
AMERICAN LAND TITLE ASSOCIATION
DO NOT REMOVE
TITLE NEWS
THE OFFICIAL PUBLICATION OF THE AMERICAN LAND TITLE ASSOCIATION
"OUR 62nd YEAR"
JANUARY, 1969

## *PRESIDENT'S MESSAGE*

JANUARY, 1969

While all issues of "Title News" are full of interesting topics, the January issue each year is especially so, since it contains copies of the talks given at the Annual Convention, which are of particular interest to people in the profession of title evidencing.

Since our Convention, held September 29th through October 2, 1968, at Portland, Oregon, in my estimation, was a great meeting, I know that all of our members will avidly read the reports.

Plans are now being finalized for the Mid-Winter Conference which will be held in Chicago at the Drake Hotel on March 5, 6 and 7, 1969. I do hope that as many of our members as possible will attend, for at the Mid-Winter Conference, we receive reports of most of the working committees, and this year in particular, the Committee on Constitution and By-laws, the Committee reviewing the proposed legislation with regard to the navigation servitude in favor of the United States, the Committee on Improvement of Land Title Records, and the Research Committee, which Committee was created to offer guidance to the newly established Department of Research of our Association at our Washington headquarters, will submit reports of great importance.

I am reminded that in the December issue I forgot to welcome, on behalf of all the members of the Association, our new Director of Public Relations, Gary L. Garrity, and our new Business Manager, David R. McLaughlin. These two appointments will relieve Mike Goodin, so that he can spend more of his time as Director of Research, as well as performing the many duties connected with his office as Secretary of the Association.

May the happiness which brightened your Holidays remain with you throughout the New Year.

Sincerely,

Gordon Burlingame

Gordon M. Burlingame

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AMERICAN LAND TITLE ASSOCIATION

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ON THE COVER: The beginning of a new year—the time to reflect on the past and hope for the future. The officers and staff of the American Land Title Association wish all of you the very best in 1969.

**PROCEEDINGS OF THE 62ND ANNUAL CONVENTION**

**AMERICAN LAND TITLE ASSOCIATION**

**PORTLAND, OREGON** **SEPTEMBER 29—OCTOBER 2, 1968**

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# GENERAL SESSIONS

## "A YEAR OF DECISION"

By ALVIN R. ROBIN

*President, American Land Title Association; President, Guaranty Title Company, Tampa, Florida*

And now ladies and gentlemen, it is time for me to tell you about our "Year of Decision" as these remarks are rather dramatically billed in our printed program.

Actually, it *has* been a year of decision. One in which the American Land Title Association has begun to squarely face up to some of the problems now confronting our industry. I believe that in years to come we will be able to look back and clearly discern that this association year of 1967-68 did in fact mark the beginning of a new era for ALTA. We are now ready in some areas and almost ready in others to publicly and officially take a position on controversial issues where we speak out affirmatively on behalf of our membership. We have become more united in our thinking and there is less disagreement among our members regarding the proper policies to pursue. I believe this process of cohesiveness and continuity will progress and continue until we become one powerful organization unified in purpose that speaks with authority for all of its members. This willingness on the part of ALTA to assume these additional responsibilities and to become "involved" is a sign of growth and maturity and we should be proud that our association has arrived at this point.

For a number of years I have watched my predecessors who have almost invariably concluded their remarks with tribute to our Washington staff and an expression of gratitude for the support and assistance which they received during the year.

I would like to reverse this procedure and begin by telling you that I too now know it is not possible to efficiently discharge the duties of this office without the very material support of our professional staff. Through the years we have been blessed with hard-working, dedicated, and competent staff officers. I want to publicly acknowledge the degree of importance that these gentlemen play in the affairs of our association.

Bill McAuliffe, our Executive Vice President, in a relatively short period of time has acquired the knowledge and know how to effectively direct the operations of our Washington office. Bill is certainly to be commended for his fine work in our behalf.

As I am sure you all now know, our very able Secretary and Director of Public Relations, James W. Robinson, submitted his resignation effective July 1st, 1968. It was with reluctance that his resignation was accepted as for a decade he had served us exceedingly well. Jim Robinson was a tireless worker completely dedicated to the cause of our association and his record of performance and accomplishments particularly in the Public Relations field speaks for itself.

At least we have not lost him from the industry. Jim has accepted a position with District Realty Title Insurance Corporation of Washington, D. C. and as such remains as a member in good standing of ALTA. We thank him for his outstanding contribution to our association's work and we will miss his personal touch on the literally hundreds of details that he has handled for us in the past ten years. We all wish him the best in his new venture with District Realty Title Insurance Corporation.

We were also very fortunate to have on our staff a young man whose talents not only excelled in the accounting field but who is capable in other areas as well. Mike Goodin who had been our Business Manager, was elected by your Executive Committee to the office of Secretary of our Association effective July 1st, of this year. Mike, of course, has acquired additional duties and since the first of July he has most competently discharged these added responsibilities.

It is also necessary to obtain the services of another man to fill the post of Public Relations Director so that our efforts in this field may continue uninterrupted. Our Executive Vice President and your Executive Committee are currently working toward this end.

The backbone of any progressive effective trade association must necessarily be its professional staff and we are indeed fortunate to have these men working in our behalf.

It would be inappropriate if I did not also recognize the contributions of your other officers, the chairmen of our committees, the members thereof and the many others who so willingly gave of their time and talent during this past year. It has truly been a teamwork affair with everyone pulling his share of the load.

May I also take a moment to express thanks and appreciation to all of the people from Oregon who have spent so much time planning and preparing for this convention. Without their diligent attention to the hundreds of details we would not be here today. We are especially indebted to Fred and Marian McMahon who as General Convention Chairman and Ladies Hospitality Chairman assumed the overall responsibility for organizing this convention. To all of you we express our sincere thanks for a job well done.

Of course, it will not be possible for me to enumerate in the short time allotted all of the important events of the year, and those which I cannot cover, either have been or will be made known to you through committee reports, *Title News* or *Capital Comment.*

I do not believe you would be interested nor do I think it would be warranted for me to take the time to give you a running account of my travels during this past year. In retrospect this year seems to have been a series of meetings of one kind or another which coupled with state conventions have truly kept me on the go. Never before have I covered so much ground within a period of twelve months nor do I expect ever to do so again. It was, however, a great experience and a considerable education. I do not know whether the American Land Title Association has derived any benefit from my adventures but I do know that I have.

It is not uncommon for our Constitution and By-Laws to be amended from time to time as our needs and conditions change. There are amendments to be submitted to this convention and this will be done Wednesday morning by Chet McCullough, the chairman of our Constitution and By-Laws Committee.

One of these proposals is of sufficient significance to warrant recognition here. As most of you know, for some time there has been discussion about the possibility of changing the name of our two sections to more clearly indicate the type of business operations conducted by the membership of each section. This is particularly applicable in the Abstracters Section where now most of its members are also Title Insurance Agents and many of them operate predominately as agents in the Title Insurance field. Thus after several years of discussion, approval by both sections, and our Board of Governors, there will be submitted at this convention a formal proposal which if adopted will change the name of the Title Insurance Section to "Title Insurance and Underwriters Section" and will also change the name of the Abstracters Section to "Abstracters and Title Insurance Agents Section." I hope this body will see fit to adopt this recommended amendment.

May I also call your attention to a change in the format of this year's program. Except where absolutely necessary to conduct our association's business affairs we have eliminated the routine committee reports which were heretofore sprinkled throughout our convention program. It was felt that this information could readily be made available to you through *Title News* and other means. We have used this additional time to bring to you messages of interest from qualified

speakers both from within and without our industry.

Another important and historic step was taken by your association during the past year. At our Mid-Winter Meeting in New Orleans last February, our Board of Governors on the recommendations of our Executive Committee retained the Honorable Thomas S. Jackson of Washington, D. C. as General Counsel of the American Land Title Association. Mr. Jackson heads the firm of Jackson, Gray and Laskey in Washington and has most ably represented ALTA in its efforts to persuade the American Bar Association not to enter the national title insurance field. Mr. Jackson has a distinguished record of legal practice and provides for us mature, responsible counsel in our legal affairs. Although ALTA has previously retained counsel from time to time to assist us with specific matters, we have not before had the benefit of a general counsel to assist us with our overall legal problems.

Perhaps the most important problem facing our association during this past year has been the activity within the American Bar Association aimed at the creation of a National Bar-Related Title Assurance Corporation. This is really not a new development although some of us only recently may have taken cognizance of it. Ever since the organization of the Lawyers Title Guaranty Fund in Florida, Bar Associations in various states have been active in this field. These efforts have resulted in the organization of a number of state level Bar-Related Title Insuring facilities. Some have been more successful than others but the enthusiasm within the Bar for this type of plan and operation has grown with the passing years. As a result, on a national level a few years ago the American Bar Association created its special committee on Lawyers Title Guaranty Funds. This group has worked diligently promoting Bar-Related Title Insurance Facilities around the country and its members have long dreamed and planned for the day when they would be able to induce the American Bar Association to lend its dignity and prestige to a giant national Bar-Related Title Assurance Corporation. The culmination of the first phase of this struggle within the Bar came a little over a year ago with the narrow passage in the ABA House of Delegates of the resolution approving in principle the formation of such a corporation.

This action by ABA came as a surprise to us because just a few months prior thereto our own Board of Governors had approved the creation of a National Conference between ALTA and the ABA. At that time we were expecting to begin discussions with representatives of the ABA concerning our mutual problems. Ironically ABA also approved the establishment of a National Conference between our two organizations almost simultaneously with the passage of the resolution regarding the establishment of a National Bar-Related Title Insurance Corporation.

Up to then, ALTA as an organization, had taken no position and voiced no opinion on this matter which had inevitably been creeping upon us. But under the impact of this ABA resolution, we finally became aroused. Perhaps for the first time we began to realize the full implications of this move by the Bar into our field.

At our convention a year ago our own Board of Governors committed our association officially to oppose the implementation of this resolution by the American Bar Association. To assist us in this effort we retained the services of Thomas S. Jackson of Washington, D. C. now our General Counsel. I believe you all know that through our counsel we filed a brief and made a personal appearance before the ABA Board stating our views and position on this subject. At that time in October of last year, the ABA Board voted to temporarily defer further action on this resolution.

Shortly thereafter, our National Conference was actually established. The Conference Committee numbered six on each side and our group was headed by our Immediate Past President, George Garber who acted as Chairman. The Bar group was headed by Mr. Robert H. Frazier of Greensboro, North Carolina.

These two committees met for the first time in January at Chicago. The first meeting was preliminary and exploratory. It was there agreed to meet again during April in Richmond, Virginia. Both sides agreed to come to the second meeting prepared with a proposed agenda of

subjects which should be considered and discussed by the conference.

The April meeting was held on schedule and before discussions actually began Mr. Frazier the Chairman of the Bar group said that he would like to make an announcement. He then advised our committee that about two weeks prior thereto he had attended a meeting of the ABA Special Committee on Lawyers Title Guaranty Funds of which he is a member and that there was also in attendance a sub-committee of the ABA Board of Governors during which Mr. Hewen Lassiter the former President of the Lawyers Title Guaranty Fund of Florida and now a Vice President of American Title Insurance Company of Miami made the now famous Continental Insurance Company proposal to create a National Bar-Related Title Insurance Company. Even in the face of this announcement our Conference Committee continued discussions with the Bar group and submitted its proposed agenda of subjects to be discussed. It is worth noting that although there was prior agreement that both sides would submit suggested subjects for discussion, the Bar Committee offered none for consideration. This meeting was adjourned without making definite plans for a future session.

Then in May of this year the ABA Board by a vote of 10 to 8 adopted the Continental Insurance Company's p r o p o s a l. This approval, however, was subject to further ratification by the ABA's House of Delegates which did not meet until August. Knowing that the original vote in the House of Delegates and the subsequent vote in the ABA Board turned on a very narrow margin without any organized opposition, we began our work designed to defeat this proposal in the House of Delegates of the American Bar Association.

As a result of these efforts, on August 6, of this year the ABA House meeting in Philadelphia, after extensive debate, voted 112 to 104 to defer the Continental Insurance Company proposal for a period of one year. There were last minute changes in the details of this plan designed to make it more palatable to those in opposition. These changes included the elimination of the planned return of a portion of the company's profits to the American Bar Association or one of its instrumentalities and in addition, left the door open for other title insurance companies to participate with the Bar in a like venture if they chose to do so.

The very closeness of the vote on what was obviously a compromise decision leaves no doubt that the proponents of Bar Sponsored Title Insurance operations will continue their efforts unabated. We, of course, must also continue ours on whatever basis and in whatever direction developing events demand.

What is to happen in the future depends on a lot of things and we may well wonder where we are headed. We might also ask ourselves what will this industry be like a few years from now? What is to be the ultimate result? And although I cannot answer these questions, I think we will agree that there are some fundamental changes in the making. I believe we will also agree on the basic principle, no trade association has any business being in business. If the American Bar Association is ever really successful in establishing an effective National Bar Title Insurance Company, it will certainly cause some far-reaching changes in our industry as we have known it in the past. I believe also there is a good possibility that the results of such action might well work to the detriment of the lawyers present objectives. It might even topple the Bar from its lofty pedestal of professionalism down into the cauldron of commercial endeavor. Strangely enough this might be the key to victory in our present struggle. Our job now is to stay abreast of the situation, be flexible in our approach to the problem and be prepared to adjust our practices, our policies and our philosophies as the need arises.

# "VIET NAM—THE KEY TO ASIA"

By THE HONORABLE DR. WALTER H. JUDD
*Former U. S. Congressman, Missionary, Far Eastern Expert, Washington, D. C.*

Everybody's life in America today depends more than ever before on what happens in Washington. But what happens in Washington depends more than ever before on decisions in places like Moscow, Peking and Hanoi. And decisions in Moscow and Peking and Hanoi depend more than we realize on what we in these United States do—or what they *think* we will do. They know our power. They appreciate it better than we ourselves do. But how are we to use it? That is the first question both our friends and our enemies around the world ask.

Before any one of us is a business man, or land title expert, or physician, he is a citizen of this Republic; he is a taxpayer; he is a parent; he is a trustee of a way of doing things, a set of values, a pattern of living called the American way of life which is under assault today—cold, calculated, determined assault. There *is* an organized effort in our world to undermine or overpower or force into bankruptcy and failure this system of which you and I are the beneficiaries and also trustees.

Therefore we have to study our world just as a doctor examines a patient. He might say to the patient, "If you hadn't done what you did, you wouldn't have what you've got." But that isn't very useful because the patient *did* what he did; he's *got* what he's got. Likewise, we have to examine today's world coldly, not in terms of what we wish the situation were, but in terms of what the situation is.

If we were to choose two words to describe this world, I think they would be these: *Conflicts* and *Confusion.*

Most of the explosions around the world are parts of four main struggles or conflicts.

The *first* is the struggle against the *old* colonialism—which was mostly run from Western Europe. In these last twenty years, a billion people have gotten their independence. We began it ourselves in Manila, on July 4, 1946. We pulled down the American flag and ran up the Filipino flag. This started a process which, of course, was irreversible and irresistible and in the two decades since, some 60 countries have come into national independence, most of them without being at all prepared for it. The disintegration of the old empires, which is practically completed now, inevitably brought confusion, turmoil, conflict —and revolutions.

The *second* conflict is the free world's struggle against the *new* colonialism—mostly run from Moscow and Peking. In these same twenty years, a billion other people, ancient and highly civilized peoples, have lost their independence. I think all of history has seen no two such convulsions as these.

The free world's struggle against Communist colonialism is known as the Cold War. It is not a policy of our choice, it is the price of our survival. What are the alternatives? A hot war? Who wants that? Surrender? Not many want that. Well, the only other possible course is this long, hard, frustrating struggle. It is the least unacceptable of the various courses available to us.

A lot of people have been saying we have achieved a detente in the Cold War. But is it real? I think one of our greatest dangers lies in misunderstanding of this so-called detente.

Every time the Communists are in trouble, they become conciliatory. That doesn't prove they are changing.

People say, "Well, Communism is now mellowing, it's maturing, it's evolving. The Soviets are becoming more capitalistic, we are becoming more socialistic, and the two will converge." But introducing capitalist incentives to stimulate lagging production is not evolution. It is reversion to what Lenin himself did in 1921.

Aren't the Russians, it is said, talking about peaceful coexistence and relaxation of tensions? Yes, they

are talking about it but I cannot find one deed that indicates the slightest change in the fixed objective of World Communism—world conquest. Whenever Communists are in trouble, they agree to talk—and generally it is just that—TALK.

In political struggle, you have an election—*if you can win it.* If not, then push for a coalition as the way to get into power.

In military struggle, go ahead and fight the war, *if you can win it.* But, if you can't, then propose or accept a truce—not as a means of ending the war, but of trying to gain at the negotiating table what you have not been able to gain on the battlefield. To Communists, talk of truce, peaceful coexistence, detente, is a military maneuver designed to *win* the struggle, not to call it off. When they couldn't win in Korea by fighting, they proposed a truce—and talk!—so they could shift to Vietnam where they had a better chance to win.

I don't know why this tactic should be so hard to understand. They write it all out that this is the way they are going to operate, but most of us refuse to believe it.

What would be a deed to indicate a real change? They could take down the Berlin Wall. If they want to relax tensions, they have only to remove the causes and here is one of them. It wouldn't start a war if they took down the Berlin Wall. And it would change the climate of Europe overnight. But they don't take it down.

Another deed would be to stop using Cuba as a base for subverting our hemisphere. There is no need to have a conference—no need to sign any piece of paper—just let them stop doing it and there will be relaxation.

Why don't the Russians send Gromyko to the U. N. to announce they have given up their program of world revolution and that from now on, they are going to work only for the well-being of the Russian people like any normal national government? The threat to us and the world would be gone. Hanoi couldn't hang on three weeks. Our boys would be home as fast as they could be brought home. But there still are no deeds to show a change in their objectives. Soviet action against Czechoslovakia makes this painfully and tragically clear.

That brings us to the *third* main conflict: that within the Communist world. It shouldn't be called the "Sino-Soviet split," however, because it is not a conflict between two nation states — the Soviet Union and Red China. Communism is not a national movement. When you become a Communist, you have to reject, by act of intellect and will, your primary loyalty to your native country. You are now a world revolutionist.

This conflict is a quarrel between two factions within the Communist movement worldwide. The main leaders of one faction are in Moscow and the main leaders of the other are in China. But each has support in the other's country. The anti-Maoists in China are not Russians — they are Chinese. But they are on Moscow's side in the quarrel. Moscow purged Molotov, Malenkov, etc., because they were on Mao's side. They thought Mao, not their fellow-Russian, Khrushchev, was following the proper tactics.

All the governments we ever dealt with in the past operated in terms of what their leaders thought were their *national* interests. We, therefore, have assumed that any government in Moscow *must* be working primarily to meet the needs of the Russian people. I hope and believe this will ultimately become the case. But it has not as yet.

We have assumed that if a government is in Peking, it *must* be working primarily, for the well-being of the Chinese people. So, if we help it meet their needs, it won't be aggressive.

But Mao Tse-tung is not a Chinese patriot. He is wholly *un*-Chinese, openly waging war on Chinese culture itself. He is working for the Communist world revolution. When his own people were starving in China, Mao exported rice almost every month for five years! To what place? To Cuba! His first concern was to keep the struggle going in the Western Hemisphere against *us.*

The Communist quarrel is not over *whether* to conquer the world, but *how?* It is over tactics and timing.

Mao Tse-tung never ceases to say, "Political power grows out of the barrel of a gun." He relies only on force. Moscow relies first on deception.

Mao says, Have the showdown now in Vietnam. Moscow says, Not now, we'd get hurt too badly. Stall along with "peaceful coexistence" until we get more countries subverted in Latin America and Africa, and the United

States gets tired and pulls out of Vietnam, and Europe and NATO are more divided. We will win the world then, not by actual *use* of nuclear weapons, but by the *threat* of them.

Of the two, the Soviet Union is, of course, far more dangerous. One, it has greater power; it can hit us now. Two, its leaders are more clever; they can sound like men of peace!

The *fourth* struggle is not so much a conflict as tensions, divisions, disunities within the free world.

Perhaps our greatest *hope* today lies in the conflicts within the Communist world. I am reasonably sure that our greatest *peril* lies neither in the power nor the purposes of the Communists but in the divisions and disunities within the free world.

On the eastern side of the north Atlantic are some 325-million people in Western Europe, the largest body of strong skilled manpower in the world, the mother of our civilization and of 75% of our science. On this side of the Atlantic are almost 225-million people — Canada and ourselves. If these 550-millions were really united, plus Japan, Australia and a few others — our President wouldn't have to be pleading with Ho Chi Minh to negotiate. The whole Communist world would have to negotiate, and on the free world's terms. But we are not united. Our alliances are in "disarray"—Washington's word for a mess.

So, the various explosions are parts of a consistent pattern worldwide. There *is* a head and a tail to things—if we take the trouble to put the picture together.

From this world background, let us look at Vietnam. It is the test case for us now. Three different times, Berlin was the test case. Twice it was Formosa and Quemoy. Once it was Lebanon. Twice it was Cuba.

The Communists call this test in Vietnam the "watershed."

What do they mean by "watershed"? They mean that if they can humiliate the United States in Vietnam and prove that we don't have the resolution and the ingenuity to deal successfully with that problem, that we are, as Mao Tse-tung says, a "paper tiger," then who else can count on us? The world will shift rapidly to the Communist side.

Why should Ho Chi Minh settle for the 17th parallel, or even for all of Vietnam, if he thinks the Reds can win the world? Once they have humiliated the United States—no one else can stand up to Communist threats and pressures.

On the other hand, if we prevail, as we can and will if we understand, the Communists are in terrible trouble worldwide. The fakery and fraudulence of their whole pretense of having the answer to man's problems, particularly in underdeveloped countries, has been exposed. The peoples of Asia and Africa increasingly know it. The peoples of Europe know it. There is vast disillusionment in all of those areas. Look at Nkrumah's fate in Ghana, and Sukarno's in Indonesia. Look at the failures and disorders in Red China itself.

Communism is also at its lowest ebb in Latin America—the people there have seen Cuba's sufferings. Only in the universities is it making some headway—just as in the United States. Communism is not gaining converts anywhere except among some "intellectuals" and "idealists". Communism is in deep trouble and I predict that if we stand fast, it will disintegrate as a world threat far more quickly than people today begin to realize.

What really is the issue in Vietnam? In world terms, the issue is, How are international disputes to be settled? This is what the war in Vietnam is about.

Are we to go back to the law of the tooth and claw or the atomic bomb or the jungle, and any outfit with the will and the power to impose its rule on other peoples is to be allowed to get away with it? Is that the kind of world we are to have? Or are we going to help a neighbor under cruel attack, within the reasonable limits of our resources and with due regard to our other obligations, first, because commitments were made by the duly constituted authorities of the United States; second, because we are a good neighbor; and third, because if we don't check such gangsterism in the neighbor's house, we will have to fight it later on in our own house.

What is the stake in Vietnam? Is it Southeast Asia? Yes, and the rest of the world, too, including ourselves.

What is the problem in Vietnam? It is not just one little country with some 16-million people. It isn't the Buddhists; it isn't General Ky; it isn't inexperience in government, corruption, or factionalism. These are problems, but they are not *the* prob-

lem. *The* problem is aggressive Communist expansionism.

The heart of Communism is its dogma of inevitable world domination, achieved by world revolution. Has any important Communist leader ever renounced it?

The aggressive Communist expansionism from North Vietnam is backed up by Red China next door and, more remotely, the Soviet Union. Without their help, North Vietnam would have to give up her aggression promptly. But we must remember that Brezhnev has repeatedly said that whatever Red China, because of her internal troubles, cannot furnish Ho Chi Minh, the Soviet Union will supply in order to make sure that Ho can "defeat the rapacious American imperialists." That amounts almost to a declaration of war on us.

Communist China is the key to the situation in Asia because of mainland China's size, its strategically advantageous central position in Asia, the strength of the Chinese people, the history of Asia, and the kind of rulers now in power in China. Whenever the Chinese people have been united under an aggressive, expansionist government, it has been the boss in Asia. The people of Asia all understand that and have come to be somewhat fatalistic about it.

Look at Asia's geography. Asia is like a giant hand. China is the palm and out from it come fifteen fingers —fifteen countries occupying peninsulas and island groups around China. On the east are Korea, Japan, Formosa, the Phillipines; in southeast Asia, six; and across the south are Burma, India, Nepal, Pakistan, Afghanistan. All of these radiate out from China like spokes from the hub of a wheel.

In these fifteen fingers live one-third of all the people in the world. That's what is at stake in the Vietnam war.

To the Communists, getting China was what getting a man on first base is to a baseball team—as Lenin pointed out, although he didn't put it that way. He said the way to Paris—the North Atlantic—is through Peking!

In baseball, you go to first base only to get to second base. Second base is the fifteen countries around China.

What's third base? Africa and Latin America. Do you recall the first "Tri-Continental Solidarity Conference" which world Communism held in Havana in 1966? Six hundred delegates from the Communist parties of 82 countries met to plan the subversion of the rest of Asia, of Africa, and particularly of Latin America.

Castro boasted publicly that Cuba is to be to the Western Hemisphere what North Vietnam is to South Vietnam. That ought to tell us something. Cuba already has 40-some camps where Communists from Guatemala, Panama, Venezuela, Brazil, etc. are being trained, as the Vietcong leaders were trained in North Vietnam. They are then equipped, transported back to their home areas, supplied and directed, while they subvert from within.

But suppose world Communism gets third base? Does it plan to stop there? No, the objective, of course, is home base—the North Atlantic, the United States and Europe.

What does a baseball team do when the opponent gets its best base runner on first base? It doesn't give him second base in order to please him! No, it tries to keep him on first base until the inning ends.

This is the essence of our foreign policy in Asia: Keep Red China on first base until this inning in world events ends—until internal troubles compel changes within China—until somebody dies—until the world situation changes. *Keep Red China on first base!* Four American Presidents came to this policy. However hard to accomplish, it is not hard to understand!

How do we do it? There are two ways—One is negative: Don't do anything to help Red China. That's why we mustn't trade with it. It has severe shortages. The system isn't in accord with the nature of man. It doesn't release and energize man's creative capacities to the full. It doesn't give adequate incentives. People don't do their best. Surely we should not rush over and help the Communists out, so they will have a better chance untimately to take over our system which works and replace it with their system which doesn't work!

That's also why we must not give diplomatic recognition to Red China. It would unnecessarily give them a smashing victory.

Again, Red China must not be brought into the United Nations until it is willing to qualify for membership. What does it have to do to

qualify? The U. N. Charter is clear: "to refrain from the threat or use of armed force in international disputes."

Ask three practical questions: If, before Red China is willing to change its lawless behavior, the U. N. were to admit Red China and the U. S. were to give it official recognition, what would that do to the other countries, especially those around China? If the strong embrace, can the weak resist? All of them would have to recognize Red China, too. Every Chinese consulate and embassy in the world would become a legitimate center for Communist espionage, sabotage, subversion.

Second, what would be the effect upon Red China itself? Would proof that belligerence succeeds persuade it to abandon belligerence?

Third, would it s t r e n g t h e n or weaken the United Nations? Make it more "united"? Or make it even more divided and unable to act effectively?

The positive way to keep Red China on first base until it fades or changes is: Do all we reasonably can to s t r e n g t h e n the countries around China. This brings us again to Vietnam. How are we doing there? Better. Thanks to the toughness and tenacity of the South Vietnamese people and the heroism, clear-headedness and skill of our armed forces—our aviators, ground troops, navy, marines, and all the rest—the situation has been retrieved so that today the Communists know they can't win. But they fight on because they think we will lose here at home. Their only hopes now are for disorder in South Vietnam (and I don't think they can create that now—if *we* hold steady), disunity in the free world, and disunity in the United States. Disunity here is the most serious threat.

Gentlemen, it is wholly unreasonable to demand or expect greater unity and stability in Saigon than there is in the President's own party on Capitol Hill. Nobody can get unity in Washington and in the country except the President. He has to become like Churchill, great enough to tell the people the full truth and they will respond. But he cannot delay indefinitely. We are gaining ground in Vietnam but losing ground in America.

In South Vietnam we must HOLD and we must HELP. We are doing these better.

We must also weaken North Vietnam. The objective in a military operation must always be political, namely, to change the will of the adversary. What is likely to change the will of Ho Chi Minh? Killing people in South Vietnam—while constantly reassuring him that no matter what he does, nothing will happen to him and his position in the North? Do we think this is likely to change Ho Chi-Minh's will?

What is to be done now that talks with North Vietnam are being held in Paris? First, we must always keep the door open to *genuine* negotiations. And I am always basically an optimist. I have seen so many patients whose condition seemed hopeless, but pulled through if we kept on working. Second, we should put a time limit on talks that are just unproductive stalling to gain time for them and to create fatigue and divisions among ourselves.

That is the way President Eisenhower got an end to the killing in Korea. The Reds had been stalling at Panmunjon for eighteen months when he took office. When they continued the same pattern, he sent word privately, as he revealed in his book, MANDATE FOR CHANGE, that unless they began to negotiate seriously and meaningfully, the U. S. would have "no inhibitions as to territory or weapons". That meant he would go beyond the Yalu River and, if necessary, beyond conventional weapons. They got the message, but didn't quite believe him. So he ordered the bombing of some dams in North Korea, flooded those valleys endangering the Communist food supply—and they promptly agreed to stop the fighting. This is how we got the cease-fire in Korea. That is the pattern most likely to get a cessation of fighting in Vietnam.

For example, we could let South Vietnam start a true "liberation front" in the north. Almost a million of those in the south came down from the North to escape Ho's rule. They have wanted since 1961 to go back as guerillas to disrupt things in their native areas, as the Vietcong do in the south.

Why not a Kennedy-type blockade of Haiphong through which goes at least 75% of Ho's absolutely essential help from the outside?

We should also conduct more effective bombing of more important targets. Not mass bombings of Hanoi or civilian populations, but attacks

on military targets we have thus far forbidden our men to hit, including the all-important Red River dikes so essential to North Vietnam's food supply. Why not notify Ho publicly of a list of 10 or 20 military targets that we intend to destroy sometime in the next few days or weeks, as we decide. We should ask Ho Chi Minh to please get his people away from those targets and out of those factories and fields. We don't want to kill North Vietnamese, but *we must reduce his capacity to kill South Vietnamese and to kill Americans.* This would put him, rather than ourselves, on the defensive. If civilians were killed, it would be because he didn't move them away after the warning.

I don't think we have a right to send one boy out to give his one life unless our government is willing to do all it can, short of nuclear war, to reduce the capacity of the enemy to take that boy's life.

Why haven't we done these things? FEAR. Fear, one, that the "masses" of Red China might intervene. But, are they likely to? If they were to intervene, they would be inviting and justifying our destruction of their nuclear facilities. Mao Tse-tung isn't that crazy.

Besides, how would they supply their "masses" in South Vietnam? Moreover, their best troops are now tied down at home to defend against Taiwan and to keep the lid on in China itself. They are not free to go to Vietnam.

The other thing we are afraid of is two words: *Confrontation* and *Escalation.* It is assumed and asserted that a confrontation will inevitably lead to an escalation. But look at the record. There have been twelve confrontations in the last twenty years when we refused to yield to Communist threats. Five times under President Truman, five under President Eisenhower, and two under President Kennedy. Each of the twelve times we firmly said "no", and, with deeds to match, it led without exception to *de*-escalation. That is the record.

What has led to escalation? Not firm confrontations on our part . . . but hesitation, indecision, division, disunity, the appearance of fear . . . *these* are what have expanded and prolonged the war. It is not because I want an all-out war, but precisely because I don't want one that I urge steady firmness and strength as the quickest and surest way to a livable peace.

Surely the cynical and brutal Soviet conquest of Czechoslovakia has exposed the bankruptcy of trying to get peace with Communists by appeasement or by "accommodation". It demonstrated for all to see that:

(1) no society can be Communist and free at the same time;

(2) the Cold War is not over. It was only naive wishful-thinkers who ever imagined it was.

(3) however much Americans may argue about the "domino theory" in Southeast Asia (in reality, not a theory but a *fact*), the Soviets believe in it. They know that a little freedom in one of their dominos will lead inevitably to the falling of its neighboring dominos in the same direction;

(4) Moscow's action in Czechoslovakia is exactly the same as Hanoi's action in South Vietnam. In Europe, the problem is the refusal of the Soviets to let the Czechoslovakians have their independence, just as in Asia it is the refusal of Hanoi, backed up by the Soviet Union and Red China, to let the South Vietnamese have their independence;

(5) perhaps some Europeans who have been condescendingly critical of our efforts in Vietnam will now discover that they, in free Europe, cannot make it without our help any more than South Vietnam can; and

(6) perhaps there will be some clarification of the confused thinking that permitted supposed liberals like McCarthy and McGovern to say, "After all, what's the difference between Russian troops in Czechoslovakia and American troops in Vietnam?", as if the use of armed force to defend human freedom is the same as the use of armed force to destroy human freedom!

We must expect the Soviets to persuade or coerce Hanoi to make some "peace" gesture before November 5th so that what will be at first interpreted as a "breakthrough toward peace" may lead millions of American mothers to decide we should not "change horses in mid-stream" and maybe their boys won't have to go to Vietnam! Without doubt, the hard-headed and rational men in the Kremlin are intensely interested in seeing that the weaker American candidate wins this election, just as Khrushchev boasted that he defeated the stronger candidate, Nixon, in 1960. Hanoi, understandably, will

hold out until the last moment to get the biggest price possible from the U. S. Administration in the same way that a football player does not stop with ten yards if he has a chance to get thirty.

Truly the world conflict is approaching its climax—"watershed". Which way is it to move—toward Communist regimentation or towards freedom?

The masses of Asia and Africa in some 60 new countries are disenchanted with Communism. They see its shortcomings in the Soviet Union which has had it for fifty years. Russia isn't short of land, it isn't short of natural resources, and it isn't short of strong, brilliant, competent people. But it has shortages. The system is a failure.

All countries see East and West Berlin. East Berlin is a flop. They have to build a wall to keep people in! Who wants that pattern? West Berlin has freedom, individual dignity, incentive and initiative, self determination and it is booming.

The irony is that just when hundreds of millions are disillusioned with Communism and more attracted than ever before to the system of which we are the pioneers, the products and the trustees, they see so many here tempted to abandon faith in it and move further towards the socialist system which doesn't work.

Communism is in trouble and the road ahead has a turning—if we just don't lose faith in ourselves. This is a test, not of our power, but of our character.

# "A PENNY SAVED—"

**By LLOYD HUGHES**

*Chairman, ALTA Finance Committee; Senior Vice President, Midwest Division, Transamerica Title Insurance Company, Denver, Colorado*

My speech is entitled in the program "A Penny Saved—", I had some remarks about that but I'll just refer to it this way: whoever suggested that title, I'll just say that it's easier said than done these days.

I'll just touch on our trusts. I should do that, I find as Chairman of the Finance Committee. In our Reserve Assets Trust, there's very little change. There hasn't been, as a matter of fact, for some years. Why? Because all of the earnings by our order are turned over by the Trustee to fund our Retirement Plan Trust. Both of these trusts, as you know, are in the hands of Title Insurance and Trust Company, and I'm grateful for that. So much for that.

The important thing that the Finance Chairman has to do is, with the help of Bill McAuliffe and others, believe me, and all of the Executive Committee, to prepare and come up with a b u d g e t for 1969. Your Executive Committee has worked almost two full days on this—one day in Chicago early in September and one Saturday all day here. We have raised the budget expense-wise. You'll learn as the year goes on that we have included in there some more money for public relations—not as much as our very able Public Relations Committee had asked for, but we went as far as we thought we could go in view of our financial condition, and we hope that they will carry on and even expand what I consider a very fine public relations program, and I'm sure you do.

Other items that you'll hear the results from are items for research and items for committee expense. Your Executive Committee and your Board of Governors yesterday agreed with us that American Land Title has gone about as far as it can go, or should go, in imposing on individual companies to pay dues and also pay —not only contribute the time but pay the expenses of some of their men who work on committees for the good of all of us. We're going to try to pick up at least some of that expense, that added expense.

The budget on the expense side, as was adopted and approved by the Board of Governors yesterday, calls for an expenditure t o t a l i n g $313,-770.00. If you haven't guessed it already, we have to raise the dues to meet this budget. We have raised the dues, following very much the

same pattern as we followed before. I understand it's the first change in the basis for our dues since 1962. The total amount that we guess at this time—it's always a guess because it will be based on this year's total earnings, individual earnings, that's what our dues for 1969 will be based on. But our educated guess is that it will bring in $312,270.00. A very slight deficit.

But one thing I should mention—I mentioned it at the start—that our Trust for the Retirement Program, the earnings from the Assets Trust have always been—as far as I know since it was first adopted in 1963—transferred to fund the Retirement Plan. Jim Robinson's leaving—believe me, we were sorry to have him leave, but it will probably result in some saving—we know it will result in some saving, as far as the funding of the Retirement Program. Therefore we feel that we can live within our budget next year.

As I told you, you'll hear more about the results of the expenditures and you'll also hear more about the exact form that the raise has taken from Bill McAuliffe probably along about the first of the year.

# "AFTER A YEAR OF STUDY"

**By WALTER B. RAUSHENBUSH**

*Professor of Law, University of Wisconsin Law School, Madison, Wisconsin*

Mr. Chairman, Ladies and Gentlemen of ALTA, it is a renewed pleasure to talk to you again, exactly 371 days after I had that pleasure in Denver. Your hospitality and cordiality have made this visit a delightful one for Marylu and myself, as was the last.

You will recall that I was studying title assurance and the small real estate transfer, under the auspices of the American Bar Foundation. It would be a pleasure to report to you dramatically that I have solved the problems of real estate transfer and adjusted the differences between some parts of the bar and some parts of the title industry, so we could all live happily ever after. I haven't done anything like that, of course, nor could I. Rather, I've become increasingly conscious of the smallness of one man's individual effort to even consider all the interrelated problems involved. It's a bit like the story of the small but cocky and ambitious mouse who suddenly encountered the huge elephant. The elephant looked down disdainfully and trumpeted, "How come you're so ridiculously tiny?" The embarrassed mouse squeaked, "I've been sick!"

Well, I cannot say "I've been sick," but if any of you have noted some of the events at the University of Wisconsin campus the past year, you can believe that I have been occasionally distracted! I wish I could have accomplished more in the past year; I intended to. But intentions often outrun performance. Several dozen of you here know that full well, because in Denver when I urged you to communicate facts or ideas or arguments to me, you individually assured me you would do so, and *only* your distinguished executive vice-president has done so! It is not too late for any who may have meant to write me to do it, so I hope some of you will.

I don't wish to give you the idea, though, that nothing has been accomplished in our study in the past year. My report is in the process of being written, and its general outlines have taken shape quite clearly, though I still have some investigating and some thinking to do. Also, proposals for additional Bar Foundation work related to real estate transfer have crystallized and are currently under active consideration. So I do have things to report to you, and will take the rest of our brief time together this morning trying to be specific and brief about matters which I know are important to you.

I am sure you understand that neither here nor in my report can I purport to speak for the American Bar Foundation, the American Bar

Association, or anyone other than myself. Indeed the Bar *Foundation*, at least, does not take *positions* on issues at all, though it guarantees its researchers freedom to do so on their own. I think, though, that I can properly advise you of the status of Foundation *activity* related to real estate transfer. First, the Foundation stands ready to receive my written report as soon as prepared, and to publish that report or such parts of it as are deemed worthy of publication. Second, my report will probably contain proposals for additional Foundation research into specific matters, and the Foundation stands ready to give serious consideration to supporting those proposals, though it is of course not committed to support them. Third, the Foundation has presently under active consideration three additional projects having to do with real estate transfer:

One is related to your Workshop on Improvement of Public Records tomorrow afternoon at 2:00 p.m. It involves an already completed internal preliminary report and the possibility of further work on the problems and the potential involved in automating public land records.

The second involves starting from the Simes-Taylor proposals of eight years ago for a model Marketable Title Act and related title-curing statutes. There would be a survey of recent state legislation in that area, an examination of relevant cases, an investigation of just how such statutes are really used by conveyancers in various states, and a presentation of proposals for possible additional future legislation of the same type.

The third involves a study of the extent to which land-use control information and other types of data not normally available as a part of the traditional complex of land *title* records, have been or might be integrated with and made available together with traditional title data. Various states would be surveyed to see whether such traditionally non-record data is now included in land title records, how this is done, how it's working, and the like. The results of the survey might reasonably lead to proposals for more effectively making such data publicly available. The importance of such work to the more general effort to improve and automate public land information systems is obvious.

Let me emphasize that the latter three possible projects I have described are only under *consideration* at the moment. Approval by the governing officials of the Foundation is necessary, and will not be finally sought unless competent researchers to handle the projects can be found. For now, we can say no more than that the Foundation has shown a constructive and continuing interest in real estate transfer and title assurance that goes well beyond my own project.

Let me turn now to my report, as it is taking shape. I expect it to be book-length, and have tentatively planned to title it *Who Helps the Home Buyer*? The subtitle might be: "A Study of Roles, Problems, and Controversy in the Small Real Estate Transfer." After an introductory chapter describing the study and the context which gave rise to it, the report will turn to a description of some of the amazingly variant ways home sales are handled around the country—a matter I discussed with you a year ago. Next I plan a discussion of our land information system, on tract indexing, on Torrens, and on the potential and problems of automation. My plan is to turn then to a discussion of those who play roles in the transfer process, with chapters on brokers and unauthorized practice of law problems related to them; on title companies and related unauthorized practice problems; on lawyers and some problems of the lawyer-abstract system; and on bar-related title insurance and the problems it poses. Next will come a look at certain possible remedial techniques for increasing protection afforded the buyer, including at least chapters on marketable title legislation and on ways to impose by law additional responsibilities on knowledgeable participants in the transfer process such as lenders, brokers, and title companies. Concluding chapters will include a summary of information still needed, with research proposals for getting it, and a look at the longer range future of real estate transfer.

Someone in the rather sensitive position I now occupy always faces a danger of being misunderstood. You may have heard the story of the busy and successful obstetrician and gynecologist who was alone in his office at about 5:15 at the end of a busy day. He needed to make a few notes in certain files, so he poured him-

self a highball to sip as he worked. Then there was a knock at the door, and he discovered there a long-time patient of his, an attractive woman in her late thirties. She apologetically said that she had hoped to find him still there, because her annual checkup was soon due, and a sudden opportunity had arisen for her to go with her husband to Europe for several months. She felt the doctor should give her at least a quick check before she left, and wondered if he might possibly do so now. He agreed, and invited her in, and then on impulse said "You know, I was just relaxing a bit with a highball at the end of the day. Can I fix you one too?" She gratefully accepted and said it had been a hectic day for her also. Just as he handed her the drink, there was another knock on the front office door. This time the doctor was very guarded, opening a side door and peering down the hall. He hastily shut the door, turned to his patient, and whispered: "Quick! Take off your clothes! It's my wife!"

Now, that doctor didn't want to be misunderstood—and neither do I. I hope my report will focus the problems and issues, sharply and impartially. I hope it will strip away some of the loose rhetoric heard on various sides, and expose areas where we really don't have enough facts to make a confident judgment. What it cannot do, and will not pretend to do, is solve the problems and decide the issues, so I hope you won't misunderstand and assume that I expect to try to say any definitive or decisive words.

Let me briefly sketch for you some of the thoughts which I hope to suggest in the report. I do not suggest to you that these thoughts are highly original, but I hope they will at least be usefully focused and freshly stated, and helpful as a starting point for further research by the Foundation or others.

First, there is quite general agreement that our public systems of providing information about real estate are an irrational hodgepodge. The clear verdict of the marketplace is that real estate information is most useful when available by tract or parcel. That is the way abstracters present it. That is the way title plants are set up. If lawyers keep a record of title searches or title opinions previously prepared in their office, so as to expedite their future work, that is the way they do it. But tract indexing is a part of the public records system in only about a dozen states. Moreover, we have hardly begun to solve the problem of the numerous satellite locations where there may be filings or docketings which affect real estate title. And in very few places have we so much as made a start on making land use information, such as zoning, an integral part of our real estate information system. The problems this situation poses need to be explained clearly, and stated strongly.

A second matter needing discussion is the problem of unauthorized practice of law. In a real sense, this is at the heart of the concern about finding real estate transfer procedures which best protect and serve the public. I trust that the Bar's reason for watching carefully the activities of brokers, title insurers, escrow companies, abstracters, and the like, and for seeking to stop or prevent those activities which seem to invade the lawyer's exclusive province, is *not* to preserve a Bar monopoly of business which could be just as skillfully and usefully conducted by others. The reason must be rather that in the public interest the lawyer's role has to be preserved, because otherwise the *public* will not be as well represented or protected. In small real estate transfers, particularly, the Bar expresses concern about protection for the buyer against various risks of purchase which, though fortunately infrequent, can be very severe as we all know. Those concerned with unauthorized practice, and those most interested in bar-related title insurance (who have closely related concerns), assume almost as an article of faith that a real estate deal where the buyer is individually represented by counsel is better for the buyer than one where the buyer is not so represented. But title insurers and some real estate brokers, in areas where the lawyer's role in small real estate transfer has become merely occasional, deny that assumption and assert that skilled lay or corporate specialists, backed up by specialist lawyer-employees, do just as good a job for the buyer. I would love to be able to tell the American Bar Foundation how we can construct a research project which will test the various assertions and assumptions in this controversial area, and which will support conclusions as to which of

several models of the real estate transfer process best and most economically protects the home buyer from legal difficulties. It is a problem I am still working on, and involves very great difficulties.

