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Title News

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POLITICAL AWARENESS

a message from the President. . .

Sometimes I hear the old question: Is it really true? A variation of this is: Can I really believe it? Some things we hear are so obviously false that they may be dismissed from our minds immediately. Others are dubious, and require some investigation on our part. Then there is the one we hear that is so apparently true that we accept it and move on with little thought toward promoting it.

Our democratic-capitalistic system, the basis for the success and growth of this great nation of ours, is such a truth. Because we have known it so long we are prone to accept this system as a *fait accompli.* But do we really see the big picture?

A personal letter to me from Claude C. Jones, Jr., president of DeSoto Abstract Co. of Arcadia, Florida, carries the following message.

"There are too many Americans that do not know what our democratic-capitalistic system is or what it stands for. The very fact that it stands for dispersement of power through private ownership should make our job in the title industry easier; however, millions of Americans do not understand this. Perhaps this is the area of prime responsibility of the title industry, to make Americans aware of our great system."

Claude defines democracy as "government by the people; government in which the supreme power is retained by the people and exercised either directly or indirectly through a system of representation."

Capitalism is "an economic system in which the ownership of land, natural wealth, production, distribution and exchange of goods are under the control and operation of private enterprise under competitive conditions."

These seem like textbook truths and definitions. In fact they are! But, because they are so basic, Claude's remarks ring loud and clear. I see therein a challenge.

We have experienced this truth of a democratic-capitalistic system, and in my opinion our industry is significant in that the reason for its existence is predicated upon the basic concept of the system. Individual ownership of land, and the right to be secure in that ownership, make our mission in life necessary.

If the remarks of Claude C. Jones, Jr. get to you, as they did to me, do something about it.

Sincerely,

Philip D. McCulloch

VOLUME 56, NUMBER 1

Title News

Proceedings—70th annual ALTA convention, Seattle

Departments

On the cover: This title industry collage, like Janus, the mythological Roman god from which the word January derives, appropriately conveys two perspectives. One looks back to aspects of the 1976 ALTA Convention and the accomplishments of 1976 while the second looks toward the future and its accompanying challenges. Best wishes for a prosperous 1977.

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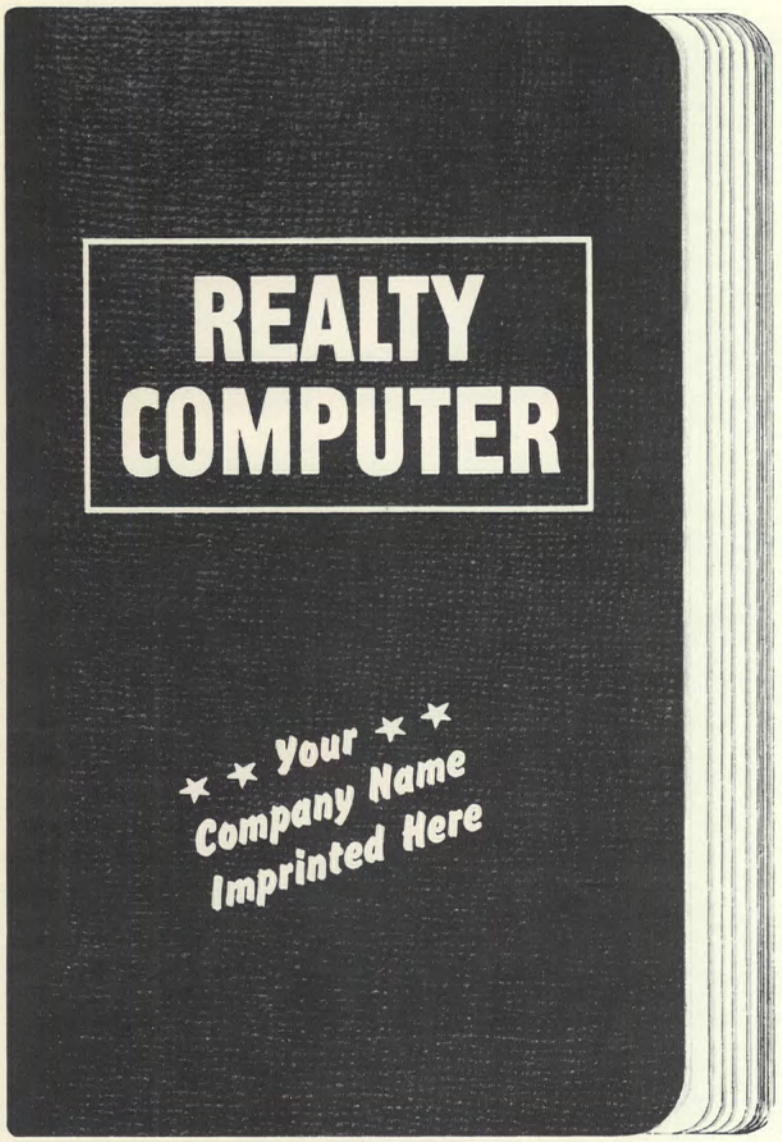

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General Sessions

President's Report

Richard H. Howlett, 1975-76 ALTA President

Senior Vice President
Title Insurance and Trust Company
Los Angeles, California

The program, as printed, says that this is a Report of the President. I think under the circumstances I ought to say one year, ten pounds and two inches later.

It has been a privilege serving you as president of the Association for the past year and I would like to take a minute or two in reporting something other than the fact that we have attended conventions.

We have been closely watching the Association for many years. But not until the last three years were we able to see the function and the organization of the Association.

You are to be complimented on your staff. It is efficient. It works well.

Your Planning Committee is working very hard to streamline the organization and make it more efficient so that your Association can better serve the needs of the industry.

In our relationship with our membership, we have an area that needs a lot of improvement. And that is the direction that our national officers are taking to increase the support for our state affiliated associations. It is the policy of your national that if there need be regulation of our industry, it should not be federal. It should be state.

Because of that policy, it is essential that we get the industry together so that they can handle their local problems, can govern themselves and establish their regulation as rules of reason before they're imposed upon them.

The role of the national is to help the state associations achieve that goal.

I urge you to make that one of your prime purposes during the coming year.

We're very proud of the work of the officers and the staff of the Association during the past year. The program is filled with reports of these functions. It would be redundant for me to tell you what we have done. The only think I can do is to urge you to get involved. Participate. That way, and that way only will your Association in fact know what your needs are and know how to serve you.

The Executive Committee this year created our Government Relations Committee. This is evidence of what your Association is trying to do to affirmatively represent your industry.

Welcome to the Port of Seattle

Henry T. Simonson
President, Port of Seattle Commission

Ladies and gentlemen, I am delighted to have been chosen to welcome you to what I, immodestly but sincerely, believe to be one of America's finest seaport cities.

Speaking for the Port of Seattle and all of our citizens, we hope your convention here will be interesting and fruitful, that you will find us friendly and hospitable and that you will return to your homes with the feeling that, next to your own hometown, Seattle is your second favorite city.

Really, that's all that I was scheduled to say to you. But I can't pass up this opportunity to tell you a few facts about our port authority — the sort of things that our real estate director assured me would be of interest to you.

First, I should explain that the Port of Seattle is a separate municipal corporation and not a part of the city of Seattle. Our boundaries are coexistent with those of King County and we have a modest taxing authority on all real estate within the county.

We do use title insurance in all of our property acquisitions, which amounted to approximately $30 million last year. Our income from all sources amounts to $58 million annually, of which some $16 million is derived from rentals. We have approximately 475 land leases on our waterfront and another 154 at Seattle-Tacoma International Airport, which we own and operate.

Our properties have a book value of $394 million and an estimated current market value of $875 million.

And about all that proves is that we're not as big as, say, the Port of New York, but we're not the smallest port in the country, either.

Having now finished bragging about our port, let me return to the principal purpose for which I am on your program. That, of course, is to tell you sincerely that you are our welcome and honored guests and we hope you return very soon. Thank you.

Government Relations Committee Report

Philip B. Branson, Committee Chairman

Senior Vice President
Title Insurance and Trust Company
Los Angeles, California

Thank you, Dick. I appreciate being the lead-off speaker for the 1976 Convention. Some important developments have taken place since our last convention and we have an exciting story to tell.

It's been a productive year for the industry Government Relations Program. We've made progress — and I can say that safely because it's also been our first year. We started at point zero. Last year at this time, a government relations program was only an idea — but it was certainly an idea which received a great deal of attention at the 1975 Convention in Chicago.

You will recall our being lambasted by people in Washington who didn't really understand our business. We had also been attacked a few times by the nation's media. The problem wasn't disappearing. It was becoming more acute. There was a consensus it was time to develop an offensive campaign that would educate government on the true nature and benefit of the title insurance industry.

Following specific suggestions from the Public Relations Committee, the Executive Committee authorized staff and budget for a major undertaking. That was late October. By the end of December, the new committee had come to final draft of its Charter of Operations. It was approved in January. During this time, we were working with Bill McAuliffe on finding the most qualified individual to staff this project. The committee set its personnel sights very high. Washington is full of "experts" on darn near everything but it took quite a bit of searching to find our staff director. After reviewing over 200 resumes and interviewing 18 candidates, we found our man. Mark Winter joined us in February. Mark has an excellent background. A masters degree in government from Georgetown and years working in government relations with the U.S. League of Savings Associations.

Mark hit the decks running and we started to move. Projects have included:

- Interviews with key Congressmen in *Title News*
- Legislative contact programs
- Position papers on the nature and need for title insurance services, the importance of title insurance in the availability of mortgage funds and in the development of the secondary mortgage market, the benefits of title insurance, popular misconceptions of the title industry and the Torrens System
- Legislative status reports
- Formal Capitol Hill visits by ALTA members
- Seminar '76

This is an association that can move quickly when it has to.

(*continued*)

government—(*continued from page 3*)

We have for you a slide presentation of the Hill visit and Seminar '76, narrated by Government Relations Committee member and Chairman of the Abstracters and Title Insurance Agents Section, Roger Bell.

(*Slide Presentation*)

Thank you Roger. What you saw on the screen was a major step for us. In a manner of speaking, we've come out of the closet. We're going on an educational offensive. As an industry, our political awareness quotient is way up. Two or three years ago how many of us were really familiar and concerned with the Washington Scene? There are now new words in our vocabulary — RESPA, Lender Pay, Martin Lobel, RESPA II, TIPAC, McCarran-Ferguson, Benny Kass, Mark Winter, Ad Hoc Committee, Section 8, Section 13, Kathleen O'Reilly, and, if you will — government relations.

We must recognize a basic difference in philosophy. Many in government, as well as consumerists, believe direct government intervention into your business is the best answer to lowering closing costs. They believe private industry is suspect in what it says because it only perpetrates its own selfish interest. That is their sincere belief. They operate on that premise.

Please understand our Washington problems are real. They are ongoing. They won't go away. Don't look for any long breathing periods because as soon as we deal with one issue, another will pop up.

It is also important to note that we can no longer think of our adversaries as individuals who don't know what they're talking about. Our opponents are intelligent, persuasive, influential people who are being listened to and who are educating themselves.

But also realize there is no cause to panic. This industry performs a valuable service to the consumer at a very reasonable cost, and it can be demonstrated.

You and I believe in private enterprise. We realize the importance of open competition as a means by which the public will realize the best product and services for their consumer dollars. We believe a competitive, open marketplace protects the public. Private enterprise encourages efficiency and if we were to leave our destiny in the hands of federal agencies the public would be the ones to suffer. However, don't assume these truths to be self-evident. They aren't.

I am reminded of a quote attributed to George Bernard Shaw, which I believe succinctly states where we have been and where we are going. Mr. Shaw said, "People are always blaming their circumstances for what they are. I don't believe in circumstances. The people who get on in this world are the people who get up and look for the circumstances they want and if they can't find them, they make them." This is exactly what we are doing.

We have an excellent case. We are presenting it in a logical, reasoned, directed and aggressive manner. This Association is fully aware of the need for communication with government bodies of the real facts about the title insurance industry.

We have developed a strong communications foundation and upon that base we are building a sound and effective communications structure.

The Government Relations Committee is already into its 1977 program. We are going to be involved in more seminars, more staff effort on the Hill, more Congressional contracts, more position papers, more coordination with state associations and a program to encourage more participation by individual members.

We're new. We're learning. We're gaining in experience and momentum. ALTA is on the right track. But how about your company? How about your state association? Where do you stand? There are at least four choices. You can assume the problem is nonexistent; you can underestimate the longevity of the problem and hope that it will pass; you can proceed alone and fight individually as a company or state association, or, preferably, you can aggressively and positively support the industry programs in the following ways:

- As an involved and vocal citizen
- As a member of a state association wired into ALTA efforts
- As a financial supporter of TIPAC
- As a donor of time to make positive contact with legislators

For ALTA as a whole, and for you individually, a unified and intensive campaign is needed which requires your time and support. Change is directly related to the amount of effort we as an industry make in informing and educating our friends and adversaries as to what the title insurance industry is really all about.

On behalf of the Government Relations Committee, I leave you with three thoughts: The problem is serious; the facts are in our favor; we are taking the offensive.

Report of the Title Industry Political Action Committee (TIPAC)

Francis E. O'Connor, Chairman, TIPAC Board of Trustees
Senior Vice President
Chicago Title and Trust Company, Chicago, Illinois

Thank you. You know, Phil did talk about, a little bit about getting involved in political activity and all of us are constantly being told that's what we should do and I think that's good. And I'll spend a little time on that a little later.

But in order for such involvement to be effective, as I'm sure you all know, we must secure the attention of our legislators and that can only be done by providing them with financial support, in large enough amounts to be noticed, directed to those making decisions that affect our industry.

Over the last three years your TIPAC Board of Trustees, Jerry Ippel, Jim Schmidt and I, have joined you at various state title association meetings, and at ALTA Mid-Winter Conferences and Annual Conventions with one simple objective in mind. And that is to secure your financial support for TIPAC. This is necessary to assure that TIPAC will be a successful instrument for asserting the title industry's point of view to Congress. Today, on behalf of the Board of Trustees, I thank each of you who contributed to the TIPAC cause. Over $41,000 has been collected since TIPAC's inception three years ago, $36,000 of which has been given to support the candidacies of key members of Congress who currently are seeking re-election.

$41,000 collected over three years, however, is not a tremendous response. I cannot emphasize too strongly the necessity for all ALTA members — from the largest to the smallest — to lend financial support to the industry's PAC. This PAC is not an organization whose membership is limited to officers of large underwriters — all ALTA members must get involved. I would hate to see such momentum as we have achieved slowed or stopped, and to face the necessity of dissolving TIPAC because of lack of your support.

During the past year, the TIPAC Board of Trustees met four times to select those Congressional candidates who would be the recipients of TIPAC funds and to discuss the manner in which those funds could be most effectively deployed. Remember, with the dollars that are contributed by the ALTA membership to TIPAC, the title industry benefits not only through its strengthened political identity, but through its opportunity to inform legislators about the title business. By selectively pooling and distributing the contributions from TIPAC's supporters, the Board of Trustees hopes to achieve optimum political effectiveness and visibility during this election year.

TIPAC's donations to the Congressional candidates ranged from $500 to $2,500 and were directed primarily to members of the House and Senate Banking and Judiciary Committees. Anyone who is interested in reviewing a list of these campaign contributions should contact Mark Winter.

As a part of TIPAC's campaign strategy, the Board of Trustees contacted various ALTA members drawn from the constituency of the respective Congressional candidates and arranged for these members to personally convey the TIPAC check to the appropriate campaign committee. In this way, the Board of Trustees hoped to achieve greater political leverage with these important Congressional committee members. At this time I'd like to extend a special thank you to those ALTA members who delivered the checks for dedicating time and effort to this assignment.

We already have received a number of responses from Congressional recipients of TIPAC checks which not only expressed thanks for our contribution but encouraged members of our industry to visit them in their offices.

I'd like now to give you a representative sample of the responses:

Senator Harry Byrd of Virginia stated, "I do hope you will express to all the members of your Association my warm appreciation and tell them how grateful I am for their confidence and support."

Representative Mazzoli, a Democrat from Louisville, wrote, "Many thanks to you and your TIPAC colleagues for the very welcome and helpful campaign check."

Representative Richard Kelly of Florida's 5th Congressional District expressed his thanks and commented, "With TIPAC's support I will be able to continue to work to maintain our free enterprise system and to keep the government from spending us into oblivion."

Representative Mark Hannaford, a Democrat from California and a member of the important House Banking Committee extended us his "gratitude for the generosity and support of TIPAC."

(*continued*)

Representative Jack Brooks, a Democrat from Beaumont, Texas said, "Be assured that I will continue to do my utmost to meet the confidence of your membership."

And Representative Robert H. Michel, House Minority Whip wrote, "How pleasantly surprised we were to receive the most generous contribution from the Title Industry Political Action Committee.

"You can rest assured it will be put to good use, advertising our record in the Congress, and promoting those principles to which we all subscribe.

"Many thanks for this expression of confidence and support."

All of you have cause to be proud of your efforts on behalf of TIPAC. Through your continued help TIPAC can achieve even more significant results, and continue to grow and serve as a persuasive and responsible voice in the political forum.

Although TIPAC always has required your financial support, it now is more imperative than ever that the title industry unify itself and lend its assistance to its Political Action Committee. Not only are we facing the possibility of a new administration this election year, but, also, one-third of the Senate is up for re-election as well as all members of the House of Representatives. Next year's 95th Congress will contain many new faces. So far, 48 House members and eight Senators have announced that they will not seek re-election, which exceeds the 52 Congressional dropouts in 1974. Of particular interest, five of the 44 members of the House Banking Committee are not seeking re-election. Three House Banking Committee members have announced their resignations: Representative Leonor Sullivan (D-Mo.), Representative Bob Stevens (D-Ga.) and Representative Tom Rees (D-Cal.). And as you all know, I'm sure, Representatives Wright Patman (D-Tex.) and William Barrett (D-Pa.) are deceased. It is apparent from these statistics that the business community will not only be dealing with new faces, but also with a number of new committee assignments. Therefore, I once again appeal to you for financial assistance.

The recent changes in the character of the regulations governing business, finance and industry have amplified both the responsibility and the scope of TIPAC's efforts to make its voice heard in Congress. Although changes in the membership of Congress are inevitable after this November's election, the need for TIPAC to assert the title industry's point of view remains constant. Accordingly, it is the intention of the TIPAC Board of Trustees to continue to authorize contributions even during non-election years. We feel that it will further enhance our industry's visibility and credibility if we help defray campaign debts that the Congressional candidates incur and also have our industry represented at certain, key Congressional dinners and receptions. It is with this in mind that I urge you to actively participate in the support of our industry's political action committee.

In May of this year, the Federal Election Campaign Act Amendments of 1976 were passed by Congress and signed into law. One of the most significant aspects of the new Federal Election Campaign Amendments Law is the solicitation process by which trade association PACs must abide. One section specifically provides that a PAC established by a trade association may solicit contributions from the stockholders, executive or administrative personnel, and families of such stockholders or personnel of the member corporations. However, it is required that the solicitation be separately and specifically approved by the member corporation involved, and the member corporation may not approve solicitation by more than one trade association PAC in any calendar year. On June 3 of this year, I sent a memo to ALTA members requesting their permission to be solicited by TIPAC. Although many have responded, a number still have not. I'd like to emphasize that it is important that TIPAC receive your permission to solicit your executive and administrative personnel. And many corporations I learned today are also soliciting shareholders. We have made available a supply of blue solicitation cards at the registration desk. Please make it possible for us to solicit contributions.

The registration desk also has on hand a supply of yellow membership cards. As I'm sure you'll recall, we offer four membership classifications: Supporting member at $10, active member at $25, sponsoring member at $50 and sustaining member at $100 or more. We are asking you to be generous, so that we can further expand TIPAC's funding capacity.

We probably will never have as many dollars to spend as some of the larger PACs. However, under the Federal Election Campaign Act we can make contributions to selected candidates in amounts as large as these more heavily funded PACs are allowed to make. By being selective we certainly can command the attention of those serving on committees which deal with legislation affecting our industry.

I remind you that the tax treatment for TIPAC contributors has not been subject to any variation. This means that individuals making a contribution to TIPAC are still permitted either a tax deduction or a tax credit.

Many of you have responded to TIPAC's needs over the past three years, and it is the hope of the Board of Trustees that even more of you will choose to be involved this year and in future years. To meet the many challenges which now confront our industry, we must be prepared to assert ourselves in the legislative arena. The representation that we so vitally need on Capitol Hill requires the collective support of our membership. Every contribution affords us that much more of an opportunity to successfully assert the views of the title industry in the appropriate political forums.

In addition to supporting TIPAC, we can and should become equally sensitive to the social and political world which shapes our business environment, the patterns of law, relationships, and customs which determine the way we do business. We cannot afford to ignore what is happening in Washington, or just let others worry about it, nor *can we any longer* afford a lack of communication with our elected representatives. I believe that's the principal reason for the development of inequities in the first place. We must admit that we've sat on our big fat complacencies and failed to communicate with our elected representatives, advising them personally of our opinions and interests. *Speak up!* At last report the lawmakers say they *are* listening. We must insist that our business and professional organizations become skilled and active in the political arena, and that they cooperate with others in meeting a common goal.

We will achieve some measure of success in the legislative arena by consistent, cooperative, industrywide cooperation through our Congressmen. You also can contribute to the overall effort to moderate the present trends by becoming *personally involved.* If you do so, I'm sure the signers of the Declaration of Independence will join me in thanking you.

MBA Congressional Perspective

Walter B. Williams, Past President
Mortgage Bankers Association of America
Member, MBA Legislative Committee
President, Continental, Inc.
Seattle, Washington

Thank you, Mr. Howlett. Ladies and gentlemen, it's a real privilege for me to be here to visit with all of you. Also, as a vice president of the Seattle Chamber of Commerce, I'm glad that you picked Seattle this year as your convention site. This is one of the more illustrious conventions we've had and we're very proud to have you. I guess you're not quite as big as the American Legion convention we had here a few weeks ago, but contrary to traditional expectations, you're probably just as noisy because they weren't like they used to be. Anyway we're awfully glad to have you here.

I'm particularly glad to be able to visit with you because, of course, we work closely with people in your industry here in Seattle all the time — very closely. During the time I served as president of our national association, I became acquainted with many of your leaders — particularly Bill McAuliffe and his very good staff. But, I've never had the chance to talk to a title organization before.

You may have already gathered from our speaker from the port this morning that you are in a city that maybe is obnoxiously proud of itself. We're very optimistic here. We feel that a lot of things are going well in Seattle. Home building is going well. For our professional football team, we have a new domed stadium which, happily, we built for a little more than a third of the new New Orleans stadium of the same size. Of the 63,000 season tickets offered, 57,000 were sold the first day, even though we didn't yet have football players or a coach or anything. We have local governments which operate in the black — unlike some parts of the country.

Today, I particularly want to talk about things of mutual interest to us because we do have a very close relationship. Your industry is essential to all our operations. We just can't do anything from the beginning of the mortgage to the ultimate foreclosure, if it goes that way, without working closely with you people.

And on the other hand, I think that because we do work so closely and use you so completely, our volume and what we're doing in our industry is of considerable importance to your success and the volume and nature of your business in the coming period.

I notice that the program alludes to this being a congressional type forecast but I'm only going to touch on that somewhat

(*continued*)

because I think that predicting at this stage of an election is even more uncertain than forecasting interest rates.

But we will touch on the congressional and legislative aspects of the various key items that I think affect both our industries.

The biggest single thing that's obviously happening now in the real estate field is the real boom in single family activity. I think sometimes we aren't fully aware of it because it's kind of lost in the overall housing figures. You know, housing statistics come out and the constant comment is that they're not that good or they're only a little bit better than last year or whatever.

But when people see housing figures they're apt to think those housing figures are all about single family houses. Well, of course, the housing figures are collective. They include single family and apartments and everything else. And totally they've not been that great, but the single family side has been really the boom side more than I think is generally appreciated. Last year was good, but this has been much better — both in the new construction and in the existing. The existing is at record levels — 20 per cent over last year, which I think was also record levels. The new construction side is near record levels. In our community this year, it will be the highest ever, except for the one year of the building boom we had in the late 60's. And nationwide it's going to be a record except for 1972 when we had a lot of subsidized single family starts which gave it a sort of abnormal bulge at that time.

So, I think the next questions are: What does it mean? Is it here to stay? Is it temporary or what?

And there are a number of reasons why I think that if things are done right we should have a healthy single family period for several years at least.

Of course, the key thing that makes it so are the demographic factors — essentially the fact that the post war baby boom is now reaching into the family or home ownership stage rather than the apartment stage. The big population bulge is heading that way and that is the key support of this thing.

But obviously it wouldn't happen just with that. Because we had quite a dismal single family start just a couple of years ago which shows that you need other factors besides this population to make it go.

I think there are both subjective and economic factors. One is the style-of-living factor. I think, worldwide there's the desire to have that kind of anonymity or separateness or whatever that goes with the single family home rather than being part of a big, massive high-rise.

So often we see these things better if we look at them from a different perspective. And I had this chance two years ago when I was participating in a United Nations housing study involving the European section of the United Nations. They were looking at Denmark and Sweden but the people involved were from every country in Europe — both eastern and western. The dramatic thing that had happened in not only Denmark and Sweden but throughout western Europe was that though they were still building high-rises, nobody was moving into them. But anywhere a single family house went up — townhouse or whatever — there was a long waiting list. And you notice that recently the Swedish government changed or fell. One of the factors that contributed to that was increasing criticism of the government for continuing to support high-rise construction when the public really wanted to go single family.

So, there is a social factor there as well as the economic factors that gives a strong impetus to the single family side.

It was interesting to note that in the various discussions among this group the only one that indicated differently was the Russian representative. I asked him if there was a similar trend in Russia away from the high-rise. He answered no and said that his people are still happy to move into the high-rises. Well, you can draw your own conclusions. It's different if you don't have a choice about what happens. I think that was the only significant difference from the rest of Europe.

There are several things that have helped this and I think they're also reasons why we have to watch to be sure we don't undo this good strong factor going.

Will this housing strength continue? Let's look at the things that have helped and the possible pitfalls in the future. Of course, on the economic side there has been more mortgage money and the rates are better. As you know the FHA and VA rates just dropped to 8 per cent last Friday, which is the lowest they've been in a long time. Now these are set rates but happily the administration lately has been doing a pretty good job of not setting them too far from the market so that the discounts don't become too large to correct.

So this, of course, is real help because every time those interest rates go down, you lower the monthly payment that's required for a monthly mortgage, which is the standard mortgage. Every time you lower that monthly payment, you qualify more buyers for the same house. Just that many more buyers are able to buy that $35,000 or $40,000 house because their income will just support a certain monthly payment level and when that payment drops you've qualified more buyers. So this interest rate reduction is one of the key things in supporting and strengthening the single family boom.

If we're looking ahead to where this thing is going to go we come back to the question of where our interest rates are going. I want to come back to that in a minute.

There have been other things that have particularly strengthened the single family side and that's the new tools that have come on to help in the financing of homes. Many people aren't too well aware of these tools because they are in the secondary market and that's something that the average home buyer is not aware of.

One of the things that's been very effective in bringing a whole lot of new money into the home mortgage market has been the GNMA mortgage-backed security. The mortgage originator, like us, puts together a pool of FHA and VA mortgages and then issues a certificate based on that pool and with a return of principal and interest based on what the mortgagors have agreed to pay. And whether they pay it or not, we are assuring the security buyer we will pay it. That's our responsibility to see that it happens so the security buyer is assured he is going to get that money each month on time.

Two things are more important than that. One is that because these are insured mortgages and because we are qualified originators under federal supervision, the federal government guarantees that the buyer of these certificates gets his principal on time. Now this means that the buyer of this certificate has two things. He has the guaranty of the United States that he will get that money every month when it's due. Secondly, he doesn't have to worry about any of the accounting and supervision of a mortgage portfolio. He doesn't have to worry about delinquency and which pattern is going, foreclosure problems and that sort of thing. He's freed of all of that. So, it's made it a very attractive instrument and it's permitted a lot of people, pension funds, small banks and so on, that never put money into the mortgage market, to do so. And, of course, any time you can get more mortgage money in, you are helping both keep rates down and generally provide a larger supply of money to support a larger volume of single family operations.

This has been really one of the most outstanding things that has happened in this decade in the whole mortgage industry — particularly on the single family side.

There have been other things that have quietly come along that have helped. The VA loan, which is one of the best home loans there is, has been strengthened both in that there is a larger guarantee permitting a much larger loan to be given there. And, also, particularly significant is that all of we veterans who have used our VA mortgage many years ago and since have sold that house and the mortgage is all gone, now are authorized to get a whole new VA loan. So many more are now eligible for this VA loan which is really the best loan going, with the 8 per cent interest today and minimum down payment on even a major mortgage.

To see whether or not this is going to continue, I think the next thing to look at is the possible adverse factors and the risks that they might jeopardize this whole strong side of the industry. Now there are many, and how bad it gets is a question for all of us to consider when we think about our political activity, the importance of which Mr. O'Connor so well just pointed out to you.

The environmental laws and a whole category of things that come under that heading have increasingly slowed down the development of land and thereby the availability of single family lots. When you cut the supply, you're obviously going to increase the price because of the shortage that results.

You know we're quite strong on the environment out here. All of us who are interested in the production side also live here and want the environment to be protected. And this is true, I think, in most parts of the country.

But the problems I'm concerned with are not so much whether we save the environment or not, but the procedural doubts and uncertainties or encumbrances that have really bogged the thing down. In many cases the problem is not with the administrators of these laws or the legislative body that passes them, but the way the courts have interpreted them. For example, there was a court decision this summer from our State Supreme Court that said King County, our local government, was wrong when it said that for a plat of about 180 homes where the county had done a full evaluation and had come up with so-called negative declarations that environmental factors were not involved, that this was okay and that was okay — where the county had done all these things very thoroughly it should still have required a full impact statement. In terms of direct cost for the impact state-

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ment, this comes to about $20,000 for that plat of about 180 ordinary FHA single family lots.

This was a decision, which beyond that, didn't say what kind of plats have to have this — whether it's 175 or 10 or what. It didn't say what the rules were or anything. So it's thrown the whole state and every county planning department and so on into confusion. There aren't enough people to write impact statements to meet that kind of demand so the whole lot development process has been slowed down.

These kinds of things really do hurt the supply of lots and thereby hurt the homebuyer's ability to get a single family home at a reasonable price.

Under the same general heading, of course, is the whole no-growth concept, which I think has more aptly been described as the drawbridge concept — that we've got our home here so don't let anybody else in. Pull up the drawbridge. And this has affected, of course, many communities. We've got our sewer but let's not have any more sewers for anybody else. These are the kinds of things that are probably one of the greatest impediments to the continuation of the single family demand and supply that we now have.

There are other areas of some concern. Of course, the key one is where will long term interest rates go? Will they stay down to the more livable levels of now or will they move back up with heating up the economy?

That, of course, depends on whether government gets into deeper deficit spending or not. Long term interest rates are largely a matter of expectations of what the lenders think is going to happen in the way of inflation. As we've pulled inflation back down, long term interest rates have come right down with it.

Again, when we get into the forecast of what's going to happen here, we're not making so much an economic forecast as a political forecast. It's in the political world where decisions on deficit spending and other economic policies are made. I'll leave this political forecasting to others.

So those are kind of the plusses that are going on in the single family area and the things that we have to be concerned about because it could be stopped-off rather quickly, as it was a few years ago.

The other areas of real estate finance are also of interest to you because every time there is real estate finance, there's a title policy. As you know, conversely to the single family side, the apartment starts are way down — and for a lot of reasons. Because more people are going to single families, they don't need apartments. But there are other things, of course, too. Rent control in some areas and the increased problems with that or the threat of that have discouraged apartment lending and development in some areas. We know, for instance, one of the insurance companies we represent, one of the ten largest in the country, has been a heavy apartment house lender for a number of years but has stopped apartment house lending now because it just feels there are too many problems and too many risks.

The other areas of commercial lending are affected by a lot of things — I guess mainly the market. In many parts of the country, the overbuilding of shopping centers, new office buildings and so on have obviously slowed that down.

And then the increased governmental procedures required have slowed down some developments too. But these have had some plusses. The shopping center world has moved from a world of new shopping centers to one of many expansions, redevelopments and redos. Generally, these involve a new financing and a new title policy. There are some other healthy things in this kind of restructuring and redoing of existing commercial real estate.

One of the special items I'd like to talk about is the position of FHA in our whole real estate, construction and financing operation.

As you know, FHA was really the backbone of single family ownership in this country from the mid-30's until rather recently. It was the program that really enabled most lower and middle income people to buy a home or their first home and, in many cases, the second and third home.

The FHA share of the market has declined drastically in recent years and this decline can be explained by various things but it came simultaneously with a major reorganization — I will blame both administrations for this because it started under the Democrats and was completed under the Republicans — of wrapping FHA into HUD so that FHA is an organization that no longer exists. The label is there in some programs but, as an organization, it's gone. Instead of FHA local offices and regional offices we have HUD regional offices. And this is more than just a difference in name because the person that is responsible for FHA activities in the local HUD office or the regional HUD office may have been an FHA person if we're lucky but probably he never had anything to do with FHA. Yet he's running all these programs along with Urban Renewal and the Community Block Grants and all the various kinds of programs that HUD runs.

Well, if you've known and worked with FHA over the years, you realize it developed a professionalism. When you obliterated that organization, you wiped out the professionalism and the *esprit de corps* and a pride that went with it. Since this happened, FHA processing has gotten badly bogged down with the result that in too many cases people avoid it if they can.

Now I don't want to be too sweeping here. In spite of this terrible organizational defect, there are still some very fine people working in the organization. There are some strong efforts being made to make it work. But we feel this is fighting against the system that just isn't the right system. These efforts are good in one area and they fall down in another area. The Mortgage Bankers Association and the other major organizations, including the National Association of Mutual Savings Banks, the United States League of Savings Associations, the National Association of Realtors and the National Association of Home Builders are pushing for this. It's going to be a big effort in the next Congress to get FHA established again as an independent organization. This could be in HUD or out of HUD. That's not important at all. But you've got to have the professional group that works in this area back to being an independent group — not totally mixed in with everything else.

We talked about the multiple family starts problem and this is where FHA is badly bogged down in the shuffle. That's where they really need the expertise and where they've lost a lot of it and where reorganizing an independent FHA is particularly important.

Going to some other recent congressional things of particular interest, there is RESPA — Real Estate Settlement Procedures Act — which initially caused so many problems. Consequently, it was substantially amended quite speedily with this revised format effective June 30.

The people in our five branch offices are very happy with it. They think it's working well. Many homebuyers don't care about all this increased protection, but others appreciate the extra detailed information they receive. Briefly, the moment a person comes in to apply for a loan they receive a booklet prepared by HUD, *The Homebuyer's Guide to Settlement Costs.* It's a good booklet describing how we all function. In about 30 pages the homebuyer has a chance to look up a variety of things.

At the same time we take the application, we make an estimate of what the closing costs are going to be. This is very helpful in that early in the game the homebuyer has some idea of what all these costs are that he's heard about and what the item by item breakdown is. Then at the time of the final settlement, he gets a precise, accurate breakdown of all the settlement costs that ties him in with his book so he can look in his book and see how it all ties in together.

As you know there are also provisions in RESPA preventing kickbacks. I don't think that has been of much significance to us in this part of the country, but I think the title industry and others in some parts of the country were affected by this. I think most people were glad that finally the problem was eliminated by a law that stopped it.

Related to the RESPA legislation is the proposal that's been disturbing all of us —the proposal that the lender pay all the title costs. And I'm happy to report that our people think that this is really a dead issue. And they think it's a dead issue because, firstly, the RESPA problem the first go around caused so many problems that there is a feeling in Congress that they didn't just want to jump into things willy-nilly. Secondly, it would obviously be a futile effort. It is apparent that no matter how the charge is structured it has to be included in the cost to the borrower.

Now I should say that another area that you and we have been interested in (and I can talk about this critically because I was a lawyer before I was a mortgage banker) is the report of the American Bar Association's Special Committee on Real Estate Transactions, I don't know how many of you are aware of their report that came out this year. It's entitled *The Proper Role of the Lawyer in the Residential Real Estate Transaction.* Well, they had some very distinguished lawyers on this, including one of my old professors at Harvard Law School, but I guess not surprisingly, the main conclusion is that more lawyers should be involved in real estate transactions. The lender's lawyer cannot be the borrower's lawyer and everyone else involved also must have a lawyer. They did recognize that all these lawyers would add considerably to the cost of the whole transaction. So their next recommendation is to save cost elsewhere. They say the big cost in the industry on the settlement side is the high cost of title plants. So the recommendation is that over a period of time title plants be eliminated. Well, you can't phase them out unless you have something else instead so the recommendation is that public recording systems be greatly strengthened so we wouldn't need the private title plants anymore. They recognized these public record-

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ing systems would be at the taxpayer's expense. So I suppose you could trace this through and it comes out this way: We'll hire more attorneys and we're going to pay them by getting rid of title plants which cost money and, instead, have a recording system that would be made just as expensive, but the taxpayers will pay for that. It's a questionable theory I think. But it's advanced quite seriously and it's something that needs to be watched and weighed.

They also said that if we had more lawyers in the picture, we wouldn't need so much consumer legislation. Well, I assume they're talking about things like RESPA and that sort of legislation. I think maybe it's less expensive to the homebuyer to have the consumer legislation of the RESPA type and the types we've found to be very informative to the buyer as opposed to a lot more attorney's fees in the typical home residential closing.

