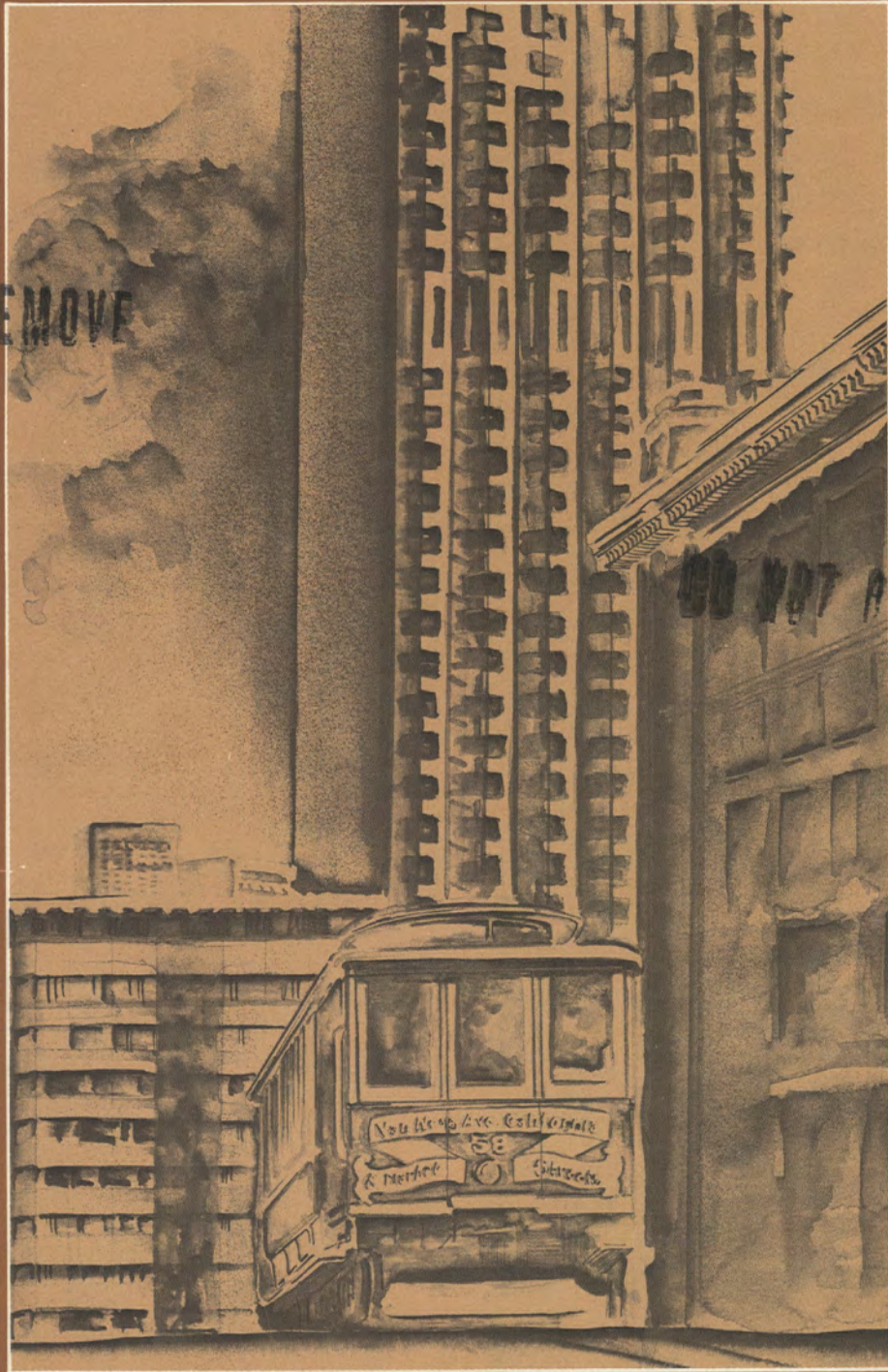


# TITLE NEWS



ALTA Convention  
in Retrospect

January 1980

# The Role of Title Insurance in Conveyancing

## A Title Insurance Seminar

This meeting is sponsored by the American Land Title Association  
In Cooperation with the Dixie Land Title Association  
9 a.m. to 5 p.m., February 22, 1980 in the Marriott Hotel, Atlanta, Ga.

### Topics and Speakers:

**Title Insurance Coverage**—*Marvin C. Bowling, Jr.*  
Senior Vice President and General Counsel  
Lawyers Title Insurance Corp.  
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*Robert T. Haines*  
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Chicago, Illinois

**Use of Title Insurance by the Lender**—*Neal M. Kamin*  
Associate General Counsel  
Life Insurance Company of Georgia  
Atlanta, Georgia

**Use of Title Insurance by the Practicing Attorney**—*James M. Ney, Esquire*  
Alston, Miller & Gaines  
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**Title Claims**—*Ted W. Morris, Jr.*  
Assistant Vice President and Associate Title Counsel  
Pioneer National Title Insurance Co.  
Atlanta, Georgia

Registration fee of \$65 per attendee covers meeting costs, handbook and lunch.  
Send names and addresses of registrants and remittance, made payable to the American Land Title Association:

American Land Title Association  
Suite 705, 1828 L St., N.W.  
Washington, D.C. 20036

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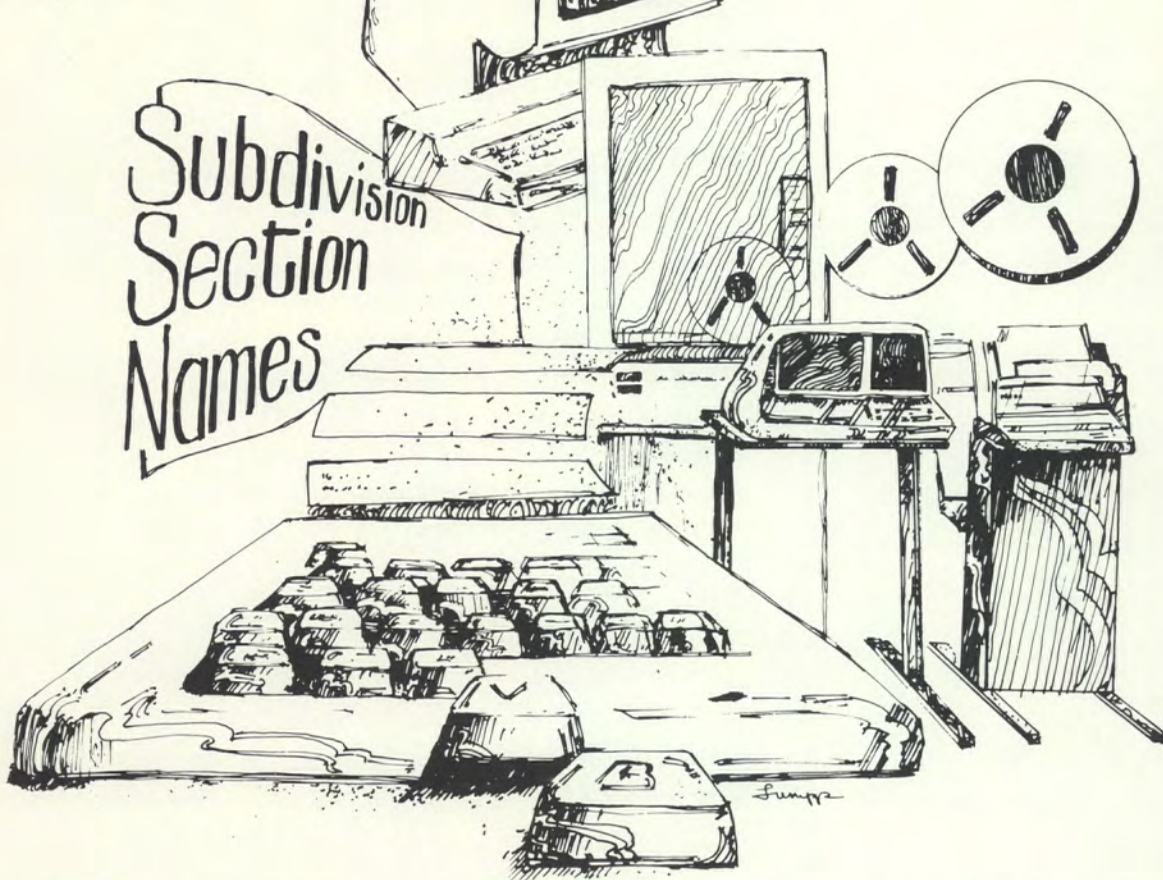
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## A MESSAGE FROM THE PRESIDENT

**O**n Dec. 12, 1979, I spent most of the day in ALTA's Washington headquarters with Bill McAuliffe and his staff. We spent several hours in a brainstorming session. It was a very gratifying experience. All members of our Association would have been pleased and proud to observe the intelligence, experience and dedication of the ALTA staff.