Meanwhile, the case law of unauthorized practice in real estate matters has not written a proud page in our jurisprudence. In one case we see certain broker practices condemned as unauthorized practice of law and forbidden, with a resultant constitutional amendment reversing the decision. In another, quite similar broker practices are declared not to be the practice of law when done for no compensation other than the broker's commission, though apparently the same acts *would* be the practice of law, and bloody well unauthorized, if separately paid for. In another jurisdiction, the same practices by brokers are acknowledged to be the practice of law, and hence subject to regulation by the Supreme Court, but are then approved as authorized with a warning that to do these things badly may make the broker liable for legal malpractice! Title companies are allowed to do in one state what they are forbidden to do in another. In one state, they cannot offer the buyer legal service by their salaried lawyer, but they can properly refer buyers to that same lawyer once they have dropped him as an employee, set him up in private practice in a separate office in the same building, and placed him on retainer to do the same legal work for the company he did before. That distinction is suggestive of the mysteries of field warehousing! Then there are the cases which let title companies perform legal services, like clearing title defects, if the service is merely "incidental" to the company's principal service, but no otherwise; those cases are more reminiscent of the labyrinths of our tax law!

I hope we can somehow find ways to unearth proven facts which may serve as a basis for systematic reconsideration of just what sorts of things, if any, in the small real estate transfer the Bar should really insist that only individual lawyers can properly do. In more and more localities, individual lawyers are playing no role. When lawyers assert as a profession that there is a part of that process which must be restored to them as a monopoly, they must try to be sure they are right, and be prepared to prove they are.

Note that the unauthorized practice problem is a reflection of the fact that in many localities, non-lawyers are carrying out most or all of the functions in the real estate transfer process. Lawyers need to ask themselves a question increasingly posed by those concerned about the economics of the Bar: Are there more functions w i t h i n the legal framework which can reasonably be carried out by non-lawyer personnel, often less highly trained and less highly paid? Can we develop techniques equivalent to the doctor's nurse and med tech, to free us for the more highly professional parts of what we do? We should recognize that some of what your industry has achieved with non-lawyer personnel is suggestive in this regard, and deserves careful study.

Thirdly, my study has recognized the reality of significant functions being carried out by brokers, title companies, escrow companies, and lenders in many localities. Given that reality, with the resulting diminished role of the lawyer, are there techniques by which the public can nevertheless receive some of the protection that the lawyer might provide? This is a question not much explored in cases, statutes, or periodical literature, but the possibilities are worth considering. For example, one danger where title insurance is involved is that only a mortgagee policy will issue, and the owner with substantial equity may assume he has protection beyond what he really has. A few states, as you know, have responded with statutes requiring that buyers be *offered* an owner's policy with some explanation of the added protection it affords. Another example comes from the law of construction or "mechanics" liens, which in many states is loaded with potential unpleasant surprises for the innocent owner. When we struggled with this problem in a recent revision of the lien law in Wisconsin, we introduced a new notice about the lien law to be given the owner by the general contractor as a part of the construction contract itself, and backed up the requirement by imposing a statutory duty on the construction mortgage lender to make inquiry of the owner-borrower as to whether the required notice has been given. This technique imposes duties, as you see, on the more knowledgeable participants to help protect

those less well-informed. Such duties can be the basis for suit in tort, and in a few cases courts have begun to develop such duties by case law as well. I hope to summarize in my report the status and potential of this approach to protecting the buyer.

Lastly, I suggest that the potential for improving real estate transfer and protecting buyers by statutes of limitation and related laws has not yet been fully explored. The Simes-Taylor work of seven or eight years ago produced a model marketable title act and several other model curative acts, and several states have followed up with varying legislation. The theory of such proposals, of course, is to cut off those interests suggested by the record, or possibly existing outside the record, which theoretically affect real estate title but which in reality are almost surely non-existent. If such statutes work as they should, the period of title search can be shortened and the process of title examination can be simplified and made to provide better protection for the buyer. Title insurance rates might even go down! I have told you that the Foundation is considering further study of this matter, but my own report will include a brief discussion.

I believe our new Wisconsin statute, passed late in 1967 and effective July 1, 1968, may be the most recent and most sweeping example of this sort of legislation. I wrote a short piece about it for the Spring 1968 issue of the *Real Property, Probate, and Trust Journal*, which was reproduced on pages 10-11 of the June 1968 *Title News*. Very briefly, the law defines what constitutes "notice," and provides that a purchaser without notice takes and holds any interest purported to be conveyed to him free of a listed group of kinds of possible adverse claims, after specified periods of time have elapsed from the time of the last recorded item referring to or giving rise to the possible adverse claim. For example, such a purchaser can rely immediately on proper delivery of any recorded conveyance; one who wants to assert non-delivery of a deed must not let it be recorded at all. Such a purchaser takes free of the claims of those asserting non-identity of persons in conveyances in the chain of title, provided such persons appear in such conveyances under identical names or reasonably close variants thereof and have so appeared of record for at least five years. Note that this provision says we need no longer worry about nit-picking minor name variances if they've been of record five years and no one has asserted that the persons involved were really different, but it *also* cuts off the rights of a victim of a forgery if he hasn't taken action within five years. As a last example, claims based on lack of authority of officers, agents, or fiduciaries are cut off against a purchaser without notice if the conveyance asserted to be without authority has appeared of record for five years. There's much more, including a 30-year catch-all cutoff, and there are some limited exceptions to the full operation of the statute, but the examples will give you the idea.

A weakness in statutes of the kind described lies in the possibility that we may begin to cut off too many interests that are real rather than speculative and imaginary. We need to strike a reasonable balance by requiring owners of real estate interests to get their interests of record and keep watch over their rights, on the one hand, but avoiding legislation that will too summarily cut off genuine interests. Enough jurisdictions have now had enough statutes of limitations for a long enough time so that I am trying to devise ways to see to what extent, if at all, such statutes have extinguished interests which, without the statute, would have remained valid and valuable. Time forbids more than a mention of the vigorous criticism of this sort of legislation on other grounds, primarily that it is a minor cure for the major diseases of our outmoded recording system. My own view is that it is a major part of the cure and would be important even with a vastly improved and automated real estate data system. Only a full title registration system, which poses other problems, might reduce the need for legislation of the kind I have been discussing.

You know and I know how much more might be said on these and related subjects. I still hope for more of your thoughts on them, and then will try to give more adequate coverage in my report. But the main test of the last speaker before lunch is the test of his terminal facilities. Mine are in working order, so I'll close by saying: For this chance to share ideas with you, for your fellowship, and for your hospitality, thank you very much.

# AMENDMENTS TO THE CONSTITUTION AND BY-LAWS

By CHESTER C. McCULLOUGH

*Chairman, ALTA Constitution and By-Laws Committee; Senior Vice President Chicago Title Insurance Company, Chicago, Illinois*

In accordance with provisions of Article XI, Section 1, of the ALTA Constitution and By-Laws, it is recommended that Section 1 of Article VI, Sections 3 and 4 of Article VII, and Article VIII, of the Constitution and By-Laws be amended in the manner set forth in the following paragraphs in order that the names of the Sections be changed to "Title Insurance and Underwriters Section" and "Abstracters and Title Insurance Agents Section," that the "Liaison Committee with the National Association of Insurance Commissioners" and the "Federal Legislative Action Committee" (being now special committees) become standing committees of the Association, to provide that the Immediate Past President of the Association be a member of the Executive Committee of the Board of Governors, and to change the requirement that no two members of the Standard Title Insurance Forms Committee be from the same state, territory or district:

1. Amend subparagraph (a) of Section 1 of Article VI by inserting, after the words "Title Insurance," the words "and Underwriters"—so that the paragraph will read as follows:
   "(a) Title Insurance and Underwriters Section, which shall include all active members who or which shall be a title insurer or who or which shall be a bona fide agent of a title insurer, and"
2. Amend subparagraph (b) of Section 1 of Article VI by inserting, after the word "Abstracters," the words "and Title Insurance Agents"—so that the paragraph will read as follows:
   "(b) Abstracters and Title Insurance Agents Section, which shall include all active members who or which shall provide an abstracting service to the public, whether or not an agent of a title insurer."
3. Amend Section 3 of Article VII to insert a comma after the phrase "Chairman of the Finance Committee" and to insert after the said comma the words "the Immediate Past President"—so that the Section will read as follows:
   "EXECUTIVE COMMITTEE: The Executive Committee of the Board of Governors shall be composed of the President, Vice President, Treasurer, Chairman of the Finance Committee, the Immediate Past President and the Chairman of each Section. The President shall be the Chairman."
4. Amend the first paragraph of Section 4 of Article VII to insert after "Judiciary," the words "Liaison Committee with the National Association of Insurance Commissioners," and after "Legislative," the words "Federal Legislative Action Committee," so that the paragraph will read as follows:
   "The President within thirty days after election, shall fill expired terms and vacancies, if any, in the Liaison Committee, the Grievance Committee, the Standard Title Insurance Forms Committee and the Standard Title Insurance Accounting Committee and shall appoint all members of the Planning, Judiciary, Liaison Committee with the National Association of Insurance Commissioners, Membership and Organization, Legislative, Federal Legislative Action Committee, Public Relations, Constitution and By-Laws Committees, and Young Titlemen's Committee, and such other Committees as may have been authorized by the Board of Governors or by the members at any convention, each to consist of a chairman and such number of members as he shall deem advisable, unless otherwise provided."
5. Amend the second sentence of the

fourth paragraph of Section 4 of Article VII to insert the words "more than" after the first word of that sentence, so that the sentence will read: "No more than two members shall be accredited from the same state, territory or district."

6. Amend Section 4 of Article VII to insert, preceding the last paragraph thereof, the following paragraphs:

"The Liaison Committee with the National Association of Insurance Commissioners shall be composed of a Chairman and five other members, each representative of an active member of the Association. Each section shall be represented on the Committee."

"The Federal Legislative Action Committee shall be composed of a Chairman and four other members, selected from different geographical areas of the country."

7. Amend Article VIII to renumber certain sections, as follows:

| Present Section Number | | |
|---|---|---|
| 11 | 15 | 19 |
| 12 | 16 | 20 |
| 13 | 17 | 21 |
| 14 | 18 | |

| New Section Number | | |
|---|---|---|
| 12 | 17 | 21 |
| 13 | 18 | 22 |
| 15 | 19 | 23 |
| 16 | 20 | |

And to insert the following new Sections 11 and 14:

"Sec. 11. THE LIAISON COMMITTEE WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS shall work and cooperate with the National Association of Insurance Commissioners, or the appropriate committee or committees thereof, in order to further a more complete understanding of the business of title insurance, to promote sound legislation and regulation, to prevent unsound legislation, and to accomplish other desirable, lawful objectives, with the understanding that any undertaking or agreement on behalf of the American Land Title Association shall be subject to ratification by a majority of the Board of Governors or the Executive Committee of the Association prior to approval and adoption of such undertaking or agreement."

"Sec. 14. THE FEDERAL LEGISLATIVE ACTION COMMITTEE shall review such pending federal legislation and proposed changes in rules and regulations of federal departments and agencies which might affect the title industry as are submitted to "it by the Association staff for the purpose of advising the staff and shall report to the membership on such matters. The Committee shall make recommendations to the Executive Committee when it concludes that action is needed by the Association to support or oppose pending legislation and shall participate in resulting needed action, when authorized by the Executive Committee, by either contacting directly or by arranging for contacts by other Association members with senators and congressmen in congressional committee members home areas, and by testifying before congressional committees if appropriate."

—CARRIED UNANIMOUSLY

**IMPORTANT DATES**

**TO REMEMBER!**

**ALTA**

**ANNUAL CONVENTIONS**

1969 Atlantic City, New Jersey,
September 28-October 1, Chalfonte-Haddon Hall Hotel

1970 New York, New York
October 4-7, Waldorf-Astoria Hotel

1971 Detroit, Michigan
October 3-6, Statler Hilton Hotel

1972 Houston, Texas
October 8-11, The Rice Hotel

# EULOGY IN HONOR OF JACK RATTIKIN

By LLOYD HUGHES

*Chairman, ALTA Finance Committee; Senior Vice President*
*Midwest Division, Transamerica Title Insurance Company, Denver, Colorado*

Jack Rattikin Sr., the President of our Association during 1939 and 1940, and a member since 1929, died on the first of January of this year. He was active in our business until the time of his death. He was a man who cared about people as individuals and cared about people getting to know each other. Nobody was a stranger in any organization after he had met Jack because he saw to it that new-comers got acquainted.

Behind Jack's friendly geniality among people there was a fierce and constant loyalty to each one of the areas of his life to which he gave his talents and his unstinting service. This loyalty was demonstrated to us by his attendance record at our meetings. In 37 years he only missed one National Convention and was at every Mid-Winter Meeting without exception. For 37 years the Title Industry knew Jack and loved him.

In the Texas Land Title Association his record of interest and loyalty was the same. For 38 years he only missed one meeting, was the President from 1933 to 1935, and was named "Title Man of the Year" by his fellow-Texans in 1962.

Jack's activities and honors in the Title business, we all know, but the route that brought him to the Title industry is less familiar, except that, as you would expect, the various landmarks in his career were never neglected or forgotten.

Jack's life began in Arkansas in 1891. Then his family took him to Texas when he was only a year old. His formal education: school, college and university, was all in Texas, finishing with a law degree from the University of Texas in 1916. He began the practice of law that same year and in due course became a member of the Fort Worth, Texas, and American Bar Associations. Again Jack's long span of loyalty and responsibility to his life's commitments are indicated by his ties to the legal profession and emphasized by the remarkable fact that in 1965 when he was 74 years old he was admitted to practice law before the Supreme Court of the United States.

In 1918 Jack interrupted his legal career to join the Air Branch of the Navy. He became a pilot with the rank of Lieutenant J. G. and continued reserve duty for four years. Characteristically, he turned the value of this experience to the advantage of his community by his later service on the Fort Worth Aviation Board and the Airport Zoning Board.

In 1927, and as a permanent interruption in his legal career, Jack bought the Home Abstract Co. in Fort Worth which subsequently led to his association with the Kansas City Title Insurance Co.: first, as the Texas State Manager, and, since 1946, as Vice President of that Company. Meanwhile the Home Abstract Co. had been reorganized into the Rattikin Title Company of which Jack was the President and Manager until his death.

Beside the Title and Bar Associations, Jack had memberships in the Chamber of Commerce, the Mortgage Bankers Association, the Real Estate Board, and the Home Builder's Association. His memberships in all cases were at the local, state, and national levels. Jack thought in terms of the present and the future. He used his life generously as a citizen of Fort Worth, Texas, and the United States. He was at home in all three communities.

It is the great good fortune of the members of our Association to know Jack's immediate family first hand: Ann, whom he married in 1920 and their children, Ann and Bill Thurman and Jack Jr. and Glenda Rattikin. Our affection for this family needs no word. However in speaking of Jack's family, it is inevitable to suggest that his constant devotion to them and to the First Methodist

Church, Fort Worth, was the motivation and main stay of the kindly spirit that so permeated his life and that has left its indelible imprint on everyone who was lucky enough to know him.

I have spoken impersonally about my dear friend Jack. I spoke this way intentionally so that his family would know that while the honor to speak of him was given to me, everything I have said or could say in praise of a life well lived was as the spokesman for all of us in the American Land Title Association.

# "BUSINESS AS USUAL IN AN ELECTION YEAR"

**By THE HONORABLE TOM McCALL**

*Governor of the State of Oregon, Salem, Oregon*

Thank you very much, President Robin, Chairman McMahon, and Ladies and Gentlemen of the American Land Title Association: I'm glad to learn from that very cordial welcome you've given me this morning that my mother hasn't overshadowed me completely. That's kind of an in-house joke, but at the age of 79 in the month of May of this year she published her first book. And as famous as the Oregon primary is nationally and internationally, the event of publishing that book almost overshadowed our primary.

She's a very out-spoken writer, very out-spoken woman when it comes to talking, and she named her book, "Ranch Under the Rimrock." And that ranch is where we were raised when we came out from Massachusetts. As a matter of fact, this ranch under the rimrock is a place I hope that some of you can see as you linger in our beautiful state, if you can. It's about 150 miles to the south and east of us in the high country, and it's a most unusual author who wrote this book.

Her book reviews and her autograph parties are something to see. She recently had an autograph party in the women's prison down in Salem, and got home safely. (laughter) She recently had one in a supermarket, much to the great distraction and indignation of her publisher who said that she's demeaning the whole book-publishing business, but she's selling more books for somebody nearly eighty years of age than you can possibly imagine.

And she was very remarkable as a younger woman. She had five children and they were all conceived in Oregon and all born in Massachusetts. And that is pioneering in reverse, let me assure you. And we figured it out, 25,000 miles. And even in the jet age, 25,000 miles is quite a distance to travel, and when you did it by train, then it really is quite a feat.

Speaking of publications, as we were about the book, "Ranch Under the Rimrock," I am certainly impressed—as a person who has been, well, I'd say a little bit above the hackwriting stage for thirty years, making a living as a person who has been in public relations — with this brochure on the "American Land Title Association Answers Some Important Questions About The Title To Your Home." It is beautifully laid out. I think it is both inspiring and educational, and gives, I think, a wonderful, almost statesmanlike, while still being accurate, perspective of your job and your role in life.

Let me take a couple of quotes just before I go on into one little admonition, one little lesson I'd like to discuss with you this morning that perhaps doesn't pertain to politics as usual but I think pertains to not only this generation but every generation that is going to follow.

Mankind has always looked to the earth itself as the one solid element of certainty from which all other material benefits originate. He has fought for the land, worked for it and died for it, and even today the private ownership of real property is one of the most highly coveted

rights inherent in the American way of life.

I also learned that the transfer of real estate in the United States is the nation's single largest business, estimated to total nearly $72 billion annually. And then what of the future? You asked on your last cover page where you say we are on the threshold of a vast era of expansion. The nation's builders estimate that within the next ten years the number of homes, office buildings, factories, shopping areas and highways to be constructed will exceed in value the total construction costs of building in America since the Revolutionary War.

Our population which of course has doubled in the last sixty years will exceed 200 million by the end of the present century, indicating a tremendous need for new housing and working facilities of every source. Through all of America's history, the real estate title industry has kept pace with the growth of the country. Its members are continually seeking improved methods, new operations, and different equipment, anything that will contribute to better service and more protection for the owners of the land.

So you asked on that page, what of the future? And then you cite your efforts to provide more protection for the owners of the land. And I think these are vital efforts, especially when you consider that they result in the speedy delivery of sound property titles.

But I think the term "more protection" involves even more than considerations, and I'm referring to the stealthy theft of literally billions of dollars in property values that is continuing gradually and inexorably every year across this once fair land of ours, the United States. Because this crush of population that you discuss in such great language in the brochure is threatening the land, the scenery, the air and the water. In fact, it is threatening nearly every home in these United States and perhaps the sanity of nearly each and every one of us.

I would like to just share with you this morning some of the ideas we have in Oregon which has, I think, a n o t a b l e environment — notable throughout the nation for its purity and for the abundance of wildlife we have here. Some of the ideas we have as a source of encouragement for those of you when you return home to provide this broad sense of more protection of the land.

We think we are facing up to the challenge of sustaining a viable, dynamic economy. It's not smoke-filled, it's not built around smoke stacks, it's not going up in terms of, I would say, the increase in population as fast as some people like. But the figure I really like to measure it by is the increase in personal income, and as long as that keeps moving upward, then I know if we can have that spiral which is so effective without sacrifice of the quality environment, of which the state is justly proud, then we are on the right track.

I think many states that are represented here today—and I'm not jabbing a finger at you—have and live with, and may have to live with far into the future and perhaps forever, the indiscriminate results of indiscriminate stimulation of industrial development. We rejected that in favor of a balanced approach to the orderly economic development of the state.

The one best documentary I made in television was called "Pollution in Paradise" and it won the national Sigma Delta Chi award in 1962—as the best documentary of a crusading nature on television in the United States. And the thesis was that in the State of Oregon we have the incipiency of the kinds of conditions you see in California, Southern California, and you see in the Eastern States in terms of pollution. But we have seen these signs at a time when they are still a warning and we can still do something about them, without inordinate cost. In other words, the ounce of prevention that is indicated can be accomplished, and this is the background I bring to you this morning—one of continuous concern over this problem, which I think is more of concern and has more impact on the value of one's home and one's property than any other particular threat or subject.

We believe that our approach of balanced development is a realistic one. It recognizes the need for industry, but not industry at any price. It places a high value on environmental features which make the state a good place to work and a good state to live in. It recognizes that these livability features which Oregon

enjoys are attracting ever-increasing hoards of visitors, many of them Californians. But you see, the visitors use the renewable resources. Perhaps they might tramp a little hard on some of them, or catch too many fish, or perhaps shoot too many deer or elk, but these are renewable resources and they can be restored in the interim between the tourist seasons.

And so we made tourism and recreation an important activity, one that pours about a quarter of a billion dollars into our state each year. The place of out-and-out industrialization for mushrooming growth, we've been willing to accept a more moderate goal for economic development. We're seeking a growth rate that just keeps our economy stable, that provides enough job opportunities to meet our own growth from the people who are born in our state, and a few extra jobs for those who occasionally move in from neighboring states.

In the pursuit of an admittedly, I would say somewhat self objective, Oregonians have made the happy discovery that livability is an increasingly important factor to industry. In this day of rapid advances, discovery of new technologies, successful industry needs highly trained people who can capture the new technology, who can apply it to the development of new and improved products and processes. So more and more, industry is looking to the quality of environment as a means of recruiting and keeping professional and technical and managerial help of the top caliber that is needed.

The balance of the probes to economic development involves a number of programs and directions. Let me skim over them briefly this morning. For one thing, we in Oregon are determined to demonstrate that industrial expansion need not be identified irreversibly with air and water pollution. This is a tough thing to say in a state that grows more trees than any state in the Union. And therefore, too, will accomplish the industrial cycle involved in that tree; brings in a great number of pulp and paper plants which use, of course, millions and billions of gallons of water.

High standards of air and water quality are being established. They're being established at the state level, at a local level and a regional level. Industry is expected to comply, but we don't just whack at them. We have the carrot of tax credits to help meet the cost of installing immediate pollution control equipment. This insistence on clean air and water has cost us an industry or two just since the last legislature which passed the most massive bank of new anti-pollution legislation of any legislature, or all legislatures cumulatively in the history of this state.

For instance, a paper company shut down an old obsolescent mill and transferred the making of its pulp to a more modern plant where the pollution standards could be met in a less costly way. A metals plant, 80 million dollars worth in the initial investment has been eyeing Oregon. It has now moved across the river to Washington because our standards are tougher than our neighbor's to the north.

On the other hand, a large new metals plant—the biggest single plant ever to contemplate location in this state, $140 million aluminum plant—not only accepted the standards of high air quality put to them but it contracted with scientists at the University down at Corvallis for a five-year research project that involves the monitering of the environment in the area of this plant for any possible effects of the plant operations.

And then, to avoid another big headache of industrial growth—urban congestion—major emphasis is being placed in this state on dispersal of industry by encouraging location of new plants and branch plants in some of the smaller communities, in the areas where the population density is considerably less than it is here on the West side. And some fifty communities in our state—which is a state of only two million people—have organized local industrial development corporations, these to assist new industry by developing industrial sites. New and expanded industry has plans for lease-back financing of plants. This policy of encouraging the dispersal away from the population centers is showing results. In recent months we have locations outside the metropolitan area chosen by seven mobile home and trailer plants, an industrial tool plant, an electrical equipment plant, among others.

And of course, inherent in this whole thing I'm talking to you about

today is the fact that industrial encroachment on scenic and recreational lands is being stoutly resisted. There is a great need for industry in the Columbia Gorge. Those of you driving in on Highway 30 are familiar with the Columbia Gorge, one of the most beautiful ravines—if you want to call it in a demeaning way. I think it's more beautiful than the Grand Canyon. And through it flows the mighty Columbia River, into Oregon and down to the sea.

We had a steel plant that wanted to come in, that offered all sorts of concessions in terms of landscaping. We prevailed on that plant to move elsewhere. New state legislation is being enforced that will protect Oregon's beaches for public recreational use and enjoyment in perpetuity. And the public owns most of the beaches of the State of Oregon still, and this is what we want to enhance.

Comprehensive zoning and planning is being carried forward. Several counties have joined forces in this respect on a regional basis. A new thrust is being given to industrial diversification. You know, we were terribly heavily dependent on timber industry, and timber industry has been our number one source of income. But now we have a manufacturing mix that provides both greater stability for the economy and reduces the impact on environmental quality.

Electronics, you may be interested to know, has become our state's fastest growing industry. We had a threefold increase in electronics' employment just in the past decade. And then, food processing has been expanding. In the area of Salem, which is our state capitol city down the Willamette Valley fifty miles, from which I came this morning, that area has become the largest fruit and vegetable processing center in the entire world, and we'll battle San Jose and Fresno if they resist that particular platitude.

Another of our great growth industries is threatening to — in a pleasant way I use the word "threaten", threatening to make us the world center of exotic metals, because down the Valley just about fifteen miles beyond Salem is the city of Albany where the fabrication of such exotic metals goes on as titanium, zirconium, hafnium, all for application in aerospace and nuclear power.

So, in accepting the challenge of maintaining a quality environment, most Oregonians realize this simple equation—some industrial development is needed and some compromises will have to be made to achieve a balanced approach to economic development. And most are willing to try while there still is time.

Well, I don't think there is anything new or startling in what I have discussed with you this morning. These emphases, these projects —but it is an interesting fact, this deep into the volatile, soiling, noisy twentieth century, this deep, Oregon is enjoying the best fishing and hunting in the state's entire history. And I think that more than being a boast, the condition of your wildlife is an infallible yardstick in telling how well an area is preserving the quality of its environment.

I always say that when the salmon stop forging up the Columbia River, then we've had it. Then we're on our way to honky-tonkies of a nature that you find in a great many of the Eastern States. When the salmon goes, then our way of life with its beauty, its cleanliness of water, its cleanliness of scenery, that has gone too.

Thus I welcome you with a little advice; I hope a helpful example; welcome you to beautiful Oregon, truly, we believe, a state of excitement. And welcome you with the hope that in this little message you found some fresh encouragement to go back to your homes to wage the battle anew, the battle for pure air and water and clean open space. You know, fighting for environmental quality is simply an extension, an extension of the great mission of the title industry, again quoting from your manual, "to help mankind fulfill a basic human desire, to own property." But to own it, I would add, parenthetically, to own it securely and free from plunder, whatever the source. So, may your deliberations in Oregon during your first convention in our great state be crowned with success and be replete with wise decisions that will serve not only our generation meeting here today but the generations coming on to take over the mantle and the helm from us. Thank you and good luck.

# "—A PENNY EARNED"

**By LAURENCE J. PTAK**

*Treasurer, American Land Title Association; Vice President, Lawyers Title Insurance Corporation, Cleveland, Ohio*

Good morning, Ladies and Gentlemen. I was all set to say that I could think of nothing more anti-climatic than to follow the address of the Governor with a dull, boring Treasurer's report.

But at any rate, I am happy to report to you for the twelfth semi-annual time that our Association is in excellent financial condition. The figures that I am about to read are from our August 31, 1968 balance sheet, at which time we had on hand in our master account some $58,000.-00. In the imprest account, $20,000.-00. In short term investments, $58,-000.00, for a total of $137,000.00, which is only $11,775.00 below the point at which we stood at this time last year. I know you realize that we were faced with some extraordinary expenditures this year as a result of our confrontation with the Bar Association.

Additionally we had a net in furniture and equipment of $9,000.00 and various deposits and prepaid items of about $1,500.00. Our reserve assets, which are in a trust with T.I. in Los Angeles stand at the same amount as they did a year ago; namely, $200,074.00. So that we have total assets at this time of $347,702.30.

Our current payables now are substantially as they were last year, $2,000.00 to $2,900.00. We started out the year with an Association equity of $269,068.00. Our net income to date in the year is $76,486.00 which is some $12,000.00 below the point at which we were last year.

So, you can see that even in the face of these extraordinary expenditures, we are in excellent condition.

Now if I may indulge in a couple of personal remarks, it's a little hard to realize that it was 41 years ago this time that I attended my first convention in Detroit. In the intervening years, I've had a wonderful opportunity to educate myself, to acquire some wonderful friendships, and I simply wanted you to know that now as I take my leave, I wish you individually and as an Association the best of everything that is good for the future.

# PRESENTATION OF HONORARY MEMBERSHIP AWARD

**By GORDON M. BURLINGAME**

*Vice President, American Land Title Association; Chairman of the Board, The Title Insurance Corporation of Pennsylvania, Bryn Mawr, Pennsylvania*

Of the many benefits which accrue to a member of the Executive Committee of this Association, I think the greatest is the very close association with those you as members have chosen to serve. I have enjoyed this experience tremendously, and so, with some sadness, I realize that for one reason or another, members must pass on. One of the stalwarts, in my estimation, will no longer be with us in person to add his quiet but often positive thoughts to the deliberations of the group.

I'm indeed proud to have been chosen to notify him officially that the highest honor the Association can bestow has today been awarded to him. I'm delighted to inform Larry Ptak of his election to Honorary Membership in the American Land Title Association, an honor that has been bestowed upon ten other members only—a truly selective group. In token whereof, I am prepared to hand to him this official citation and notify him of his selection.

# "CAPITAL COMMENT"

By WILLIAM J. McAULIFFE, JR.

*Executive Vice President, American Land Title Association*
*Washington, D. C.*

I am pleased and proud to report that your ALTA staff have had their shoulders to the wheel and that they have made a positive contribution in a year which was challenging, exciting, and an unusually successful one for the Association. Of course, the good results that were achieved were due in large measure to the outstanding contributions made by the officers, certain members, and our Association counsel. It is certainly great to participate in a team effort. It is even more satisfying to be a member of a winning team, and that's the kind of year we've had.

The proposal of the American Bar Association to create a national bar-related title insurance company was the dominant problem. There can be no question that the action by the ABA House of Delegates to defer consideration for one year of the proposed company was due, in part, to the efforts of the American Land Title Association. And this result was achieved against tremendous odds.

As you will recall, a little over a year ago the American Bar Association House of Delegates, by a vote of 90 to 87, went on record as being in favor of a national bar-related title assuring corporation. In May of this year, the ABA Board of Governors, by a vote of 10 to 8, accepted Continental's proposal to create the American Attorneys Title Insurance Company. When the proposal was amended for, in my judgment, the purpose of minimizing the anti-trust problems, the American Bar Association Board of Governors, just a few days before the meeting of the House of Delegates this summer, voted 11 to 6 to approve the creation of the proposed company. Then, on the opening day of the American Bar Association meeting, ABA President Earl F. Morris, in his address to the ABA, supported the creation of the proposed company. In addition, the proponents of this plan worked very hard to convince delegates to vote for this proposal.

We, the American Land Title Association, of course, were very active also. Our Association General Counsel, Tom Jackson, put in a tremendous amount of time on the problem. He had the support and assistance of David F. Maxwell, former President of the American Bar Association and former Chairman of the ABA House of Delegates. They prepared a 16-page statement which was sent to all the members of the House. William F. Simon, a very prominent anti-trust lawyer in the District of Columbia, handled the anti-trust problems. He prepared a 60-page opinion. In addition, he and members of his firm visited the Antitrust Division of the Department of Justice on a number of occasions on this matter. In addition, certain members of the American Land Title Association were asked to contact members of the ABA House of Delegates in their areas.

I had the privilege of attending the meeting of the ABA House of Delegates when this matter was considered. I must confess that I was not too optimistic about achieving a favorable outcome. But, nevertheless, we did, when the matter was deferred for one year by the House of Delegates.

An important battle has been won. But the war is not over. Stanley Balbach is already back at it. By letter dated September 13, 1968, on the letterhead of the American Bar Association Special Committee on Lawyers' Title Guaranty Funds, he wrote to every member of the House of Delegates, informing them of the fact that St. Paul Insurance Companies had canceled the reinsurance contract of the Illinois Fund. He stated that this act will destroy the Illinois Bar Fund if another reinsurance source is not found. Continuing, he states: "If this response is representative of the industry, then lawyers are in trouble who desire to continue their real property practice in areas where title insurance is used." Of course, he does

not point out to the members of the House the fact that great numbers of lawyers are approved attorneys for title companies, nor does he point out the availability of title insurance for attorneys in his own state of Illinois.

The American Land Title Association is hopeful that the National Conference of the ALTA and the ABA will achieve some good results in alleviating the problems that exist between the members of the two professions. Certainly the ALTA conferees enter that National Conference in good faith.

Earlier this year, the Association was faced with a very serious problem involving the Federal Bureau of Public Roads. We were informed that the Bureau staff had prepared a proposed rule which would have prohibited the use of Federal money for the purchase of title insurance in connection with the Federal highway programs. James G. Schmidt, Chairman of the ALTA Legislative Committee, and I met with representatives of the Bureau of Public Roads, and, very frankly, we had a rough time. We pointed out the value of title insurance and urged them not to arbitrarily rule out the use of title insurance in connection with the Federal highway programs. The representatives of the Bureau at that time seemed to have taken the position that the Federal Government was a self-insurer, and, hence, did not need title insurance. Subsequent to our meeting, I was informed by Mr. F. C. Turner, Director of Public Roads, that he had issued instructions to all of his regional and division offices that Federal funds could continue to participate in the cost of title insurance.

Recently, three new Federal bills have been signed into law which will have a definite impact upon members of the American Land Title Association. First, on May 29, 1968, President Johnson signed the Truth-In-Lending Bill, Public Law 90-321. The rescission section of this law, Section 125, may cause trouble for title companies and certainly will be of great concern to lenders. I would not be surprised if in a future Congress an attempt is made to amend this law so as to correct this rescission problem.

On August 1, 1968, President Johnson signed into law the Housing and Urban Development Act of 1968, Public Law 90-448. This is a huge bill and I doubt whether anyone fully understands the impact that it will have on the housing industry.

Finally, on August 9, 1968, President Johnson signed the Metric Bill, Public Law 90-472. As a result, the Secretary of Commerce is now empowered to engage in a 3-year study to determine the feasibility of converting the system of weights and measures in this country to the Metric System. Certainly this study will warrant a great deal of attention by the American Land Title Association.

During the past year, a first step was taken to improve "Title News" by creating a section, beginning with the May issue, entitled "Names In The News." We hope by publishing pictures of the individuals who are in the news and just pertinent information relating to the news which they have made, to make available more space in the magazine for articles. We earnestly solicit the membership for material for "Title News." If "Title News" is to be a valuable magazine, we must have good articles and certainly in the past many of our best articles have come from members. Accordingly, I sincerely hope that the membership will make more use of "Title News" to publish papers which they have written.

I serve as a Trustee on the ALTA Group Insurance Trust, together with Mr. Morton McDonald, who is the Chairman, and Richard E. Fox of Chicago Title Insurance Company. During the past year, the Trust has added a new program; namely, a Health Insurance Plan including medical, hospital, and major-medical benefits. This is an excellent program underwritten by the John Hancock Company. If any of you are contemplating providing a Health Insurance Plan for your employees, or if you are considering changing your present plan, I hope that you will take a look at the ALTA Group Insurance Trust program.

In addition to the Health Insurance Plan, the ALTA Group Insurance Trust continues to offer life insurance and an accidental death and dismemberment insurance. As a result of the good experience last year in our life insurance program, the Trustees recently declared an 8% dividend.

Only a few weeks ago, we had our first claim under the Accidental Death and Dismemberment Plan

when one of our members was killed fighting a fire.

Insurance is important. If you use one of these programs, you are able to enjoy the discounts which are achieved through group participation.

I have not attempted to give a comprehensive report of all of the Association activities as time does not allow this. We shall keep you informed on ALTA activities through not only ALTA "Capital Comment," but also through the appearances of officers and staff at state and regional meetings.

Even though we have enjoyed a number of successes in the past year, we must not become too satisfied or complacent. Our industry is growing and changing by leaps and bounds. Problems increase and the pressures from without intensify. We must continue to be vigilant. We must keep up to date. We must mold the Association so that it can effectively tackle the problems of today and still be ready to meet the challenges of tomorrow.

# "A FRESH LOOK AT OURSELVES"

*Moderator:*

**JACK RATTIKIN, JR.**

*Chairman, ALTA Young Titlemen's Committee; President Rattikin Title Company, Fort Worth, Texas*

*Panelists:*

**PAUL F. DICKARD, JR.**

*Vice President—Title Operations, Commercial Standard Insurance Company, Fort Worth, Texas*

**THOMAS L. LOWE, JR.**

*Immediate Past Chairman, Young Men's Activities Committee National Mortgage Bankers Association; Vice President Mason-McDuffie Investment Company, Berkeley, California*

**GENE E. WILKINS**

*Chairman, Young Lawyers Section of the American Bar Association Indianapolis, Indiana*

STATEMENT BY MR. RATTIKIN:

I'd like to personally take this opportunity to thank President Robin and the ALTA staff for allowing the Young Titlemen to present this program. As you are probably aware, this program represents the first time we have had the opportunity to come before the ALTA during one of its General Sessions. I hope that we have proved and will continue to prove worthy of this honor and at one of the prime times of the entire Convention.

After considering the aspects of our program this morning, I became aware that the World Series begins at approximately the same time as our discussion. Fearing that this might hinder attendance, I immediately contacted the Managers of both teams and requested that they delay the game until twelve noon. After some discussion, they agreed to my proposal, and, therefore, I am sure that each of you will want to stay for our entire period, and I assure you that you will get a great deal from it.

The Young Titlemen met at 7:30 this morning for a breakfast and had an hour and a half's fruitful discussion. We discussed how very proud we were to be named as a Standing Committee of the ALTA, and we guarantee that we will make you proud that you allowed us such a

promotion. During the breakfast, we came up with a great number of new ideas, one of which will be a project concerning Recruitment, which has never has attempted before. I will not advise you as to this project at this time, but I am sure that you will be hearing of it during the weeks to come.

The purpose of our program this morning is to negotiate a close liaison between the young men's groups of our Association, the Bar, and the Mortgage Association. We are trying to plan for the future, knowing full well that liaison and discussions between the groups at an early time solve many problems which might be deadly ones if they were allowed to simmer through the years. All of the participants of this program have discussed the possibilities of a close liaison, and all feel that it can be readily accomplished.

When considering the program for today, our Committee instructed each of the participants to give us all of the constructive criticism that they could, with the idea of waking many of us up as to the shortcomings in our industry. After reading the various speeches, I find that my idea was carried forward, and I am sure that the remarks will be given out of respect for our industry in order to sincerely try to help in areas where criticism is sorely needed. Paul Dickard and I hope that we don't get kicked out of the Association at such an early age, for we truly want to do everything within our power to further our Association's abilities.

I will make a statement which you often hear on many radio broadcasts, so that I may try to stay out of as much trouble as possible. Therefore, I deny a liability of any remarks made, and state that they do not necessarily reflect the feelings of myself or the Young Titlemen's Committee as a whole.

I want to thank each one of you for this opportunity to present the feelings of the younger generation. We hope that the statements have been thought provoking, and we are sure that they can be used by all of us to further our efforts to establish an industry worthy of the name tag "Profession." Thank you so much.

STATEMENT BY MR. DICKARD:

What a wonderful opportunity for a Texas attorney—a captive audience. We Texans have to talk pretty fast. Our time is running out, in fact after January we may become a depressed area. And what a wonderfully presumptive title to our discussions, "A Fresh Look at Ourselves." I feel like I should appear in robes with a large crystal ball at my elbow. Well, I'm not going to consider myself to be that presumptive. I'm not really going to tell you anything that you don't already know or should know. I'm simply going to give some of the thoughts that I have about our industry's path—thoughts I know perhaps some of the rest of you have. There are certain basic items which I want to discuss. Before that, however, I have one item I would like to discuss which is really unrelated to the rest of my wanderings. This is really in the nature of a plea. It has been amazing to me the small number of people under 40 who are here. Or at least ones who are here and participating. One simple question. Why aren't these people here? Is it because the meetings don't have something to interest them? I can hardly believe that. Both the annual and mid-winter meetings of this Association consistently have programs and workshops which are current and vital. Is it because they have nothing to contribute to this Association? I can hardly believe that. Any association is better for having around those with a fresh approach who are willing to question old precepts and who refuse to accept for an answer, "It's always been done this way," or, "It can't be done." Further, any association is better off for the vitality of men of this age who bring fresh spirit to attack problems that have worn down others before them. Is it because we are either too selfish or do not want to spend the money to let younger men in our offices come to these meetings? Well, although the word "selfish" is admittedly a little harsh, there is a lot of this. These are normally excellent meetings; the programs are interesting, the locations appealing and the companionship of highest quality. The meeting gives many of us a chance to get away from over-burdened lives and enjoy a few days among our fellow titlemen. Let me say as an aside that we should all give thanks that we work in an industry which still maintains high enough professional standards that competitors can meet in these surroundings as friends. Now it is perhaps the prerogative

of those who are senior officers or owners of little companies, agent and underwriter alike, to attend this meeting to the exclusion of the younger men in their offices. Perhaps that's the real purpose of these meetings, a sort of status symbol, but I sort of doubt it. These meetings should be and are an exchange of ideas and information in pleasant surroundings away from the daily problems and telephone calls. It is a place where a man can, for a few days, put his mind on the broader problems and horizons of our business and compare problems with his fellow title men.

Doesn't it then make sense that these meetings have something to offer the younger men in your offices? Doesn't it then make sense that the information and exchange of ideas at these meetings will educate and broaden your subordinate so that they can, more quickly, handle more of the details of your business and give you the time to plan your future growth, or, if you don't have to worry about future growth, play golf, drink whiskey, or do whatever your pleasures may be and know everything is being taken care of? Doesn't it make sense that a man who is allowed by his boss to attend these meetings and have his imagination stirred by participating in the title industry at this level will make a more permanent employee for the boss who allows him this privilege? Doesn't it make sense that money so spent is not "thrown away" but is an investment in the future of your operation?

There are many of you right now who say, "I can't afford it," or, "These meetings are all the same—same old things warmed over." Well, I would say to you that it is false economy not to expose your younger men to what they can gain from this Association. You think nothing in investing in a piece of machinery for the future good of your operation. How about investing in some of the human machinery around your shop? The problems that may seem shopworn to you might be new, educational and challenging to someone else. Further, they just might have an idea or approach that none of us have thought of. Also, if you don't gain anything from these meetings, that's your fault, but don't penalize those who might.

In short, the people who aren't here need what this Association has to offer and this Association needs what they have to offer. I am sure that the vast majority of people here will continue to come each year and leave the younger men in their organizations at home, however, if just one person listening to me today will re-consider this, then both he and this Association will benefit from such re-consideration. This is not, however, what I came here to talk about. This is not my main concern. I didn't intend to spend my time up here with a pitch for more participation by some of your employees in this Association, although I think it is a vital need. I want to touch now on more serious areas. As many of you are aware, our Company is a subsidiary of Nationwide Insurance Companies of Columbus, Ohio. Not too long ago, one of the senior vice presidents of Nationwide asked me, "Paul, where are you going in the next ten years in the title business?" Well, I immediately started to quote figures and projections about excess of housing demand over supply, the large number of young people coming into the house buying market, future prosperity, of better times from the standpoint of money supply, in general, a very rosy picture. In fact, I just about went into orbit from my flight of fancy. His next statement brought me back to earth pretty quick. He said, "No, that isn't what I mean. We know that more money is going to come in the front door, but is it going to make it to the bank. Is the title industry going to be profitable ten years from now. Is it going to make a decent return to its investors. When our company thought many years ago that there was no better business than automobile business or dwelling risks—then we got smart and started extending our coverages. Soon we had such things as the homeowner's policy and when we were faced with adverse decisions extending our liability beyond what we dreamed, with rising loss ratios and with refusal on the part of state regulatory bodies to allow us to adequately adjust premiums, then things suddenly got a whole lot less profitable. My question, Paul, is—are you doing this to yourselves in the title insurance industry?"

Well, I for sure didn't have an answer for that. But the more I thought about it, the more it worried me. At age 36, I look upon myself as a young man and believe me, I'm getting younger every year. Lord willing, I hope to enjoy many years

in an industry that I truly love and enjoy. But what are you and I doing to it? Where are we going? What sort of problems am I creating for myself in the future? Even though you may be within 10 to 15 years of the end of your activity in your operation, are you making decisions while they may not effect you will effect the future growth and profitability of your company and those who will be running it after you?