Obviously there are two sides to all these things but I just feel that maybe this report is weighted somewhat heavily the other way. I particularly have a strong question about whether a public recording system could ever take the place of a title plant. We have the Torrens System in this state and it's never been workable at all.

Well, those are some of the things that are going on in the industry that relate to all of us. There are a lot of good things in it. Whether these things stay good or not good and basically whether your industry and our industry can do what we are doing for the homebuyer today in the way of a low cost, efficient delivery system, depends upon our activity in seeing that the system is not messed up by well-intentioned but misdirected legislation and other efforts. And this boils down to just increased activity by all of us. I talked the other day to a titleman who was formerly a mortgage banker. I mentioned this talk and asked what I should say. He said to tell you to get more active and get your people to get more active. Well I realize that's kind of a generalization that applies to some and not others. But I think the lesson is that we all have to be more active in a whole lot of ways. I was out yesterday doorbelling for a legislative candidate and afterwards we talked about it. A few years ago, if a candidate doorbelled it was such a unique thing he just really was sure of the election. But everybody has to doorbell now just to stay even. I'm sure that's true of the whole process. We all have to be more active because everybody on all sides is getting more active.

I would particularly like to mention among other things to be considered is the fact that title companies need to be among those who permit their employees to serve in the legislature because we've got to have in the legislative effort more citizen-type people — people that know what's going on in the business world and the real estate world — and you're among those that can do that. You don't tell them how to vote. You just simply know these people understand what you're doing and what the problems are and you're glad to have them down there.

The Boeing Company here in Seattle is very good in permitting its employees to serve in the legislature and they serve running as Republicans and running as Democrats. Some of them are very pro-labor in their attitudes, others are not, but the Boeing Company has taken a very good attitude in believing this is the way they've got to help contribute to the legislative process.

If you have people that are qualified and are interested, let them become involved in the legislative process that way. We have to take on these responsibilities if we are going to have a good, effective representative governmental system.

Our Share and Our Stake in Social Responsibility

Gordon H. Sweany, President
SAFECO Corporation, Seattle, Washington

On a day like this I wish that I had a magic wand. I wish that quite often but my purpose today would be to transport us all, if it were possible, to the top of our tall buildings and see the magnificent panorama of the mountains and the water around us. This is the kind of day when we would like to show off our country in this area. You'll have a chance to see it, but right now it would be magnificent.

I'm delighted to have this opportunity to talk to this group. As you may know SAFECO is engaged in other lines of insurance — property, casualty and life insurance. We came into the title insurance field about 12 years ago. We have been through some rather rough times along with you during that period, but it's a good business. We are proud of our SAFECO title operation and we are delighted to be with you in this area of service to the public.

I've been asked to talk about the subject of corporate social responsibility. You can call it philanthropy, social action, good corporate citizenship, social achievement. It is a big subject and we can only touch, in the time that we have here, on a few aspects of the whole issue of the role of the corporation or, perhaps more accurately, of business generally in the society of today and the future.

We should be able to agree on one thing. Our first responsibility shows up on the bottom line where profits or losses are recorded. It's the obligation of any business to provide services and products which are needed and wanted by the citizens of this country. That's the very foundation of social responsibility. That's the activity that improves the material and the spiritual quality of life for most people. And, at the same time, it creates new jobs and profits, provides an adequate compensation package for employees and protects the future of the business by protecting the base of the operation and the investors' return.

And we must constantly renew ourselves to serve the changing wants and demands of the public. We must search for new markets by identifying special needs and finding better ways to meet them. All this is certainly being responsive and responsible to society.

So first we must survive and succeed, because unless we do that we can't look to other areas.

As a going, successful concern we have an affirmative impact. A failing concern or a failure has a negative impact adding to the problems of unemployment and all the other things that go with a lessening of a contribution to the social endeavor.

So as part of the management, as most of us are of an organization or company, large or small, let's start with the premise that the first step toward social responsibility is to operate our business in a successful way, conforming to the basic rules and ethics of our business and society, and making for our owners a satisfactory return on their investment.

Let's assume that that is the case, a healthy, profitable business. What more social responsibility do we have? And by social responsibility let's consider that we're talking now about charitable contributions, involvement in community projects and those other things that don't show up on the bottom line directly.

So what do we do? What should we do? This is a subject upon which there has been a tremendous amount written and said in the past ten years in particular. There are those that say that the managers should consider it their function to maximize the profits of the business; to do all that they can in a proper way to increase the return, and leave it up to the owners, the stockholders, the people who receive the profits eventually, to decide which, if any, charitable or social responsibility or endeavor they wish to support.

The question has even been asked by some critics of business, why does a businessman or woman assume to have the ability to decide what endeavors should be supported? Why entrust the spending of large sums of money to people whose prejudices and philosophies may differ from others in the society? Others who may have different objectives?

I don't know quite whom that type of person would expect to make the decision — perhaps some agency or commission of government — but where would we find one which would be free of all prejudice and have nothing but a perfect philosophy in any expenditure which they would arrive at?

We've come a long way from the 19th Century concept of a business where the founder/owner lived in his big house on the hill or in the finest part of town. He generally felt some eleemosynary obligation to recognize some of the needs of the community, the needs of his employees. He would perform good works. Undoubtedly personal gratification and self esteem was a factor, but in keeping with the customs of the times there was also recognition by most that wealth brought with it some obligation of what we would now term social responsibility.

And we see today some evidence of some major efforts in that respect. Such good works as the National Gallery and the Nobel Prize, the Rhodes Scholarships, the Carnegie Endowments. Perhaps some of you have profited, as have I, from time spent in those many libraries across the country. And there is the Rockefeller Foundation and others.

But today modern tax laws make it very difficult for individuals to accumulate great wealth and the needs from a social stand-

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point have become great both in quantity and variety. One obvious available source has been government.

There are massive programs such as Social Security and Unemployment Compensation that only government can really handle and put into effect in a short space of time. But I think that we instantly can recognize that if the activity of government is to be further expanded, the cost of those programs is going to be paid by us — you as an individual citizen and the business with which you are concerned as taxpayers. The government, of course, cannot be productive. It can only utilize the funds which are sent to it.

I suppose we might use that all too familiar phrase to any of us who have been engaged in trying to raise charitable funds. We might say that we've "given at the office" with the taxes that we've paid, the income tax and the other taxes. But really in my mind we cannot take that way out of escaping some additional social responsibilities.

To me the answer is rather simple. Government is already big enough and too big. Already it is collecting too much of the income of our people. Already it is too much in the lives and the business operations of our entire society. Every poll that I have seen shows that a majority of the public has this feeling. They share in this basic concern. And from the comments here this morning I know that this association feels it keenly. I will not go over the many facts and statistics which indicate the growth of government, the waste of time of all of us in complying with the requirements of bureaucracy, the cost of big schemes and the tremendous plans which have gone awry.

One of our long-range goals must be to strive in every way that we can — every proper way — to diminish the domination and the unnecessary involvement of government in our lives, our thinking, our business and our culture.

On both practical and philosophic grounds we must not yield up any more of the private sector activity than is necessary. Government money is expensive money and it's dominant money. It's expensive because of the many steps and the many detours which it takes from the time it leaves your pocketbook and mine until it finally gets back to the community in the way of services — the meshwork of government and the meshes through which it must pass before it can come to any good use. It is dominant money because with the funding there always comes control.

I was interested to read in *Newsweek* for August 30 that the colleges and the universities are getting the red tape blues. The U.S. government gives colleges and universities nearly $9 billion a year, but there's a catch. Frustrated educators find they're spending a lot of this largess not to teach students but to comply with bureaucratic regulations. They go on with the University of Illinois finding that they're going to have to spend over $500,000 to heighten by five inches the banisters on an elevated walkway connecting two of their buildings to comply with the requirements of OSHA. Federal inspectors warned Stanford that their chromium-plated fire extinguishers — 6,000 of them — did not meet U.S. standards which require that all such devices be colored red. They finally figured out the way to comply was to wrap them in red tape.

But the universities have found that they must comply with federal standards of hiring help. Every federal regulation means inspections and corrections and by the best estimates available the federal rules now cost colleges and universities nearly $2 billion a year for compliance and reports — $2 billion to get $9 billion.

But perhaps worst of all, some of the educators see a threat of government intrusion in the classrooms themselves. The Department of Health, Education and Welfare recently proposed a review of all curriculums "to root out racism and sexism". There has been a wave of protests but the threat remains and the universities — the academic people who all too often have felt that the cure for any problem, of theirs or of the society at large, might well be found by going to the federal government for some solution — are learning that indeed the quick-term solution often leads to situations more desperate than the problem.

Let's contrast that for a moment with the United Way, United Crusades or whatever those campaigns are called in your community. It's underway now in Seattle. We will raise through volunteer effort and devotion over $11 million and it will be spent here by a variety of agencies, screened by volunteer committees to make sure that the service that each is performing for the community is a good one, a needed one, a worthy recipient of the funds of the community.

The costs, the fund raising costs and the overhead will be less than seven per cent. And what a difference in the basic attitude and approach, feelings of involvement and the interest of the people of Seattle — both individual citizens and business — working to help those who need help, as contrasted to having the government collect it from us in taxes and pay some of it back under controls from 3,000 miles away.

No, we have enough government and we should not invite its further intrusion into our lives. That's one reason I believe, as both an individual and a corporate manager, in the social responsibility resting upon us in both capacities.

Certainly it's been recognized by corporations. It was estimated in 1974, the last figure that I've seen, that corporate contributions for the year 1974 reached a figure of $1.25 billion. And if we were to take into account the very substantial contributions of time and effort, such as providing loaned executives for United Way campaigns, volunteer time, use of facilities and all the rest, these would add up to approximately another $800 million for a total effort of more than $2 billion coming from the *corporate* sector, a part of the entire private sector.

The corporation is a legal entity but it's more than that. It's a group of people, the stockholders who have put their money into an enterprise to provide a service or produce a product. But it's more than that. It's also another group of people — the managers and the employees who get the work done. And many of them of course are also stockholders. And these people live and work and play. They enjoy the cultural and recreational opportunities in their communities. Their children attend schools, their friends and relatives live and have their being in each community where the corporation does business.

For a company to say that it wishes to be a good neighbor, a good citizen, is not just rhetoric. It's a natural desire on the part of all of these people whom I have mentioned. They all want to see the enhancement of the quality of life and the environment where they work and live. They will be happier, more productive people. Both they and the company will prosper as will the community itself.

The objectives of the people, the objectives of the corporation, the objectives of the community are not in opposition. They are mutually supportive. Without any feeling that we are merely do-gooders, we can recognize and welcome a corporate social responsibility to help build for an improved today and a better tomorrow.

Now there are limits to what any business or industry and certainly any one company can do. There are limits even to what our entire country can do. What's important at this stage of our society is for both business and the public to understand that business can't accomplish some things and it can accomplish others. Much as we would like to eliminate recessionary periods or inflationary periods, wipe out poverty, control crime and rebuild the inner cities, we can work toward these objectives but they can't be accomplished overnight.

But we can try to identify the public and the social problems which exist in our sphere of expertise, our concern and our authority. There's a delicate balance between business, labor, government and the other elements of our culture. These have blended to create the world's most affluent, healthiest and best-educated society. We would suffer immeasurably if we were to permit preemption of any one of these over the others. And government's major responsibility should be to maintain a climate where business can properly and ethically make a profit and then attack these other responsibilities with the attention and the vigor that they deserve.

I think also we should avoid falling into a knee jerk, adversary reaction to government in all its phases and all its activities. There are problems which properly fall within the government's range of responsibility. There are many situations where government and business can and should work together to shape legislation constructively for the benefit of all of us. And the existence of any particular business depends entirely on the public. It votes everyday in the marketplace. With its money. If people don't trust a particular company or industry they will demand and usually get government to regulate, control or take over part of the problem or all of it. And that can have disastrous results for the public.

We've seen a recent instance of this across the border in Canada where the province of British Columbia took over the auto insurance business. A Socialist government was elected on a political platform of lower rates and better service. (Sounds good, doesn't it?) The provincial insurance company soon found itself — in what was only to be expected — in a position where it had to raise rates substantially, where it was giving poorer service, where the public was more than dissatisfied with it. It was perhaps the major reason why, at the next election, the Socialist government was voted out. But, the new government finds itself with the sorry mess which has been left behind through government inefficiency and inability to handle the problem.

Part of our corporate responsibility should be to strive to anticipate social changes and emerging issues which might impact our particular business. Too often in America we react too late and then with too much. We should be able by careful analysis, planning and research to anticipate these major social issues.

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Recently we have formed in the property and casualty business what is called the Property and Casualty Insurance Council, made up of a number of leading property and casualty companies. Its objective is to try to identify these issues, try to find solutions and to inform the public more effectively than we ever have before of the facts involved.

One of the issues is whether the tort system must be reformed. Can it survive in its present condition and satisfactorily serve the public under the impact of the kinds of injury awards and the kinds of increasing costs that we've seen in such fields, for example, as malpractice, and products liability?

Another item of study which is of interest to all of you in the title business is the possible repeal of the McCarran-Ferguson Act, which in 1945 gave to the states the right and responsibility of regulating the insurance business — all kinds of insurance.

I don't know what your feelings may be on that subject. Mine quite firmly are (and I'm confident it's the feeling of a majority of the property and casualty companies) that what we do not need and what the public does not need is still another agency in Washington to supervise the insurance business. We would then have dual regulation because I'm confident that the states would not give up their share of the action. But beyond that, we would have another big bureau. We would have the expense of more reports and more regulations. We would see the sequence that the colleges and universities — as well as all other businesses — have run into. We spend too much of our time now filling out forms in quintuplicate and complying with red tape.

Some of the issues have had their origins in social problems which were really highlighted by the tragic riots and disorders of 1967-68. As a result of those experiences, the executives of the life insurance companies observed publicly that their business could not survive and prosper in cities which were "rent by riots, pocketed by poverty and deadened by despair. Call this self-interest if you will," they said, "but most of our policyholders live in these communities, our investments are contained within these communities, our home offices are there, our employees work or live there." Ultimately the life insurance companies provided some $2 billion for high risk real estate development in improvement funds for inner city areas.

A major step was taken when they created a clearing house on corporate social responsibility in the life insurance industry. They set forth six areas of major concern.

First, socially desirable investments, those in which a company might not be involved in the normal course of its investment operations and made primarily for social purposes.

Second, corporate contributions — United Way and that type of contribution.

Third, community projects — improvement of the community either on the initiative of the company or supported by the company.

Fourth, individual involvement and the company encouragement of involvement by officers and other employees in community and governmental programs.

Fifth, employment and promotion practices involving women and minorities, and the training of disadvantaged and unskilled workers, through such programs as the National Alliance of Businessmen finding jobs and developing skills for people who were not able to develop their own skills within our society.

And sixth, the impact of the companies and their operations on the environment. That's quite a listing of social responsibilities and yet each one of them is worthy and merits our attention.

We in SAFECO have been active and affirmative in all of these areas. I might get some satisfaction out of reciting to you a list of the activities in which we've been involved but it would hardly be appropriate. It recalls to my mind a cartoon in the *New Yorker* magazine with the usual caricature of the portly chairman of the board telling his board, "We'll spend a million dollars on this public service program, and then we'll spend $2 million telling the public about our generosity".

There's no doubt that there are many cynics who think that corporate do-goodism is just a pose; that it's not done through any altruistic or public-minded motive, but only to win friends and customers — for its effect on the bottom line. And isn't it strange how such people can see things from only one point of view and take the interpretation that appeals to their philosophy?

Our actions will speak for themselves of course, more eloquently and graciously than we can do. But is it not apparent that a corporation should engage in action constructive and beneficial to the community even though it may also be helpful to its own image? And its own reputation? Again, those two objectives are compatible and not inconsistent. They work for the good of society rather than against it. But there are increasing recommendations that corporations should give to their stockholders and public a public accounting of what their efforts have been in this field. I'm sure that such reports, as they are made, will produce cynical comment from those who would downgrade the motives of business under all circumstances, but they should also produce better public understanding.

Now I'd like to close by mentioning two areas of corporate social responsibility which fall beyond those about which I've been talking. And I know these areas are close to your minds because of the talks which I've heard earlier today.

First, there have been all too many instances of improper and unethical conduct in the business world — sometimes in the highest levels of management. Surely each of us can and should take upon ourselves, for ourselves as managers and for the corporations that we manage, a social responsibility for conducting our business in a way that merits the confidence of our customers, our employees, our stockholders and the public. I don't intend to sermonize on this subject. I'm convinced the great majority of business people are honest, hardworking and conscientious in dealing fairly with all. The actions and commitments of this majority, those are not newsworthy. The good things seldom are. The infrequent misconduct makes the news.

But let us make certain that the integrity of our actions continue to speak on our behalf and let's communicate, whenever we can, our conviction that good and ethical conduct is good business.

As a longtime Rotarian, I am constantly impressed by the value of what is called the Four-way Test. In all transactions — Is it the truth? Is it fair to all concerned? Will it build goodwill and better friendships? Is it beneficial to all concerned?

That's a point that's so often overlooked by those who criticize the free enterprise system. They seem to have the feeling that every transaction must be a rip-off one way or the other instead of indeed being beneficial to all concerned.

Second, I know that you believe, as I do, that the private enterprise system has brought our American society to its unprecedented level of success and accomplishment. It offers the best chance for the future, for our children and their children to enjoy an even better life. And if we feel that way, then we, as individuals and as corporate managers, owe something to the future members of the American society, our grandchildren, and the successors to the stockholders and the owners of our corporations which we now manage. We owe it to them to preserve and strengthen and improve the private enterprise system. Without our determined effort it will gradually be regulated, taxed, infringed upon and taken over in segments by those who believe that for every perceived blemish in our society some plastic surgery in the form of a governmental agency transplant is the answer. We cannot as a nation afford to try to solve all problems by immediate government action regardless of cost.

We can observe where this approach has taken poor old England down the road to socialism and near bankruptcy, as it has other countries. The symptoms of the disease of ever-swelling government are increasingly apparent here.

This is a trend which has been implemented and will continue to be implemented by political action on the part of those who believe in it. To halt the trend will take political action and involvement by all of us who feel otherwise.

I firmly believe that there are no greater social responsibilities than these two which rest upon all of us:

First, communicating to the public, to everyone, and especially to the young people in school, the basic ingredients of economics: Why our system works, how it works, the necessity and the value of the profit system, the fact that in a free and competitive society both parties to the transaction or the relationship, both the seller and the buyer, both the employer and the employee, benefit from that transaction or that relationship.

It has been said that the eighth wonder of the world is the ignorance of the American public on the subject of economics.

And the second responsibility that rests upon us is the responsibility for political involvement in every proper way. I have heard three speakers here this morning and each one of them has sounded that theme. Consider the efforts of TIPAC, the opportunities it gives each of us to become more directly involved as individuals. Yes. Take advantage of that opportunity. It means such a tremendous amount. Not just to you and to me. Chamberlain said, "Peace in our time". We might say, "Things will be all right in our time". Let's take the longer view. The mandate which we have requires us to do no less.

Our society was built by free men and women working in freedom. Let's preserve those freedoms. Let's elect public officials and legislators who understand the values of our system and let's continue to build upon and improve what we have.

I'm happy to join with you in those efforts. Thank you very much for inviting me.

Dam(n)s Across the Border --Canada-U.S. Relations

Bryan Johnson, News Director, KOMO Radio
Seattle, Washington

I must admit that when I first had an invitation to speak before you and somebody said ALTA I thought, "That's strange, I don't even play tennis". I thought it was the American Lawn Tennis Association. Who's ever heard of the American Land Title Association? I thought you must have been inviting me here to speak about problems in the broadcast industry and how you get your story to us and I was prepared with my usual speech.

But 62 per cent of all American people get their information from us, therefore, 62 per cent of all American people are totally uninformed, ill-informed and underinformed.

My usual remark is that broadcast journalism is nothing but a series of hiccups because we do not have enough words to tell you what's going on.

But then I accepted the challenge of talking a little bit about Canada-U.S. relations precisely because of that — because the people in this room are probably like average American citizens. They do get 62 per cent of all their information from us. They get their information about the world, the nation, their region and their locality in 300-500 word bursts. It is difficult enough to summarize Mr. Sweany's remarks in 300 words, let alone tell you what happened to Henry Kissinger in Africa, what's happening on the campaign trail, the major developments in a region and in a locality.

So you probably know very little about what's happening in the United States, let alone what's happening in Canada.

As you can tell from those remarks, I very seldom make friends when I speak from a podium because my first remark is usually that the people that are listening to me are probably uninformed, ill-informed or underinformed.

But I do feel that, as a broadcast journalist, I do have a responsibility. And my responsibility basically is to alert people to those developments about which they need to know in order to make rational decisions that impact their lives, the life of their community and the life of their nation.

I do not expect to be able to fully inform you in 250 words of a newscast. I do not expect to be able to fully inform you in 3,000 or so words in a prepared speech, but I do feel that I have an obligation to raise red flags where red flags need to be raised and I think some need to be raised in the relationship between the United States and Canada — the paternalism with which many people in this audience probably regard our infant, fledgling brothers across the border.

I speak because I can understand a little bit of the problem of the Canadian because I am not a native born American. But I am also not a Canadian and I am not coming down here to berate my adopted home. I happen to be English. I was born on the English-Welsh border and spent most of my life growing up in England to come over here to take American citizenship, and studied all the things you have to study to pass the immigration and naturalization test. During that study you recognize the fierce nationalism that swept this country 200 years ago. I would ask you to keep that in mind as you consider the fierce nationalism which is starting to sweep the Dominion of Canada at this time.

Canadians rail against U.S. products, U.S. companies and about the flood of United States magazines on the newsstands. To the casual observer, such talk does sound like anti-Americanism. To anyone familiar with the Canadian scene it is not so much anti-Americanism as it is pro-Canadianism — a sudden surge of Canadian nationalism.

The outlook of Canadians has changed. They have a new sense of identity, a new sense of national pride, a new urge to control their own resources and industry, a new determination to make use of their own talent and to preserve their own cultural heritage.

The dominant theme in Canada today is nationalism. That was written in April of 1974 in current history. If you look in *Time*, in *Newsweek*, in *Business Week* or in *U.S. News & World Report*, you are lucky if you can find anything prior to about December of 1975. But if you looked at Canadian periodicals, you could see that as far back as 1967 at Expo the emerging and dominant theme in Canada was nationalism.

But I wondered how to tell a group of people that we may have some problems. How do you communicate it to an audience that may be from Dallas or Houston or Kansas City or New York or places that aren't 150 miles away from the Canadian border?

I thought one way it could be communicated is through the eyes of a child. Children say the damnedest things. Art Linkletter changed it to "darnedest", didn't he? But, anyway, I thought it might be easier if I talked about living here in the Northwest and about a trip I took with my son.

Ten years ago when my son Sean was about 5 years of age, I decided a great weekend trip would be a trip to British Columbia. Now, when I take my children somewhere, I believe in telling them a little about the place we're going to visit. If we're going trout fishing, I'll tell them what kind of a lake it is, what the fishing books say, what types of lures or flies are recommended, how long it will take to get there and how long we're going to be there. This method doesn't guarantee that we'll catch a single fish but it does insure that the kids are somewhat prepared for the length of the trip. It doesn't really stop all the how-much-longer-is-it-Daddy's. But it helps. And it keeps them a tiny bit quieter.

Thus I informed him the trip to Vancouver would take some 3½ hours. That would include time to stop for lunch and time to the Peace Arch briefly. I explained the Canada-U.S. border was the longest unguarded border anywhere in the world at any time. I informed him that crossing the border really didn't entail that much. I told him to expect different currency but that he could spend American money. As he's a stamp collector, I didn't have to tell him they have different stamps. But I was informed that although *I* might enjoy the beauties of Stanley Park and the panorama of the high-rise section of Vancouver, B.C., Canada's second largest city, that what *he* wanted to see was the post office.

I suppose there are a lot of other things I could have told him, but didn't. When we approached the Peach Arch, I told him we'd stop at the arch which symbolized an open border and see the inscription of the arch, "Children of a Common Mother."

I don't have the slightest idea what he really expected, but at any rate, he appeared pleased by the trip but somewhat disappointed by the visit to a foreign land. His reaction was, "Dad, that seemed just like Seattle. The people speak the same language, they dress the same, they drive the same cars, they seem the same". And I suppose his reaction was the same as that of countless Americans who journey north of the border.

There is no apparent difference unless one is in Quebec — except for the color of the money, the pictures on the money and the signs that say U.S. money at par or U.S. money at 5 per cent discount.

Everything is so much the same we think we're home. Oh — they don't play the *Star Spangled Banner* at football games and the call letters on radio and television stations start with a "C" rather than a "K" or a "W". But I suppose that there's a substantial chance that if I were not in the news business, I might have gone along thinking forever that there is no real difference north of the border and there is nothing to worry about and nothing special to consider.

Two years later at a convention of the Radio and Television News Directors in Toronto, we had our ears pinned back. One of the programs featured Canadian nationalists. There were a few of them back there in 1967. They weren't French nationalists. They were the infant Canadian nationalists, tired of the constant streams of American programs, American cars, American food, American companies, and Americans. They were tired of the lack of identity as Canadians and of the difficulty when it came to finding their way out of their frustrations.

The feeling of the Canadians against what they regard as the colossus of the south — that's us — festered, smoldered and finally erupted, not in bitter confrontation with the United States, but in what Canadian Prime Minister Pierre Trudeau has termed the third option. The first option is to be pro-American. The second option is to be anti-American. The third option according to Prime Minister Trudeau is neither anti-Americanism nor pro-Americanism, rather it is pro-Canadianism. Prime Minister Trudeau formulated this policy after years of frustration similar to what I heard in Canada eight to ten years ago. Trudeau has described living next to the United States this way: "Living next to the United States is, in some ways, like sleeping with an elephant. No matter how friendly and even-tempered the beast is, one is affected by every twitch and grunt."

(*continued*)

Now that quote may not be very well known in the United States. In a search through the *Reader's Guide to Periodical Literature,* I found only two references to the quote after looking up every reference on Canada-U.S. relations from 1974 forward. One was a fractured version in an issue of *U.S. News & World Report* which quoted the statement only through the word elephant. And then throughout the article it was made clear what the rest of Trudeau's comment was.

The other quote was in *Senior Scholastic* and unless we swipe that from our youngsters who are in high school, we'd never know about it. And I don't know how many of your kids bring home that material, which they regard as punishment.

Because of the lack of readily available articles discussing what must be one of Trudeau's most famous quotes, I decided to search through the *Canadian Guide to Periodical Literature* and the *U.S. Readers' Guide.* I had no intention of standing up here quoting a series of magazine articles. I was merely interested in determining the amount of magazine space devoted to U.S.-Canada relations, the growing nationalism in Canada, the investment of Canadians in U.S. property and the problems that it's causing as well as the meaning of all these events in terms of the future of U.S.-Canada relations.

What I found follows. The American who really wanted to learn about Canada-U.S. relations would be hardpressed to find any meaningful material in any U.S. publication. There were a couple of *State Department Bulletins* that might help, as well as a subscription to *Current History* which I can only describe as boring. Those are not publications which are found in the average home or even the average library. Canadian periodicals, on the other hand, were full of articles describing the feelings and frustrations of Canadians in their growing call for recognition as citizens of a growing sovereign land.

But even in Seattle's library, 145 miles away from the Canadian border, these magazines are not ordered and remain totally unavailable.

There is a tremendous difficulty for the average American in finding reliable literature about our relationship with our closest neighbor here in the Pacific Northwest. And there's a reason for it. The average Seattleite doesn't give a damn. It is for that reason that I, as a newsman, am delighted to have the opportunity to point to a few of the developing problems in what has been termed the special relationship between Canada and the United States.

Henry Kissinger remarked in December of 1975 that the special relationship between our two countries no longer exists. The translation is that U.S. economic, social and political domination of Canada is over. That's what the special relationship meant.

But then just a few months later in a summer visit to Seattle, Kissinger seemed chagrined and at a loss for an answer when asked if any thought had been given to a serious U.S. attempt to repair relations that were deteriorating as a result of extensive land purchases by Canadians here in the Northwest and throughout the United States. Whether any attention had been given to the problems caused by the new Canadian foreign investment laws; whether attention had been given to arguments raised by Canadians about nuclear energy plants and hydroelectric dams planned by U.S. power companies near the Canadian border; whether any State Department attention had been given to the serious, unresolved dispute over Fraser River salmons and just how in heaven's name we're going to impose a 200-mile fishing limit along the common U.S.-Canada border. Kissinger had no answer other than to say the problems did not appear to be that serious.

In the past, Canadians have been timid. One cartoon in 1975 displayed the former Canadian lack of boldness. That was at the time the Arctic oil fields were up for bids. Canadians felt sure that Americans, in pursuit of oil and energy, would just run roughshod over Canadian interests in the Canadian Arctic. The bitter cartoon showed a Texas oilman standing on the frozen tundra. Next to him was a Canadian. The American had a large Texas-style boot firmly placed on top of the Canadian's shoe. The Canadian was obviously in pain and his words in the caption were, "Excuse me, but I'm standing under your foot".

A second cartoon, circulating about the same time, showed an office in Canada. On the far wall there was an American flag and what one assumed was red, white and blue bunting. The room was humming with activity. The banner on the far wall underneath the flag said, "The Great American New Utah Oil Company of Canada, Ltd." Two executives were approaching an elevator. At the front of the room was a man looking up to them as if he were being introduced. The caption read, "And Herman here is our token Canadian".

Sour grapes? Latent nationalism? Anti-Americanism? No, not really, although there have been growing indications that Americans are becoming less and less welcome in some areas of Canada particularly in urban centers. Remember these facts:

- Forty per cent of all Canadian manufacturing firms are controlled by U.S. citizens.
- Fifty per cent of all Canadian chemical and petroleum companies are controlled by Americans.
- Eighty-three per cent of oil companies are controlled by Americans or have Americans as principal investors.
- Sixty-five per cent of all import and export trade conducted by Canada is with the United States.

The October 7 issue of *Senior Scholastic* last year reported that in a 1975 survey of Canadian school children, a significant number identified Harry S. Truman as a former prime minister; General Motors as a Canadian firm, and All In The Family as a Canadian television show. Fifty-seven per cent of all the students surveyed felt that the Canadian way of life is overly influenced by the United States.

Since that time what has happened? First, the Canadian government under Trudeau has been moving along on the third option. Remember? That's not pro-American, not anti-American, but pro-Canadian.

There have been serious restrictions imposed on U.S. investment in Canada. It is no longer enough to run to Canada with a bushel of money and say, "I would like to build a plant here". Potential investments are now examined on the basis of "What's in it for us". A merger between an approved American company and a Canadian company prompts a second and more serious review and sometimes loss of those American holdings. And sales of American firms to American firms are really given the once over.

Canadian national resources are coming under more scrutiny than ever before with the government of Saskatchewan considering nationalization of the potash industry — an industry that was developed by U.S. firms.

The new controls don't stop there. There are requirements that Canadian radio stations program Canadian songs, Canadian artists and Canadian songwriters. Hit parade charts in Canada, for the use of disc jockeys, now contain triangles beside the hits in the printed lists. The triangles contain a maximum of three letters for artist, publisher and writer. If there are no letters in the triangle, Canadians were not involved in the production of the song.

The triangles are important. Fines and even loss of license can follow if the proper percentage of Canadian songs are not programmed by Canadian radio stations.

Television has the same problem. The government is mandating an ever-increasing share of Canadian-produced programs. The hockey games show up for more than one reason. The Canadians are interested in hockey but it counts towards percentages and it's cheap.

But in many areas a full 60 per cent of Canadian programming is American. The Canadian government has also ruled, in the case of cable television shows beamed into Canada, that all American commercials must be taken out.

New restrictions have been imposed on *Time* magazine and *Reader's Digest,* which have plants in Canada, in an attempt to convert their Canadian editions into something more than the American edition printed in Canada with a higher price tag.

The Canadians have also indicated they will cut off oil supplies to the United States by 1982. They have phased down the supply of natural gas through the Pacific Northwest and that will be cut off in the future too.

Prices have already skyrocketed here. Here in the Pacific Northwest, there is substantial dependence on Canadian gas. When the prices started to shoot up, B.C. officials referred to past pricing as ludicrous and indicated they were switching to an energy charge. The approximate worth of a British thermal unit was calculated into new prices for both Canadian oil and gas along with a warning that the supply eventually would dry up.

The impact here in the Northwest was staggering. Conversions to electricity shot up. Last year alone, they increased 26 per cent in households. Home builders are virtually abandoning natural gas as a heating mechanism and building homes equipped with all electric heat. Senator Henry Jackson once accused our northern neighbors of acting like Arabs. But, then he added, "I can't really blame them either".

The price of natural gas continues to escalate and the U.S. government in faraway Washington, D.C., made the problem worse and exacerbated the already deteriorating U.S.-Canada relationships here.

The State Department did not understand the Canadian drive for a reasonable price for gas. It did not understand the regional peculiarities of the Pacific Northwest.

For example, the Canadian government wanted to increase the price of 1,000 cubic feet of gas from approximately $1.34 to an average of $1.98. Washington state, which is abundantly supplied with hydroelectricity, recognizes that a boost of that magnitude would completely upset the division of power sources for homes and businesses, create increased reliance on electricity and leave the region power-short.

(continued on page 14)

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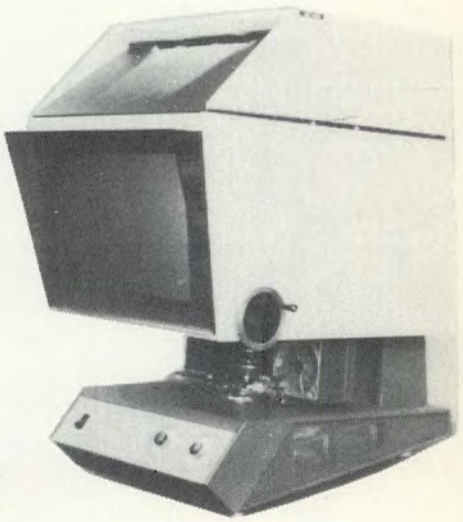

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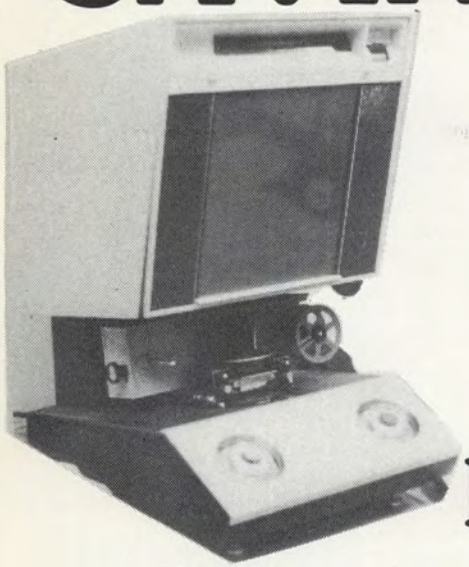

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The Washington state government, under our constitution, may not, however, negotiate directly with the Canadians. A series of meetings was called between British Columbia and Washington state officials and general recognition of the problem was made. The message was conveyed to the Canadian federal government in Ottawa. The Canadian government recognized the problem and offered lower gas rates to Oregon, Washington and Idaho and higher rates to California, Montana and other states where gas and electricity are already competitive.

The U.S. State Department, completely unaware of the behind-the-scenes maneuvering and completely unaware of the pledges of cooperation from lower level State Department mediators that nothing could go wrong, stepped in, blocked the agreement and voted a single pricing policy for the entire United States.

The result here in the Northwest was frustration, resentment of the State Department and increased feeling that Canada was ripping off the energy consumer.
Another frustration on the part of Washingtonians followed the voters' repeal of the state's yellow peril laws. Washington state, as those in your business probably know, had in its constitution a total ban on the ownership of land by aliens. The laws were obviously aimed at Asians. It took two submissions of that constitutional amendment before the people of this state overwhelmingly voted for repeal.

But two controversies have now arisen. One was short-lived. During the Arab oil boycott, Washingtonians became sensitive to Arab investment. Stories appeared in Pierce County, Whatcom County and in eastern Washington that there were massive land purchases planned by Arab sheiks. The majority of these scare stories, which drew front page headlines, turned out to be false. But there was an initial push by several concerned residents, particularly in Whatcom County, to resurrect the alien land laws and once again ban foreign speculation in Washington state land.

But, in honesty, the principal concern right now is foreign investment from Canada. The San Juan Islands are being gobbled up by Canadians and Californians who are equally bad in the minds of many Washingtonians. And, fancy recreational complexes developed in the northern tier of Washington state are heavily Canadian. A friend of mine operates one of those developments which is now in its third section. I will not name it by name. It is about 35 miles below the Canadian border. Seventy per cent of the land in that complex is now owned by Canadians.

The lower land costs in Washington state, the more lax building provisions and the lower bank interest rates, have all resulted in extremely heavy land purchasing. This may be good for real estate salesmen, but it's obviously having an impact on real estate prices in the northern part of this state. Owners of property trying to sell it aren't displeased. But residents of this state trying to buy it view the developments with alarm as they see density increasingly driving away the recreational values for which they came to this state. And the residential property purchasers in the state just don't like what's happening to the cost of property.

But even more serious than that is something that's happening right here in Seattle.

As you probably know, Canada right now is suffering under rent controls and people in Canada with a substantial amount of money are purchasing apartment complexes here in Seattle. There are no rent controls here.

Some of those apartment units have turned over two and three times with the rental increasing every time a new Canadian operator takes over. This has led to screaming comments about those "blasted Canadians" in several Sunday editions of the local newspapers. It is a potentially serious problem in an apartment-short region. There is yet no major push for reimposing alien land law restrictions to stop Canadians. But there is enough grumbling at a low level to indicate to me that it could happen in the future.