Much of our discussion centered on identifying and analyzing real or perceived strengths and weaknesses of the title industry and our Association. This discussion produced a puzzling and somewhat disturbing paradox.

We concluded that the general image of abstracters and agents in their home communities is excellent. They are involved in every kind of civic, charitable and religious activity. Some are involved in important political activities. They assume leadership roles in all these endeavors. They are respected as businessmen and have the best possible relationship with the financial, legal and real estate segments of the communities which they serve.

The underwriter members of our Association enjoy similar positions in their home cities and states. They are highly respected corporate citizens. They support civic, charitable and religious organizations through their foundations and by encouraging their employees to be involved in their communities. Their top officers frequently give much time and leadership to worthy causes. All enjoy a reputation for being well managed and financially sound.

Furthermore, our discussion on that day led us to conclude that ALTA is one of the most respected of all trade associations in Washington. We have excellent relations and credibility with such groups as HUD, the Federal Home Loan Bank Board, Mortgage Bankers Association, Federal National Mortgage Association and the United States League of Savings Associations. Our relations with the National Association of Realtors likewise are positive. Our Washington staff has an image of intelligence, hard work, competence and reliability.

The paradox that evolved from this brainstorming session was our unanimous conclusion that notwithstanding the image of abstracters, agents and underwriters and the image of the American Land Title Association in Washington, the title industry in general has an extremely poor image among members of Congress, many federal agencies, state legislatures, some state insurance departments, among segments of the press and the general public. Our industry frequently is criticized for charging too much for what we do. We are described as inefficient, uncreative and even unnecessary.

Why this paradox?

In my view there are at least three factors which have caused this unfortunate image to become a reality. First, we are a relatively new industry. Life insurance was known during the time of the Roman Empire and property casualty insurance predates the birth of Christ. Title insurance became a major industry only following World War II.

Second, the process of searching, examining and insuring titles can be extremely complex. Most, if not all, of our critics do not understand the function of title insurance or the significance of the coverage we provide. We have all too frequently been blamed for the shortcomings of other parties to the real estate transaction.

Third, those of us whose lives and careers have been totally involved in the title business for many years have fallen short in finding ways to help the general public, members of Congress, state legislators, state regulators, federal agencies and the press to understand both the complexity and real value of the product we sell.

In recent years we have talked a great deal about the cost of producing and marketing our product. But we have said far too little about its function and its value.

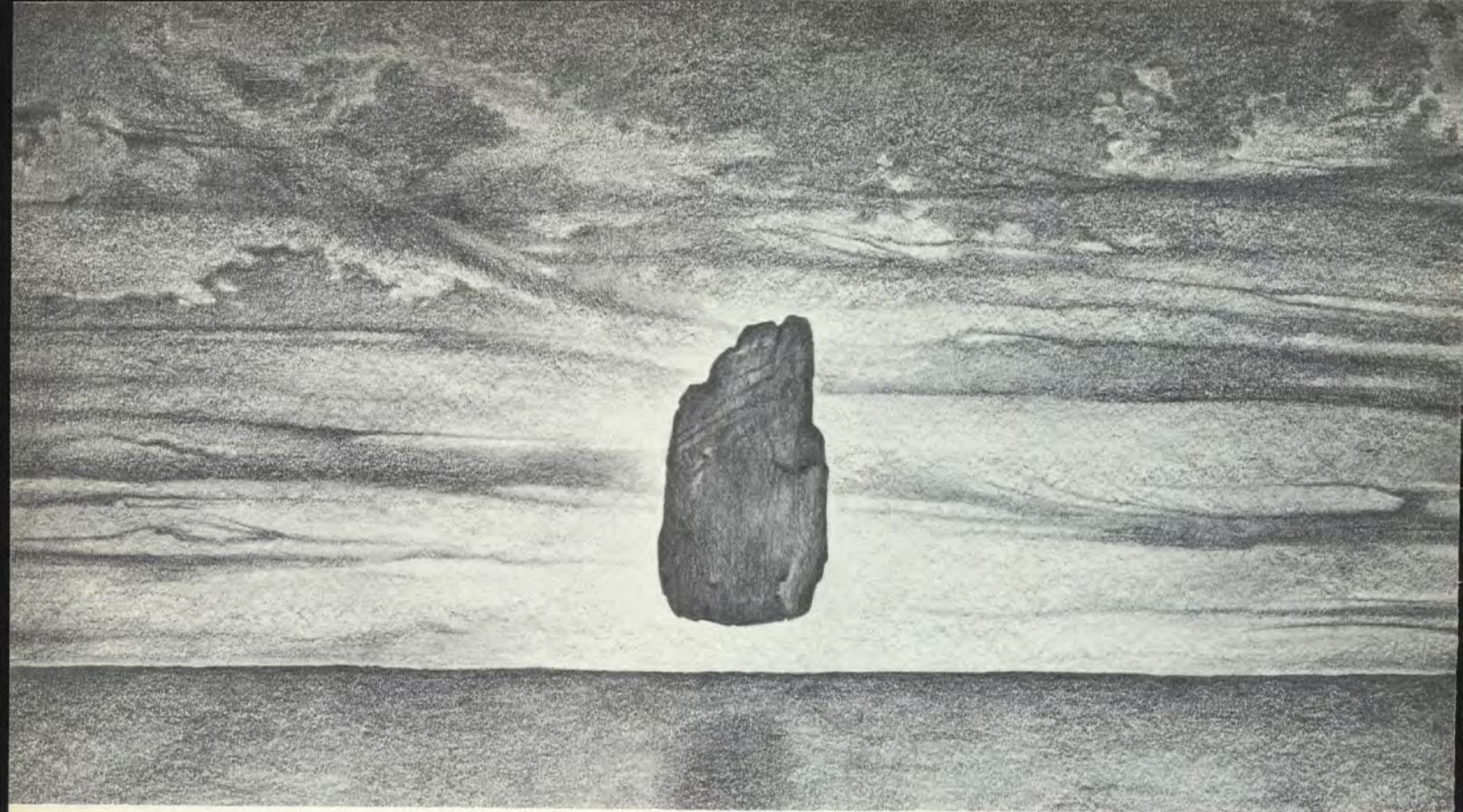
We produce a valuable product that is essential to the speedy and efficient functioning of the process of buying, selling, mortgaging and leasing interests in land. Our product has a valuable place in any society where private ownership of land is established and protected by the laws of that society.

Clearly, the time has come for our industry and our Association to devote a great deal more time, effort and money in helping the general public as well as our critics to fully understand the nature and complexity of our product. We must do much more to communicate the true value of title insurance to members of Congress, federal agencies, state legislatures, state insurance departments, the press and the general public.

I consider this to be a primary challenge to our industry and our Association during the '80s.

*Robert C. Bates*

Robert C. Bates



# Stough County's Floating Parcel.

It's pretty hilly. You'll find no structures on the floating parcel. Certain mineral rights have been conveyed.

There's also a power line easement. Someone thought a good, strong power line would help anchor the parcel. But it didn't work out.

As you might imagine, the legal description of the floating parcel is out of the ordinary. One person said, "Now *there's* a problem that no computerized title plant could handle."

Wrong. Neither of the two title companies in the county as yet owns a LANDEX minicomputer system for automating title plants. But a LANDEX system could handle the problem just fine.

LANDEX, you see, is the experienced system. Twenty-six counties in ten states are served by LANDEX automated plants. So far, they've not reported any floating parcels. But with all that coverage, LANDEX has become used to out-of-the-ordinary property descriptions.

If you're looking for a proven, on-line minicomputer system for your title plant - a system that goes into your offices, where your people run it, under your control - then you'll want to know about LANDEX.