Loss ratios and salaries are pretty important in determining profitability and it is in those areas that I ask you to think about what type of situations we are creating for the title industry in the future. I don't think it's stretching reason and logic too far to say that the more risks we take and the more we extend coverages, particularly if we do it for the same price, the more money we are going to pay out without corresponding increase and income. Loss ratios will surely rise. We have the example of other types of insurance where it was felt that it was perfectly rational to give more coverage to attract more premium dollar, decisions made by intelligent men which seemed perfectly rational at the time, but which later destroyed or greatly reduced profitability. Yet we refuse to heed these examples and go along our way. In some cases, we do even worse. We go into areas where, for example, bonding companies have pulled out, thinking somehow that what happened to them isn't going to happen to us. We extend coverages with full knowledge that other forms of insurance have done this and lived to regret it when the courts extended coverage beyond what anyone could possibly imagine and then relief through increased premiums was denied by state regulatory body. Worse than this, we extend the coverages without extra premium charge.

Let's be a little more specific. If states having some sort of recordation before work commenced or materials furnished, we often give protection to a construction mortgagee against mechanic's liens. Once this was based upon proof or recordation of the construction mortgage before work done or materials furnished, but no more. Now we give this protection based upon a builder's financial statement or his indemnity when we know we don't have prior recordation protection.

In effect, we have marched into the contract bonding business at the same time that companies in this business were marching out because they consider the risk too great. We even do better than that. We enter into a blanket indemnity agreement with the builder as to all his projects—not even looking at it on a deal by deal basis, but betting on his continuing solvency. We further complicate this by doing away with the pending disbursements clause so that a lender can continue to make disbursements and drag us along, even while mechanic's liens are being filed, with no real opportunity to step in and purchase a construction mortgage before things are too bad. The big casualty reinsuring companies in 1964 foresaw tightening of money and over-expansion of builders and withdrew from reinsuring contract bonds which in turn took many primary insurers out of the field, and I mean companies with more assets in a single company than the whole title industry put together. And yet along we come. While we give many arguments to ourselves that we are different from bonding companies, for example, because we often control disbursements, are we really? And, if not, do we really realize what we are doing and what course it is taking us down—or are we in search of a fast buck in todays highly competitive market without regard to what we are creating. And further, even if this is something that we're going to do, can it be done for the same basic premium.

Now many of you would say who is he to be talking about all of this. I know he has done this and he's done that—and you're probably right, plus a few more things you don't even know about. I only know of one company within this industry that I consider lives by true title underwriting standards and it is a small, rather localized company. What I say is—regardless of who does what, what kind of a path is the title business going down. What are we exposing ourselves to in years to come? Do we really know?

Let's take another area. Slowly and inexorably, we are being drawn towards affirmative protections in the restriction violations and affirmative protection as to zoning compliance. No matter how we rationalize the ability to make certain checks and determinations beforehand, aren't we really playing a form of roulette—

and if so, where is it leading us? Is title insurance really the best means of giving this protection? If it is and if we are obviously increasing our exposure, why are we giving it away in most areas? I realize that in some areas of the country an extra premium is paid for certain protections of this type. But in most of the country, if we give it away, how do we come along later and justify a charge to an insurance commissioner unless it's because we lost our shirt and that's a hard way to learn a lesson or justify adequate rating. It's even a harder lesson if you don't get the increased rate.

Another thought in this area. If we are going down these roads, shouldn't we someday examine the concept of one-time only premium. A concept based on being able to assist most of our risks, other than non-record items, at the time of issuance. Further, shouldn't we begin to call a halt to the practice of gutting our policies and taking casualty risks without additional premium. If we want to take risks—if we feel that this is a rational decision, then let's get paid a hazard premium for taking a hazard risk and quit getting more and more into the casualty business for the same premium. We give a marketability policy at no extra cost. We give mechanic's lien protection and owner's policy in many areas at no extra cost. We give survey protection in an owner's policy in many areas at no extra cost. How far are we going to go before we finally wake up and realize how much we have expanded our liability without increase in premium and then find insurance commissioners adamantly opposed to any sort of general rate increase?

Let me make myself plain. I'm not against increased coverages. I feel that some increased coverages might help our image. After all, an insurer who makes too much profit doesn't really have a product that offers much incentive or justification. It is the duty of any insuror to return a certain amount of premium to the insureds in payment of claims. What I am against, however, is the tendency to indescriminately increase coverages without charging extra hazard premiums for extra hazard risks. If this continues unabated, than I see spiraling loss ratios. Then I must look at my friend at Nationwide and say, "You're right, we are going down the same road. Further, in our great wisdom, we are completely ignoring what may have happened to someone else.

Now obviously, I'm not going to say this because if I ever did, there would probably be a title operation for sale right quick.

I do feel one thing. I do feel that regardless of what we do, loss ratios are going to increase in the title industry. We are inevitably going to be drawn into increased coverages. Court decisions will inevitably become more burdensome. People, unfortunately, will inevitably find more ways to skin us. Because of this, what would good planning call for in the future. Higher loss ratios mean greater attention by underwriters to investment income, liquidity and expense ratios.

Perhaps there is more evidence of attention to this than I have seen. My own personal experience is that investment return for most title companies is small. The tendency is to make investments that will produce title premium, but not necessarily investment yield. Rising loss ratios place greater dependence on a corresponding offset and investment income. When loss ratios rise in the title business, companies had better take a long look at their investments. An investment for more title premium may not be the best long range action.

Liquidity—I once heard the chief executive of a large title insurance company say, "As long as I keep $1,000,000 liquid, I am okay." Well, if what had happened to some other companies in the last few years had happened to him, he might have found himself either selling some abstract plants he didn't want to sell, or borrowing money to pay his claims—neither, I contend, a palatable prospect. If loss ratios rise, more liquidity is necessary and if we don't do it ourselves, events will happen which will cause state legislatures to do it for us. If loss ratios are going to rise, any title insuror who does not pay heed to the increasing of liquidity not only hurts the public but he hurts me, because he is going to cause me public relations and regulatory problems. No company now or in the future should become so obsessed with growth that it ignores it basis obligation to the insuring public and drastically lowers liquidity.

Abstract companies are not immune to this. A policy of taking out all the profits each year, leaving no

liquid assets may be great—but what if more and more were being asked by way of certificate and more liability to the agent by courts. For, for example, fidelity loss, where the underwriter is not responsible. A little belt tightening might allow a little surplus to build up, which in turn might help a business painstakingly built from having to be sold. More liquidity for agent and underwriter alike should be of more and more concern in future planning.

As to expense ratios. What about the big item in most of our operating statements—salaries. As all of us know, there are nowhere near enough trained people to fill the needs of the title industry during the next decade and beyond. This inevitably leads to pirating and pirating has only one inevitable consequence and that is a spiraling of salaries to not only keep your people, but get somebody else. Now, pirating isn't going to stop. In fact, it's only really just beginning and the needs for it are too great to stop. I'm not using this as a dirty word, by the way. I've done it. But I am stating a simple fact of life. It's continuance with the consequent rise in the expense ratios coupled with higher loss ratios can be fatal.

What are the alternatives? We can't go to related industries because we often find ourselves below their scale. We can't let it go unchecked or we soon find ourselves in the shape the Data Processing Industry is in. What we can do is realize we have a problem and solve it at the root. Encourage more young people to come into the title industry and see that they have the educational background to develop as rapidly as possible into effective employees. This should be a primary concern of everyone in the title industry. We can't go on playing musical chairs with employees forever. There must be a fresh supply of people to come into the title industry in future years, not because their families were in it but because they see in it a good way of life. We must get into the high schools and tell our stories. All high schools normally have certain weeks of the year when various businesses explain themselves and their opportunities to the public and effort should be made by all of us, abstractor and underwriter alike, to contact the guidance counselors of our local high schools and let our story be told. Also, we ignore reservoirs of talent in many areas. When the colored people are crying for job opportunities, how many of you abstractors are training an intelligent colored man or woman for court house checking or examining or abstracting? In our area, I can tell you it's damn few and yet it offers a course of action to meet our employment needs.

Our industry will never have an adequate supply of manpower until we get our story across to the law schools. I certainly can't offer any magic solution along this line. But I can say this. We had better recognize this as one of the great problems facing us. We as an industry are not ready to meet the manpower needs of the '70s and we don't seem to be doing much about it, except hoping that everything will come out okay because it always has before. Both this Association and our state association should be planning and spending large sums of money to solve this future problem. And the time is now in order to have a good supply of trained people to meet the future needs.

One other item of contributing to our future planning from an expense standpoint. My own personal belief is that any title operation that is now existing without an adequate title escrow account auditing system for at least its major sources is existing on two things—luck and prayer. During some of the unfortunate happenings in Houston several years ago, a high bank official became rather irate at the then lack of auditing in the title industry. His comment was right to the point, "We bankers learned a long time ago we couldn't trust people with money, what the hell makes you people think you can." The answer to that ought to be obvious and yet I still see many companies, underwriter and abstracter alike in our industry saying they can't really afford to have a system and fear that it can't be really effective, which is really the equivalent of saying that we shouldn't keep up our defense forces, because we can't really kill all the Chinese. We know what would happen if we let our defense forces lapse and we should also be certain in our industry that we first have defense forces and then that we not let them lapse. This was an item of expense and planning that was not really present a decade ago. In the decade of the

'70s, vast sums of money are going to be handled for which title companies are responsible. Those who are not building strong auditing systems should be doing so. Why take that risk for a few dollars of expense savings? What possible justification can there be for taking such a risk, except that in reality you didn't want to try to spend the money keeping up the old hope that it hasn't happened to you yet, so it couldn't possibly happen to you in the future.

These systems are not fool-proof, but they do work and they do have great deterrent effect. In our state, we believe in it so strongly that we have a state supervised system of audit of all title agents annually, and even this should be backed up by private audits of underwriters of their major agents.

I told you at the outset that I didn't have a crystal ball and I'm sure by now that you are thoroughly convinced of this. My only major thesis is that the title industry is being swept along, like the rest of our e c o n o m y, in some sweeping changes. Further, the decade of the '70s is going to be a ring-tooter and we had better be ready. Thank you.

STATEMENT BY MR. LOWE:

Some six months ago when I was first invited to participate in this morning's panel discussion, and later learned that part of my assignment was to offer constructive criticism on how ALTA members are not properly serving Mortgage Bankers, I must acknowledge some initial feelings of guilt about coming up here to Portland at the Association's expense. It seemed difficult to take on the "no holds barred" attitude which Paul Dickard suggested in his letter to me, when my wife and I were to be your guests and be included in the festivities of your annual convention.

This feeling of guilt and hesitancy lasted until I happened to mention to some of our loan closing and shipping people that I had been asked to comment on the title industry's efficiency and thoroughness in complying with our escrow instructions. I was immediately met with comments such as: "Oh, Mr. Lowe, what a marvelous opportunity for you to set them straight." *or* "How will you be able to limit your remarks to 20 minutes when there are so many problems." *or* "It won't do you any good to talk to the owners and members of senior management. They won't understand. You should be talking directly to the escrow officers and branch managers."

Since my responsibilities are in the area of loan production and investor contact, I have been only moderately involved in the day to day problems of getting the loan insured or guaranteed within the allowed time and the completely documented case presented to our principle on the agreed date of purchase. Among my early reactions to the comments of some of my people were: "How did I get myself into this?" and "If all of this is true, how can I adequately cover the subject matter and still get back home to Berkeley with my scalp intact?"

As I discussed these comments at length with some of my associates, I found the case has been grossly overexaggerated and I now observe that they were really reacting out of shock at the very fact that the title industry was actually soliciting criticism rather than defending some seemingly petty error on a set of loan escrow instructions.

It seems to me that both the mortgage banker and the title industry would both do well to learn more about the other's product, and in so doing become more sensitive to potential problems and needs. Possibly we might take a few minutes to analyze each other's product, if we can be permitted to refer to our services as a product. The Mortgage Banker is in a sense a middleman performing the functioning of transferring capital from the areas where it is in abundance to areas where it is in great demand. Much of the strength of the mortgage banking system is due to the wide acceptance of the FHA and VA insured or guaranteed loans. Through the use of standardized security instruments it is possible for the Mortgage Banker to close large numbers of FHA and VA loans, in many cases without prior investor approval, by use of a commercial bank line of credit. The Mortgage Banker is confident that the loan, properly insured or guaranteed by an agency of the U. S. Government, will be acceptable at some price to one of his lenders. That price is reflected in the use of "points" which determines the yield to the investor. Obviously a loan purchased at 94, or 6 points discount, offers a higher yield than one at 96, or 4 points discount.

During the extremely volatile conditions which have dominated the economy these past 2 or 3 years, the Mortgage Banker has been forced to move fast to avoid massive losses on unsold loans when yields increase. Many times these losses cannot be entirely avoided, but we have improved our internal systems organization to minimize these losses by reducing the time period that this so-called "hot paper" is on the block. It is during these times that we have developed great respect for the title company that can accurately follow our instructions and provide us with all necessary documents, insurance policies, assignments, endorsements and title policies on a closed loan—back in our office at an early date. Putting it another way, when the documents aren't back correct and on time, your "product" is judged by the lender to be a bad one—from his viewpoint.

This then leads naturally into a brief discussion of the title industry's product from the point of view of Mortgage Banking. I hope you won't be offended by an oversimplified analysis. It seems to me that there are three things which effect any product and they are: the price of the product, the quality of the product, and the delivery of the product. The title insurance industry has the peculiar distinction of having a product in which the three factors are of different value to at least three different parties to the transaction:

1) The real estate broker might appropriately be called your client as he is the direct source of most of your business and the one whose attention and loyalty you must strive out of necessity to obtain. The broker is really not concerned with the price of your product as he doesn't even pay for it. His only concern with quality is whether you can get him a preliminary title report within two days or not. As to delivery—you have performed that function when he gets the commission check.

2) The buyer-seller (and for our purposes we shall lump them together and refer to them as one person) is motivated by a different perspective of the three ingredients. He is *most* concerned about price because he pays for it. He knows little about the quality aspect—in fact probably wonders what he paid for when he bought title insurance—and —delivery means only, "Can I move in my new house by next week-end?"

3) The Mortgage Banker does have a curious position with respect to price, quality, and delivery. He may be described as the "temporary owner of a product for which he has paid nothing." He is not concerned with price; again because he doesn't pay for it, but he is probably the most concerned of all about both quality and delivery.

From the viewpoint of the Mortgage Banker then, he tends to judge your product not by how much it costs, or whether you succeed in winning over the greatest number of real estate b r o k e r s thus insuring your firm a good volume of new orders, but rather — and this is the meat it seems of what I'm talking about—the speed and accuracy with which you are able to process a loan escrow, and then return the documents back to us as soon as possible so that we can remove that loan from the "hot paper" category as soon as possible.

In talking to my loan closing people, I noted numerous infractions; some too minor to mention, others not necessarily pertinent throughout the country, and others too vague to belabor in the time remaining. For the sake of example, let me mention a few of the problems which we incur most often.

1) Most common fault—failure to provide an insurance policy with paid receipt which is spelled out clearly in our instructions.

2) Failure to thoroughly read and follow instructions as stipulated.

3) Failure to define and locate rights of way and easements so that we can readily identify them.

4) Explain and clarify *all* details of *all* recorded documents which may effect title to property and provide necessary protective endorsements.

5) Failure to close escrows within certain specified dates and to collect first payment in escrow when instructed.

6) Compare legal descriptions and property addresses on various documents—confirm and compare signatures and proper vesting of title.

7) Review taxes to be collected and verify correct amount.

8) Numerous instances of title company personnel failing to follow through on their assurances and promises made to us regarding transmittal of documents and compliance with conditions—after we have funded and loan is of record.

Well, there are others, but these

are enough to demonstrate the point which I want to make. It seems that what we're talking about is—"quality control." The Mortgage Banker judges your product by the quality control which you exert over your escrows, just as you judge your new car by the quality control that went into it as it was built on the assembly line. You wouldn't expect your engine to be dropped under the hood without fastening down securely with the motor mounts—would you?

To the extent that the title industry does not exhibit this quality control over its product, then we must set-up your own quality and document control sections. Now—certainly we expect to have quality control people reviewing our loan packages as they come back from title. None of us feels we can eliminate the need for such skills, but I guess we do feel that, in general, your industry could do a better job in this area.

Before leaving the area of what might be done to improve your ability to turn out a better product, may I offer several more suggestions at random:

1) Realizing this is easier said than done, attempt to hire competent people who are "detail oriented" to do "detail work" and hire "sales oriented" people to perform your outside contact work.

2) Train your people thoroughly in the skills in which you expect proficiency. Retrain periodically on the knowledge that even the best of us gets rusty with time.

3) Work to develop a sense of pride and teamwork among your personnel and seek ways to reward them for proficiency and attention to detail as well as for volume of new orders which they bring in.

4) Finally, seek ways to educate the community on your product and its value, and on the services available through the title company. Encourage members of the real estate industry to tour your plants and get better acquainted with your services so that they too can be in a position to "sell" the need for title insurance to wary buyers and sellers—rather than saying—"You're right, it does cost a lot of money, but why not consider title i n s u r a n c e a necessary evil."

I would be remiss, after offering so much criticism, if I didn't take a few moments to mention some of the areas where the title industry does provide that extra measure, which is of so much value to us.

In general we find several of the companies which we deal with daily particularly careful to anticipate our needs in the area of endorsements and to provide them voluntarily or to phone and recognize a possible cloud but offer to remove it through use of an endorsement. A typical example is the use of the "identity endorsement" in the case of an "also known as."

We also find your industry particularly good in keeping us posted of any changes in your key personnel, which do occur from time to time. As an aside, how many of you have provided your customers with a roster of your many skilled technicians available to your clients on call? I should think that this is an area in which you would like to do some boasting and at the same time, provide additional service to your clients to make them feel more inclined to think of you as "their" title company.

So much for the "pot shot" part of my remarks. I was asked to comment briefly on anything which might be of interest to you in the field of recruitment of potential management personnel.

The recruitment of outstanding young men from the colleges and universities is of utmost importance to any business operating in a competitive market. You need exceptional young men in your employ, if for no other reason than to provide a source of continuity in management. It seems to me, however, that we need young men for other reasons. We are in an expanding business and if our companies are to be able to grow with this expansion, we must increase the number of management personnel. In any competitive business a company needs new ideas, new outlooks, and new dimensions of operation. These do not always flow freely from men that have been pounding the competitive streets of your business. But, the young man is able to see your industry and your company from a fresh perspective. The young man is eager, undaunted by failure or lack of accomplishment. If you haven't had the experience of a young man or two in your shop lately, I highly recommend it to you. Not only will you benefit from the fresh ideas and concepts, but you will find yourselves challenging your own thoughts and practices.

Now some of you may be saying to

yourselves, as one friend of mine who works in your business has often said, "I've been to colleges and talked to undergraduate and graduate students, but I've had virtually no success in attracting any young men to my company."

What is there about the title insurance business that does not appeal to the young men coming out of colleges and universities today? Possibly the first answer we may come up with is—the pay scale. You may have reason to know that you cannot match the starting salaries which other business and industry is willing to offer. I would be inclined to agree with you, because I know that we, too, cannot equal the salary level of many businesses or industry.

Another criticism which you may have heard from young men is that the work in title insurance is too tedious—that there must be, out of necessity, too much attention to detail and little opportunity to be challenged by different problems each day.

Still another criticism which you may have been exposed to is—that the people you come in contact with on a day to day basis are not as intelligent or sophisticated as the people that a banker or stock broker would deal with.

Now, I certainly don't intend to present myself before you as being an authority on the subject of how to attract good young men to train for positions of management, but I think I can suggest—as many of you might—that one solution would be to capitalize on the most appealing aspects of title insurance work—and there certainly are some!

I can think of no business or industry that has greater opportunities for growth and expansion than real estate. Some years ago it was stated that the number of dwelling units in the U. S. would have to be doubled between 1960 and 1980. Very little progress has been made toward this goal during the 60's—which has prompted most economists to look to the 70's as possibly the greatest decade the housing industry has seen yet. This growth cannot take place without effecting all businesses related to real estate. Any of us can point to the future as the insurance of great opportunity for the young man who is concerned about his future. When you align your industry with the future of real estate, the opportunities speak for themselves.

It seems to me that your business need not be considered limited in depth or flexibility. Sure there are an abundance of technical, detail oriented jobs—but there are also opportunities for those that seek more variety. What title insurance operation can expect to survive today without outside salesmen whose job it is to sell your real estate broker and builder clients on why they should do business with you. Every branch office needs a manager and every geographic area a regional manager. The title industry can be very appealing to the sales oriented young man who is seeking public contact work.

There is one final s u g g e s t i o n which was hinted at earlier in my remarks, which I feel should receive the immediate attention of your management—from top to bottom. You should begin to improve the public's understanding of just what it is that you provide for that "outrageous" fee, which you collect. Because the typical buyer and seller does not understand your product and the necessity of insurance to the lender and to them as buyers, they conclude that the whole industry is a "get rich quick r a c k e t." We in related real estate industries are indebted to you in the title insurance field for the boost that your "buy now" campaigns have given new construction and sales. The timing of your advertising campaigns was great and the message was clear and unchallengeable. As a result, your business and ours was sustained during a time when mortgage interest rates were climbing to their all-time peaks. Now that this campaign has peaked, why not c h a n n e l your advertising expenditures into better education of the public.

There are things which you could do which wouldn't even cost much money. You could invite high school students to tour your plants and familiarize tomorrow's customers with your function and product. Most civic groups and service clubs are constantly looking for interesting speakers and what better topic than "What do you buy when you buy a policy of title insurance?" How many of you have ever talked before such a group on this subject?

I expect it wouldn't surprise any of us to find the job of recruitment vastly more effective once the nature of your business is better understood.

*Conclusion:*

Ladies and gentlemen—it has been a real pleasure for my wife and I to have been with you these past 2 days. You are certainly a warm and friendly group and we have had a lot of fun. In fact, if I'm ever invited again, I'm going to make it a point of coming earlier and staying longer. Thank you for your hospitality and for your attention this morning. I hope my remarks have been taken in the vein I intended them and that as a result you might be focusing just a little clearer on some aspects of your great business. Thank you!

STATEMENT BY MR. WILKINS:

I feel that I could almost say fellow lawyers as there are so many of you who belong to my profession and who understand lawyers' problems.

As past chairman of the Young Lawyers' Section it is not my purpose to give you a scholarly dissertation on the evolution of the real estate law practice, the title insurance industry, the problems of the abstractor, nor even on the legal and practical problems that face us both. I want to discuss with you what I think the lawyer-title company relationship should be in a real estate transaction. I also want to examine with you the present controversy on bar related title insurance as it appears to me as a member of the profession of law who is in the general practice.

It is my feeling that there is more that brings us together than holds us apart. There is no fair-minded, informed member of the legal profession who can deny that the abstracters and the title insurer have a place in most real estate transactions.

There are counties of few people and little land value where it is uneconomical for a commercial abstract company to operate. There are other parts of the country where abstracting is traditionally the lawyer's function. But in most parts of the country the lawyer is quite willing that the work of gathering the title information be done by a non-lawyer.

There are parts of the country where title insurance is not in general use. In one state this is because of state laws. In other places the history of the land and of its people is so well known that hidden defects are not considered a prob'em. However, there are few lawyers that deny the value of title insurance to indemnify the insured from hidden defects, honest error, and the insolvency of the examiner.

The need for an appraisal of the evidence of title is also almost universally recognized. To be sure there have been a few title insurance companies that have insured a casualty basis. This is a bold approach but title insurance companies are rather like airplane pilots—there are old pilots and bold pilots but there are very few old bold pilots. There are very few old casualty-writing title insurance companies.

If we can agree that the evidence of title must be examined then the question arises as to whether this should be done by the title insurance company, by the lawyer representing the purchaser, by the lawyer representing the lender or by the lawyer representing the seller. Theoretically, each party should examine the evidence of title. Practically this is not feasible and it is not and will not be done.

There are few lawyers representing a solvent seller who let him sign a contract for the sale of real property providing for a warranty deed without checking the title and there are few wealthy sellers that fail to take this precaution.

There are few buyers and almost no lenders who are investing any considerable amount of money in real property who fail to have the title examined—either by their own counsel or by the title insurance company.

There are almost no title insurance companies who will write title insurance without the opinion of a lawyer.

The conflict between the bar and the title insurance industry comes when the title insurance company claims the exclusive right to examine right to insure the titles it examines.

It is theoretically possible for the lawyer to examine a title on behalf of his client and for another lawyer to examine the title on behalf of the title insurance company but is practically impossible because of the double cost.

The national retain rate on title insurance is $3.50 per thousand. The rate to agencies is approximately $1.75 per thousand. The agency rate contemplates the agency examining the title and issuing the policy. A lawyer representing a purchaser who examines the title gives the purchaser a title opinion which is a form of guaranty not restricted in amount but in liability as it excludes matters out-

side the record. If that lawyer is financially responsible, the title insurance company which issues a policy based on that opinion accepts a risk that is so negligible as to be microscopic. The lawyer is than asking the title insurance industry—why won't you accept my opinion to my client as an appraisal of the title and allow me to issue title insurance at a cost to me of the agency rate?

In other words, the position of many lawyers at the present time is that we have no quarrel with the abstractors—they perform a useful service at an economical cost in searching the title.

We have no quarrel with the title insurance companies which issue title insurance only on the opinion of independent legal counsel. The quarrel of most lawyers is with those title insurance companies that gobble up the abstracter so that there is no ready access to the public records or refuse to provide title insurance on an economical basis to lawyers.

There is nothing more frustrating than to see the title insurance ads—"not even the most searching examination can protect the buyer from hidden defects"—and then not have the tools to economically provide protection to the public.

There are parts of the country where lawyers who are capable of examining real estate titles cannot become agents for commercial companies. There are parts of the country where evidence of title is unavailable to the practicing lawyer so that he cannot examine the title on behalf of his client. There are many parts of the country where the lawyer is excluded from the average real estate closing. Lawyers generally, and many of you here, do not feel that it is in the public interest.

The preemption of this field has been gradual. Some areas are still in the first step of the process. Here the lawyer still represents his client in the drawing of the contract of purchase, the examination of the title and the rendition of an opinion thereon; this opinion is used as a basis of the insurance of a title insurance policy for which a premium is paid and the closing of the transaction is handled by the attorney. The client receives the benefit of the attorney's opinion and the title insurance and the added cost arising from the added protection given by title insurance is justified. This method of handling seems to be proper.

Other areas are in the second step of the process. Here the contract of purchase is handled by the independent attorney; the title search is made by salaried lawyers employed by the title insurance companies or by full-time employees who have not been admitted to the practice of law and no opinion is required in connection with the title from an independent practitioner; the title policy is written for a premium; the transaction is closed by the attorney who obtained the policy. The attorney still receives his fee for the contract of sale and the closing thereof, but receives no fee arising from the examination of title and an opinion thereon. The purchaser does not have the protection of an independent legal opinion of title.

Other areas are in the third and final step of the process. Here the title insurance company working with the real estate agent handles the entire transaction from its inception to its conclusion. The legal steps inherent therein are either handled by a salaried attorney or by an employee not authorized to practice law. No services are rendered by an independent practitioner in connection with the transaction. The contract the sale, the examination of title, the issuance of the title insurance policy, the closing of the transaction and recording of the instruments are all handled by the title insurance company. The purchaser does not have the protection of legal advice and lay agencies engage in the practice of law.

The principal danger to the public is not caused by inadequate title protection but by lack of adequate advice concerning the legal aspects of the transfer of real property. . . .

Admittedly, the problem is partly economic. Routine real estate transactions may not be of much interest to the large corporation-centered law firms but they are central to many of the smaller firms and the solo practitioners. They are a prime source of client contact and an area where a lawyer can practice a type of preventive law which will cause the parties to want to return for later wills, trusts, partnership agreements, etc. Moreover, individuals who come to rely on laymen for legal advice in the sale of real property will turn to laymen for similar advice in a host of related areas. . . .

Much more than economic benefit to the profession is involved, how-

ever. . . . The lawyer's role in the transaction is at least as important as that of the broker, the lender, and the title insurance company. The public should be made aware of this fact for its own protection.

None of this is an argument against title insurance. It is an argument for the lawyer as legal adviser regardless of the method of title assurance. If the lawyer can be kept in the transaction only by being a title insurer there will be a continued demand for local bar-related lawyers' guaranty funds and continued support for a national bar-related title insurance company.

There is now pending before the House of Delegates of the ABA a recommendation that it enter into a non-exclusive contract with a commercial company whereby that company which would organize a bar-related title insurance company which would issue title insurance only through lawyers. This recommendation has the approval of the Board of Governors of the Association.

The arguments to the House of Delegates were interesting. The principle arguments against the proposal advanced by the legal counsel for the American Land Title Association were:

*FIRST* The House in Hawaii narrowly approved the principle of bar related title insurance. This statement is not true. The House almost tabled the recommendations. When that vote lost, the vote was heavily in favor of the principle.

*SECOND* The plan was not sufficiently detailed. The committee's position was that reference to pamphlet #2 spelled out the mode of operation.

*THIRD* The creation of a national company would sabotage the conference of the ABA with the ALTA. We feel that the conference is a long overdue avenue of communication that may be even more necessary if all lawyers have a service of title insurance.

*FOURTH* The plan puts the bar into business. This objection was levied at an early plan where the bar would have been in the title insurance business. Here a commecial company would be the vehicle. Many lawyers feel that without a source of title insurance they are in the title insurance business right now more than they want to be.

*FIFTH* It would be unfair for the ABA to urge the exclusive use of this national company by lawyers. This is not contemplated and if any company felt it were prejudiced by the new national company, it would make a similar proposal to the ABA.

*SIXTH* If the lawyers approve this plan then the commercial title insurance companies will practice law. It seems unlikely that the commercial companies will go any farther than they have gone.

*SEVENTH* There is an ethical conflict in a lawyer issuing title insurance. This is true, but the conflict is no greater than when the lawyer gives his client a tit'e opinion without insurance. In fact, it may be, and usually is, considerably less.

*EIGHTH* A national company should not advertise on behalf of its lawyer representatives. This is true and this advertising is not contemplated. The company would advertise "see your lawyer in a real estate transaction—no amount of financial indemnification can take the place of independent legal counsel" or some similar message.

*NINTH* The proposed agreement is in violation of the anti-trust laws. The answer is that the plan was conditional on getting an anti-trust rating. A friend of mine on the LTGF committee advised me that the Department of Justice was very interested in the existing rate structure in the commercial title insurance field when the anti-trust department was investigating the ABA proposal.

The strongest argument made by the committee as to the necessity of such a national bar-related company was based on the non-competition agreement of the national company, that is, the national company would issue title insurance only through buyers. The point was that the lawyer who relies upon his competitor for title insurance service is leaning on a tender reed. Less than thirty days following the talk in the House of Delegates the reinsurance carrier of the Illinois Fund which competes through abstractor agents with lawyers, cancelled its reinsurance agreement with the Fund.

What can we do to resolve our differences and give the public the best service at a reasonable charge?

When it comes to resolving differences, I feel that I am carrying coals to Newcastle. Any organization that can secure cooperation between abstractors and title insurance companies has achieved an understanding that would seem much more difficult

than the problem with the lawyers.

I believe that every purchaser of real estate should have the benefit of his own counsel at least examining the title insurance policy and the closing documents. This will allow the exceptions to the title policy and the affect of such policy to be explained to the purchaser. At the same time, the consequences of the various forms used by a title company are explained to the purchaser.

In Indiana in the majority of cases I would say that this is exactly what happens and as a practical matter there is very little conflict between title companies and lawyers. Lawyers are still a part of the real estate transaction and the title companies are primarily responsible for furnishing the insurance. I think this is what ideally our relative rules should be.

If the title insurance industry would recognize the skill of the independent lawyer and his economic worth, our differences could probably be settled and almost certainly would not have arisen.

As lawyers, we have on occasion been slow to recognize the worth of title insurance. If imitation is, in truth, the sincerest form of flattery, then you have had your accolade.

The public, the lawyer, the title industry, and the general real estate transfer field will benefit by a source of title information available to all, by title analysis, by one qualified so to do and by title insurance for financial indemnity.

# "THE NAVIGATION SERVITUDE"

By JOHN P. TURNER

*Vice President and General Counsel*
*Chicago Title Insurance Company, Chicago, Illinois*

Even though the 5th Amendment to the Constitution of the United States prohibits the taking of private property for public use without the payment of just compensation, one particular kind of property, that lying within the boundaries of a navigable water, is not within the protection of the amendment if the taking is for the purpose of navigation. This property is considered to be burdened with a servitude in favor of the United States, and the servitude has been denominated the navigation servitude.[1]

The servitude is described in detail in a report filed by a committee of the Section of Real Property, Probate and Trust Law of the American Bar Association. This report appears at Page 597, of Volume 2, of the REAL PROPERTY, PROBATE AND TRUST JOURNAL, being the Winter Issue for 1967. There are also two very excellent articles which are required reading for anyone interested in this subject. The first of these is Morreale, *Federal Power In Western Waters: The Navigation Power And The Rule of No Compensation*, 3 NATURAL RESOURCES JOURNAL 1. The article contains a careful analysis of the cases which have established the servitude and a critical study of its legal justification. The second article appeared on Page 6 of the issue of the COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS for Monday, May 2, 1966, and is entitled *Underwater Land And The 'Navigation Servitude'*. While the leading cases are discussed, this article also considers the social and political implications of the servitude.

The existence of this servitude is well known to title insurers who make a considerable effort to determine, before the policy is issued, whether the property described in the policy is affected by the servitude. My assignment to discuss the servitude today was made therefore not because the servitude is new matter, but because a committee of the American Bar Association is working on some legislation concerning it which ought to be of interest to the members of the American Land Title Association. I am a member of that Bar Association committee, and I also was a member of the predecessor committee

which laid the foundation for the activities of the present committee, and which prepared the report to which reference has been made.

In any discussion of the navigation servitude, there are certain fundamental ideas which should be expressed. The first of these is that the servitude affects any water which is navigable, whether it be salt or fresh water, bays, lakes or rivers.[2] The much more difficult problem here is to determine whether a particular water is navigable. At common law, only tidal waters were navigable[3] but this rule has not been followed in this country. It was established very early that waters navigable in fact are navigable at law, and the test for navigability in fact was stated to be whether waters "are used or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade or travel are or may be conducted in the customary modes of trade and travel on water."[4] In more recent years, at least one case has held that the limitation to the "ordinary condition" is no longer applicable and that a water may be navigable if it can be made so with artificial improvements.[5] It seems certain that if any part of the water is navigable in fact, it is considered navigable for its entire length[6] and width, width being to the high water mark,[7] and that, if once considered to be navigable, navigability is not lost because changed conditions make actual use for navigation impossible.[8] Navigability may be an issue for different purposes, such as determining admiralty jurisdiction for the federal courts, or determining whether the title to the bed of the water passed to a state when it joined the Union, as well as determining whether the water is affected by the navigation servitude. One law review article lists eight different situations where the term "navigability" has been defined for different purposes.[9] Certainly, in any event, extreme caution must be exercised in determining that a water is not navigable.

The second point which must be noted is that the ownership of the bed of the water is not within our discussion. If the water was navigable, normally the title to the bed was divested from the United States at the time the state was admitted to the Union.[10] Whether the ownership is still in the state, whether the state has certain navigation and fishing rights, etc., are matters which must be determined before any title can be insured. The navigation servitude applies regardless of the status of ownership of the bed of the water. Also to be noted here is the fact that the servitude is not a matter of reservation which is contained in some instrument in the chain of title.

The third point is that the general statutes which are concerned with the control of navigable waters by the United States give no relief in connection with the navigation servitude. The statutes in question are those which authorize the Secretary of the Army to establish harbor lines, which permit improvements by the bed owner within the harbor line, and which authorize the Secretary of the Army to grant permits for improvements outside the harbor line or where no harbor line has been established.[11] The permit issued by the Secretary of the Army is a revocable permit by its express terms and, while I know of no instance where a permit for fill has been revoked after the same was exercised,[12] the fact remains that the right to revoke exists. As to improvements made within the harbor line, it has been held that the right granted by the statute is a qualified right, in that even fill made pursuant to the statute may be taken "without compensation, in the interest of navigation, provided the taking is not arbitrary."[13] And, of course, the famous case in this connection is the GREENLEAF JOHNSON case[14] where it was held that the then equivalent of the Secretary of the Army could relocate a harbor line, and the United States would not be required to pay compensation for the improvements originally within the harbor line which it required be removed when they were on the water side of the re-established harbor line.

The discussion here is referring to general statutes. Congress has passed a number of statutes which relate to a specific navigable water and which are intended to terminate the navigation servitude for that particular water.[15] Some of these statutes take the form of a declaration that the particular water described is not navigable,[16] and some criticism of this approach has been expressed.[17] I believe, however, that

general reliance is usually placed on such statutes.

Professor Morreale, at Pages 62 and 63 of her article to which reference has been made, summarizes the consequences inflicted by the navigation servitude on private property. While her summary is directed only at streams, many of the conclusions expressed would apply also to other types of navigable waters. The summary, without her footnotes, is as follows:

"(1) The navigation servitude extends to the ordinary high-water mark of navigable streams and may be maintained at that level by artificial means.

(2) Within that boundary line, title to all private property is defeasible without compensation as against the exercise of the navigation power by the United States. Such property includes title to the stream bed, title to structures within the stream, access to the stream, title to abutting land up to the ordinary high-water mark and rights to the stream flow.

(3) Beyond the boundaries set by the ordinary high-water mark, the servitude affects abutting uplands in that value attributable to their location near a navigable stream is non-compensable.

(4) Injury to private property within or abutting non-navigable streams is compensable if inflicted in the course of an exercise of the navigation power limited to the navigable mainstream.

(5) In the event Congress expressly exercises the navigation power over the non-navigable tributary in order to protect the navigable capacity of the mainstream, (a) title to private property within the boundaries set by the ordinary high-water mark of the non-navigable tributary is defeasible without compensation; (b) beyond these boundaries, the servitude affects abutting uplands in that value attributable to their location is non-compensable.

(6) Neither prior state nor Congressional sanction of the right in question, nor prior Congressional inaction, cause the sovereign to be estopped. A Congressional recognition of the right as compensable would be effective."

A discussion of all of the points listed in the summary is beyond the scope of this paper. Two of these points, however, require special discussion. The first is that contained in Paragraph (1) and relates to the right to maintain the servitude to the level of the high water mark "by artificial means." The case which supports this statement is *United States* v. *Chicago, M., St. P. & Pac. R.R.*[18] The railroad had its trestle along the Mississippi River between the high and low water marks. The United States built a dam in the river which caused the area between the high and low water mark to flood. It was held that the building of the dam was the proper exercise of the power of navigation, that the area between the high and low water mark was subject to the navigation servitude, and that consequently the United States was not required to pay for the damage which resulted to the trestle.

When title insurers discuss the dangers connected with the navigation servitude, it is customary to concentrate on the right of the United States to require fill and structures to be removed. It is possible that more likely a greater hazard exists from the right in the United States to change the water level or perhaps to change the channel of the stream so as to cause a greater erosion of a filled area by the different flow, all without obligation to compensate for the resultant damages to fill and structures within the area affected by the servitude.

The second point for emphasis in the summary occurs in Paragraph (2) where "title to the stream bed" and "title to structures within the stream" are classified as property, title to which "is defeasible without compensation as against the exercise of the navigation power by the United States." In support of these conclusions, four cases are cited. In the first, *Lewis Blue Point Oyster Cultivation Company* v. *Briggs*,[19] the United States caused a deeper channel to be dredged in a salt water bay, which dredging destroyed an oyster bed. In the second case, *Louisville Bridge Company* v. *United States*,[20] and the third case, *Union Bridge company* v. *United States*,[21] it was held that the owners of bridges over navigable rivers could be required to alter the same without right of recovery for the cost of the alterations. In the fourth case, *United*

*States* v. *Chandler-Dunbar Water Power Company*,[22] a water power company was denied compensation, among other things, for the value of a water power plant located in the river.

When Professor Morreale describes the title to the bed, the bridges and the power plant as "defeasible," she apparently is not saying that the title can be taken in the sense of being transferred to the United States without compensation. As an illustration, consider a situation where an apartment building has been erected on filled land in a navigable water. It seems certain that the United States could require that the fill and the building be removed without compensating for their value or the cost of the removal if this was necessary in the exercise of the power of navigation. It seems highly unlikely, however, that the United States could appropriate the use of the apartment building to house sailors in training upon the claim that the training of sailors was an incident of navigation. On the other hand, it appears in the CHANDLER-DUNBAR WATER POWER case[23] that the original condemnation action instituted by the United States included, as a purpose, the acquisition of the fee simple title to that part of the bed of the stream which was owned by the defendant. Although no stress is placed upon this in the court's opinion, this purpose appears to have been accomplished without a determination of, or any payment for, the value of that title.

This discussion should have established, by this time, that the right to maintain structures or other improvements erected in navigable waters is not exactly free from uncertainty. Yet more and more title insurers are being asked to insure the title to areas in navigable waters without exception as to the existing right in the United States.

Many insurers have done so, I think, in the belief that no undue risk was being taken and, in the great majority of instances where this has occurred, this probably was a correct belief. It is my understanding that a very substantial part of lower Manhattan Island is comprised of filled land and was once a part of the waters of New York Harbor. I have seen maps which show that much of downtown Boston is in the same category. I think the same is true of San Francisco. If a title policy is issued on a tract of land in one of these areas which is located a substantial distance from the presently existing water front, and with the entire intervening area improved with streets, buildings, etc., it is hard to conceive the circumstances under which the United States might try to assert its rights under the navigation servitude.

Consider a situation, however, where an insurer is asked to issue a policy in a transaction where it is proposed to fill in a section of a navigable water on which will be erected a 20-story apartment building at a cost of many millions of dollars. This is the first such filling in of this particular water. The area in question is behind an established harbor line, and it is not proposed to make any fill on the water side of the bulkhead line. The title insurer is asked to issue a policy in favor of a purchaser from the present owner using a description which will specifically include the area to be filled and also to issue a mortgage title insurance policy in favor of a mortgagee who will lend the money to that purchaser to erect that apartment building. It is requested that neither policy contain an exception as to the rights of the United States.

I have found no reported case where a harbor line has been reestablished after improvements of this kind have been made so as to require the removal of the improvements. At the same time, all of the cases indicate that the United States does have this right. If, therefore, the policies are issued without appropriate exceptions, they must be issued because the insurer's analysis of the physical circumstances in connection with the surrounding area convinces it that there is no reasonable possibility that the United States, at any time in the future, will attempt to assert its rights.

This may well be a reasonable conclusion. I think it departs, however, from normal underwriting procedures. These procedures, as I understand them, require the insurer to attempt to determine whether a right exists. Insurers spend considerable time and effort to that end, and many of us, to our sorrow, have decided that a right did not exist and have so insured only to find that there was a right in existence. Usually, however, if we determine that a right does exist, we do not attempt to determine whether the right will be exercised.

In the case of the navigation servitude, I think we must proceed on the basis that the right does exist. If, therefore, we insure over it, our only justification for so doing is that we believe it will not be exercised.

Some owners' title insurance policies contain, in the Conditions and Stipulations, a specific exclusion as to this right of the United States. One policy which is used interchangeably for owners and mortgagees also contains such an exclusion. Neither the LIC nor any of the ALTA mortgage policies have such an exclusion in the Conditions and Stipulations and the ALTA owner's policy does not. If, therefore, we want to exclude liability by reason of the existence of this right, we must do so by specific exception. The summary by Professor Morreale indicates the matters which perhaps should be included in the scope of the exception.

I think all of us use some judgment as to whether or not it is necessary to put in this exception. For example, as has been previously mentioned, the lower part of Manhattan Island is on filled land. If this filled land is on the land side of existing streets and with valuable buildings located on the affected area, I do not think title insurers usually insert the exception in policies. On the other hand, if the area immediately adjoins the present water front, or if the land is presently being filled, I think it is usual to make an exception.

In 1966, a special subcommittee of the Committee on Public Regulation of Land Use of the Real Property, Trust and Probate Section was requested to consider whether a recommendation should be made that the American Bar Association support legislation directed at the navigation servitude, which legislation was being initiated by the Bar Association of the City of New York. The subcommittee came to the conclusion that some legislation was desirable, but was not entirely convinced that the proposed legislation solved the problem.

The act proposed was a new section following the two sections of Title 33 which deal with the power of the Secretary of the Army to establish harbor lines and to prohibit obstructions and read as follows:

> § 404a. When land now or formerly under water within harbor lines established pursuant to Sections 403 and 404 has heretofore been or hereafter is filled or otherwise improved, or when such land not within habor lines has heretofore been or hereafter is filled or otherwise improved pursuant to plans recommended by the Chief of Engineers and authorized by the Secretary of the Army, the United States will not enter upon such land or compel the removal of such fill or other improvements without making full compensation to the owners of such land for the land, fill and improvements.