In Canada investment capital from the United States has been restricted with a resulting drop of 25 per cent in the rate of annualized U.S. investment in Canada so restrictions could be placed in the United States on Canadian investment.

Now as both sides have started to become concerned about investment in territory, they have become increasingly concerned about the quality of life in their area. For an additional example here in the United States or at least here in Washington, is a hydroelectric project known as Ross Dam. The dam floods the Canadian Skagit Valley. The area has bottom red cedar. There is a continuing dispute over how unique this particular stand of bottom growth red cedar really is. But suffice it to say that conservationists and environmentalists on both sides of the border think that they are the most unique trees that God ever planted.

The Canadians do not want Ross Dam and have vowed it will never be built. The organization ROSS (Run Out Skagit Spoilers) now appears to have the backing of the B.C. government and possibly the Canadian federal government in Ottawa as well as numerous environmental groups in the United States.

When Seattle City Light built low Ross Dam, it expended about $7 million to make the dam expandable and to devise plans for the expansion which would raise the height of the dam 122.5 feet, flooding more of the British Columbia valley.

Seattle has signed a flood plain agreement with the B.C. government. It's been ratified by both countries. It happened a long time ago and it spells out the rental to be paid by City Light. The sum was a pittance back in the days of zero Canadian nationalism.

Canadians now have a new sense of togetherness and nationality and they're saying in effect, "You're not going to pay us 24 bucks and give us a couple of strings of beads for all the land you're going to flood up here".

But Seattle City Light insists it has a binding valid agreement and is pushing ahead for a Federal Power Commission license. Tempers are sometimes so frayed that the issue has the makings of an international incident. It can probably be avoided.

The power-hungry American population also wants to get Alaskan oil to the oil-starved Midwest. So what's happening?
Californians, as those of you from California know, apparently have no desire to serve as a reception point for Alaskan oil and a transfer site to the Midwest. Meanwhile, the Washington State Legislature has indicated it wants no part of Alaskan oil coming by supertanker to the present refineries in Puget Sound and passed a law banning supertankers. The law was eventually thrown out by an appeals court but is still under appeal.

A consortium of companies has now proposed an off-Sound, off-loading point and a pipeline across the state. A county where that terminal is located immediately passed an ordinance banning such terminals.

Two cities, Seattle and Tacoma, have already indicated they will fight the proposed pipeline route because it goes through their municipal watershed.

Several of the agencies now are suggesting it go through Canada. After all *they* want it up there and *they* need the business. Nobody checked with the Canadians.

Five environmental organizations, including the powerful B.C. Wildlife Federation and Sierra Club, issued a drop-dead statement last week. The president of the B.C. Wildlife Federation told me, "You're asking us to sign our death warrant. If the oil comes from Alaska to Seattle under terms of your Jones Maritime Act it must be sent in U.S. flagships. That will mean you'll get the best supertankers, the best doublehaul construction, improved navigation and the works. If it comes to Canada they can use any leaky vessel of any foreign registry. And Americans seem to think that's our problem". He added, "We have no national environmental policy act and no way to fight it in court".

The president of the B.C. Wildlife Federation noted that foreign flag vessels would pass through the Rosario Strait on their way to Kittimat, B.C. He said there will be an accident. There goes our Fraser River Sound run, our livelihood and our shores. And his final comment was, "The Americans seem to want to push the terminal and pipeline our way". He added, "Why in hell should we give up our country to keep your Midwest supplied with oil?" That comment is not that unusual.

His comment also reminds me of the latest protests of the anti-nuclear folks in Seattle. The subject is the "Skagit River Power Plant planned by Puget Sound Power and Light — the occasion, a hearing by the Atomic Safety and Licensing Board in Seattle. Two busloads of Canadians came down from Vancouver and Victoria. They asked for permission to speak. They were denied. They were not U.S. citizens and could not appear before a U.S. regulatory board. They returned to their country fuming. One irate Canadian told me, "Those plants are downwind from Vancouver and only 32 miles away from us. If there's an accident it's going to be us who catch it, not you".

In the area of the international border there's an extraordinary run of fish, the Fraser River salmon. They intermingle with U.S. runs. The U.S. also gets some of those fish because the Fraser run was enhanced by Americans but it's always been a potentially inflammatory area.

Now, with the incursion of a decision by U.S. Federal Court Judge George Bolt, the problem is explosive.

Judge Bolt has ruled that American Indians are entitled to 50 per cent of the anadromous fish in this state. That means salmon and steelhead. That, of course, includes 50 per cent of the American fish in the mingling area and 50 per cent of those Canadian Fraser River salmon which are returning to Canada.

Indians in this state are not equipped with the same type of gear as non-Indian fishermen. The Indians thus want additional days of fishing on the mingling stocks to ensure a catch equivalent to the non-Indians. But Canadian fishermen say they have the right to place their nets in the water whenever any American is fishing. If

(*continued*)

this were not bad enough the Canadian commercial fishermen fear that their own Indian tribes will now attempt to exert rights similar to those granted to American Indians. The fishing discussions are critical to Canadian-American relations and the Canadians resent what they believe is the intrusion of the American Indian problem into international negotiations.

Those are just some of the emerging problems in this area which have led to what I call dams across the border.

Any one of the aforementioned issues could lead to a Canadian assertion of control of the water at the headwaters and claims to diversions, to the detriment of the United States and virtually every river and fish run.

U.S. investment in Canada, meanwhile, remains essential to the Canadians. It is only sort of a mutual dependence which has, in effect, contained these issues.

Returning to Prime Minister Trudeau briefly, he said, "I should like to reassure the government and people of the United States that while we must move toward security of supply and a capacity for self-sufficiency, we will not do so in a manner which is destructive of the beneficial ties which have developed between our two countries".

There, he was talking about oil but that's his cry. Prime Minister Trudeau's words bear listening to. They indicate determination of a people to remain independent and to start controlling their destiny.

That is something that everybody in this room should be able to understand in this bicentennial year. And something which I, as an American who was naturalized some 20 years ago, can recognize.

The real task is for us to recognize that just as we want to preserve our independence and the ability to make our decisions, so do our neighbors.

The State of Washington can no longer act independently and like Daddy by building dams, constructing nuclear plants, governing land use and planning major employment centers.

We've recognized that inside our own country with planning from the city level to the county to the councils of government to state planning agencies to regional compacts. The task now is to recognize that we cannot ignore neighbors because they are across borders and we cannot ignore their wishes because their government is in Ottawa and ours is in Washington.

Governor Dan Evans of this state has opened a dialogue between the B.C. government and this state. But it will take more than that. Those two men can't act together. It will take all local governments willing to recognize that although they can't negotiate with Ottawa, the desires and wishes of neighbors must be taken into account.

The special relationship between Canada and the United States was once described by U.S. Ambassador Thomas O. Enders as cultural and economic dependence on the United States. That no longer exists. That means we cannot bulldoze our way through future relationships.

It may seem to you that I have taken on the role of a devil's advocate in this appearance, but I am speaking as an American who senses none of the Canadian nationalism in truth. I am speaking as an American who faces none of the incursions into the fabric of his country. I am speaking as an American who is not frustrated by largeness to the south or north. I am speaking as an American who can recognize only a little of the national search for identity, only a little of the national drive, only a little of the quest for national pride and only a little of the desire for national determination. If you wanted both barrels you should have invited a Canadian.

But to be frank, it wasn't that hard to be a devil's advocate. It hit me when I read that October 7, 1975 *Senior Scholastic* which quoted Trudeau in full. And the final essay for the students was how would you feel if the positions were reversed and the television programs you watched were beamed down from Canada? How would you feel if Canadians owned most of your industry and most of your production? And how would you feel if the most powerful nation on earth was Canada and you lived in the shadow of that country?

It was a fair question. Thank you.

Washington Report : An update

William J. McAuliffe, Jr.
Executive Vice President, American Land Title Association
Washington, D.C.

This is the last convention where we are going to call upon the local title people to assist financially. Next year, in Washington, D.C., it will be the total responsibility of the ALTA officers and staff.

Over the years, we have had tremendous help from the local people who have assisted in putting on our conventions. This year, we had tremendous assistance and cooperation from the Washington Land Title Association members. They have been exceedingly well organized; they have been concerned with your needs. I want to publicly express my thanks for all of the things they have done in connection with this meeting. They have done an outstanding job.

I believe it is generally agreed that there are two areas of greatest concern to the title industry. They are lack of understanding on the part of people in government and the public concerning what this title industry is all about and secondly, government interest in and, indeed, government intrusion into this business.

Your national Association is addressing itself to both of these problems.

Over the years, ALTA has had an outstanding public relations program. You see here the screen and the television monitors. Later this morning you will hear a report from our Public Relations Committee, concerning their activities of this year. I think you will be impressed with the accomplishments of this committee.

Next year, they will continue many of the activities that you will hear described this morning.

But, over and above that, they have been authorized by the Executive Committee and the Board of Governors to undertake the development of a new 14-minute film, which will be available not only for public service television broadcast, but also for you as members to use in showings to service organizations and in your local companies.

This particular film will be designed to dovetail with the activities of the new Government Relations Committee to explain and to help educate people concerning the misconceptions about this industry.

During the past year with respect to government interests and government intrusion, our government-related activities have involved RESPA, the rebirth of interest in the Torrens System, development of uniform laws, and activities involving the National Association of Insurance Commissioners.

Less than a month after the 1975 Annual Convention, President Dick Howlett testified on behalf of the Association before the House Subcommittee on Housing and Community Development, and he called for prompt legislation which would constructively amend the Real Estate Settlement Procedures Act of 1974. After President Ford signed the amendments into law, effective January 2, 1976, ALTA representatives met with HUD staff and conveyed industry concern relative to the need for regulations or interpretations relating to Section 8.

Then, in April of this year, ALTA filed a statement with HUD on the proposed RESPA regulations, which HUD had published in the March 29 issue of the *Federal Register*. ALTA comments were prepared with the assistance of the ALTA General Counsel, the Ad Hoc Committee, officers and staff.

Now, we have an amended RESPA, and I have heard in some quarters at least that the RESPA regulations and requirements are being adhered to and are more comfortable to work with.

But we are not necessarily through with RESPA. We could have in the years to come more RESPA legislation, because under Section 14 of the Act, the HUD secretary is directed to report back to Congress concerning the need for any additional legislation in this area, and he's supposed to do that in three to five years after the effective date of this legislation. If we do our arithmetic correctly, that date could arrive as early as June 20, 1978.

On the basis of separate conversations in June of this year involving President Dick Howlett, other ALTA representatives, and Garry Brown, the ranking minority member on the House Subcommittee on Housing and Community Development, and HUD Secretary Carla Hills' staff, we are hopeful that there will be no legislation in this area in 1977. We are hopeful. It is possible that Senator Proxmire or somebody else may introduce something on "lender pay". But we are hopeful, based upon the June conversations, that this will not happen.

Another area of RESPA that has had the attention of your Association involves Section 13. This section calls upon HUD to establish, on a demonstration basis, model recordation systems with a view to the possible development of a nationally uniform system of land parcel recordation.

In December of last year, ALTA submitted a paper outlining some 26 recommendations for improving the recordation system in this country. The American Bar Association also submitted comments on this. I daresay that if you read their paper, you would have to come away with the strong feeling that in this paper the American Bar Association was at the very least urging HUD to take a strong look at a registration or a Torrens-like system. As I mentioned, there seems to be within this country a rebirth of interest in a Torrens System.

You may recall at our Mid-Winter Conference that Kathleen O'Reilly, legislative counsel for the Consumer Federation of America, in her remarks advocated a national compulsory registration or Torrens-like system.

In the District of Columbia, we have had a proposal developed by a bar association committee there on which Martin Lobel worked. Martin Lobel is a former legislative aide of Senator Proxmire. In this draft of a bill for the District of Columbia, it is proposed that a compulsory registration or Torrens-like system be adopted for the District. This proposal was picked up and supported by the Washington *Post* in an editorial and it was supported in an editorial of the NBC television station in the District.

Later this morning, you will see on one of these television monitors the response to that television editorial — delivered by a member of the local title association.

And only last week, in Montgomery County, Maryland, a county that abuts the District of Columbia, a state legislative draft bill was circulated which calls for a compulsory Torrens or registration-like system for Montgomery County.

Now, you might say, "Who cares about Montgomery County, who cares about the District of Columbia?" Well, we have to care far more about those areas than other areas of the country because this is where the Congressmen live. This is where government officials and staff live. They hear the NBC editorial, they read the Washington *Post*, they're aware of what's going on in metropolitan Washington.

So these activities at a state level in a sense take on national importance.

In Montgomery County — and in Maryland it is possible to have legislation that will only affect one county — it is proposed in this draft bill that they have a compulsory registration system. The bill was circulated last week. Thursday night of this week, the Montgomery County General Assembly delegation will hold hearings on this.

These are local hearings by the Montgomery County delegation which goes to Annapolis, the state capital, which wants to know what people think about this proposal. And title people from this convention are going back to Montgomery County to be involved in these hearings.

So we have a great deal of interest in a Torrens-like system and that is why at our federal government relations seminar, which was described to you yesterday, there was a discussion of the Torrens System. That's why yesterday we had a workshop on the Torrens System. Not many of us are up-to-date on what is going on with respect to Torrens. It's something that was very current way back in the thirties, so we're trying to get ourselves up-to-date and we're doing one other thing.

During this year, President Dick Howlett and ALTA have created a Government Relations Committee, as you know — you've heard their report. This Government Relations Committee has been authorized to become involved next year with an outside organization for the purpose of developing a study paper that will evaluate the legal and economic aspects of a Torrens-like system.

So we are, I believe, meeting the demands of the consumer, in trying to educate him a little bit about the industry. We're also addressing ourselves to the governmental problem.

In connection with our Government Relations Program (our committee chairman is Phil Branson and our staff man is Mark Winter, who has joined us in the past year), we have developed this booklet, "Title Industry White Papers: Volume I". In this booklet there is a white paper on the Torrens System.

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I thought that many of you would have received the booklet by this time, but I understand the mail has failed us somewhat and they have been in the mail for over three weeks. But I certainly hope that when you receive this booklet, you will read the various papers that have been developed by the authors — who are all title people. I hope you will read it. I hope you will share this with your employees and I hope that you will let the young people in your industry read this booklet.

If we are going to be concerned about the problems, if we are going to solve the problems of this industry, we will have to have a total commitment from every person in this industry. And how can an individual know what the problems are or how to respond unless he has the ammunition and the information? This booklet will help greatly. It not only addresses the Torrens System, but there are articles here about popular misconceptions, the benefits of title insurance, the importance of title insurance and the need for title insurance services.

We have to become better informed about ourselves; our own employees have to become better informed and then we can collectively meet the challenges that face this industry.

Let me speak briefly about two other matters.

First, I'd like to release the results of the poll that we conducted.

Remember the first day of this meeting? We had a little pink box in the back and we asked you to vote as to whether you preferred Ford or Carter.

Now, if you were here, you know we had a large group in attendance. I daresay we had 400 to 500 people here. The results of this ballot, I think, tell us a lot about the election. We only had 159 people who voted. Should we conclude that most of the people in this industry are not going to vote in this election? Are most of the people in the country not going to vote? That's speculation — but, at any rate, the majority of the people who were in attendance either did not hear the announcement or decided they weren't going to vote.

I think the most significant part of the ballot is that the majority of the people in attendance didn't vote.

Now, what were the results? Remember, the question was, "Whom would you vote for?"

Eighty-two per cent said they would vote for President Ford — 82 per cent.

Fourteen per cent said they would vote for Carter and 4 per cent cast miscellaneous votes. There were a few crazy things in there.

How would you count a ballot that said, "No"?

"No". That was one of the ballots. I put that in the miscellaneous category.

One other thing — I've received a number of questions concerning the 1977 Mid-Winter Conference.

The President has signed a recent tax bill — it's 1500 pages long. Incidentally, there is something in there that you won't like relating to filing certain liens. We're going to get something out to you on that. But I'm not talking about that today. The law contains some provisions relating to taking a convention or a meeting outside the United States — and that's what we're scheduled to do with our 1977 Mid-Winter. There are very strict provisions with respect to what you can deduct and what you can't deduct, how many hours you have to attend a meeting and the attendance records and so on.

The Executive Committee was presented with this problem at its meeting before this convention, and they directed the ALTA General Counsel to make a study. The Executive Committee is going to meet, as they normally do, on the Thursday morning following the convention, and one of the things that they are going to have to decide is whether or not the 1977 Mid-Winter Conference in Mexico City is on or off. It is possible that they might opt to pull it out of Mexico City because of the tax-related problems.

Very frankly, we have all the brochures, we've lined up a travel agency, we've got the rooms and we're all ready to go, but the new tax bill makes it very difficult.

One aspect of the bill, for instance, states you can only deduct about $39 a day, because you have to conform to what the government employees' per diem allowance is. There are certain requirements with respect to how many hours of meetings you have to attend in a day in order to take advantage of the $39 a day. The Executive Committee — I'm not trying to prejudge their determination — may decide to switch the meeting.

Dick Howlett said that you have a very professional staff in Washington. You do. You have Gary L. Garrity, who's director of public affairs; you have Mark Winter, who is director of government relations; David McLaughlin, our business manager and Maxine Stough, our public relations associate, who will become in time the editor of *Title News*.

These people are competent in what they do. I hope that if you have need for their services that you will not hesitate to call them. I hope that if you come to Washington, you will not hesitate to use our offices. Drop in and visit us, we'd like to hear from you.

Report of the ALTA Public Relations Committee

Patrick McQuaid, Committee Member
Vice President, Title Insurance Company of Minnesota
Minneapolis, Minnesota

You have just heard one of the 1976 ALTA public service video spots that helped to establish a positive identity for our industry before a nationwide audience of millions. Here are two more.

(*Film and tape presentation, starring Marty Robbins and Henry Mancini*)

Celebrities add a great deal to the attractiveness of these radio offerings, which are produced as part of your ALTA Public Relations Program. Some of the celebrity spots are especially informative, as this example illustrates.

(*Radio spot narrated by Patty Duke Astin*)

By using this public service format, ALTA reaches a vast nationwide audience in free air time donated by stations in the public interest. Our radio offerings have widespread appeal because they've fed a variety of station programming formats. Here is another example.

(*Radio spot narrated by Larry Linville*)

Your ALTA Public Relations Program uses both electronic and print media to accurately inform consumers, opinion leaders and title company customers about our industry.

This year, for example, important stories about our business have created positive awareness among the federal establishment through the Washington *Post* and the Washington *Star*.

Other ALTA publicity has appeared in local newspapers from coast to coast. And ALTA assisted again this year in developing a special title insurance issue of the *Mortgage Banker* magazine.

With this being the centennial year of title insurance, I am pleased to report that ALTA members have made impressive and extensive use of the Centennial Kit developed by your Public Relations Committee and staff.

Especially important has been the adaptation of centennial proclamations by affiliated title associations for signing by state and local government officials. Good results have been noted in the development of centennial publicity and in use of our centennial folders, postage meter slugs and ads.

Among the other activities of your Public Relations Program, ALTA for the eighth consecutive year is sponsoring the Consumer Information Category of the National Association of Realtors Creative Reporting Contest for working journalists. Identification with realtors through this contact has proved very worthwhile in the public relations front.

As might be expected, ALTA television activity is our most impressive vehicle for reaching millions of people across the nation. Films of different time length serve as our primary communication to all here. But we also receive excellent results with television public service slide announcements. Let's look at the 1976 slide offering that was sent to stations this past spring.

(*Slide announcement*)

That four-slide television package was aired by 75 stations in 38 states with the potential audience of more than 97 million.

Another television mainstay is the 60-second mini-drama that emphasizes land title safeguards in a film clip. While mini-dramas are quite successful for ALTA, they also have brought moments of anxiety for your Public Relations Committee in working with a highly creative film producer.

An example occurred this year when our producer recommended some rather unusual background music for one of these public service clips. After the producer insisted that this particular mini-drama would be more appealing to station television personnel and the public with the music that he had selected, we swallowed hard

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and approved the clip for distribution this summer. Here it is.

(*Film clip*)

As it happened, the producer turned out to be right. The clip that you have just seen was aired by 88 stations in 39 states which donated nearly 38 hours of free broadcast time to ALTA.

A second mini-drama is being distributed to television stations this fall and should prove equally appealing. Here it is.

(*Film clip*)

Your Public Relations Committee continually encourages the involvement of ALTA members in positive local public relations activity. Preparedness is an important part of this, especially when dealing with the television media.

This morning we have two excellent examples to demonstrate how preparedness paid off for local title people involved with television.

First, here's a videotape of the actual telecast that shows how alertness and preparation by Titleman Warner Harrah of San Diego was beneficial in a KFMB report on closing costs. In the same news coverage, you will see how a fellow member in the real estate industry did not fare quite so well.

Let me point out one thing. You can see the comparison of the representative of our industry and the representative of the real estate industry. The report concluded right at the front and I quote, "If there is one closing cost that can be justified, it's title insurance." Sweet words indeed.

In a different type of situation, WRC television in Washington, D.C., decided to suggest in an inaccurate editorial that a proposed land registration system would eliminate title searches and title insurance, and save money. With members of Congress and their staff and federal agency personnel in the audience, this editorial was a serious matter.

After conferring with his members and ALTA staff, D.C. Title Association President Morris Knouse wrote a letter to WRC expressing disagreement with the editorial and requesting air time for a response from the association.

The station editorial director promptly agreed, and John Cooney, a local titleman, videotaped this response that was telecast in prime time immediately before the evening news.

(*Editorial rebuttal film*)

Needless to say, the response you have just seen far outpointed the initial WRC editorial which was developed by station personnel without any prior consultation with land title industry representatives.

In this era of consumerism, the true story of our business must be told again and again to an ever-changing national audience. This task is being adverbally performed on a relatively modest budget through your ALTA Public Relations Program.

At this time, I would like to extend special appreciation to my fellow Public Relations Committee members for their dedication in this important work. They are: Chairman Phil Branson, Randy Farmer, Frank O'Connor, Jim Robinson, Ed Schmidt and Bill Thurman.

Special thanks also go to Bill McAuliffe, Gary Garrity and Maxine Stough of our ALTA staff, whose capability mean a great deal to the success of this program.

In recent years, it has become clear that public misunderstanding is among the most serious problems faced by our industry.

Through your Public Relations Program and through ever-increasing public relations activity by affiliated title associations and individual members, the difficulties of misinformation will be minimized and we will all enjoy a more favorable climate of public opinion in which to do business.

Thank you.

HUD Update

The Honorable Harvey Weiner
Deputy Assistant Secretary for Regulatory Functions
United States Department of Housing and Urban Development
Washington, D.C.

I am pleased to be here with you today to represent the Office of Consumer Affairs and Regulatory Functions of the Department of Housing and Urban Development.

Assistant Secretary Newman, who was originally scheduled to be here, sends her regrets and her best wishes for a successful conference.

I have to tell you that I sometimes have difficulty identifying myself as a member of the bureaucracy, particularly in front of audiences like this, because of the unfavorable connotations of that word today.

To paraphrase Arthur Okun, who was one of President Johnson's chief economic advisers, "Bureaucracy is the crabgrass in the lawn of life. Difficult to pull out, it spreads insipidly and grows well everywhere." I'm sure some of you agree with that characterization. Nevertheless, since I am of that genus and species, I am very glad to be here with you today to talk about consumer affairs and regulatory functions — commonly referred to around HUD as CARF — and to tell you a little bit about where we are going and what we are doing.

I'm also pleased to do so because I think that it is often a lack of communication that leads to misunderstanding and to major problems within our society.

The Office of Consumer Affairs and Regulatory Functions, in part at least, is an attempt to mitigate injustices and to give citizens an opportunity to participate in the up-front decision-making in the Department of Housing and Urban Development.

I say "in part", because CARF really consists of two major areas: The consumer side and the regulatory side that I'm involved with.

Let me first tell you a little bit about what's happening on the consumer side.

The consumer side's mission is to try to assure that consumers, individuals and organizations have an opportunity to effectively participate in decision-making. We do so by assuring consumers that they have an opportunity to get their views heard by the department. The office of CARF then tries to assure that those views are considered by others in the department when policy decisions are made.

The consumer side also reviews handbooks, regulations, circulars — things of that kind — including those on the regulatory side, to try to assure that consumer concerns are considered.

Finally, the consumer side is in the process of establishing a consumer complaint handling system that will try to assure that consumers are given a reasonable opportunity to have their concerns answered, and if they find that their concerns are not answered in a timely or a favorable manner, some system of appeal of the initial decision.

Let me turn to the regulatory side which is the area that I'm involved in.

What I'm going to do is to try to briefly describe four of the major activities we're involved with and then spend some additional time discussing the area I think you're probably most interested in — the Real Estate Settlement Procedures Act of 1974.

Before I begin on that description, let me say that I think it's important that you understand that there is a distinction between the way the two sides of CARF work. On the consumer side, input is taken from consumers and input is made on behalf of consumers. On the regulatory side, the way I view my job, we have to look at all sides and balance all interests in making decisions.

Let me tell you a little bit about the programs with which I'm involved.

The first one is the Mobile Home Construction and Safety Standards Act of 1974. Under that Act, HUD is authorized to issue a national construction and safety code for mobile homes. That code, containing variations necessary to meet different climatic and geographic conditions, was issued in September of 1975.

I want to emphasize that this is an unusual program because the federal law says that all state and local laws that are not identical to the HUD code must fall. Therefore, if you have a state law, whether it's lower or higher, that's not identical to the standard, that portion of the local law that's not the same is preempted and is no longer enforceable.

In a sense, therefore, what this mobile home program represents is the first national building code. It is, of course, limited to the mobile home area.

Now, another major responsibility that we have under the Act is to assure that it is properly enforced. We have issued both the standards and the enforcement regulations and the program as a whole became operational on June 15 of this past year.

I want to tell you that I think the program has two unusual features that are important. They are important I think to you as citizens and to you as participants in ALTA, because the attitude and approach to government regulation taken may perhaps be emulated in other programs.

One of the major differences is that instead of creating a mammoth federal bureaucracy

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to administer the program, we utilize the services of state and private inspection agencies, many of which were already in the mobile home area, to administer and to inspect homes under the program. If we had not utilized these services — those people who were already there — we would have created a federal bureaucracy of 600-800 people. Instead, the Mobile Home Division currently has 22 people and is expected to grow to no more than 30. That's quite a difference in approach, I think.

Also, the use of those resources represents a difference in another way. Instead of going out and telling people this is the way it's going to be, we have involved the states and we have involved the private agencies as partners with us in trying to administer the program. I think to a certain extent we've been successful. We have applications from over 35 states that have applied for participation in the program to be our partners and to play some role in enforcing the program. We've approved 18 of those applications since June of this year, and those 18 states are already in the program, acting as our partners.

I don't want to suggest to you that all the problems have been eliminated nor that our relationships with the states are perfect. Instead, I think I will describe that program as off to a reasonable beginning with numerous day-to-day operating problems and some significant policy and organizational difficulties yet to be resolved. But we're off and we're enforcing that program right now.

The second area I want to talk to you about concerns our responsibilities under the Energy Conservation and Production Act that was passed in August of this year.

The Act was designed to encourage more efficient use of depletable energy resources and to help reduce utility costs to individual occupants of buildings.

The bill provides that any new building — commercial, residential or industrial — must comply with standards to be developed by HUD in cooperation with other agencies of the federal government, state government and industry and consumer groups. The work, in terms of developing performance standards for energy, is to be completed within a 3- to 3½-year period.

The standards are compulsory in that there is a heavy penalty if states or localities do not adopt the same standards, equivalent or higher standards.

Once the standards are set, should a state or a locality not adopt them or equivalent ones, all federal assistance for the construction of buildings, direct or indirect, other than a limited category such as revenue-sharing funds, will be suspended until the locality either adopts those requirements or begins the process of adopting those requirements. It's a rather powerful sanction. And because of the far-reaching nature of the standards and the far-reaching nature of the potential sanctions, the Congress has imposed an unusual requirement on us.

We are obliged to submit both the standards and the sanctions package to Congress before they become effective and the Congress must then act affirmatively, not just passively on the standards and the sanctions, for them to become operational.

Implementation of the energy bill has just begun. When the standards have been developed and the program is operational, I expect that our office will have the overall responsibility within HUD for the operation of the program.

Until then, HUD's research arm will be working on the development of the standards and we will be concentrating on establishing the administrative and enforcement mechanisms under the program.

So that's a major new responsibility that we have.

Let me turn to a third area, and that is the Task Force on Condominium Processing. The task force consists of members of HUD, VA, FNMA and the Federal Home Loan Mortgage Corporation. Mrs. Newman is chairman of that task force and I am vice chairman.

The goal of the task force is to identify the various requirements of the different agencies and organizations as to condominiums and to seek to achieve, to the extent possible, uniformity as to these requirements.

If this goal is realized, the developers will have an easier time getting their projects processed for mortgage insurance and for secondary mortgage financing. Hopefully, private lenders will, where agreement between the organizations has been reached, consider adopting the same requirements for their loans on non-federally related condominiums.

The task force is looking at a broad range of subjects — legal documentation, appraisal practices and underwriting, to name a few.

Because of the complexities of the subject and the varying state requirements, completion of the task force work is not expected for some time. However, I am hopeful that the initial work of legal documentation will be available either late this year or early next for comment and review.

Let me move to the fourth major area that some of you, directly or indirectly, may have been involved in and that is, the Interstate Land Sales Registration Program.

Under the program, which was enacted in 1969, subdivisions of 50 or more lots that are sold by means of interstate commerce or by the mails are generally required to file a registration statement with HUD and a property report as well. There are, of course, a number of exemptions such as cases where all the lots are over five acres, but the general rule is that subdivisions of 50 or more must be filed.

Under the Act, developers must provide the property report disclosure document to the purchaser prior to the time that the sale is completed. Failure to do so or failure to file may subject the developer to civil or criminal penalties or may result in the department requiring that purchasers be offered a right of recision by the developer. That program, as I say, has been on the books since 1969. But we are frankly taking a hard look at the requirements to see what, if anything, needs to be changed or modified. Our goal is still consumer protection — that's the purpose of this disclosure requirement. But we want to make sure that the way we're doing it is the best way of accomplishing that goal.

To that end, we published in the *Federal Register* in mid-August, an advanced notice of proposed rulemaking. We said to the public, "Look, we're going to take a fresh look at this, we don't know exactly where we are going but we think the time has come to just start from fresh, in terms of taking another look. We want your comments. We want you to tell us what you think our priorities should be and we want you to tell us where you think the requirements that we currently have should be changed."

To date, we've received over 80 responses. Many of them, I should add, are very detailed in terms of suggestions as to how we should change the requirements under the program.

I'm hopeful that at least part of a proposed rulemaking in the area of interstate land sales will be issued later this year or early next year.

I want to tell you about another priority in the interstate land sales area and then move on to RESPA.

I'm very much concerned about unnecessary duplication. HUD and many state agencies have disclosure requirement programs. Because of that, there are often two filings, one with the state and one with the federal government. Our objective is to work with the states to find ways of moving toward a single filing requirement.

My feeling is that consumers are many times better off if they get one clear and concise disclosure document, property report, than they are at the present time where they may get two or three documents from different state agencies or federal agencies, concerning the same purchase. I think I know what they're more likely to do with three than they are with one, and I'm not referring to reading them.

But, in any event, those are two of the major efforts that we're undertaking in the area of interstate land sales registration.

Let me talk to you about RESPA. You are all very much involved with and familiar with that program. I think that you are all far more expert in that than I. Nevertheless, let me tell you a little bit about where we're going and what we're doing. And let me say to you that your organization played a key role both in the development of the original legislation in 1974 and in terms of becoming involved when the legislative proposals were before the Congress in 1975. Those legislative proposals and alterations, of course, resulted in legislation in 1976. ALTA has played, to my way of thinking, a key role in both of those processes.

I think that there are three key objectives that Congress was talking about when it passed RESPA. One was to take the surprise out of the settlement process. Too many complaints had been raised by people who would walk into settlement and be confronted with a whole new set of costs about which they had not been formerly notified. Besides the frustration and anger over paying what they perceived to be additional costs, settlement sometimes was delayed because the buyer had to scurry about to find additional funds.

The second objective of RESPA, as I see it, was to eliminate certain abusive practices that plagued the home-purchasing process. Section 8 of RESPA, which I'll discuss in greater detail, is a direct response to that problem.

Finally, I think that Congress intended, through this program, to try to increase efficiency of settlement services. I think this is explicit in the area of land recordation where HUD is charged with the responsibility to undertake a number of demonstration programs. I'll return to those a little bit later on.

After the Congress passed the first RESPA in 1974 and after we issued our regulations, we were, as I'm sure you know, besieged by adverse comments and criticism.

The comments and criticism, I think, focused on two main areas. One had to do with the Section 6 requirement that consumers be provided certain disclosures 12

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days before settlement. Although the regulations permitted a waiver of that requirement, most lenders enforced it strictly and, as a consequence, some consumers could not settle on a date that they had hoped to, thereby resulting in additional costs for furniture storage, motel rooms and just plain inconvenience.

The second area of major concern, I think, had to do with Section 7 of the original bill. That section required that sellers disclose the sale price if they had owned the property for less than two years. This provision was aimed at real estate speculators who would buy low and sell at a high price. I think, however, the statute went too far in that many non-speculating families who owned less than two years were also covered.

As you know, RESPA was subsequently modified to alleviate these and other criticisms.

Under the new program, which went into effect in June of this year, lenders making RESPA-related loans must provide two documents. The first is the special information booklet called *Settlement Costs* which HUD prepared. The second is a set of good faith estimates. The lender may provide good faith estimates either as a specific amount or as a range of cost. The full set of estimates may contain both amounts and ranges. Both items are to be provided to the applicant within three days of receipt of the application.

As you know, on or before the date of settlement, both the buyer and seller are to receive from the person conducting settlement a copy of the completed HUD-1 Form, called the Uniform Settlement Statement.

The person conducting settlement may be the lender, attorney, or as often happens, the title insurance company. If you are in that position, you're required to inform the borrower, at his request, the day before settlement, of the specific settlement service charges that you know at that time.

Now, while you don't have a similar obligation with respect to the seller, I think it's a good practice if the seller requests it, to also notify him of the charges relevant to him that you are aware of.

After you complete the Uniform Settlement Statement, you are to send appropriate copies to the buyer and seller and to retain a complete set for the lender to be filed in the mortgage.

Under the original RESPA program, we received numerous complaints concerning the inflexibility of the Uniform Settlement Statement. I think the new regulations take care of that.

Materials can now be added to the statement, such as signature blocks. Line items may be deleted if the settlement cost items are not incurred in your locality.

We also received numerous criticisms concerning the problems of fulfilling the delivery requirements in locations using escrow closings. The regulations now provide for waiver of the delivery requirements in cases where the buyer or his agent is not present at the closing or where the agent conducting settlement does not require the buyer or his agent to be present. These exemptions were passed to meet the escrow-type closing problems as well as to accommodate for closings where the buyer lived a considerable distance from the place of closing.

Judging from the complaints from settlement service providers and consumers, the revised RESPA appears to be working reasonably well. We are not home free; but, we're certainly a good way there.

I think that a part of our success in anticipating and responding to problems has to do with the significant amount of contact that we've had with the public during the formative process of writing the regulations. On two different occasions we sought public comment on the nature of the regulations before placing them into final form.

Again, I would like to report that ALTA, in all instances, provided us with detailed and useful comments.

We also had an opportunity to meet with industry and consumer organizations to talk about specific aspects of the program. Again, we had very good input from ALTA in these sessions. And finally, the many comments we received were also considered.

As you know, the regulations became effective on June 30, 1976. Since then, we have mailed out over 20,000 compilations in response to individual requests sent to us.

The booklet that I described to you earlier on settlement costs has been a big seller. We have mailed out over 8,000 copies of the final printed booklet to individual consumers who have written to us. It's also my rough estimate that private printers who supply lenders with these booklets have produced 2-3 million copies, most of which I believe have been distributed by now.

As a result of the efforts on your part and ours to minimize the start-up problems of the program, we have reduced the complaint level and have apparently reduced the problems of paper work.

The area in which we get most of our questions now has to do with Section 8 — the kickback provision of RESPA.

Section 8 was part of the original bill, as you know, and under the original regulations that the department issued in 1974, we chose not to provide any clarification as to what Section 8 meant.

After going back this year and having public comment on that position, the department together with the Department of Justice reconsidered its stand and decided to issue clarifying provisions in the regulations. Section 3500.14 and Appendix B contain those clarifying provisions.

In Appendix B, we present the series of fact-comment situations to explain the more common illustrations of what would be considered prohibitions under Section 8. We feel that these two sections, along with the statutory provisions, are sufficient to permit an attorney to make an assessment as to whether a particular fact pattern is prohibited under the Act.

We will, however, from time to time, add to Appendix B fact-comment hypotheticals to cover situations of broad application that are brought to our attention. When we do so, we will do it through the formal rule-making process. We will go out with the proposal, we will get your comments, and then we will go out with the final.

I know that many of you would like to have a binding legal opinion on a particular fact pattern that concerns you. I can't give you that kind of advice, I can't give you that kind of a direction, because of the criminal and civil sanctions involved and because I think that we need to go through a public rule-making procedure prior to issuance of binding interpretations.

Nevertheless, when we get letters from you requesting some guidance, we do try to provide our best thinking to you. After we do that, you are the ones who have to make the decisions (with our additional comments) as to whether a particular kind of an action is or is not prohibited under Section 8.