May we tell you more? Just write or telephone -

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# The President's CONVENTION REPORT

Roger N. Bell

Aside from being financially strong, I think one of the big pluses of ALTA is our Washington staff. We have a small but highly efficient, knowledgeable staff with Maxine Stough, public relations associate, who's shaped up *Title News* considerably and who did the program format for the convention and Gary Garrity, whose creation of Sgt. Braxton in our public service radio announcements, just won first prize this year in the 1979 national CINDY competition that's run by the Information Film Producers of America. This is tantamount to an Oscar for public service presentation. So we're very proud of that award and of Gary.

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**"I feel good about the ALTA and the direction it's going these days. We have a great number of competent people that are spending a lot of their personal time to try to solve some of the problems that you and I face in our title operations."**

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Then there's Rich McCarthy, our director of research, who just published a special *Title News* report that the ALTA Organization and Claims Committee of the Abstractor and Title Insurance Agents Section did. Other staffers are Dave McLaughlin, who's our business manager and responsible for running these conventions and does such a splendid job, and Mark Winter, director of government relations, who will speak to you later. We just completed our largest federal reception in Washington, D.C., and we have a federal seminar coming up Nov. 13. Of course, Mark's hard and diligent work is responsible for the success of these events.

It is our executive vice president, Bill McAuliffe, who put this team together and supervises its functioning. So we're very blessed with a fine Washington staff along with their secretaries.

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Mr. Bell is the 1978-79 ALTA president. He is president of The Security Abstract and Title Co., Inc., Wichita, Kan.

We're involved in an almost impossible number of problems. I certainly don't want to relate all of them to you this morning, but I do want to touch on a few things. They range from such cosmetic improvements as we took yesterday to improve the appearance of the membership application and certificates, to such serious industry-wide traumas as controlled business.

Controlled business is a problem, of course, that cuts across both the underwriter and abstractor sections. At the Mid-Winter Conference, the Executive Committee, the Government Relations Committee and the Federal Legislative Action Committee voted unanimously at a joint session that we are opposed

to controlled business and that we will develop a white paper on the subject. The white paper is now in the second draft. Those three committees will discuss the new draft in another joint meeting this afternoon.

The Association, through ALTA General Counsel Tom Jackson and his law firm, has been active in unauthorized practice matters upon invitation from state associations. This involvement includes a wide range of states. They are Oklahoma, Virginia, Indiana, Maryland, Illinois, Kentucky and South Carolina.

The Association produced its first title insurance seminar April 21 in Boston. Approximately 240 people attended. A similar seminar

(continued on page 20)



**The 1978-79 President Bell listens intently to a report given at the ALTA Board of Governors meeting over which he presided.**

# America's ENERGY CRISIS

Glenn T. Seaborg

I will begin by assuring you, or maybe admonishing you, that we do have an energy problem. I will try to place our dilemma in some quantitative perspective. We're in the situation that we're in today because we've allowed ourselves to gradually depend on the importation of foreign oil in order to meet our requirements.

Ever since the 1960s, we have taken the easy way out. We have met our incremental needs by the importation of oil. This has reached the stage today where we're importing oil to the extent of some \$70 billion per year—perhaps more, at the rate that we are undergoing inflation. This and the energy problem in general are the leading contributors to our inflation and to the general decline of the dollar and our economy.

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**"In other words, America, with about six percent of the world's population, uses about 30 percent of all the energy that's consumed."**

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This is a problem—this energy problem—that simply must be solved.

Now, let me try to put it into a quantitative perspective. In order to do so, I will use a unit and some simple figures that summarize for us where we stand. I will describe our energy consumption in terms of the unit of millions of barrels of oil a day equivalent. Here, then, is our present situation.

Today we use about 20 million barrels of oil a day of which we import nearly half. We use about 10 million barrels of oil a day equivalent of natural gas, about seven of coal, and about three of hydroelectric and nuclear power to generate electricity. That gives us a total of about 40 million barrels of oil a day equivalent. I emphasize that I'm using approximate

figures in order to make it more understandable.

This, by the way, in terms of another common unit—the quad—is equivalent to 80 quads per year. A quad is quadrillion British thermal units (Btu) per year. Quadrillion means the number one, followed by 15 zeros. This unit has become popular to describe our energy needs in terms of quadrillion Btu per year. The conversion factor is very simple. Eighty quads corresponds to 40 million barrels of oil a day equivalent—just a factor of two.

Now, as I have indicated, about 75 percent of this 40 million barrels of oil equivalent comes from the fossil fuels that we have in diminishing supply—oil and gas.

We have enough coal to last for hundreds of years. In fact, some 95 percent of our energy in the form of fossil fuels resides in coal. But we are only using less than 20 percent in this form today. We suffer from a very serious imbalance.

Worldwide, the situation is just as bad. Energy consumption worldwide, expressed in these units is about 120 millions of barrels of oil a day, of which more than half—some 70—is in the form of oil and gas, some 30 in coal and 20 in hydroelectric power and the use of wood.

In other words, America, with about six percent of the world's population, uses about 30 percent of all the energy that is consumed.

Now, to begin with, I want to say that we're going to have to conserve. Conservation is the term used for diminishing the rate of increase of energy consumption.

However, conservation alone will be insufficient to maintain a viable economy. In order to maintain a gross national product consistent with a viable economy in the United States, we're also going to have to develop and use an increased domestic supply of energy.

In order to take care of the increase in our use of energy—and we will have some increase, despite conservation—we will need to add by 1990 something like five million barrels of oil a day. If we're going to meet President Carter's goal of cutting our imports by four or five million barrels of oil a day, we will then

need to somehow come up with about 10 million barrels of oil a day equivalent by 1990.

There are six sources of energy that can appreciably increase the supply in terms of these units—millions of barrels of oil a day equivalent—by 1990, perhaps by the year 2000, and some of them on an even longer time scale. They are:

- The improvement of the use of fossil fuels
- The use of conventional nuclear power
- The development and use of the breeder reactor
- The development and use of the nuclear fusion source of electricity
- The development and use of solar power in all of its manifestations—the heating and cooling of homes and buildings, the production of electricity, the use of biomass, the burning of wood and the use of wind power
- Geothermal energy

## Fossil fuels

The improvement of fossil fuels and the use of all these additional sources of energy, will bring about the production and use of energy above and beyond that which we now produce. For example, in the improvement of fossil fuels, we have such possibilities as the liquefaction and gasification of coal and the production of liquid fuels from oil shale and tar sand.

You will recall that when I ran through our present energy situation in these units—20 oil, 10 gas, seven coal and three hydro and nuclear, I indicated our use of coal is equivalent to about seven million barrels of oil a day equivalent. Now this corresponds to the actual mining and use of close to 700 million tons of coal a year. So, here again the conversion factor is simple. If we want, from coal, to produce and use the equivalent of a million barrels of oil a day, we will have to mine and use, in terms of energy equivalent, about 100 million tons of coal a year. Actually, if we're going to convert it into oil, because the conversion is not 100 percent efficient, we will have to mine and convert to oil about 150 million tons of coal a year.

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*Dr. Seaborg is a former U.S. Atomic Energy Commissioner and is with Lawrence Berkeley Laboratory, University of California, Berkeley, Calif.*



Thus, if we want to add four million barrels of oil a day to our supply of oil through the synfuel process, we will have to mine and convert to oil, about 600 million tons of coal per year. This is nearly twice the amount of coal that we presently mine and use yearly in the United States. This represents a Herculean undertaking. Imagine what would be involved just in terms of opening new mines, increasing our transportation capability and taking care of the environmental impact.

I am not implying that we should not follow this course of action. I am only trying to give you an idea of what is involved in this path which, actually, I believe we should take.

In terms of oil shale, the task is even larger. In order to produce about one million barrels of oil a day from oil shale, we have to mine and treat about 500 million tons a year. This represents almost as much oil shale as corresponds to our entire yearly coal mining industry. This will require a tremendous amount of water. It will give rise to a fantastically large waste disposal problem because when the oil is squeezed out of oil shale, it is converted from a harmless rock into a sort of corrosive, expanded residue that somehow must be disposed of.

One way of getting around this problem, both in the conversion of coal and oil shale, is to go into what is called *in situ* mining. By this method, a certain fraction—say 20 percent or so—is first mined out, producing a large enough space underground so that the conversion process can be carried out underground and the wastes left in place. This, however, presents an even greater challenge and it is

not yet clear whether the energy balance will even be favorable in that case.