The primary difficulty which the subcommittee had with the proposed act was that it appeared to be too comprehensive from the standpoint of the landowner as opposed to that of the United States. The statute was intended to be retroactive and it seemed to embrace every improvement whenever made and regardless of the nature of the improvement. This last was particularly disturbing, since it appeared to the subcommittee that a distinction should be made between permanent improvements made on filled land on the shore side of an established harbor line, which improvements were not in any way connected with the use of the water, and, for example, a semi-permanent dock extending beyond a harbor line and constructed under the authority of a revocable permit issued by the Secretary of the Army. If the statute was to be retroactive, and it was finally the consensus of opinion within the subcommittee that it should be, it was believed that it should be limited to improvements which were really contemplated by all parties as intended to be permanent when they were made.

While the subcommittee was making its study, the Bar Association of the City of New York modified its proposed statute to read as follows:

> § 404a. When land now or formerly under water within harbor lines established pursuant to Sections 403 and 404 has heretofore been or hereafter is filled or otherwise improved, if the United States enters upon such land or compels the removal of such fill or other improvements, it must pay just compensation to the owners of such land for the land, fill and improvements.

The effect of this draft in sub-

stance is to make any established harbor line binding on the United States, thus overcoming the GREENLEAF JOHNSON case, and it certainly has much to commend it. The subcommittee, however, believed that permanent non-navigationally connected improvements might have been established under permits and that the statute should protect these improvements. It believed that a procedure should be established whereby irrevocable permits for land outside harbor lines, or where no harbor line had been established, could be issued. In other words, the subcommittee felt that the revised New York Bar Association statute did not go far enough.

The subcommittee made an attempt to draft a statute which it thought would solve the need. It finally decided, however, that it would be inappropriate to try to formulate such a statute without consultation with the government agencies which would be primarily concerned with such a statute. It not only felt that the thinking of these agencies would be very important in determining what should be contained in the statute, but it also felt that the possibility that the statute would be enacted would be greater if the government agencies were working in favor of such a statute instead of being opposed to it. Consequently, the report of the subcommittee, which was approved by the Section, called for authority from the House of Delegates of the American Bar Association to attempt to work out the terms of a statute with the appropriate government agencies. With such approval, the Section Council designated a new committee whose purpose was to seek the advice and guidance of the appropriate government agencies to the end that a statute might be formulated and enacted which would provide a method whereby the navigation servitude could be finally terminated. Mr. Eugene Morris, an attorney in New York City and who had been the Chairman of the Committee for Public Regulation of Land Use during the period that the subcommittee was formulating its report, was appointed chairman. Mr. Morris arranged a conference with representatives of the Corps of Army Engineers and attended the same with representatives of the committee and other interested persons. It became apparent at this meeting that the Corps of Engineers would not take an active part in drafting the statute. This was occasioned in part by the feeling that it should not do so unless directed by the Secretary of the Army, by the feeling in part that such a statute was not necessary as the problem was being overstated, and in part by a reluctance to see foisted upon the Corps of Engineers the responsibility to make decisions which might result in the final termination of any government right in an area within a navigable water. This last reason certainly appears to be understandable in that it is obvious that a great amount of pressure can be brought on the Corps of Engineers to approve the issuance of a permit, or at least to recommend the same, because of the financial benefit which might result therefrom to the riparian owner. Actually, this last position is a little inconsistent with the second position stated, since the Corps of Engineers, when it does issue a permit for a permanent fill, even though such permit may be revocable on its face, undoubtedly has in mind that it will not be revoked. This, of course, is one of the reasons why the Corps believes that no statute is necessary. In any event, after the meeting with the Corps of Engineers, the committee decided that it should attempt to draft a statute which it would undertake to have introduced without any sponsorship from the Corps of Engineers.

As I have previously indicated, no step can be taken which can be represented as being in behalf of the American Bar Association without the approval of the House of Delegates. The committee's authority is limited to negotiations with the various government agencies with the thought that any final action would be approved by the House of Delegates before it became final. The statute which the committee has under consideration has not been submitted to, and approved by, the House of Delegates and, consequently, it should not be considered as having been approved by the American Bar Association. On the other hand, the committee presently has drafted a statute which it intends to submit to the House of Delegates for approval and it is this proposed statute which I intend to describe.

The basic thinking behind the

statute is that there are two different circumstances to be considered. In the first place, there is the circumstance where the net result of the improvement will be to eliminate the possibility of any further water flow. In other words, if the area is to be filled, it is being filled with the intention that it no longer be subject to navigation use, and, consequently, before that fill is made, the United States should have reached the decision that it is no longer necessary for navigation purposes. It is intended that the statute be retroactive to include areas which have heretofore been filled either because they were on the shore side of an established harbor line or because they were authorized by permit from the Secretary of the Army. The second circumstance for consideration is that where it is not intended that the water use be terminated. For example, projects are already underway in New York where very substantial buildings will be placed upon piers or foundations extending to the river bed and where it will be the intention that the water be continued in use for navigation purposes. It seems proper that the rights of the United States should be preserved under those circumstances but at the same time the right to maintain permanently the structure on piers ought to be recognized. There will also be circumstances where it will be important that the permit issued by the Secretary of the Army retain certain rights of control including the right to require removal. Therefore, it is proposed that the present statute be amended to continue the right of the Secretary of the Army to issue permits but also to make it clear that such permits can be irrevocable permits under appropriate circumstances.

I will not attempt to read the statute as proposed because of its tentative nature. It does seem to me that it is far enough along so that American Land Title Association should be aware of its existence and should take a position as to whether it is in favor of the statute or opposed to it. If it is opposed to it, I would think the American Land Title Association ought to take such steps as would cause the statute, if introduced, to be defeated. On the other hand, if the American Land Title Association is in favor of it, then I think it and its members ought to lend all possible support to getting this statute enacted. Consequently, I would like to recommend to the Board of Governors of American Land Title Association that a special committee be appointed in behalf of the Association to consider this statute and make such recommendations to the Association in connection with it as the committee deems appropriate. It is my hope that if such a committee is appointed, it will have a recommendation for the Association by the mid-winter meeting.

This, then, is the navigation servitude, a problem which, while complex, ought to be of interest to all persons in the title business. I hope that my presentation today has not retarded that interest.

FOOTNOTES

[1] Mr. Justice White, in United States v. Rands, 389 U.S. 121 (1967), the latest pronouncement by the United States Supreme Court of the principle, refers to the "navigational servitude". This paper will follow the law review articles cited in its text, which describe the principle as the "navigation servitude".

[2] See, e.g., Lewis Blue Point Oyster Cultivation Company v. Briggs, 229 U.S. 82 (1913) (Great South Bay in New York); Louisville Bridge Company v. United States, 242 U.S. 409 (1917) (Ohio River); Sanitary District of Chicago v. United States, 266 U.S. 405 (1925) (Lake Michigan).

[3] 65 C.J.S. Sec. 4, p. 64.

[4] The Daniel Ball, 77 U.S. 557, 1.c. 563 (1870).

[5] United States v. Appalachian Electric Power Co., 311 U.S. 377 (1940).

[6] United States v. Rio Grande Dam and Irrigation Company, 174 U.S. 690 (1899).

[7] U. S. v. Chicago, M., St. P. & Pac. R.R., 312 U.S. 592 (1941). In tidal waters, the servitude appears to extend to the mark of high tide, but defining that mark presents considerable difficulty. See Tideland Ownership—Time For Reform, 36 UNIVERSITY OF CINCINNATI L. REV. 121 (1967). It should also be remembered that it is possible for tidal waters not to be navigable in fact. 65 C.J.S. Sec. 4, p. 64.

[8] Economy Light & Power Company v. United States, 256 U.S. 113 (1921).

[9] Johnson and Austin, Recreational Rights And Titles To Beds On Western Lakes And Streams, 7 NATURAL RESOURCES JOURNAL 1, 1.c. 4, (1967).

[10] The question of ownership of the bed is discussed fully in III AMERICAN LAW OF PROPERTY, Sec. 12.27.

[11] 30 STAT. 1151 (1899); 33 U.S.C. 403 & 404 (1964).

[12] In Miami Beach Jockey Club v. Dern, 83 F.2d 715, 86 F.2d 135, (D.C. Cir., 1936), cert. denied, 299 U.S. 556, the permit apparently was revoked before the fill was made.

[13] United States v. Martin, 177 F.2d 733 (D.C. Cir., 1949). Whether this holding exactly fits the matter under discussion is debatable. The decision in the lower court (United States v. Groen, 72 F.Supp. 713 [U.S.D.C., D.C. 1947]) apparently found that title to the bed of the water was in the United States, but that the defendants had acquired ownership by filling the same. The appellate

court seems to dispute that this was the finding (l.c. 734, footnote 1) but then proceeds to treat the right of the United States as being only the navigation servitude.

[14] Greenleaf Johnson Lumber Co. v. Garrison, 237 U.S. 251 (1915).

[15] These statutes appear in 33 U.S.C. Sec. 21 et seq.

[16] See, e.g., 33 U.S.C. Sec. 29 (1900).

[17] Speech entitled "The Navigation Servitude And Waterfront Development" delivered by Professor Curtis J. Berger at meeting of New York State Land Title Association held at Cooperstown, N.Y. on July 13, 1966.

[18] 312 U.S. 592 (1941).

[19] 229 U.S. 82 (1913).

[20] 242 U.S. 409 (1917).

[21] 204 U.S. 364 (1907).

[22] 229 U.S. 53 (1913).

[23] 229 U.S. 53 (1913).

# REPORT OF THE RESOLUTIONS COMMITTEE

By CLARENCE M. BURTON
*Member, ALTA Resolutions Committee*
*Vice President and Secretary,*
*Burton Abstract and Title Company, Detroit, Michigan*

*This report was presented on behalf of John D. Binkley, Chairman of the Resolutions Committee, and Past President of the American Land Title Association*

It is a pleasure for me to present for your consideration the following resolutions.

WHEREAS, the cordial welcome of The Honorable Terry D. Schrunk, Mayor of the City of Portland, instilled a warm and hospitable atmosphere for this 62nd Annual Convention of the American Land Title Association; and

WHEREAS, the convention chairman, Mr. Fred McMahon and the members of his committee have worked so diligently to plan a successful convention program; and

WHEREAS, Mrs. Marian McMahon, Chairman of the Ladies Hospitality Committee, and her members succeeded in presenting such an interesting program of events for the ladies; and

WHEREAS, the Oregon Land Title Association, as host of the convention, provided the delegation a meaningful and memorable convention in this beautiful "City of Roses";

THEREFORE, be it resolved, that the members of American Land Title Association express their appreciation and thanks to Mayor Schrunk, Mr. and Mrs. Fred McMahon and the members of their committees, and to the Oregon Land Title Association for exposing all delegates to the 20th Century version of "Oregon Fever," which does make us reluctant to leave Portland.

WHEREAS, the delegates in attendance have benefited significantly by the challenging, stimulating and informative messages presented by a distinguished group of guest speakers who discussed vital issues of today which face all of us;

THEREFORE, be it resolved, that the delegates here assembled express and record their sincere appreciation for the participation in this 62nd Annual Convention of the American Land Title Association to:

W. VICTOR BIELINSKI, Dean of Academic Development, Northwood Institute, Midland, Michigan

ROBERT HAZEN, President, Benjamin Franklin Savings and Loan Association, Portland, Oregon

JOHN R. HOWARD, President, Lewis and Clark College, Portland, Oregon

THE HONORABLE DR. WALTER H. JUDD, Former U. S. Congressman, Missionary, Far Eastern Expert, Washington, D.C.

THOMAS L. LOWE, JR., Vice President, Mason-McDuffie Investment Co., Berkeley, California

EDWARD W. MATHEWSON, Manager, Land Title Department, Weyerhaeuser Company, Tacoma, Washington

THE HONORABLE TOM MC CALL, Governor of the State of Oregon, Salem, Oregon

DR. CLINTON S. MC GILL, M.D., Portland, Oregon

RICHARD W. NAHSTOLL, Past President, Oregon State Bar Association, Portland, Oregon

BEN PADROW, Head, Department of Speech, Portland State College, Portland, Oregon

WALTER B. RAUSHENBUSH, Professor of Law, University of Wisconsin Law School, Madison, Wisconsin

THE HONORABLE TERRY D. SCHRUNK, Mayor of the City of Portland, Portland, Oregon

DAVE STONE, Real Estate Consultant, Lecturer, Sales Trainer, Dave Stone Enterprises, Los Gatos, California

DR. MICHAEL SUMICHRAST, Economist, National Association of Homebuilders, Washington, D.C.

GENE E. WILKINS, Chairman, Young Lawyers Section, American Bar Association, Indianapolis, Indiana

ALBERT B. WOLFE, Chairman, Section of Real Property, Probate and Trust Law, American Bar Association, Boston, Massachusetts

WHEREAS, the 62nd Annual Convention delegates have benefited not only from a discussion of recent developments in our business but also a frank appraisal of ourselves and of our industry.

THEREFORE, be it resolved that members of this Association express deep appreciation for the appearance on the program of a knowledgeable group of our own industry speakers.

WHEREAS, this Association has enjoyed for many years the friendship, interest and participation in our activities of the representatives of the Life Insurance Industry;

THEREFORE, be it resolved that the delegates here assembled express and record their thanks and appreciation to representatives of Life Insurance companies for their continued interest and helpful contributions to our mutual problems.

WHEREAS, responsibility for the American Land Title Association during the year has been entrusted by the membership to the elected national officers, the members of our Board of Governors, the chairmen and executive committees of the respective Sections, and to the appointed chairmen and members of all standing and special committees, and;

WHEREAS, each of them has made notable contributions of time, talent and effort to the guidance of this Association during the past year. Outstanding leaders in their own businesses, they have shared their broad knowledge, sage counsel and vision with the entire title insurance industry; they have brought to this organization not only an educated awareness of the problems with which we are faced but also the kind of administrative skills and foresight required to provide the solutions to these problems;

THEREFORE, be it resolved that on behalf of all members of the American Land Title Association, the convention delegates hereby pay tribute and express their very great gratitude for the significant role played in the direction and development of this Association to: ALVIN R. ROBIN, President; GORDON M. BURLINGAME, Vice President; THOMAS J. HOLSTEIN, Chairman, Abstracters Section; ALVIN W. LONG, Chairman, Title Insurance Section; LAURENCE J. PTAK, Treasurer; LLOYD HUGHES, Chairman, Finance Committee; to the members of the Board of Governors; to the chairmen and members of all standing and special committees of this Association, and to other members of our Association who have contributed so generously to this convention.

WHEREAS, the American Land Title Association again has completed a successful year of operations in its Washington Office;

THEREFORE, be it resolved that the delegates here assembled express their sincere thanks to:

WILLIAM J. McAULIFFE, JR., Executive Vice President;

MICHAEL B. GOODIN, Secretary

WHEREAS, James W. Robinson, in his capacity as Secretary and Director of Public Relations, served this Association with a dedication of purpose and performance for almost a decade.

THEREFORE, be it resolved that members of the American Land Title Association express and record their deep appreciation to James W. Robinson for his loyal and capable service to this organization and extend their best wishes for success in his new association.

Mr. President, in behalf of the members of this committee who are:

CLARENCE M. BURTON, Vice President and Secretary, Burton Abstract and Title Company, Detroit, Michigan

JACK W. MC ANINCH, Vice President and Agency Manager, Pioneer National Title Insurance Company, Dallas, Texas

FRANK J. MC DONOUGH, President, West Jersey Title and Guaranty Company, Camden, New Jersey

RONALD A. MOORE, Vice President, Security Title Company of Ogden, Ogden, Utah

I move the adoption of each of these resolutions.

CARRIED UNANIMOUSLY.

# "SPECIAL TRIBUTE TO STEVE CARRIER"

By C. H. BRILEY, JR.
*President, Tennessee Title Company, Nashville, Tennessee*

I was selected to pay this special tribute to Steve Carrier because of the close association that I have had with Steve, lo these many years at Nashville, Tennessee. Most titlemen in speaking of counsel for life insurance companies from time to time, bore some criticism of the technicalities imposed upon them by the local life insurance counsel. Such, however, has not been my personal relationship with Steve Carrier. For many years I've found Steve to be exacting in his requirements, intensely loyal to the National Life and Accident Insurance Company, but on the other hand, exceedingly fair in all matters involving title insurance companies.

Not only have I found Steve to be exceedingly fair but I have found him to be well versed on the many fine points of all title policies. And to my personal knowledge, he has been a wonderful asset to this title industry. He has spent many long hours working with the powers-that-be in establishing uniform systems of operation throughout the United States. He has been a strong advocate for title insurance.

Therefore, to summarize and to complete this mission which I consider to be a special privilege granted unto me, I would simply state to you that Steve was born in the State of Kentucky and was subsequently married to the beautiful lady whom we know as Betty, and that they are the parents of two lovely daughters. With the exception of a slight period of time when Steve taught school, the remainder of his professional career has been in connection with either the financial department of a mortgage loan company or the department of two life insurance companies. He began his career with National Life on my birthday, April 13, 1942. Unfortunately, however, the year of the birth is wrong.

Being a graduate of Vanderbilt University and an alumni of Cincinnati YMCA Law School, which YMCA Law School has contributed a great number of fine lawyers to the bar in the State of Tennessee, Steve was graduated cum laude from Vanderbilt and as we all know has spent many years on behalf of the life insurance companies in connection with his work involving the ALTA.

In fact, Steve has been Chairman of the Life Insurance Counsel Section of the American Land Title Association and Chairman of the American Life Insurance Counsel Committee on Standard Title Insurance Policy Form from the year 1960 to the present date.

Steve has been active in social and fraternal work at Vanderbilt University. He's been active in community chest and UGF work for many years. He has held practically every honorary office that his church — St. George's Episcopal Church at Nashville—could bestow upon him.

I think that it is extremely fitting that the American Land Title Association pay special tribute to Steve Carrier at this time in recognition of his long and faithful service to this industry, and his intense and loyal interest to all of us on the eve of his announced retirement.

It is my extreme pleasure to make this presentation on behalf of this Association and to advise you that it will be difficult for this Association to find someone to replace Steve in that I am advised that this will be his last active convention.

MR. BRILEY: Steve, I've known you for many years and I have valued your guidance over the entire period of time that I have known you. Insofar as my personal feelings are concerned, you've been a most valued asset to this Association, and it is with extreme pleasure that I present to you, on behalf of this Association, this plaque. Ladies and

gentlemen, Mr. Carrier.

MR. STEVE CARRIER: Thank you very much. Too late to make that speech I prepared.

MR. BRILEY: (Reading plaque) A special tribute: "Know all men by these presence that the Board of Governors of the American Land Title Association did on October 2, 1968 pay a special tribute to E. P. Carrier in recognition of his continuing interest, participation and contribution toward the welfare and progress of the land title profession and of this Association. Witness our hands and seal, signed by Alvin R. Robin, President, and Michael B. Goodin, Secretary."

MR. CARRIER: Thank you.

# STANDARD TITLE INSURANCE FORMS COMMITTEE REPORT

**By RICHARD H. HOWLETT**

*Chairman, ALTA Standard Title Insurance Forms Committee,*
*Senior Vice President, Secretary and General Counsel*
*Title Insurance and Trust Company, Los Angeles, California*

The industry has been concerned about the coverages afforded by the existing loan policies as to questions of usury. With rising interest rates during the past few years and the increasing tendency on the part of the courts to classify many of the costs and charges passed on to the borrower as being interest, the question has become acute and should be answered now. I know of no segment of the real estate industry that believes that we should insure or be expected to insure that a usurious loan is valid and enforceable.

The 1962 Loan Policies contain an exclusion from coverage:

"(f) Usury or claims of usury not shown by the public records;".

The Committee is of the opinion that this exclusion does not comply with the express intention of our industry, that the exclusion should be absolute and not qualified.

Experience indicates that it is impossible for an insurer to determine by inquiry or investigation what charges have been made and passed on to the borrower, or what payments which by indirection actually fall on the borrower, or whether or not proceeds of the loan are in fact to be used for the represented purposes. All must be known to determine whether or not the loan is usurious. Since we cannot determine the facts, we have no basis upon which to afford the insurance. The Committee and the Title Insurance and Underwriters Section recommend that the subject matter of usury be excluded from coverage of the loan policies at this time. In states where forms are promulgated, we request the members to use their best efforts to obtain from the regulatory authority approval of this modification. The Committee will support these efforts.

If this modification conforms to the intent of the membership, then it is not enough to just modify the 1962 policies. All loan policies must be amended to exclude usury coverages. It is a meaningless act to exclude usury coverage in the 1962 policies but continue to afford that coverage in other policies. The Committee asks—if the industry means that usury coverage should not be afforded—then the industry must mean that all mortgage policies will be modified to exclude usury coverages.

Mr. Chairman, as recommended by the Title Insurance and Underwriters Section, I move that paragraph 3(f) of the Conditions and Stipulations, Exclusions from Coverage of both of the 1962 Loan Policies be amended to read:

(f) Usury or claims of usury;

that the amendment may be accomplished by endorsement to the Policy or by a special exception in Schedule B.

Further, that all loan or mortgage policies, in addition to the ALTA approved policies, be amended to exclude all coverage of the subject matter of usury.

—MOTION WAS CARRIED

# ELECTION OF NATIONAL OFFICERS

By proper nomination and second, the following officers were unanimously elected for 1968-1969:

*President* — GORDON M. BURLINGAME, Bryn Mawr, Pennsylvania
Chairman of the Board, The Title Insurance Corporation of Pennsylvania
10 South Bryn Mawr Avenue, 19010

*Vice President*—THOMAS J. HOLSTEIN, LaCrosse, Wisconsin
President, Lacrosse County Title Company
509 Main Street, P. O. Box 969, 54601

*Chairman, Finance Committee*—LLOYD HUGHES, Denver, Colorado
Senior Vice President, Midwest Division, Transamerica Title Insurance Company
1720 California Street, 80202

*Treasurer*—JAMES G. SCHMIDT, Philadelphia, Pennsylvania
President, Commonwealth Land Title Insurance Company
1510 Walnut Street, 19102

BOARD OF GOVERNORS

Term Expiring 1971

JERRY W. McCARTHY, Traverse City, Michigan
Owner and Manager, Grand Traverse Title Company
206 State Bank Building, 49684

LOUIS C. HICKMAN, Logan, Utah
President, Hickman Land Title Company
112 N. Main Street, 84321

H. EUGENE TULLY, Los Angeles, California
President, Security Title Insurance Company
3444 Wilshire Boulevard, 90054

PAUL F. DICKARD, JR., Fort Worth, Texas
Vice President, Commercial Standard Title Company
6421 Camp Bowie Boulevard, P. O. Box 12216, 76116

VICTOR W. GILLETT, Phoenix, Arizona
President and Chief Executive Officer, Stewart Title and Trust of Phoenix
3800 North Central Avenue, 85011

# ABSTRACTERS AND TITLE INSURANCE AGENTS SECTION

## REPORT OF SECTION CHAIRMAN

By THOMAS J. HOLSTEIN

*Chairman, Abstracters and Title Insurance Agents Section, President, LaCrosse County Title Company, LaCrosse, Wisconsin*

I have a very short report to present to you. The only activity I want to report on is the Abstracters and Title Insurance Agents Section management seminars. The rest of the things that we have accomplished during the year will be reported on this morning.

We chose this activity and the continuation of it as our main activity during the year. Meetings were held on Saturdays so that no con-

feree would have to be out of his office more than one day for travel.

The first meeting was held in Dallas on April 6, 1968. About 75 per cent indicated a preference for the one day pattern. The evaluation of the speakers was uniformly high. An attempt to hold down the registration fee resulted in a loss of about $1,200. In spite of this fact, the talent from the industry was terrific and only one outside speaker was paid an honorarium.

Because of this loss at Dallas, the program of five sites was immediately cut to one more conference to be held in Chicago on July 13, 1968. It was equally successful with eighty attending, even though the registration fee was increased. At both meetings a high percentage of those attending were from small offices.

I, therefore, believe that these meetings were a success from ALTA's point of view because we have now answered the man who most often asks, "What have you done for *me?*" I recommend that six proper sites be chosen and that a program be established of continuing the sessions in two of these sites each year.

This will enable the abstracter or title insurance agent in the small office to get up to date at least every third year. I believe he will attend in sufficient numbers to make the meetings successful. Twenty-four hundred dollars a year is a small price to pay if we can prove that the ALTA is interested in the man who gives us numbers in our membership.

During the past year I have had a delightful time traveling to several conventions.

We have one procedural matter to take care of. That is on the voting procedure in this section. You will have to bring me up to date on this. James W. Robinson, before his resignation, wrote a very profound exposition on this, which I don't intend to read but I do intend to show you some of the problems. They concern voting procedures, establishing some machinery for it, and certifying of credentials of representatives of member conferences.

This concern was crystallized at the meeting of the Abstracters and Title Insurance Agents Section on March 2, 1967 during which a certain number of members challenged the legality of votes cast by other members on a pending motion. Several years ago when a similar question arose, great confusion arose. Many members indicated they felt they had a right to vote in both the Abstracters Section and the Title Insurance Section.

It seems clear that under the ALTA Constitution and By-Laws all active members in good standing may cast votes at general session meetings. Title insurance and underwriting companies may cast a vote in the remedial title insurance section.

The practice in effect is that almost every member can vote in the Title Insurance Section. In Paragraph B, Section 1, Article IV of the Constitution, a title insurance underwriting company may vote in the Title Insurance Section. They also vote in the Abstracters Section.

With these basic problems in mind, coupled with the need for some revision of the Constitution and By-Laws, I hereby suggest a course of action which will develop a method of voting for the ALTA meetings of the sections at Annual Conventions. The member companies will be asked to indicate in advance by mail the names of their representatives and alternates for general sessions for the meeting of the Abstracters Section and the meeting of the Title Insurance Section several days before the convening of the convention. These representatives will be compiled in chart form.

From these charts, which will be available at the meetings of each section and each general session, members will have an additional one-half hour after the meetings start to submit names of voting representatives in order to make changes.

No matters calling for a vote will be presented to the general section meeting during the first half hour of the meeting. In the event of a vote necessitating the calling of the roll, the representative of ALTA will be on hand with a list of authorized voting representatives for the resolution of that problem. They will be called upon to resolve questions on voting rights.

Well, it seems to me that we don't have any problem. If there is a problem, I think it is across the hall. I am very glad to be able to say this.

In response to a letter from me, our Executive Committee seems to be of the opinion, and I quote: "I do not see where any member belonging to ALTA should expect to have more than one vote no matter how large or

how many additional members it has attending the convention.

"They should decide which one of those attending will vote for the company and this designation should be forwarded along with the provisions for the purpose of naming alternates."

I don't think we have any problem but I think as long as the proposed Constitution and By-Laws revision is in the mill on this thing, we should go along with what is going to happen across the hall and adopt a similar procedure for our section, which I am sure will be very, very simple.

The proposal reads as follows:

"RESOLVED: That each member company of the Abstracters Section of the American Land Title Association shall be entitled to one vote on all matters of business to come before the Section. If more than one representative of a member company, whether corporation, partnership or other is in attendance, they shall decide among themselves as to whom shall be spokesman for this company and therefore cast the ballot.

"Voting procedure shall follow *Robert's Rules of Order;* however, if any member requests a roll call vote by name of company present, it may be held at the discretion of the chairman."

We have had a lot of ten to twelve decisions like the American Bar Association has had on matters lately. I think some very technical voting procedure might be appropriate, but I suggest something of this nature for your consideration.

CHAIRMAN HOLSTEIN: Is there any discussion of the revision that is proposed?

A VOICE: Chairman Holstein, would this proposal stop the other representatives from these companies from having a voice on the floor?

CHAIRMAN HOLSTEIN: Oh, never.

A VOICE: It seems to me if that is quite clear, your proposals are fine.

CHAIRMAN HOLSTEIN: I think this proposal only involves action when we get out to vote. I don't think we have any problem here. Any other discussion? All those in favor of the resolution as read vote "Aye." Opposed?—CARRIED UNANIMOUSLY.

# "THE BEST OF DICKEY"

**By RICHARD A. HOGAN**

*Associate Counsel, Pioneer National Title Insurance Company, Seattle, Washington*

The title of my topic is stated to be, *The Best of Dickey.* This is a rather wretched title, and every time I look at it, I retch slightly. What kind of an informative message can be created around such a topic.

However, I have taken heart from two of yesterday's fine speakers. Mr. John Howard, in discussing the "Information Explosion," stated that while we can increase knowledge at a hurricane pace—the big risk is, can we do it and remain human. I would certainly hate to be thought guilty of subjecting you to this risk. Mr. Ben Padrow, who increased our knowledge of communications at a hurricane pace, stated that it isn't the message that counts but the environment in which it is given. This I can also buy.

This is a great environment, but since this is the second time I have spoken at a national title convention, I do view it with mixed emotions, somewhat like the guy who saw his mother-in-law go over a cliff in his new Cadillac convertible. This is because it violates one of my fundamental principles: if at first you don't succeed—the hell with it. For another thing, I spent 24 years pursuing titles across the Columbia River in Vancouver, Washington, and since I seldom attend a National Convention, I think I would enjoy it more under less familiar topographical conditions, lovely though they be. However, I do not mean to take anything away from this great country which, in addition to its scenic attractions, is ideal from the standpoint of people in the title business. It is new country. The in-

dex pages are crisper and less voluminous, and it is a growth area. The mighty river attracts dams like ofdex pages are crisper and less volufal attracts flies, opening up agricultural lands, drawing commerce and industry, and of course, people, who in their capacity as customers are highly regarded by all segments of the title industry.

One thing that probably has not been pointed out, is that the Columbia River, by measured volume, is the largest natural sewer in the country. It is the logical out-fall for our cities and major industries, such as paper mills, all of which produce a great deal of waste. Its pollution possibilities for industry are unlimited, and increased pollution means progress. Unfortunately, this situation has been deteriorating, as there is a great deal of griping by anti-pollution people, such as sportsmen and rival industries. For example, the fishing industry, which is really big, gripes a lot because they claim they are pulling in too many crummy-looking fish. As a result of all this organized whining, it is doubtful that the river's huge potential capacity for pollution will ever be fully utilized, unless effective countermeasures are taken.

I enjoyed living in Vancouver, Washington. It is a progressive city of 40,000 contented people. They are contented because, not only do they live in the midst of lush, natural beauty, but they have many tax advantages over the rest of the State. Property taxes are low, and splendid opportunities are offered to avoid the state sales tax by the astute use of the whooping shopping centers conveniently located on the Oregon side of the river. It is a way of life dictated by practical economics, but it is resulting in the gradual extinction of the merchant class in that city.

Perhaps it is better to attend a convention where you are so familiar with the habitat that it does not detract from the convention program. In reviewing the program, it is immediately apparent that you have had a very busy convention, and I am sure that it has been an enriching experience for all of you who have had the stamina to attend all of the sessions.

Conventions have always played an important role in the American way of life. Certainly, they have always been important in the brief history of the title industry. In this connection, it occurred to me to scrutinize slightly today the part that conventions play in our lives.

One of the faults of these conventions, and, indeed, of our Amercian way of life, is the overemphasis on education. In former years, we attended conventions to achieve convivial togetherness with our fellow titlemen and to get loaded under genteel circumstances. Nowadays, attending a convention is basically a scholastic experience. We stagger out of these sessions loaded with hot data and permeated with a lot of lofty principles and ethical standards which are almost impossible to use and still maintain decently dirty competitive practices.

Also, the ground rules for convention conduct have changed drastically. Before a recent state convention, the president of one company had his people subscribe to a good conduct oath, amounting to a manual of behavior which can really slow down a convention. Here are some of the pertinent clauses of that oath:

If I go to the convention, I shall not drink;
If I do, I shall not get drunk;
If I do, I shall not stagger;
If I do, I shall not fall down;
If I do, I shall fall face down so that my company convention badge won't show.

Since the convention is about over, I fear this advice may be too late. I do want to add a word of warning, however. There is a tendency at these conventions for people to drink coming, going, and while at. As the convention draws to a close, I want to add my admonition. Don't drive while drinking, you are likely to hit a bump and spill some of it.

One of the plus values of any convention will be that of renewing auld acquaintances and making friends. Any type of cooperative endeavor, even when it involves intense competitors, is best accomplished with people who are on a first-name basis. Of course, there is a big difference between acquaintances and friends. We all have more acquaintances than friends. An acquaintance is a person whom you know well enough to borrow from but not well enough to lend to.

Friendship is different. A good illustration is that old story about a couple of guys who were going to go camping in the Arizona desert. One of them said, "There are a lot

of rattlesnakes out there, what do we do if someone gets bitten?" The second guy said, "Don't worry about it, if you get bitten by a rattlesnake, whip out your knife, make a cross over the wound, put it to your lips, draw out the blood and poison—that's all there is to it."

The first guy persisted. He said, "That's all very well and good if the snake bites one on the wrist. But suppose you sit on a rattlesnake and it bites you, what do you do?" The second guy replied, "That's when you find out who your friends are."

I can't say that such an outstanding example of friendship can be formed merely by attending a title convention, but it is an involuntary fringe benefit of every title convention, although most of us still adhere to the principle that a friend who isn't in need is a friend indeed.

The need for a National Association and a National Convention is to cope with problems and situations that affect the industry internally and externally. Many of these problems have existed since the beginning, but they have been intensified by the continuing changes in the title services performed and in the structure and makeup of the industry. In addition, problems affecting the industry have become national in scope and, consequently, the need for a national organization and representation is intensified. The national convention brings together all segments of the industry for organizational and other mutual purposes. One of the things about a national convention is that it also illustrates most pungently that while as an industry we are mostly made up of individual operators, we have become organization men. This is not unusual, because the need for organization permeates almost all phases of our lives, and today almost everything we do is organized into some form of group action.

Nowadays, a man is not known so much by what he individually does but by the organizations he belongs to. Our times have been variously and cynically described as the age of conformity, of the committee, of the computer, and of the Organization Man whose slogan, unlike Caesar's, is: "I came, I saw, I conquered." Whatever our individual mission or interest may be, it is usually best accomplished through an organization of some kind. There are very few things any more that are accomplished solely by an individual's efforts, and these are mostly of a personal or of a sanitary nature.

Organizations exist because they are the most effective means of promoting action. There are literally thousands of groups that are out to rectify some lousy condition, do good deeds, or are formed for other questionable purposes. It is almost a truism that anyone who starts such a group, no matter what its purpose, can usually get some followers.

I suppose that very few of you subscribe to the Pruneville, Washington News-Tribune-Gazette. If you did, you would have read recently an interesting account of a lost cause. This news story was about the Annual Convention of the National Association for the Restoration of Pungency to the English Language: NARPEL, as they call themselves. They went strongly on record against the disuse of such words as "Belch" and "Puke" and other words, claiming that the disuse of these words is evidence of an effete and decadent society. With this, I agree. The English Language lost something when these words went out of common usage. When you think about it, how often have you heard these words used in the last several weeks?

Take the word, "BELCH . . . b-e-l-c-h. People don't belch anymore. They "burp" or "emit," or do similar innocuous things and very discreetly, too. Yet this word has had a long and honorable history. It is derived from the Greek word, "BEL," meaning release, and the Welsh word, "ULCH," meaning pressure. It is a product of two civilizations, has a fine cultural background, and is expressive to a degree beyond most other words. The same unsatisfactory condition pertains to the use of the other word. Never in our history have there been so many drunks in our country. Statistics show that during every minute of every day, there are at least three persons in some stage of regurgitation. They are "sick" all over the stereo, they become "nauseated" down the laundry chute, or they "upchuck" all over the petunias. But let's face it—no one pukes. These are typical examples of what NARPEL is fighting for in its little-known campaign. This simple example shows also why such organizations are needed. Because, without NARPEL, this sad condition might have gone unnoticed and unrectified until too late. But now, thanks to

NARPEL, these words have a fighting chance to survive if we each follow NARPEL's simple action rules:

"Use these words at home. Teach the kids. Add spice to your conversation by using them at every opportunity. Send for your NARPEL button."

Our earliest industrial forebears in the new world recognized the need for organization. Historically, just prior to the time that Columbus made his basic miscalculations as to the location of the Indies, there were no land problems. Land at that time consisted only of various types of dirt which were inert, tribally occupied, and virtually unused. It was just stuff on which the vegetation grew or on which the buffalo roamed, and the deer and the antelope played. And seldom was heard a discouraging word as the natives, consisting of well-adjusted tribal groups, were reasonably content on their "home on the range." They settled such land differences as they might have with other tribal groups in accordance with simple tribal customs . . . Mass Murder. After Old Chris blundered into the picture, great changes came to the land. It was assaulted by wave after wave of civilized people, bringing with them their rotten habits, their acquisitive ways, and their lust for land. One of the most important things that they brought with them was the doctrine of individual property rights.

This doctrine included such built-in features as the right to own, sell, encumber, inherit and devise land. It also included the rights of creditors and governments to clobber the land with their judgments and liens and to satisfy them by forced sale. Naturally, with all these things lousing up land titles, it became quite messy to deal safely with land, as there were only rudimentary types of title evidence then in vogue, with indifferent safeguards to either customer or to the members of the industry.

Something had to be done. Typical of the manner in which the problem was met throughout the nation, a group of dedicated men, activated by the purest of profit motives, met secretly in the back room of a tavern in a small southern town. After a full discussion, lasting almost until closing time, the meeting was eventually called to order, and a resolution was passed, which I feel has such great historical significance that I'm going to read it to you:

"WHEREAS, there are plenty of people to plant them 'taters, tote that bale, and pick that cotton; and

WHEREAS, them that does is soon forgotten; and

WHEREAS, there ain't scarcely nobody to take care of the cotton-picken' titles;

NOW, THEREFORE, it is hereby resolved that serious consideration should be given to this matter at some future meeting."

From simple beginnings like this, came the various state title associations and eventually the National Association as we know them today.

This need for association to combat common industrial problem is biblically sanctioned. It is an extension of one of the fundamental principles found in Genesis. It is termed the "Brother's Keeper" principle. As you will recall, brother Cain, in a momentary fit of jealousy, had knocked off his brother Abel, and when the Lord asked him where his brother was, Cain replied, "Am I my brother's keeper?" The Lord gave every indication that this was the case, although there is no direct quotation on this point. Nevertheless, the scriptures provide the answer, you are your brother's keeper whether you like it or not. Most of us, like Cain, don't like it. It is contrary to our basic materialistic natures. This is like so many other noble thoughts and sayings which we subscribe to heartily, but modify extensively when we put them into action.

We believe in these sayings, most of which come from scriptural sources. They have stood the test of time, but we have found it necessary to modify them to fit the baser facts of our lives. For example, "It is more blessed to give than to receive." Right on the face of it, every modern citizen knows that this is a lot of nonsense, unless you're talking about guided missiles. If you follow this literally, you wind up without a blessed thing.

Then there is the principle, "Blessed are the meek, for they shall inherit the earth." This is another dandy, particularly from the standpoint of simplifying Probate Procedure, but it just won't hold up in this age of fierce competition. The only earth that the meek ever seem to get is a lot of dirt.

Then there is the kindly theory that if someone hits you on one cheek, instead of kicking him in the groin as he deserves, you should turn the other cheek and give him another clear shot at it. If you do this too often, you can really wind up punchy.

And then there is the one about "Cast your bread upon the waters." This is the cornerstone of our international policy. Not only is this wasteful, but in carefully conducted tests, it has been repeatedly proven that all you'll ever get back is a soggy mess.

The modern conclusion apparently is that you have to watch such statements; that you can't follow them too literally. It is said that innocent people have been gulled by them for generations. It is said that these rich thoughts have to be modified in their practical application because human beings do not operate in a vacuum. It is said that the law of survivorship is still a great motivating force in human and business relations. It is said that the law of the jungle hasn't been repealed, that it has merely been held in check by the police power of the State and by a thin coating of civilization which rubs off very easily.

We do know that the title business is full of new challenges, for each member to either meet, keep abreast of, or succumb to. There is not time for comforting lassitude in our business world. There is always some bird-dog who gets nervous and thinks of some new way of doing something better, performing more efficiently, or who dreams up some other sneaky way to get more business. This is the name of the game. Whether as an individual company, or as an association, we must be alert to change. There is nothing that recedes like success, and failure is the line of least persistence. You either progress to meet and exceed challenges, or you stagnate.

There is a lot to be said in favor of stagnation, but it is against Company policy.

All of this may be true. But just because we live in a jungle doesn't mean that we always have to be the animals. So what if competition is keen . . . we are each of us still our brother's keeper insofar as unfair practices, unethical competition and outside forces may adversely affect the industry. And each of us casts the image on the mirror by which the public forms its attitude towards our industry. The Golden Rule may have been amended but it still operates. . . . and our public-relations people tell us that there is still a lot of life in that old saw, "As you sew, so shall you reap."

We have lots of brothers in this association, and, reiterating the closing words of Mr. Howard, "Let us love one another."

# "ABSTRACTING SCHOOLS—1968"

**By LOUIS C. HICKMAN**

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*This Report was presented to the Section on behalf of James J. Laffoon, School Committee Chairman, Transmerica Title Insurance Company Denver, Colorado*

Before bringing you the report of the 1968 ALTA School Committee I wish to thank the following persons who served as members of this committee. Fred H. Benson, Liberty, Missouri, Clyde V. DeVillier, Madison, Wisconsin, Irene M. Fraser, Fargo, North Dakota, James A. Gray, Little Rock, Arkansas, Gordon Harstad, Cedar Rapids, Iowa, John H. Holland, Phoenix, Arizona, Karl Holwager, New Castle, Indiana, Charles J. Kiblin, Moscow, Idaho and Charles A. Mayer, Memphis, Tennessee.

I realize that to serve on this kind of committee at "long range" of each other is most difficult and I do appreciate their efforts in gathering the necessary information so this report could be made.

When I agreed to serve as Chairman of the 1968 ALTA School Committee, one of the first assignments I was asked to complete was to bring to date the now existing manual on Abstract and Title Schools. To date, I regret that the response from members of ALTA was by no means sufficient in my opinion to properly do the job. The committee made contact with all 50 states and we only received reports from 26 of them. By various

means other than the questionnaire which we sent out, we know that there were several states which did hold schools of some type and some that are planning schools next year and they made no report. I am asking the chairman of next year's Abstract Section to take the material which we have gathered and have next year's committee recontact those states who did not report and get all the facts before bringing the manual up to date.

Those states which did report a school during 1967 were Colorado, Indiana, Kansas, Minnesota, Missouri, North Dakota and Iowa. There were a total of 697 persons in attendance at these schools. The average attendance cost for registration was $10.00 per person. Only one school reported that they furnished meals and lodging for the students. Most schools, however, furnished some meals in the basic charges. Most schools use a combination teaching method of lectures, visual aid and workshop. Basic curriculum includes descriptions, methods of abstracting documents and interpretation of documents as to the transfer of property and as to those that burden property. Some of the schools are having advanced classes which include probate matters, quiet title suits, etc., and the interpretation of conditions and stipulations on Title Insurance Policies. No one seems to have expanded very much into the field of Public Relations, however, several are having speakers who touch on the subject. Examinations are not used as a general rule and if they are, it is more for the purpose of determining the effect of the school rather than how a given student may do.

That is the general picture of this year's schools. Because it is necessary to make a report of the preceding year's activities, I have done so, however, I feel that a report should also analyze the general condition as it may affect you. Therefore, I have attempted to analyze each of the schools actions since 1962 in an attempt to bring to you their result through trial, error and great study as to what is the best average type of school.

First, let your association members know that a school *is* available and *what* is available. General Bulletins placed in offices for the employees to see seem to be very helpful. Whether you are aware or not, most of your employees *are* anxious to *do* a better job and understanding their job will help them do that. Be sure to let the employer know what the cost of the school is and make it as non-profit as possible. Don't use it to make money.

Second, select the instructors as much as possible from members of your association rather than from outside. Your school should produce practical solutions of problems and no one but an abstractor knows an abstractor's problems and how they can be solved. It is of course, good to get outside views of a general nature so you can give the customer what he wants, but you have to run the shop and make the money. Also, instructors from the association can usually be obtained from some plants with less cost than a lawyer or professor, etc.

Third, select if possible, a college campus for your school. It is usually equipped with the proper rooms, blackboards, P.A. systems, etc., at a cost much less than you can do otherwise and in most states, printing, meals and lodging are also available on the campus. It will keep people attending closer together for conversation and study.

Fourth, the curriculum you choose must fit the type of participant, such as new employees or experienced employees. Remember that you are dealing with four basic areas—the nature of the property, namely, real property, description of property, how the property may be burdened or encumbered and how it might be transferred. In addition to this, you may wish to add courses to cover Title Insurance, Escrows and Public Relations.

Fifth, is probably the hardest of all, the method of teaching. Remember that we all like to be entertained and as a matter of fact, if we aren't we don't listen or participate very well. As it is very hard to get a top-entertaining speaker every time, you will have better luck using more professionally prepared visual aids. They are expensive to prepare but can be used over and over thereafter and *you* will get the profits. By supplementing these aids with a speaker and teacher to expand on the points you now have the necessary interest of the student. Then be sure that you allow these students to participate. If they

won't participate in large groups then break them into smaller groups where they will. If they don't participate they won't learn very much and experience has taught us that most people will participate with some encouragement.