I think, frankly, that many of the questions that you have under Section 8 can be answered right now under the existing regulations and by use of the Appendix.

Many of the inquiries we get involve the following kinds of determinations: First, does the factual situation involve the referral of business incident to a federally related mortgage loan? You need to look at the nature of the loan to determine whether it is covered by the statute. You also need to look at the two parties involved to determine whether they are involved in a business transaction involving real estate settlement services.

Second, many questions involve a clarification of a thing of value. Section 3500.14(b) provides clarification as to what a thing of value is. Subsection (c) deals with what constitutes an agreement or understanding. Payment of a thing of value need not result in an increase in the charge made for settlement service. This is covered in Subsection (d).

Finally, Subsection (e) treats the question of what constitutes an unearned fee in situations where services are actually rendered.

By breaking out your particular factual situations in terms of these elements, you should be able to answer many of your questions as to whether your fact pattern is a prohibitive practice.

I want to go back, however, and tell you that when we get questions, we will try to provide answers and if we get a series of questions that suggest to us that a general fact pattern exists that requires clarification, we stand ready to go back to the *Federal Register* and issue a proposal as to how we think that particular fact pattern should be handled. You will have an opportunity to become involved with us because you'll have an opportunity to comment on our proposal.

Let me tell you a little bit about the enforcement that we are doing under RESPA.

As I think you know, the legislation does not set forth any specific requirements or guidance as to how the program is to be enforced. I think that by working with the other federal regulatory agencies, particularly the Federal Home Loan Bank Board, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Controller of the Currency and the National Credit Union Administration, we've come up with a system that will make sense. It doesn't involve hiring people by HUD or any of the agencies or any additional or special visitations to lenders. What we've agreed to is a set of compliance questions that these organizations will include in their routine bank examination procedures. They also stand prepared to pursue with any of their members more vigorous enforcement action when serious violations are identified and corrective action needed.

Enforcement of the kickback provisions will be principally through the Department of Justice. If we receive complaints alleging violations of Section 8, those will be turned over to the Department of Justice for appropriate action. Complaints of violations may and already have been lodged with U.S. attorneys in which case, the U.S. Attorney's Office notifies us of the action and we correspond with the other agencies.

Let me move finally into the area of research. There are three major responsibil-

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ities that we have under RESPA with regard to research activities.

The first involves our evaluation responsibility under Section 14. The second involves our responsibility under Section 15 in the range of cost demonstration study. The third involves Section 13, the demonstration relating to land parcel recordation systems. Let me first talk to you briefly about Section 14 and mention Section 15 and end my discussion with Section 13.

I think the evaluation of RESPA will formally begin a little over a year from now. We intend to go into a sample of housing market areas and conduct in-depth surveys of all participants in the real estate settlement process to determine how well RESPA has functioned and whether the objectives that I spoke of earlier have been achieved.

We're going to ask questions such as: To what extent do abusive practices still exist? Is the market for settlement services more competitive as a result of RESPA?

Answers to these questions and other questions will lead the department to either legislative or regulatory changes or proposals. We also will probably collect a sample of Uniform Settlement Statements for purposes of this Section 14 work.

Section 15 work involves, as I've said, the range of costs demonstration. The department on September 30 this year issued to the Congress an interim report on Section 15. In that document we said, "Here's what we've done in the past; here's what we're proposing to do in the future. We were unable to undertake the demonstration which you'd hoped we'd be able to undertake by June 30 because, among other things, of the change in the legislation and so on. But here's where we are going." What we said is that we want to conduct demonstrations only if necessary but we are going to conduct a further research effort in the near future. Our plans are to go into a small number of housing market areas and conduct intensive case studies of the real estate settlement processing in each of those areas.

In the Section 15 interim report, we set forth a set of policy issues to be answered by that research. If answers are forthcoming, we will issue a final report and conclude the effort there. If we can't answer some of those tough questions, we will go forward with a formal demonstration.

I know that many of you are greatly interested in the Section 13 research effort. Under Section 13, we are charged with undertaking a number of demonstrations to see if a model system or systems for recordation of land can be developed and to see whether some nationally uniform land parcel recordation system is feasible.

Let me tell you where we stand today. The department will soon issue a request for a proposal to find an evaluation and design contractor to assist the department in first specifying the various types of systems to be tested, to evaluate those systems when subjected to field-testing, and to subject the necessary analyses to close scrutiny. We hope to have that contract let early next year and be in a position to start the actual demonstration by the end of calendar 1977.

At the present time, we are contemplating a broad range of demonstrations which will cover many items. For example, greater use of parcel-based recording systems instead of grantor-grantee listings to more radical approaches like the Torrens System.

As a part of the process of deciding upon the demonstration, I anticipate that we will be seeking comments from you, as individuals, and from ALTA, and that you will be playing an active role in that process.

What I've tried to do today is to give you a brief overview of where we are going in CARF, particularly on the regulatory functions side of the office. We have a number of very broad responsibilities, many programs and additional programs being added all the time.

The key thing I'd like to leave with you is this. I feel very strongly that we cannot conduct our business in isolation in Washington. We have to know what is going on in the real world. We have to open up the process. We have to hear from you as representatives of the industry and we have to hear from consumers.

We are going to provide you, as I think we have in the past, with the opportunity to participate in the processes of decision-making at HUD. I would only urge you to take advantage of the opportunity to participate in the future, whether it be in RESPA, in Mobile Homes, or in any other areas that you are particularly interested in. I think it's important for you, I think it's also very important for us. We may not agree with you but I can assure you of one thing — we will listen to what you have to say.

Federal Home Loan Bank Board Perspective

The Honorable Garth Marston
Acting Chairman, Federal Home Loan Bank Board
Washington, D.C.

I'm delighted to see you in Seattle. I noticed in looking over your program that you are big on communications. Polly Lane is going to speak in a few minutes and you had somebody from one of the broadcasting studios here. It seems to me that if you really want to get your point across to consumers that perhaps Bangor or Bar Harbour up in Maine might have been a little more appropriate place since there's an Indian uprising of severe consequences there and the title insurance people are certainly involved.

But since you are here in Seattle, where I've spent 20 years or so, as I say, I'm delighted that you are here. I'm a no-growth man myself and I hope that you all go back home and enjoy wherever you came from.

But it does give me an opportunity — we're very hospitable up here in the Northwest; you are going to have to get used to that.

I see that you are going to honor George Garber. I think I only met George and his wife once when they were here. But George and people like Walter Williams and D.K. McDonald provided a lot of leadership. And I think it was George and people like himself being active in politics that led to people such as Congressman Pritchard, Governor Evans — two highly unusual politicians in that they are able and competent and honest — to get into that very important field.

I see my friend Wharton Funk back here, I haven't seen Wharton for quite a while. Norton, I'm sure is not here. He knows me too well, number one; and number two, while you guys are sitting here, he's all over the country trying to get your business from your customers.

And is anybody here from the old Washington Title? I can't — I don't know, it's Pioneer or something now.

Is that you? I can never figure out why you guys change a name, but we'll get into a marketing argument later on it.

Well if somebody is here from a local unit and if you know where Ebbie Pond is, I hope you'll give him my best. Somehow you have these inexplicable reasons for feeling kindly towards an industry, there's no good reason for anybody to feel kindly about the title insurance people except when I was closing loans, anytime that I got into trouble, which was every day, I'd call Ebbie Pond and Ebbie Pond would straighten me out, and I think that's one of the reasons when Mark and Bill asked me if I'd come out here, I said I'd be happy to, and I guess maybe in a way I am trying to repay all the kindnesses that Ebbie Pond of Unit 8 down at Washington Title Company gave me when I was closing loans.

Well, I think all of you should be very, very pleased to be here at this time, really the country is safe. I ran into John Rousselot yesterday down in San Francisco, and John had a big smile on his face and he said, "Isn't it wonderful, the country's safe, the Congress is not in session."

And I said, "John, you know the Savings and Loan people feel the same way, not only is the Congress not in session, I'm not in Washington, D.C. and there aren't any regulations being passed."

So it's really a very good day for everybody. I think probably those of you who have been back there recognize, as I have found out, that Washington, D.C. is in fact a city that operates with northern hospitality and southern efficiency.

We're getting worse. It may be that Washington, D.C., or Secretary Simon said this one, I've never heard this one before but he said that this is one — the one city in the United States where sound travels faster than light.

Before I get into my main topic, a couple of people have indicated that you would like to have me comment briefly on the savings picture and perhaps our interest rate projections.

The savings picture is roughly this. In 1975, more net savings dollars came into savings and loan associations than ever before — about $29.4 billion.

At the beginning of the year, we felt that 1976 would either be the best year or the second-best year if you think that pure savings flow is best. We thought that short term rates would be going up a little bit at this juncture. That has not been the case. So through the end of September, we are ahead of last year's record-setting pace. Now we think that there will be more dollars

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flowing into savings and loan associations this year than ever before. This means that there will be a good supply of mortgage money. We are seeing the first indications that rates may be tapering off in response to a law that we often forget about in Washington, D.C. and that is, the law of supply and demand. Interest rates are coming down.

However, there is the reality of inflationary expectations. Whereas rates may be coming off a little bit, I think you are not going to see much of a significant drop until November 3. If the American people select a President whom they believe in and who signals to the financial community and to the people in general that there would not be huge deficits and not be runaway inflation, interest rates will probably continue to drop. If the American public selects, from the many people that they have to select from, somebody who signals that he's going to increase the deficits, then the inflationary expectations will increase.

I want to talk about the role of dollars in the mortgage market.

In mature cities and the problems that mature cities face today, dollars are important but dollars aren't everything. The typical response of government at all levels — federal, state, local — is to throw dollars at the problem — the taxpayers' dollars.

But the major problem in housing today is inflation and throwing dollars at that problem is like throwing gasoline on the fire in order to extinguish it.

Let me just give you an example. We asked ourselves what it would take to keep the payments (P & I) the same on an 80 per cent loan on the median new-priced house over a period of years. We went back to July 1973. The median-priced house at that time was selling for $34,200, so an 80 per cent loan was $27,400. We assumed an interest rate of 9 per cent and a 30-year term. The payment is $220.46. How do you keep that stable as the price of housing increases?

In 1974, the median-priced house cost $36,800. You'd have to cut the interest rate on an 80 per cent loan to 8¼ per cent to keep the P & I the same.

In 1975, $38,600. Cut the interest rate to 7¾ per cent.

In July of this year, the median-priced house around the country was $45,100. Cut the interest rate to 6¼ per cent.

In about six more years, we'll be subsidizing borrowers directly because there isn't much room to go with interest rates.

Those of us involved in housing and housing-related activities must understand and communicate to the other decision-makers around the country what is going on in the housing market, what some of the basic problems are. We must avoid punitive, counterproductive and mandated solutions, aimed at curing the symptoms rather than the disease.

In this regard, I was glad to see some literature when I arrived yesterday that through the ALTA you are getting more active in the area of politics and communication. It is very important that you and all the other people connected with housing bestir themselves politically. You must know the issues. You must communicate about the issues. You have to be very realistic about your condition and status when you do this. Title insurance is just as dry as dry can be. It's more fun to go out and dig up crabgrass than it is to talk about title insurance.

How are you going to explain title insurance and keep somebody awake for five minutes? You're not going to do it.

Now really, you're like gas stations, aren't you? How many of you have ever gotten into the car and said, "Let's go to the shore, I know where there's a great gas station." You don't do that.

Somebody goes into a hardware store and says "I want to buy a drill". They talk about a drill for a long time. What does the buyer really want? That's right, the buyer doesn't want a drill, he wants a hole!

The buyer doesn't want title insurance, he doesn't want a credit report, he doesn't want RESPA. The buyer wants a home.

Be sure you are doing the right thing, whatever that is, for your customers. Then become active on the local and state and national levels to tell your story.

There are some disturbing trends that are going on in residential finance. I want to share with you my concerns and to have you think about them. After all, you are part of the action. I'm going to give you some trends as to the mortgage debt outstanding on one-to four-family nonfarm dwellings by type of holder. What I hope you will hear is the changing interest in residential mortgages on the part of lenders.

At the end of 1968, the total mortgage debt outstanding on one to fours was $251 billion.

At the end of the first quarter of 1976 — $456 billion. That's an increase of $205 billion or roughly 82 per cent.

The savings and loan association share of those outstandings had gone up 110 per cent. The life insurance share of those outstandings had gone down 40 per cent. The mutual savings bank share had gone up 31 per cent. The commercial bank had gone up 95 per cent although a lot of that was involuntary.

The figure that is really disturbing to me is that in 1968, the federal government and federally-related agencies held $13 billion worth of this outstanding credit and at the end of the first quarter it was up to $60.5 billion. This was an increase of $47 billion or 265 per cent. Almost as much as that held by life insurance companies and savings banks combined is held by the federal government and the agencies. This is an ominous sign. It is not good to rely more and more upon one lender. It gives too much power to one group of lenders. Reliance is placed on lenders where money floods in and rushes out. No single source of funds is reliable. The American public needs a broader source of financing. We need to attract investors who are willing to come in because they find real estate lending profitable. Profitable. That's a word that we don't use often enough in Washington, D.C., with a smile on our face.

What I'm saying is that the federal government neither can nor should try to house America. It is up to the private sector to do that. That includes title insurance. You have to get your fees down, you know, and your exorbitant profits and all those evil things. You have to do that. The savings and loan associations have to get their rates down and they have to find good sound economic loans. Now. Wherever they can find them. The federal government cannot do it.

We often hear, "Well, if so-and-so doesn't do it, the federal government will." The federal government can't do it. They have demonstrated amply that they cannot do it. If the private sector doesn't do it, it won't get done.

Where are these discretionary lenders? Not all of them have the narrow constraints that the savings and loan associations do. Discretionary lenders can invest in various geographic areas and in other instruments as well. Why are they not attracted to the mortgage market?

I suggest to you that there are at least 12 impediments to investing in the mortgage market. Let's cover them rather quickly.

Last March there were seven. This list keeps growing. If you have any good ideas, send them on to me. Something has to be done. They are:

- *Mandatory* interest on escrow accounts. These are typically taxes and insurance. A lot does depend on the plan — on whether it's retroactive or not. It depends on the interest rate that's mandated and it depends on whether the lender will be allowed to charge a reasonable fee or service charge. But if the trend is towards mandatory interest, this will lead to fewer lenders offering tax and insurance escrows or it will mean higher loan fees. There is no such thing as a free lunch.
- *Mandatory* elimination of the due-on-sale clause. The question here is "Should a due-on-sale clause be allowed for Federals in a state that outlaws it?" Eliminating the due-on-sale clause will affect mortgage loan portfolio yields, especially in these days of racheting upward rates. If mortgage loan portfolios move from a 7-year average life up to a 10- or 12-year average life, serious earnings problems will impact lenders. Why should a lender take a lower yield from a mortgage market investment if he can get a higher yield elsewhere? In states that are burdened by long foreclosure periods, without a due-on-sale clause the only security is the property. The buyer really is gone. Now in some states, such as California, you can reach the property quickly, often in 60 to 90 days. But in other states, such as Illinois, it typically takes two and one-half years from the time the last payment is due.
- *Mandatory* elimination of the prepayment penalties. Prepayment penalties discourage borrowers from refinancing a mortgage loan in a falling market. When lenders price mortgage credit, they do so with some expectation as to the risk they face that their portfolio yield will be reduced. If lenders are precluded from incorporating such prepayment penalties in their contracts, we can expect the price of mortgage credit to rise.
- *Mandatory* underwriting standards. More and more communities are being made aware of the demands by various civic action groups of what is termed "disinvestment" or "redlining". Whatever the terminology, the problems of economic decay in urban areas remains. The imposition of lending criteria and insistence on equal terms for all is a political solution that may well lead to outright credit allocation.
- *Mandatory* forbearance procedures. Rules and regulations, whether promulgated by state or federal authority, that substitute bureaucratic for private judgment are wrong and a major impediment to free market relationships.

(Please notice that in these five preceding impediments I have emphasized the word mandatory. I am sure there are many of you here who do not have prepayment penalties, some may not have due-on-sale clauses, and some do pay interest on escrow accounts. This is fine if you voluntarily

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come to the decision that it is in the best interest of your institution and, therefore, of your institution's customers, both on the borrowing side and on the side of the people who supply the money — the savers. What is objectionable is the mandatory aspect of some greater, all-knowledgeable body imposing these rules upon your institutions.)

- Sole reliance on the standard-level-payment mortgage. Somewhat tongue-in-cheek, I would suggest to you that sole reliance on the standard-level-payment mortgage instrument may be an "unsafe and unsound practice". More and more people are beginning to realize that the level-payment mortgage design is not for everybody. However, the day of total reliance on this type of instrument may be coming to an end. This is one of the reasons why the Board undertook its Alternative Mortgage Instruments Research Study which is to be a comprehensive and systematic analysis of a lengthy list of alternative mortgage designs including VRM's.
- Excessive foreclosure costs. This condition is certainly a major mortgage market deterrent. Local lenders will not take as high a degree of risk as they might unless they can rectify loan default situations in a reasonable period of time. Furthermore, out-of-state lenders will not invest, or at least not as heavily, in a state where it takes an excessively long time to recoup it after default.
- Continued imperfecting in the secondary mortgage market. There are 50 different ways of perfecting a mortgage and having the title transferred in the United States. Imagine the problems of the desk lender someplace who is trying to decide where to invest around the country when he has excess funds. This lack of uniformity is obviously a serious deterrent to operating in the secondary market.

  Major work has been done by the National Conference of Commissioners on Uniform State Laws to achieve uniformity in the law related to real estate transactions. The efforts, which are supported by the Board and the Mortgage Corporation, have culminated in the Uniform Land Transaction Act and the Uniform Simplification of Land Transaction Act. I urge you to study these acts and to consider supporting them in your state legislatures.

  The secondary mortgage market needs better standardization and better packaging. The Mortgage Corporation has made real progress, but the current imperfections remain a major market impediment.
- The REIT experience. The problem, generally confined to construction in development of REIT's, stems in large part from their structure. Generally they have to pay out 90 per cent of their earnings and cannot build up much net worth. Also they made a lot of poor loans. Also some managers were incompetent. All this resulted in unfortunate national publicity, with repercussions throughout the accounting industry and the SEC. Unfortunately, all of this affected other non-REIT lenders. The REIT experience was a bad experience and a detriment to people who were considering coming into the residential loan mortgage market as investors.
- Rent control. Those of us from Washington, D.C., recognize what an impediment rent control can be. Rent control is a major impediment and a deterrent to investing in the mortgage market, especially in multiunit housing.
- Usury laws. While some believe that there are social grounds for usury laws, it is difficult to justify mandatory interest rates on an economic basis. In 1974-75, a lot of so-called "cheap government money" was priced in excess of the usury rates in many of the states. These states complained that they couldn't get this "cheap government money". Usury laws are a real impediment to a free mortgage market.
- Excessive laws and regulations. How many pages of regulations does the average savings and loan closer have to cope with today? Loans to one borrower requirement — one page. Documentation requirements — one page of regulations. Nondiscrimination laws and regulations — three pages. FTC preservation of consumers claims to defenses (this is the holder in due course 1976) — 15 pages. Home Mortgage Disclosure Act, 1976 — 13 pages. Equal Credit Opportunity Act, Regulation B, 1976 — 13 pages. Flood Disaster Protection Act, 1973 — seven pages. RESPA, Regulation X, simplified now, cut way down — 55 pages. Truth in Lending, Regulation Z — 100 pages.

  This example cites a total of 208 pages of regulations. More are coming. I suggest to you that there has to be a cost. These rules and regulations may be good, and they may be bad. They exist, but at what cost? I think it is time that the Congress take a look at what it is doing and answer the question: Are we really *protecting* the consumer and, if so, are the benefits worth the costs exacted?

Let me sum up this way: Savings and loans are taking over an ever-increasing share of the mortgage market, and that is not a good thing. I've suggested that there are at least 12 impediments to investing in the mortgage market. On the local level and on the federal level, these impediments should be broken down. I asked the question, are consumer-protection laws worth what they cost?

Let me leave you with this hopeful, stimulating thought from H.L. Mencken, who said, "For every human problem there is a solution. Neat, simple, and wrong."

Acceptance of Alaska Land Title Association as an ALTA Affiliate

Presented by 1975-76 ALTA President Richard H. Howlett
Accepted by Alaska Land Title Association President
Harold O. Lightle
President, Alaska Title Guaranty Company

President Howlett: One of the great privileges that the Association has is from time to time to receive a new member state-affiliated association, and pursuant to the action by the American Land Title Association Board of Governors, on October 17, 1976, the Alaska Land Title Association, having met all qualifications, has been accepted as an affiliate of our national Association.

In its Articles of Incorporation, filed April 14, 1976, with the appropriate officers, and in the integrity and professional competence of its members, all of whom are in good standing with our national Association, the Alaska Land Title Association has demonstrated an impressive dedication to the highest standards of land title evidencing.

On behalf of the board, members and staff of our national Association, I welcome the Alaska Land Title Association into this affiliation.

Alaska Land Title Association Representative: On behalf of the 13 member officers of the Alaska Land Title Association, it gives me great pleasure to accept this.

We extend you an invitation to come visit the great land and the welcome mat is always out. Thank you.

President Howlett: The Alaska Land Title Association has accepted the affiliation with our national Association. I think it is the 39th state and regional affiliated association of the American Land Title Association.

I'd like to take just one minute to talk a bit about the relationship between the state association and the national Association.

We have the responsibility, in the national office, of presenting the industry's view, the industry's position, its service and the value of that service to the national regulators and legislative bodies. But we also have the responsibility of aiding the states, because they are the ones that must represent our industry at the local legislature. They are the ones that must coordinate the activities of our membership. Through them, it can be made a very strong relationship.

I urge upon the state associations and the regional affiliated associations to designate a person in their organization for liaison with the national Government Relations Committee. Set up a method in which you can take a position on short notice. Help identify those people who have legislative contacts so that they can be called upon when an urgent situation arises. Invite the Government Relations Committee, Mark Winter, their director, to help you organize, they'll come visit you. Work, get involved, support the national and let the national support you.

Help Your Newspaper Tell Your Story

Polly Lane
Real Estate Editor, The Seattle Times
Seattle, Washington

President Howlett: Most of us would like to see the newspapers do a better job of reporting on our industry. Along the same line, most newspapers would like for us to improve our relationship so that they could adequately report on us.

We have asked our next speaker to discuss some ideas on how title people can work with the press. She served the Seattle *Times* as real estate writer from 1967 to 1975, when she became real estate editor. She is the past president of the Seattle Chapter, Women in Communications, and is a member of the Washington Press Women and the Sigma Delta Chi professional journalism fraternity. Her writing has won a number of awards.

At this time, it is my privilege to present to you, Polly Lane, real estate editor of the Seattle *Times*.

Ms. Lane: You know, it's quite a switch for me to be up here. Usually, I'm the one down in the front row, taking all the notes. But today I get to do double duty. I'm a lot more accustomed to speaking to my typewriter, however, so if I shake a lot, please don't get nervous, I've already done that.

You've heard a lot of urging at this convention about getting involved politically. Well, right along with it goes communicating better.

You and I really don't have a very good relationship, and it's not that it's bad, it just isn't going anywhere, it doesn't exist very often.

So let's do something about it. I'm willing and so is your newspaper.

There are lots of ways you can get your name in the paper these days. As we've seen recently, you can give an interview to *Playboy* magazine about your secret thoughts and get great press or you can tell an off-color ethnic joke, too.

And a lot of people get their names used only because the're vital statistics. They're born, they're married, they're dissolved, they die, or they get involved in some kind of a mishap.

But most who get their names and their company's names in the real estate sections succeed because they have something better or unusual to tell about.

Sometimes, businesses don't like the way their names are used and published, and this is because it's considered in an uncomplimentary way, such as in a law suit or labor trouble, or some other problem. But at the same time, many of these same people haven't ever given any thought to providing access to information they have that would enable them to be newsmakers in a positive way.

Most people don't realize that news is not about people doing what they're supposed to do or what they say they'll do.

The fact that a developer has constructed a building he has announced is not news, or that you in the title industry are busy providing titles, as you say you will and guaranteed that you'll do — it's just not news.

News is that something extra. It's got to have a different twist, if you will, something new and it's credibility and space in a newspaper that money simply can't buy.

Most people don't understand how you go about your industry or any other for that matter, and they really don't care either, as long as you do it legally. As Garth Marston said, "It is a dry subject".

But you people in the title industry are dealing with two things which fascinate almost everybody and you should use that and get more press. You are dealing with money and real estate. You can provide information about these subjects in your community that no one else has, and you can do it from a neutral position, you don't have to take sides, you're in the middle. I think all it takes is some imagination to figure out what will pique an interest.

You have a literal gold mine of information that's unused, as far as the public is concerned. Most of you don't tell what you can be giving out in large doses and at the same time building your own image.

I suspect it hasn't occurred to some of you to find anyone to tend to this, but I urge you to do so. Creative greed is as good a reason as any, for you and for me. An informed public is a more sophisticated investing public and you eventually will benefit from that while I get more interesting stories to write.

The information that you have access to and collect daily about realty transactions can be interpreted into dozens of articles about trends: What's happening around a major development, how the money market is affecting sales and values and on and on. You have it all right there, away ahead of everybody else.

But think big. All you need is a good imagination to create ways to interpret all that information you have, and most of it would make news, positive news which is educational to the public.

How money and real estate relate to the public is your subject.

Your companies can provide information with full credit as the authority in the community. I think it's a tremendous challenge, it's a way that you can get recognition and on and on and on — good press.

One impressive example that I know about is produced right here in Seattle by Pioneer National Title, called "The Mortgage Barometer". Just a little piece of paper, but I get it every month and it's just filled with good information. I get a story out of it every month, sometimes I refer to it in between, giving Pioneer all the credit. It's one way that the public knows that Pioneer is in the title business. It tells about all the lenders and all the loans through a month, how many loans they've made, whether they were government insured or whether they were conventional, it tells how many foreclosures there were, how many deeds of trust, building permits — the whole thing. It's right there in a nutshell, and it's very handy. I think this is a great service. It gives readers in the industry something to discuss. It gives the public something to relate to.

It doesn't take a lot to compile the information, Pioneer has one person full-time to do this. She goes to the daily recordings and collects the outside information and puts it together.

I wish it had more geographic information, then maybe we could deal with some of this red-lining business, because we have so few facts, but at least we have this much.

Even my readers with only a casual interest in real estate can relate to this, and they recognize that Pioneer is right there.

Some others in your industry also have circulated information we have used, but there sure isn't enough of it.

One we wrote about recently detailed the condominium market in Washington state, and I thought it was really valuable because we don't have access to much of that kind of information either. We used it and we credited the First American Title Company for its efforts.

There are lots of other possibilities for you. In your community, you can initiate this kind of an article and be credited as a source. But you have to think broadly about real estate and interpret it so that it appeals to the whole public and it relates to them. The picture is really big, but people are eager to know this information.

Some of the ideas that you might try would be to discuss legal implications of new legislation, such as the environmental restraints, proposed lending regulations, all the problems that Mr. Marston was talking about. New tax laws, RESPA, those are just a few of them. I'm sure you have attorneys on your staff analyzing these anyway so why not have someone talk to the press about it, we could get a great article going. We could talk intelligently about them. Let's share your worries, where you want to go, and then we can help everybody.

A newsletter about recent court decisions affecting the environment and environmental legislation is published locally by the Washington State Bar Association. I think this is really helpful, and you people can do something like this perhaps with court decisions affecting tax laws or real estate.

Some other topics you can research and report include reactions to disasters in local communities and how they affect property values. Did people have flood insurance? Did they use it? Did property values decline? Did they rebuild? What happened?

And again, the red-lining problem, I'm sure you could help us there.

The opportunities are just endless. You might have to spend some money getting this information together, but I think your good will is worth it. People spend money to advertise, and this is even better than advertising.

In Seattle, for instance, we would have been delighted to have some information documenting what happened around the Seattle Center, both before the 1962 World's Fair, when speculators were gobbling up the property, and afterward. Has value declined or kept up with the rate in the rest of the

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community? We don't know. I'm sure the title companies could tell us with a little effort. And Spokane could have used this information a few years ago when they were planning a fair over there.

I think details of what's happened to various neighborhoods as a result of a hospital or a new college could be interesting too.

Just recently, one of my suburban reporters asked where he could find out what happened to residential neighborhoods around halfway houses for drug addicts and other troubled persons. The only source I could think of was the County Assessor's office, which wasn't much help. But I'm sure a title company, if it had been thinking ahead, could have provided that, too.

Let your imagination go. All you need is a person with initiative to think up ways to interpret this information. Put it together, get it out, make it available. I don't think you'd have to give it all away either. I think there are a lot of people in related fields who would be quite happy to pay for it.

I really don't know enough about how you conduct your business or organize your staffs to tell you exactly how to do this, but I'm sure you can, at least in some limited way. But I can tell you how to get the information published once you have it together.

I think probably the most important thing you should do is to assign someone on your staff to be the media contact. Then send him or her, and I hope there will be more females, out to meet the people in the news business. It's a lot easier for us if we know whom we're dealing with, and probably for them, too. But I urge you to do this in a businesslike way the first time. Call and make an appointment. Don't just drop in that first time although I think that's perfectly okay after you once get acquainted.

The news business is absolutely fraught with interruptions and emergencies, and if you drop in on one of them, you might be kind of frustrated if your schedule is limited. It's just inevitable when someone comes in, everything blows up in our schedule. Because of our competition and our constant deadlines and the nature of our business, we just can't drop everything to talk to a visitor, the story has to come first. I almost didn't come today because of a story, but I finally found someone else to handle it.

Just recently, a friend of mine in the advertising business came into our office to see someone else, but he was late, so she thought she'd chat with me awhile, while she waited. No sooner had I gotten her settled with a cup of coffee and we were ready to chat, then everything fell apart. The eastside bureau called and they wanted to tell me about a new project they just had heard about, "Quick we've got to get it into the paper today because somebody else is going to get the story if we don't". While I was talking about that, a city editor handed me a wire story about a sale of a shopping center site, it's a big project here and it's big news, and we had to get the details on that right away. So I was calling New York and Minneapolis and all the local people, trying to get both stories at once while my poor friend sat there wondering what next? And besides that, the proofreaders came by to get a clarification on one of my stories and somebody on the telephone wanted to know how to hire a roofing contractor.

My friend didn't mind, in fact, she thought it was exciting, just like it is in the movies. But if someone had been there with a hurried schedule, they might have been frustrated.

I also want to emphasize that in the news business, like everything else, we're changing. It used to be that newspeople were big freeloaders. We'd let people who wanted to get their names in the paper buy us lunch or booze or whatever. But, like open government, most of us nowadays expect to pay our own way. And that doesn't mean we won't let you pick up the tab at lunch, but we have expense accounts, too. And you men executives, I urge you to let the women in business pick up the check once in awhile. I have to fight this all the time, and it seems to me the men feel degraded if they don't pay for it. I have an expense account and my boss sometimes wonders why I don't use it more often.

But in my office, we just don't let favors like that decide what news is used or how. It has to compete on a news basis. So don't feel obligated to take a reporter to lunch to get a story. Go to the office and invite the reporter to yours, and if a friendship develops and you want to go to lunch or have a drink, fine, but don't feel obligated.

Frankly, I don't like to go to lunch to get a story. It's very frustrating to take notes, ask questions, and try to eat, too. You end up not enjoying anything.

When your media persons go to get acquainted, have him or her be prepared to ask questions and to take notes so that they'll remember what they're told.

First of all, they should find out about deadlines and then be prepared to observe them. The papers are published whether you meet the deadline or not, and if you don't, your story might not get used.

Also, inquire about how the copy or the information should be submitted. Many think they have to write up their information in flowing prose. I like a fact sheet or an outline or even just a list. I do like it in writing, if at all possible, but sometimes deadlines don't allow that, and we have to do it on the phone. And get the address — the mailing address — of the newspaper. I get a lot of mail addressed to the *Times* at our street address but we have a post office box and the time differential there is about two days. So if you know my post office box number, I can get it much faster.

At the *Times* and lots of other papers, we have what's called style, and that means some copy editors sat around the desk, probably in a smoke-filled room, one dark night, and decided that everyone on the staff should spell certain words the same way. This is supposed to make it easier for the reader — consistent — but I don't know whether it makes any difference. But, anyway, I have to spell gray with an "a", never with an "e". Even if it's somebody's name, I have to fight to get it in with an "e". And I have to refer to this hotel as The Olympic Hotel, all in capital letters.

So we have to rewrite everything that comes in anyway, so don't waste your effort trying to do that.

Now that we're computerized, we have special typewriters, special paper that we have to type on for a scanner, or else we use a video display terminal which is a horrendous new machine attached to a computer where you type and it all comes up on the screen in front of you — rather disarming to some of us old-timers.

Whether you see a writer in person or leave some copy, be sure to include your name and telephone number on the copy where you could be reached, and try to be there. It's really frustrating to need a little bit more information before you use a story and then you can't find the person who has the answer. This is one advantage to having a single person being the media contact in an organization. Then I know whom to call if I need something. We could have a starting place, I don't have to go through the operator and get passed around from person to person who doesn't know the answer or doesn't have the responsibility to talk to me.

Now, this media person, besides doing specific stories, can also provide a lot of tips to the reporters, especially after they get acquainted and know what kind of thing can be used.

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You know, I'd like to know what new builders are coming to town, the new investors, or some new development that might be happening. And you can be very helpful in letting me know about this, and as Daniel Schorr has made clear, we don't tell where our sources are, so you don't have to worry about being involved.

The media person also can brief us on a subject so that we can ask decent questions when we have interviews with strangers. Sometimes it's really hard to know what to ask people, but if we're briefed ahead of time, if you do a little educating for our benefit, it helps a lot.

Sometimes organizations allow only their media person to talk to the press, and this can be awkward if that person is gone. And it's obvious he's not going to have all of the answers all of the time, then we have to get involved in asking and answering questions second- and thirdhand. This can be very difficult if it's a complex subject, and most of your type of things are. And I like it much better if the media person can get me the person with the answer and then we can sit down and talk about it or we all talk on the phone.

Don't be afraid to suggest potential story ideas to your newspapers, I know you see lots of opportunities, at least for column items and little tidbits as well as big major stories.

But please don't be miffed either if we refuse, sometimes we just can't do what you ask. We have to take a broad look and we have terrible competition for our space within the newspaper as well as within the real estate section. Usually, I try somehow to find a way to use the information you suggest even though it may not be exactly as you suggested it.

The most frequently requested and refused items are pictures of proclamation signings — everybody gathered around the mayor or the governor while he's supposedly signing this paper. You see them everywhere. Another one is everybody leaning on the groundbreaking shovel. We just refuse to do that anymore.

Award presentations and document signings are pretty dull, too, these are okay for the trade press but they all look alike to the general public, and we simply don't use them.

The public, who are our readers, are far better informed and more sophisticated about real estate than many people seem to realize these days. We notice the distinct change in the type of question we're getting on the telephone in response to some of our articles.

You probably don't know it, but besides writing about real estate and its happenings, we, at the newspapers, also deal a great deal with the consumer. They seem to think that we know everything, and so they call and ask for all kinds of advice. We have to be careful not to recommend companies or procedures but we try to help people find information sources where they can find out and then make up their own mind. We don't offer legal advice either, but we're asked every day.

But the questions are really getting tougher about implications of things, such as new legislation procedures. And this indicates to me that the public knows more and more about this business and so more and more we're running to this better-informed reader.

As a real estate section, the Seattle *Times* is concerned mostly with the general public, as a user of real estate, not really how the industry works.

When we began about ten years ago, we did serve mainly the industry. We wrote about new projects, leasing activities, sales records, and personnel changes. But now with our space in such competition because more is occurring in the community that needs to be reported, we're trying to write more about things to help people understand what is happening to the places where they live and work and why. And this means that you, in the title industry, who want to get news in my section, have to offer something with general appeal and value.

We can't write an article about what you do unless you relate it to the public. And we don't mean that we want you to write about your visiting out-of-town president or some official just because he came to town. He has to be able to tell us something special about his experience somewhere else that relates locally or some new aspect of the business.

The days for propagandizing for your or any other industry are over. If you, for instance, want us to write about legislation which may drive up closing costs or which puts you in a bad light, or the so-called evils of RESPA, then you'd have to give us details and examples.

Don't just tell us it's bad and expect us to repeat that. Tell us why, specifically, and tell us what you want us to let the political leaders know, tell us what the public needs to know, to discuss it intelligently, then we can all work together.

Earlier, I mentioned something about the importance of having someone on your staff to deal with the media, and I can't stress this too much, because then I know where to call if I have a question. As it is now, in this community, I really don't know where to begin. I have to look in the phone book and start with some anonymous person, and that doesn't always work out.

Most organizations have someone who has journalism training. Make use of that and let that person be your media contact — or send someone to a basic class to learn how. I think you should be urged to register this person for membership in the various professional organizations to which the media belongs.

One which several of your companies support with members is the National Association of Real Estate Editors, your staff members who are associates attend our seminars and they get to know us and our problems and we do likewise. It's a great sharing experience.

Among your members are Randy Farmer of Lawyers Title in Virginia; Frank O'Connor of Chicago Title and Trust; Jim Robinson of American Title in Miami, and of course, Gary Garrity of your Washington, D.C. headquarters. ALTA also supports better real estate writing by sponsoring the consumer information category in the reporting contest offered annually by the National Association of Realtors. These ALTA awards will be presented for the eighth year in a couple of weeks in Houston.

This group of realty editors also gives your staff people an entree to a lot of trade professions, too. More than 70 publications are represented in this organization.