Now, if we go in the direction of increased coal use, we must also pay close attention to another problem—the “greenhouse effect” which occurs when coal is burned and carbon dioxide produced. The widespread burning of coal could increase the carbon dioxide in the atmosphere to a somewhat impermeable level that would prevent the escape of radiation from the earth and lead to an increase of temperature. This temperature increase has been estimated at about 2 degrees celsius on the average, and perhaps 8 degrees celsius at the poles, by the year 2050. This could result in the melting of the polar ice caps and the flooding of coastal cities. We don't yet know if this is a correct assessment, but we are sure it's one that we will have to pay close attention to as we proceed.

### Nuclear Power

The second source of energy also available in the immediate future is conventional nuclear power. Of the six sources of energy that I named, the only ones that can make a contribution on the scale that will be necessary in the next 10 or 20 years—on the level of the million barrels of oil a day equivalent—are coal, perhaps in the way that I previously outlined; conventional nuclear power, which I discuss below, and limited aspects of solar energy such as in the heating and cooling of homes and buildings and the use of some biomass.

Of course, this does not mean the other sources of energy shouldn't be developed. They should be developed. They are on a longer time scale and we will need them in the future.

Now, with respect to conventional nuclear power, the conversion factor is about one million barrels of oil a day equals 40 million kilowatts of electricity.

Today, we have about 70 nuclear power reactors developing about 50 million kilowatts. They produce about 13 percent of our electric power in the United States. That's equivalent to about 1.25 million barrels of oil a day.

We have about 100 licensed reactors and many of them under construction, which, if built and operated, would add another 100 million kilowatts by about 1990, which, if you add to the 50, would give us 150 million kilowatts. Remember that the conversion factor is 40, and 40 into 150 is about 4—close to about four million barrels of oil a day equivalent by 1990.

Perhaps we will not go that route. There is a tremendous opposition to nuclear power in the United States. There are problems such as waste disposal.

I believe that these problems are solvable. I think that in the United States today we have somehow got our perspective on risks all out of kilter. I think the number one risk in the United States today in the energy picture, is the continued and increasing importation of oil from the Mideast with all its ramifications with respect to our national security. The number two risk in my mind, is the use of coal. I say we should increase its use, but it is the number two risk. The number three risk is probably the use of nuclear power.

### Breeder Reactor

The breeder reactor is required because in the use of conventional nuclear power we use only about one percent of the energy available in uranium. Uranium has about .7 percent of what we call the fissionable isotope which is the useful isotope, U-235. The other 99.3 percent is the U-238, which is not fissionable, but fertile.

Through a breeder reactor it's possible to convert the U-238 into fissionable plutonium and then indirectly use all of the uranium, hence yielding a factor of about 100 in the supply of uranium. Without the breeder reactor, our supply of uranium will only last a couple of decades. With the breeder reactor, we can multiply that by at least 100. A couple of decades then becomes a couple of thousand years.

Actually, use of the breeder reactor will increase our supply of usable uranium even more significantly because with the breeder reactor, the cost of the uranium is so small. It's negligible in terms of the total cost, so that you can mine lower grade uranium at a greater cost and still have it economic and there is a much larger supply of lower grade uranium.



However, the breeder reactor is very difficult to develop and it will not yield an appreciable amount of energy, certainly nothing on the scale of a million barrels of oil a day equivalent, before probably the year 2010.

Also, President Carter has effectively halted the development of the breeder reactor in the United States because it produces plutonium which can be used in bombs. One of his greatest concerns is with the proliferation of nuclear weapons.

I believe that the foregoing by the United States of the breeder reactor is not going to have any positive impact on the prevention of proliferation throughout the rest of the world because the rest of the world is not following President Carter's lead. They are proceeding with the development of the breeder reactor, in some cases, of course, with great glee. Because the United States isn't, the market is left open to them. France is a good example.

## Nuclear Fusion

Nuclear fusion operates at the opposite end of the scale of elements than uranium or plutonium. Uranium and plutonium, at the upper end of the scale, undergo fission, when a neutron, which has no charge and can easily enter the nucleus of an atom, enters and causes the U-235 or plutonium to split in half to give you the energy and the fission products. Of course, that creates the waste disposal problem. It is the energy of these fission products plowing through the matter that is transferred to a water coolant and then into steam to turn a turbine to produce electricity.

With a fusion reaction, we have another problem. At the lightest end of the periodic table, two hydrogens, the very lightest element, come together to form helium through fusion. In each case, the result is energy through Einstein's relation. At the upper end, with fission, the fission products weigh less than the uranium or plutonium and the difference in mass turns into energy by Einstein's relation,  $E = MC^2$ . At the lower end of the periodic table, the weight of the hydrogen is greater than the product helium and the mass difference changes into energy by Einstein's relation. In principle, tremendous amounts of energy are produced—millions of times greater than is produced by the burning of fossil fuels.

The trouble with fusion is that we do not yet know how to do it and we haven't yet proved scientifically how to do it. Once we've done that it will take many years in order to put it on a practical scale, that is, where we can produce say a million barrels of oil a day equivalent of energy. What we're trying to do is effectively produce a miniature sun on earth.

Fusion runs the sun and the stars. It produces their energy. We're trying to do that on earth. Perhaps you can get a small inkling of the problems involved with actually doing it when you realize that a temperature of about a billion degrees is necessary. This temperature can be reduced to about a hundred million degrees by using tritium. We hope to use a

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**"Development of fusion is long range. It will probably take 50 years, but when we get there, we'll have enough energy. In this possibility, the water in the oceans of the world would be a source of fuel."**

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rarer form of hydrogen—deuterium—present at less than .1 percent. Still, there is so much water in the oceans of the world that through fusion we would have enough energy to last almost indefinitely—probably a billion years. That's why we should work on fusion.

Development of fusion is long range. It will probably take 50 years, but when we get there, we'll have enough energy. In this possibility, the water in the oceans of the world would be a source of fuel.

## Solar Energy

I mentioned that we can already use solar energy for heating. Suppose that 10 percent of our homes were converted completely to solar heating, which would probably be impossible. It would be more like converting 20 percent to half solar heating. Then, because we use about 10 percent of our energy for the heating of homes, we have 10 percent multiplied by 10 percent equals one percent and one percent of 40 million barrels of oil a day is about .4 million barrels of oil a day. So, that is the contribution that solar heating of homes can realistically make in the next 10 or maybe 20 years.

What is on all our minds is the possibility of using solar energy to produce electricity. The problem here is that it is so dilute, that we haven't yet found a way to do it economically and, more importantly, in a manner where you get more energy out than you use in order to produce your photocells or whatever it is that you're going to use to convert solar energy to electricity. It takes about 1,000 square miles of land to yield about one million barrels of oil a day equivalent.

Windmills have been suggested as a source of energy. This is indirect use of solar energy. The conversion factor here equivalent to a million barrels of oil a day is about 400,000 windmills. This assumes that each windmill generates about 100 kilowatts, 24 hours a day.

I'm not saying we shouldn't do it. I'm just saying we should realize what we need to do in order to make a sizable contribution.

Biomass obviously is a possibility. In order to produce energy equivalent to a million barrels of oil a day in terms of wood, it would take a couple of hundred million tons a year. This, of course, is doable. The burning of garbage has been suggested. This is a more dilute source.

There is the whole problem of segregating out the non-combustible parts in a meaningful, environmentally acceptable way. It probably would take something on the order of more than a couple of hundred million tons of garbage burned per year to be equivalent to a million barrels of oil a day. All the energy consumed in gathering this garbage makes me somewhat skeptical that this will be an important source of energy in the future.

Another possibility is gasohol. That is to mix our gasoline with alcohol or various forms of alcohol, produced perhaps by the fermentation of grains, excess wheat or corn or distressed crops. Again, the amount needed is of the order that I've indicated and we would surely, at least in the United States, come face to face with a decision as to whether this should go into food to feed us and the rest of the world or into fuel for the propulsion of automobiles in the United States. Also, it has a negative energy balance at the present time.

Another possibility is what my colleague, Professor Melvin Calvin, at the University of California, advocates. He believes that we should essentially grow hydrocarbons—oil—on trees, as for example, we grow rubber, a related compound, in that manner. Gasoline, of course, is constituted of hydrocarbons.