Next, if you do have more than one experience level of student, and you most surely will, be sure that in the participating classes, they be separated into such levels.

Sixth, examinations are important. Perhaps not so much to give credit to the individual participant as to help the instructors know that they are getting the subject explained sufficiently so that it is being understood.

I am sure that many of you may take issue with some of the points I have given, but they are founded on that facts that have been learned through trial and error in all those schools over the past 6 years.

If you are using different methods and being successful, I suggest that you continue, after all success is what we are striving for.

The one last point I would make is, what are the colleges doing with abstract and title courses? Past reports of school committees have given us names of various schools that are offering such courses. However, they were so vague and varied in their coverage that I would hesitate to even attempt to say what they are actually covering without having the curriculum available to read and analyze. I had asked the committee to report on any factual material that they could obtain and I received none, which leads me to the conclusion that everything is still in an experimental stage with the colleges. If any of you have any such material I would appreciate it if it could be sent to me or to ALTA.

I have enjoyed serving on this committee and would like to again thank all of those members who served with me and did such a very fine job.

# "CIVIL DISOBEDIENCE"

**By RICHARD W. NAHSTOLL**

*Past President, Oregon State Bar Association*
*Krause, Lindsay & Nahstoll, Portland, Oregon*

We hear much today to suggest that some among us regard as a national goal of highest priority the maintenance of "law and order." It is important, I think in times of social tension and urgency, to reflect upon, and to reaffirm our confidence in, and respect for, the rule of law and the structured system of judicial administration which implements that rule of law into an ordered society. Where there is an effectively administered, and generally respected, system of law, there is a climate in which men may live and move and have their being with a satisfactory degree of confidence in the security of the persons and property of themselves and their families and they may reasonably take comfort in the confidence that their affairs will be tolerably predictable. In such a climate one may dare believe that the common weal will be promoted and, may dare believe that, subject to some backing and filling which is an inevitable part of social experimentation, we as a group relentlessly will pursue, (and may even at some unpredictable future time attain) those goals which shall avail to each person, and to the future descendants of each person, a realistic aspiration and a fair opportunity to compete, to achieve his potential, to produce and to enjoy reasonably the fruits of his production. In short, under a system of law, we can dare hope for a higher standard of civilization. The alternative, whether in the context of a local community, a state, the nation or the world, could only be a state of anarchy and disorder, in which man moves to the other end of the spectrum of reason and approaches again those days in which, animal-like, he lived in a state of intellectual and spiritual darkness, apprehensive of his neighbors, anxious for the security of his treasure, distrustful of his own future and hopeless for the future of his children. Surely, the former is preferable to the latter; and surely, it is appropriate for us to

pause occasionally to rededicate and recommit our concern and our energies and our wills to the end that the rule of law may prevail and the law which prevails shall be just.

But, I invite you today to consider with me whether, and if so to what extent and under what circumstances, a breach of the rule of law may be appropriate or justifiable, or at least understandable. The various degrees and counterparts of this problem are currently rather unsatisfactorily commingled under the oversimplified caption of "civil disobedience." This is nothing new to our time. Indeed, over a span of many years, the subject has provoked to comment Aristotle, Plato, St. Augustine, Thomas Aquinas, Hobbs, Pascal, Locke, Rouseau and Tolstoy. Nor has it been limited to this country. It has been involved in the social phenomena we now associate with the exodus of the Israelites, the French Revolution, Mahatma Ghandi, the Anti-Nazi Underground, Copernicus, Martin Luther, Galileo,—yes, and Christ. But also, indeed, it has been a part of the proud heritage of the United States. John Adams, Benjamin Franklin, Thomas Jefferson and those with them pledged their lives, their fortunes and their sacred honor that this nation might be given a first, and lasting, breath of life and hope, wove their dreams and the futures of all of us into a backdrop of *defiance, revolution and treason.* Those now nameless, who memoralized *their* protests in the Boston Tea Party, the revolution of the Sons of Liberty, the abolitionist movement, the Civil War draft riots, Shay's Rebellion, the p r o t e s t s against convictions under the infamous Sedition Act of 1798, the demonstrations of the Suffragettes, the Bonus Army of 1932, the milk riots and the farmers' protests against foreclosure of farm mortgages during the economic depression of the 1930's, and the struggles which won for labor recognition of trade unionism—each of these perpetuated in varying degree the exercise of defiant individualism or defiant protest.

For some few years, the term "civil disobedience" has been most often used with respect to the *struggle for civil rights and civil liberties in the racial context.* However, there are protests similarly labeled which are unrelated to the racial struggles.

The national policy respecting Viet Nam has become a target of protest of many different forms. Not long ago, under the leadership of Dr. Linus Pauling, some protested atomic testing generally by deliberately placing themselves within the target area in the confidence—or I am sure at least the hope—that the test efforts would be aborted while they were there. More recently, others have engaged in a spate of draft-card burning as a means of protesting, in a wholly negative, and totally unhelpful way, their disagreement with the policy of this country toward the Viet Nam problems. With increasing vigor, others have undertaken to disrupt political gatherings and speeches by physical obstruction and noise, unfortunately often successful.

In common with a very large proportion of the problems which are cussed and discussed, the subject of "civil disobedience" suffers from semantics problems. Two people will set about disputing with emotion and vigor the proprieties and validity of civil disobedience without the slightest reason to believe that there is between them any common understanding of the definition or limits of the subject they are discussing. Let us not fall into that error. We are *not* discussing those violent breaches of peace which are the destructive acts of wanton vandals. These crimes are civil disobedience to be sure, but they are beyond excuse in any and every respect and are devoid of any semblance of rational justification. That they may be explainable, on some psychological theory, as a "protest" of some ambigous nature, does not mitigate or extenuate their proper classification as crimes, and in my judgment they should be treated as such.

On the other hand, neither are we to be concerned with those non-obstructive, demonstrative pleas, not in breach of any law or ordinance, in which a person individually or in concert with others undertakes to demonstrate or assemble with the purposeful intent of dramatizing the moment in order to excite the conscience of the public, or some portion of the public, to whom his effort is addressed. Such an effort is constitutionally guaranteed and legally proper, *though the effort may in fact provoke violence* or other breach of peace by those who find the demonstration offensive. Whether or not such an effort be effectual it

is legal and justifiable. Indeed, in these times when fear of public approbrium causes many to cower from controversy, it is difficult to withhold commendation from *anyone* whose convictions about *any* subject are sufficiently compelling to encourage and stimulate him to public espousal of his unpopular beliefs. I think of William L. Moore. (Sandwich board) Had he not been martyred on that dusty Alabama roadway, his singular participation might have been momentarily considered only as a pathetically comical, and somewhat grotesque, undertaking. But, when he departed Chattanooga to walk the 200 odd miles to Alabama carrying a homemade sandwich board, he was undertaking to communicate his point of view. He was doing so in an orderly, non-violent, unobtrusive manner, in breach of no law or ordinance, constitutional or otherwise, and in a manner consistent with self-effacing humility, rather than sophistication. The fact that he was unlawfully met with violence and murder did not alter the fact that he was acting within his rights. The U. S. Supreme Court has frequently held that disorder is less to be dreaded than is suppression of the right to protest.

The fact that those who observe and think offensive the demonstrations of others might be provoked to a breach of the peace can surely be no reason to restrict the exercise by others of their constitutional right to assemble or protest. It would be unthinkable that the constitutional right to demonstrate peaceably should be abridged by the least tolerant element in the community.

Of course, police may be compelled to stop a public meeting or demonstration if the situation develops to the point of imminent riot. But before the tension reaches that stage, police must act to prevent hostile threats against peaceful demonstrators from being carried out, and to arrest those seeking to break up an assembly. There is no legal or constitutional right for other citizens to interfere with a public assembly. And those who by booing or by physical obstruction undertake to prevent political candidates or others from communicating their message are acting illegally and contrary to the fundamental premises of a viable democratic society.

In talking about civil disobedience then, we are talking neither about those irrational, destructive, illegal acts of vandalism or other intentional breach of the peace, known to be unlawful and without other meaningful purpose. We are also excluding those constitutionally protected acts of non-violent, and legal, demonstration, though the purpose be to demonstrate or dramatize a sense of indignation or injustice regarding some existing rule or its enforcement.

I invite your attention, then, to a third category which includes the intentional and the purposeful defiance of a law or ordinance which is *reasonably and conscientiously believed* to be unconstitutional or invalid, either in its provisions or its enforcement. This type of action, qualified by these conditions, I suggest to you is appropriate, notwithstanding the fact that the result of this conduct may include obstructive interference with what the law of questionable validity or constitutionality would propose to assign as the rights of others. It is one thing to sit down in a driveway and obstruct a bulldozer in order to dramatize one's protest of employment policies on a construction project. This we shall consider momentarily. It is quite another thing for the same person to sit down at a lunch counter to protest an existing law or ordinance which, by its terms or by the nature of its enforcement, denies equality of opportunity and equality of protection under the law to any who conscientiously believes he has a constitutional right to be at that lunch counter. Equally distinguishable, are those who would sit on a seat on the front of a bus, or occupy a chair in a public school, or those who would loiter in defiance of vagrancy ordinances to await equal protection under the policies of the voting registrar. It is not uncommon in our history to contribute to the development of our constitutional policies and to the development of the rules which implement constitutional rights by testing such laws by purposeful and intentional challenge and breach.

There remains a fourth category which is sometimes included within the term "civil disobedience." There are those instances in which demonstrators, with a sincere (though, I believe, often misguided) interest in honest protest, obstruct or interfere with others in a manner defiant of a law or ordinance recognized by all to be legally enacted and technically

valid. If the protest involves defiant violation of a valid law or ordinance *other* than the law being protested, it seems to me to be improper. For example, I submit the purposeful obstruction of automobile traffic enroute to the World's Fair in New York or obstruction of Chicago streets during the recent Democratic Convention. I submit also the instances in which some have undertaken to place themselves physically in the path of bulldozers, trucks or other vehicles at construction projects, or in the path of vehicular or pedestrian traffic for the sole purpose of communicating protest by obstruction. The distinguishing feature of these instances is that the law which these persons violate is not directly related to the protest they are attempting to communicate. It is not the bulldozer operator, the truck driver, the automobile operator, or the pedestrian who can effect a remedy to the wrong which is the basis of the protest. By a violation of the rules which guarantee freedom of movement to this traffic, they are not challenging the legality, constitutionality or justice of the rule guaranteeing that freedom of movement. Their protest is to a different or corollary rule or policy. Their action sometimes imposes upon a single individual the terrible burden of accepting an imposition upon his own rights or inflicting grievous injury upon the protestor. As: Offering the bulldozer operator the election of being put upon or injuring a protestor. To impose upon an individual this dilemma is, in my judgment, a shoddy trick, and unjustifiable.

The real difficulty lies in those situations in which a law which is constitutionally and legally valid is nevertheless lacking in moral validity. I appreciate the problems inherent in the differences between the moral standards of individuals. Nevertheless, I believe that disobedience of such a law may be acceptable, and is at least understandable, if:

1. The violator acts without violence;

2. He commits his violation openly, rather than clandestinely with the effort or hope of being undetected; and

3. He is prepared to accept the sanctions or punishment for his violation. This tends to eliminate the violator's self-interest as one of his motives, and to reduce the chance of his misjudgment of the moral unjustifiability of the violated rule.

I do not share the position of some that there is an invariable duty to obey a law, simply because it has been enacted by a democratic process. This theory suggests that the law creates its own duty, irrespective of all considerations of morals. If this were acceptable and respected; if the law were to command obedience simply because it is the law, progress and change would be negligible—the Dred Scott decision would still be the rule, the "separate but equal" doctrine would still obtain and some persons entitled to "Equal Justice under Law" would be shunted still to the rear of public conveyances.

A rule publically adopted is not rendered sacrosanct, merely because it represents the theoretical will of a majority, which may be a majority of one. The possibility of public persuasion to a new or different point of view is the essence of a viable government. And the form of the effort to persuade is not limited to verbal communication. Picketing and assembly for non-violent expressions of mass concern are also appropriate means of an effort to persuade and to register a different point of view. The U.S. Supreme Court has said:

> "Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed this freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

I leave you with this word of caution, for the purpose of suggesting to you that our judgment of these instances and of those who participate in them perhaps cannot always realistically assume these neat classifications into which we have undertaken to segregate and distinguish them. I recall again to your notice the historical evidences of civil disobedience which suggest that these considerations have been with mankind during all of history important to our culture. My skepticism of the ready classification which I have

offered to you is based upon the fact that history has a way of dealing rather kindly with those whose protests, though illegal at the moment and which constitute breaches of peace against a law of acknowledged constitutionality, have been nevertheless successful and *morally justifiable. In retrospect,* the Revolution and treason which were the labor pains of this nation, and the affirmative unlawful conduct of Mahatma Ghandi are commended as triumphs of the human spirit over legal oppression, and though the acts of that most unlawful of zealots, John Brown, or the stirring provocations of Tom Paine were perhaps treason, their "truth goes marching on." We must never be too confident that history will share our current appraisal of all whose causes we may today believe disagreeable.

Democratic government functions because a consensus forms to push legislative action. That consensus is usually formed by, or contributed to, as a result of lobbying and other services of an educational or public relations character. These services are expensive and are available only to cohesive, well-financed groups. This fact leaves great masses of our citizens inarticulate, unheard and out of communication with government. To a great extent, they are disenfranchised and their interests are unchampioned. They are left as nonparticipants. This is a source of profound resentment and frustration. It seems to me clear that we must find the means and methods to provide these great numbers of unheard and unheeded consumers of government an effective participating role in the legislative process. Until we do, the civil disorders which are *their* frustrated implementation of the lobbying process will continue as an expensive and disruptive and disquieting fact and threat.

# "MODERN TRENDS IN EDUCATION"

**By W. VICTOR BIELINSKI**

*Dean of Academic Development, Northwood Institute, Midland, Michigan*

The education of people is changing. The changes involve the formal education systems, and the informal education systems. Some of these changes may be known generally, but they need emphasizing because of their importance.

In the first part of my remarks, I will describe these and comment on their significance to business and education people.

In the second part of my talk, I will describe some of the specific ways the formal and informal education systems are developing new methods to educate people today. In the latter part I will use the Northwood Land Title program as an example of a key change in American education.

The modern trends in education which are known generally include these:

1. *Bigger educational units* in the aggregate sense—that is, the new growth by expansion and by merger of existing units. Just like business, schools and colleges vary in size, but we are getting more of what everyone admits are larger schools, bigger colleges, and very much larger universities.

This means we deal with more money, buildings, space, faculty, and staff in keeping with the overall size. There is concern over the efficiency factor. Can the small college, for example, be efficient enough in its operations to live within its present sources of income; or will it need additional sources of income to operate? How can a new college succeed in competition with older, well-established colleges with sources of income from taxes, grants, and endowments?

The answer is that some small colleges and new colleges are doing well, others are fading away, and others are standing still. This situation is not much different than it is in business. It is only recently that the factor of bigness in education has been widely publicized in con-

nection with some of the problems in the very large universities.

2. *The complexity of the education program.* The increase in total knowledge, the division into specialized fields of knowledge, and the application of all knowledge into many new areas of society has created more courses, curriculums, and specializations.

Studying in school today is more than the 3 R's. The American concept of college studies is more than the 4, 5, 6, 7, or 8 branches of knowledge called the Arts and the Sciences of the traditional institution. Today's complex life and business demand people with new and specialized knowledge and skills. The total American educational systems at the high school and at the higher education levels provide for a variety of new arts and sciences. These in turn prepare people for a host of new occupations and professions.

The combination of the size and complexity factors calls for some new viewpoints or concepts in what education methods ought to be used.

I will describe now some modern trends in the means used to bring education to American society.

1. *The continuing education concept.*

Society today, especially in the matter of holding a job, expects people to know how to perform their work. Whether it is art, law, medicine, engineering, sales, manufacturing, or property and insurance records, new knowledge and skills are required due to constant changes. So even if already employed and trained, people have to learn new things connected with their work. The continuing education concept requires an attitude of understanding that this is so, and an attitude of wanting to learn more so as to do better in one's job.

This concept also includes a desire to learn about non-work matters such as current events, cultural affairs, and technological highlights in other kinds of work just for the understanding and appreciation of other people's problems, creations, and work. This gives us a clue to the use of leisure time by everyone, and especially to the use to which an older or retired person puts his time.

The old slogan, "It's never too late to learn", is even more true today because of the increased emphasis on the need for continuing education and the increase in the means to make it available to more people.

2. *New methods and media.*

There is a whole new world of mechanical and electronic equipment available and in use in education.

Some of these are:

a. *Visual projection machines* to show an enlarged image in a variety of ways to show minute detail. These are for movies, filmstrips, slides, black and white plus color. All sorts of photos, graphs, charts, maps, and other materials mean more when illustrated and explained with this method.

b. *Sound amplification* by use of records, tapes, and often in combination with movies, slides, and trips to add instructions and examples of what is described.

For these two methods many schools and colleges provide increasing amounts of class and out-of-class opportunities for faculty and students to learn. In many libraries audio and visual materials are regularly available for individual and group use.

c. The newer audio-visual mechanical media also are being used in combination with the long-established laboratory method and the more newly developed programmed learning method. With the addition of *electronic* controls and equipment, three new features are possible:
*The first is the feature of speed* of availability or recall of information desired. Either in the classroom or in the library, this feature makes the learning very effective and attractive.
*The second* is the feature of updated information with obsolete information skeletonized or eliminated. This makes it unnecessary for the student to wade through huge quantities of knowledge to get to the essential up-to-date information needed for knowing the correct information. Electronic apparatus, because of its speed and its accuracy, can add new information, and at almost the instant same time, subtract or erase the obsolete material which has been stored.

*The third* feature is the *great storage capacity* of electronic units compared to other forms of storage of knowledge. With this feature, schools and colleges of the future may well have available instant computerized dial access units in each student's room, or in study centers in each dormitory, or elsewhere. By this system any student anywhere on the campus can dial his library for a reply over the phone, and when combined with TV, he can see the materials he wants on a screen from a computer-selected sending station.

In addition, if the information desired is not in the campus library, it may be possible to either automatically or manually switch the student's call to a central state or regional library which will provide the answer. A national network of all colleges, and even high schools, can be tied into such a system.

These new methods provide more possibilities of individualizing the whole field of instructing students. More students can go at a fast-as-you-are-able pace, and in independent study assignments and thus provide the instructor with more time to help those students who really need help.

In many cases greater numbers of students can be handled by one faculty person in lesson assignments instruction and in routine information sessions. More complex lessons can receive more planning, lecture, and discussion time and can be prepared on media suitable for student review in special study or library areas.

With these new methods, younger and less experienced faculty can handle more routine, but carefully prepared, materials, while learning the more complex methods and materials of teaching.

d. *Experimental or pilot teaching* is another method of instruction involving all old and new media. With new media now available, experimental or pilot projects can be more accurately recorded and can be more rapidly measured as to effectiveness. In prior years, the chief criticism of experimental or pilot educational programs was the slowness of reporting and the inaccuracy of results.

**Problems**

While all of the new ideas make education different and glamorous, they also bring more problems than ever before for education. Here are some of the problems that make the teaching of people more difficult than in prior decades.

1. *Increase in affluence* has increased the number and the percentage of students in schools and colleges. This means not only that the pressure is on for space, buildings, and facilities, but also that the pressure is on for the manpower to teach. The demand for teachers is unprecedented. The economics of increasing demand for a decreasing supply creates a situation where there are not enough trained faculty to fill the jobs each year.

2. In addition, more students are finishing high school and entering college with more knowledge of an advanced level than prior generations had. This means that we have a problem of *getting the attention and holding the attention of sophisticated students. This takes an instructor of high quality* who knows not only the answers, but one who can also individualize his teaching to the students.

3. A third problem is the *need for variety in instruction content and media to make the teaching applicable to a wider range of abilities of students in high school.* More students in the highest and the lowest parts of the range need special attention. Occupational choices and training need more attention at this point.

4. A fourth problem is the *need for variety in curriculums in college-level training to interest and motivate the wider range of interests and abilities of students in college.* More colleges in the United States are now providing new curriculums and courses in new technical, vocational, occupational, and career fields than ever before. The increasing numbers and kinds of new jobs require this attention.

**Answers**

What are some of the answers to problems in education?

The traditional answer of some countries is to set limits on the

number and kind of people to be educated—especially at the higher levels. In the United States the traditional answer has been to encourage free education at the high school level. We also had a traditional answer to those wanting to go to college—You can go if you choose a program of the conventional type, and if you qualify on the academic scale. As time went on, colleges turned out graduates in a certain number of professions and careers. About 1900 the 2-year college program was developed. About 1930 the 2-year career program began to evolve slowly, in the 1940's it grew faster, and in the 1950's became predominant in the planning of 2-year college experts. Today the Associate degree program is considered a unique American innovation in higher education—and the career goal is the main objective.

*The Land Title Program* is an example of a career-goal Associate degree curriculum. It was designed to interest and to prepare college students in an occupational field to meet the needs of a respected and established American industry.

It was designed with the advice and help of Land Title industry experts from large and small firms in the Land Title and Title Insurance business.

Northwood has developed a curriculum pattern which blends 50% of the liberal arts courses, 25% of the general business courses, and 25% of the specialized Land Title industry courses. This curriculum pattern is different from most 2-year college Associate degree patterns. It is based on industry advice, it is sound, and it is of proven success in other industry fields for the past 9 years.

Northwood has attracted a faculty outstanding in its successful experience in business, industry, and professional fields, in addition to its teaching ability. The faculty maintains contact with the world off-campus by a continuing plan of guest lecturers from business, government, and other fields to give the students a chance to hear and to discuss the relationship of text theory and principles to actual practices in the world of work. The faculty also uses field trips and student projects to keep in touch with real life and work. Students also have externship employment opportunities in their major interests for college credit. A great deal of industry materials are made available by Northwood libraries so students may see what is used in business.

Northwood includes in its courses of study considerable required reading and discussion of the philosophy of American life and business, the free enterprise basis of the American economy, the values of individual initiative, responsibility for one's actions, and the economics of competition. The motto of the college indicates its commitment to emphasize to all of its students these values. It is: "Learn what contribution you can make to American enterprise and you will have little need to concern yourself with what compensation it will make you."

In nine years Northwood has grown from 100 students on one campus to over 1700 students on four campuses in Michigan, Texas, and Indiana. These 1700 students come from 20 states and 12 foreign countries. In addition, at two extension centers in Lima, Peru and Quito, Ecuador, over 500 students this past year took one or more Northwood courses, and 12 students completed degrees. These students are South American natives who are being trained to work for North American firms in their countries.

This year Northwood awarded over 250 Associate degrees, and 45 Bachelor's degrees.

Northwood's entire success is privately sponsored and privately financed as a completely independent college. Northwood uses no government tax-supported funds. Private individuals, companies, and foundations are its friends who give money to develop the college facilities. The operations of the college, including instruction costs, are paid for entirely out of student tuition and fee charges. Endowment funds for long-range support are needed by Northwood to insure its success in the future, and for it to continue to provide the excellence of its proven curriculums. It is especially needed in the newer curriculums, such as the Land Title program, to attract and keep students who will enter into this industry as qualified and interested employees.

# ELECTION OF SECTION OFFICERS

By proper nomination and second, the following officers were unanimously elected to serve for 1968-1969:

*Chairman*—JOHN W. WARREN, Newkirk, Oklahoma
Vice President, Albright Title and Trust Company
100 North Main Street, P. O. Box 51, 74647

*Vice Chairman*—KARL S. HOLWAGER, New Castle, Indiana
Secretary - Treasurer, Henry County Abstract Company
1220 Broad Street, 47362

*Secretary*—JAMES L. ROFFE, Denver, Colorado
Vice President, Agencies; Transamerica Title Insurance Company
1720 California Street, 80202

EXECUTIVE COMMITTEE

LOUIS J. BURKEY, Tacoma, Washington
President, Tacoma Title Company
1111 A Street, 98402

ROBERT F. LORENZ, St. Joseph, Missouri
President, Hall Abstract Company
118 North Fifth Street, 64501

GENE P. SPENCE, Omaha, Nebraska
President, Fidelity Title Insurance Company
314 South 19th Street, 68102

F. B. WEED, Helena, Montana
President and Manager, Helena Abstract and Title Company
33 West Sixth Avenue, 59601

# TITLE INSURANCE AND UNDERWRITERS SECTION

## REPORT OF SECTION CHAIRMAN

By ALVIN W. LONG

*Chairman, Title Insurance and Underwriters Section*
*President, Chicago Title Insurance Company, Chicago, Illinois*

It's now the duty of the Chairman to give a brief report on the activities of the Association, or of this Section during the past year. It has been an honor and privilege to serve as Chairman of this Section during the past year. Being your Chairman has provided me with the opportunity of attending all three regional meetings for the first time. These regional meetings of title insurance executives are very educational in themselves.

Many of the matters which are being discussed at this convention were first debated at these regional meetings. These are serious business meetings that take place around the country. They provide an excellent overall picture of the problems and the trends in our business as viewed by the title insurance executives who attend these three regional conferences. By attending all three meetings, your chairman attains a nationwide perspective of industry pro-

blems that would otherwise be unobtainable.

In addition to the regional meetings, historically your ALTA officers have attended the state title association meetings. This year, either Al Robin, Gordon Burlingame, Tom Holstein, Bill McAuliffe, Jim Robinson, or I attended each of the state meetings that were held throughout the country.

Of course the prime purpose of the attendance of ALTA officers at these state meetings is to advise the delegates to these state conventions of the current ALTA activities. Again however, only by attending a number of these state conventions can your ALTA officers obtain the benefit of hearing the discussions of industry problems at the state level and learn of the various similarities and of the many differences that exist in the title practices and customs from state to state. And also to learn of the many differences that exist between the state title associations themselves.

As I mentioned, most of the subjects which were discussed at the regional meetings and at the state title association meetings are on the agenda of this convention. They're on the agenda of the Section meeting today, at the workshop sessions, and in the general sessions, too. This agenda reflects the fact that our Association is maturing. As new problems arise, as new dangers are presented to our industry, as new federal and state regulations are proposed, our Association has stepped in and assumed the task of representing all of its members on such new matters.

Today, controversial matters are not avoided. I think most of you know this was not always the case. For example, today Mr. McAuliffe is registered as a federal lobbyist. As an industry, we are taking positions on public issues, we are attempting to influence new federal laws and regulations that affect our industry and affect our members. Today we have representatives meeting with representatives of the American Bar Association to try to resolve the alleged differences between these two groups.

Today we have a committee that's meeting with representatives of the National Association of Insurance Commissioners, to make sure that this group knows of the particular problems, the particular interests of our own Association and its members.

Today we have a committee representing our industry in keeping current on the number of movements that are now underway in the area of improvement of public land records. This, as I mentioned earlier, will be the subject of a major workshop this afternoon.

The Public Relations Committee has increased its efforts and its effectiveness in each of the last several years. This, of course, is reflected in the increased budget that was mentioned by Lloyd Hughes yesterday.

Of course, our Standard Forms Committee continues to be one of the hardest-working committees of our Association. This will be covered by a report later this morning by Dick Howlett where we will propose a motion and action to be taken by this Section today.

Today we also have a new committee that is now working for the first time in attempting to gather industry-wide statistics on claims, on source of claims, on cost of claims, on cost of processing claims, in an attempt to obtain industry-wide statistics for the first time in this very important area so that we will have some data, some industry-wide, nation-wide data that can be utilized by the members, that will be available to individual state insurance commissioners on controversies that may arise within the individual states.

These specific industry-wide activities are most appropriate, in my opinion, for a national trade association. These nation-wide activities cannot be accomplished effectively by any individual state title association. Nor can they be accomplished effectively or economically by any single title insurance company. However, for ALTA to be able to take on these additional and increasing number of new activities, it does require participation—real participation by all of the title insurance members. It requires working committee members on each of the standing and special committees.

These committee activities do take a commitment of valuable time—time which each of us can little afford to give from our own businesses. On the other hand, these committees could not and cannot be effective unless there is real participation by those who have the talent and the abilities and the experience to give to this committee work.

In addition to contributing our own individual time, of course, these activities take money. And as Lloyd Hughes mentioned the other day, our budget again has increased for the coming year. In order to pay for these activities, if we believe they are really necessary, it takes funds to pay for them and it's up to the individual members to provide these funds. We have been operating at a deficit and a number of these expenses are increasing and new activities are urgently needed.

In all of these activities, the work of our Washington staff has been essential. Bill McAuliffe and Mike Goodin, and up until very recently, Jim Robinson, have worked effectively throughout the year with the Executive Committee at its several meetings, with the National Conference, as well as with all of the other committees that have met during the year.

Our industry continues to be faced with many current problems and also with many opportunities. Some of these problems are common to all businesses today. For example, there does seem to be a serious deterioration in the business, social and family morals of our society today. This deterioration is reflected in many ways. Many of them are reflected in the headlines of our daily papers.

Within our own industry, however, I believe most of us are aware of many numerous and recent examples of fidelity losses, of embezzlements, of defalcations by agents, by employees, by approved attorneys, and by customers. In my opinion, it is incumbant on each of us to get our own house in order in this area, and I don't mean just by acquiring additional fidelity insurance coverage or by adding to our own reserves to provide for these possible losses, but by tightening our own controls, by improving our practices and procedures, and by revamping our hiring and training techniques, and by constantly working to improve a sound and mutually advantageous relationship with agents. A relationship which would include surprise audits each and every year.

We can and I believe we must overcome this adverse trend within our own industry. Our industry, after all, is fiduciary in nature and it is based upon financial integrity.

Another example of this deterioration occurred in the well-publicized riots in Chicago during the last Democratic Convention. Since our next Mid-Winter Conference will be in Chicago, I thought I should assure the group that Mayor Daley has advised that all delegates to the Mid-Winter Conference will be protected. He says they'll be protected against demonstrators, hippies, yippies, and yes, even TV commentators. We urge each of you to attend the Mid-Winter Conference—your safety is assured.

In concluding this brief report, I want to thank all members of the Section for giving me this opportunity to serve during the past year. It's been more demanding and time-consuming than I ever realized it would, or that my predecessor Mr. Burlingame assured me that it would. However, I have a much better appreciation of the real contribution that the ALTA officers have made over the years to this Association. It's been highly self-rewarding and again I sincerely appreciate having had this opportunity.

# "TALES OF TANGLED TIMBERLAND TITLES"

By EDWARD W. MATHEWSON

*Land Title Department Manager, Weyerhaeuser Company, Tacoma, Washington*

I have been asked to tell you some of the problems Weyerhaeuser Company has in ascertaining the validity of titles to land it purchases. This includes a lot of other land use acquisitions and the title questions involved—for example, road use agreements and pipeline rights of ways.

First, we look for quality title work whether it is in your industry or in our own organization. Second, we like uniformity of Title Reports, Binders and Policies. I un-

derstand that these are your problems too.

## BACKGROUND ABOUT WEYERHAEUSER

Here are a few background facts against which we in the Land Title Department work. The Company owns about 3½ million acres of fee land. The large concentrations of Timberland are in Washington and Oregon, North Carolina and in Alabama and Mississippi. Through subsidiaries the Company owns timber cutting rights and some smaller fee ownership areas in Vermont, Canada, the Philippines and Borneo.

Ownership of these lands and cutting rights calls for logging operations and manufacturing and converting plants, transportation facilities, including railroads, trucks and ships, and all the land use incidents that go with them. Included also are development lands. I am sure that you know what can and does happen when lands are subdivided and sold.

Today I will confine my remarks to our lands and properties in continental United States and the part your industry has in Weyerhaeuser Company's acquisition, disposal and use of these lands.

When a Company owns as much land as Weyerhaeuser does, someone must keep track of it. Ownership inventory, taxes, use by the Company and its neighbors, and guarding against adverse claims are major reasons for keeping an accurate check. All of this requires records, records that will give us reliable title information as soon as possible. Many times this information is wanted day before yesterday.

These records are founded on abstracts prior to the time title insurance became common. Thereafter their base is title insurance. Copies of all encumbrances are obtained, indexed geographically and by name of party and then filed. We keep track of everything we do to the land and likewise index and file copies of the documents.

All of this indexing is done in three places (1) A land book, similar to your tract or lot book, for all fee ownership, easements in favor of the Company and mineral and other reservations; (2) A section file for each section. Here we geographically index all encumbrances which we or our predecessors have put against the land, and (3) An alphabetical name card file. All this adds up to a title plant on our own lands. The land book and section files contain additional corporate information.

## QUALITY OF TITLE

We are interested in quality of title first and insurance second. This example illustrates why. One Pulp Mill represents an investment of about $28 million. Water supply is the life blood of this mill. It uses about 35 million gallons a day. This water comes through a pipe line about 8 miles long. The pipe line is located on private land under easements, fee land bought for the purpose, franchises and other right-of-way arrangements. If title to any segment of the right of way fails the mill can be shut down. Insurance on each parcel covering potential loss because of failure of title would be prohibitive. We, therefore, want quality title work.

In varying degree this same thing applies to every parcel of land the Company owns or in which it has an interest. Another illustration. We buy cut-over timberland, reforest it, protect it against fire and manage it for the best possible yield. When the timber crop is ready for harvest, the value of the land and timber is far greater than when the land was purchased. It follows that the title insurance originally purchased would not cover the increased value. So we look for quality title work in the first instance—not casualty insurance.

Prior to 1956 most of our title business was done with Title Companies operating in Washington and Oregon. We knew how they operated and most of them knew our requirements. Then we began to acquire land in Alabama and Mississippi and found a title insurance operation that was entirely new to us. To order title insurance you go to a lawyer approved by one of the Title Insurance Companies. He runs the public record and on the basis of his examination he, on behalf of the insuring Company, issues a binder or commitment for title insurance. This goes into detail as to present vestee, description, the deed required, a schedule of things that must be done prior to closing and then a list of the encumbrances. I particularly like the description of the forthcoming deed and the list of "musts" to be done prior to closing; however, this looks pretty close to practicing law. I won't go into that one now.

We know that in some areas of the country Title Companies keep their own records, posted daily, and generally work from these and suspect there are other variations of which we are not aware. We do not quarrel with any of these different methods of arriving at the title insurance policy so long as the quality of the title examination that produced it is good. Again, we are not looking for casualty insurance. Our operation is nationwide and we are gradually becoming aware of the differences in title operations in widely separated parts of the country, and in this connection commend you on your efforts to produce standard forms. Various State laws can and do in some measure hamper this endeavor. Perhaps we should do something about getting some uniform laws. Keep up the good work. Eventually it will save all of us a lot of time.

Recently we bought a piece of second growth timberland from a man whose vendor was declared incompetent after both sales had been completed. We were sued and our vendor was joined. The lawyer for the Title Company which had insured us evidently convinced the lawyer for the incompetent's guardian that we were bona fide purchasers under such circumstances and that the guardian could not recover. The case never went to trial and was dismissed with prejudice.

Neither the record or other investigation would have disclosed the trouble at the time we purchased. I like to think that these types of things of which we have no notice and could not discover even if we looked, are the only places where we would have to make a claim or tender a defense. This, however, is not always the case. In any event, we are not claim conscious.

## EXTENDED COVERAGE

This leads into extended coverage. Generally it involves elimination of one or more of the standard policy exceptions, i.e.

1. Location, boundary and area—requiring a survey.
2. Public or private easements not disclosed by the record.
3. Rights or claims of persons in possession not disclosed by the record.
4. Material or labor liens not disclosed by the record.
5. Water rights and utility charges not disclosed by the record.

There can be and often are other things.

Our approach to this problem varies with the position in which we find ourselves. When purchase of timberland is the subject a good on-the-ground investigation eliminates most of the extended coverage need. Type and character of land removes the rest. Because of the investigation and our knowledge of the area we are justified in assuming such slight risk as may remain. Purchase of land for plantsite purposes in operating areas gets the same intensive treatment, plus exacting surveys. When we build the plant we have preventive control of liens for labor and materials.

The facts are different in acquisition of an isolated plantsite or distribution center in another part of the country. Such acquisition can be accomplished in several ways, such as purchase the land and build, purchase or lease an existing facility, agree to lease a facility built to our specifications, with or without an option to buy. In these cases our control is not so great and we are not so likely to have a good knowledge of local land and title procedures. So we shift some of the burden to our vendor or lessor by requiring extended coverage.

## APPORTIONMENT OF VALUES

Apportionment of values for title insurance is another problem that concerns us. This is illustrated by the purchase of say 10,000 acres of timberland. Some will have a valuable stand of timber on it. Some will be cut over land ready for seeding or planting. Some will be in different stages of reforestation from seedlings to partially-grown timber. The timber on the reforested areas increases in value every year and eventually reaches the value of the original matured timber, which by that time will have been cut. This is crop rotation—tree farming. What happens if there is a title failure on any one of these areas? Will the loss be apportioned on an acreage basis? on the value at the date of the title insurance policy? on the value of the particular parcel at the time of loss? or will all cumulative losses be paid on actual loss values until the face value of the policy is used up? Remember that values are changing continually. These questions are not theoretical. In such a case where all

the land was in one county, the insurance was split into three separate policies. In several other instances, where the land was in two or more counties, the value was apportioned between counties. There are other solutions. I suspect that reinsurance of large value policies is one factor affecting your judgment in these cases and that the solution to each one will be governed by its particular facts. We realize that we can segregate values—for instance, a valuable building on part of a tract and a junk building on another part. This is not the problem when it comes to timberlands.

## DESCRIPTIONS

We all know the purpose of descriptions. Most of the trouble with them is caused by the people who write them, particularly metes and bounds descriptions. Even if you have an accurate survey which produces a good legal description, it still might not be insurable unless properly handled by the conveyancer to eliminate gaps and overlaps. Here is an example that illustrates some of the problems. We had just completed a railroad and there were some irregular parcels left over which we did not need and our neighbors wanted. One adjoining owner propositioned our Branch Land Supervisor, a registered land surveyor, for one of these parcels and they made a deal. Our man sent me a description and asked me to prepare a deed. One of my assistants checked the description and it wouldn't close by about 15 feet. Then we got out our right of way deeds, deeds to adjoining land and the railroad survey. These indicated that our man had used the railroad survey for one boundary and at least three other deeds for four other boundaries. No two of the surveys were oriented alike. We told our man what we had found. His answer was, "You are not supposed to check my work. Just prepare the deed!" Needless to say, we rewrote the description and it was insurable. This also illustrates what a fireball operator can do to you if you don't check up on his work.

Then there is the following which I saw in the records of an unnamed county and state describing a tract of land in the correct legal subdivision, Section, Township and Range as follows: Beginning at the intersection of Road A and Road B; thence East along the North side of Road B to the branch; thence Northerly along the branch 350 feet; thence back to the point of beginning, it being our intention to describe a pie shaped piece of land with the point at the road intersection and the crust along the branch. You can find that land.

Then there is the parcel in two identified legal subdivisions described as follows: Beginning at a certain marked pine known to the parties and running due South to the section line; and again from the same pine nearly North to a rock corner on a certain ditch known to the parties; thence down the ditch to a cross fence; thence along this fence to the woods; thence straight to the Southwest corner, all in T 14, R 11, containing 130 acres, more or less. How do you find this one without one of the parties?

## EXCEPTIONS OR RESERVATION

Another problem arises when we buy a tract of undeveloped land. This is a description which ends "Except roads" or some variation such as "Except the South 30 feet for road" or just "Except the South 30 feet." I realize that the Title Company is "built in" on this when it appears in a prior deed but it is surprising how many title examiners just automatically except roads.

It is my opinion, based on over 20 years of observation, that the problem is created by any one or a combination of the following:

1. Amateur conveyancers, which includes but is not limited to
   a. The landowner or his surveyor,
   b. Real Estate salesmen and brokers, and
   c. Lawyers who have not sufficiently studied the problem—once I was one of these.
2. Title examiners who automatically except roads or who use this phrase to cover roads which are of record.

What is meant by "except Roads" ? Is it an easement for roads? Appurtenant to what? Is it an exception of the fee? an exception of a determinable fee for an existing road? Or what? Maybe the title examiner just excepted roads from his examination. I have found that title people differ in their interpretations and some are a bit hazy on the subject. I assure you that you can come up with some weird results.

I have no pat answer for all cases. Each one will have to stand on its

own facts. As a guide line, I suggest that if there is a road of record show it specifically. If there are other roads not of record (and there may be some) rely on your printed exceptions, don't generally except roads from the description. If they are there at best it would be by prescriptive easement. The deed could be made subject to "easements or rights for existing roads, if any." This is substantially your printed policy exception and you are not excepting a part of the fee. And here it might be well to suggest that you and we read your policy once in a while, then you wouldn't come up with something like this:

> SCHEDULE B, PARAGRAPH 4. (Printed)—"Any unrecorded rights of way or easements; and any discrepancies, conflicts, encroachments or shortages in area and boundaries which a correct survey would show."
>
> PARAGRAPH (6) (Typed)—"Any unrecorded rights of way or easements; and any discrepancies, conflicts, encroachments or shortages in area and boundaries which a correct survey would show."

This is the type of thing, or variations thereof, that the amateurs, without investigation, will put in a deed and further clobber the record title.

Here is a beautiful example of what can happen. Everyone was wrong in some way or another, starting with Weyerhaeuser. We needed a 40-foot strip of land across the East half of a section. There was a road on it and this was what we were after.

1st. Error—Our Area Land Supervisor ordered a title report on the East half of the section without defining what he wanted. The report came out in two parcels. One parcel excepted the road and the other included it, so actually the two parcels did show what we wanted. However, after the road description in each parcel the title examiner added "Except Roads." This was the 2nd error and was corrected by the Title Company when we pointed it out. The 3rd error (sloppy conveyancing), which was really the start of the whole thing, was the original conveyance putting the road of record. This conveyance was the deed which divided the East half of the section into the two parcels on which the Title Company reported to us. This deed EXCEPTED the 40-foot strip on which the road was located as being "20 feet on either side of the center line of the existing road." Now we had to make a survey of the road center line to definitely locate the strip of land. The deed went on to say "Grantee shall have the right to use for road purposes, only, the 40-foot strip above." This provision created an easement on the location of the existing road in favor of the owner of Parcel 1. After our survey of the road we had to go to the owners of both parcels (which by this time had again been divided) and get agreement of all parties as to the true location of the road so that it could be properly put of record and our ownership of the fee be properly assessed for taxes.

How about this one? Fitted into the land we bought this year for our new corporate headquarters complex was the following: A tract of land properly described then follows this, "Except the West 30 feet and Except the East 20 feet and Except the South 30 feet thereof and Except that portion lying within Primary State Highway No. 2." The highway was non-access at this point. How did we get to the land locked parcel? Our question to the Title Company was, "Who owns the West and South 30 feet and the East 20 feet?" We finally acquired these exceptions.

These are some of our problems. How do we both go about solving them? I have made a few suggestions for general guidelines, but this is not enough. There s h o u l d be some accepted rules. This is an area where some uniformity would be helpful. Perhaps there should be some sort of an organization of title personnel employed by owners of widely dispersed land, such as Weyerhaeuser and other companies similarly situated, which could meet with your organization and hopefully make a start toward identifying and eventually solving some of these mutual problems. We try to maintain liaison with the Title Companies most frequently involved and to date there has been fine cooperation.

# "STANDARD FORMS"

By RICHARD H. HOWLETT

*Chairman, Standard Title Insurance Forms Committee*
*Senior Vice President, Secretary and General Counsel, Title Insurance and Trust Company, Los Angeles, California*

The Association has this year been served by the Standard Title Insurance Forms Committee composed of William H. Baker, Lawyers Title Insurance Corporation; James O. Hickman, Transamerica Title Insurance Company; William A. Thuma, Chicago Title and Trust Company; Harrison H. Jones, Louisville Title Insurance Company; James H. McKillop, Lawyers Title Insurance Company; Eugene Tully, Security Title Insurance Company; William Wolfman, The Title Guarantee Company, New York; Frederick R. Buck, The Title Guarantee Company, Baltimore; C. J. McConville, Title Insurance Co. of Minnesota; Thomas B. Preston, Stewart Title Guaranty Company; and James G. Schmidt, Commonwealth Land Title Insurance Company. John P. Turner of Chicago Title Insurance Company acted as Counsel for the Committee.

The Committee has met often, and long. It is a privilege to serve with these men.

The Committee has considered inquiries placed with us concerning the meaning of existing policies. Some of these inquiries have been resolved in the single form policy that we will suggest to you; however, some questions should be discussed with you at this time.

We have been asked for an interpretation of the obligations and rights of the title insurer under the provisions of paragraph 6 of the Conditions and Stipulations of the Standard Loan Policy affording the insurer the option to purchase the indebtedness secured by the insured mortgage.