One thing I'd like to caution you about, in dealing with reporters — consider them reporters at all times around the clock. Don't tell them all you know and expect them to only print the part you want them to.

I recently had an unfortunate experience with one of my favorite architects. He's involved in a terribly controversial project about the restoration of our historic Smith Tower. It's a very heated subject because the preservationists want no changes on the building at all and the owner wants to do something quite different.

So I called the architect and asked his comments, and he was quite heated, but he didn't say don't repeat this or I'm not talking for the record, he just raved on and on, and I quoted him and so he was furious, claiming he was talking to me as a friend. I don't know why he thought I called him, but anyway I was only a friend and he felt let down, I had betrayed him.

I have the same problem with bureaucrats at City Hall. They love to brag about their accomplishments, as a friend or to me, personally, but they never want me to print them. They forget that I'm a reporter and it's my job to get that news first, and a good story really has to be put in print, we just can't sit there and wait and hope nobody else will pick it up.

The news business is very competitive like everything else. We have to get the word out fast if we're going to be first.

But please don't overwork the "off the record" bit either. I don't like to know something off the record, especially if it's in a controversy, because usually it comes out anyway and then I'm stuck promising not to use something everybody else has.

If your company is involved in a controversy or a sticky problem, I think you should make the facts available immediately. This prevents speculation which is often far more harmful than the fact. If you've done something wrong or made a mistake, admit it. As we've seen nationally, those who try to cover up usually get into more trouble and make it worse. A refusal to discuss something often raises more questions and speculation and gets more attention than a simple statement of fact.

We, in the press, are really not scandalmongers as some believe. We make a huge effort to find informative constructive articles. And real estate is becoming more and more important as our land grows scarcer and scarcer. No-growth and environmental concerns, jobs, where to live, how to keep up neighborhood values, they're of interest to everybody, and we need to find ways to make the public understand what is happening and why and enable them in their businesses to participate intelligently in controlling what is happening in where they live and work.

You have access to some of the most valuable information about land in your communities that you see the trends beginning right there, and I hope you'll help us use it in a meaningful comprehensive way. In the process, you can gain appreciation and stature in the community as a contributor. If your hometown paper doesn't have a real estate section, talk to the editors about it. Some newspaper management doesn't know how much interest there is in real estate. Suggest some trendy-type articles, some things with some real interest to them, and you might be surprised what the response would be.

My real estate section got its start when development was booming here and building and construction were blossoming everywhere. Then the famous building bust occurred, that was in the late sixties and everything fell apart, including real estate advertising which supported our section. But the news about real estate was more

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important than ever. Thousands of Boeing workers were trying to find work, they were trying to avoid bankruptcy and keep their houses from being foreclosed.

We had developed such a following in readership that management decided to continue giving space to the news about real estate even though its revenue had disappeared. We had made our place in the newspaper, competing for space with articles about politics, sports, foreign affairs, schools, government, you name it.

Our space is limited but I think this stimulates us to search for better subjects and do a better job. But we depend upon people like you to make the information available so we can interpret it.

This job that I have is a lot of fun. I began by being quite interested in construction and I rode the high-rise elevators all around town and learned a lot about how buildings go together.

Now, we're not doing that so much anymore, it has become a much more sophisticated business. And one of my most complicated continuing stories that I'm working on this year is what is to be done with this hotel. Everyone acknowledges that it's out of date. But the University of Washington owns it. It sits on the site of the original university campus, and so the public has a say of what becomes of it. There's been a great "hoorah" about saving it, we can't tear it down, and I think after more than a year worrying about it, we've established that it won't be torn down. But now the problem is what will we do with it? Do we remodel the rooms? Combine some to make large ones? Or do we build a 500-room tower across the street to make it more of a convention hotel? The arguments go on and on. I don't expect we'll have answers very soon. It's a very complex subject, and this is where I have to depend on professionals in the industry. This kind of story is going on all over, not just about what to do with a building but about real estate in general.

Some people in this community are interested and surprised that a woman is real estate editor, but as in so many other fields, I don't think this makes a bit of difference. We all use real estate somehow or other. But I have to say that "women's lib" has made my job less conspicuous. And I'll tell you about one experience I had before the equal rights movement began that I'll never forget.

I went to New York and interviewed the contractors and the engineers building the World Trade Center Towers. One of them had recently been topped out, and I wanted to go to the top. My hosts exchanged looks and they balked and they didn't want me to go up there. But I decided I wasn't going to travel 3,000 miles to what was then the world's largest, tallest building and not go to the top. So finally they relented, and they found me a hard hat and took me to the construction elevator and then I knew why they balked. There was this tremendous sign in the elevator that said "Absolutely no dogs or women ever allowed".

And so I crowded in the corner and ignored all the dirty looks all the way to the top, and when I got up there, there weren't any dogs up there either.

Today, all this is changed and this would never happen, and change is also bringing new concerns to real estate. New concerns about legal protection of property and development, environment, vitally related interests.

We, in the news business, as I've said, depend on you to help us get the information out. I know we can do more exciting things together, we can have a much better relationship and it can be neat and simple and let's hope not wrong.

Thanks a lot.

Award of ALTA Honorary Memberships to George B. Garber and Thomas G. Morton

Presented by
James O. Hickman, Senior Vice President, Title Insurance and Trust Company, Los Angeles, California and
Donald P. Kennedy, President, First American Title Insurance Company, Santa Ana, California

James Hickman: It is most appropriate that on today's date, here in Seattle, we award George B. Garber, an honorary membership in this Association; for it was in Seattle that George commenced his title business and on this same day in 1966, George was elected president of the American Land Title Association.

The reason that I can speak with certainty about the date is that the date was heralded in the Garber *Free Press.* I brought an issue of this newspaper to show you.

Perhaps, you can see the headlines screaming "George Garber Elected President of the American Land Title Association".

Copies of this paper were on all of the chairs at the annual banquet and, to my knowledge, this is the only time in the history of our Association that an announcement was made in such a manner.

Now, the Garber *Free Press* is not George's personal PR fantasy but is the weekly newspaper of Garber, Oklahoma. In perusing the newspaper, we learned that George's father took part in making of the run during the opening of the Cherokee Strip, and it is from his family that the town received the name Garber.

George was born in Garber, Oklahoma and spent a portion of his youth there.

Continuing in the paper, we learned how George moved to Seattle, we even have pictures of George as a cheerleader and a hot saxophone player.

The issue has an ad from the Oklahoma Title Association claiming George and Miss America, or perhaps it was in reverse order — they claimed Miss America first.
George secured his law degree from the University of Washington and joined Washington Title Insurance Company in 1939. From there, he rose to become president of that company and subsequently Washington Title was acquired by Title Insurance and Trust.

Title Insurance and Trust, recognizing George's abilities, transferred George to Los Angeles where he became a senior vice president. This transfer occurred in 1959, and upon the organization of Pioneer National Title Insurance Company in 1965, George was selected to be its first president.

During this title activity, George was also serving his community. While a resident of Seattle, he was a vice president of the Seattle Chamber of Commerce. He occupied key roles with the metropolitan YMCA, Junior Achievement, Seattle Symphony and Community Chest, as well as being president of the Washington Land Title Association.

When George transferred to Los Angeles, he assumed leadership in the U.S.O. And, as a matter of fact, this edition of the Garber *Free Press* contains a picture of Bob Hope and a story. This issue that I refer to quotes Bob Hope as follows:

"Not only in his business career but in his concern for others, he is a pretty big fellow in our community. For three years, he was president of the Los Angeles U.S.O. and he remains active on their board of directors. Congratulations, George, on your election as president of the American Land Title Association. Sincerely, Bob Hope."

It would be too time-consuming for me to enumerate all the committees and activities by which Garber has served this Association. I certainly should mention, however, his outstanding leadership as president of our group in 1966 and 1967.

Well, George has retired from the title business but not from a busy schedule. George and his charming wife, Phyllis have moved to Laguna Niguele and their home is situated on the golf course. George assaults the course on a regular basis. But, in addition to that, he is maintaining an active interest in the Rotary Club — presently he is program chairman. He is also president of the Board of Trustees of the Gold Star Mothers Home in Long Beach which has recently gone through a very extensive remodeling program. And if that isn't enough, he's carrying a major load in fund-raising for the South Coast Community Hospital. In fact, Phyllis reports that George is so busy, he doesn't even have time for golf anymore.

So, it is fitting that we acknowledge George's contribution to his community and to our industry by awarding him an honorary membership in the American Land Title Association.

On a personal note, I am flattered to have had the privilege of conferring this award, for I have known George as a competitor, and it was during George's presidency in Denver that I had the opportunity to serve George as a convention chairman. So subsequently I joined Pioneer Title and George was my boss.

I know and all of us know George is a great person, and it gives me a great deal of personal pride, on behalf of you, to present this award to George B. Garber.

Garber: Thank you, Jim. As you probably understand, I am doubly pleased to be here and accept this, not only because it's an honor to be a member of this Association but because this event is taking place in my hometown where I began in the title business many years ago. I went through law school here and thoroughly enjoyed my association with our people up here.

I am going to resist the temptation to

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reminisce, but I did think of the comparison of our Association with how it was back almost 30 years ago, when I started to participate, and the Association as it exists now.

Back in those days, it was known as the American Title Association. It had a very small staff in Detroit, Michigan. The conventions consisted of about two speakers, some bull sessions, and some darn hot poker games.

Through the years, with the move of the Association office to Washington, D.C., the enlargement of the staff and taking on some professional help and activation of the committees, it's an entirely different organization now, and I'm pleased to see that it is.

During the years, we've had problems we had to wrestle with. But like an athlete, we get exercise from wrestling with those problems and we gain muscle. The Association has a lot of muscle now. It has the ability to work on the problems that exist in the industry, and for that reason, I am very proud, as you should be, to be a member of this Association.

This is a very pleasant moment for me, and I thank you for it.

President Howlett: Donald P. Kennedy, president of First American, was asked to present to Thomas Morton.

Kennedy: Mr. President, contrary to the usual practice, I am going to ask that Tom Morton come to the stage and all of you in the audience join me in giving him a hand.

Tom, I can't tell you how pleased I am on behalf of the American Land Title Association to award you this plaque which designates you as an ALTA Honorary Member. A glance at the roster of those who have been awarded this high honor indicates that you are joining an extremely distinguished group. I note among them your close friends on the west coast, Ben Henley and Mort Smith.

It often has been said that one of the most important things that happens to a man during his lifetime is his retirement from active business life. It therefore makes it doubly important that I am able to properly express the admiration and deep affection that the industry holds for Tom Morton without becoming maudlin. As a competitor of long standing, I certainly share that admiration and affection.

The cold bare facts are these: Tom was born in Illinois on March 10, 1889. Just think what has occurred in this world since March 10, 1889. After high school he visited California where he enlisted in the U.S. Army on May 1, 1917, having previously agreed to enter the Army in 1916 in the event the U.S. entered the war. He was discharged on June 23, 1919 in San Francisco, was charmed by the State of California and has remained there ever since. In 1920 he married Alicia and had two sons. One son Bob is now the chief executive officer of Western Title Insurance Company, a tough competitor. The other is Tom, Jr., who is in the mortgage business and who supports a four handicap in golf. Tom entered the title business in 1922 as an employee of the old California Pacific Title Company in San Mateo County, California. In 1927 he joined the Santa Cruz County Title Company which was underwritten by Western Title Insurance Company. And in 1930, he became president of the original Western Title Insurance Company and manager of the county department of Title Insuance and Guaranty Company.

In 1936, he was elected president of the California Land Title Association and through the years, has always served on the board of governors and other key committees. In 1943 he was elected president of ALTA. In 1940, he was elected president of Title Insurance and Guaranty Company, which subsequently merged into Western Title Insurance Company. He presided over a very complicated corporate structure, as you may note from my remarks. He served as president of the Western Title Insurance Company until he became chairman of the board and chief executive officer, which was his title upon retirement June 30, 1976.

The title insurance industry is a relatively young industry, especially in California. As everyone knows, the actions taken early in the life of an industry or a corporation by its leaders generally set the pattern for the entire life of that industry or corporation. Tom Morton, in my opinion, contributed more than any other man toward providing a sound structure for the title insurance industry in California. That alone was an achievement for which any man could be proud. I hasten to say, Tom, that you are not responsible for any of the miserable things that are now happening to our industry. Tom is a strong, stubborn man but we all learned early he was objective in his viewpoints and never held a grudge when his views did not prevail. I find it hard to believe that Tom is going to retire. We will miss his counsel but above all, his humor and good will.

It's a pleasure to award you an honorary life membership in the American Land Title Association. We are proud of you and wish you well.

Morton: Thank you, Don. And I want to thank all of you for the award. It's very gratifying. I didn't prepare a statement and I'm not going to bore you by making up something.

I do want to make one comment, however, and that is that the officers of this Association should be complimented on the way they have taken care of the problems of the Association or the industry, as a whole, in the last few years. There have been trying times and I think the officers have done a real good job. Thank you.

Title Insurance and Underwriters Section

Workshop on the Torrens System: A panel discussion

Panelists are:
- R.G. Gandrud, Vice President and Assistant Counsel, Title Insurance Company of Minnesota, Minneapolis, Minnesota
- Robert T. Haines, Vice President and General Underwriting Counsel Chicago Title Insurance Company, Chicago, Illinois
- Bruce H. Zeiser, Vice President Lawyers Title Insurance Corporation, Boston, Massachusetts

C.J. McConville: Ladies and gentlemen, welcome to the workshop on Torrens.

I want to make an announcement. In the program this morning, you'll notice that the two sections overlap. The Abstracters and Title Insurance Agents Section will have its session on business development and customer education in the Spanish Ballroom at 10 a.m. So if you want to attend that session, please feel free to leave.

On the program this morning, as I mentioned last evening just before adjournment, we all recognized the fact that under Section 13 of RESPA, there is a mandate to HUD that they make a study through demonstration land parcel recordation systems with an eye to improving land records. The consumer advocates who appeared before the Congressional committees made it quite clear that Torrens would be the answer.

It is very important, I think, that you ladies and gentlemen who are the leaders in the industry be aware of exactly what Torrens is all about.

Does it have some good points? We should know those. What are its limitations and what will it do to you and I if it is introduced on a national basis? That is the reason for this seminar.

There are three — there are actually more — but there are three major regions in the United States where Torrens is widely used. One is in Hennepin and Ramsay Counties in Minnesota, the other in Cook County, Illinois and the third, in Suffolk County, Massachusetts. Of course, it's also used in Hawaii and some other states, but these three are often cited as the main areas of use for the Torrens System.

So we have representatives from each of those regions to give you an insight on how Torrens works in their area and answers to some of these questions that I've just proposed.

The chairman of the panel is Bob Haines, the vice president of Chicago Title Insurance, from Chicago. The other two panelists are Bruce Zeiser, vice president of Lawyers Title from Boston, Massachusetts, and Ron Gandrud, vice president and assistant counsel of Title Insurance Company of Minnesota, Minneapolis. So to get things rolling, I would like to introduce to you the chairman of the panel, Bob Haines.

Robert T. Haines: Thank you very much, Mac. I am glad you led the applause because I'm sure there wouldn't have been any otherwise.

I have been wondering what the distinction is between this session this morning that is billed as a workshop and the sessions that we had yesterday afternoon. I noticed that we had some very hard-working speakers up here that were not only working hard at the time but had been working hard all year long.

My contribution of hard work for this goes back only a few days, and so I was a little bit stumped as to what is a workshop and then, with great relief, it came to me in a blinding flash of light that the people who work in a workshop are you. So dust the sand out of your eyes and get ready to work on the problems that we have before us.

The program leads this session off with three questions: How does Torrens work? Is a national Torrens System possible? How would it affect the land title industry?

Now, I'm not dead sure whether those are the questions that you are to answer or whether those are the questions that we are to answer, but I assume possibly those are matters to which those of us up here on the podium should address ourselves, to some extent.

I am going to first make a comment or two. This is to brush some things out of the way so it won't take longer later. As for "Is a national Torrens System possible?", it seems to me that the answer to that, assuming that any of our constitutional theories still prevail, is that it would not be possible unless you mean by a national Torrens System, a system that is so far popularized through a wave of legislative action that it is introduced in each state as a state measure.

I personally have not yet come to the point where I can envision Congress having power to enact a land title registration system as a federal law that would govern titles in all states.

When Torrens first became a watchword back in the latter part of the 19th Century, it was because the problems of repeated examinations of titles had been recognized. That was more than 75 years ago. Torrens was put forward as the solution at that time, and, as a matter of fact, many states did go through the legislative procedures of authorizing a Torrens System.

A similar campaign of selling title registration as a panacea might result in its widespread adoption. To that extent, a national system might be possible. I do not see how it could be done by federal legislation applicable to all titles everywhere.

The first question is, "How does the Torrens System work?" The panel, in meeting yesterday afternoon, among ourselves, decided that certainly everybody in the title industry knows that and doesn't want to have a further explanation; but this morning, without the consent of my compatriots, it occurred to me that may be presumptuous because in some states it does not exist at all. I ask for a show of hands of those who feel that this discussion will not be understandable if we don't start with a description of how the Torrens System works. How many of you feel that you need some description? (*A considerable number of hands were raised.*)

Bruce, when you get up, would you give us a brief description of how the Torrens System works?

The answer to the third question is something that you, indeed, are going to have to do the hard work on. We are, each of us, going to give what I hope is a short statement of our viewpoint of Torrens as a result of contact in our own areas — its strengths and its weaknesses as it actually operates. Then there will be a question period — a substantial question and answer period with answers coming from out there. After all of that, you people do the work and decide how this would affect the title industry and what you — and you are the whole title industry — are going to do about it.

If I may, first, I am going to introduce both gentlemen right now. I am going to introduce Ron Gandrud of Title Insurance Company of Minnesota. Ron, would you stand and be recognized and then I'll make Bruce stand up and keep standing.

As our first speaker, now I introduce Mr. Bruce Zeiser of Lawyers Title Insurance Company.

Bruce Zeiser: Thank you, Bob. I think the audience should know that we actually had two rehearsals for this, so you're going to get a very polished performance. The first rehearsal was, as Bob said, yesterday afternoon starting around 3 p.m. The second rehearsal was a little later in the evening when Mac McConville came in.

As a matter of fact, I was sitting here in the hotel in a certain public room with some very entertaining company, I might add, and Mac came in. Now, I do not say that he came staggering in; he actually came sailing in, and that's his style, and I said, "Gee, Mac, have you any words of wisdom on how we should handle this Torrens System tomorrow?" He gave me some wonderful words of wisdom and some good advice — fatherly and possibly grandfatherly advice — on how to proceed. That put me in mind of the fact that he is from Minnesota and there is a famous story from political history from Minnesota and I'm not even sure that these Minnesota fellows know the story.

Now, Bob Dawson sitting here knows that I never tell political stories, so I'm going to break a rule and I'm going to tell an absolutely true story that occurred in Minnesota and it involves Grover Cleveland, the first Demo-

(*continued*)

cratic President of the United States after the Civil War.

He was campaigning in Minnesota. Grover Cleveland was not known as a man with an impish sense of humor, but occasionally he got off some good ones.

He was out at a major rural center in Minnesota campaigning and the local dignitaries had forgotten to come up with a platform for him to stand on, and there were thousands of farmers spread out all over the place and no way that Grover could get up over the crowd and, finally, somebody said, "I know, we've got a wagon here in the back" and they brought the wagon up and he got up on it and he looked around at the thousands of people and he said, "Here I am on a manure spreader and I want you to know that it is the first time in my political life that I have ever spoken from a Republican platform."

It really happened. You don't see it in your children's history books, but it really happened.

I have been asked to give a description of how the Land Court works. I do not speak from the standpoint of a lawyer who has practiced for a quarter of a century in our Land Court. I am a lawyer by profession but I am a businessman by trade. My experience with the Massachusetts Land Court has been primarily as a legislator and partly as a competitor, so I do happen to know something about it without practicing in it. Two of the judges were colleagues of mine in the legislature and I have sat on the committee that has generally passed legislation that involves the land court, but I don't want the audience to feel that I have had 25 years of experience practicing before the Land Court.

Fortunately, I was able to get some material on our Land Court that enabled me to bone up for this session and another session that we had in Washington in which we covered the same general topic.

Our system is complicated. It is probably more complicated in Massachusetts than it is in either Illinois or Minnesota, but I will let the other speakers make amendments if they want to to things that I say, but here's how we go about it in Massachusetts.

The first thing that happens is the petitioner who wants to get a piece of land registered, as we call it, hires a lawyer and a surveyor. The lawyer prepares the petition and assembles the tax data and makes a brief examination of title — more of a last owner search than anything else. The surveyor, who is a registered land surveyor, is employed by the petitioner to survey the property. The petition and the tax information and the survey, when completed, are filed in the Land Court in Boston.

Step Two is for the court to assign a title examiner to make a full examination and narrative of the title.

Now, the title examiner is actually a privately practicing attorney who has been qualified as a Land Court examiner very much as the title companies have the approved attorney system. A good many privately practicing lawyers are certified Land Court examiners.

Generally speaking, the petitioner has made a deal with some other lawyer who is a Land Court examiner and he asks the court to appoint him as the Land Court examiner and, generally speaking, the court does that, as long as he is approved by the Land Court.

An abstract, a full abstract of title, is made and then the Land Court examiner writes a narrative of the title. This goes back into the court where each of the three judges has a law clerk. The law clerks look over the abstracts and make recommendations to the judge with respect to any noticeable title problems that they see.

The judges don't always read the abstracts, but at least the narratives are skimmed and anything that is out of the ordinary is noted.

The next step is what we call the citation procedure. Keep in mind this is a court, this is an arm of state government. Notice has to be given that petitioner seeks to be declared the full owner of locus. Notice is given both by publication and by service to all abutters and all interested parties. There is a fairly broad determination of who gets notice.

Generally speaking, at least six weeks are allowed between citation and actual hearing. Now, I am not going to attempt to describe a contested case judicially decided by the Land Court—the equivalent of a superior court sitting in equity on a non-jury trial. What I'm going to describe is the average case, the uncontested case.

Notice goes out and the hearing day is set and it's an ex-party proceeding. Nobody appears to argue against the petitioner's claim that he has been in adverse possession of the property for more than 20 years or whatever. But even in the uncontested case, the court requires proof. If it's an adverse possession situation, you have to come up with affidavits that you've farmed the land — you've hoed your rutabaga there for a quarter of a century. You've got to prove your case. In an uncontested situation, you are going to prove your case when you satisfy the court that you have a pretty good claim and nobody else after notice and citation is asserting any contrary claim.

So you then get a preliminary grant of your petition. Now the case goes from the law side to the engineering side. We have three judges in our Land Court and three law clerks and maybe 20 people working on the law side, and we have about 40 people on the engineering side. These are the surveyors who draw up the Land Court plan.

Now, you cannot register a piece of land in Massachusetts unless there is a Land Court plan. Your own privately hired RLS doesn't make the plan. He just makes the initial, probably perimeter, plan that went in with your petition.

At no time in the future, once land is registered, can you convey or lease or mortgage or file any instrument without reference to a Land Court plan. If you want to subdivide land that you have registered, you have to come back into the Land Court and get new plans made up, so I think you can see this is going to be a problem what we have in Massachusetts.

Well, the engineering department starts work on the plan. I asked the chief judge last month, "How often do your engineers accept the work of the registered land surveyor who did the initial work on the plan?" and he said, "Well, very rarely. In 90 per cent of the cases, more work has to be done by the engineering department". They consult with the privately practicing RLS, but the Land Court's engineers actually do long, hard work on the Land Court plan.

Finally, it's done and the case comes back from the engineering side to the law side where the final accounting is done, to make sure that the petitioner has paid for the notices, the citations, and the insurance fund. I assume most people know that the whole basis of land registration is that the petitioner pays a premium into the insurance fund. The payment is one-tenth of one per cent of the assessed valuation at the time the petition is initially filed. That money is paid into the fund and it goes into the state treasury in a segregated fund but not into a trust fund. I'm going to come back to that later when we discuss the advantages and disadvantages of the Torrens System.

When the accounting work is done, the final decree is issued and then the papers go out to the registries of deeds.

Now, in Massachusetts, we have county registries. Some of our big counties have several different registries. Suffolk County is Boston. Middlesex, which is the north suburbs of Boston, has two registries, and Essex, northeast of Boston, has two. Perhaps the Torrens System's greatest use is in Barnstable County which is Cape Cod and there are reasons for that which we will perhaps come to later.

In each county there are two different departments. There is the regular Registry of Deeds in which, if you're not using the Land Court, you record your papers; and there is the Land Court side of each county registry where the duplicate owner certificates are issued.

Now, what happens in land registration in Massachusetts is that the deed which refers to the new Land Court plan is filed. Presumably the petitioner wanted to convey or mortgage at the time that he brought his petition, so he has an instrument to file. The registry prepares and issues a duplicate owner certificate, and the instrument which is filed is left in the registry district of the Land Court. The only thing the owner gets is a duplicate owner certificate. If he makes a mortgage to a bank, the only thing the bank gets is a notation on the duplicate owner certificate that the title to the property is in the named owner but subject to a first lien to the bank.

Now, I am not going to spend as much time on the advantages and disadvantages of the Torrens System for two reasons. First, because the other two speakers are going to be better on this than I am and, secondly, I hope that you will ask a lot of questions and we will have an opportunity to express our views more fully when we come to that part of the program. But I'm going to highlight a few things that I think are important.

The major advantage of the Torrens System is for curing title defects. Initially, that's why it was started in Massachusetts — as the answer to every title problem. But what has happened in our Land Court is that the number of registration proceedings has continued to diminish over the years.

Part of the reason is because the Land Court's functions have been continually broadened by the legislature. The court now has all kinds of additional powers. It has zoning powers, foreclosure powers, cutting out rights under our Soldiers and Sailors Civil Relief Act which was passed in World War II so that an overseas serviceman couldn't lose his property when he wasn't home to defend himself. But the number of cases which are brought today for original registration of title continues to decrease.

Why? Two simple answers. Time and money. Time. It takes, and this is current information, it takes from one to one and a half years to register a simple uncontested case — 12 to 18 months.

I asked Jeanne Maloney, who is the deputy registrar of the Land Court and who is also on my executive committee in the Conveyances Association, what's the shortest time that she ever got a registration through. She said, "Well, six months, but it will never happen again because the person seeking registration was an employee of the land court".

(*continued on page 32*)

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She said, "That person —" and I don't know if it was a he or a she — "that person hand carried the whole thing through all nine of these steps and drove everybody else in the land court absolutely bananas and made a total pest of himself or herself". I don't even know the gender of this speed demon. And Jeanne said, "Never again am I going to permit anybody to misuse the system to that extent". I thought, "To get something done in six months through government, if that's a misuse of the system, I'm awfully glad I'm a competitor in title insurance where we like to think we can get it done a little faster".

That's the truth, one to one and a half years.

Second. Cost. Hold your hats. Two thousand dollars. For an uncontested case, $2,000. You've got to pay your lawyer; you've got to pay your registered land surveyor; you've got to pay into the insurance fund one-tenth of one per cent of the assessed valuation of the property; you've got to pay for the notices, the citations; you've got to pay for the Land Court examiner, even though he works for the Land Court, and you've got to pay for the work of that engineering department, even though they work for the Land Court. They all can and do look to you for their money.

Two thousand dollars. I asked several lawyers who practice before the Land Court, and that $2,000 is an average. It could be as low as $1,500, but it could be more.

Now, there are the two big problems from the consumer's point of view. There is a third problem that I know Bob Haines is going to touch on and that is what I call incomplete coverage. You do not get an absolute guarantee of title without exceptions. That's a disadvantage, but I'm going to leave that to Bob because I know he knows more about that one than I do.

The last thing that I will comment on is the philosophical aspect of all this. We are faced with the possibility that powerful forces will try to urge our state legislatures or our national Congress to mandate a nationwide Torrens System in this country.

Very frankly, that means government not only going into business but eliminating two terribly important phases of American business.

It not only eliminates the title companies and the abstracters, but it also, at least in this District of Columbia plan that I've seen, eliminates the lawyer.

The long range concept is to mandate a Torrens System in which, after all land is registered, an owner of property can simply make an affidavit that he has good title and can hand that or its equivalent to a buyer to pass "good" title. No title examination will be required and no title insurance will be required.

By reason of the fact that continued payments go into this insurance fund, the government will pay off on a casualty basis (much I guess the way a life insurance company pays off when you die) if you don't have good title. A simply marvelous system of national Russian roulette! But you won't be here to worry about it, because we'll be in the unemployment lines together!

I've been eight years in state government as a legislator and before that I spent seven years in Washington in two different administrations as a federal official. I believe very firmly that when business gets out of line, it should be regulated and if it gets too far out of line, federal or state legislation prohibiting iniquitous practices should be enacted.

I have stood before Senator Proxmire and said very candidly that I thought Section 8, the anti-kickback section, was an excellent thing to do, that if he had any substantial evidence (which I doubted that he did) then I would have no objection to a very firm federal statute which prohibited those practices.

Now, regulation is one thing, but it is an entirely different thing as far as I am concerned for the federal government to go into our business and force us out of it.

It is simply not the American way. In the 15 years that I have been in government, I have never seen the federal government or the state government or, indeed, local government do a job as cheaply, as quickly or as efficiently as private enterprise can do that job. So when I contemplate the possibility of some of the pie-in-the-sky theorists and all of those people who have been educated beyond their capacities that we listen to when we testify in Washington — when I think of them coming before Congress or state legislators saying the only way to keep the nasty title companies and the nasty lawyers and the rip-off artists that exist throughout the fabric of American business from giving the public the terrible shafting that they've been giving them is to set up a national system whereby everybody has to go into the federal government or the state government and utilize the governmental service in this area — I think they have an awful lot to learn.

And so my strongest objection to this is one of philosophy. I just simply don't think that it will ever work. It will cost the consumer untold billions of dollars. It will frustrate consumers — people who want service now. It will take away from this country one of the major things in one of the major areas that we need. And that's the competition between companies or attorneys in service, in rate, in everything else; and it will freeze the title industry in an intractable bureaucracy which, as far as I'm concerned, never has been able to equal, much less better, the performance of private enterprise. So on that, I guess I'd better quit and I'll answer any questions that come later.

Haines: Bruce's information that the Torrens System in Massachusetts is available in Suffolk County and Middlesex County reminds me of the days of my very early youth when my father used to recite to me the poem, "The Midnight Ride of Paul Revere".

You remember that he rode through every Middlesex village and farm. I knew what villages and farms were, but I couldn't figure out what a Middlesex was.

I really didn't know what a Middlesex was until you told me that just now. Whoever it was that rushed that piece through the Torrens office was the Middlesex.

Ron, would you tell us about Hennepin, tell us what it is, too.

R.G. Gandrud: The State of Minnesota has had a functioning Torrens System, a voluntary Torrens System, since 1902. I noticed at yesterday's sessions that there was a considerable attempt to take a more realistic attitude and approach to government relations, political action and so on, and I think we're going to have to take a realistic look at the Torrens System and recognize that certain Torrens Systems can work and are functioning.

I think there is real danger in overkill — in simply saying there is no way that any kind of a Torrens System can work. We've found that it can function and it has some desirable characteristics. I'm going to spend some time telling you what a functioning Torrens System can and cannot do.

I might add that while Minnesota does have a functioning Torrens System, specifically in Hennepin County, the outlying counties have virtually no Torrens. But Hennepin County, since 1902, has slowly but surely grown to the point where we have about 40 per cent of our titles registered under the Torrens System.

We have found that the fact that we have 40 per cent of the land under the Torrens System has had virtually no effect upon the demand for either title insurance or title evidence in the form of abstracts.

I am not now aware of any cases in which people ask themselves whether or not property is Torrens before they decide whether or not they will order a title insurance policy. It just isn't taken into consideration any more.

Furthermore, on Torrens titles, we no longer make abstracts, but we make what's called a Registered Property Abstract, for which we obviously get paid, and this is what the attorney or the title company examines.

I am going to spend a few minutes talking about why the Torrens System has grown as it has in Hennepin County. This will give you some idea of what the appeal of the Torrens System is to the attorney, because I think under a voluntary system it's generally the decision of the private practicing attorney whether or not he's going to register the title to land.

For one thing, Hennepin County for many years has been blessed with some very capable Torrens examiners.

The examiner is an attorney who is appointed by the District Court judges to oversee the process of bringing land under the Torrens System.

We have had some strong people. For example, we've had a man by the name of R.G. Patton who wrote a book, *Patton On Titles,* that has become the virtual Bible of Minnesota real estate lawyers. In fact, lawyers from other states use it, too.

Also, we have a Torrens examiner's office that has been an excellent source of free legal advice to attorneys. This is something that attorneys don't talk to the general public about, but it's a nice thing to be able to fall back on. If you've got a bad title, you can go down to the examiner's office and he will tell you what to do in order to make that title good in the process of registration.

As Bruce mentioned, the biggest factor in Torrensing titles has been the fact that it is the equivalent of a quiet title action. Very few titles are registered in Minnesota unless there is something so seriously wrong with them that the alternative would be a quiet title action.

However, the registration process has one big advantage over the quiet title action in Minnesota. Quiet title actions are very complicated actions. Everything has to be done just so, or you don't necessarily get jurisdiction. The problem with quiet title action is that you're never done with it. Once you've completed the action, it becomes several entries in the abstract, and everybody who examines that abstract in the future is going to go back and look at the District Court file to see that it was done right.

With the Torrens System, once you've completed what is, in effect, a fancy quiet title action, the entire thing is buried. It is not the practice to go back and look at the registration proceeding. It is the practice to accept the certificate of title on its face, so attorneys in the metro area have found that if

(*continued*)

they Torrens the title, they're not going to have other attorneys going back and looking at their work. If they bring a quiet title action, it will be forever reexamined and they're going to have problems in many cases.

Hennepin has been very fortunate, in that until this year we have had no losses in the Torrens fund, and I think that this has helped to preserve the system.

I understand that in a number of other areas where the Torrens System has either fallen into disuse, been abandoned or eliminated by statute, there have been some serious losses and the fund was inadequate. There have been zero losses in Hennepin County up until now. There was one this year — the first one — and I'll tell you a little bit about that in a moment.

A mortgage was filed on the wrong certificate and, as a result, a claim was made. We are in the strange situation here where the examiner of titles wants to pay the entire claim, the county attorney's office does not want the entire claim paid and the claimant is somewhere in the middle while the examiner and the county attorney are fighting it out.

The District Court held that the claim should be paid in full, and presently they're waiting to see if the county attorney is going to appeal this to the state Supreme Court. This is one of the unfortunate problems, of course, with our Torrens System in Minnesota — that is, the involved process of collecting when you have a loss.

To resort to the Torrens fund is strictly a last resort. You are first required to exhaust all of your other remedies. If anybody else might be responsible, you have to attempt to recover from them first and, as a last resort, you are permitted to go to the fund.

Then the question becomes, how much can you recover. Basically, the way the statute reads in Minnesota, your recovery is limited to the value of the property at the time of the last payment into the assurance fund. This is normally when it's bare land and at very low value, and this is one of the arguments in the present mortgage case.

The county attorney feels that recovery should be limited to the value of the land at the time that it was registered which, in this case, is just a few hundred dollars. This is the way the law appears to stand right now. There may be an effort made to change the law at the next session of the state legislature.

The other reason, so far as I can tell, that the Torrens System has survived in Hennepin County, has been because the Torrens examiners have been very conscientious about going to the state legislature and having changes and improvements made in the law.

The law, as was originally written, was very cumbersome. In order to do virtually anything other than file an ordinary deed, you had to have what is known as a subsequent proceeding which is a later proceeding in District Court. This has been streamlined somewhat at this point so that in many cases you can now get examiner's approval in lieu of the subsequent proceeding, and it has made the system much more workable.

I think, to be realistic, I should briefly outline the advantages of the Torrens System as it exists in Minnesota.

For one thing, in the process of Torrensing, the legal descriptions are very carefully checked out and you have very little chance of any type of overlap or gap between Torrens titles.

There is very little chance of any stray instruments appearing in the chain of title because a stray deed would not be entitled to be filed on the certificate.

There is less risk of forgeries because we use a system whereby an owner's duplicate certificate is issued to the owner, and the registrar will not accept a deed for filing unless you bring in the owner's duplicate certificate along with it. If a person had a forged deed, he would also have to get his hands on the owner's duplicate, or if a person had a forged mortgage assignment, he would have to have the mortgagee's duplicate.

Now, this is not all good, because if you lose this duplicate certificate, you'd have to get a new one which may require either an order of court or a fairly complicated proceeding through the examiner's office.

The Torrens System also results in simpler title examinations. Instead of having to examine a complete chain of title, in most cases you are examining only one certificate of title. This means that, from our point of view, many of the Torrens exams can be done faster, and they can be done by people with less training — paralegal people in many cases, as opposed to an attorney who might be required in a complicated abstract exam.

You don't have adverse possession or perscriptive rights running against registered land, which is a big benefit for the owner, but, again, I think this cuts both ways.

I feel that the common law concept of adverse possession, which has now been reduced to statute in most of the states throughout the United States, has something to be said for it. The theory of adverse possession is that if somebody has been occupying land openly, adversely and notoriously for 15 years in Minnesota, he gets title to it.

It's very useful and practical. For example, if you have a building that encroaches six inches onto adjoining property, and it's been there for 30 or 40 years, and then you discover the encroachment, you've got adverse possession.

This right is eliminated under the Torrens System, and it is one of the many rights that you are going to find are eliminated under the Torrens System, because you can't have the required safety, especially with a system that will eliminate the need for title insurance, without eliminating a heck of a lot of rights that everybody presently has in connection with real estate.