In this case, Melvin Calvin believes that he can develop a suitable plant. He's working on a plant called euphorbia that could produce about 10 barrels of oil per acre per year. This translates to about one million barrels of oil per day from an area about one-half the size of Arizona. Again, perhaps it is feasible. I wouldn't expect that it would be possible before about the year 2000.

Another possibility is to put a satellite, a couple of miles wide, in orbit 22,300 miles above the earth and collect the sunlight 24 hours a day. One of the problems with solar electricity, of course, is the storage problem. Because the sun does not shine all the time some means of accumulating and storing the electricity has to be developed so that it is available when the sun isn't out.

A way around this is through the use of such a satellite, 22,300 miles above the earth, where it rotates around the earth in the same 24-hour time frame so that the two are synchronized. This is called a synchronous satellite. However, I believe that the problem of assembling thousands of tons of intricate material into a huge complex 22,300 miles above the earth is a very difficult one that we probably won't be able to solve for at least 50 years.

I think probably the best way that solar energy will be used on a large scale beyond its use for heating and through biomass beginning sometime after the year 2,000, will be through the production of hydrogen by the decomposition of water using some kind of a catalyst which has not yet been discovered but which might be discovered through a greater emphasis on basic research. This would lead us to

(continued on page 15)

# Why Bar Funds Are Not In The Public Interest

Moses K. Rosenberg

At first, when I undertook to address this audience on the question why bar-related title insurance funds contravene the public interest, the subject seemed sufficiently provocative to be appropriate for a convention of the representatives of the title insurance industry. The more I considered the matter, the more I became convinced, however, that I would be addressing the wrong forum.

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**"With the assistance of the national and local bar associations, the number of bar-related funds has increased since the creation of the Florida Lawyers' Title Guarantee Fund in 1947 to nine companies operating in 19 states with total assets in excess of \$18 million."**

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It seemed that commercial title insurers needed no further instruction about the conflicts of interest that inevitably arise when an attorney both represents the buyer and reaps a profit by selling his client a title policy. Nor, did it seem that commercial title insurers need learn more about the divided allegiance of an attorney whose duty it is to negotiate a policy for the buyer with the broadest possible coverage, but whose concurrent duty it is also to enumerate all discoverable title defects to protect the assets of the company whose principal

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*Mr. Rosenberg is solicitor of the Pennsylvania Land Title Association and a partner of the law firm of McNees, Wallace & Nurick, Harrisburg, Pa. The opinions are not necessarily those of any of his clients or any of their constituents and not necessarily those of any of his associates, partners or law firm (except Eric Brossman and H. Lee Roussel who collaborated with him in the preparation of this and other articles).*

he is. Likewise, it seemed the title insurer knows enough about the economic self-interest of those who have argued that the lawyer's role in the real estate transaction must be preserved for the public welfare and about the antitrust problems posed by the entry of a profession that has enjoyed exclusive control over the bounds of its own monopoly into an entirely commercial venture. Finally, it seemed the title insurer needed no further instruction about the impact on the title insurance industry of controlled companies that yield handsome rebates to real estate professionals and thereby stifle any genuine competition for the benefit of the public. Nonetheless, I had pledged to deliver these remarks, and, perhaps, they are not entirely misdirected.

With the assistance of the national and local bar associations, the number of bar-related funds has increased since the creation of the Florida Lawyers' Title Guarantee Fund in 1947 to nine companies operating in 19 states with total assets in excess of \$18 million.

The Florida fund, which has been commended to the bar as a prototype, is simple in operation and illustrates the fund concept. An attorney, upon becoming a member of the fund, makes an initial contribution and, thereafter, remits further contributions secured from clients as the fund guarantees are issued, all of which are credited to the member's account.

Furthermore, each member is credited annually with his proportionate share of income from investments and charged with his share of expenses, including losses, as determined by his fund contributions for the year. Guarantee claims attributable to policies issued by a member are chargeable to his account. Any remaining credit balance in the member's account is refunded to him at prescribed intervals, thus emphasizing the direct financial interest of the attorney-member in the welfare of the fund.

Because growth in membership is critical to the subsistence of the bar-related fund, which typically has been established by a small core of discontented attorneys who fear for the loss of their real estate practice, great emphasis is

placed on cajoling non-member attorneys to subscribe by advertisement, group meetings, repeated visits, and direct mail campaigns to obtain "sales" or "converts" as the American Bar Association's standing committee on Lawyers' Title Guarantee Funds chooses to designate the process.<sup>1</sup>

Serious questions have been raised, and remained unanswered, not only whether the enthusiastic, headlong plunge into the realm of business is in the public's best interest, but also whether it serves the interest of a profession whose image has become increasingly tarnished because of the self-interest of a few of its practitioners.

Bar-related title insuring organizations, while differing in organizational detail, have several common features. They are owned, managed and controlled by lawyers. Rebates or commissions are usually paid to attorneys proportionate to policies written. Policies can be procured only through attorneys. Funds are endorsed by the organized bar. The motivating purpose is to entrench the position of the attorney in the conveyancing process or, as one leading proponent of the bar-related title insurance movement has stated, to "provide a solution to the waning influence of the lawyer in property transactions."<sup>2</sup>

The attorney's diminishing role and the consequent need for the development of the bar-related movement is facetiously attributed by the literature of the organized bar to the entry by commercial title companies into the practice of law. The rendering of any ancillary services, except the mere issuance of a title insur-

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<sup>1</sup>How-To-Do-It: Bar-Related Title Assuring Organizations 11 (1976) [hereinafter referred to as How-To-Do-It]. The committee has cautioned, however, that the group meeting entails some disadvantages, since "it provides a forum for those opposed to bar-related title insurance. Some opponents hold an honest but misplaced belief that it is not in the best interests of the profession." *Id.*

<sup>2</sup>Balbach, Title Assurance: A New Approach to Unauthorized Practice, 41 N. DAME L. 192, 198 (1965).

ance policy, it is contended, constitutes the unauthorized practice of law.<sup>3</sup>

To the consternation of these enthusiasts, prosecution of unauthorized practice charges has often proved futile, and the courts have, in numerous instances, expressly held that the challenged activities are not within the purview of the attorney's exclusive realm.<sup>4</sup> Repeatedly, the basis for this conclusion has been the public interest. Lacking, therefore, any more expedient means to curtail the competition of title insurers in providing ancillary conveyancing services, members of the legal profession sought to enter the title insurance business by forming their own title insurance companies.

The bar-related title movement is thus, from one perspective, a defensive construct intended to thwart the competition of commercial title companies in the business of providing conveyancing services, which the organized bar would, of course, reserve to itself and characterize as the practice of law.

Despite the lofty ideals espoused by the proponents of bar funds, it is apparent that the prime concerns are the economic self-interest of the legal profession and the generation of future legal business.

*How-To-Do-It*, published by the American Bar Association's standing committee enumerates, for example, four reasons why the attorney's role in the real estate transaction must be preserved. The first states that both buyer and seller need legal assistance to protect their rights and that lawyers have a professional duty to represent the needs of the public. This pursuit is undoubtedly meritorious to the extent that the parties to a real estate transaction wish to avail themselves of an attorney's services. The final three considerations reveal, however, the underlying concern:

- The average member of the public is introduced to a lawyer through the real estate transaction.
  - The real estate transaction is an excellent occasion to perform an examination of the individual client's estate.
  - Real estate practice can be remunerative.<sup>5</sup>
- Similarly, another commentator has noted,

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<sup>3</sup>One commentator has noted, however, that, "A major factor in the inefficiency of present real estate transfers is the concept that attorneys should search titles and conduct closings. The use of legally trained professionals to perform these routine tasks constitutes an enormous waste of skill and causes increased overall costs to parties." Whitman, *Home Transfer Costs: An Economic and Legal Analysis*, 62 *GEO. L.J.* 1311, 1334 (1974).

<sup>4</sup>See e.g., *Cooperman v. West Coast Title Co.*, 75 So.2d 818 (Fla. 1954); *State Bar v. Guardian Abstract & Title Co.*, 91 N.M. 434, 575 P.2d 943 (1978); *LaBrum v. Commonwealth Title Co.*, 358 Pa. 239, 56 A.2d 246 (1948). See generally *Brossman & Rosenberg*, *Title Companies and the Unauthorized Practice Rules: the Exclusive Domain Reexamined*, 83 *DICK. L. REV.* 437 (1979).

<sup>5</sup>*How-To-Do-It*, supra, note 1 at 3.