If the insured lender gives notice of a claim under the policy the insurer has the right, among others, to purchase the indebtedness secured by the insured mortgage, and, if he elects to purchase the indebtedness, he must tender the full amount of principal, interest and advances made pursuant to the terms of the insured security instrument, together with costs, attorney's fees and expenses covered by the policy; that the aggregate of these amounts may exceed the face of the policy. If the insurer elects to pay to the insured the face amount of the policy, and that amount is less than the amount of the indebtedness and interest and costs, then under paragraph 8 of the Conditions and Stipulations the rights of subrogation of the insurer are subordinate to the rights of the insured lender to be fully paid.

When an insured learns of a claim covered by the policy, under the provisions of the policy and general law, he must notify the insurer of the claim. If he fails to do so, the insurer may be relieved from liability. This is a general rule—applied according to the facts of each case.

The Committee has been reviewing the coverages of the 1962 Loan and Owner's Policies. This review arises out of the direction to the Committee to consider the formulation of a single form policy that could be used to insure an owner, or a lessee, or a mortgagee on the fee or a leasehold. To do this the Committee was asked to clarify the coverages afforded, to eliminate ambiguous provisions, and to conform the coverages afforded. The Committee now recommends for your consideration a new policy. Shortly after the Convention, you will receive copies of that policy. We request that you study the proposal and send to the Chairman of the Committee your comments, suggestions and criticisms. The Committee proposes to ask you to approve the Single Form Policy and to conform the existing Owner's and Lender's Policies to that coverage at the next Mid-Winter Conference.

We have met with Life Counsel on the proposed coverages. The suggestions made by them indicate that the changes indicated will be acceptable. Some clarification will have to be made, but that cannot be done until the Committee has your suggestions.

Some explanation of what we propose is proper at this time.

The Committee recommends that, so far as is possible, the insuring clauses of the policy be expanded to include the exclusions from coverage so that our contract will not be subject to the possible court ruling that fine print inconsistent with the big print insuring clause should be ignored. We were able to do this with the mechanic's lien insurance and the coverage as to validity and enforceability of the lien of the insured mortgage.

For years questions have been raised concerning the liability of a title insurer to an insured owner after a sale of the property or to a lender after foreclosure of the insured mortgage. Companies have written letters of interpretation, but no place in the policy was there any express definition of the continuing liability, if any. The Committee is of the opinion that these rights and obligations should be expressly stated; that there should be some continuing liability, within defined limitations. The contract should be made certain.

Questions have been raised as to the amount of coverage afforded an insured lender making optional advances after the date of the policy. Existing policies are silent. The Committee believes and recommends to you that there should be no liability under the policy for such advances—and that the policy should say so.

A coinsurance provision is proper in a title insurance policy. The existing provision was not acceptable to a large segment of our membership nor to many of our customers. The Committee recommends the deletion of this provision in the standard or base policy, leaving to the underwriting principals of each company the handling of the problem in the cases where it is presented.

There are many other areas of change. Some expand the coverage of either the owner's or the lender's coverage—but all are designed to make the policy accurate, and certain. We request your suggestions for improvement.

The industry has long been concerned about coverage of questions of usury. I know of no segment of the industry that believes that we should insure that a usurious loan is valid and enforceable. Actually no segment wants to insure a known unsurious loan—even though the policy contains an exclusion of that coverage. The industry does not want to be a party to that type of transaction.

The 1962 Loan Policies contain an exclusion from coverage of usury or claims of usury not shown by the public records. The Committee is of the opinion that this exclusion does not comply with the position of our industry; that the exclusion should be absolute and not qualified. It is impossible for an insurer to determine by inquiry or investigation the fact of under-the-table payments, the actual payments made, costs charged or to be charged—all of which determine whether or not a loan is usurious. Since we cannot determine the facts, we have no basis upon which to afford the insurance. The Committee recommends that the subject matter of usury be excluded from coverage of the loan policies at this time. In states where forms are promulgated, we request the members to use their best efforts to obtain this modification. The Committee will support these efforts.

If the Committee properly interprets the views of the industry, then it is not enough to just modify the 1962 policy. All loan or mortgage policies should be amended to exclude usury coverage. It is meaningless to exclude usury coverage from the 1962 form but offer the customer another form—1946 as an illustration —that has no exclusion. The Committee asks—if the industry means that usury coverage should not be afforded—then the industry must mean that all mortgage policies will be modified to exclude coverage as to usury.

Mr. Chairman, I move that the Title Insurance Section of the American Land Title Association recommend to this Convention of the Association that Paragraph 3(f) of the Conditions and Stipulations, Exclusions from Coverage of both Loan Policies be amended to read:

(f) Usury or claims of usury.

That the amendment may be accomplished by endorsement to the policy or by a typed exception in Schedule B.

Further, that the Association recommends to the membership that all loan or mortgage policies, in addition to the ALTA approved policies, be amended to exclude coverage of the subject matter of usury.

—MOTION WAS CARRIED

# ELECTION OF SECTION OFFICERS

By proper nomination and second, the following officers were unanimously elected to serve for 1968-1969:

*Chairman*—ALVIN W. LONG, Chicago, Illinois
President, Chicago Title Insurance Company
111 West Washington Street, 60602

*Vice Chairman*—JAMES L. BOREN, JR., Memphis, Tennessee
Executive Vice President, Mid-South Title Company, Inc.
12 South Main Street, P. O. Box 432, 38101

*Secretary*—GERALD L. IPPEL, Los Angeles, California
Senior Vice President, Pioneer National Title Insurance Company
433 South Spring Street, 90054

EXECUTIVE COMMITTEE

FRANCIS E. O'CONNOR, Chicago, Illinois
Senior Vice President, Chicago Title and Trust Company
111 West Washington Street, 60602

LAWRENCE A. DAVIS, JR., Pittsburgh, Pennsylvania
Manager, Lawyers Title Insurance Corporation
407 Grant Street, 15219

HAROLD G. GOUBIL, Mobile, Alabama
President, Title Insurance Company
164 St. Francis Street, P. O. Box 2265, 36602

JOHN E. GRIFFITH, Phoenix, Arizona
President, Southwest Division, Transamerica Title Insurance Company
114 West Adams Street, P. O. Drawer 13028, 85002

# WORKSHOP SESSIONS

## "RECENT DEVELOPMENTS IN REAL ESTATE LAW"

*Moderator:*

**JOHN S. OSBORN, JR.**

*Chairman, ALTA Judiciary Committee; Executive Vice President, General Counsel and Title Officer, Louisville Title Insurance Company, Louisville, Kentucky*

*Panelists:*

**BRUCE M. JONES**

*Vice President and Chief Counsel, Security Title Insurance Company, Los Angeles, California*

**ROBERT T. KRATOVIL**

*Vice President, Chicago Title and Trust Company, Chicago, Illinois*

**MELBOURNE L. MARTIN**

*Senior Vice President, General Counsel and Secretary, American Title Insurance Company, Miami, Florida*

STATEMENT BY MR. OSBORN:

Several cases concerning title insurance have been decided since our last National Convention, and I thought it would be a matter of

interest to report on them. All of us know that title insurance policies are liberally construed in favor of the insured, and any ambiguities are strictly construed against the title insurance company. This is generally true of most insurance contracts, since the insurer prepares the policy. These principles were involved in two cases which illustrate that title policies must be carefully prepared.

In the case of *San Jacinto Title Guaranty Co. v. Lemmon, 417 S. W. 2d 429*, a Texas case, the Policy did not contain an exception in Schedule B to an easement shown on the recorded Subdivision plat. However, in Schedule A of the Policy, containing the description of the property insured, a reference was made to the recorded plat for "all pertinent purposes." The insured sued the Company, and the Court held that the Company was liable, since there was no specific exception in Schedule B, and that the Company relied upon a vague or general reference to serve as an exception. The Court also held that the measure of damages was the cost of removal of the easement up to the face amount of the Policy.

In the case of *E. A. Robey and Co. v. City Title Insurance Company, 68 Cal. Rptr. 38*, the Title Policy had an exception in Schedule B which read:

> "Right of the public and others to use the Southerly 342 feet as a beach and athletic field."

In this case the Court first held that under California law, since the Southerly 342 feet had been dedicated to the public as a beach and athletic field, the fee title passed to the public. After reaching that conclusion, the Court said that since the Title Policy only excepted rights in the nature of an easement, and contained nothing to indicate that the Insurance Company intended to give no coverage whatsoever on the 342 feet in question, the Title Company was liable.

In many cases title insurance companies take indemnity agreements from parties to an insured transaction, particularly where unusual risks are assumed by the insurer. A case in Missouri shows an additional worry that the title insurer has over and above the risk he assumes. This case is *Jeter v. Title Insurance Company of Minnesota, 424 S. W. 2d 329*. Here the Title Insurance Company charged an extra $250.00 fee for a Title Policy and obtained an indemnity agreement from the vendor at the closing, which agreement indemnified the Insurance Company from losses and expenses it might sustain in defending the title against a possible lawsuit. The unusual risk the Company assumed was due to the fact that the improvements on the property consisting of a dwelling house and other structures extended beyond the boundary line, as shown in the deed to the vendors. These encroachments had existed since the structures were built in the 1930s. The vendor, on the advice of his attorney, contended that he had good title by reason of adverse possession. After the transaction was closed and the indemnity agreement signed and the extra fee paid by the seller, certain other lot owners brought a suit against the insured for trespassing. The Title Company successfully defended the suit and made demand upon the vendor, pursuant to the indemnity agreement, for its attorneys' fees and costs. The vendor, who had signed the indemnity agreement, denied liability on the ground that the indemnity agreement was not supported by a consideration and was procured by fraud. There was a great deal of conflicting testimony about whether or not the vendor knew he was signing an indemnity agreement. The Trial Court found that the Title Company's charge of $250.00 as an extra risk fee was predicated upon its belief that it would be sufficient to reimburse it for the cost of a quiet title action should one become necessary, and that when the vendor signed various documents, including the indemnity agreement, he and his attorney had not previously considered or examined the instrument, and that the consideration which he paid for the Title insurance, consisting of the regular risk fee plus the $250.00 extra fee, constituted the entire agreed consideration for the issuance of the policy, and that the indemnity agreement constituted a mere voluntary promise devoid of and lacking any consideration, and that he was entitled to be relieved of it.

The evidence in this case as disclosed by the reported opinion, was very conflicting, and it points out the care which is needed in handling any situation in which the Title Insurance Company relies upon in-

demnity agreements. The agreements should probably be hand tailored and contain "but for" clauses to set up an estoppel. In addition, the approval of the indemnitors' attorney should be documented whenever possible.

In three other cases the duties or obligations of title insurors under specific sections of policies or commitments were discussed.

In the case of *Cole v. Home Title Guaranty Co., 285 N. Y. Suppl. 2d 914* (1967), certain assessments did not become liens until after the issuance of the respective title policies. The contention was made that the Title Insurance Company was liable because of language in the Policy insuring against loss because of "any statutory lien for labor or material furnished prior to the date hereof which has now gained or which may hereafter gain priority over the interest insured hereby." The Court found that assessments were not intended to be within the coverage of this language in the Policy, and that any other determination would be inconsistent with the concept of assessments as distinguished from mechanics' liens.

In my opinion, this was unquestionably a correct decision and is an important one for the Title Industry.

A Louisiana case, *American Legion v. Southwest Title Ins. Co., 207 So. 2d 383,* has brought in question one of the conditions of an owner's policy which appeared to be on the 1962 ALTA Standard Form B. The particular condition was 6 (c) which provides:

> "No claim for damages shall arise or be maintainable under this policy (1) if the Company, after having received notice of an alleged defect, lien or encumbrance not excepted or excluded herein removes such defect, lien or encumbrance within a reasonable time after receipt of such notice."

In this case a recorded lease was, by mistake, omitted by the register in his certificate of conveyance. The title insurer thereupon did not take exception to the recorded lease. The Insured was unable to secure possession of the property. By letter dated June 30, 1965, the insured demanded that the title insurer do whatever was necessary to place it in possession of the property. The Attorneys representing the seller, the Register, the title insurer, and the insured had a conference and agreed that the attorney representing the seller would file a possessory action against the lessee. Such a suit was filed on August 4, 1965. On August 27, 1965 the insured demanded damages of $285 a month from the title insurer until possession was secured. The title insurer took the position that it had fulfilled its obligation under the Policy through the agreement under which the attorney for the vendor brought the possessory action to which agreement the insured's attorney was a party.

Thereafter the insured sued the Register, the Vendor, and the Title Insurance Company. Various third party actions were brought. The insured finally evicted the lessees on March 8, 1967, at its own expense upon a judgment in a separate action brought by it. The Court held that the insurer did not remove the encumbrance within a reasonable time after receipt of notice and demand as required by clause 6 (c), and that the insurer could have brought an eviction action in the insured's name and nothing in the other action precluded this. The Court further found the insurer liable for penalties of 12% of the total loss and attorneys' fees for failure to pay the loss as demanded. This is provided for by Statute in Louisiana. An appeal has been allowed in this case only on the issue of the penalties and attorneys' fees assessed against the title insurer. This case is an interesting one, though very involved, and is the only case I know of involving section 6 (c) of the ALTA Owner's Policy.

A very complicated case was decided in New Jersey last year. It is *(Cambridge Acceptance Corporation v. American National Motor Inns, et al. 96 N. J. Super 183, 232 At. 2d 692.)* Here an assignee acquired a mortgage on realty where the mortgagor was a motel building lessee with rights under the lease to subject the fee title to the mortgage for construction money. Money was advanced but none of the money advanced was used for construction, and no construction was ever commenced. The title insurer had issued a binder but never issued a policy. The Court found the title insurer not liable, because no premium was ever paid and no policy ever issued. The binder had provided it was "null and void unless a title

policy is issued . . . . within 9 months from the date hereof and the premium thereon paid." The Court also said that a letter given the insured by the title insurer was without consideration sufficient to have a breach of warranty action upon. The court's reliance upon the time limitation and premium requirement is most gratifying. This is the only reported case I can find on this subject. Although my company won litigation in the Federal Court for the Eastern District of Tennessee a few years ago on the same point. In that case, not reported, the Federal Court also absolved the title insurer from liability because of expiration of the time limitation on the binder without a premium being paid or a policy issued.

The question of responsibility between the Fidelity Insurer, and the Title Insurer for the same insured is currently being litigated in Utah. This Case of *(Prudential Federal Savings & Loan Association v. St. Paul Insurance Companies, 20 Utah 2d 95, 433 P. 2d 602)*, is still in Court on a petition for a rehearing. When finally decided, it will be of interest to the Industry.

STATEMENT BY MR. JONES:

First, I'd like to talk about a case which, although decided about two years ago, is increasingly being referred to by insureds under title insurance policies and their attorneys—not only in the state where the decision was rendered, but also in other states, and even though it was not a title insurance case.

I'm talking about the California Supreme Court case of *Gray v. Zurich Insurance Co. (65 Cal (2) 263; 419 P. (2) 168)*.

A complaint was filed against Gray for damages for bodily injuries allegedly caused by an intentional assault by Gray. He had a personal liability policy covering damages for bodily injury which expressly excluded liability for injury caused by an intentional rather than a merely negligent act. Because of the exclusionary clause, the insurer refused to defend. Gray procured his own defense and lost, the Court rendering a damage judgment against him based on his intentional act. Nothwithstanding the fact that the judgment and loss were based on an act excluded from coverage, the Court, in a suit by Gray against the insurer, held that the insurer should have defended the action against Gray and that it was liable not only for the defense costs but also for the judgment.

Increasingly in California a title insurer who rejects a defense demand because the matter is within an exclusionary clause in the policy is referred to the *Gray* case by the insured's attorney. I am told that the case is sometimes also mentioned to title insurers in other states.

I think that attorneys for insureds under title policies have overreacted to the Gray case. Certainly the *Gray* case and others, in whole or in part like it, that have been or probably will be decided in a somewhat similar fashion in some other states, is a matter of concern to title insurers. But I don't believe that it requires the conclusion that a title insurer must defend regardless of whether an exclusionary clause is involved. Although it is not easy to relate a personal liability policy and the subject matter of the *Gray* case to a title insurance policy and its subject matter, let's make an attempt, using the *Gray* case as our vehicle.

Basically, the *Gray* court held that the duty to defend under the policy there involved was broader than the duty to indemnify and pay because, in the Court's opinion, it was not clear from the policy that the exclusion of intentional acts applied to the defense duty as well as to the indemnity duty. The policy provided that the company had a duty to defend any suit alleging bodily injury and seeking damages "which are payable under the terms of the policy." I feel that the ALTA title policy forms, for example, to some extent more clearly show an intent to limit the defense obligation to suits involving matters within the policy coverage, taking into consideration the exclusions and exceptions as well as the insuring clauses. Furthermore, the ALTA policy does not contain a provision which appeared in the Gray policy and upon which the Court placed some reliance —a provision that the insurer would defend "even if any of the allegations is groundless, false or fraudulent."

The Gray court also based its decision in part on the theory that "the nature of the obligation to defend is itself necessarily uncertain" because "no one can determine whether the suit against the insured does or does not fall within the indemnification coverage of the policy until that suit is resolved." However, it must be remembered that this theory was pre-

sented and applied in the context of a suit where the uncertainty was whether the act involved was only negligent, or was willful. It does not seem to me that this type of uncertainty to which the Court referred is inherent in all title policy situations. In actions such as *Gray*, involving personal injury, the act by defendant insured which damaged plaintiff might have been negligence, and so within the policy, or willful, and therefore outside the policy. In a title policy usury case, for example, if the act (i.e. the usurious payment or provision therefore) occurred, there is no question whether it's within or without the policy coverage—it's outside the coverage. Similarly as to matters occurring subsequent to the policy. In fact, carrying the *Gray* case theory of the uncertainty of the nature of the obligation to defend to its logical conclusion in a title case would require the insurer to defend an action to foreclose a mortgage shown in Schedule B. Obviously there must be some qualification of the theory in some title insurance cases.

On the other hand, the *Gray* case may be applicable in this kind of a situation: a quiet title suit is brought against your insured (who holds your ALTA owner's policy) based on an off-record deed to the plaintiff, alleged to have been executed and delivered by the former record owner prior to the deed to your insured. Plaintiff alleges that your insured knew of the deed. If your insured admits having had knowledge, it seems to me that you are outside the *Gray* case. The exclusionary clause immediately applies, and you have no defense obligation. If, on the other hand, the insured denies knowledge, then you must defend until such time as it is established (if it is) that your insured had knowledge, and in most cases, where the insured continues to deny knowledge, the insurer probably will have to stay in the case until final judgment. Your exclusionary clause regarding knowledge of the insured is inapplicable until the knowledge determination is made, just as, in the *Gray* case, the exclusionary clause was inapplicable until the determination of whether the act was negligent or intentional (or neither).

There is one theory expounded in the *Gray* case—and in other cases—which probably is applicable to title insurers. I am referring to the position that an insurance contract is one of that class of contracts which are entered into between parties of unequal bargaining strength, with the insurer being the stronger bargainer, and, therefore, that the c o n t r a c t's meaning will be held to be that which the other party—the insured—would reasonably expect. This is the so-called "Adhesion Theory."

It used to be the law that if a party entered into a contract, he was bound by its terms, even, in most cases, if he was so foolish as to not read it. Now he's probably foolish if he does read an insurance contract because the law says that it will mean what he reasonably assumed he was getting and if he reads it before he enters into it and finds it to the contrary, he's probably prejudiced by his knowledge.

The application of the "Adhesion Theory" by the courts to title insurance contracts will be interesting.

Before leaving the *Gray* case we should refer to one other part of the decision. The Court, after rejecting the idea that the insurer's defense obligation was based on, and measured by, the pleadings in the suit against the insured, said that even if his duty was so measured by the complaint's allegations, and the complaint alleged a situation outside the policy coverage, he still must defend if the suit "potentially seeks damages within the coverage of the policy." The Court then said that the suit against Gray was such a suit since a judgment based on negligence rather than on a willful act was possible under the pleadings, and that, in any event, the pleadings might be amended. Again, I feel that this is not necessarily applicable to our title insurance field for the same reasons which I mentioned earlier in discussing the Court's theory that the duty to defend is necessarily uncertain. Thus, in the usury situation the action is not "potentially within" the policy. In the off-record deed example, the potentially *is* there until knowledge is admitted or established. In fact, perhaps this "potential liability" theory is really the same thing as what the Court described as the uncertainty of the obligation to defend (see discussion above). Where, and only where, there is such uncertainty, there will be such potential liability.

The conflict of interest problem that arises when the insurer defends a suit which puts the loss on the insured or the insurer, depending on the exact basis for the judgment, seems obvious. Thus, in the *Gray* case,

if the insurer defended, it would have been to his advantage to prove that the insured's act was willful, and so outside the policy. The Court, as to this, said that there would be no conflict because this issue—i.e. whether the act and the resulting liability were within or without the policy—doesn't arise in the suit by the third party against the insured. Technically, the Court is correct, but as a practical matter the issue *is* there resolved.

Now, I'd like to mention a few other more recent cases from the West.

One of the cases disclosed facts which understandably made a Lake Tahoe shore owner pretty unhappy. In the 1920's he had granted to the state an easement for highway purposes over an unusually broad strip bordering the lake. The state paved only a small part of the strip for the highway. Our lake-shore owner had for some years used the remaining part of the easement between the highway and the lake as a recreational area for him and his guests and business acquaintances and as a ramp for occasional launching and retrieving of their boats, and he had a few rental facilities on the shore. Then one day the peace and quiet of this idyllic lake-shore resort was rudely disturbed by the sound of bulldozers which commenced tearing up the area in preparation for a roadside rest and a vista point which the state intended to construct. Said the lake-shore owner of the underlying fee to the state officials: "You have an easement for highway purposes only. This does not include or permit use as a rest area and vista point which, no doubt, will be used for picnics, sightseeing, sanitary facilities, camping and general littering. What's that got to do with a highway?"

A law suit resulted but the property owner came out on the short end of the decision. Said the court: "When land is taken or dedicated for use as a highway, the taking or dedication should be presumed to be not merely for such purposes and uses as were known and customary at that time, but also for all public purposes, present or prospective, whether then known or not, consistent with the character of such highway and not actually detrimental to the abutting property." The court held that a vista point and a roadside rest come within this principle.

However, the court in holding that a vista point and roadside rest were within the scope of the easement as granted also held that there would be an undue increase in the burden on the servient tenement if, for example, the roadside rest was used as a campground or public beach and that if, due to lack of proper supervision by the state, the roadside rest was improperly used, it would constitute a taking by the state in the exercise of its power of eminent domain. *Norris v. State of California* (261 Adv. Cal. App. 30)

Another case involved a suit against an escrow holder—or closing agent. The plaintiff was the buyer in a sale transaction handled by the closing agent. In the suit against the closing agent brought by the buyer after the completion of the transaction, the buyer alleged that he was induced to buy the property by false and fraudulent acts and promises by the seller and others who conspired with the seller, that the escrow agent knew of these acts and promises and knew that they were false and fraudulent and, knowing, had a duty to disclose his knowledge to the buyer.

Said the escrow agent: "I didn't know, but what if I did? I was only the closing agent." The court agreed with the agent, saying: "It is generally held that no liability attaches to the escrow holder for his failure to do something not required by the terms of the escrow or for a loss incurred while obediently following his escrow instructions." The court added that if the rule were otherwise "once an escrow holder received information from whatever source, he would be forced to decide i n d e p e n d e n t l y whether to believe the information and disclose it or disbelieve it and conceal his knowledge. If he concealed his knowledge he would risk suit. If he discloses and the information is inaccurate, he may be sued by all parties to the escrow for interfering with their contract. Establishing a rule which would create such a dilemma and subject the escrow holder to a high risk of litigation would damage a valuable business procedure . . . and would ultimately defeat the very purpose for which escrows originated." *Lee v. Title Insurance & Trust Company*, (264 Adv. Cal. App. 194)

In another closing agent case the agent recorded a mortgage in favor of the seller in the wrong county. The buyer went bankrupt, at which time the seller discovered that he had an invalid lien. He sued the closing agent for negligence. The agent pointed to

a provision in the closing instructions which provided that the closing agent would not be liable for any loss resulting from any negligence committed by it. The court held that any type of exculpatory clause would be invalid if it met the following tests:

1. The business is suitable for public regulation.
2. The party relying on the clause is engaged in performing a service of great importance to the public.
3. He holds himself out as willing to perform this service for any member of the public who seeks it.
4. As a result of the essential nature of the service, he possesses a decisive bargaining advantage.
5. He makes no provision whereby a purchaser may pay an additional reasonable fee and obtain protection against negligence.

The court held that the business involved in this case met the requirements and, therefore, the exculpatory clause was invalid. *Akin v. Business Title Corporation* (264 Adv. Cal. App. 173)

A case involving a mortgage transaction had a somewhat unusual twist. A lender made an $85,000 first mortgage loan to a buyer on property which he purchased for $122,000. Prior to the sale transaction the seller very cleverly so painted, plastered, and decorated the house as to conceal the fact that there had been a cracking and separating of various parts of the house due to its having been built on improperly filled and compacted land and that the whole structure was about to collapse. The buyer, unaware of the house's condition, bought the land and the lender —similarly unaware—made his loan. After the sale the buyer woke up one morning to find his house literally in pieces.

The buyer then sued the seller for damages and received a substantial amount in settlement of that action. Thereafter the lender, who also was unhappy, brought suit against the buyer (its mortgagor) arguing that the money which the buyer received from the seller for damages should be paid to the lender, and in support of that argument the lender pointed to a provision in the mortgage that any award of damages in connection with any injury to the property was assigned to the lender for application to the loan.

The lender went away from the suit empty handed, the court holding that the buyer's claim against the seller was not for injury to the property within the meaning of the mortgage clause but rather for the seller's fraud and misrepresentation in inducing the buyer to purchase the property to his economic loss. The lender was, therefore, relegated to an action for damages against the seller for the injury to him, the lender, as distinguished from the injury to the buyer. Of course, the buyer was still liable to the lender for the amount of the loan but, since the security was practically worthless and no deficiency judgment was allowable under the law of the state involved, this was small consolation. *American Savings and Loan Association v. Leeds* (68 Adv. Cal. 637)

Another mortgage case was referred to by the court as presenting a novel question concerning the rights of a mortgagee under a second mortgage. A mortgagor failed to make payment of taxes as required by both the first and second mortgages and so the holder of the first mortgage advanced them and added the amounts to his secured loan but did not declare a default or foreclose.

The second mortgagee then started foreclosure on the theory that the mortgagor was still in default to the extent of the taxes. The mortgagor argued that he was not in default. He admitted that failure to pay taxes was an event of default under the second mortgage but pointed out that the taxes had been paid by the first mortgagee and were not delinquent. The mortgagor's argument was clever but not clever enough. The court said that the election by the first mortgagee to add the tax advance to the principal and waive the default did not relieve the mortgagor of his obligations under the second mortgage and there was no reason why the second mortgagee should be required to sit idly by while the first mortgage was enlarged by the mortgagor's failure to make payments specifically required by the terms of the second mortgage. The second mortgagee's only protection against impairment of his security by an increased indebtedness under the first deed of trust was to declare a default and foreclosure. *Manning v. Queen* (263 Adv. Cal. App. 754)

The expendiencies to which parties to a loan transaction will go to attempt to avoid the usury laws is end-

less. A way that was new to me—although I don't doubt that it has been tried before—appeared in a recent case. The mortgagor signed a note for 9 1/2 percent in a 10 percent state. He also gave the lender an option to purchase the land at $3,000 an acre—a price which was about one-half the value of the land. Concurrently the lender gave to the mortgagor an option to purchase it, the lender's, option. The price in this case was $8,000 an acre, an amount which, incidentally, represented about 10 percent of the face amount of the loan. The court held that in view of the fact that the mortgagor was compelled to avoid the lender's exercising his very favorable $3,000 an acre option by buying out that option for the $800 an acre price, the $800 per acre amount constituted interest and so the transaction was usurious. *Mission Hills Development Corporation v. Western Small Business Investment Company* (260 Adv. Cal. App. 974)

Incidentally, here's a rather interesting definition of usury—it is the title of a Law Review article on usury: "Usury—the lender's trap and the borrower's windfall."

My time is up—thank you for your attention.

STATEMENT BY MR. KRATOVIL:

There are a number of decisions, more or less recent, that bear importantly upon the business of title insurance.

**Federal and State relations—foreclosure and redemption where a federal agency is involved.** The Small Business Administration foreclosed a mortgage on Kansas land in a federal district court. The court held that it could order sales free and clear of the eighteen month Kansas redemption period. *United States v. Montgomery,* 268 Fed.Supp. 787 (1967). This is one of a number of such decisions, all resting on the authority of *United States v. View Crest Garden Apartments, Inc.,* 268 F.2d 380, cert. denied, 361 U.S. 884. The new philosophy is that where the federal government appears as a litigant, it may choose between state law and federal law, and that the federal court may shape federal law to suit the purpose at hand. It will be remembered that in *Swift v. Tyson,* 16 Pet. 1 (1842), the Supreme Court held that federal courts were at liberty to evolve and apply a federal common law and were not obliged to apply local state rules of common law. In *Erie R. Co. v. Tompkins,* 304 U.S. 64 (1938), a diversity case not involving the federal government, the court overruled *Swift v. Tyson,* and held that there is no federal common law. But where federal interests are involved the federal courts later held they could disregard *Erie* and apply federal common law. *Clearfield Trust Co. v. United States,* 318 U.S. 363 (1943): See 53 Colum. L. Rev. 991; 54 id. 489; 59 Harv. L. Rev. 966; 50 Va. L. Rev. 1236; 105 U. Pa. L. Rev. 797. Until the Supreme Court speaks on the precise question of state redemption laws, this entire situation will remain shrouded in doubt. Granting for the sake of argument that a federal court has the power to choose as above stated, ought it to choose to disregard something so firmly embedded in local land policy as a redemption right? And, if the Supreme Court later holds that the federal government should respect local redemption laws, how will earlier decisions such as *United States v. Montgomery* be affected? Will they be treated as void or as simply erroneous? If simply erroneous, will they be subject to the local redemption law they chose to ignore or free and clear thereof? It is well settled, of course, that one does not escape local redemption law by filing his foreclosure in the federal court. *Brine v. Insurance Co.,* 96 U.S. 627. And it is equally clear that where a decree ignores local redemption law, the courts may simply read the redemption law into the decree. *Smitterlin v. Conn. Mut. Life Inc. Co.,* 90 Ill. 483. Such authorities seem to indicate the need for some rather explicit declaration in the decree that the federal government and the federal court have deliberately chosen the federal prerogative that transcends local redemption law. Should the Supreme Court later throw its weight on the side of local redemption law, it would then be arguable that earlier decisions simply made an erroneous choice of law and that such error does not subject the decree to collateral attack.

**Easements.** In *Kamrowski v. State,* 31 Wis.2d 256, 142 N.W.2d 793 (1966), the Supreme Court of Wisconsin sustained the right of the state to acquire a scenic easement by condemnation. This scenic "easement" is novel in that it consists basically of the imposition of restrictions on the use of the land, for example permitting only farming

and residential use, prohibiting dumping of trash, prohibiting billboards, etc. The court held that enjoyment by the public of scenic beauty is a public use, for which the power of eminent domain can be exercised. One can expect the drive to preserve open space to intensify.

In 1913 a subdivider installed sewer and water lines under one of his lots to service another lot adjoining. I will refer to the lot having the benefit of the installation as the dominant lot and the other lot as the servient lot, although of course, no easement then existed. The subdivider sold the dominant lot in 1914 to *P's* predecessor and the servient lot in 1915 to *D's* predecessor, neither of the deeds referring to the sewer or water lines, and the lines were not discernible from a visual inspection of the servient property. Water appeared on *D's* lawn, who then discovered for the first time that sewer and water lines ran across his land from the street adjoining his property to *P's* land. *D* attempted to shut off these lines and *P* instituted proceedings to enjoin *D's* actions. The court held that *D*, as a bona fide purchaser, took free of the implied easement. The court stated that where an owner of two parcels of land subjects one of them to an easement in favor of the other and where such owner sells the dominant parcel without providing for that easement in his grant and where the enjoyment of such easement is reasonably necessary to the beneficial enjoyment of the parcel granted, it may reasonably be inferred that the parties mutually intended there should have been a grant to such easement. *Because of the right of the grantee to require reformation of the deed* to set forth the mutual intent of the parties, it is often held that the grant of such an easement will be implied. *This implied easement, the court held, is based upon the equitable right to reform the grant.* Hence such an equitable right should not be enforceable against a bona fide purchaser for value who has no notice of such easement. *Renner v. Johnson*, 2 Ohio 2d 195, 207 N.E.2d 751 (1965).

Title companies are concerned, of course, with the question of whether a bona fide purchaser takes free and clear of an easement. The authorities, as one might expect, are conflicting. There is ample authority for the view that if an easement is created by a grant, and that grant is not recorded, and the servient premises are then conveyed to a bona fide purchaser who has no notice, actual or from the condition of the premises, of the existence of the grant, the bona fide purchaser takes free and clear of the grant. *State of Indiana v. Anderson*, 241 Ind. 184, 170 N.E.2d 812. This is elementary recording law. But if the easement is created by prescription, there is some authority to the effect that a bona fide purchaser is not protected. *McKeen v. Brammer*, 238 Ia. 1113, 27 N.W.2d 518. These courts say that, just as is true of adverse possession, there is no law requiring the existence of a prescriptive easement to be placed of record. As to implied easements most courts would agree with the Ohio case that a bona fide purchaser is protected. *Goldstein v. Hunter*, 257 N.Y. 401, 178 N.E. 675; *Wolek v. Di Feo*, 60 N.J.S. 324, 159 A.2d 127. But some courts will not protect the bona fide purchaser. *Wiesel v. Smira*, 49 R.I. 246, 142 Atl. 148; *McElroy v. McLeay*, 71 Vt. 396, 45 Atl. 898.

There seems to be general agreement that if there is something on the ground that gives notice of the existence of the easement, any purchaser takes subject to it. But when it comes to determining what the "something on the ground" must consist of to put a purchaser on notice, the decisions are conflicting 41 A.L.R. 1442, 74 id. 1250.

**Zoning—Restrictions.** In the early days of zoning, when residences could be erected in any zone, it was quite commonly held that a later zoning ordinance did not displace earlier building restrictions. See, e.g., *Dolan v. Brown*, 338 Ill. 412, 170 N.E. 425; *Chuba v. Glasgow*, 61 N.M. 302, 299 P.2d 744 (1956); 36 Mich. L. Rev. 1389. There was a measure of logic in these decisions, for even if the city zoned a former residential area as commercial, and this might be indicative of a change in the neighborhood, nevertheless a lot owner could still legally improve his lot with a residence. In recent times, zoning ordinances tend to exclude residences from commercial and industrial zones. *Roney v. Board of Supervisors*, 139 Cal.App.2d 740, 292 P.2d 529; *People ex rel. v. Morton Grove*, 16 Ill.2d 183, 157 N.E.2d 33; *Lamb v. City of Monroe*, 358 Mich. 136, 99 N.W.2d 566. An impasse is created where the earlier building restrictions permit only

residences and the later zoning ordinance permits only commercial or industrial structures. Some recent decisions now hold that the zoning ordinance impliedly abrogates a prior inconsistent building restriction. *1.77 Acres of Land v. State*, 241 A.2d 513 (Del. 1968); *Grubel* v. *MacLaughlin*, 286 Fed.Supp. 24 (1968). This fulfills a prophecy made back in 1954. Kratovil and Harrison, *Eminent Domain—Policy and Concept*, 42 Calif. L. Rev. 596, 636 (1954).

**Deeds—assumed names.** One Dorothy Binter, and her husband acquired title to certain Kansas land in joint tenancy. After the death of her husband, she married one Westley E. White. White told her he wanted to obtain a loan commitment on her land and in order to do this, he asked her to convey the property to him and sign the deed as "Dorothy Binter". Dorothy acceded to this request, the deed named "Dorothy Binter, widow of Paul A. Binter", as grantor, and "Westley E. White, a single man", as grantee. White then obtained a loan for $20,000 executing a mortgage on the land to secure the same. Default occurred under the mortgage, and foreclosure proceedings were instituted. Dorthy claimed a homestead exemption because she had never signed the mortgage. The court held that Dorothy's execution and delivery of the deed subjected her rights of homestead to the lien of the mortgage. *Mid Kansas Fed. S. & L. Ass'n. v. Binter*, (Kan.), 415 P.2d 278 (1966). The observations of the court concerning Dorothy's conduct are worth quoting.

"She had a right to do with her property as she saw fit. She took the unusual method of conveying it by an instrument which, on its face, gave her husband the exclusive right to deal with it as he saw fit, ostensibly for the ultimate purpose of securing a loan upon the property. She clothed him with apparent authority to encumber the property without further action on her part. This is exactly what her husband did, although without any accounting to her. By her own acts in making the deed and concealing her marriage, she made possible the deception practiced upon the mortgagee."

**Joint tenancy.** *A*, *B*, and *C* owned land in joint tenancy. *C* conveyed an undivided 1/20th of his interest to *D*. It was held that this severed the joint tenancy as to *C*'s original one-third interest, but left the joint tenancy subsisting as to the two-thirds held by *A* and *B*. *Giles v. Sheridan*, 179 Neb. 257, 137 N.W.2d 828 (1965). This ends the speculation we have had on this point. 38 Minn. L. Rev. 466, 472. We have previously had holdings that where three persons owned land in joint tenancy, there is a severance as to the third conveyed where the entire third is deeded to a stranger. *Hammond v. McArthur*, 30 Cal.2d 512, 183 P.2d 1; *Morgan* v. *Catherwood*, 95 Ind.App. 266, 167 N.E. 619. We have also had holdings that where one of three joint tenants conveys his third to one of the other joint tenants, this severs the joint tenancy as to that third, leaving the other two-thirds in joint tenancy. *Shelton* v. *Vance*, 106 Cal. App.2d 194, 234 P.2d 1012; *Jackson* v. *O'Connell*, 23 Ill.2d 52, 177 N.E.2d 194. And it is clear that *X* may convey a half interest in his land to *A* and a half interest to *A* and *B* as joint tenants. *In re Galletto's Estate*, 75 Cal.App.2d 580, 171 P.2d 152. But *Giles* v. *Sheridan* is the first case dealing with conveyance by one of several joint tenants of a fraction of his interest. In Clark v. Carter, 70 Cal. Reptr. 793, it was held that a joint tenancy is not severed where one joint tenant makes a deed to himself as grantee.

**Conditions as creating a general plan.** In a recent Texas decision all the lots in a subdivision except six previously conveyed were conveyed by the subdivider subject to identical conditions restricting the lots to residential purposes. Each deed contained a reverter clause. A lot owner brought a class action seeking to have the scheme of restrictions set aside because of change of neighborhood and the court granted the relief prayed for. Simon v. Henrichson, 394 S.W.2d 249 (Tex. 1965).

Of interest is the fact that the court treated uniform conditions as creating a general plan. By the old English law, of course, only the grantor in a deed creating a condition subsequent can enforce it. By definition, then, conditions, no matter how uniform, should be ineffective to create a general plan, for such a plan contemplates enforcement by the lot owners, not the subdivider. In other words, changes in neighborhood affect the property owners, not the subdivider. Indeed he has often conveyed out all the lots before

changes occur. Most modern American courts adhere to the view that uniform conditions do not create a general plan that lot owners can enforce. Werner v. Graham, 181 Cal. 174, 183 P. 945 (1919); *Shields* v. *Bank of America*, 255 Cal.App.2d 330, 37 Cal. Reptr. 360 (1964); *Finchum* v. *Vogel*, 194 So.2d 49 (Fla. Dist. App. 1967); *Whitton* v. *Clark*, 112 Conn. 28, 151 A. 305 (1930); *Goodman* v. *Bingle*, 48 S.W.2d 432 (Tex. Cir. App. 1932). However, in two states the courts treat identical conditions as proof of the creation of a general plan of restrictions enforceable in equity by the lot owner. *Sayles* v. *Hall*, 210 Mass. 281, 96 N.E. 712; *Genske* v. *Jensen*, 188 Wisc. 17, 205 N.W. 548.

Since by the prevailing rule, uniform conditions do not create a general plan, the existence of change of neighborhood that might ordinarily be deemed to render a general plan enforceable should be immaterial, and again, this seems to be the prevailing view. However, again two states have held that the change of neighborhood doctrine applies to the right to enforce uniform conditions. Letteau v. Ellis, 122 Cal.App. 584, 10 P.2d 496; Koehler v. Rowland, 275 Mo. 573, 205 S.W. 217. These decisions seem explainable only on the basis that uniform conditions create a general plan enforceable by the lot owners, for, as previously observed, a change of neighborhood has little economic impact on subdivider who has conveyed out all his lots. One might hazard the guess that at times the courts and litigants perhaps lose sight of the historic difference between conditions and covenants.

Another point deserving of attention is the right of plaintiffs to bring a class action to have restrictions set aside. The Texas court and some others have assumed that such a class action can be brought. There is a contrary view, namely, that a proceeding to enforce or cancel restrictive covenants concerning real property contained in an agreement or deed is not such an action as can be the subject of class representation. This position has been taken by both the United States Supreme Court and the Illinois Supreme Court. See *Hansberry* v. *Lee*, 311 U.S. 32; *Otto* v. *Alexander*, 383 Ill. 482, 50 N.E.2d 511. General plan restrictions create not only a common right in each property owner to insist on the validity of the restriction, but also impose an obligation on each property owner not to violate such restrictions or covenants. Thus, in any proceeding to enforce or cancel the restriction *it would be impossible to determine whether the persons not before the court desire to enforce their common right or to relieve the property of what appears to be an obligation and, certainly, those persons before the court should have no right to make this determination for them.* In other words, there is no assurance of community of interest in the remedy or relief sought or that the persons who are before the court adequately and fairly represent those persons who are not.

**Mechanic's liens—priorities as to mortgages.** In a good many states priority of lien as between a construction lender and the mechanics' lien claimants depends upon whether the mortgage was recorded prior to the commencement of construction. In a sensible decision the Utah Supreme Court held that commencement of "offsite" construction (sewers, streets, etc.) prior to recording of the mortgage would not confer priority on the mechanics' lien claimants. *Western Mortgage L. Corp.* v. *Cottonwood Const. Co.*, 424 P.2d 437 (Utah 1967). The notion that a man in overalls digging in a street blocks away from a construction site must trigger inquiries by a construction lender lest he lose his priority seems utterly preposterous. After all, the philosophy underlying the priorities rule is that "the fact of the improvement gives its own notice to the world" and enables lenders "by ocular examination to ascertain whether they can * * * buy or take a mortgage safely." *Schroetter Bros. Hdw. Co.* v. *Croation "Sokol" G. Assn.*, 332 Mo. 440, 58 S.W.2d 995 (1933). Plainly, this refers to construction on the construction site, and Utah so holds.

In harmony with the philosophy expressed in the foregoing decision is a thoroughly sound case in Minnesota. Minnesota also is one of the states giving priority of lien to the mortgage that is recorded prior to the commencement of construction. In the decision in question, architect's services took place prior to the recording of the mortgage, and it was contended that all liens arising out of construction related back to the date of the architect's services, thus priming the mechanic's liens. Note, in this connection, that in Minnesota architect's fees are lienable. The court re-

jected the contention, stating that, as to a mortgage, commencement of construction is the actual and visible beginning of the improvement on the ground. *Reuben E. Johnson Co.* v. *Phelps*, (Minn.), 156 N.W.2d 247 (1968). In a somewhat similar vein, a court in Arkansas held that leveling the ground with a bulldozer and removing old foundations in anticipation of new construction would not cause the liens arising out of construction to relate back to this period and prime the mortgage. *Clark* v. *General Electric Co.*, 243 Ark. 399, 420 S.W.2d 830. All three of the foregoing mechanic's lien decisions to some extent rely upon *Rupp*, v. *Earl H. Cline & Sons*, 230 Md. 573, 188 A.2d 146, 1 ALR 3d 815, a case well worth reading.

In the so-called "priority states," such as those we have been discussing, one of the problems that arises stems from the fact that the construction mortgage, when handled according to recognized routines, goes of record before construction commences, but this, obviously, is never true of the permanent mortgage that pays off the construction loan. However, there are two recent decisions holding that the permanent mortgage is subrogated to priority enjoined by the construction mortgage. *Peterman-Donnelly Eng. & Const. Corp.* v. *First Nat. Bank*, 2 Ariz. App. 321, 408 P.2d 841 (1966); *Planters Lumber Co.* v. *Wilson Co.*, 241 Ark. 1005, 413 S.W.2d 55. The prudent permanent lender may well insist upon a subrogation agreement, thereby bringing himself within the rule that under conventional subrogation knowledge of the intervening lien is immaterial. *Wilkins* v. *Gibson*, 113 Ga. 31, 38 S.W. 374.