There is no perscription and there is no adverse possession. A judgment must be memorialized on a certificate of title. Again, this is a convenience for an examiner and it's probably a good thing for an owner. Nevertheless, it creates a serious problem for judgment creditors.

On abstract property, they can docket their judgment in District Court and it automatically becomes a lien on all of the real estate in the county owned by the debtor. With a Torrens title, they have to figure out what he owns, and sometimes this can be very difficult. Again, it's a loss of certain rights for a certain group of people.

Another advantage of the Torrens System is when you're clearing the title to a very complicated subdivision, for example, when restrictions are being violated and you have many defendants. With the Torrens System, you can determine who the defendants are, serve them, and when the action is done, it doesn't have to be reviewed. If you do this with a quiet title action, you might have 30 or 40 defendants, and everybody who examines that quiet title action is going to have to determine for themselves if all the proper defendants were made parties. This is eliminated with the Torrens System.

Now, what are the problems that we have encountered with the Torrens System? I think the big problem, of course, is the problem of due process — the constitutional problem — and there have been cases in Minnesota that have addressed themselves to this situation.

We had a very recent case, *Konitz v. Stein.* This is a case in which a party was in adverse possession of a part of the property being registered. Through inadvertence, error or mistake, he was not made a defendant in the registration proceeding. The state Supreme Court held that a person who was not properly made a defendant in the proceeding, but who was entitled to notice, would not be cut out by the proceeding. They further held that the six months period of appeal did not apply to him because he was not a proper party in the first place, and he was doing everything which he was entitled to do, which was to occupy the land.

So the Minnesota Supreme Court has held that there are situations in which, as a matter of due process, you are entitled to notice, and if you are not given that notice, the Torrens certificate is not good as to your rights.

The second problem is the size of the assurance fund. Hennepin County has the largest fund of any county in the state. As of July 1 this year, the fund in Hennepin County which has been built up since 1902, amounted to $147,000.

The filing of documents is much more complicated and slower under the Torrens System. This is part of the problem with any type of a Torrens System. In order to have safety, it's going to be slower and more complicated, because with an abstract title, as long as you've got the necessary recording data on the deed, the name of the draftsperson, the state deed stamps and so on and it's acknowledged, you can take the deed in and the register of deeds will accept the deed for filing. This means that if you're involved in a substantial transaction involving complex legal descriptions, multiple documents and so on and if you believe that the documents are okay, you're not going to have a hassle at the courthouse.

With Torrens, it can be a different story. If you're going in to file instruments on a complicated transaction, it might be three or four days before the Torrens office is done looking at them and decides that they're adequate so that they can be filed. This can create super problems, of course, on a big deal.

Now, the alternative, if you get along with the Torrens examiner or the registrar of titles, is to take in all your documents in advance and have them approved. But, again, this is complicated and time consuming.

Cost is the other item that has already been discussed but I'll add what the situation is in Minnesota.

In Minnesota we don't have as complicated a registration proceeding as the first system that was described. But under our system, I would say, you're looking at a minimum of $500 to register a title, and it goes up from there.

If you get into multiple defendants, especially in a contested case, you could be looking at $2,000 or $3,000.

As regards time, I think if an attorney really follows the file and stays right on top of it,

(*continued*)

he could register a title in about six months. The average time runs closer to a year to a year and a half.

There are a number of problems inherent in the Torrens System just because of the nature of the system. You can't use affidavits, for example. In Minnesota, they will not accept an affidavit for filing on a certificate of title, because there is no adjudication as to whether or not the affidavit is true.

You can get into some ridiculous situations, which shows the inflexibility of a Torrens System.

One of my favorite examples came up a couple of years ago when two unmarried sisters took title to a Torrens property. The name of one — I think it was Frances — was one of those names that could go either way. So it was Frances and Mary. Whoever drew the deed mistook them for husband and wife, so the deed ran to the two as husband and wife as joint tenants.

Well, several years later, they were going to sell the property and that's when we got involved, examined the title and issued a binder showing they were husband and wife as joint tenants. They contacted us and said they were not husband and wife and that they were sisters and both unmarried.

We talked to the Torrens office and they said, well, we don't really care how you do it, but they're going to have to deed out as husband and wife or you're going to have to have a subsequent proceeding.

This is true. A subsequent proceeding would have cost about $300 and would have taken at least six weeks and they were all set to close, so they bit the bullet and signed the deed as husband and wife as joint tenants and that took care of it.

Another example of how the system works involved a husband and wife who had changed their name, and they found out after they had completed the proceeding that they would also have to go in and have a subsequent proceeding to get an order of the District Court directing the registrar of titles to change their names on the certificate.

Without telling us what they were going to do, they had a deed drawn from themselves by their old names to themselves by their new names — which you can't do in Minnesota — and they filed the deed. A new certificate was issued to the same people, in an illegal way, which saved them the cost of a subsequent proceeding.

This is the problem. Once you get an instrument on the certificate of title, it is very difficult to get it off, and in many cases, in order to get it off you have to resort to a subsequent proceeding.

For example, take an assignment of rents as additional security under a mortgage. Normally, if the mortgage is satisfied in an abstract title, you're not going to be so concerned about the assignment of rents because you know it's only additional security and it's gone.

On a Torrens title, the registrar will faithfully carry that assignment on the certificate to the new certificates until you produce an official release of the assignment of rents. Everything has to be done just so, or you have these things cluttering up the certificate of title.

I'll tell you about the staff that we presently have in Hennepin County to handle our Torrens System. We have an examiner of titles, who is an attorney, and we have four other attorney deputy examiners. There are two secretaries, and there is a deputy clerk of court who stays in the same office to handle the filing of the documents. This makes eight people.

Now, this eight-person office last year completed initial registration proceedings numbering 130. This means that they averaged 16 registration proceedings per person.

This is not to say that they're lazy, because part of the situation in the Torrens System is that the more Torrens titles you have, the more related matters that the county people become involved in.

I mentioned subsequent proceedings. You have to have many subsequent proceedings in connection with unusual Torrens situations involving trusts and estates. After a foreclosure, you have to have a subsequent proceeding to determine that the foreclosure was good so that you can get a new certificate in the name of the purchaser.

They spend some of their time talking to outside attorneys, deciding who will be necessary defendants, how they're going to do this and that, and what is good and what is bad. They get contested cases that take a lot of their time, so in the end they average 16 original cases per person per year.

Now, I was just doing some computing to see where we would be if we got into some type of a compulsory registration proceeding. I noticed that in July, which is the last month for which I could get figures, there were 1,874 deeds filed and 92 contracts for deeds in Hennepin County — a total of 1,966.

This is probably a heavy month and there may have been some duplications where there were two deeds per transaction. Based on the present ability of the staff to handle registration proceedings and figuring 1,800 transactions in Hennepin County, if every one of those titles had to be registered, it would require an additional 1,350 people. Bear in mind that ours is a fairly simple registration system compared to Massachusetts.

Assuming that we have 40 per cent of the titles already registered, to register the other 60 per cent would still require 810 more people. They'd have to build another courthouse.

Presently, there is about a one to three month backlog when you file an application to register a title. After that time, the examiner will take about one month to examine the abstract. In Minnesota, we do not use outside attorneys in the big counties. They have a staff in office.

Then there is six weeks publication and after that, it's up to the attorney. As I say, it might run one to two years.

In addition to the fact that you have to have all these people in the Torrens office, each applicant would also have to be represented by an attorney, because the forms are too complicated for an individual who does not have legal background and experience to fill out. So you can add on to my figure the many outside attorneys who would also have to be working on these cases.

Let me tell you now about the exceptions to the registered titles in Minnesota.

Number one, federal tax liens, claims or rights of the United States are excepted. I find this a bit ironic when you consider the people who are pushing for a national Torrens System. In Minnesota, the Internal Revenue Service has very vigorously resisted the idea of having to file their federal tax liens on certificates of title.

At one time, the state, foolishly it turns out, tried to force the IRS to file federal tax liens on the certificate of title. The IRS said, you no longer are furnishing us with a place to file tax liens, because they would no longer take them for filing by name in the local Register of Deeds offices, and so they started filing them all in third division.

As a result, Minnesota had to stop trying to require them to file on certificates of title and we now have to make a search in the third division during that period of time, as well as the division that the particular property is located in.

It just made matters worse because the IRS would not file on a certificate of title by legal description.

Furthermore, bankruptcy matters do not appear on the certificate of title. There would have to be some change in the bankruptcy law if we were going to some type of a more advanced Torrens System where this information would appear on the certificate.

Real estate taxes and special assessments do not appear on the certificate of title. A lease for less than three years, when it involves actual occupancy, does not appear on the certificate of title. All public highways are exempted.

I once examined a certificate of title and it appeared to be a large parcel of land. Later on, I found that there was a major highway that ran through the middle of it, taking most of the certificate, but it didn't appear on the certificate of title.

Rights of parties in possession under a deed or contract for a deed from the owner don't have to be shown. Under the original Torrens System in Minnesota, they did not accept rights of parties in possession under a deed or contract from the owner. But we had a very hard case in which a person was living in the property under an unrecorded contract for deed and the property was sold to an innocent purchaser who relied on the certificate and the contract purchaser lost his title.

The state legislature was so alarmed at this that it amended the Torrens law to make another exception. I think this is something you have to remember when you look at a strong Torrens System. It's going to make for some very hard cases.

There is the constitutional problem which we have discussed and will probably discuss further in the question and answer period.

The Torrens System does not change Minnesota's doctrine of practical location of boundaries, which means that even though you have a Torrens title, you could find out later that the boundaries are not exactly where you thought they were.

We don't require the surveying work that is done in Massachusetts and this is probably a weakness in the Minnesota system. If you want a fail-safe system, you probably have to go to all of that expensive surveying in order to be completely safe.

The certificate does not indicate probate or guardianship matters. It does not indicate if the party who is going to sign the deed is under guardianship or incompetent. There are a number of easements that only appear on the plat and don't appear on a certificate of title, and this can be tricky to the inexperienced examiner. Furthermore, mechanic's liens do not have to appear on the certificate of title until after a 90-day period that Minnesota has for filing.

Again, this was not an original exception on the certificate. However, there was a state Supreme Court case in which the court held that the mechanic's lien law overrode the Torrens law and, therefore, it was not necessary to file for 90 days.

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I'll say this for a national Torrens System: Based on my experience with the system, many valuable common law rights that people have in real estate would have to be surrendered in order to have a strong national Torrens System.

Furthermore, you're always going to have situations in which certificates of title will be very complicated. Some of the major commercial properties in Hennepin County are under the Torrens System.

We have a shopping complex called Southdale. When you examine the certificate of title to Southdale, you think you've died and gone to hell, because it's got page after page after page of recitals and memorials. There is no way that a piece of property like that could possibly be handled other than by competent examination, and I feel a title policy that will determine what is still effective and what is no longer effective on that certificate of title is the only answer.

I feel that a national Torrens System would really be a fraud on the consumer, because it has both advantages and disadvantages. Some things just cannot be reflected on the certificate.

Based on my experience in Minnesota, it would not replace title insurance, but it would impose tremendous burdens on people during the time when their titles were being registered, great delays in the buying and selling of real estate, considerable expense and it would take away many of the present rights that people have under our common law and statutory systems.

After all is said and done and all the dust is settled, I think we would have spent a lot of money and we would have lived through many delays. We would still have the same basic cost of buying and selling real estate that we have right now and we would have lost a number of valuable rights. I think it's our job to alert the public and the lawmakers as to what a Torrens System can do and let them know that in the cases where we do have working systems, it isn't the answer to title insurance.

Haines: Thanks, Ron. May I remind you that there is another session, a workshop — you have to work there, too — in the Spanish Ballroom on business development and customer education. You are already late,so if you wish to go to it, run.

I think it is important for us to bear in mind what Ron just said, and that is that Torrens Systems and their cousins do work. Let's not deceive ourselves that they can't work. They can even work quite well.

Anyone who is familiar with the land title systems in the western provinces of Canada will know that they function in a way that is admirable. We are now talking about what would work best in the United States. We possibly have some realities of life in the United States that might make an answer that works in another jurisdiction, not the best for us, but we aren't saying that Torrens or any of its cousins won't work.

It is perhaps worthwhile to remember that the proponents of some sort of a system by which real property can be transferred as easily as you transfer a motor car do not say that it must be a Torrens system.

In fact, aside from the current flurry in the District of Columbia where they are quite unabashedly talking about Torrens, many of the proponents of some sort of a magic system say, "Oh, no. No, not Torrens. We've tried Torrens for a hundred years and it didn't work, so now we're talking about something different".

My thesis is that whether you incorporate some of the particular features of Torrens that makes Torrens Torrens or whether you are talking about some sort of a different arrangement by which titles are registered, you are getting the same fundamental problems.

For the purposes of this talk, I'm referring to a system where what is registered ostensibly is not the successive deeds, mortgages and whatnot that go to make up the title, but the ultimate title itself.

This is the theory of Torrens; this is the theory of the Canadian land title systems which some say are not entirely the same as Torrens, and this is the theory of the British registration system, which clearly differs from Torrens. Still the proposition in each is that some official decides what kind of a title is to be entered for you.

Now, I think that the genius of the so-called conventional recording system is as follows: It provides a mechanism by which the private parties to a transaction can do that which they are counseled that they may properly do and make a record of it so that all others must respect what they have done according to its intrinsic merit. It provides a system that is practical for subsequent private investors to find out just what has been done before and make their own judgment of the result, as it applies to them. Whenever disputes arise, the solution will be based on the intrinsic merits, not an official's fiat.

Now, of course, our opponents will say that this causes the 99-year search, the problem of repetitive examinations and differences of opinions between counsel.

Some of that just isn't true. Some of it is true but is worth it. I would say, specifically, that the fact that you're dealing with the possibility of difference of opinion between counsel may be a merit instead of a demerit because the alternative is not what is the informed and intelligent opinion of competing counsel but you're concerned with what is the decision of a bureaucrat.

Now, let us concede that the bureaucrats are intelligent, well-informed and well-intentioned. You still have the situation that you present your documents to the registrar, who, under the Illinois law must be satisfied that the parties have the right to make this transfer, and then the registrar puts it on the books.

He doesn't have to issue the certificate until he is satisfied, and the issuance of the certificate is essential to the transfer.

It's the whole difference between the independence of private parties in dealing with real property and the necessity of fitting into an official mold.

A couple of the title insurers in the United States have done a substantial amount of business in Ontario, Canada, where they have both systems. They have the land title system which is more or less Torrens, and they have the conventional system that they call registration but we would call recording. Our counsel in Ontario has on several occasions told me that modern, sophisticated transactions that have been presented for the financing of major projects would have been difficult or impossible or would have had to be done very differently if the title had happened to be under the land title system.

Ron mentioned that he didn't think that Torrens would do away with title insurance and I would have to agree with him on that point.

In Cook County in 1975, there were somewhat over 9,000 transfers of registered titles. Of the somewhat more than 9,000 transfers, Chicago Title alone issued title insurance policies on more than 3,000 of them. We insured somewhat less than one-third of the total number of Torrens transfers in Cook County last year. There are other title companies operating in Cook County, so it is reasonably fair to say that in Cook County, investors in one-third of the registered transactions found that there were reasons why Torrens was not sufficient and they wanted title insurance in addition.

We should look at what those reasons might be. I did not commission a public opinion survey to find out what the reasons for those particular investors really were. We are now talking about what would have been my reasons for taking the same course of action.

In the first place, the Torrens System is completely statutory. It doesn't matter what the ability or purpose of the registrar's people are; they can only do what the statute tells them they can do, and the statute provides for several exceptions. Statutes and case law, I might say, provide for several exceptions as to the protection that is available under the Torrens certificate.

For starters, if the Torrens certificate actually on its face includes land that was not included in the original application for registration, the registration certificate is not effective as to that land. Consequently, to do a complete job it would be necessary to go back and check not only the face of the present certificate, but you would have to go back and look at the original application to see if you can rely on the certificate for the land it describes. That's not like checking the serial number on a car title.

I might add that any person who had an interest in the original land who is not made a party to the original registration proceeding is not bound by the registration. They are entitled to due process — they must be given their day in court.

Those who were made a party have appeal rights. In most cases, that expires in a couple of years so it wouldn't be of great concern.

In the event that two Torrens certificates are issued overlapping as to land, only one of them can be valid. You cannot tell from the face of the Torrens certificate that you are working on that there may not be a superior Torrens title as to some part of your land, so it's necessary to determine the possibilities of overlap. That is just as difficult on Torrens land as on recorded land.

The Torrens certificate contains many memorials on its back stating those other interests which have been registered on this particular title — mortgages, easements, covenants, air rights and any interest less than full ownership. A bona fide purchaser may be protected against such interests not shown on his grantor's registration certificate. But you are not entitled to rely on the accuracy of the memorial. If the memorial says it's a mortgage for $10,000 and, in fact, it's a mortgage for $100,000, you're subject to the lien for $100,000. Consequently, you'd better go back to the file and look at the instruments on which the memorials are based.

On the other hand, a mortgagee whose mortgage has been memorialized upon the certificate of title and who holds the mortgagee's duplicate of the title certificate

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only has evidence that his title has been shown as a memorial. The registration and memorialization of the mortgage is no assurance that the mortgage is valid and enforceable, and I wonder how many mortgagees know that.

If you own blackacre with a benefit of your only easement for access across whiteacre, and if blackacre and whiteacre are both registered titles, the only evidence or protection that you have of the easement across whiteacre is the fact that it is a memorial on the certificate of the owner of whiteacre. It will not even be shown on the certificate for blackacre.

Considering the effect of the Torrens indemnity fund, remember that the Torrens indemnity fund is to protect an injured party against loss caused by an improper act of the registrar's office. It is not title insurance. It does not insure the holder of a Torrens certificate that he has received a good and valid title. If having been a registered owner, he loses his title or it is impaired by what the registrar's office does, then he is indemnified. Therefore, if my friend, Hatch Jones down here, is the registered owner of blackacre and if my friend, Jack Jensen over there, comes to me and represents to me that he is Hatch Jones and delivers to me a forged deed, and if he also forges or steals the owner's duplicate and gives it to me, and if I go to the registrar and register my title and get a new certificate, as has been done, I am not protected. Hatch has not lost his property. That forgery is ineffective and I am not protected by having had my title registered. This illustrates a major difference between Torrens and title insurance. Title insurance assures the validity of the insured's interest, not just that the seller did have title.

Now, it is true that if I convey the property to Bruce Zeiser and he relies on my certificate as showing that Haines has title instead of Hatch Jones, and then Bruce gets his title registered, then he is protected and Hatch is cut off without any fault on his part and his interest is now converted from a title in real property to a claim against the assurance fund.

If what Hatch had owned was a Cadillac automobile, of course, a claim against the insurance fund for the price of buying a new Cadillac would perhaps take care of it, but we have a theory, and I think most people really feel this way about their real property — their real property is unique. Money will not replace the particular location that Hatch owned.

That was an example of loss of a registered title through forgery. Registered interests can be lost by the error or wrongdoing of the registrar as by leaving a memorial off when a new certificate is issued. That could eradicate a mortgage or an easement or a complete air rights development.

Therefore, the Torrens System for the sake of a supposed greater ease and certainty at the time of buying the property sacrifices the security and stability of the ownership of the property thereafter.

Those who favor a system of transfers of title to real property as simple as the transfer of a motor vehicle title have forgotten what the purpose is of our laws respecting real property.

The purpose is to provide security and stability of that peculiar investment which for 1,000 years and more has been regarded as a unique kind of ownership; regarded that way not because lawyers thought up the idea, not because real estate brokers thought up the idea and, last of all, not because title insurers in the last hundred years thought up the idea, but because the people have always thought that their interest in a particular piece of land was tremendously important.

You know, Freud is not the latest thing in psychology. Some scientists think that maybe the primary drive of living creatures — animals, birds, insects, and so on — may not be the sex-drive, but it is the drive to have territory, to control locale. People have thought that the ownership of a particular piece of property, a particular location on land, was of peculiar importance and they have constructed over hundreds of years all of the laws having to do with the safety of title. Now some people say let's forget about the security of what you own in order to have an instantaneous ease at the time of purchase.

A case went up to the United States Supreme Court from Illinois which turned on this issue of whether the owner of registered title that was being taken from him because a person had forged a deed from him and gotten a hold of his duplicate owner's certificate and presented it for re-registration, and that owner said, "My property is being taken without due process of law". The Supreme Court held that he had waived his right of due process by buying a piece of property that was registered in Torrens.

That's right. That's *Eliason v. Wellburn*, the Supreme Court of the United States in 281 U.S. 457, and after saying that he had waived his right to due process to the extent of the Torrens law only on that property, the court goes on to draw an analogy with another casual way of losing what one owns, saying: "There are plenty of cases in which a man may lose his title when he does not mean to. If he entrusts a check endorsed in blank to a servant or friend, he takes his chance." So much for making the transfer of real property as simple as the transfer of a motor vehicle.

Fellows, we've done all the work up here we're going to do. Now, it's yours, so if you have comments or questions, may I request that you approach the microphone in the middle of the room and let's have at it. These are for both questions and comments.

A voice: Would somebody comment on the foreclosure proceedings under the Torrens System in these three areas. I was up visiting with an attorney from Switzerland this summer and he indicated it would take up to 14 months in order for any lender to foreclose a piece of property.

Gandrud: In Minnesota, if you foreclose a mortgage, you would do it just like you always do. We have foreclosure by advertisement or foreclosure by action. Obviously, foreclosure by advertisement is faster.

After the time for redemption by owner has expired, you have to go back into District Court (back if it's by action or into District Court for the first time if it's by advertisement). You go into District Court and petition to have the examiner issue a new certificate. You then have to serve notice again on the people who are foreclosed, so in effect you give them one more crack at the foreclosure.

They could default in the foreclosure and then answer in the subsequent proceeding, and this has happened. You add on a second proceeding in District Court which takes, I would say, on a default basis, a couple of months or so.

Zeiser: Pretty much the same in Massachusetts. The Land Court does have concurrent jurisdiction to handle mortgage foreclosures, so the procedure, the better procedure in Massachusetts would be to foreclose your mortgage on Torrens property in the Land Court rather than in the Superior Court or the Probate Court.

However, there have been cases where just exactly what you said has happened. You've got a decree in another court and then you came into the Land Court and somebody came up out of the woodwork and caused you some trouble, but on the whole, it's pretty much the same in Massachusetts.

Gordon Smith: I'd like to ask a couple of questions. Can you deregister land once it's been registered?

Haines: Well, the transfer is accomplished by the registration, the issuance of a new registration certificate. The deed is treated as a contract transfer and you must execute something in the nature of a deed and deliver that to the registrar and ordinarily with a copy of the owner's original of the registration.

If the copy has been lost, you've got to prove it's been lost and take steps to get a new duplicate but the actual transfer is made by the registrar deciding he's satisfied and issuing a new certificate.

Smith: Well, I don't think you gave the answer I want. Once you put it in the registration system, you've got to follow all that procedure, but having gotten the tract of land registered, can you ever get it deregistered so you can go back to the recording system?

Haines: I only know of one state in which you can do that and that's Colorado. I think perhaps other states have abolished the Torrens System, but I only know of Colorado where it is a choice in the individual case. Does anybody know any other state?

Zeiser: Yes. It's a little different in Massachusetts. Gordon, generally speaking, once land is Torrensized, it cannot be de-Torrensized or deregistered, with one exception that we added in the legislature in the last four years, and that is in condominium.

Now, we haven't talked about condominium, but if you think it's difficult for the Land court to deal with two-dimensional property, if it takes them a year and a half and $2,000 to deal with length and breadth, I can only leave to your fertile imaginations what the situation is in three-dimensional.

However, in Massachusetts, we do have a limited deregistration proceeding for condominium property and condominium property only. This means that where a developer assembles some registered and some unregistered parcels on which to build a condominium, you can take the registered parcels out of the Torrens System in order to go condominium, but that's the only exception.

Gandrud: In Minnesota, you cannot deregister in the large counties where there is much Torrens land. Minnesota has taken care of the condominium problem the other way. If it's part Torrens, they require the whole thing to be Torrens.

Smith: My second question goes to Ron. In the case of this adverse holder of property, and your Circuit Court held that this adverse possessor was entitled to his rights to this registered land, why wasn't the registered landholder compensated for his loss of the property?

Gandrud: That wasn't an issue before the court. It's possible that he would be entitled to proceed in that direction, but —

(*continued*)

Voice: You mentioned they'd never had a claim. Maybe this is the reason they don't have any claim because they can't collect.

Gandrud: It's very difficult to collect. It's strictly a last resort.

Zeiser: You know, Gordon, in the example that Bob gave, if Hatch sued me, you know, he's looking for his Cadillac. He'd sue me and he couldn't even get my Volkswagen.

Davis: I'm Herb Davis from Ohio. I'd like to describe a situation that we had that speaks both to condominiums and deregistering registered land. We had a situation where we filed condominium documents contemplating an expandable condominium and some four or five days later, the county recorder realized that she was going to be issuing a certificate showing the ownership of a unit plus a fractional share of the common element and she began to get a little concerned about what was going to happen to the validity of those certificates when the condominium was expanded, so after some hurried consultation with the State and County Recorders Association and some other personnel in surrounding counties and in the Torrens department, she returned the documents to me and said, "We can't do this with Torrens property. You will have to deregister the land and refile the documents", which upset me and the lender very considerably, but that was actually what he had to do.

After they had accepted the documents, they refused to process the filing under the Torrens law and we had to deregister the land, which is possible in Ohio in any case.

I wonder if that situation has come up in other states where an expandable condominium has been handled under the Torrens System.

Zeiser: I don't know specifically, but at least in Massachusetts we have an out, as I described in that situation.

Consider how much more angry you would have been and your developer would have been had there been no procedure for de-Torrensizing land and a minor county or state official simply said, "We can't do it. You'll have to build a conventional apartment house because that's the only thing that we understand."

You know, this is the trouble with this. In our present system today, our customers, our clients have a choice. They can go to an abstracter or they can go to an approved attorney or they can go to a title insurance company or they can go to the land registration system in the states in which it exists or, if they want to play Russian roulette, they can just give a deed from father to son with absolutely no title examination or assurance at all, and that may be crazy, but that is the idea of choice.

The concept here of a national mandatory Torrens System eliminates the choice that people have in the conveyance or mortgaging of real estate, and that's basically my fundamental objection to the whole thing.

Haines: I want to agree with that point and that was a great illustration, that if you're under Torrens, I don't care how well-intentioned the registrar is — you do it the registrar's way, period.

The registrar may be up-to-date or he may be six months or a year behind, but you wait for the registrar. Under the conventional recording system, you've got choices.

If Abstract Company A is slow in getting its abstract completed, you can go to the index. I've done it. You can work it out that way. In larger counties, there is competition and if Haines says that he doesn't want to take a particular kind of a risk for his company, Pedowitz out there is pretty likely to say, yes, he'll do it and after that, Haines will take the risk too.

But not under Torrens. You've got one guy who is the real supreme court of real property and he says, "I don't like it", and that's tough, you're just out.

A voice: This question is addressed to all three of you. To what extent do politics play a part in the decisions of the various Torrens offices?

Haines: Well, I couldn't actually cite a case where I think a registration was actually politically granted or denied, but we do have Zeiser's example of six months for somebody with connections versus whatever it would have been otherwise, and I think that is fairly typical.

The delay factor in Cook County in registering fluctuates, depending on the cycle of the economy and so on. It is currently about three months to get an ordinary transfer registered, never mind when you're subdividing.

Gandrud: Earl, I could comment a little bit on that. I don't believe that there is any political influence in the sense, you know, tampering with the judicial system because they are part of the court system, but, rather, you do have the budgetary political considerations and you know how that cycles, and the budget in a county may not coincide with the volume of transfers in a county, so you've got feast and famine and you've got Civil Service with its inequities, too.

Zeiser: I'd like to expand on that. I'm going to tell you a true story. Now, Bert Saunders, you're going to feel very comfortable at this and any other life counsel that are in the room, because the Massachusetts fund, you know — in Minnesota, they have only $147,000. We have loads of money. We have $352,428.18 in our fund, so you can breathe a sigh of relief because you know that there is no commercial title company that has that kind of capital surplus and reserves available for the payment of funds. But it is not in a separate trust fund in the coffers of the Commonwealth of Massachusetts. Those of you who have had a little bit of a laugh at Jim Pedowitz's expense should be advised I am going to make him feel better now, because I'm going to tell you that New York is not the only city or state that has in the last year been within seven days of bankruptcy.

Three times in the last year, I, as a Massachusetts state legislator, have been called back into session and had the gun held to my head and told that we had to take extraordinary action in order to shore up the sagging credit of the commonwealth.

At one point, we had to throw the full faith and credit of the commonwealth behind a half a million dollars worth of MHFA Bonds (which are housing bonds issued by an independent agency) in order to allow them to be turned over — they were short term notes coming due "next Monday".

Now, what does that mean? That means that if there is $352,000 in a fund and suddenly a commonwealth or a state is $100 million short, the legislature is going to say to the state treasurer, "Find the damn money. We don't care where you get it. Rob every fund there is. Take the money out". Indeed, in Massachusetts once before, money had been taken out of this restricted but not trusteed fund. A legislator, when he is faced with an urgent situation — "default next Monday" — isn't going to worry. He is going to direct the state treasurer to pay no attention to the moral obligation to keep this money in the fund. So, Bert, the $352,000 may not be there, really.

A voice: Another question from Ohio. In the states that have a Torrensized title today, to what extent are the holders of the certificates protected by the operation of the marketable title act in those states or incurity of acts in those states or in those states that permit affidavits that have evidentiary effect in courts as to airship and land surveys and so forth? All three of which assistance provisions we happen to have in Ohio, but they were barred from the experience of other states.

Gandrud: I would say the Minnesota Marketable Title Act does apply to Torrens as well as abstract titles. It's applied, for example, to eliminate old restrictions.

After 40 years, with examiners approval, or else by subsequent proceeding, they will drop them from the certificate based upon the Act.

Haines: Yes, Ed? Just shout. (Whereupon an unrecorded question was asked from the floor.)

Haines: One of the major New York banks represented by one of the major New York law firms drafted what they thought was an admirable form of mortgage, and they wanted to use it on an Ontario loan on property under the land title act.

Ontario counsel cautioned them that he didn't think that form of mortgage was very good in Ontario, but the bank did want to stick to their uniform form, so Ontario counsel presented it for registration.

What actually happened was that the attorney general of Ontario ruled that in that case, they would accept it but the Ontario counsel for the New York bank was told, "Don't ever tender one of these for registration again", and this happened weeks after the closing.

There is no doubt that the Ontario registrar had the right, had the power to throw that mortgage back and say, "This is no good in Ontario".

Zeiser: You know, I could make a comment on that. If Marvin Bowling lives long enough, some day we may have to have the ALTA Committee on Standard Duplicate Owners Certificates.

One of the tremendous advantages from your point of view as the investor is that we have over the years come up with standard nationwide policy forms which give you an exact understanding of what you're getting, whether it's in Massachusetts or Minnesota or anywhere else.

And, of course, it's probably interesting to note that the Torrens System came into effect around 1890 in several states before title insurance became a national factor and, indeed, one of the reasons why the Torrens System has withered on the vine is that the public found it wanting, maybe in time, maybe in money, maybe in other ways. The title insurance industry grew up to service the need that investors and that homeowners and that other people had. This is why I just cannot see at this point that either the consumer or the investor or anybody else is going to be really served, really served by trying to turn the clock back 75 years and trying to make, at enormous cost and labor, making a silk purse — well, I shouldn't say a sow's ear because there are advantages in the Torrens System, but it

(*continued*)

simply isn't the 20th Century vehicle that I think the consumer needs.

Haines: May I summarize and give this back to Mac.

There are, as Bruce says, some advantages to Torrens, It is a system that can be made to work, has been made to work in jurisdictions and business goes on and so it will not be the end of the world.

Does it provide to the investor the security of looking at one piece of paper and knowing what he's gotten? I think the answer is no. He still has to have an attorney go look at the files, consider the certificate.

Let me say that actually it's necessary to have an attorney go to the registrar's office and look at the registrar's original records. Possibly, an abstract company will tell you they've looked at everything, you'd have the same advantage.

Secondly, the transaction itself still requires all of the attorney's attention or the attention of whomever you rely upon for the particular transaction itself, and that's what a lot of our critics don't understand, that really a major part of our time, our expense and our risk is on the question of what about this transaction, will this transaction hold water, and Torrens does not assure the validity of the present transaction. The Torrens Act is sort of a super marketable title act, perhaps. It says that things that are left off the certificate are cut off by a bona fide purchaser, in effect. But the assurance fund is against the errors of the registrar in dealing with your registered title, only.

Now, in Cook County, the fund is about $5 million, and in this past year, the registrar paid about $15,000 in claims. Probably on an experience standpoint, you could say it's an adequately sized fund, but how well is the investor who has invested, let's say, $10 million in one property protected? How secure does he feel about knowing that if the registrar's office blows it, there is only $5 million to take care of it.

Abstracters and Title Insurance Agents Section

Report of the Section Chairman

Roger N. Bell
President, The Security Abstract and Title Company, Inc.
Wichita, Kansas

Next on the agenda is the report of your section chairman. Looks like you're going to have to put up with me for another year. As you know, the section chairman attends a number of state conventions. We were to nine this year. I'd just like to mention a few names: Windell Kelley, Robert McHenry, Roger Grimsrud, Bill Quinn, John Mennenoh, Elaine Blackeslee, Bob Noe, Rod Weltmer and Frank Drelicharz.

These were the presidents of the nine associations. I think they deserve that recognition. We thoroughly enjoyed the conventions, particularly meeting the people that were active at those meetings and I was very impressed with the presidents and the way they were running their associations.

Tennessee is getting turned on. If that's an appropriate expression. We were told they jumped the dues from something like $20 a year to $200 and then collected a year retroactively. Now that's one way to build a positive cash flow in a hurry. And they tell me they did not lose any members.

I was made an Arkansas Traveller by Bob McHenry. I'm not sure if that means you're supposed to immediately depart the state or whether you can travel back to it, but in any case I have that certificate on my wall.

I also was introduced to the Official Seal of the Michigan Land Title Association. That's exactly what it is. They had a member a few years ago that had a little artistic ability and asked him to design an official seal and by George there it is — a seal sitting on top of a ball. They have a sense of humor in Michigan.

We were at a barbecue put on by a person of Greek descent in Wyoming. I never had better barbecued lamb in my life. We do a little barbecuing ourselves and I picked up a few pointers from him.

We've been through the gates of the mountains in Montana. Gorgeous place. The river is the Missouri but we Midwestern folks wouldn't recognize it — clean, beautiful water.

They made me a 20-year honorary member of the Montana Land Title Association. I'm not sure I particularly like the 20 years but I had to admit I'd been in the business at least that long. I think in Helena we found what has to be the most picturesque business address of any company in the United States. Fritz Weed's company's address, ladies and gentlemen, is 1 North Last Chance Gulch. And boy you can't get any better than that!

There are a couple of things I would like to mention. Nebraska invites a member of the state insurance office to attend their convention. Maybe some of you do, too. I just happened to run across him and that's an idea we've never had in Kansas. I think we all should try and become better acquainted with our regulatory people.

I'd beg some of you (because your officers are getting older and wearing bifocals) to try to print your nametags larger — something like we're wearing here. Sometimes we had a little trouble picking up names at these conventions. Advance registration lists would also be a great help.

As was mentioned this morning, we had our seminar September 16 in Washington, D.C. I'd never been to Washington before. I want to thank you all for that trip. I arrived at the airport and got in the cab and told the driver I wanted to go to the Hyatt Regency. He didn't know where it was. I told him I had a map that my congressman sent me so I wouldn't get lost and the hotel was on there. So the driver started out and I'd tell him where to turn and we finally got to the Hyatt Regency. I checked in. The gentleman at the desk was very friendly and welcomed me to the hotel and told me I was in Room 546 but gave me a key to Room 419. I said, "That's not the right key". And he said, "That's the way we do things here for security reasons".

The next morning I go down to the seminar a little early so I can meet as many of the regulators, etc. as are present and here's a guy with a big nametag on that says Bernard Smythe and I walk up and say, "Hi, Barney, my name is Roger Bell," and he said, "Glad to know you. My name is Bob Allen". I asked about Bernard Smythe and he said, "Bernard couldn't make it and I'm standing in for him". The cabbies don't know where the hotels are, the keys don't match the room numbers, guys don't wear the right nametags — everything I had heard about Washington had to be true!

The seminar was good. I think it was a fine first step. It's something that the Association should have done a long time ago and I was very pleased with the results.

Torrens seems to be coming into the forefront in the minds of the consumer advocates and those who believe we have problems in the title evidencing industry. I would suggest that we all get as knowledgeable about this subject as possible. We don't want to overreact but I think it's time to educate ourselves and perhaps start talking to some of our customers that depend upon us for service and information. It's certainly not too early to start telling them a little about what Torrens is and what it does and doesn't do.

We had a Section Executive Committee meeting this noon. The ALTA Executive Committee referred a request to us from Illinois for help on errors and omissions coverage. Our section does have an errors and omissions liability and insurance committee and at the noon meeting we did accept that assignment. We will be reporting to the ALTA Executive Committee and back to Illinois.

Report of the Educational Committee

John R. Cathey, Chairman
President, American-First Title and Trust Company
Oklahoma City, Oklahoma

Mr. Chairman, ladies and gentlemen. The Report of the Education Committee. I'm afraid I've got some good news and some bad news.