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**"The bar-related title movement is . . . a defensive construct intended to thwart the competition of commercial title companies in . . . providing conveyancing services, which the organized bar would . . . reserve to itself and characterize as the practice of law."**

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"measured in terms of monetary loss, the decline of the attorney's role in the real estate transaction imports serious economic consequences to the profession, both in terms of present income and future patronage of their clients."<sup>6</sup>

The need for a bar-related fund is accordingly depicted as a matter of economic necessity. Unless the attorney can derive adequate compensation from his real estate practice, so the argument goes, he will abandon this aspect of practice, leaving the home buyer without proper legal representation. The exclusion of the lawyer, thus, redounds to the public's detriment. The public interest is never separately considered, but is presumed to coincide with the good of the bar.

Lest my emphasis be misconstrued, let me emphasize that the lawyer does play a unique role for his client and should not be displaced from the real estate transaction. He is an advocate and counselor who owes the client by whom he is retained an undivided loyalty to secure the most favorable deal and greatest protection possible.

Nevertheless, a party to the transfer of real estate should never be compelled to accept legal representation, and might reasonably find the expense unwarranted. Furthermore, the attorney's role as advocate does not justify his entry into private enterprise in an effort to eliminate alternative conveyancing services, but reserves to him rather the right and duty to act exclusively in the best interest of his client. The attorney who undertakes the role of title insurer thereby enters into the realm of private enterprise and, by necessity, relinquishes his function as independent legal counselor since he no longer serves a single master.

The very hypothesis on which the bar-related fund concept is predicated bears an elemental flaw. While it is said that the primary purpose of the fund is to protect the right of the public to impartial and independent legal advice in connection with the real estate transaction, the attorney-member selling a fund guarantee is entering into a business transaction with his client from which he gains monetarily and is further acting on behalf of parties with radically conflicting interests—i.e., the purchaser and the vendor of title insurance. If retained by the buyer, it is

<sup>6</sup>*Balbach*, supra, note 2, at 195 n.12.

the attorney's obligation to negotiate terms of the purchase most favorable to his client with the seller or his agent, and to ensure that the negotiated conditions are reduced to the form of a written contract properly executed by, and binding upon, both parties.

Once the terms of the transaction have been satisfactorily resolved, counsel must seek to obtain for his client the most feasible form of assurance that the quality of title is in accordance with the negotiated contract of sale, whether that assurance is an attorney's opinion of title or a title policy. If it is concluded, with the client's knowledgeable consent, that title insurance is in order, it is then the attorney's duty to negotiate with the chosen title insurer the most complete policy coverage possible under the circumstance. At settlement, the attorney's function includes ascertaining that all provisions of the agreement of sale have been performed and that the buyer receives the quality of title for which he has bargained. When all of this has been accomplished, the attorney has earned a fee covering, but limited to, the legal services he has rendered.

This, as I perceive it, is the proper role of the lawyer in the residential real estate transaction. To the extent that the lawyer conducts closing without acting as advocate or counsel or to either party in the conveyancing process, he is no longer functioning within the protected realm of the practice of law and is merely providing a service.<sup>7</sup> Contrary to the argument of the organized bar, an attorney who further sells a title policy to his client issued by a fund of which the attorney is a member or holds an ownership interest practices self-dealing for his own account.

Measured by ethical standards that the legal profession has embraced, the attorney, unless he has made a full disclosure of the

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*"The attorney's ethical obligation in this regard is quite clear. Canon 5 of the Code of Professional Responsibility provides that "a lawyer should exercise independent professional judgment on behalf of a client." The disciplinary rules promulgated to enforce this norm require that, in the absence of full disclosure to, and knowledgeable consent by, his client, the attorney must refuse employment when his own business, financial or personal interests may reasonably affect his employment; that he decline to enter into a business transaction with the client if they have differing interests therein and the client expects the lawyer to exercise his professional judgment on his behalf; and that the lawyer decline to accept from a third party anything of value related to retention by his client. The objective, in other words, is to preclude interference with the attorney's exercise of his independent professional judgment. The ethical considerations adopted in conjunction with these rules similarly proscribe self-dealing and multiple representation without the client's consent and state quite succinctly that "neither [the attorney's] personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client." ABA Code of Professional Responsibility, EC 5-1.*

potential conflicts and the client has given his informed consent, is engaged in a proscribed conflict of interest.<sup>8</sup> Because of the complexity of clarifying all of the circumstances, including the legal significance of the conflicts that might arise, to all parties relying on him, because of the residential real estate client's lack of sophistication and because whatever disclosure is made would undoubtedly occur at a time when the client has little choice but to proceed, it is unlikely that a meaningful disclosure will be made. Furthermore, in practical terms, the client will still receive something less than the undivided loyalty of his counsel, but may acquiesce nonetheless. Clearly, the matter cannot be dismissed, as the ABA's standing committee attempts, with the rationalization that lawyers "resolve such conflicts by invariably placing the client's interests ahead of their own."<sup>9</sup>

<sup>8</sup>The organized bar has suggested a means to circumvent this conflict, however. Formal Opinion 304 issued on Feb. 16, 1962, by the American Bar Association Committee on Professional Ethics would deny the attorney the right to receive a commission for recommending or selling title insurance unless he has disclosed to the client his financial interest in the transaction or has credited the client's bill with the amount received. See also A.B.A. Formal Opinion 331 (Dec. 15, 1972): If a lawyer has financial interest in the company that will provide title insurance for his client, he must make a full disclosure of this to the client and must obtain the client's consent to the transaction. If a lawyer performs legal services for both the title company and the client, he must get the consent of both after full disclosure of possibly conflicting interests.

<sup>9</sup>Bar-Related Title Assuring Organizations 13 (1976) (hereinafter referred to as "Bar-Related Title Assuring Organizations").

The organized bar readily acknowledges the existence of a conflict between the interests of the title insurer and the buyer. As stated in a report of the Special Committee on Residential Real Estate Transactions of the American Bar Association, "It is sometimes assumed there is no conflict between the interests of the title insurer, on the one hand, and the buyer and lender on the other. Any such assumption is false. The insurer wants minimum risk; the other parties maximum protection . . . . What is not understood by the buyer is that, by the nature of the contract, his interests are in conflict with those of the insurer . . . . [T]he inherent conflict between the interests of the parties stands in the way of the insurer either advising or representing the insured."<sup>10</sup> This conflict is heightened when the real estate client's attorney is an owner or member of the insurance provider.

Although bar associations have issued few opinions interpreting the pertinent ethical principles that have considered the sale by attorney/title fund members of guarantee funds to their clients, one need only look to the standards applied to the involvement of lawyers in other aspects of the real estate and insurance businesses to discern what should be deemed the guiding standards. Thus, for example, ethics opinions have universally held that a lawyer may not serve as a real estate broker or as an insurance agent for a client whom he represents in the same transaction, and lawyers have been precluded, on common-law principles, from accepting commissions resulting from real estate or similar business

<sup>10</sup>The Proper Role of the Lawyer in Residential Real Estate Transactions: Appropriate Methods of Compensating Him for His Services 11-12 (Final Draft 1974).

transactions with their clients.<sup>11</sup> The rule, in essence, is that the role of vendor and attorney are incompatible and should not be comingled.

The rationale for the proscription against self-dealing is quite vividly illustrated in the context of the bar-related title company. Because of his interest in the title company, the attorney is initially induced to recommend the use of title insurance and, further, will undoubtedly refer the client to his own title company. Rather than exercise his independent professional judgment on his client's behalf, the attorney is governed in his selection by extraneous considerations. If the bar-related company is unwilling to assume a risk that cannot be eliminated, the client is precluded from seeking out a company that may provide broader coverage. The policy is issued not because the client, after having been advised on the matter by counsel, has elected title insurance protection and not because the search has revealed potential defects particularly warranting coverage, but "as part (of the attorney's) regular office routine."<sup>12</sup>

As principal, member or owner of the title company, the lawyer must be concerned with protecting the company and its assets against losses and is, thus, burdened with contradictory and mutually exclusive obligations. While in his role as principal of the company the law-

<sup>11</sup>See generally the discussion of the ethics of bar-related and lawyer-controlled title companies in *Roussel & Rosenberg, Lawyer-Controlled Title Insurance Companies—Legal Ethics and the Need for Insurance Department Regulation*, \_\_\_\_\_ *Fordham L. Rev.* \_\_\_\_\_ (1979).