**Bankruptcy — Contracts of sale.** Lawyers representing purchasers are frequently uneasy about the installment contract for the purchase of land. One cause for this uneasiness is well illustrated by a recent decision. A contract for the sale of land was entered into but before the contract was consummated by the execution of a deed the seller became bankrupt. A trustee in bankruptcy was appointed and sixty days elapsed without the trustee taking any action with respect to the contract. The court held that under § 70 of the Bankruptcy Act the trustee had a right to affirm or disaffirm the contract and by taking no action within the sixty days he had elected to disaffirm the contract. Glos Petroleum v. Collazo, 316 F.2d 257 (1963). To like effect is the decision in *In re New York Investors Mutual Group*, 143 Fed.Supp. 51 (1956).

*Restrictions—eminent domain.* In a recent case a school district condemned some lots for school purposes. The entire subdivision was subject to a general plan restriction limiting use of the lots to residential purposes. A lot owner filed a suit for damages and the court held he must be compensated, inasmuch as building restrictions create property rights protected by both the federal and state constitutions. *Meredith* v. *Washoe County School*, 435 P.2d 750 (Nev. 1968). The decisions on this question are conflicting. 4 ALR 3d 1121; 2 *Nichols, Eminent Domain*, § 5.73, p. 125. Among the questions that remain unanswered is the question whether all lot owners are necessary parties to the condemnation where the statute requires that the condemnor implead all persons having an "interest" in the land. The problem is discussed in *Kratovil and Harrison, Eminent Domain, Policy and Concept*, 42 Calif. L. Rev. 629-634.

*Right of First Refusal.* An important current question relates to the so-called "right of first refusal." Here a lease gives to the lessee the right to buy the property at the same price the landlord is willing to accept from a third party purchaser. Suppose that the premises are subject to a lease of this character. Suppose, further, that the landlord thereafter executes a mortgage on the property. The mortgage is defaulted and foreclosure takes place. Now we come to the mortgage foreclosure sale. The mortgagee buys the property at the foreclosure sale. Does the lessee now have a right to buy the property from the mortgagee at a price equal to the foreclosure sale price? In a recent Texas case the Court of Civil Appeals held that the lessee did indeed have such a right (Gochman v. Draper, (Tex. Civ. App. 1965) 389 S.W.2d 571) but the Supreme Court of Texas took a contrary view (Draper v. Gochman, 400 S.W.2d 545 (1966)). However, in some states the view taken by the Texas Court of Civil Appeals prevails. Price v. Town of Ruston, 171 La. 985, 132 So. 653 (1931); Cities Service Oil Co. v. Estes, 155 S.E.2d 59 (Va. 1967). To the prudent mortgagee this would certainly suggest that, until the local courts speak, any such right should

be subordinated to the mortgage so that the mortgagee is free to bid any price he chooses at the foreclosure sale. Obviously the language of this subordination must be carefully selected.

*Deeds—exceptions and reservations in favor of a stranger.* In a recent Kentucky case, the grantor included in a deed a provision "reserving" to one Jesse Townsend, a stranger to the deed, one half of the oil and gas. The court held that the deed was an effective conveyance to Townsend of the half interest in the oil and gas. The court said that the sensible course is to be guided by the intention expressed in the deed. Artificial rules, such as the rule forbidding reservations to third persons, ought to be abolished, the court said. *Townsend* v. *Cable*, (Ky.), 378 S.W. 2d 806 (1964). In contrast are *Burnell* v. *Roush*, Wyo. , 404 P.2d 836 (1965) *Bauer* v. *Bauer*, 180 Neb. 177, 141 N.W.2d 837 (1966), and *Stetson* v. *Nelson*, N.D. , 118 N.W.2d 685 (1962). In each of these cases the court struck down an attempted reservation or exception in favor of a stranger. There is an annotation in 88 A.L.R.2d 1199. It seems appropriate to observe that some courts that adhere to the old rule recognize and will nevertheless sustain a reservation of a life estate to the spouse of the owner-grantor. *Saunders* v. *Saunders*, 373 Ill. 302, 129 ALR 306.

*Rights of Survivors in Proceeds of Contract of Sale.* Where a husband and wife enter into an installment contract to sell their land, and one of them dies before the purchase price is fully paid, questions arise as to who gets the balance of the purchase price, the surviving spouse or the estate of the decedent. Where the parties held the land in joint tenancy, some courts hold that the right to the money goes to the survivor just as though there were a joint tenancy in the contract price. *Watson* v. *Watson*, 5 Ill.2d 526, 126 N.E.2d 220 (1955); *Hewitt* v. *Biege*, 183 Kan. 352, 329 P.2d 872 (1958). Likewise where the parties were tenants by the entireties. *In re Maguire's Estate*, 296 N.Y.S. 528 (1937). In Michigan this is the result by virtue of a statute, *DeYoung* v. *Mesler*, 373 Mich. 499, 120 N.W.2d 38, 41 (1964). Even a condemnation award on land held in tenancy by the entireties is held by the same tenancy. *Smith* v. *Tipping*, 349 Mass. 590, 211 N.E.2d 231 (1965). As to a purchase money mortgage taken back by sellers who are tenants by the entireties, the decisions are conflicting. 64 A.L.R.2d 8, 47 (1959). Maryland recently decided, however, that where joint tenants sell land the contract price is held in tenancy in common. *Register of Wills* v. *Madine*, 242 Md. 437, 219 A.2d 245 (1966) (citing many cases). And in Arizona the Court held recently that although the sellers were joint tenants the sale price became community property. *Smith* v. *Tang*, 100 Ariz. 196, 412 P.2d 697 (1966).

Where the husband alone owns the land, but his wife joins with him in a contract of sale, quite probably the contract will call for the purchase price to be paid to the "sellers." Nevertheless, this joinder is only for the purpose of releasing dower or other marital rights and gives her no right in the proceeds of the sale. Estate of Fisher, 22 Wisc.2d 637, 126 N.W.2d 596 (1964).

*Products Liability in Sale of Homes.* In *Schipper* v. *Levitt & Sons, Inc.*, 44 N.J. 70, 207 A.2d 314 (1965), the defendant builder sold a mass-produced house to a plaintiff's lessor, but neglected to install a mixing value in a gas fired hot water heater, as recommended by the manufacturer. Plaintiff's minor son received serious burns when he drew scalding water from a bathroom faucet. The defendant was held liable. As in products liability, the absence of privity was no bar to recovery. This decision has been followed in a number of recent cases holding a builder liable for defects where he sold a completed house. *Waggoner* v. *Midwestern Development Inc., (S.D.)*, 154 N.W.2d 803 (1968); *Frasher* v. *Cofer*, (S.C.), 160 S.E.2d 560 (1968); *Totten* v. *Gruzen*, 245 A.2d 1 (1968) *Humber* v. *Morton*, 426 S.W.2d 559 (1968). Among the recent discussions of this problem are the following: 1 Follmer and Friedman, Products Liability, § 5.03 (5)(b); Stewart, "Implied Warranties in the Sale of New Houses," Note, 26 U.Pitt. L. Rev. 862 (1965); Haskell, "The case for an Implied Warranty of Quality in Sales of Real Property," 53 Geo. L. J. 633 (1965); Gibson and Lounsberry, "Implied Warranties—Sales of a Completed House," Comments, 1 Cal. Western L. Rev. 110 (1965); Smith, "Torts, Implied Warranty in Real Estate, Privity Requirement," N. Car. L. Rev. 236 (1965); Ramunno, "Implied Warranty of Fitness for Habita-

tion in Sale of Residential Dwellings," 43 Denver L. Rev. 379 (1966).

*STATEMENT BY MR. MARTIN:*

In country this beautiful it is almost sacrilegious to be indoors, and I suspect that a good many are out sightseeing and playing golf.

One of the definitions of an expert is just an ordinary fellow who doesn't know much about the subject, and is a long way from home. That makes me an expert because it's a long way to Miami.

Bruce Jones has just explained the matter of an insurer's obligation to defend. Because our subjects are so interrelated, he has dealt with some aspects which relate to my subject. Let me say at the outset that the more one reads the case law in the United States dealing with casualty insurance policies, the more he believes that an insurer had better be extremely cautious and knowledgeable in declining either to defend or to settle within the policy limits. Stated affirmatively, the insurer had better be rather positive either that it has no liability, or, having liability, the damages are questionable or small, before it refuses to settle within the policy limits when requested so to do. Generally speaking, the failure to settle within policy limits when requested by the insured so to do can be an expensive mistake resulting very frequently in the courts holding, under varying circumstances, that it was bad faith on the insurers' part, with the result that the insurer had to pay not only the policy limits, but all of the excess amount of the judgment as well.

How about trying this on your nerves and your bank balance, especially if you are a title insurer, the one who has the real risk. In the New York Law Journal of November 29, 1967, is a headline which reads, "Insurance Company Ordered to Pay $175,000 Against Policy for $10,000." It reads that "Judge James A. Coolahan of United States District Court of New Jersey found the insurance company liable mainly because it exercised 'Bad Faith' in declining a pre-trial settlement offer of $10,000. The amount of the offer, by the attorney for the injured woman, was the limit of the policy. . . . Judge Coolahan said that insurance companies have an obligation to 'Exercise good faith in dealing with with offers of compromise, having both its own and the insured's interests in mind.

"He observed that although conflicts of interest between the company's desire to minimize its liability and the insured's desire to keep any possible award within his policy limits may often arise. Allstate's 'Disinterest with settlement' in this case 'seems to have been motivated by a desire to gamble on the outcome of the trial'.

"The court said that certain aspects of the case 'strongly indicate that the entire affair was mismanaged and negligently handled by Allstate'."

The judge said further, ". . . the 'matter was flagrantly violated by Allstate'. It was 'absolutely clear on the record that the law firm' engaged was 'little more than an arm of Allstate, their benefits, salaries and collateral expenses all being paid directly by Allstate'."

In the case of *Canal Insurance Company vs. Sturgis, 114 So.2d 469, Fla. DCA First, REH. Den. 2/10/59,* the court stated, "as we view it, the amount in excess of policy limits which an insured might in a proper case be able to recover against the insurer because of its negligence or bad faith in failing to compromise or settle a claim is not truly of the character of 'insurance', but rather constitutes damages resulting from the insurer's tort or breach of contract."

One of the more interesting and more recent leading cases on the subject, still dealing with liability insurance, is *State Farm Mutual Automobile Insurance Company vs. Marcum, Etc., et al., Court of Appeals of Kentucky 3/31/67, 420 SW2d 113.* Here the insurer failed to settle within the policy limits when requested by insured to do so. The appellate court held that such refusal to settle three very substantial claims within the policy limit of $20,000.00 *when liability of insured appeared reasonably certain* was because of insurers' bad faith, and resulted in the insurer being stuck for the amount of the policy plus $34,000.00 excess. In a nutshell, that case holds what seems to be the weight of authority and the prevailing rule in the United States today: A liability insurer which exercises bad faith in refusing to settle a claim against its insured within policy limits may become liable to insured for amounts in excess of the policy limits. This case held further that the entry of a final judgment against the insured, rather than the satisfaction of the judg-

ment, gives rise to cause of action against insurer for bad faith in refusing to settle the claim, and the court seemed to emphasize this when the liability of the insured appeared reasonably certain.

The same court said something else that we had all better take home and remember:

> "The insurer, as a professional defender of lawsuits, is held to a standard higher than that of an unskilled practitioner."

The court went on to say that an automobile liability insurer must not abuse power it has to negotiate and make settlements and refuse to settle within limits of policy if damage to insured is reasonably certain.

In the instance of the Kentucky case, it appears that the policy contained a provision obligating State Farm to defend any suit against the insured which alleges bodily injury or destruction and seeks damage on account thereof, even if such suit is groundless, false or fraudulent, but the policy went on to provide that the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient. This policy provision greatly influenced the outcome of the litigation. The facts in the Marcum case were dwelt upon at length and were such that the court said that it should have been obvious to the insurance company that the judgment would be far in excess of the insurance policy limit of $20,000.00; and that State Farm was confronted with a dilemma because the claims of the three surviving children were not being asserted in the instant litigation. The court said the company could have extricated itself from the dilemma by filing an interpleader action and paying the policy limits into court, but that it did not do so. The court said these failures in these circumstances were evidence of bad faith. The court said further that an insurer is not bound to act to the prejudice of its own interest. Nonetheless, it must not abuse the power it has to negotiate and make settlements and refuse to settle within the limits of the policy if the damage to the insured is reasonably certain.

What is bad faith? Well, here is what the Kentucky case said it is: " 'Bad Faith' is a general and somewhat indefinite term. It has no constricted meaning. It cannot be defined with exactness. It is not simply bad judgment. It is not merely negligence."

"It imports a dishonest purpose of some moral obliquity. It implies conscious doing of wrong. It means a breach of known duty through some motive of interest or ill will. It partakes of the nature of fraud * * * it means 'with actual intent to mislead or deceive another' " * * *

I have virtually no doubt at all that the same general reasoning will be exercised by courts in dealing with title insurance policies as has been used when dealing with liability insurance policies. I believe the same bad faith test will be applied to a title insurer in order to determine if it shall be liable for damages to an insured in excess of the face of a title insurance policy.

The most recent appellate court case I have heard about is *Seward vs. State Farm Mutual Automobile Insurance Company, decided March 20, 1968*, and reported in *392 Fed.2d 723*. This case is worth your hearing about, and certainly not just because it came up from a Florida U.S. District Court. The appellate court held that an automobile liability insurer which wrongfully refuses to defend its insured cannot be liable in excess of its policy limit unless there has been an offer of settlement which the insurer might have accepted or used as the basis for negotiation. In that case the insurer refused to defend the policy holder on the ground that he was not covered by the policy. Although the trial court stated that the insurer's refusal to defend was "A shocking disregard of its obligations under the very policy that it meticulously drafted," the district court regretfully held that the insurer could not be liable beyond the policy limit of $10,000.00 whereas the insured had suffered a $57,000.00 judgment. The appellate court affirmed and used as its basic reason the fact that the judgment holder at no time had made an offer of settlement, either to the insurer or to the insured, and it was this fact the court found decisive of the case.

As I said earlier, I believe that the courts are going to apply about the same test where title insurance policies are concerned as they have applied where liability policies are concerned, that is, the test of good faith; and I believe that the determination of what is good faith will follow along the same guidelines.

I wish all of you good faith, good business, and no claims.

# "IMPROVEMENT OF PUBLIC RECORDS"

*Moderator:*

**LAURENCE J. PTAK**

*Treasurer, American Land Title Association; Vice President, Lawyers Title Insurance Corporation Cleveland, Ohio*

*Panelists:*

**ALBERT B. WOLFE**

*Chairman, Section on Real Property, Probate and Trust Law American Bar Association, Boston, Massachusetts*

**EDWARD N. GRSKOVICH**

*Vice President, Chicago Title and Trust Company, Chicago, Illinois*

STATEMENT BY MR. PTAK:

Niccolo Machiavelli was a very astute, if somewhat notorious, Italian politician who lived in Florence from 1469 to 1527.

The following quotation from him seems appropriate 450 years later.:

"There is nothing more difficult to carry out nor more doubtful of success nor more dangerous to handle than to initiate a new order of things."

The subject of this panel discussion, like ancient Gaul, is divided into three parts.

The first will deal with our present recording systems and plants with emphasis on their deficiencies.

The second will relate to some of the work which has been going on to cure deficiencies in recording systems.

The third will analyze the final impact on our business when and if the cure is accomplished.

It will be our purpose in this first portion of the panel to give some historical background to recording systems and methods employed in this country which have induced the creation of our title plants and to point out some of the shortcomings of both. Obviously, there will be variations from the usual in some areas but I hope my remarks will represent the typical.

The English abstract of title differs from the American in that it relates primarily to the title of a certain person and involves, in legal terms, an examination in personam. Thus, it has, as its ultimate purpose the proof of title in the vendor for a prospective transaction. The American abstract, conversely, deals with a certain parcel of land, the personal aspects being more or less incidental. This approach makes it a matter in rem and thus it is looked upon as giving evidence of the title of Black Acre whoever may own it.

Perhaps it is this English concept which led the early settlers in Massachusetts to enact the first American recording legislation out of which developed our practice of indexing documents of record to the name of the owner rather than to an identifier of the land. This is the fundamental principle which has guided our recording and indexing practices down through the many, many decades, namely:—to identify the record of the instrument with the person whose title it affects.

It is in this manner that we have, seemingly by inadvertence, created the gross anachronism in our recording and title evidencing customs by tying the ages-old English practice of abstracts as to the person to American recording and indexing, also as to the person; all the while preparing our abstracts and examining and insuring our titles as to the parcel of land.

It seems most unfortunate from this vantage point of hindsight that our predecessors in the recording field did not long ago appreciate the significance of this simple but basic fact; that the public and we, are for the most part, interested in the answer to the question "Who owns this parcel of land?" not "Does John Doe

own some parcel of land?" Similarly, we want to know the answer to the question "Is the title to this parcel of land encumbered by a judgment lien?" not "Has Richard Roe a debt to John Smith which may be an encumbrance on Roe's title?"

Of almost equal basic importance to *how* our recording offices index is *where* they index. In my home county, we go to the Recorder's Office for deeds, mortgages, etc.; to the office of the Clerk of Courts for divorces, foreclosures, judgments; to Probate Court for administrations of estates, guardianships, mental health matters; to the Treasurer's Office for taxes; to Federal Court for bankruptcies and other civil matters; to the Clerks of 60 odd different municipalities for special assessments as well as other miscellaneous offices for lesser matters. But here we have five major public offices all having essential data relative to title; all giving notice with respect to the persons involved rather than the land and each having a separate index through which we take notice.

Our industry has long recognized these fundamental weaknesses in the public recording and indexing systems. We have, at enormous past, present and continuing expense, built private title plants to mitigate the public error. We have scoured the public record offices for all data affecting title and have organized it in our offices, insofar as it is possible under existing law, with reference to the land which they affect by means of our tract books and similar devices.

We recognize, it is true, and likewise as a result of the deficiencies of existing law, that there are many items of record which affect title but which contain no integral reference to the land which is affected. Such data we index in our plants to the name of the person affected rather than to his land but we do this as a matter of necessity not desirability. It would certainly enhance the value of our plants if within them we could go to one place rather than to two.

Think, if you will, of the vast sums of money which have been spent on the original building of our plants. I say original because we are continually building as we lay today's bricks on our structure of yesterday.

No one will ever know the past cost of title plants in this country but it must surely be in the hundreds of millions of dollars.

If no fundamental change is made for the future, we can look forward to the expenditure of many more hundreds of millions as time goes on.

And, let me emphasize, we spend this money not to create something new but only something different. Our title plants are, in essence, a duplication of the public records. The differences are, that on the one hand, we index geographic data geographically whereas the public offices index geographic data alphabetically—on the other hand, we take the alphabetic data in many public offices and bring them together in a single alphabetic index in our offices.

Surely, this duplication is an enormous and unconscionable waste and we should find a means to eliminate it.

Let us take a look at another area of waste for which we are largly responsible. In most areas where plants are maintained, competitive plants are maintained. Granting that the circumstances in a particular county justify the existence of a title plant, Company B or Abstracter B, seeking to compete with Company A or Abstracter A who already has a plant, builds one for himself thereby, in the sense of this discussion, creating a third duplicate of the public record.

It is true that there has been a recent trend in our industry toward the creation and maintenance of joint plants. By these, two or more competitor participants share the cost and avoid the duplication and consequent waste. This, in my opinion, is all to the good.

Conversely, however, in very recent years, we have seen new duplicate plants built in two of our largest cities at costs approaching ten millions of dollars.

If these new plants produced a greater quantity of title evidences or produced them better or more efficiently, we might find that justification for them. But the fact is that they are only competitive in the narrowest sense. Their existence does not create a potential for a greater overall volume of policies or better policies or more efficient production —it simply enables two competitors to compete.

It is an overriding truism of this business that only extremely rarely do two competitors examine the same title at the same time and, indeed, it is quite likely that a great deal

of the data in any competitor's plant will never be used by him. This point is illustrated by the fact a proper title plant must be built on a monopolistic basis—that is as though the owner would enjoy all of the title business in his county and thus would sometime use all of the data in his plant.

But no competitor has a monopoly on the business in his comunity. His plant, however, necessarily contains all of the title data available. It follows, therefore, that as to the share of the market which competitor A captures, competitor B's plant will be largely unused and vice versa.

Let us take a look at another area of waste that is unavoidable under our present system of public indexing and recording the deficiencies of which require us to maintain plants. This portion of the discussion will relate to that part of our plants which we must organize on an alphabetic rather than geographic basis since the data make no reference to the land affected.

Again, my home county will serve as an example. Cuyahoga County, Ohio has a population of about 1,750,000 people who live, work and play on about 430,000 separate parcels of land. We have, then, a proportion of people to parcels of 4 to 1. Let us assume, for this purpose, that each of the parcels is owned by a different person. This we know is not true. Many people own multiple parcels. Some parcels are owned by more than one person but I think the 4 to 1 proportion is fair for our purposes. The plant items we are talking about consist largely of judgments, Federal and other tax liens, bankruptcies, estates, guardianships, etc., and they exist roughly in proportion to the population. In other words, using our 4 to 1 formula, we have four times as many such items to index as have reference to owners of land or, put in another way, 3 of the four items in this index will not affect the title to any land and, consequently, will never be used by us and, therefore, wasted.

Consider next, if you will, that much of this data, judgments, tax liens, bankruptcies, etc., relate to people in financial difficulty. They are not, for the most part, sustained by the solid, honest, thrifty home owners of the community. This, of course, means that another sizable proportion of these data will be of no interest to us.

Another factor bearing on this argument is that many of these matters, which otherwise might affect title are eliminated from our consideration by reason of having been created before or after the affected person is in title and thus of no concern.

Finally, we have the situation, alluded to before, of the particular matter being of interest to one competitor who is examining a certain title but of no significance to the one who is not.

To recapitulate: If we eliminate 75% of such references on the basis of total population versus freeholders; 50% of the remainder, or 12½%, on the basis of solvent versus insolvent owners, ½ of that from the standpoint of the lien being created out of phase with the period of ownership reducing the useful part to 6¼% and further divide the figure in half to 3⅛% relative to two competitors who equally share the market, we create a hypothesis which, from a mathematical point of view, renders the alphabetical portion of our plants almost useless.

This, obviously, would be a ridiculous conclusion but it does further point up the fact that a great deal of the material in our plants is of no use and thus wasted. In the area of our alphabetic indexes, I think it is fair to assume that only 10% or 20% has or will be of value to us. The difficulty being that, at the time of indexing, we have no means of knowing what will or will not be pertinent to the titles we will examine.

Finally, and in summary, we have an indexing and recording system in this country which is foreign to it and foreign to the needs of the public and to us and the Bar who are the agents of the public in abstracting and certifying and insuring titles. This by reason of relating the record to the person rather than to the land which it affects. We have a multiplicity of record offices whose indexes are maintained in this same anachronistic way. As a result of the deficiencies in the public records, we are compelled to maintain private title plants in order that the real estate investing public may be safely and speedily served. Such plants, being in large part duplications of the public record, are wasteful and to the extent that they are multiplied as a result of competition, the waste is multiplied. The nature of the business being what it is, our plants

perforce must unknowingly contain a large proportion of useless material —more waste.

Waste, in my book, is immoral; being immoral, it should be unconscionable and reprehensible. A change ought to be made.

STATEMENT BY MR. WOLFE:

On behalf of our American Bar Association Section, I express appreciation to the American Land Title Association and your officers and members concerned for the fine sense of public responsibility evidenced both in the establishment of your Committee on Improvement of Land Title Records and in the manner in which they have undertaken their assignment, and I thank you for the priviledge of joining in the discussion of this challenging subject here.

Improving methods of keeping records in various public offices sufficiently to overcome the major inefficiencies and wastes in the searching and checking necessary for title transactions is a challenge that has baffled past generations.

But developments in surveying and map making, and in electronic data storage, indexing, retrieval, processing and reproduction now offer new tools for these old tasks. The title industry is increasingly demonstrating in its more advanced plants the practicality of these tools within the limits in which the industry must operate. Municipal and county electronic banks of data for tax and public land use control and planning administration are increasingly and dramatically demonstrating additional potential of these tools.

Public deed recording offices are increasigly employing electronic data processing equipment for preparing grantor and grantee indexes, and even for storage and retrieval. Various governmental units at federal, state and local levels are taking increased interest in parcel information systems and the dynamics of information flow.

To do what needs to be done will take the experience and skills of surveyors and civil engineers, of title insurers and conveyancers, of systems analysts and economists and of public administrators and legislators, to study not only records offices, but all the processes involved and the practicality of measures evolved. Neither the Bar nor the title insurance industry nor both can do such a job alone, but it is none too soon for us both to be thinking about it and working towards it.

The development of municipal and county land data banks within the last five years is perhaps the most significant single pressure for change. A score or more are now in operation in places varying in size from Alexandria, Virginia to Philadelphia.

The District of Columbia is a modest example. About four years ago their Government Management Office prompted largely by a demand for a city-wide survey of housing conditions started a data bank for their 153,000 parcels, using Assessor's records and plans a their base, and gradually adding data from a dozen different departments as demands for such coordinated data for the respective departments developed.

At a cost of $32,000 for the first 18 months (including $13,000 in staff time) they figure they accrued about $76,000 in indirect savings. Some 60 items about each lot are included, such as lot numbers, street address, owner's name, square footage, frontage, land use building class and material, year built, license and certificate of occupancy data, last inspection, land and improvement assessed values, year last reassessed, zoning, building condition and code violations. It is now maintained on tape and set up for printout of lists of lots and data for internal use only, and has been pretty much monopolized this last year by their urban renewal authority on review of neighborhoods to determine where deterioration is occurring and steps are needed.

Philadelphia has some 600,000 parcels. Five years or so ago it had five different lot numbering systems in different departments — now almost all their data is under a single system and on tape.

None of these administrative data banks is yet on random access—third generation equipment—but the District of Columbia and Philadelphia are now transferring their banks to such gear, and Santa Clara and Alameda Counties, California, are adding such land data to the "real time" banks they already maintain of data about persons and personal property.

Much of the parcel data in existing land data banks is not of particular concern in land transactions, but many items are, and many more that are could be added if the output were made available to the public and demand warranted. The random access banks could also be programmed

to printout only what is needed, and charges could be made for printouts to help defray costs.

Where such banks are maintained it is only a matter of time before purchasers and mortgagees will want to check them for every mortgage and purchase. When that time comes, and building, zoning, and health code violation data is regularly included, code enforcement will be greatly aided. The main thrust for land data banks so far is from planning, taxing and code enforcement officials.

Increased usefulness of these data banks even for administrative purposes will increasingly depend on their continuous and accurate updating from deeds and other documents as recorded, and when that is done, they can relatively easily include for each parcel all that a normal records office tract index would include. One of the problems with public use of some of these banks is that they are based on assessors plans and records of owners and may be subject to the same errors in those records that can invalidate tax titles, but closer coordination with deed records can minimize such errors.

For many purposes, and particularly for aggregating of data by areas and comparison of data between areas, each parcel must carry a coded identifier that locates it within a geographic grid, in addition to any lot and block numbers or street addresses used. The possibilities afforded by random access equipment and such grid coding were well illustrated by a prototype demonstration held in New York this January, discussed in my article in our Section's Spring Journal, reprinted in the Title News, where I referred also to some of the legal problems that may be raised, as I see them. Further action in New York has been delayed by the untimely death shortly after my article was written, of the City Registrar responsible for the demonstration.

Another development within the last five years bears on our subject. In 1963 the American Law Institute undertook a major study of zoning, subdivision control and public land planning law, with substantial financial aid from the Ford Foundation. The time and effort of determining with desirable certainty what can be done with real estate under public land use controls, have in too many instances come to be as great or greater than those of determining title. Title policies expressly deny protection here except to a limited extent in particular localities. Where a lawyer gives a title opinion or certificate he, too, must usually deny protection unless special investigation is made, but unlike a title company he does fully protect himself by such denial. In many situations if he does not further explain the risks or refer his client to proper local officials or sources, he may be held accountable.

This project's draft of five Articles for a twelve Article Model Land Development Code, was discussed at their annual meeting this May. These Articles provide a restructuring of present zoning and subdivision control into a unified system of special and general development permissions, give government units that have gone through comprehensive planning procedures broader and more flexible controls, and make various provisions to assure fuller consideration by local boards of the needs of adjoining communities, the region and the state. Provisions dealing with enforcement have yet to be presented, but a system of record "enforcement notices" has been under consideration. The draft's "Introductory Memorandum" says that the planned Article 11 will attempt to integrate publicly imposed encumbrances or restrictions on land use into the public land record systems so that title examiners and others interested in the title history of a parcel of land have a system of public records which disclose zoning or subdivision restrictions to the same extent that the records disclose private easements, covenants and the like.

A few cities, such as Philadelphia and San Francisco, already have adequate parcel maps and zoning records, and provide public certificates of zoning status which meet many of the purchaser's and lender's needs, and could be machine processed.

Where title records are indexed only by grantor and grantee, the difficulties of enforcing authorities in keeping track of record ownerships sufficiently for this purpose might be quite considerable. Processing such data through land data banks or indexes kept by parcel and computer, either in the same master file as title data or in a compatible sub-system would be far more efficient. How far this project may encourage such data banks or public record indexing by parcel remains to

be seen.

"Second generation" zoning concepts, such as ratios of floor area to land area and the like, accentuate the needs. Consider the case of Alley vs. Building Inspector of Danvers (234 NE 2nd 879, Mass. '68 Adv. Sh. 381, March 5). In a 10,000 square foot zone two lots containing together about 25,000 square feet had houses on one street and back yards on another. A purchaser of one lot sold the house with 8,500 square feet, and bought enough of his neighbor's back yard to give him a lot of more than 10,000 feet on the back street. He got planning board endorsement of a plan of the new lot and applied for permit to build on it. He had violated the zoning law by both his sale and his purchase. The board's endorsement assured only that the back street was adequate access, and gave the lot no standing under the zoning law. The permit was held properly denied. From the court's reasoning it appears that any subsequent purchaser of the lot would have been denied a permit too. How can administrators know to deny permits and purchasers know to expect the denial in such situations except by better title record check?

Also in 1963, the same year this ALI project started, our Bar Association Real Property Law Division reorganized its Committees and their functions under a plan propsed by Division Director Allison Dunham before he resigned to become Executive Director of the National Conference of Commissioners on Uniform State Laws, and still later the Chief Reporter of the ALI project. The Committee on Improvement of Conveyancing and Recording Practices was succeeded by one on Improvement of Land Title Record in recognition of the key role of such records. This Committee has since served as a clearing house of information on developments in such records, both title and administrative, and on the growing interest in such improvements by a wide variety of organizations, public and private. With support from the United States Department of Agriculture's Economic Research Service and from the University of Cincinnati where Professor Robert Cook, its Chairman until this August, teaches, research was conducted there, criteria were evolved for a Comprehensive Unified Land Data System, known by its acronym, CULDATA, a conference on that subject was held there in December 1966, the constructive papers of that conference were widely distributed and are familiar to many here, and a booklet by the Civil Engineer chiefly involved entitled "Fundamentals of a Modern System of Land Parcel Records" was published last month.

Our Section's Improvement Committee continues under chairmanship of Franklin N. Ornstein, formerly Clerk of Nassau County, Long Island, who introduced the microfiche system in use there since last September. Professor Cook continues his liaison activities for the Committee, particularly with ABA's new Standing Committee on Law and Technology, formerly the Special Committee on Electronic Data Retrieval.

The American Congress on Surveying and Mapping appointed a Committee on Improvement of Land Title Records last year and has been making studies of types of index maps and parcel identifiers best suited to geographic indexing of the various types of data on a common basis, interchangeable over the country, utilizing existing surveying to the maximum feasible, and also study of the optimum objectives where new surveying is underaken.

A Workshop was held the end of July at Mackinac Island on Problems of Improving the United States System of Land Title Records, sponsored by the North Central Land Economics Research Committee and supported also by the Department of Agriculture's Economic Research Service. It was attended by men experienced in all the disciplines I first referred to, except legislators, including all members of the ALTA Committee and the Chairmen and other members of the ABA and ACSM Committees. The very constructive papers presented there are scheduled for December publication. The interdisciplinary informal discussions were even more constructive.

The ACSM has now suggested calling a conference of outstanding experts in the fields of cartography, geodesy, photogrammetry and surveying in Washington with representatives from ABA and ALTA and possibly also from the Council of State Governments, whose Information Systems Committee is, we understand, carrying on work in this area—particularly as to parcel identifiers—following a significant general policy determining Report on Dynamics of Information Flow published in April by an Intergovernmental Task Force

on Information Systems. This Report recommended among other things, guidelines to be issued by the Director of the Budget, and federal grant-in-aid programs to assist state and local governments in developing and operating information systems.

Substantial consensus is developing on what is needed, both in public recording improvements and in further research.

Of first priority now is the work ACSM proposes. Parcel index maps, most now conclude, need not, in the initial stages at least, give exact courses and distances—only lines sufficient to distinguish each parcel from others.

Coupled with the discrete parcel identifiers being developed should be person identifiers more discrete than names—perhaps social security or tax numbers—to minimize idem sonans problems and permit mechanized checking of name-associated title items.

Also needed is work on forms for deeds and mortgages and assignments for mortgage warehousing, that can be standardized over the country as much as possible and readable by optical scanner.

A pilot operation may well be justified.

Legislation will be needed in due course to encourage or require use of the parcel and person identifiers and forms, and also to establish fixed periods for clearing current records of obsolete matters, and for reliance on fixed periods of record check for as much as possible, to avoid unduly entrenching present limitations.

Back records are not proposed to be included in the new systems, for reasons of expense if no other, except to the extent of reference for each parcel to a legal description wherever feasible.

It is possible that the necessary equipment may have to be maintained by the state or county and used by all other offices concerned on a shared time basis.

As to further research, we heard Professor Raushenbush's comments yesterday about American Bar Foundation interest. I can only reiterate that a principal problem for them as for any such research is finding the right men to head and do the work.

It is heartening to hear that ALTA's Board has at this Convention voted to contribute $5,000 to the National Conference of Commissioners on Uniform State Laws for its projected real estate financing—land transactions code project. The necessary work on standardizing forms could be included in that project, and possibly much more record improvement work if financing permits. I urge all present here who represent or deal with institutions called on to contribute to that project, to urge their institutions to respond generously. A National Land Records Institute with participation by the various disciplines concerned has been suggested as a possibility if needs cannot otherwise be met.

Public records improvement is not a glamor subject. It does not appeal as an immediate obvious need like coping with problems of war or ghetto, but in the long run the resulting efficiencies from such work can help us better cope with such problems too.

Such improvements should also in the long run benefit both the title industry and the Bar, as well as the public. They should enable the title industry and the Bar each better to play the role for which it is best suited. They should help reduce the tensions that trouble both. They will not eliminate needs to evaluate the records, and some form of abstracting for that purpose, nor for protection against record and nonrecord risks, but they should in time drastically reduce the number of man hours required of personnel trained to do what the machine can do if properly programmed and supported by legislation—personnel already in short supply. They cannot happen overnight. They may well mean more, not less work, but more efficient work for us in this room for the rest of our lives. The statistical analyses possible with computerized parcel indexing should enable many risks and aspects of title processes to be evaluated better than at present, and could lead to more refined and sophisticated, economical and wide-spread use of insurance, and to continuing improvements in title processing, closing procedures, and related services.

We may well have it within our power, with the help of others now concerned, to overcome major inefficiencies and wastes that have baffled past generations. We must not fail to make the effort.

STATEMENT BY MR. GRSKOVICH:

I'd like to compliment the other two members of this panel. Somehow, they got the popular "tell-it-like-it-is"

parts, while I have only to prophesy the future. Well, I'm not going to deny that I'm a fortune teller and then to sit down. After having spent the last eight years in systems work, I am fool enough to make predictions and prophesies at the slightest prompting.

First, let me assure those of you who plan to retire soon, that you might be able to do your same job for the next five to ten years without, necessarily, becoming very involved with computers, CULDATA or coordinate indentifiers.

But, for many of us, somehow, some of the things that have been described will affect our business and our lives. You can be sure that computers will keep coming. In your hands, you may like to think of them as tools. In the hands of your competitors, they could, undoubtedly, look like weapons. And, these machines are going to bring with them changes in laws, changes in procedures—and, possibly more important to us—changes in the people's needs.

But, before I talk more about the future, I'd like to speak a little about the past. If I, or anyone else, is to try to predict the course of the future, we should make judgment as to what has caused the so-called prolonged delay in the improvement of land records. Who or what has been the source of the chaos?

The reason I bring this up is because recently too many people have been seeking a scoundrel on whom they can place all the blame.

Since nowadays we often have to work with and defend ourselves and our systems against those with training in the traditional sciences, let's put the problem of the past in terms that they too can easily understand. Let's use an analogy with an easily observed fact.

We all know that—with age—coffee gets colder, and martinis get warmer. Why? Well, there's no need to look for typical villains. Some of you may answer, "because of the laws of thermodynamics." Or, you can—as one scientist has—blame it on "the cussedness of nature."

What is the point? The point is that all information is just like that coffee; the longer it stands before it is used, the less satisfying it is likely to be. The more different people's tastes it is intended to please, the less appealing it is likely to be to any one of them. Similarly, it's in the nature of information—and, therefore, title records, too—to become disorganized with age and with increases in the number of people who try to communicate with each other through these records. There is little point, therefore, in looking for any "willful obstructionists who stand in the path of progress."

While it may be premature to give a eulogy, respect and decency demand that someone say a few words about the nature of the problems we have faced and, generally, have successfully overcome.

The natural order is toward chaos. When you accept this principle, you understand a number of things. First, that if you do nothing you can expect things to get worse. If everything is left alone—conditions will not remain to man's liking. The second point, however, is that it is not easy to improve conditions; it goes against the natural inclinations that are as basic as laws of physics. It always remains a constant challenge to us to try to bring some amount of order out of impending chaos.

One question is: How much order in these records can we really get? A teacher in the grade school that I attended would, at times, write on the blackboard "Order is heaven's first law." However, this world is not heaven. On earth, man finds everything around him unruly. Recently, a man wrote that "Men like order, but are human because they are disorderly."

A comfortable environment always contains some elements of freedom and flexibility. This untidiness can cause confusion to some, but, its advantages at certain times and places may outweigh the liabilities.

For example, everything that Larry has said about the problems of an alpha name index is true. However, the story is told that at one time, a dying prospector named Joe scratched on a tin can "I give Molly all I've got." Maybe it's gotten too expensive to maintain an alpha index to give meaning to Joe's act, but it was nice that we could—and did do so—as long as we have.

Larry said that I would describe the picture of the future "after the cure." However, if I'm to talk about a cure, it would be nice if we could all agree on: Who is the patient? What is his affliction? What are the symptoms? What is the treatment going to be?

We can eventually come to agreement on these questions. But, before I

try to predict the probability of a cure, I want to know more about the training, competence, and motivation of the many who are volunteering to be the doctors?

We do know that there are today a lot of people——and there will be more—who have access to computers. They have become increasingly interested in land data. They want, and sometimes even need, the current information that the county recorders process. These people represent legitimate concerns for new laws and economic progress.

Eventually, probably within the next ten years, these new users of land data ownership will get the information they need. However, in the process, there is a possibility that our land laws and the mechanics of maintaining land ownership records may become subordinate to these other—non-conveyancing—needs.

What part of our so-called "sickness" is going to be the most resistant to these new electronic medicines?

Since all of our work is affected by laws written by lawyers, you can be confident that the rules we will have to follow—even in the future—will never achieve the simplicity and certainty that scientists and mathematicians find especially appealing.

Often in the practice of law, ambiguous opinions and laws can become "valuable tools for the tool box" of the lawyer—to be used to support a claim whenever they fit. This has caused many people to think that some lawyers have more than a reasonable respect for bad laws.

But, I do not want to overemphasize this point. Mr. Wolfe has told you of a number of current lawyer-sponsored projects to improve real estate laws. Mr. Early of the American Bar Association has said "We must not only understand, but actively help develop the new language of a computerized society." And, I am convinced that lawyers will do a great deal within the next five years to make many of our laws and practices more appropriate to the needs of this century.

However, when we enact merchantable title laws, we are telling someone that we got tired of carrying a lot of old information around for the protection of his possible ancient rights. When we ask people to use special codes with legal descriptions on their deeds, we are insisting that they speak a special language before we'll pay any attention to them. Obviously, these changes are proper provided that they have been done for the general good of the whole system—if they do, in fact, serve the common good. And, lawyers, more than any other group, will demand proof of these advantages before accepting changes that reduce or remove any of our present protections.

However, a number of other professions are now concerned with land data, and they are getting more money and power with which they can speed up the introduction of innovations, and maybe, even change the rules of the game.

Of course, there are some people who don't like our current system. They will object to any role private companies may play in maintaining and searching records related to land ownership. They would like to change the current mixture of public and private title record-keeping and searching facilities. And, they see the computer as the excuse by which these changes can be accomplished. Many feel that it's only with computers that most public officials can acquire and maintain the talents and other resources that are necessary to do an adequate job of land record-keeping and searching.

In addition, there are many people —both in and out of the title industry—who are properly concerned that many aspects of land record-keeping cannot be automated economically. Since most people are sure that these records will have to be automated, sooner or later, a growing number of people feel strongly that it has become important to approach the problem now—quickly and logically. To determine *now* what needs to be changed in order to prepare for the future, and *then* to make the necessary changes in an orderly way.

Of course, everyone knows that there are computers everywhere, doing every type of work. So, what's the problem with land records?

It takes a lot of time and money to automate. People can be expected to spend a lot of time and money to do something new and different, something that they haven't been able to do before, or when there's a radical change in the job requirements. However, changes in the real estate business have been and are likely to continue to be gradual, and, therethe existing record systems are less susceptible to the pressures for im-

mediate automation. And, it usually takes even more time, more money and more planning to install reliable computer systems than even the pessimists suspect.

At this point, I am sure that some of you may feel that like the traditional prophets we three speakers have done more worrying and complaining than prophesying. This is a valid observation and it underscores a point. No one can confidently predict the future, unless he is willing also to predict what role the title industry will choose to play. What you do next still does make a difference.

To those who are afflicted with the ailment that a modern poet has called "the potbelly of the intellect—indifference," I warn you that forces for change are already in motion. It is clear that the marketability and security of land titles can easily be endangered through inexperienced and unsophisticated tampering with land-ownership data.

We all have a responsibility to show our serious interest at this time and to give our impartial advice speedily. But, to do so will require that we adequately prepare ourselves with study and debate.

However, let's not simply take the traditional tack among the tangle of land laws and legal precedences in evaluating these proposed changes. While the work of Mr. Wolfe and others of various bar groups will need our support and must get it, the title industry has an even more singular responsibility.

All of us, including lawyers, surveyors, college professors, and public officials, have to orient our work toward the satisfaction of public needs. But, we of the title industry have a special ingredient to add—sales experience—and, therefore, market awareness.

Any new system must strike an appropriate balance between the many competing interests of the public. The free enterprise system has taught the title industry to avoid the apparent security of static objectives, and how to anticipate and prepare for the conflicts or priorities and strategies in our active society. Any new system should provide for the proper testing of marketing objectives in the "give and take" of the real world of land data users.

We must develop firm convictions about the title industry's role—both, present and future—in filling the dynamic needs of our economy and our communities. Then, we can with confidence and with enthusiasm face this fresh challenge.

# "MODERN MACHINERY FOR THE SMALL OFFICE"

**By RUSSELL C. LOWRY, JR.**

*Senior Systems Analyst and Assistant Secretary*
*Chicago Title and Trust Company, Chicago, Illinois*

Ladies and Gentlemen, it is with a great deal of pleasure the I address a group of title people because in this area, I feel most at home, and since at this moment I am some distance from home, I can pose as a genuine expert.

My subject which proposes to deal with modern machinery applicable to our business is to be treated from the viewpoint of a systems man who has plugged away in this area for a number of years. I should perhaps begin by stating my views on equipment as an investment for a title office. I do not, as some might expect, regard equipment or machines as something that replaces people. Indeed, I regard people, your staff in particular, as the most costly asset you possess. By comparison, an investment in equipment is almost negligible. Since there are a number of machines which I hope to treat today, that extend the capabilities of your staff, I regard that investment as highly desirable. But I do not subscribe, finally, to the statement you may hear made on occasion, "this machine will do the work of 30 men." I do not believe that there have yet been developed thirty machines that can do what one man can do—or undo what one small woman can do, on occasion.

I have operated for a number of

years at Chicago Title in a systems capacity. When first invited about a year and half ago to speak on this subject, I assembled material largely made up of areas of inquiry which we most frequently encounter. In other words—the subjects I propose to treat are those in which we know from our department's experience to be the most often requested for assistance and where the greatest technology advances appear to have developed.

I would like to speak first on copy making equipment.

To my way of thinking, the Xerox process is the most striking development in the copymaking machinery field in my total experience. I cannot imagine operating any title office or for that matter any business office without at least one Xerox copymaker. I speak specifically of the machinery that employs the selenium drum and produces copies on plain ordinary paper—or for that matter virtually any medium the user cares to substitute. This feature—the ability to make copies on plain paper —is what sets this machine apart from all others—and recommends its use in various systems applications besides mere copymaking. We have seen its use as an addressing device —wherein the hopper was loaded with mailing pieces and an addressee list posed sequentially on its copying glass. On another occasion we noted a fairly large Midwest corporation that actually employed 914 devices to effect a 3 for 1 stock split. Again its hopper was loaded with new stock certificates, the machine set for three copies, and the stockholder list posed on the copy glass—one at a time for each cycle.