First, the good news is we haven't lost any ground in the past year. Of course, the bad news is we haven't gained any ground in the past year either. But we continue to have difficulty in determining how we can help you as a means of educating our industry.

I'll give you some examples of the ways that we do some things in Oklahoma in education and then I'd like to ask what you do in your states and perhaps we can come up with something that the national committee can help the entire association with.

One of the things that we do is we have five regional meetings in Oklahoma each year. We have basically the same program in each district and we try to bring some methods of education to our members. The programs are chaired by the vice president of our association.

I know Texas has similar regional meetings except I went to one of their regional meetings and their Dallas meeting is like our state convention except that it had more people. It's an extremely large meeting and they have great attendance down there.

Oklahoma also has an abstracters school about every five years. The last time we had this school it was held at the University of Oklahoma Extension Center. It was a three-day seminar. We had classes on legal descriptions, court take-offs, indexing, compiling abstracts and general information of this nature. This was basically designed for people with less than two years in the title business. It was well-received. We had an attendance of about 80 people. I know that Indiana has a similar school and perhaps other states have this type of school also.

Now these are basically things that we do in Oklahoma. What other methods of education do you use in your states? Bill, what do you use in Texas?

Towler: Well as you know, John, we have five regional meetings. These are actually regional seminars. They start at 9 a.m. Saturday and we usually finish around 4:30 p.m. We've been running them for the last three years. There are three separate seminars, all taking place at the same time. One is designed for abstracters and examiners, one that's designed for closers and closing secretaries and then one for either managers one year or for new people coming into the industry.

This year we're, for example, teaching things like a one-hour block instruction on the family code. We've got a two-hour management case problem on problems in the title company and closing techniques. The three programs run simultaneously. They begin and end at the same time so that the student can go to one block of instruction and then another or whatever the case may be.

And it's worked out very well. Last year we had just over 1,500 people attend these five regional seminars.

We've also developed a land title school. This is a school that actually is broken into two parts which will be taught over a two-year period. The first session of the basic school will take place in February-March of 1977. This one-week school, in two different years, will give the student a certificate of completion upon graduation. It's being done in conjunction with the University of Texas at San Antonio. The students will be in class 8:30 a.m. - 4:30 p.m. Monday,Tuesday, Wednesday, Thursday and a half day Friday. Then they have an examination. Between the year 1977 and 1978 they'll have a half-dozen case problems that they'll have to work and then they'll come back for the second year. The school will be graded. You can fail it. The instructors are a combination of industry and academics. Then, if you want to, you can go to an advance school which is yet to be developed. The advance school will be a three-year school — leading to a degree in much the same manner as a certified abstracter or examiner or escrow officer. This is where we are.

Cathey: Thank you, Bill. I'd like to see if anybody in the audience has any suggestion as to how the Education Committee can be of more benefit to you. Does anyone have any suggestions at all?

An unidentified speaker: Yes. Anytime there's a school anywhere in the Midwest I'm sure there are several of us who would be interested. For example, I live in central Missouri. I would not mind sending my employees to Wichita or to Indianapolis, Chicago or Little Rock. I would suggest perhaps we might have a national table for those of us who do want to put some of our key employees into it.

Cathey: Thank you.

An unidentified speaker: In Wisconsin we have had what you term your abstracters or what they term in Indiana their abstract schools for a number of years and just lately we have had a very active school committee within our state association. They have come up with an idea of a one-year school now which will be a complete one-year study at a vocational-technical school in one of the vo-tech districts in Wisconsin which will be a title industry school where they'll learn abstracting and something about title insurance. It's going to be just one year to start out with so they can see what kind of action they're going to get from it which, hopefully, they'll start next fall. It has evolved from the abstracters school we have in our section. It's one thing that we have gone into and hopefully it can go on from there.

Cathey: Is it going to be taught by industry instructors or instructors from the school?

Speaker: I don't know whether they have decided yet exactly if it is all going to be from the school or all from the industry. It might be a combination.

Cathey: One of the problems we found in Oklahoma is that in having these educational seminars that we feel like we have to get people from our industry to teach the courses. It's much more effective.

Speaker: That's how we did it in our abstracters school.

Cathey: Yes sir.

An unidentified speaker: We're in the process of completing a textbook for the Indiana Land Title Association over a three-year span. We finished this spring and the writer of that text had been teaching our seminars every spring based on each section that he has completed. This spring we'll complete our three-year endeavor and from there we had talked about going to a one- or two-day university type thing.

Also the state association several years ago introduced to underwrite an abstracters school where you can obtain a junior degree in land title technology at Vincent University and this year has 24 students enrolled so it is very well received.

Other than that we have had most of our emphasis mainly at the level of the employee's education and not much — I don't know what our future program will be as far as one or two years.

Cathey: Thank you Phil. As you can see, many of the states do have active education programs. If you have any suggestions or you need any material if you'd drop me a note I would attempt to put you in contact with people that would have the information you might need as far as legal description, types of schools or any other information that you might desire. Just drop me a note and I'll be glad to tell you if that material is available.

Mr. Chairman, if there are no other comments I would — yes, Jim?

An unidentified speaker: Do you get the feeling that we continue to reinvent the wheel? If you could just alert us as to when these things happen. I happen to be in a state where it's very different from most other states. But, even with that, I think I would enjoy seeing an outline or a copy of this text or that schedule and I think we've got the perfect vehicle in *Title News* for that.

Cathey: If nothing else, just a calendar of upcoming events. I suppose that type of information should be directed to ALTA to be published in *Title News*.

In states that have these title schools, you might also, when you're advising ALTA of the time, inform them whether or not any material will be available to be mailed out to the members unable to attend the meeting.

Mr. Chairman, if there are no other comments that's my report. Thank you.

Report of the Plants and Photography Committee

Thomas A. Griffin, Jr., Chairman
Executive Vice President and Secretary
Mid-South Title Company, Inc.
Memphis, Tennessee

Thank you, Roger. You forgot to mention one thing about your visit to our Tennessee convention and that was that we invited our insurance commissioner and he wouldn't come.

Chairman Bell: That's right. He wouldn't answer your letter as I recall.

Griffin: I think he was really afraid we were going to ask him for something. Possibly even some legislation.

You also forgot to mention that we granted you an exclusive license to import Jack Daniels to this part of the country and I wish you'd import a little bit more.

This morning at the ungodly hour of 7:30 we had an informal meeting of the Plants and Photography Committee and to those of you who were beddie-bye at that time I envy you. I practically fell asleep at dinner last night after flying 2,560 miles. I had heard about jet lag and I thought I knew what it was but I really got introduced to it last night.

This morning we talked about many things and I'll just touch on them briefly.

One of the major items on the horizon is the computerized plant — already a reality in many areas. We attempted to deal with some of the sources of the hardware and software and, for a change, it was one of the few times we've actually had some cost figures. We were really trying to see just how close we were to the small man — the little fellow who had his own shop. We're not there yet. Don Henley's company has an installation where they are amortizing the hardware and software cost over seven years at $1,600 a month. Now that's pretty reasonable when you consider the size of the installation and the hardware and everything that goes into it. As it turns out, that's as close as you can get to a mini right now that I know of or, that anyone in the room knew of. And it has some functions other than keeping the title records.

Gordon Smith mentioned one mini-computer that they have in operation that costs $150,000 for software and hardware and that's not a real biggie — there are larger ones, as I well know. We priced a system in 1969 and we still post by hand. I think that says something — we haven't had the money. Not that we're not trying. We spent a considerable amount of time and effort in studying and really working hard to determine whether we could afford it and we determined at the time that we could not.

We also dealt with the mini-computer as it is used in preparing closing documents. To those of you who have not seen the displays here who think there might be a remote chance you can use something like that, I strongly suggest that you visit the exhibitors. I am personally familiar with one of them and came reasonably close to trying to adapt it to our problems locally. I say locally. I'm from Memphis, Tennessee. Some of the sources which were mentioned in addition to the exhibitors here (I think there are at least two) were Wang Computers who market their own computer now. One of the big problems in getting this type of a system is finding who sells it. Most of the larger cities have dealers and they're working hard on covering the country so you might be able to deal directly with the company.

Another name mentioned is Radix, a firm about which I know absolutely nothing, but which has been in the business a pretty good while.

There was also a considerable discussion about joint plants — the concepts, the cost, the problems, the successes and the failures and what causes them. During the discussion on shared plants, it was pointed out again that one of the things which we might tend to overlook in studying this complex question is that you reduce your cost when you increase your participants. But don't be so foolish as to divide by the number of participants. That does not happen. But you decrease your cost if you have a midi- or mini-computer if you have a multi-county plant on it. And in most states this is a fairly easy thing to do.

There was a short discussion on the data entry methods. Some of us had some real unique problems. If you ever solve your problems, Jim Mills, let me know how you did it. It's too complicated to get into here but he's got to keypunch and stop and look something up, and stop and keypunch again. Any of you who have keypunch devices know what happens to production when the operator has to stop and look something up.

I distributed some literature on a rather unique piece of equipment which we looked at for our Florida operation which was not acceptable at the time because it didn't have the right lens. But, the lens is being developed and in about three or four months will be available. This is an automatic reader-printer which uses cartridges and has the blip count attachment. A lot of recorders or registers are going to 16 millimeter film cartridge with the blip count or the document count type of indexing. Those of you who have any of this equipment know that it is relatively expensive and we ran onto this one piece of equipment which cost just about half of what most of the existing pieces of equipment cost.

I had a few pieces of the literature left over and I tried to figure where I could put them where they would be safe until after I got to this point and mentioned them. So I put them on the bar in the rear of the room which is not open. And I felt they would be safe there. To those of you who are interested, there are three brochures from Western Reserve Electronics. There are some brochures from Eastman Kodak which, as you might expect, arrived about an hour ago — too late for the meeting.

I would like to talk a second about the committee itself. Like John, we have the problem of not knowing what we can do for you. Every time I think I have a solution, I find this particular solution is good only for one size of company. You know this business is really a unique business. We practically all could be said to be in exactly the same business. But the methods and devices we use to perform our service or prepare our product are the damnedest duke's mixture you have ever seen. I feel like I'm trying to swim in quicksand when trying to convey information to the general membership about plants and/or photography.

I have to tell you in case you missed it, I had a little squib inside the front cover of *Title News* asking if anyone needed any help or any information of any kind, to send a letter telling me what you wanted. Now I want you to bear in mind I'm from Memphis, Tennessee. I got one letter from 40 miles away in Arkansas and I know *Title News* has better circulation than that. I know it's not published in Memphis. So we are going to take a different approach if we're able to work it out next year.

The committee is going to be expanded and I'm in the process of tapping a few people to help. The concept that we came up with at lunch is to try to get some expertise in some of these duke's mixture fields that we operate in and to try next year to come up with a panel which could answer questions. We might even be able to arrange for you to submit your questions in writing ahead of time or during the meeting.

If we are lucky, this is the way it will happen. If any of you have a man on your staff who is well-versed in any of the areas I dealt with earlier, please let me know his name but only do this if you're willing for him to work. To make this thing jell for next year it is going to take a considerable amount of work and time and if he doesn't have the time, or you can't let him have the time, then let's just skip it. But if you do know of someone who is willing to work and devote the time and effort to it, I would appreciate having the name.

Now to those of you who run what's called in the trade a Mom and Pop Shop — I really want some of you on this committee. This association is not made up of, nor is this committee designed to aid only the large- and medium-sized company. Please help if you have the time — it probably will consist mainly of writing some letters and making some inquiries of manufacturers for the present time. We might need a day or two before the next convention to do some interim planning. But particularly those in the small and moderate companies if you do have the time, please volunteer; and to those of you who are Mom and Pop Shops, I'd like for Mom to give the Pop you know what until he does volunteer. This is the only way it will be successful.

Thank you.

Report of the Organization and Claims Committee

Robert G. Frederick, Chairman
President, C.W. Lynn Abstract Company, Inc.
Salina, Kansas

The main function of the Organization and Claims Committee for the last several years has been a study of the organizational and financial makeup of the member abstracters and agents.

The committee had a meeting this morning. We went over the questionnaire which will be mailed out right after the first of the year. We made a few changes.

The growing recognition that the land title industry is a significant contributor toward the efficient operation of both local and national real estate markets indicates that information on the organizational and financial characteristics of abstracting companies and title insurance agents will be needed for planning and reporting purposes. That's why we would like for you to take a few minutes to answer the next questionnaire. Your answers will give us a good idea of your activities and, in addition, we will be able to detect any underlying trends by comparing the results of this survey with those taken in 1971, 1973 and 1975.

We would like for you to reply to all questions. But if you prefer to withhold certain information or do not wish to identify yourself, please feel free to do so.

All the data received will be considered strictly confidential and compiled only on an aggregate basis. Since the information is for your benefit, both as an individual company and as part of the land title industry, we hope you will all fill out the forms and return them to the ALTA Research Department.

Thank you, Roger.

Errors and Omissions Liability Coverage: A panel discussion

Moderator — Arthur L. Reppert, President, Clay County Abstract Company
Liberty, Missouri
Panelists are:

- Fred Themmes, Underwriting Officer, General Liability Insurance
  St. Paul Fire and Marine Insurance Company, St. Paul, Minnesota
- R. Joe Cantrell, President
  R. J. Cantrell Agency, Inc., Tahlequah, Oklahoma

Roger Bell: Ladies and gentlemen, for the balance of the afternoon we're going to talk about errors and omissions coverage. It was obvious in making some of the trips I referred to earlier that in Illinois and other areas errors and omissions coverage is becoming a critical problem and I would like to thank at this point Bill McAuliffe and Fred Benson for obtaining our speaker today from St. Paul. We also contacted Lloyd's but they did not desire to send anyone.

I would like to qualify our panel members and the moderator and then ask them to step forward.

In order of appearance — Mr. Fred Themmes from St. Paul Insurance Company has lived his entire life in the St. Paul area. He has a bachelor of science degree in public administration from McAllister College which he received in 1958. He started his employment with St. Paul Fire and Marine Insurance Company in 1956 on a part-time basis. He became a full time employee in 1958 upon graduation from college. He has completed the chartered property and casualty underwriter program and obtained that designation in 1967. He completed the Insurance Institute of American Management Studies Program in 1972 and received the associate in management diploma that same year. He completed the program in risk management in 1973 and received the associate in risk management diploma in 1974. He has been involved in various aspects of liability underwriting since 1958. Professional liability is the main area of his responsibility at the present time.

Joe Cantrell is president of R. Joe Cantrell Insurance, Inc., a general agency operated in northeastern Oklahoma. He is also president of R.J. Cantrell Agency, Inc., which offers the Title Pac errors and omissions program to the title industry on a national scope. He is a past president of the Oklahoma Land Title Association and has served as vice chairman of the Abstracters Section of the American Land Title Association. He owned and operated the Tahlequah Abstract and Title, Inc., for more than 28 years. The March 1976 *Title News* featured an article by him, describing a unique system of developing and utilizing an arbitrary index system which resulted in increased efficiency in his operation.

Joe is a graduate of Northeastern Oklahoma State University and a four-year veteran of World War II. He lives in Muskogee, Oklahoma. I will end Joe's qualifications by saying that he also has one blue-eyed granddaughter who will undoubtedly be Miss America in 1994.

I knew that Art Reppert had been on the Errors and Omissions Liability Insurance Committee for the Section for a number of years. He and Jim Vance have spent a great deal of time years ago in making suggestions that caused St. Paul to revise its policy more to our liking. Knowing that Art had this background, I asked him if he would moderate the panel, which he readily agreed to do. I asked him for his biography and I would like to read it as I received it.

He says, "Dear Roger, just tell the people I am an old titleman," but he said he guesses it might be more fair to tell you a little bit about his background. He started in the title business on May 1, 1936, which is 40 years ago. He attended William Jewel College at Liberty, Missouri and the University of Missouri Law School at Kansas City. He became a member of the Missouri Bar in 1941. He was president of the Missouri Land Title Association 1956-57 and, of course, as you all know, was president of the American Land Title Association 1961-62.

Art, I want to thank you again for agreeing to handle this for us. I would like you gentlemen to come forward at this time please.

Reppert: This is primarily going to be a program by them. We will try and allow each one of them as much time as they wish to talk about their product and about the errors and omissions policies. We will then have time for discussion and questions and I will try to dig questions out of you folks.

I was interested in some information that Jim Vance sent to me concerning errors and omissions and the loss ratios that St. Paul has had. It was almost identical to the loss that the title insurers have sustained and the losses in 1971, 1972 and 1973 of both the abstracters and the title insurance agents. But in 1974, right after our good year in 1973, the consumerism problem came more and more to the front and we started having slow business. Then the losses started.

Now I'm going to ask Fred if he will start the program.

Themmes: I came into Seattle last evening and went to bed fairly early and woke up

(*continued*)

this morning and asked myself, "What in the world am I doing here?" Usually when we go to a meeting I can start out by saying that I'm not here to sell insurance because I'm not a licensed agent but I believe that at this gathering it would be better if I could say that I was here to sell insurance.

The thought that came to mind this morning when I asked myself what am I doing here was the best to beat this thing we have an hour and a half time schedule and if I talk for an hour and a half there won't be any time for questions. But I don't think Art would let me go on that long. So actually I'm going to hold my comments very short at this time and hope that in the discussion that follows we can get to what's on your mind also.

My purpose in being here today is to contribute whatever I can from an underwriter's point of view. As I see it, you have two major problems associated with your purchase of errors and omissions insurance. They are availability and cost. From my company's standpoint as a seller of insurance, there is a corresponding problem for each one of yours, plus one more.

This additional problem is the very nature of title insurance. Unlike property and casualty insurance, where the bulk of the premium is used to pay losses, the bulk of the title insurance premium is used to prevent losses. The title insurance premium is used to pay a professional abstracter to make a title search, a professional lawyer to render a title opinion, and a professional title insurance agent to properly issue the title insurance policy. Unless one of these three professionals commits a negligent act, error or omission, there is very little chance of a loss under the title insurance policy.

Since the title insurance companies use premiums to pay these three professionals for their loss prevention services, when errors occur, there may not be sufficient premium left, after overhead expenses, to pay the losses. So it is only natural that the title insurance company look for recovery from the professional that didn't perform 100 per cent perfectly.

The cost, which I mentioned earlier as one of your two major problems, is also one of ours. Your costs, however, refer to premiums; and our costs refer to losses. When the system works properly, your costs or premium are adequate to pay our costs or losses, plus our expenses, and have a little left over for profit.

Unfortunately, the system hasn't been working properly for the last couple of years and we have sustained underwriting losses on both abstracters and title insurance agents.

In order to understand what has happened, we have to correlate the theory of insurance with our actual experience. Insurance is merely a mechanism whereby the uncertainty of many is passed on to one. The law of large numbers then changes the uncertainty of the many into a predictable certainty of the one. And this mechanism does work if changes are fairly uniform and gradual. It has been said that liability insurers move ahead by walking backwards. And if the path curves very gradually we can navigate it. However, if a change produces a sharp corner, we miss it and hit our head against a brick wall.

One writer graphically described it as an automobile speeding through a large city. In the front seat sat the company president and chief underwriting officer. The president has his hands on the wheel and a foot on the brake while the chief underwriting officer had his foot on the gas. In the back seat the chief actuary was kneeling amidst his charts and peering out the back window as he yelled directions to the drivers.

Historically, we have set liability rate levels based on past experience. And these rate levels were adequate because change was gradual. But when change became sudden and drastic, past experience was not an adequate yardstick. What happened to us is that past experience didn't tell us there would be double digit inflation, social inflation and drastic changes in tort liability concepts. Consequently, we didn't charge enough for the products we sold. We took the uncertainty of the many and ended up with an uncertainty for the one.

We recently filed substantial rate increases for both the abstracters and title insurance agents lines of insurance. The percentage of increase on the abstracters is 157.1 per cent and on the title insurance agents it is 246.5 per cent. I can appreciate your reaction to this type of increase; however, to be real frank with you, I'm not sure it is enough.

I think it is appropriate to stop right here and set the record straight. None of the states, in which we write these lines of insurance, or the District of Columbia insurance codes permit rate levels to recoup previous losses. Rates can only be set in anticipation of the losses to be reported under the policies to which the rates apply. While those rate increases are substantial they were still trended from past experience so that they could be justified to the state insurance regulators by accepted actuarial techniques.

The other problem, which I mentioned at the outset, is availability. The reasons we are not an active market in all states are complex ones. However, I'll try to outline the problems we face in attempting to make markets available.

We are a regulated business and must file rates and supporting statistical data in almost all states. We do not have adequate volume of either abstracters or title insurance agents in any state to make our rates on a state basis. Therefore, both of these rate filings were made on a countrywide rate basis. Some state insurance departments feel rates must be set, based on the experience within that state only, even when the statistical data is too small to be creditable.

This countrywide rate filing was made on May 7. To date we have received approvals from the regulators in 39 states. Seven states have disapproved the filings and five states are still sitting on their hands having neither approved nor disapproved the filing. The guts of our problem is that only 39 states will permit us to price our product at the price we feel is necessary. If we sell our products in the other 12 jurisdictions, it must be done at the old rate levels which are still on file; and we know the old rates are grossly inadequate.

This has led us to a business decision not to be a market in states where we cannot charge a rate commensurate with the risk. Also, if we were to continue to use the old rates in some states, we would discriminate against those policyholders in states with reasonable insurance codes and regulation.

Another reason our market is not uniform in all states is due to actions we took earlier this year regarding lawyers professional liability. The lawyers business turned unprofitable in 1972 with losses doubling each year since. In 1975 we took a $9.3 million statutory underwriting loss on lawyers. We currently market lawyers coverage in only 30 states.

Many title insurance agents are lawyers. There is not a clear cut line between abstracting work performed in the capacity of a lawyer and the capacity as a title insurance agent. We feel that where a single entity performs more than one of the functions, the coverages should be written in the same company. This eliminates the fighting between insurers in their attempts to push the loss to the other carrier. Therefore, in states where we do not offer lawyers professional liability insurance, we do not offer title insurance agents coverage to title insurance agents who are also lawyers.

I've attempted to confine my comments to actions and problems of St. Paul. This was done to try to prevent a duplication of what Joe may plan on saying. I'll expand on any area during the question period scheduled for later in the program.

Reppert: What we will do, as I stated before, will be to have both Fred and Joe speak and then I'll have a few remarks and then we'll open it to questions. Joe?

Cantrell: Ladies and gentlemen of the title industry, it is a pleasure to appear before you today. And with Fred Themmes, one of the best casualty underwriters in the country or he wouldn't have his job, and with my old Missouri friend, Art Reppert. I can remember when Art, a bunch of Okies and a few of the others from Missouri would get together when Oklahoma was still dry, and they brought along their own smoke in corn jugs. I mean they had corncob stoppers in them.

It's common knowledge that St. Paul has been the leader in professional liability in our country for many years. And I commend them for that.

It's also common knowledge that the age of consumerism and lenient courts has resulted in extremely poor loss ratios for the insurance companies offering professional and malpractice coverages. We, too, hope the trend will change and show improvement.

I've been asked to discuss our Title Pac program with you and I'm very happy to have this opportunity. The old saying that fools rush in where angels fear to tread could possibly be true in the case of Title Pac but we do not feel this will be the case in our program.

We believe that our knowledge of the title industry, together with sound casualty underwriting and proper rates, can result in favorable loss ratios for errors and omissions for the title industry.

The Title Pac was born as a child of necessity. The idea first came to me in 1965 when we were in a convention of the Oklahoma Title Association. Some of the fellows here may recall our discussing it at that time.

We were having some problems with what we thought were rates that were too high. We're rather conservative in Oklahoma, and we couldn't find anybody who'd admit having had a loss. We started trying to find a carrier who would work with us as titlemen to provide the coverage we wanted and needed. It was eight years before that opportunity arose.

In 1973 I contacted David Shand of Shand, Morahan and Company in Evanston, Illinois. He is president of that company, which is one of the leading managing underwriters in the country, and manages the errors and omissions program for the National Association of Mutual Insurance Agents. They're also one of the largest underwriters of architects and engineers errors and omis-

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sions worldwide. They are now in the field of lawyers professional liability. In fact they do insure the American Trial Lawyers Association and, as I understand it, the Pennsylvania Bar and several other state bar associations.

They are experts in their field, which is strictly errors and omissions. They write premiums substantially and in excess of $50 million a year. We feel that they know what they're doing and we hope they do.

Well, Dave Shand believed in my idea, and my project, and after more than a year of working to develop policy forms and rates, and all the other aspects necessary to enter the field of abstracters and title agents errors and omissions, we began offering our coverages.

During this time the market, as most of you well know, deteriorated drastically. Many companies were refusing completely to offer the product in many states.

Other companies severely limited their underwriting. They increased rates where they were permitted. They required much higher deductibles and underwrote each risk more closely in an effort to improve their loss ratios.

This would appear to be where "angels fear to tread," but we believe our philosophy will work. We believe that errors and omissions coverage can be provided for the title industry by closer underwriting combined with an effort to insure each risk through better knowledge of that risk.

We feel that we go much further into the operation of a title plant or an abstract plant than most companies. Our mail and telephone bills will verify the expense to which we go to get full details, especially where there's been a claim history by the applicant.

Many times we have determined that claims paid under abstracters or title agents E & O, which is what you all are purchasing, were actually escrow or closers errors. They are justifiably denied under an abstracter-title agent E & O policy. But according to the information we received they were actually paid as an abstracter-title agent claim.

The problem is that the local agent, in most cases, unless he's an abstracter, doesn't understand the title profession. The casualty claims adjuster certainly doesn't understand the title profession, and with all due respect to the casualty companies, most casualty underwriters don't understand the title profession either.

In an effort to overcome this lack of familiarity, I took my top underwriters for a tour of Ted Schneider's plant, the Kenosha County Abstract Company in Wisconsin. Ted graciously gave us a day of his time which was most beneficial to our program. I'll grant that you absolutely cannot make a title agent, or an abstracter, out of a casualty agent in one day, or one year. But now, when I speak to our underwriters and talk about tract indices, arbitrary tract maps, grantor-grantee indices, judgment dockets, lien dockets, plants and so forth, my underwriters have some idea about what I'm speaking.

We plan to repeat this visit soon with concentration on the courthouse aspects of the search. We will get into the tax angles particularly, judgment dockets, and more into the lien dockets.

A great amount of my time has been spent as a translator. I think I really should be classified now as an interpreter. The applications we receive in title language, I translate into casualty language. This sometimes requires a considerable amount of correspondence, as Fred will vouch for, because many terms that come in are completely foreign to a casualty underwriter. He can underwrite only on the basis of what he sees and knows. Where brokers are involved, as they are in many instances, I'll very often get their permission to speak directly to their client, the abstracter or the title agent. In this way I can speak to his client, and talk titleman to titleman. There are those of you in this room with whom this has happened.

I was in the title business over 28 years. I never filed an E & O claim. I was scared a few times, but it could have happened and St. Paul was our carrier, which I was happy about most of the time. I didn't like the rates sometimes, but we could have had a claim. It could happen to anyone. We were just lucky, I guess.

However, we had a complete set of records. Oklahoma requires a complete set of records back to patent — a virtual duplicate of the courthouse. I was proud of those records, and even though I'm not operating the Tahlequah Abstract and Title now, I'm still proud of those records. Also, I'm still proud of being a titleman because in working with you I still feel I'm a part of the industry.

Fred said he wasn't going into the policy coverages, but I'm going to point out a few of the differences between Title Pac and St. Paul. I stand to be corrected in any case.

One of the basic differences is that our policies are issued on a claims-made basis. In effect, it states that for a claim to be covered, it must be filed or notice of possible claim be given during the term of the policy. What this means is that, at the end of a policy year of that particular policy, the company knows that it has fully earned its premium or it knows what reserves it must set up.

There's been a considerable amount of controversy between the claims-made and the occurrence type policy. Both have their good points; both have their bad points. We

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believe it is the solution to professional liability. By this, I'm speaking of the attorneys E & O and the other professional fields.

I believe that Fred will also agree that a major part of their problem is the claim which occurs several years after the occurrence at more inflated prices. In fact, he mentioned that claims were occurring based on previous premiums but at today's double digit, or what were double digit, inflation figures and at inflated prices both in the cost of settlement and the legal fees.

It's very difficult to establish reserves, to anticipate these claims which occur under occurrence type policies three, four, five and six years down the road.

A claims-made policy doesn't have this particular problem. As I said at the end of the policy year the premium was fully earned. Claims, if any, are known and that is an advantage.

There have been questions about what happens if you sell your business or if you change ownership. That is known as tail-end coverage, or run-off coverage, which I have at this time on Tahlequah Abstract and Title. It will protect me through the statutory liability period in Oklahoma. It's written at greatly reduced rates yet provides the same coverage I had before, and it's a very nice thing to have.

Briefly, the claims-made policy covers claims for acts prior to inception of the policy about which there was no knowledge. The occurrence policy covers claims made after the expiration of the policy but the act was during the policy period. One just about offsets the other.

We also believe that Title Pac is being more innovative in its attempts to establish rates on the basis of experience in the different states. We're trying to do that.

At this time we have seven different rate structures in force in the United States. It's my understanding, subject to correction, that St. Paul has three rates — their previous rate, their new rate and Texas.

Themmes: They didn't approve the last rate increase.

Cantrell: Texas is still the Lone Star State, I think, in rates.

I have no argument with their system, but believe the title standards and systems are better in some states than in others. We know that there are 14 different title evidencing systems in our country. These variations have resulted in some systems which are just not quite as fail-safe as others.

We also have claim-prone areas which should take higher rates. I hope I don't incur any adversity here when I say that southern California is somewhat known as that, as well as New Jersey and metropolitan New York. Title Pac also provides additional time in the event of cancellation in that we allow 45 days, where the standard is ordinarily 30 days. We have an extra 15 days, for what it's worth.

Title Pac rates were originally developed on the basis of St. Paul's rates. I don't mind saying that. They're the acknowledged leader in the field. We felt they knew what they were doing, pretty well, and we hope they do. Our rates are somewhere in the 10 to 19 per cent deviation from St. Paul's rates, based on the state and on the type of operation revealed by the application we receive. Our applications are rather in detail. They're four pages, but we want to know how you do your title evidencing. We want answers about your personnel, and we'd like quite a bit of information about your business. From that we believe that, with more thorough understanding, we provide a better rating system.

We believe that our system will continue to offer this service on a profitable basis. Only time and experience will tell. We'd be foolish to think otherwise. The first year and a half of operation makes us think we're right, and we hope our luck continues.

I won't get into limits since Fred didn't, and we offer about the same limits. We offer the same deductibles. We recently received a request for $100,000 deductible from one applicant, and were very happy to be able to quote. However, we do believe that the $1,000 deductible is the best buy if you're going by Nader's *Consumer Reports*. I hate to mention that name here today. And do so with apologies to all of you.

We are now offering Title Pac in 49 states. At this time New York is the only state in which we do not offer the coverage, and expect approval daily. Our filing was made in April. We've been making minor changes since that time, and hope that each day's mail will show approval. We can then say that we are completely national.

Our program for Title Pac has actually been filed by the American Bankers Insurance Company of Miami, Florida in 43 states. It's been approved in 34 of those states and approval by the other nine states is expected very soon.

American Bankers is a company which is known to all of you, I'm sure. In the nine states, from which we are awaiting approval, and the remaining seven states in which we will not fil the American Bankers policy, we are now issuing the same coverage with the Mutual Fire Marine and Inland Insurance Company of Philadelphia. It's an A + AAA company, and coverage will be issued on a surplus lines, non-admitted basis. The insuring clauses are the same and the rates are the same. The principal difference is that on non-filed policies such as these we must charge and pay the state surplus-line tax which varies from 2 to 6 per cent of the premium.

We feel we have something special to offer in the title profession. Having been an owner and operator of a title plant for many years, 28 of them in fact, I think I know the title business pretty well. I'd like to think I also know the insurance business. And I'm also very proud of Fred when I notice that he retained his CPCU rating. That is the PhD of insurance men. He's certainly qualified for anything he says.

I enjoy working with title people all over the country to provide the coverage they need and desire. Mostly I work by telephone, which I'm sure makes Ma Bell happy, and I've also had the pleasure of speaking at a number of state conventions in the past year. I'm sure that makes the airlines happy.

We're proud of the fact that we've provided E & O coverage for many abstracters and title agents who could not secure it elsewhere. They needed it in order to meet requirements of title insurers, whom they represent, besides the peace of mind and protection, which it represents. In this we feel a great satisfaction in having provided a true service to the title industry which I love.

It's been a pleasure and a privilege to have this opportunity to speak to you today, and to appear on the platform with Fred Themmes of St. Paul and with Art.

Reppert: Thank you very much, Joe. Fred mentioned something about the loss ratios that they had. They actually sent us the ratios of 1971 through 1975 of both the abstracters and the title insurance agents. You might like to put some of these figures down just to see what happened.

In 1975 under the abstracters errors and omissions there were premiums paid of $631,854 and losses of $849,725. This is a 134.5 per cent loss ratio. Now with the title insurance agents business in 1975 there were $409,475 paid; get this, $1,054,200 losses paid or 257 per cent.

I'm sure St. Paul would have liked to had all of the business. This is only a portion of the business in the United States that's written. He mentioned something about lawyers insurance. It's gone up very drastically because of the consumerism and the laws that were passed.

We just recently passed in Missouri a new divorce law which allows an attorney to represent both sides in an uncontested divorce. This sounded reasonable. Why hire two attorneys when there's no contest? Both wanted a divorce and there's no property to be settled. At least they all agreed on it. But this got started and after one party in a divorce thought about it for a few weeks or a few months after the divorce he thought the lawyer didn't represent him where he should have and sued the lawyer for malpractice. It's just really throwing the malpractice insurance and the lawyers to hide.

I think another one of the reasons for the great losses we're having is because of the cost of the land that we insure or the land that we make abstracts on. My brother-in-law is in the real estate business in our adjoining county, Johnson County, in Kansas. He works for a builder who bought 80 acres of bare ground paying $20,000 an acre. They're putting in streets and the utilities and so forth and selling half-acre lots for about $35,000 each. Now that just sounds fantastic but I'm sure in each one of your counties the values of the property today have gone just sky high from what they were even if you were in the business just ten years ago or even after World War II.

To start some of the questioning, however, I would like to ask Fred this question: Would it help if we required a larger deduction or a larger first loss to cover a larger amount of the policy? Would this have a tendency generally to keep the rates the same or lower them? Could you address that question?

Themmes: On the abstracter's side of the picture we have a lot of small claims. The abstracter problem is one of frequency. There is some severity once in a while but, by and large, the abstracting losses are a frequency situation where a deductible can help. But the title insurance end of the thing there is not frequency at least with us but when they come they're big. The deductible whether you get $1,000 or $5,000 and end up paying $200,000 that extra $4,000 didn't do you much good. But we have been stressing to our underwriters to be raising the deductibles in an attempt to hold the experience down on the abstracting end.

Reppert: Yes?

An unidentified speaker: Did I understand the number on title agents you say you are putting in was 400 and something thousand?

Reppert: 409 against $1,054,000 losses.

Speaker: Seems like St. Paul is smarter than that. You can look at those figures and tell you're —

Reppert: The year 1971 —

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Speaker: And you've got multimillion dollar potential losses. Hell, it's just not worth it.

Themmes: We found that out the hard way. By the same token we have to justify to the insurance regulators the premiums we intend to charge. Up until now it's been that actuary looking out the back window. And, hopefully, we are on the verge of, I wouldn't call it a breakthrough, but the regulators will allow some other factors in the rating formula. If nothing else, if we put in 50 per cent for a fright factor because we're afraid to insure them at that type of rating. But we've historically used the actuarial techniques to establish rates and it's been proven that these are not adequate when times have changed. If the change is gradual and the judgments or the value of the land remain fairly uniform, our actuarial techniques are good and they would work. But when you have a home that was worth $10,000 in 1946 after the war selling for $60,000 now, there has been a change in exposure.

Speaker: There was a comment I'd like to make here. I paid your premium for ten years with no losses. I was advised one day that I had been cancelled the day before —

Themmes: Have to give you 30 days. I find that difficult to accept and I would like to pursue it. If you see me afterwards we'll track it down. Because that is not the way we do business.

An unidentified speaker: We have a state law that says we have to have $500 deductibes. St. Paul Fire and Marine was the only company that would sell insurance in North Dakota and our rates almost doubled. But you said you can't possibly make the rates. The last time I got a bill from St. Paul Fire and Marine it went up — the rate doubled. What are the losses in Michigan, Arizona and California? I'm not concerned about Michigan, Arizona and California. North Dakota hasn't had a loss for years that I know of. We've never had loss. I've been in the business 25 years and we've never collected. But we have our association and a state law that says I have to have a $500 deductible errors and omissions.

Reppert: And you're from what state?

Speaker: North Dakota.

Speaker: And yet I have to pay on the premium because you're losing money in Michigan, Arizona and California. I'm paying for that? To heck with it. You ought to be able to figure out a deal for North Dakota or Minnesota or whatever state it is that's not losing.

Reppert: I just can't go along with that theory. That's not insurance theory. Whether you buy life insurance or fire and casualty insurance or anything else you're going to buy it on a national basis. And if North Dakota had one bad loss up there and just because you hadn't had any and your insurance went up 17 times instead of twice —

Speaker: Right. I have to have a plant. I've got to do this, that and the other. And I can't sell title insurance on a casualty basis, I can't abstract with the typewriter underneath —

Reppert: I understand.

Speaker: (continuing) and operate that way. I have to have a complete plant.

Reppert: I'm just sure that if it could be done and I don't think it probably can, maybe St. Paul or Joe's company has been in business long enough, I just feel that if they took it state by state the premium would be so much larger in every state than it is with the average premium they're charging now.