<sup>12</sup>Bar-Related Title Assuring Organizations, *supra*, note 9, at 8.



Program participants of the Title Insurance and Underwriters Section meeting held at the 1979 ALTA Annual Convention are from left: Erich E. Everbach, chairman ALTA Liaison Committee with the National Association of Insurance Commissioners; Moses K. Rosenberg, executive vice president of the Pennsylvania Land Title Association; Section Chairman Fred B. Fromhold, and Marvin C. Bowling Jr., chairman of the ALTA Title Insurance Forms Committee.

yer seeks to protect it, and concomitantly his account, from loss by excepting possible claims from coverage, as the buyer's advocate he is bound to negotiate the removal of as many exceptions as possible to maximize coverage. Finally, the attorney's account is credited and he earns a profit only upon consummation of the transaction, thus giving rise to a financial motivation to bring the transaction to a conclusion.

In addition to the ethical problems posed by an attorney's deriving a financial benefit by entering into business dealings with his client, an attorney/member of a title fund engages also in the practice of representing diverse interests. As noted previously, it is the attorney's duty to the insurer to whom he is rendering a title opinion to enumerate all possible title defects and his duty to his client to eliminate all exceptions.

The conflict crystallizes when a claim on the policy is made. It should seem quite evident that the attorney is then in a position of being unable to represent or advise either party, much to the disservice of his former real estate client. The conflict that had been latent at and before closing has now taken shape.

The attorney thus affiliated with the fund shows little concern for the client's economic interest—any independent and informed judgment by the client concerning the need for and source of title coverage is discouraged. The attorney is repeatedly cautioned that "the fund member who today permits his client to leave the office after a real property closing without a fund guarantee is in effect inviting his client to take his next closing to a lay agency."<sup>13</sup>

Placement by the attorney of title insurance business with a bar-related company is consequently determined by considerations other than the best interests of each client. The interest of the client has been, once again, subordinated to the postulated need to preserve the attorney's real estate practice.

The organized venture of the legal profession into private enterprise is predicated upon the fear that control over ancillary closing services may be lost to a competitor whose advances cannot be repelled by unauthorized practice proceedings, the traditional means employed by the practicing bar to consolidate its monopoly in various areas. Rather than concede that conveyancing is a matter not exclusively within the lawyer's domain, the legal profession now seeks to eliminate the challenge of the commercial title industry by referring all real estate clients to controlled companies. The resulting system is anti-competitive inasmuch as commercial title companies are excluded from business that might otherwise have been solicited on the basis of service or salesmanship.

The lawyer is admonished "to bring the layman back into the law office—and give him both an opinion and insurance."<sup>14</sup> Accordingly,

<sup>13</sup>Bar-Related Title Assuring Organizations, *supra*, note 9, at 8-9.

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**"The conflict crystallizes when a claim on the policy is made. It should seem quite evident that the attorney is then in a position of being unable to represent or advise either party, much to the disservice of his former real estate client."**

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the bar fund member undertakes to patronize his company, to solicit lawyers who will similarly participate in the bar fund and to secure referrals to his company from other real estate settlement producers. Implicitly, he, as well as his colleagues who have enrolled in the fund, agree that they will not deal with commercial title companies, thus excluding the commercial title insurer from competing for business controlled by lawyers who support the bar-related company.

Because it is the proposal of the organized bar to elicit the enthusiastic support of all its members, and the objective of its members to control all phases of the real estate purchase from the signing of the contract to the recording of the deed, the collective effect is tantamount to a total exclusion of lay competition from the issuance of a title policy. The practicing bar further enjoys a legally sanctioned monopoly over the practice of law, however that concept may be defined, that is being exploited to preserve for, and limit to, all privately retained attorneys command over ancillary conveyancing services, including the insurance function.

When properly placed in perspective, bar-related guarantee funds have not been established as a competitor in the insurance business stimulating benefits to the consumer, but rather as a means to compel, by implication, the retention of counsel in all real estate transactions and thereby generate a financial advantage. Title insurance has, thus, become a tying product, which the mortgage lender prescribes and which the consumer can only procure if he also pays for the tied product—the attorney's legal services.

The antitrust violations resulting from group boycotts of commercial title companies, the attempts to monopolize by using exclusive power over one segment of commerce to attain control over another service, the tying arrangements requiring the acceptance of another product or service in conjunction with the purchase of the desired product, and the hidden rebates accepted by bar-fund members all hold ominous implications for the consumer as well as for the welfare of the commercial title industry.<sup>15</sup>

<sup>14</sup>*Id.* at 8.

<sup>15</sup>For a detailed antitrust analysis of the bar-related title insurance movement, see *Roussel, Pera & Rosenberg*, *Bar-Related Title Insurance Companies: An Antitrust Analysis*, 24 *Vill. L. Rev.* 639 (1979).

Perhaps the most pernicious of these anti-competitive practices is the foreclosure of business to companies that are not bar-controlled. The requirement in many jurisdictions that lawyers perform one or more aspects of the real estate transaction permits the bar to control, to a significant extent, the placement of title insurance business and consequently to limit placement of title insurance business and consequently to limit placement to bar-related companies. If they are to compete with controlled companies, commercial title insurers, whose function it is to insure title at the lowest cost attainable, must increase their rates to absorb the expense of courting the patronage of the referring attorney by offering artificial inducements. The outcome is predictable. Once again the attorney reaps the financial advantage and the consumer, who must pay the increased rates reflecting the cost of referral, is the loser.

But, as we are all aware, the anti-competitive impact of the controlled-company phenomenon is not attributable solely to the self-interest of the organized bar, and perhaps I am not, after all, addressing the wrong forum. Unlike other commercial enterprises that are able to compete directly for the business of the consumer, title companies, of necessity, have directed their competitive effort at the real estate settlement producers who act as intermediaries, giving rise to the process commonly designated as reverse competition.

Both the marketing structure of the title insurance industry and the consumer's lack of sophistication in real estate matters have contributed to the development of this form of competition, and the layman has little choice but to rely on the educated advice of the professionals engaged in the transaction to refer him to an insurer that will satisfy his need.

When referral has been predicated on consumer-oriented considerations such as coverage, solvency, quality, and efficiency of service, both the consumer and the industry have benefited. All too often, however, title companies have curried the favor of real estate professionals by the payment of unwarranted commissions or rebates, resulting in inflated premium charges and dwindling profit margins.

While commercial title companies have generally been responsive to the consumer's needs and rates have been quite nominal in comparison with the rates of other insurance lines, the entire industry has been further plagued by a trend to eliminate all but controlled business, which might be deemed a direct, albeit unnecessary, consequence of reverse competition. Ever more frequently, commercial insurers are entering into agreements or understandings with title agencies organized by Realtors, lenders or other entities able to control the placement of title insurance business. The efforts of some of our members to improve or consolidate their market position by exclusive arrangements with real estate settlement producers who direct the placement of title insurance illustrates that the issue of controlled business is much broad-

er and more significant than the conduct of bar-related companies.

An exclusive relationship with controlled agencies established by financing institutions or brokers is just as much controlled business as a bar-related title insurance company. Bar-related guarantee funds are, thus, merely symptomatic of a more pervasive tendency in the title industry. Since not only attorneys, but also banks, savings associations, mortgage companies, Realtors, developers and builders may engage in the practice of establishing controlled business entities that pay rebates or commissions in the form of corporate dividends or otherwise, the very nature of the industry is at issue.

The potential impact of controlled business on the consumer has not gone undetected by the federal government. A report prepared in 1977 by the Department of Justice entitled, *The Pricing and Marketing of Insurance*, concludes, "To sum up the major evils of controlled title companies, where a real estate settlement producer is able to direct the purchaser of a title insurance policy to a particular title company and at the same time that producer owns the title company, the purchaser is likely to end up (1) paying unreasonably high premiums, (2) accepting unusually poor service or (3) accepting faulty title examination and policies from the controlled title company."<sup>10</sup>

Furthermore, as the growth of controlled business arrangements continues, companies who have not established ties with a controlled business entity will be able to compete for increasingly fewer transactions.

Perhaps lawyers can be forgiven if they remain unpersuaded by the conflict-of-interest and antitrust arguments directed against them by title companies when they witness commercial insurers establishing controlled agencies for their own benefit. The legal profession can at least attempt to justify its behavior by venturing the contention that bar-related title funds assist in preserving the attorney-client relationship.