Some of the newer applications of this process are a continuing source of interest to the systems people. I speak of the 3-2-1 apparatus for example, that photographically reduces legal documents down to 30% of their original size and fits them on to punch cards still quite readable. The companion device—called 1-2-3—restores them to full size from the punch cards with little loss of resolution. There is no microfilm involved here, gentlemen—I leave the application of such apparatus to your ingenuity.

Lest you suspect that a Xerox salesman has come in the back door, here let me also say that a big disadvantage of Xerox is perhaps that it works too well. Indeed I sometimes feel that we seem to be on some sort of a treadmill in the use of these devices. How many of you will agree with me that each time a Xerox salesman persuades you to buy the next larger model in order to speed up your copies and reduce your costs—you find your costs actually increase. This phenomenon leads to my next point.

We realized some months back at our company that we were paying something like $36,000 each year for the privilege of having three—2400 Xerox machines on our premises, and from these three machines, we discovered to our dismay, that nearly one million copies were being produced each year. Certainly this "Frankenstein" had better be stopped since the bulk of that copying was not directly related to production of our principal product. We know now that the faster a machine works—the more copies an employee is likely to make. Currently, we are considering attacking the problem at its base cost—the cost we conclude is due to the revolution of the selenium drum.

We are investigating a recent interesting combination of equipment wherein an electrostatic copier is attached to an offset printing device. This system—labeled the AM-150 system, works on the principal that a good quality electrostatic copy—if properly treated—can make an acceptable paper master for offset duplication. This tandem device, therefore, provides the facility to automatically link the processes and provide copies on plain paper at costs of a fraction of the Xerox process. This machine is currently offered by the Addressograph-Multigraph Company—called again—the AM-150. If your copying requirements exceed four or more copies per original, as a rule, this may be your "cup of tea."

Actually, the Xerox Company is to be commended for making the copy it makes and charging the price it charges, and as a result creating the competition that has developed—and I speak here of the many offerings of good quality electrostatic copiers that all boast copies in the 3 to 4 cent range. It is the growth of this industry which has changed a lot of our thinking in other systems' areas.

Let me talk about the photo take off area as an example. For those of you who maintain title plants and have added a photographic system at the public recorders office to effect take off, are you pursuing the most

efficient system? Most of these systems are based on either a photostatic form—or a microfilm form of take off. There are advantages and disadvantages to each.

I think the principal advantage of photostatic take-off is immediate product—without the intermediate filming requirement. Microfilm offers superiority in end product—the compact file—the inviolable file which can be easily secured. The photostatic disadvantages in size and complexity of equipment are most quickly evident. But how many of us who went down the microfilm path have since had second thoughts?

The installation of a microfilm camera at a Recorder's Office places microfilm "on-line" and requires an "on-line" film processing routine. Is this a desirable operation for a title office? Use of microfilm in the first instance requires us to "batch" our work. A group of documents must be first photographed and held latent in camera before production can proceed. And what about the occasional malfunction of the camera—or the processor necessitating a complete "do-over" of a batch of documents?

And how about the reader-printer equipment currently offered as the best available — like the Recordak Magnaprint—or the 3M-400? Both of these devices require liquid development and the attendant damp prints which at best are only a reasonable compromise as a good working copy.

I suggest the cheap electrostatic photo copier which produces the 3 to 4 cent direct copy at the Recorder's Office as a far more preferable system. Make your dry copies in the first instance—use them in your production posting and examining and forget about microfilm processing and batched work. Some copiers like the Bruning 2000R and the Minolta produce a 70 % reduction dry copy directly from original documents—these offer additional cost savings.

But I recognize the advantage of the microfilm file—so why not assemble your photo copies after production and run them through a simple rotary microfilm camera like the RP-1 Recordak and send the film off to the commercial house for archival development. That way you have your cake and eat it too—convenient quick product at the input end and an efficient end product for storage and occasional subsequent copy.

The Recordak Portable RP-1 is a mighty versatile little camera that belongs in any title office—not much larger than a typewriter. It uses 16 mm film, will make two rolls simultaneously if you like, so that you can store one away for security purposes. And it has interchangeable heads for microfilming your output, for example, on a separate series of microfilms.

But I know there are those who insist that microfilm must be used for various reasons as an on-line system. For those people, I suggest you look at these newer devices:

Recordak RV-2—A new simple planetary camera that is compact eye level loaded and automatically adjusts its exposure for varying document colors.

Recordak—Prostar table top film processor—get rid of your darkroom and technicians.

Bell and Howell—Reporter—Reader-Printer or Xerox Microprinter—two new dry copy electrostatics that offer hope for the wet print enlarger whose "arteries are clogged" with coagulating chemical baths.

As a systems man, I have always felt that the only legitimate active file of bulk material is a microfilm file. The only output of any take off system worth devoting valuable floor space to—is a microform. What remains is to design an adequate access system to that file—let me address myself to that area for a moment.

Probably the earliest attempt to automate or otherwise provide more ready access to a microfilm file was through combinations of microfilm and unit record equipment—more popularly known as aperture cards. But these systems tended to defeat the basic advantage of microfilm—the ability to condense a lot of data into a small space. Also the strict unitizing of a roll of microfilm into single frames—seems to be somewhat expensive since the need to consult a single document in our business exists for a comparatively short time—and then generally very little thereafter, if at all.

Where is the "action" in this industry? I think its in two specific microforms—the plastic magazine—holding a 100 ft. roll of microfilm, and the acetate jacket—holding cut strips of microfilm in a convenient card file form.

What is the space saving advantage of microfilm? In one study we conducted we noted that where paper stores at the rate of 4,000 to 7,000 sheets per square foot of floor space —and this assumes an ordinary pull drawer file cabinet including access aisle—the same square foot could contain the equivalent of about 225,000 sheets of paper in a simple roll microfilm form. Perhaps for this approximate 60 to 1 advantage, the magazine or cartridged microfilm roll gets first consideration.

One of the most popular in the magazine systems is the Lodestar PES system. Here we find the documents, as photographed including a timing mark on the edge of the film. The Lodestar system then by a built in photo electric cell counts these timing marks as the roll of film is scanned in the reader, and selects a particular mark (and its associated document) as selected by the operator on a key board. The cartridge enables automatic threading of the roll of film in the reader-printer and the timing mark selection provides speedy access within the roll film file.

The most sophisticated in the magazine type systems is the Miracode system. Here a whole series of timing marks are attached to each frame of film under a Binary Code system and allows the operator to search the file on all kinds of perimeters. For example, such a file might be asked to select all documents mentioning a particular parcel of property or a particular named grantee or grantor, and so forth. You can see, I think, the levels of sophisticated searching that might be applied. The "hooker" perhaps is in the level of skill that must be applied at the photography end. The operator must be a trained abstractor and be able to designate those perimeters in a document that are likely to be sought at some later date and apply the appropriate coding. We know of one Michigan abstract plant that is basing its entire search record on the Miracode system.

The acetate jacket file is less economical of space utilization—but even here, 40 to 1 filing advantages over ordinary paper are possible. The jacket can be used in its simplest form by merely cutting up rolls of film and installing the strips in sequence in the jacket tiers. A 5 x 8 acetate jacket which looks not unlike a transparent 5 x 8 filing card could contain from 50 to 150 images of recorded documents. The jacket would be labeled with a beginning and ending number.

But there are also applications wherein the jacket is treated as a file folder and receives film into its chambers a frame at a time. Here the jacket could be designated as a parcel of property—and each film frame inserted represents a document affecting.

Apparatus is now available made by the "N.B." Company for one, that takes a roll of microfilm (which could represent today's take off in recorded documents) and cuts it off a frame at a time and inserts it into an acetate jacket placed in the machine. Here we see the current day tract book poster operating without a fountain pen.

Access systems for acetate jackets are being offered by the industry in ever-increasing numbers. There is the simple re-adaptation of the Remington Rand Kardex trays now containing jackets. Also, devices that precisely notch the lower edge of the jacket with up to six digits of coding. Here the manufacturer (RANDAMATIC) offers filing trays with push buttons which when depressed cause particular jackets to pop up. As you can see in this system—filing can be virtually at random.

Let me mention one final hybrid access microform that we have experimented with, with some success. I speak of the Microstrip which is currently offered by the Eastman Kodak Company. The original version of this system offered slotted plastic "wands" measuring about one foot long each containing about one foot of 16 mm microfilm. The system offered special reading equipment which accepted these wands and conveniently slid the strip of film into the optical reading system. Recently this system was expanded so that each wand contains ten strips of film (its now called Dekafilm) and the readers are engineered to be able to select a specific strip within the wand by turning a dial. This system offers a high degree of accessibility in a compact area to very large files.

But perhaps you think I'm out of your "ball-park." So let me talk for a moment on a very fundamental operation which I am sure affects you all—that of the typewriting station. Did you know that the industry has been offering all kinds of devices that will expand the capabilities of

Suzy—your typist. Some of these devices are not necessarily new but they are still worthy of consideration.

Beginning with the Auto-typist and most recently with the MTST by IBM, it seems evident that it becomes ever easier for Suzy to turn out more and accurate text. Starting with the simple application of consigning all highly repetitive t e x t u a l data to piano player rolls, as in the Auto-typist, to the occasional repetitive text wherein the typist throws a switch on a paper tape typewriter while typing a lengthy legal description. In this way the typist produces an automatic by-product tape which she can store for later use and play back—or perhaps for forwarding to other typing stations for their benefit.

The MTST typewriter, the latest of the group of automatic typewriters, seems an interesting hybrid in which re-usable magnetic tape is substituted for punched paper tape.

I spoke of machines that extend the capabilities of the staff. A classic example is the Copy-Typist or two electric typewriters wired together which literally double an ordinary typist's output. We have successfully adapted these machines to writing Owners and Loan policies simultaneously. But even here, technology advances may dictate a system change.

Of recent interest is an interesting development "hatched" by the carbon paper industry based on micro-encapsulation—and there is your 50 cent word for today. These people are offended if you refer to their product as carbon paper—although it looks exactly like it—since it contains no carbon and is not on a paper base. It is actually microscopic capsules of "live" ink evenly dispersed over a mylar plastic sheet. When a sheet of this "copy film" as they call it, is sandwiched between two pieces of paper and used in a typewriter, it is almost impossible (especially if you shuffle the two pieces of paper behind your back) to tell which is the copy and which is the original. If the intent of the tandem typewriters is to produce two original pieces of typing—we can probably substitute this copy film in a form set in a single machine and save a lot of equipment expense.

Perhaps it will be right here, at the typist station that we will see the breakthrough in technology whereby we eliminate the paper and platten and all. Already today there are cathode ray tubes built into typewriters that display text on the TV screen as the keys are struck, and the typist can produce an entire page on the TV screen before she commits anything to paper, but when she is satisfied that all is correct and everything is placed on the page as she wants it—she presses a print key which "pours" the content of the TV screen to another device which accurately imprints paper. It goes without saying that the erasure has no place anymore in this apparatus—an error made on the TV screen—can be quickly corrected by "over-typing" the mistake with the correct letter.

Currently these devices are marketed exclusively to those companies who posses large computers. But this restriction may eventually disappear. Why not equip all typist stations with paper-less machines and wire them to a central station—perhaps at the checkers desk—or even in the mail room.

Even the third generation computing equipment is not necessarily outside of consideration of the small company. As you may know this class of computing hardware has the facility to do many applications simultaneously. What am I getting at? We already know of several enterprising service companies who have set up these large computers in special areas and dispatched salesmen to sell not the computer but the *use* of it to the small office. All that is established in the small office then is a terminal—which might be one of these cathode ray tube paperless typewriters—all wired by telephone line to a large remote computer. This is not wild "blue sky" projection gentlemen. It is already with us. What the small company must do then is re-appraise its position and its systems for that matter. Will you be the last—or first among your competitors to boast the use of electronic computing equipment—even though you might only be leasing a "slice" of somebody else's device?

I have tried in this presentation to speak on a fairly representative cross section of equipment — obviously there are areas that you may have an interest on which I have not touched. I will be happy to answer any of your questions—but for now let me thank you for the opportunity to address you and for your spartan patience in sitting through this entire presentation.

# COMMITTEE REPORTS

## REPORT OF THE DIRECTORY RULES COMMITTEE

**Submitted By G. ALLAN JULIN, JR.**

*Chairman, Directory Rules Committee, Senior Vice President*
*Chicago Title and Trust Company, Chicago, Illinois*

On February 21, 1968, the Board of Governors of the American Land Title Association approved an amendment to Section 2e of the Rules and Regulations for ALTA Directory Listings concerning the manner in which the financial condition of each member title insurance underwriter was to state its figures. Subsequent to that meeting, the New York Insurance Department expressed strong disagreement with the provisions of the amended rules, which had been drawn up in collaboration with the Standard Title Insurance Accounting Committee.

Because of this objection from New York, the Standard Title Insurance Accounting Committee held a special meeting on August 14th and 15th in New York City for the purpose of once again recommending to the Directory Rules Committee the manner in which financial condition of title insurance underwriters should be stated. The Directory Rules Committee was invited to participate in this meeting and it was the committee's good fortune to have Gordon Burlingame, Jr. represent the committee at that meeting. Even more fortunate was the fact that the Accounting Committee, along with the representative of the Directory Rules Committee, had the opportunity to meet personally with Mr. J. Salant of the New York Insurance Department. The result of that meeting appears in the attached suggested amendment to paragraph 2e of the Rules and Regulations for American Land Title Insurance Directory Listings.

I have been told that formal approval of this amendment has now been received from the New York Insurance Department and have submitted the suggested amendment to all members of the ALTA Directory Rules Committee.

At the time of the writing of this report, I have not yet received sufficient comments, suggestions, amendments or recommendations from members of my committee but I anticipate that at the time of the meeting of the Board of Governors in Portland on September 29th, I will have received unanimous approval of the proposed attached amendment.

I therefore recommend, subject to final word from the members of my committee, that the proposed attached amendment to paragraph 2e of the Rules and Regulations for ALTA Directory Listings for title insurance underwriters be approved by the Board of Governors.

### PROPOSED AMENDMENT TO PARAGRAPH 2e OF THE RULES AND REGULATIONS FOR ALTA DIRECTORY LISTINGS

The financial condition of each member title insurance company will be stated as follows:

1. Capital and Surplus $————— (after provision for statutory premium reserves of $————) ——or if the member has no re-requirement of statutory premium reserves——
2. Capital and Surplus $—————

Both Capital and Surplus, and statutory premium reserves are to be reported as set forth in the most recent annual report (NAIC Form 9) filed with the governmental supervisory authority or authorities of the state of domicile of said member title insurance company.

The figure for Capital and Surplus (surplus as regards policyholders)

will be obtained from line 22, page 3 of the related annual report. The figure for statutory premium reserves, if any, will be that portion of line 2, page 3 of the related annual report that represents premium reserves required by law.

Member title insurance companies who are not required to file annual reports (NAIC Form 9) are to report financial figures on a basis that is commensurate with the requirements of the member title insurance companies who do file such annual reports. The ALTA should be notified of the fact that financial figures have been reported on such basis.

All financial information supplied by any member title insurance company to be printed in any association directory shall be certified by an officer of the member company to be in accordance with the above-stated rule.

—PROPOSAL WAS APPROVED

# REPORT OF THE LEGISLATIVE COMMITTEE

**Submitted By ROBERT C. DAWSON**

*Chairman, Legislative Committee; Florida State Manager*
*Lawyers Title Insurance Corporation, Winter Haven, Florida*

Reports from committee members in the following sixteen states indicate that the legislators either did not meet in 1968 or if they met, they passed no legislation which is pertinent to the committee's scope of activity:

Alaska, Florida, Idaho, Illinois, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Utah, Washington, Wyoming.

Committee members for the below listed states have made no reports as of this date as to any legislation of interest to our industry:

Arkansas, Colorado, Connecticut, Dist. of Columbia, Georgia, Hawaii, Indiana, Michigan, Minnesota, Montana, New Mexico, New York, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia, Wisconsin.

The following portion of this report sets forth resumes of reports from committee members in those states where the legislature did meet and which passed certain Acts of interest to our committee and the Association:

## ALABAMA

The report from our committee member indicates that a complete new Insurance Code has been developed and submitted to the Governor for submission to the 1969 session of the Legislature. This should prove to be of substantial interest to this Committee in the coming year.

In the 1968 session of the Alabama legislature, the following Act was passed:

"Section 743, TITLE INSURANCE RESERVE. (1) In addition to an adequate reserve as to outstanding losses as required under section 102, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(a) Ten percent (10%) of the total amount of the risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(b) During each of the twenty (20) years next following the year in which the title insurance contract was issued, the reserve applicable to the contract may be reduced by five percent (5%) of the original amount of such reserve.

(2) The insurer may credit upon the reserve provided for by this section the amount of its deposit made under section 58."

## ARIZONA

Ch. 164, HB 93, providing for certification and regulation of credit unions.

Ch. 159, SB 48, prescribing that

final order of adoption of a child shall not be granted until child has lived six months after entry of interlocutory order in home of petitioner.

Ch. 24, HB 5, providing for the formation of public improvement districts to purchase electricity for lighting public streets and parks. 3-5-68.

Ch. 62, SB 62, authorizing city and town councils to compel by ordinance the removal of rubbish and debris from private property if such rubbish is a hazard to public health and safety, providing that city or town may remove such rubbish at expense of owner, lessee or occupant after 30-day notice if owner does not remove.

Ch. 120, HB 191, permitting a common council to vacate or abandon any street, avenue, alley, park, public place or sidewalk.

Ch. 194, HB 300, prescribing limitations on the definition of urbanized area.

Ch. 204, SB 190, providing for the incorporation in municipalities or counties of nonprofit public corporations for the purpose of promoting industry, developing trade, etc; authorizing such corporations to issue bonds. 3-27-68.

SCR 7, proposing to amend the Arizona Constitution to remove from the Arizona Corporation Commission its present authority to license, control and supervise insurance companies and to vest such authority in a State Department of Insurance headed by a governor-appointed director.

HCR 3, proposing to amend the Arizona Constitution to provide that beginning January 1, 1969, mobile homes shall not be subject to license tax but instead shall be subject to ad valorem property taxes.

Ch. 115, SB 135, increasing from 12 per cent per year to 1-1/2 per cent per month the rate of interest allowable on loans over $5,000.

Ch. 202, SB 123, relating to business development corporations; providing for inclusion of savings and loan associations in the definition of "member"; prescribing loan limitations.

Ch. 8, SB 72, providing for disposition of county personal property by trade-in as well as by public auction if county board of supervisors deems trade-in to be in best interest of county. 2-27-68.

Ch. 82, SB 136, providing for realigning and correcting the description of the boundary line between Santa Cruz and Cochise counties. (Note: Since early territorial days the home ranch of Mr. Frank Brophy's spread, San Ignacio del babacomari land grant, has been in an ambiguous area, having through surveyor error mistakenly been placed in Cochise County. Ch. 82 corrects the error and places Mr. Brophy's home ranch in Santa Cruz County.)

Ch. 79, SB 36, increasing certain court fees.

Ch. 188, HB 66, relating to action to quiet title, requiring complaint to set forth with particularity the claim of the state; authorizing the Attorney General to file a disclaimer.

Ch. 77, HB 305, providing for administration and settlement of estates.

Ch. 96, SB 69, requiring polls in school elections to be open from 6 A.M. to 7 P.M.

Ch. 181, SB 35, providing that for the purpose of voting at a general election, an employee may absent himself from work, without penalty or loss of wages, if there are less than 3 consecutive hours between the opening of polls and beginning of his workshift or between the end of his workshift and the closing of the polls.

Ch. 63, SB 141, requiring appraisal report to justify acquisition or disposal of real property for highway purposes.

Ch. 113, SB 12, new chapter (6) authorizing the Arizona Highway Commission to borrow money and issue bonds for the purpose of acquiring highway rights-of-way in advance of need. Total amount of bonds cannot exceed $10 million without legislative consent. 3-18-68.

Ch. 102, HB 148, providing for revisions in the taxation of title insurers.

Ch. 197, SB 130, creating the Department of Insurance; providing for appointment of the director of insurance by the governor subject to Senate approval Conditional upon amendment to the Constitution.

Ch. 203, SB 168, repealing section 2 of chapter 130, laws of 1967, and technically amending Sec. 20-210 to include Lloyd's association insurer in capital funds requirement statute.

Ch. 12, HB 55, prescribing exceptions to restrictions on number of hours female employees may work.

Ch. 65, HB 36, relating to employment security; providing for finality of liability determinations, altering period for which the Employment

Security Commission may take civil action to collect contributions, interest or penalties; prescribing manner in which aggrieved employing unit petitions for hearing.

Ch. 171, SB 212, prescribing method for payment of wages to employees by bank deposit.

Ch. 107, HB 67, relating to public lands, requiring that the name of the persons having a beneficial interest in land to be acquired by the state or any political subdivision thereof shall be disclosed to certain authorities. 3-18-68.

Ch. 112, SB 10, relating to sale of state lands; providing for reservation of oil, mineral, and other rights in the State of Arizona. 3-18-68.

Ch. 178, SB 94, providing authority of land department and selection board to make exchanges of state owned for federally owned land; providing for retaining of mineral rights in state when federal government retains mineral rights. 3-21-68.

Ch. 160, SB 70, relating to public utilities; providing for conversion of existing overhead electric and communication facilities to underground facilities.

Ch. 69, HB 164, relates to time of sale for delinquent taxes, prescribing the day of sale designated in the list and notice.

Ch. 78, HB 224, amending Chapter 11 of the 3rd special session, 1967, relating to real estate transfer fee; providing procedure in processing affidavit of legal value.

Ch. 74, HB 261, relating to soil conservation districts.

Ch. 199, SB 173, extending to November 1, 1968, time for filing appeals on property valuations or classifications for the tax year 1968.

Ch. 59, SB 146, relating to the uniform commercial code; prescribing requirements for filing to perfect security interest.

Ch. 172, HB 210, relating to secured transactions under uniform commercial code; providing for a priority of security interest in fixtures.

## DELAWARE

Senate Bill 102. Provides tax exemptions for the elderly.

Senate Bill 3. Raises maximum school tax rate in City of Wilmington.

House Bill 588. Raises legal ceiling for mortgage interest charges from 6% to 8%. Effective May 28, 1968.

Senate Bill 148. To allow Sussex County (Delaware) to adopt planning and zoning regulations. Effective July 13, 1967.

Senate Bill 190. To provide zoning for Sussex County.

House Bill 211. Restricts the use of State Highway Rights of Way for pipelines. Effective July 20, 1967.

Senate Bill 164. Increases payments made in lieu of property taxes by housing authorities. Effective August 2, 1967.

## KENTUCKY

SB 20: Amends KRS 381.770 to extend city's weed lien to cities of the second class in addition to cities of the first class.

SB 106: Amended KRS 295.010, .040 and .050 relative to Mortgage Guaranty Insurance to include additional items and provide for a change in reserve requirements.

SB 136: Provides for 5th and 6th class cities located in a county containing a city of the first class to file with the County Clerk annually lists of unpaid taxes and other pertinent information.

SB 141: Created new statutes enabling the establishment of neighborhood improvement districts for the improvement of roads etc., and provides for liens and apportionment warrants to secure assessments. This whole Act appears to apply only to counties containing a city of the first class.

SB 254: An entirely new and lengthy non-profit corporations Act.

SB 264: Civil Rights Act.

SB 290: Relative to unauthorized insurers and to subjection of same to suits in Kentucky.

SB 301: Amendments to River Ports Act.

HB 125: Transfer of real property requiring declaration of value and imposing a tax of $.50 for each $500. of value or fraction thereof.

HB 172: Amends Sections of KRS 184 relative to Public Road Districts to allow establishment of same in counties containing cities of the first or second class and to allow them being established for either construction or maintenance.

HB 250: Truth in lending bill which does not become effective until January 1, 1969; no doubt regulations clarifying its application will be published before the effective date.

HB 261: Amends KRS 132.220 with respect to taxation of certain property heretofore considered exempt.

HB 99: Amends KRS 355.9-402, relating to the sufficiency of financing

statements covering crops growing or to be grown or goods.

## MARYLAND

Ch. 237—*Tax Sales.* To amend Sec. 72(b) of Art. 81 of the Code, to allow tax sales on real property after one year delinquency in Calvert County. H.B. 402.

Ch. 250—*Land Installment Contracts.* To amend Sec. 112 of Art. 21 of the Code to provide that under such contracts there be disclosure of the number of periodic installments. H.B. 497.

Ch. 252—*Land Records.* To add now Sec. 93A to St. Mary's County Code to require instruments to be prepared by an attorney, under his supervision, or by a party to such instrument in order for recordation. H.B. 513.

Ch. 301—*Recordation Tax.* To add new section 277 (r) to Art. 81 of the Code, to raise the recordation tax in Prince George's County and to provide for payment to and collection by the treasurer. H.B. 782.

Ch. 348—*Land Patents.* To repeal Sec. 45A of Art. 54 and to amend certain sections of Art. 54 and Art. 36 of the Code, to generally amend the laws concerning Land Patents. H.B. 1031.

Ch. 419—*Maryland National Capital Park & Planning Commission.* To amend Sec. 70-81 of the Montgomery County Code and Sec. 59-75 of the Prince George's County Code; providing for the authority for the government of Montgomery and Prince George's Counties concerning street dedications as a condition for approval of subdivision plats. H.B. 51.

Ch. 453—*Interest and Usury.* To repeal and re-enact Secs. 1-6 incl. of Art. 49 of the Code, generally revising the laws of Maryland relating to interest and usury. H.B. 11.

Ch. 494—*Recordation Tax.* To amend Sec. 277, Art. 81, repealing and re-enacting subsections (f) and (g) to alter the basis upon which recordation tax on leases shall be computed, to exempt certain leases creating ground rents, and to provide for cases in which instruments substituting for leases are recorded. S.B. 24.

Ch. 514—*Clerks of Court.* To amend Sec. 12 of Art. 36 of the Code to revise certain charges made by these officials. S.B. 158.

Ch. 525—*Performance Bond.* To amend, repeal and re-enact Sec. 11(a) (2) of Art. 90 of the Code, to require contractors to certify in writing as to payment of all subcontractors and suppliers. S.B. 247.

Ch. 526—*Recordation Tax.* To amend Sec. 277(o) and 278 of Art. 81 of the Code, to change the rate of recordation tax on certain instruments in Harford County and provide for the disposition of proceeds. H.B. 256.

Ch. 621—*Escrow Funds of Attorneys.* To add new section 44 to Art. 10 of the Code, to require attorneys-at-law in the State to deposit and maintain certain monies in escrow accounts and to provide certain penalties for violations. H.B. 23.

Ch. 633—*Real Property Transfer Tax.* To repeal and re-enact with amendments Sec. 1, Chapter 180 of the Laws of Montgomery County, being Sec. 2-127 Montgomery County Code, to provide the powers of the county to levy real property transfer tax on land used for farm and/or agriculture. H.B. 67.

Ch. 657—*Deeds.* To repeal and re-enact with amendments Sec. 10(3b) of Art. 21 of the Code to include Montgomery County as qualifying for exclusion from the terms of Sec. 10(3) of Art. 21. H.B. 271.

Ch. 671—*Recordation Tax.* To repeal and re-enact with amendments Secs. 277(m) and (n) of Art. 81 raising the rate of recordation tax in Calvert County. H.B. 401.

Ch. 718—*Conveyancing.* To repeal Sec. 30 of Art. 21 of the Code, and to enact new Sec. 30 in lieu thereof, to provide that no purchase money deed of trust is valid either between the parties or as to third parties unless the affidavit of consideration states that the loan sum has been paid over and disbursed at a time no later than the final and complete execution of the deed of trust. H.B. 736.

Ch. 726—*Real Estate Settlements.* To add new Sec. 42 to Art. 21 of the Code, to provide that persons undertaking responsibility for disbursement of funds in real estate conveyances shall furnish the buyer and seller certain evidence of the recording of releases of mortgages and deeds of trust within a certain period of time. H.B. 861.

Ch. 729—*Tax Sales.* To amend Sec. 113 of Art. 81 of the Code, to provide for the conclusiveness of the decree rendered under Foreclosure of Rights of Redemption (tax Sales) and placing a limitation on the time for re-opening a decree. H.B. 874.

## MASSACHUSETTS

Ch. 444—of the Acts of 1968 amending and supplementing Section 40 of Chapter 131, General Laws.
Resume: This Act known as "inland Wetlands" legislation increases the authority of the Commissioner of Natural Resources to restrict the use of "Wetland" for purposes of real estate development.

## MISSISSIPPI

The Legislature increased income and sales taxes to provide for a massive education program. Some minor changes were made in our Uniform Commercial Code which went into effect last Spring.

## NEW JERSEY

Ch. 55—Permitting the rate of interest on loans to individuals to be in excess of 6 % but not in excess of 8 % per annum, with the power in the Commissioner of Banking and Insurance to control the rates in excess of 6 %. Heretofore, the legal limit on loan was 6 %. The purpose of the legislation was to put New Jersey on a competitive basis with the other states, most of whom have legal rates in excess of 6 %. Effective June 6, 1968.

Ch. 64—A companion Act to Chapter 55; making it mandatory on residential loans that the mortgagee permit pre-payment upon a specified schedule. This Act, in addition, makes payment of "points" illegal. Effective June 6, 1968.

Ch. 49—Imposes fees upon the recording of Deeds transferring title to real property. These fees are comparable to the former Federal Stamp Tax except that in computing the fee, the consideration is deemed to include the value of the encumbrances on the property. The actual consideration must be stated in the Deed and in the acknowledgment or in an affidavit in lieu of the statement in the acknowledgement. A Deed may not be recorded unless the fees are paid. Effective June 3, 1968.

Ch. 151—Provides that the title to real estate and interest therein owned by a foreign corporation which merges or consolidates with another foreign corporation shall vest in the surviving corporation automatically upon the filing of a Certificate of Merger or Consolidation in the Office of the Secretary of State of New Jersey. This Act also validates the title to such real property or interest therein where the merger or consolidation has heretofore been effected. Prior to this legislation there was serious doubt as to whether title would so vest in cases where the corporations involved were both foreign corporations.

## SOUTH DAKOTA

Ch. 192 H.B.675—*Amending Uniform Commercial Code Provisions Relating to Security Interest Against Real Estate.* An Act Entitled, An Act to amend Section 9-313 of Chapter 150 of the Session Laws of 1966 by adding thereto a new subsection and to renumber subsection (4) of Section 9-313 of Ch. 150 of the Session Laws of 1966, relating to perfection of security interest against real estate.

## VERMONT

The report from our committee member indicates that, effective July 1, 1968, an entirely new insurance law was enacted by the Vermont Legislature, governing all types of insurance *including title insurance.*

No. 282 (H.465)—An Act to create the *VERMONT HOME MORTGAGE CREDIT AGENCY*, which will use the State's credit to:

(1) Purchase first mortgage loans on Vermont dwellings from banks and savings and loan associations within Vermont.

(2) Guarantee a percentage of repayment of certain mortgage loans on Vermont property.

This Vermont Home Mortgage Credit Agency Bill is somewhat akin with respect to its guaranty feature to the VA type of guaranty. The purpose of the Bill is to induce more home loans on the part of local banks in this State.

27 VSA 341—Has been amended to eliminate the necessity of a Seal with respect to deeds and other conveyances of land or of an estate or interest therein. Effective Jan. 24, 1968.

*CONDOMINIUM OWNERSHIP ACT*—Our committee member has reported that a "Condominium Ownership Act" has been enacted by the Vermont Legislature.

## VIRGINIA

*Section 38.1—295.1* Was added to the Code of Virginia. The new section empowers the State Corporation Commission to examine and investigate into the affairs of insur-

ance companies and agents thereof in order to determine whether any such person has engaged or is engaging in any violation of the provisions of Title 38.1 of the Code governing insurance and insurance companies. The new section also provides penalties for agents who fail or refuse to permit such examination or investigation including suspension or revocation of license to act as insurance agent.

# REPORT OF SPECIAL COMMITTEE TO ESTABLISH LIAISON WITH N.A.I.C.

**Submitted By J. MACK TARPLEY**

*Chairman, Committee to Establish Liaison with N.A.I.C.; Vice President Chicago Title Insurance Company, Chicago, Illinois*

Subsequent to the appointment of the Committee, several abortive attempts were made to establish contact with the NAIC through its then President, James L. Bentley, the Insurance Commissioner of Georgia by utilizing the mails to set up an appointment. When such attempts proved unsuccessful, the Chairman of the Committee, through the use of personal contacts, secured an appointment with Commissioner Bentley on April 11, 1968, in Atlanta, Georgia.

As a result of that conference, the Resolution of the Board of Governors of ALTA was placed on the Agenda of the Executive Committee of the NAIC for its June meeting in Portland, Oregon. Commissioner Bentley further suggested that the Chairman of the Committee attend that meeting.

Pursuant to that suggestion, the Chairman attended that meeting and on June 20, 1968, (after being given ten minutes' notice) presented to the Executive Committee of the NAIC the resolution and accompanied the presentation with the following statement:

> "I appear as Chairman of the standing committee of the ALTA appointed pursuant to that resolution.
> Our purpose is as stated in the resolution, viz: to work and cooperate with the NAIC to further a more complete understanding of the business of title insurance, to promote sound legislation and regulation, to prevent unsound legislation, and to accomplish other desirable, lawful objectives. We earnestly and respectfully seek your cooperation in implementing a plan of communication resulting in the mutual benefit to the two associations and to the members thereof."

After the presentation, the Chairman of the NAIC Committee indicated that the matter would be acted upon in closed session and that this Committee would be advised of the action taken.

Having received no word of any action by the Executive Committee of the NAIC by the end of July, your Chairman then addressed a letter to Richard E. Stewart, Superintendent of the State of New York, the new Chairman of the Executive Committee of the NAIC, inquiring as to the action, if any, of that Committee.

Mr. Stewart responded indicating that action on the matter had been deferred until the meeting of his Committee in October, 1968, and requested a written statement amplifying the resolution presented.

Your Committee felt that no such statement should be submitted by it without some approval by the governing body of ALTA. Therefore, a statement was prepared, submitted to and approved by the Executive Committee of ALTA on September 12, 1968. That statement, a copy of which is attached, was transmitted to Superintendent Stewart on the same

date and action by the NAIC is awaited.

While your Committee feels that it will meet with success in its endeavor to establish liaison, nonetheless it urges that ALTA as an organization take a more active interest in the NAIC and its meetings. No national meeting of that association should be held without a qualified representative of ALTA being in attendance as an observer and representative of the title industry.

As a corollary activity, your Committee, through its Chairman, has become interested in the efforts of the NAIC, through one of its subcommittees, chaired by Director Neff, of the Nebraska Insurance Department, to draft and secure the passage of legislation relating to "holding companies" owning and controlling insurance companies. Your Chairman has attended a number of meetings of that Committee and also certain insurance industry meetings relating to the proposed legislation.

While your Committee realizes that the vast majority of ALTA members have no direct interest in the problem, it is felt that continued interest in and vigilance of the activities relating thereto are a proper function of the Committee. No attempt will be made in this report to summarize the proceedings to date related to the "holding company" legislation problem; however, the Chairman of your Committee does have such information which will be made available to you or to any interested member of ALTA.

Having reported its progress to date, your Committee will continue to pursue its assigned responsibilities and stands ready to submit such supplemental reports as directed and for the acceptance of such other instructions as you deem necessary and appropriate.

STATEMENT:

To: The Members of the Executive Committee of the National Association of Insurance Commissioners

The Chairman of your Committee, Richard E. Stewart, of New York, has requested that there be prepared a statement amplifying the resolution of the Board of Governors of the American Land Title Association which was presented to you at your June meeting in Portland. A copy of that resolution is attached for your convenience.

As you are aware, title insurance is one of the smaller segments of the insurance industry, both from the standpoint of the number of companies and the volume of premiums written. Regulation of title insurance varies from state to state from the token statutory recognition of title insurance to the most sophisticated regulation.

Title insurance companies were originally local in the scope of their operations, but have progressed to statewide, then regional and now national in their operations.

There is among the several states a growing trend toward a specificity of statutory legislation designed to recognize the different kinds of insurance and in recent years particularly of title insurance.

The American Land Title Association is concerned with the public interest of any regulatory legislation, and because of the increasing national character of title insurance, is vitally interested in uniformity of certain regulatory provisions whether the provisions be by statute or departmental rules and regulations.

It is believed the American Land Title Association Committee to Establish Liaison with the National Association of Insurance Commissioners by working in cooperation with the proper committee or committees of your Association can assist in protecting the public interest by the promotion of sound legislation and regulation and promote a better understanding of the business of title insurance.

Turning now to the specifics as requested by Superintendent Stewart, we suggest to you the following areas of interest to our industry and with which we think you are concerned:

(a) Improved and more uniform financial and statistical reporting to state regulatory bodies and the establishment of uniform minimum record keeping standards for the title insurance industry. This would include but not be limited to:
   (1) Title and Mortgage Guaranty Blank, commonly known as Form 9,
   (2) Officer and Director questionnaires,
   (3) Forms and bases for the computation of premium taxes.

(b) Uniformity of legislation relating to:

(1) Maintenance of insurer's solvency and protection of policyholders including provisions of loss reserves and unearned premium (reinsurance) reserves,

(2) Single risk limitations and provisions for reinsurance of the excess risk,

(3) Regulation of the admission of foreign or alien insurers,

(4) Regulation of mergers or consolidation of insurers or the acquisition of their controlling stock ownership,

(5) Examination of title insurers and agents.

We earnestly request your consideration of the resolution in the light of the sincere spirit of desire for cooperation which prompted its adoption by our Board of Governors.

# REPORT OF MEETING OF AFFILIATED STATE TITLE ASSOCIATION OFFICERS

**Submitted By: J. L. BOREN, JR.**

*Executive Vice President, Mid-South Title Company, Inc.*
*Memphis, Tennessee*

The meeting of officers of Affiliated State Title Associations was a breakfast meeting held at 8:00 A.M. on Tuesday, October 1, in the Pavilion Room of the Portland Hilton Hotel. Unfortunately the room was booked for a subsequent meeting at 9:00 A.M. and, after the usual 15 to 20 minute delay in starting an early meeting, very little time was left for discussion.

Approximately 60 members were present at the meeting, including Bill Thurman of Fort Worth and Edward S. Schmidt of Philadelphia, outgoing and incoming chairmen respectively of the ALTA Public Relations Committee.

In response to questions from Messrs. Thurman and Schmidt, no particular suggestions for assistance to state associations by the National Public Relations Committee were made. These gentlemen learned that several state associations have appointed chairmen of advertising or public relations committees but that seemingly very little is done on the state association level in the way of advertising or public relations.

An interesting sidelight to the advertising and public relations question was the discussion of new standards of ethics adopted by the Washington Land Title Association prohibiting many give-away programs formerly carried on by title companies. It was the opinion of the Washington representatives that this improved the image of the title industry. Further discussion developed that similar prohibitions are enforced by commissioners in other states.

The discussion of Washington's standards of ethics led into the question of enforcement of codes of ethics. It was generally agreed that codes of ethics could be enforced only by expulsion from the local association, a penalty of questionable effectiveness.

Considerable information was made available by the people present about the legislative activities of local associations. It was apparent that there is no uniformity in the approach to the legislature, that some state associations hire lobbyists to promote their interests, that other associations share a lobbyist with groups with

similar interests, that some associations use paid staff people who function as lobbyists and that many associations rely upon a specified member or members of the association for legislative contact. While most associations which were represented and which attempted to influence legislative matters indicated a great degree of success, it was evident that the exclusion of attorneys from the effect of many licensing laws had weakened the applicability of those laws and that the efforts of the associations to obtain proper amendments to mechanics lien laws had fallen far short of the goal.

The extent to which state associations are adopting uniform forms was considered. In general summary, a number of abstract states have adopted uniform abstract certificates and some of the heavily populated title insurance states—particularly those which must have approval of their forms by state authorities—have adopted uniform policy and endorsement forms. However, the achieving of uniformity of forms other than through the use of ALTA forms appeared not to have been widely successful.

In a consideration of the increasingly serious problem of personnel which faces titlemen and abstracters, it was brought out that the abstract schools operated in some states and a few college level programs which are under way are about the only local approach being made to the problem. Specifically, no evidence was found of any efforts to take advantage of anti-poverty programs for the training of clerical help or of any joint approach being made with similarly troubled groups such as Assessor's Offices.

Many questions which had been submitted by those in attendance had to be left for discussion at other times.

# REPORT OF SPECIAL COMMITTEE TO STUDY ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

**Submitted By RALPH JOSSMAN**

*Chairman, Special Committee to Study Article 9 of the Uniform Commercial Code*
*Michigan State Counsel, Lawyers Title Insurance Corporation, Detroit, Michigan*

During the last year, this Committee has had two meetings. An additional recommendation was submitted to the Review Committee established by the sponsors of the Code. It was to the effect that the priority afforded a real estate mortgagee, who had contracted to make subsequent advances prior to the perfection of a security interest, should not be lost by reason of a later default which would excuse him from making the advance. The Code does not specifically provide otherwise, but it was thought desirable to have the point expressly stated.

The Review Committee has completed its preliminary draft of proposed amendments to those portions of Code Article 9 dealing with fixtures. This draft is expected to be in circulation during the fall. It is the intention of this Committee to study the preliminary draft intensively, and to suggest such further changes in Article 9 as may seem desirable after such study.

# MEETING TIMETABLE

## 1969

**March 5-6-7, 1969**
MID-WINTER CONFERENCE
American Land Title Association
The Drake Hotel
Chicago, Illinois

**April 3-4-5, 1969**
Arkansas Land Title Association
Coachman's Inn
Little Rock, Arkansas

**April 18-19, 1969**
Oklahoma Land Title Association
Oklahoma City, Oklahoma

**April 24-25-26, 1969**
Texas Land Title Association
Texas Hotel
Fort Worth, Texas

**May 5-6-7, 1969**
Iowa Land Title Association
Holiday Inn
Sioux City, Iowa

**May 8-9-10-11, 1969**
Washington Land Title Association
Tyee Motor Hotel
Olympia, Washington

**May 9-10, 1969**
Tennessee Land Title Association
Downtown Holiday Inn
Chattanooga, Tennessee

**May 15-16, 1969**
Utah Land Title Association
Park City, Utah

**May 21-22-23, 1969**
California Land Title Association
Fairmont Hotel
San Francisco, California

**May 25-26-27, 1969**
Pennsylvania Land Title Association
Shawnee on Delaware, Pennsylvania

**June 11-12-13, 1969**
Illinois Land Title Association
Drake Hotel, Chicago

**June 13-14-15, 1969**
Colorado Land Title Association
Steamboat Springs, Colorado

**June 18-19-20-21, 1969**
Oregon Land Title Association
Gearhart Motor Inn
Gearhart, Oregon

**June 25-26-27-28, 1969**
Michigan Land Title Association
Hidden Valley
Gaylord, Michigan

**June 26-27-28-29, 1969**
Idaho Land Title Association
The North Shore Motor Hotel
Coeur d'Alene, Idaho

**June 27-28, 1969**
South Dakota Land Title Association
Holiday Inn
Aberdeen, South Dakota

**June 30-July 1, 1969**
New Jersey Land Title
Insurance Association
Seaview Country Club, Absecon

**July 13-14-15-16, 1969**
New York State Land Title Association
Whiteface Inn
Lake Placid, New York

**August 22-23-24, 1969**
Ohio Title Association
Atwood Lodge
Dellroy, Ohio

**September 5-6-7, 1969**
Missouri Land Title Association
Plaza Inn, Kansas City, Missouri

**September 11-12-13, 1969**
North Dakota Land Title Association
Plainsman Hotel
Williston, North Dakota

**September 28-29-30, October 1, 1969**
ANNUAL CONVENTION
American Land Title Association
Chalfonte-Haddon Hall Hotel
Atlantic City, New Jersey

**October 9-10-11, 1969**
Nebraska Title Association
Lincoln, Nebraska

**October 16-17, 1969**
Dixie Land Title Association
Calloway Gardens
Pine Mountain, Georgia

**October 26-27-28, 1969**
Indiana Land Title Association
Stouffer's Inn
Indianapolis, Indiana

**October 30, November 1, 1969**
Wisconsin Land Title Association
Holiday Inn
Eau Claire, Wisconsin

**December 3, 1969**
Louisiana Land Title Association
Royal Orleans Hotel
New Orleans, Louisiana

## 1970

**April 1-2-3, 1970**
MID-WINTER CONFERENCE
American Land Title Association
The Roosevelt Hotel
New Orleans, Louisiana

**October 4-5-6-7, 1970**
ANNUAL CONVENTION
American Land Title Association
Waldorf-Astoria Hotel
New York, New York

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