Themmes: You're talking spread of risk again. When you rate fire insurance you've got all that property in town that can be rated. But when we're talking abstracter and title agents there aren't enough of you in the country to even get spread of risk. Spread of risk is pooling these uncertainties and I do not know what number of abstracters and title agents you have in North Dakota.

Speaker: . . . . when you don't have a loss in North Dakota for 25 years why should we be paying —

Themmes: We have had losses in North Dakota.

Speaker: . . . . Arizona and California? That's the thing I can't figure out.

Themmes: The only state in which we have not had a loss in five years is Rhode Island. We have had losses in all the other states. I don't have the numbers with me but we have had them.

I'd like to add one more comment. This is the same situation we're dealing with with regulators. Your regulators feel the same way you do that *we* are different. Every one of the regulators feel our state is different and should be rated only on our basis but you don't have the spread of risk to approach it that way.

Reppert: Yes.

Speaker: My question was is there a possibility —

Reppert: Earl, can you stand up so the people in the back of the room can hear you?

Speaker: Isn't there a possibility that by not using at least some sort of division in areas, the number of years the state has been in existence, that it certainly influences the possibility of loss? And isn't it possible that by rating them all the same nationally you have eliminated some of what would have been your better customers? I'm looking at myself. We haven't had any losses and the year that St. Paul came out and said you must buy the other coverage separately, we immediately transferred our insurance from St. Paul to St. Peter and it's worked out very well.

What I'm saying is you possibly lost some of your customers who would be paying a premium and you wouldn't have had a loss by saying your loss has to be equalized over the entire United States.

Themmes: Well if I'm reading you correctly the question is that we're overcharging some of you. If that is the case then we're undercharging everybody. With our nationwide rate we still haven't been able to underwrite the business profitably. And with our countrywide experience all in one pot you'd think there'd be enough credibility there to project rates and we have not been able to project rates so that if we fractionalize this into 50 units and attempted to work each state separate we'd be worse off than we are now I feel certain.

Possibly in time as your premium levels get high enough and your losses get significant where the numbers are big enough to work with, the separating it on a state-by-state basis may have some application or at least regional rating.

In the lawyer's business when we get into Utah, Montana, Wyoming and Idaho we do not have enough experience in any one state and we lump four states together for rating. And possibly in time this may work.

Reppert: Yes, would you use the mike please?

Speaker: I'm Betty Lynde from Colorado. I've got a question. Our state law provides that our abstracters must be bonded and St. Paul for years issued a majority of the bonds in Colorado. This year approximately 30 days before the time for the renewal of all the licenses — and you have to have the bond to get your license renewed — they sent word out that they were cancelling all the bonds in Colorado. It created quite a havoc among the abstracters because, of course, they really didn't know where to turn next. Well, we helped them. I'm on the state board and at least two or three companies that I know of came right in and are writing. But we couldn't figure out why you stopped writing the bonds and we could get no answer from the agents at all. They said they were as amazed as we were. They didn't know why because to their knowledge there had never been a loss on any of the bonds.

Themmes: I think my trip was worth it. I've heard two comments now that do not appear to me as the way St. Paul does business. Betty, if you could leave your address with me I could get a reason for you.

Lynde: All right. And another thing. While I'm telling you this I may as well tell you something else. I don't know, maybe this is or is not true, but this was reported to me secondhand. Two or three of the small abstracters went to renew their errors and omissions insurance and they previously had $1,000 deductible and they were informed that from then on it would have to be no less than a $10,000 deductible.

Reppert: Yes, back there in the back. Would you use the mike because the people clear in the back there have a hard time hearing.

Speaker: I'm Adrian Marks from Frankfort, Indiana. I'm encountering some personal problems that I think strike to the nature of our abstracter's liability insurance coverage and I am wondering if I personally misunderstand its nature.

We've carried abstracter's liability insurance for many years. We always figured that we carried it for *our* protection. The public and our customers were not privy to it. They had a contract with us and we sought protection through abstracter's liability coverage. For that reason we have always been a little bit cautious about how much we certified abstracts for. For many years we would not certify an abstract for a liability in excess of $50,000. We now go to $100,000. We feel that that is the limit that we, as a small company in a small town, can safely underwrite. We tell customers that if their properties are worth more and they want more coverage, title insurance is available in unlimited amounts.

We're now encountering problems with the Federal Land Bank due to the fact that real estate values have escalated so tremendously that farms in our area are selling for $500,000 and $600,000 each and they have asked us to certify our abstracts in those amounts.

We have refused to do it because we say we just simply are not that big. Yes, we carry abstracter's liability insurance and it is here today and we hope that it will be here tomorrow but we are not sure. And our liability under our certificate is a continuing thing.

On the other hand, we have a competitor who has no plant, who simply searches a few records and who is incorporated for $1,000 capital and very cheerfully writes an

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abstract and certifies it for $600,000 because he says he has a St. Paul policy and an umbrella and the two allow him to write coverages up to $1 million. The result is we are losing the business of the Federal Land Bank.

Now, are we really protected with St. Paul insurance to the extent that we can safely certify abstracts above our own personal net worth? And the corollary, is our competitor in the position to legitimately and honestly certify his abstracts in such an amount?

Reppert: I would have to ask a lawyer from Indiana. I do not know what the law would be on your liability, whether you could limit your liability on your certificate or not. I don't believe we could limit our liability in Missouri. We put out a little ownership and encumbrance certificate but we don't think it's going to do us any good if we have it.

Marks: Well we think we can. Our certificate very plainly states that liability under this certificate shall not exceed blank dollars which is the value on which the premium is based. And so we think we —

Reppert: Joe, could you sell him insurance so that he could buy that $600,000 abstract?

Cantrell: Well, if he has $100,000 we could cover the other half million. Our top limits are a half million, over a million. Half million single; million aggregate. He sounds to me like a good titleman. He's got problems with curb-stoners. I think most of us know what that is. But that's one of the problems that we all encounter. It's one of the problems that I spoke of a while ago. When an underwriter sees an application he doesn't understand the title business, that's a principal problem in the whole E & O field right now, I think. One of the problems is that they don't understand the title business. I'm sure Fred agrees with that.

Reppert: Does that answer your question?

Marks: No. The question is our liability under our certificate is a continuing liability. Now, as I understand it, with either comment we do not have the continuing coverage. If a loss comes up under an abstract that we made five years ago and we have current coverage we will be covered. But on the other hand, if the customer has no insurance, we would be covered next year.

Reppert: Fred's policy would cover down the road a few years.

Themmes: I was going to correct you on that. We are not a pure claims-made but we're not occurrence either. We provide 12 months discovery after the end of the policy so that you have an additional 12 months to have the claim made or discover that something went wrong — but the insurance you buy is in no way geared to your net worth, in your business or any other, as far as liability insurance is concerned. Every once in a while we see one of these verdicts where the individual does not have the money now so that every month down the road they're going to pay it a little at a time. But you do bring up a very valid point. With the existing market for abstracter's liability insurance you do not know whether you're going to have insurance five years hence. I don't think that Joe can guarantee that he'll be selling it and I can't guarantee that St. Paul will be selling it.

Reppert: Joe Jenkins I see back there. Joe?

Jenkins: There seems to be a gray area or at least there is in my mind. As we all know, there are many types of operations in the Title Insurance Agents Section. It can be the abstracter makes the abstract, and gives it to an outside attorney who examines — that the abstracter prepares his chain of title within his own organization, hands it to an attorney who is employed as an in-house attorney for the company and the examination is made, and the title report or commitment is set up. Then there is the type where the abstracter makes the chain of title; it is handed to a rate examiner — now, is the attorney, in-house attorney, covered by the errors and omissions policy under the title insurance agent? And secondly, if it's a lay-examination, which is being done increasingly all over the country, is that covered? Is the lay-examination covered by his omissions policy?

Reppert: Go ahead, Joe. You answer please.

Cantrell: In Title Pac you have an option. They offer title opinions coverage, and it's limited. The premiums are reasonable. It's limited though to in-house examinations of abstracts or searches prepared by that particular firm. We, of course, insure an attorney for title opinions, and we'd like if he had a couple of years under somebody that knows the title business. I've seen, with all due respect to the Bar Association, many attorneys come out of law school and know very little about the title industry — especially Indian land titles. I've seen some darn good title people who are not members of the bar. They know titles as well as many attorneys, and they could instantly write an opinion under the various state statutes. We require a minimum of five years experience and recommendation by the employer for any lay-examiner. So far our experience has been good. Of course, we've got our fingers crossed. In the case where you write a master policy on some raw land and that's going to be your base policy, you want to work only with reissues for future orders, and you don't want to go back and go through all the rigamarole of abstracting. You want to make a shirttail search, get enough on record to protect yourself and issue a binder. In doing that, you are giving a title opinion. It's done, as you all well know, mostly by laymen. We think this covers that gap between abstracting or searching, and the actual performance as a title agent.

Themmes: Our title insurance agents errors and omissions policy has an exclusion dealing with opinion. We do provide a provision for a buy back or an elimination of that exclusion. And this covers the firm if the firm is sued due to the acts of the person rendering the opinion. It does not cover unless the individual is an employee of the firm that gives individual coverage to that person.

In our attempts to underwrite this exposure we do not provide a blanket coverage. We ask you to name the individual or individuals that will render the title and to give us a resume of how they got that proficient without going through law school. And if the experience appears to be sufficient so that this person is knowledgeable in that area, then we will eliminate the exclusion and provide coverage for the firm.

Reppert: Does that answer your question, Joe?

Jenkins: Yes that certainly does. The point I'd like to have . . . is whether or not St. Paul insures lay-examiners.

Reppert: He says they do.

Themmes: We don't insure all of them. If we feel their experience is adequate —

Jenkins: They have to be approved?

Themmes: That's correct.

Jenkins: But you do and can approve if the person is qualified a lay-examiner.

Themmes: Yes.

Jenkins: For an opinion?

Themmes: Right.

Speaker: My name is Hugh Loree. I'm from Oceana Abstract and Title Company in Michigan and am also a practicing attorney. Up until the first part of this year I was insured both for attorney's malpractice and also abstracter's liability and title insurance agent's liability with St. Paul.

On my last renewal for my attorney's liability I was informed that St. Paul would no longer write the $1,000 deductible which I previously had. The minimum deductible that I could have was $5,000. The Michigan State Bar offers me for approximately the same premium (it's about $20 higher a year) the same coverage so far as the attorney is concerned with no deductible. As soon as I could get the State Bar coverage, I cancelled the St. Paul policy so far as attorney's malpractice. My questions to St. Paul are:

- When my abstract, errors and omissions and title insurance agent's policies come up are you going to cancel me because I don't have my attorney's policy with you too?
- When my abstracter's policies come up am I going to be informed that that's now a $5,000 deductible?

Themmes: I can't answer all of the questions. We, I guess in April of this year, tried to file the lawyer's policy in Michigan which Michigan did not approve so we are withdrawing from the market in Michigan because we no longer sell the occurrence form that Joe was talking about.

If our files are cross referenced properly we'll catch you on your title agent's renewal. I'm assuming the abstracting is done under a separate entity from your law practice?

Loree: My title company is a corporation. I own all the shares of stock but two. My wife owns those.

Themmes: As far as the abstracting goes it's a separate corporation. We don't feel there is a hangup on insuring that and as long as you have the abstracting — is the title company also incorporated?

Loree: The title company is incorporated. My law practice is not.

Themmes: Okay. As long as the other two functions are incorporated there should not be a problem. I cannot answer you on the deductibles. We have allowed local option. We have these 45 offices around the country where some of the offices are using larger deductibles based on the individual circumstances in their particular state. While we use a nationwide rating basis, we do have different approaches in various states based on local conditions. If our frequency in Michigan has been rather disproportionate and high then our deductibles would be increasing.

Loree: But it probably would be a fair conclusion, since claims keep going up everywhere, that probably those deductibles will continue to go up. Is that a fair assumption?

Themmes: It's a fair assumption but it's not necessarily going to happen. But I do not have the exact answer for you.

Loree: Thank you.

Reppert: Fred, in states where they have not approved your new rates I read something about consent to rate in a letter from Mr. Clifford that was sent to Mr. Vance. Would

(*continued*)

you explain to the group on how that works?

Themmes: Well, in a number of states it's permissible for an admitted carrier to use a rate different from that on file by having the insured sign a form that says he agrees to the rate that's higher than the one on file and then to give a reason for it. We are consenting to rate in a few states. But the problem isn't limited just to abstracters and title insurance agents. The states that are not approving this rate filing aren't approving any others so it's a matter of putting on more staff to handle the paper shuffling because when we pull the file for renewal we don't just automatically renew it and send it out. First we send the form out to have it signed that they consent to the rate. Then we handle the file again when it comes in. Then we mail it back to the state. Then we handle the file again when it comes back from the state. Some of our offices just wonder if it's worth the hassle. But in the states where we are not getting approval, I am giving our offices the option. They can withdraw from the market or go through to consent to rate. But there's a limit to how much additional expense you can incur and keep your service going.

Reppert: I see. Questions? Yes?

Speaker: I'm Jim Suelzer from Fort Wayne, Indiana. We've talked at these meetings about the employee of the title company who determines what sort of encumbrance ought to go in Schedule B or a binder. Now I hear talk shifting to lay-examiners who are rendering opinions of title and who need to be identified to the underwriter — at least to St. Paul — and need to have a special premium paid for them. Have I skipped over a step here? The one where the employee just decided what ought to be the encumbrance in Schedule B I thought we had pretty neatly put aside as not being a practice of law and not causing any trouble to anybody no matter what the educational background or experience record of the employee was. It was simply an employee making a decision on behalf of the title company employer and now we're talking about a permissible exclusion to the unauthorized practice of law. I'm lost on this. Is this a distinction without a difference?

Reppert: Well I always understood that the man who did examining in my office who might be a layman that was rendering an opinion when he told the secretary to put so and so into Schedule B. That was his opinion and should be in a separate — if he told the girl to put in XYZ or a certain deed of trust in Schedule B and she did not put it in, that's a title insurance agent's error that's been made. But the examination after the abstract department gives it to the examiner who examines it and makes a decision as to whether to put this in or that in, that's an opinion and that has to be covered by the lawyers. Am I correct, Joe?

Cantrell: I think so. I don't think that we're trying to define the practice of law in this at all. What we're trying to do is provide a coverage that covers something which might be construed as that by a court. There is a gap, as you know, between the certification of an abstract or a search and the issuance of a binder with Schedule B on it. Somebody makes a decision, which is called an opinion. And the title opinion is ordinarily a practice of law. So where it's done by a qualified layman we think that layman should be insured and insurance would be available to them. What we're trying to do is bridge a gap.

Reppert: Now tell us about what your policy does in that?

Cantrell: Well, I think our policies are almost the same on this particular basis. They excluded with "buyback option", and we offered it as an option, so it turns out the same thing.

Reppert: Does that answer your question? Good.

Speaker: Mr. Cantrell, did I understand you to say that the loss discovered outside of the policy —

Cantrell: A loss discovered after the end of the policy term, no. That's claims-made. That's the argumentative side of claims-made. But it does pick up claims which occur due to errors prior to the inception of the policy.

Speaker: Did I understand you to say that yours only covers for 12 months?

Themmes: In that respect our policy does the same except Joe's stopping now and ours stopping 12 months later. But the subsequent policy that is issued has prior acts coverage that will come back and pick those up under that policy.

In the claims-made policy, as far as coverage goes, what it covers doesn't differ from the occurrence but the accounting system is different. You count the claims that are reported in this year rather than the mistakes that are made during this year. The policy is priced according to what is going to be reported during this year rather than what's going to be reported in the future.

Speaker: I'm not so concerned about pricing as I am in covered loss.

Reppert: Say you made a mistake ten years ago. You did not have insurance with either company ten years ago but you do have at the time the loss is reported. But you found out that you made that loss. You didn't know you made the mistake. Now you know you made it ten years ago. It's brought to your attention. Now do both of your policies cover that?

Cantrell: Ours does.

Speaker: I'm just trying to figure it out in my mind. If a loss occurred today and it's not discovered until after your policy expires —

Cantrell: Renew it and you'll be covered.

Speaker: What if it don't renew it?

Cantrell: Well, so sorry.

Speaker: And I go to St. Paul and it's discovered under St. Paul's contract but it happened prior to —

Themmes: If you did not know this was going to be discovered or didn't know it had happened, we have prior acts coverage the same as American Bankers that will go back to the past. The problems with claims-made is what happens when you get to the end of your policy? You've got to do something that will cover what will come up in later years.

Reppert: Other questions? Surely you're not through yet. Yes?

Speaker: Under New Jersey law where we use county records, the indices are not a part of the record. There's been a bill introduced to allow the courts to charge an extra fee in order to buy insurance in order to make the indices part of the record. Will this be reflected in any insurance rate?

Cantrell: Well, I can tell you that in New Jersey your rate is double that of Oklahoma because of your system of searching and abstracting. The self-contained plant we feel is much safer than where you have to search county records or parish records — whatever the case might be — in whatever state. We feel that where you maintain your own sets of records, your rates should be substantially lower than where you're searching records based on somebody else's work.

Reppert: Joe here mentioned something about title claims. Could you tell us about some of the types you already had.

Cantrell: I thought it might be interesting to see the trend that we happen to note in claims as to where most of them occur. In frequency — not maybe in dollars — most of the claims we see reported under E & O are claims due to missed easements.

This is where I usually get a little evangelistic about establishing a set of arbitrary indices if you're doing your own work. And using such a system will help eliminate the possibility of missing an easement. It can be done, and it also increases the value of your plant.

We find that missed mortgages seem to be the second most common. I'm talking about frequency, not dollars. And I'd like to know, too, if it's possible, how many states have a statute of limitations on their certification of their abstracts or their searches. Do you have one in Kansas? How many years? Five years in Oklahoma. Any other states?

Reppert: We had a five-year statute in Missouri until a court ruled that this law starts running from the time a loss is discovered and not from the time that it's made.

Themmes: I still think the type of claim activity we're getting is the type we anticipated when we insured the abstracters. And I agree with Joe that these missed easements, we've got one now worth $100,000 that looks bad. The sand company bought a sand pit but they can't take sand out of it because of the road easement.

Reppert: Yes?

Speaker: I'm Dave Upton from Michigan. Joe, you mentioned a factor which Fred said couldn't be done. You're saying that you're insuring higher in New Jersey than other states. I think this might be one reason you're giving a lower cost premium to us in Michigan let's say than you're able, Fred. And I think that St. Paul should check this out because if you don't do it, we've been covered by St. Paul for 20 years and this year we transferred from your company to Joe's because his premium was half of what you're charging us. And I think that if it's possible for an underwriter to do this then I'd hope that St. Paul would look at it, too, because I don't want to see us in a boat where we only have one company writing for the underwriters. And E & O. I hope that St. Paul would do that.

Themmes: I just thank God that Joe got into the act. Otherwise we may be the only boat. We're trying to find a way to stay in the market as broadly as we can on a profitable basis. And that's my purpose in coming here today. Heretofore, we have not been close to the abstracters and title agents and I'm here to see what I can steal from Joe and have rub off from the rest of you. If we can find a way to write the insurance at a lower premium and make a profit at it we certainly will do it. Possibly, we're going to have to regionalize in our rating approach. But we will not hang it up without trying. Nothing will solve our problems better than if St. Paul makes a profit. I'd get a raise next year and you'll have insurance.

Reppert: They have a little better inkling of what the whole situation is about don't they?

(*continued*)

errors and omissions—(*continued*)

Upton: And they're a very good company, too.

Cantrell: Well I'd like to say to David, of course we appreciate your business, but in some states, they filed an increase and got it before we even knew about it. We were shocked when we saw the spread between our base rates, as we call them, which are the minimum state rates, and their current rate in some places. In some states, though, we might be higher than under the old rate structure prior to the most recent increase. We may be higher but it's states where we think the exposure is. And we think they should bear the load. We have some states that have very good rates, and some are fairly high.

Let's say it could, if it came down to a decision as to whether that risk was insurable or not — this is hypothetical. And I had to choose between a plant with arbitrary system and one that didn't have it. I'd be sure to take the one with the arb's. But, no, we would file on a state system. Our rates are filed by state and, within it, a risk is insurable or it isn't. It's based on what we find in that application form which we have just revised for the fifth time. We are attempting to improve it through our knowledge and input from you all, to make it simpler.

Jenkins: I really have no problems with rates though that's a good part of my question. We recently had a problem in our agency — not with either company that's represented here — and I see the problem again with the liberal courts where when a petition is filed for actual damages, in whatever amount, they have a big prayer for punitive damages. I would like to see this open a little bit in that regard because if that is restricted from the policy, which I assume that you'll both say that it is, then you're dealing with trying to defend one lawsuit and going in two totally separate directions.

Reppert: Do you understand?

Cantrell: I do from experience. I'll start this and maybe Fred can fill in for me on this thing. I happen to be being sued right now by another agency in a malicious type case and there's punitive damages —

Jenkins: It need not be malicious now.

Cantrell: They are after a big bunch of money. They know they have no case. The man's renewed with us four times since the suit was filed so we don't think they have much of a case.

In Oklahoma there's a statute, as I understand it, which prohibits judgment for punitive damages. You just might work on your legislatures.

Themmes: Well we ran into that in Oklahoma. The court said we've got two problems. We have public policy that insurance shouldn't respond to punitive damages. And the other problem is that we have an insurance company selling a policy with an exclusion and they stuck us with punitive damages.

Cantrell: The policy owes you a defense at the least, I would hope.

Jenkins: Well does it owe you a defense against punitive damages? But this can happen today and it need not be a malicious act anymore the way I understand punitive damages have been awarded by the courts. But, say you have actual damages and a suit, and we've seen some in the title industry. They've a record now where say the actual damages might be $5,000 and the punitive damage prayer is $100,000.

(*continued on page 50*)

Election of National Officers

By proper nomination and second, the following officers were unanimously elected for 1976-77:

President — **Philip D. McCulloch,** Vice Chairman of the Board, Hexter Fair Title Company, 1307 Pacific, Dallas, Texas 75202

President-Elect — **C.J. McConville,** President, Title Insurance Company of Minnesota, 400 Second Avenue, South, Minneapolis, Minnesota 55401

Chairman, Finance Committee — **Robert C. Dawson,** President, Lawyers Title Insurance Corporation, 3800 Cutshaw Avenue, Richmond, Virginia 23230

Treasurer — **Fred B. Fromhold,** President and Chief Executive Officer, Commonwealth Land Title Insurance Company, 1510 Walnut Street, Philadelphia, Pennsylvania 19102

Board of Governors (Term Expiring 1979)

Marjorie R. Bennett, Secretary-Manager, Menard County Abstract Company, 210 E. Douglas Street, Petersburg, Illinois 62675

Robert D. Dorociak, President and Chief Executive Officer, USLife Title Insurance Company of Dallas, 1301 Main Street, Dallas, Texas 75202

Thomas G. Kenney, President, Transamerica Title Insurance Company, 600 Montgomery Street, San Francisco, California 94111

Betty Lynde, President and Manager, Lawyers Title of Pueblo, Inc., 519 N. Santa Fe Avenue, Pueblo, Colorado 81002

A.L. Winczewski, President, Winona County Abstract Company, Inc., 535 Junction Street, Winona, Minnesota 55987

Election of Title Insurance and Underwriters Section Officers

By proper nomination and second, the following officers were unanimously elected for 1976-77:

Chairman — **Robert C. Bates,** Executive Vice President, Chicago Title Insurance Company, 111 W. Washington Street, Chicago, Illinois 60602

Vice Chairman — **Frank Lucente,** Executive Vice President, Title & Trust Company of Florida, 200 E. Forsyth Street, Jacksonville, Florida 32201

Secretary — **Fred H. Benson, Jr.,** President, Burton Abstract and Title Company, 1650 W. Big Beaver Road, Troy, Michigan 48084

Executive Committee

Joseph D. Burke, Executive Vice President, Commonwealth Land Title Company, 1510 Walnut Street, Philadelphia, Pennsylvania 19102

Seymour Fischman, Chairman of the Board, Security Title and Guaranty Company, 630 Fifth Avenue, New York, New York 10020

Richard C. Mohler, Senior Vice President and Region Manager, Pioneer National Title Insurance Company, 719 Second Avenue, Seattle, Washington 98104

Morris E. Knouse, Vice President, Berks Title Insurance Company, 101 N. Sixth Street, Reading, Pennsylvania 19603

Member-At-Large, Executive Committee

Carloss Morris, Chairman of the Board, Stewart Title Guaranty Company, 2200 West Loop, South, Houston, Texas 77001

Election of Abstracters and Title Insurance Agents Section Officers

By proper nomination and second, the following officers were unanimously elected for 1976-77:

Chairman — **Roger N. Bell,** President, The Security Abstract and Title Company, 434 N. Main Street, Wichita, Kansas 67202

Vice Chairman — **Fred H. Timberlake,** President, Service Abstract and Title Company, 1502 Texas Avenue, Lubbock, Texas 79401

Secretary — **Margaret A. Thurston,** Manager, Converse Land Title Company, 112 N. Second Street, Douglas, Wyoming 82633

Executive Committee

John A. Cameron, Vice President, Standard Abstract & Title Company, 708 W. Second Street, Little Rock, Arkansas 72201

W.O. Cooper, Jr., President, The Bryan County Abstract Company, 114 N. Third Avenue, Durant, Oklahoma 74701

Nancy E. O'Harra, President, Hancock County Title Company, 8 West Side Square, Carthage, Illinois 62321

John C. Reppert, President, Clay County Abstract Company, 8 East Franklin, Liberty, Missouri 64068

Member-At-Large, Executive Committee

Nic S. Hoyer, President, Wisconsin Title Service Company, Inc., 700 N. Water Street, Milwaukee, Wisconsin 53202

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(continued)

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errors and omissions—(*continued from page 48*)

Cantrell: Like down in Orange County?

Jenkins: Right.

Cantrell: We're familiar with that, too. But now you have a cause of action for their defense. Your punitive damages would be a second cause of action.

Jenkins: Well I'm not sure I want to be defended by somebody that doesn't have to pay it if they lose.

Cantrell: I see your problem. But that's the way I see it. Now Fred may —

Themmes: No, we do not have a punitive damage exclusion in the policy at the present time so when the prayer comes in stating a cause of action which would fall within coverage, maybe you did something wrong and the plaintiff does have a cause of action against you. It's a very novel lawyer that doesn't put a punitive damage prayer in every complaint.

Jenkins: It's worth a shot.

Themmes: In those cases, regardless of what the insurance company would like to do, if one of the causes of action fit coverage generally the insurance company is responsible for those defense costs and if we have a prayer for a small amount of compensatory damages and a large punitive damage then to avoid this conflict of interest we better get an attorney firm that you and we both agree on. We may get stuck for the expenses. The law requires us to fulfill our policy promise and one of our promises is to defend. And where there are actions covered and actions not covered you can't stand in court and say we're only defending the compensatory damages because the two are meshed so the defense has to be a total defense. That's whether you agree to do it and leave us out of it all together or we agree to do it all with a firm that's agreeable to both of us. But we just can't walk away from those. The defense has to be provided.

Jenkins: It creates quite a problem in the defense.

Themmes: Yes, it does.

names in the news

Commonwealth Land Title Insurance Co. has announced two promotions. **W. Nicholas Pope** of Flatwoods, Ky. was promoted to vice president of the Louisville office. **Robert D. Dougherty** of Levittown, Pa., was advanced to the position of branch manager and closing officer.

Lawyers Title Insurance Corp. announced the election of **Edward A. Blaty,** vice president in Troy, Mich., to vice president and state manager. He succeeds **Charles E. Brodeur,** who was transferred to the home office in Richmond, Va.

Other Troy, Mich., elections include **Craig H. Husband** to assistant vice president and state sales manager and **John H. Brenner** to branch manager.

In the Chicago Lawyers Title office, **John P. O'Neill** was elected a senior title attorney.

George A. Metzger was named a first vice president of The Title Guarantee Co., New York. He joined the company as vice president and manager of the Jamaica, Long Island branch and was elected a senior vice president and state sales manager in 1973.

Title Guarantee Co. has announced the election of **Annarose Sleeth Bowers** as corporate secretary. She has been associated with the company since 1972 and served as senior title examiner and associate counsel.

left:
John H. Brenner
right:
Edward A. Blaty

left:
George A. Metzger
right:
John P. O'Neill

left:
W. Nicholas Pope
right:
Craig H. Husband

A recent guest at American Title Insurance Company in Miami was Wayne Markham (center), real estate writer for the Miami *Herald.* Markham, the first place winner of the ALTA-sponsored Consumer Information Category of the National Association of Realtors Creative Reporting Contest, was presented the first place check at American Title headquarters by ALTA Public Relations Committee member and American Title Senior Vice President James W. Robinson (right). Also pictured is the company President Frank B. Glover. Second and third place winners of the ALTA-sponsored category were Glenn B. Morris of the Youngstown (Ohio) *Vindicator* and Margaret Daly of *Better Homes and Gardens,* respectively. Their pictures appeared in the December issue of *Title News.*

ALTA action

Over 8,000 copies of the ALTA publication, *The Title Industry: White Papers,* Volume I, are in circulation, according to Mark E. Winter, ALTA director of government relations. The white papers also have been made a part of the U.S. Senate Banking Committee hearings on the secondary mortgage market operations and the House Banking Committee oversight hearings on urban revival.

Members of the ALTA Standard Forms Committee met January 10-11 in Las Vegas. The meeting included discussion of the Closing Protection Letter, drafted for possible adoption as an Association form. The Closing Protection Letter was mailed in December to all ALTA members and associate members from Committee Chairman Marvin C. Bowling, Jr.

ALTA Public Relations Program activity for the year began early this month with the mailing of three, 30-second television celebrity film announcements to stations from coast to coast. Featured on the TV spots are Marty Robbins, country and western music star; Henry Mancini, contemporary music personality; and Larry Linville of the CBS "M*A*S*H" series. The celebrities suggest that home buyers learn about land title protection and purchasing real estate in advance — and write ALTA for free information on the subject.

Shooting is scheduled for late January on two 60-second ALTA television public service film minidramas that portray actual land title problems in an amusing manner — and suggest that home buyers consider owner's title insurance. One of these film clips is planned for distribution in the spring, with the other to be sent out in the fall.

ALTA Public Relations Committee members include Chairman Patrick McQuaid, Randy Farmer, Frank O'Connor, LeNore Plotkin, Jim Robinson, Ed Schmidt and Bill Thurman.

ALTA members recently were sent a Title Insurance Political Action Committee (TIPAC) mailing requesting member corporations to grant TIPAC permission to solicit their employees during the 1977 calendar year, it was announced by TIPAC Chairman Francis E. O'Connor. Solicitation approval is limited to one trade association.

O'Connor said it is imperative that ALTA members thoroughly consider the permission request in order for TIPAC to remain an effective industry voice.

Heading the agenda at the ALTA Executive Committee meeting January 8 at the Royal Orleans Hotel in New Orleans was discussion of the Mid-Winter Conference Program. Among other business, was assignment of ALTA representatives to attend 1977 state-affiliated annual conventions. Attending the meeting from the ALTA Washington office was Executive Vice President William J. McAuliffe, Jr.

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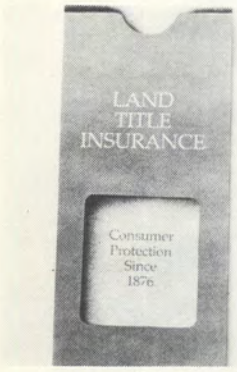

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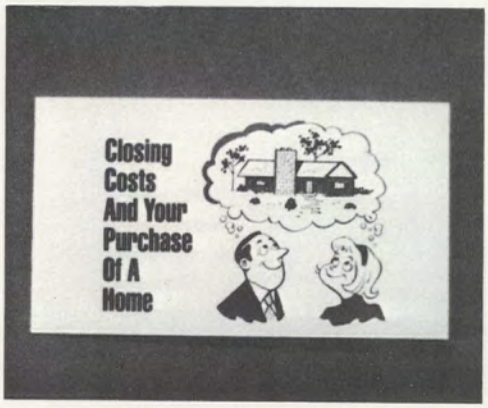

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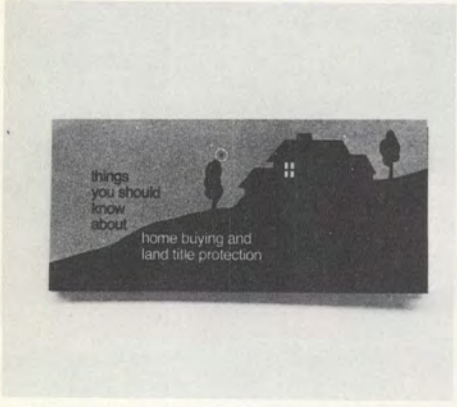

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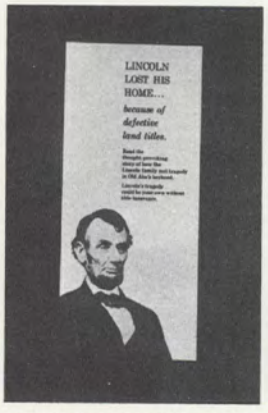

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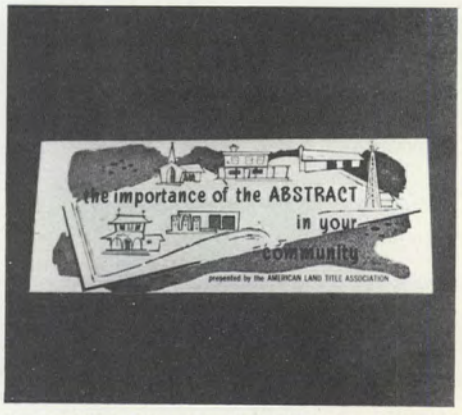
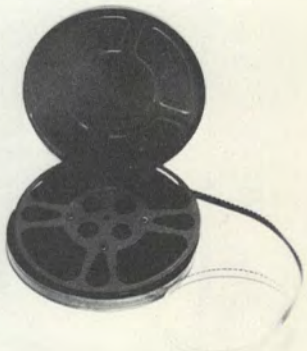


THE IMPORTANCE OF THE ABSTRACT IN YOUR COMMUNITY. An effectively illustrated booklet that uses art work from the award-winning ALTA film, "A Place Under The Sun," to tell about land title defects and the role of the abstract in land title protection. Room for imprinting on back cover, $23.00 per 100 copies.

(RIGHT) BLUEPRINT FOR HOME BUYING. Illustrated booklet contains consumer guidelines on important aspects of home buying. Explains roles of various professionals including broker, attorney and titleman. $24.00 per hundred copies. (RIGHT) ALTA FULL-LENGTH FILMS: "BLUEPRINT FOR HOME BUYING." Colorful animated 16 mm. sound film, 14 minutes long, with guidance on home selection, financing, settlement. Basis for popular booklet mentioned above. $95 per print. "A PLACE UNDER THE SUN." Award winning 21 minute animated 16 mm. color sound film tells the story of the land title industry and its services. $135 per print.



Calendar of Meetings

March 2-4, 1977
ALTA Mid-Winter Conference
South Coast Plaza Hotel
Costa Mesa, California

April 14-16, 1977
Oklahoma Land Title Association
Skirvin Plaza Hotel
Oklahoma City, Oklahoma

April 24-26, 1977
Eastern Regional Title Insurance Executives Meeting
Williamsburg, Virginia

April 28-30, 1977
Arkansas Land Title Association
Holiday Inn, Lake Hamilton
Hot Springs, Arkansas

May 1-3, 1977
Iowa Land Title Association
Eddie Webster's Inn
Des Moines, Iowa

May 5-8, 1977
Texas Land Title Association
St. Anthony Hotel
San Antonio, Texas

May 12-14, 1977
New Mexico Land Title Association
Four Seasons Motor Hotel
Albuquerque, New Mexico

May 12-14, 1977
Washington Land Title Association
Sheraton Hotel
Spokane, Washington

May 22-24, 1977
New Jersey Land Title Association
Seaview Country Club
Absecon, New Jersey

June 5-7, 1977
Pennsylvania Land Title Association
Hotel Hershey
Hershey, Pennsylvania

June 5-8, 1977
New England Land Title Association
Bretton Woods
Mount Washington, New Hampshire

June 8-11, 1977
Southwest Regional Title Insurance Executives Meeting
The Broadmoor
Colorado Springs, Colorado

June 11, 1977
ALTA Executive Committee Meeting
The Broadmoor
Colorado Springs, Colorado

June 16-18, 1977
Michigan Land Title Association
Grand Hotel
Mackinac Island, Michigan

June 16-18, 1977
Oregon Land Title Association
Sunridge Inn
Baker, Oregon

July 28-30, 1977
Colorado, Idaho, Utah and Wyoming Land Title Associations
Ramada Snow King Inn
Jackson, Wyoming

August 11-13, 1977
Montana Land Title Association
Fairmont Hot Springs Resort
Butte, Montana

August 12-14, 1977
Kansas and Missouri Land Title Associations
Crown Center Hotel
Kansas City, Missouri

August 25-27, 1977
Minnesota Land Title Association
Holiday Inn
Moorhead, Minnesota

September 22-23, 1977
Wisconsin Land Title Association
Telemark Lodge
Cable, Wisconsin

September 29-30, 1977
Nebraska Land Title Association
Ramada Inn West
Omaha, Nebraska

October 12-15, 1977
ALTA Annual Convention
Washington Hilton
Washington, D.C.

November 30, 1977
Louisiana Land Title Association
Royal Orleans Hotel
New Orleans, Louisiana

American
Land Title
Association

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Washington, D.C. 20036