A title company, organized as a strictly commercial enterprise, would find it considerably more difficult to cloak its corresponding practices with arguments of public service and interest. It is merely a question of time before the public and its self-appointed guardians grow sufficiently discontent with the additional expense imposed on, and more limited alternatives available to, the homebuyer because of controlled business to undertake the initiative.

The industry is, thus, at a crossroad. Shall all title insurance be channeled to controlled companies, bar-related or otherwise? Or, should the decision as to which company's services should be utilized be determined by the consumer's needs?

Doubtless, the homebuyer will continue to seek the guidance of the real estate profes-

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**"An exclusive relationship with controlled agencies established by financing institutions or brokers is just as much controlled business as a bar-related title insurance company. Bar-related guarantee funds are, thus, merely symptomatic of a more pervasive tendency in the title industry."**

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sional concerning the source of title coverage, but he is seeking impartial, informed advice untainted by considerations of affiliation, payment of commissions and protection of interest groups.

The industry can seize the offensive by internal regulation or by encouraging the intervention of state agencies that are experienced and familiar with the problems of commercial title companies or, in the alternative, the industry can choose to ignore the effects of controlled business and suffer the response of those who believe that the current problems relating to real estate settlements can only be resolved by a fundamental revamping of the entire conveyancing and title assuring process. A reaction to the proliferation of controlled business is inevitable, and, unless the industry seizes the initiative, it may soon be precluded.

Time is running preciously short. The industry may not have the luxury much longer of instituting self-regulatory measures. It is high time that it gets on with the task of putting its own house in order while it still has the opportunity.

**Seaborg**—(from page 10)

the "hydrogen economy" which has the tremendous advantage that hydrogen fuel is very versatile. It can be used as a substitute for gasoline in transportation. It can be used to produce electricity through individual fuel cells—perhaps small ones in homes. Through the recombination of hydrogen and oxygen to form water again, the result is energy which is converted to electricity.

The hydrogen can be transported through pipes without energy loss, just as it occurs in electrical conduction. Hydrogen also can be used as a direct, non-polluting substitute for natural gas.

I don't believe that it will be possible to have an appreciable source of energy in a few decades from either tidal power or ocean thermal gradients, due to the complexity of these sources.

### **Geothermal**

Geothermal energy is found beneath the earth in its various aspects—steam, hot water and even hot rocks. I believe that we will be

very fortunate if we can produce as much as 10 million kilowatts by the year 2000. I doubt that we can do this, but let's say we could. That's 10 divided by 40 or equivalent to about .25-million barrels of oil a day equivalent.

Our nation and the world have a real problem. In fact, I'm beginning to receive a number of publications from sociologists, and perhaps I should also characterize them as philosophers, stating that we will not be able to solve this problem.

They state that we're going to be afraid to go towards nuclear power, which we shouldn't be, and other sources all of which have some risks associated with them, and that this will lead to a decline of the industrial economy of the West.

I do not believe that this is true. I only say that there are people who are so pessimistic that they're turning their attention in that direction.

My energy policy would be the following. I would try to define in some realistic manner the magnitude of energy that our country needs. I concede that this would be difficult, but perhaps it could be done. Then I would try to spell out among the various energy sources that I have just outlined ways of meeting that demand. That seems like a simple and practical energy policy.

## **State Commissioner Guest at Jersey Association Meeting**

Land use and development and cooperation between the New Jersey title industry and the state land commissioners were the subjects addressed by featured speaker Commissioner Jerry Fitzgerald English at the recent meeting of the New Jersey Land Title Insurance Association. English, who heads the state Department of Environmental Policy, invited title insurance industry members to work with her department in developing a system whereby more will be known about the regulatory and title status of a given piece of property than is presently the case in New Jersey.

English also described various ongoing state programs, including the Riverlands Renaissance program which deals with the development potential of waterfront areas. In addition, she reported on the revenue collected from the sale of riparian lands. She said one of the aims she has set forth for her department is to increase the predictability of government decision-making.

Another focal activity of this general membership meeting of the New Jersey association was honoring former governor and Chief Justice Richard J. Hughes for his public service. Hughes spoke about the state Supreme Court's concern over malpractice suits. While this concern is generally with medical malpractice suits, Hughes said the screening and arbitration procedures the court established at the time may well lead to similar procedures for other professional malpractice suits.

<sup>10</sup>U.S. Dept. of Justice, *Report on the Task Group on Antitrust Immunities: The Pricing and Marketing of Insurance*, 274 (1977).

# Report on the ZONE VI NAIC MEETING

Erich E. Everbach

**T**he ALTA Liaison Committee with the National Association of Insurance Commissioners (NAIC) is sort of a strange animal. It has sputtered along for years. Under the able direction of Mack Tarpley, it has done an excellent job of monitoring the activities of NAIC. Since Mack retired, I have attempted to push it into more of an active role. I find some resistance.

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**"The National Association of Insurance Commissioners does have great persuasive powers. It does have great communication powers. The members assemble many times a year to discuss your industry and other industries in the insurance field."**

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Members of ALTA are facing another crossroads besides the one that Buzz Rosenberg described. (See article on page 00.) That crossroads is what the role of your trade association—the ALTA—is to be.

Do you want it to be a group of affiliated state associations, where each of the state associations is responsible for handling the development of the industry's future within that state? Or do you want it to have some coordinated approach on a national basis with a strong central staff coordinating the work?

I think that this organization is going to have to answer those questions in the next two or three years. Many other lines of insurance such as casualty and life, have opted for a strong central organization. I think it is something that this organization is going to have to consider.

Yesterday, in this committee's meeting, ALTA Executive Vice President Bill McAuliffe

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*Mr. Everbach chairs the ALTA Liaison Committee with the National Association of Insurance Commissioners. He is vice president, Pioneer National Title Insurance Co., Los Angeles, Calif.*

made a very important point. He stated that what we are today is the sum of what we were yesterday and all the way back to the American Association of Titlemen in the early 1900s. But what we are today is not what we are going to stay. We're going to be something else tomorrow and the day after. Unless we want to let it become something else tomorrow, we're going to have to make the decision of what we think it should become and try to work toward it.

Let me tell you about the NAIC and the Zone VI meeting. For some of you I know this will be repetitious, but I would like to repeat for those of you who might not have heard it. The NAIC is a trade association—a loose confederation of insurance commissioners. There is nothing binding in what they do. For example, if they pass a model law, no one is obligated to put that model law into effect.

The NAIC does have great persuasive powers. It does have great communication powers. The members assemble many times a year to discuss your industry and other industries in the insurance field.

National NAIC headquarters is in Milwaukee, Wis. The headquarters tries to grow and accomplish as many important things as it can. They have not yet seriously gotten into the title insurance business. They are still struggling with growth in the other lines.

NAIC uses committees, subcommittees and task forces to accomplish its work. Generally, membership in these organizations is by state, so that perhaps the state of Nevada will be a member of a particular task force and then the incumbent insurance commissioner has the option to serve or he may select someone within his staff who will represent the state on that committee. Insurance commissioners come and go. The staff people are often the ones that are the consistent thread throughout the development of concepts and ideas.

There is a task force of a subcommittee called the Title Insurance Task Force. That task force has not been especially active. One active member, however, is Jim Wadhams. Many of you may remember when he served in the Nebraska insurance department. He then went out to serve with Dick Rottman in Nevada. When Rottman left office, Wadhams

was appointed insurance commissioner. He has been active. He has some ideas and he understands our industry.

Wadhams is now commissioner of commerce. Under him is the insurance commissioner. Wadhams' hand is still strong in what happens because Nevada chairs the Title Insurance Task Force. The incumbent Nevada insurance commissioner is Don Heath, a former New York Life agent from the Reno, Nev., area.

Heath is a relatively clean blackboard. He doesn't know much about title insurance. Wadhams makes input to him. But we have some input too.

One of the reasons that not much has been done in the Title Insurance Task Force has been the fact that it has not had the help of an industry advisory committee.

Many of the task forces and subcommittees have advisory committees. The advisory committee is not only people from industry, but consumers and public advocates and others who think that they have a message that they want to convey and ideas that they want to impart.

We have prevailed on Heath to appoint the first true advisory committee to the Title Insurance Task Force. He has appointed George Hursig, Bob Swift, Bill McAuliffe, Ted Schneider, Hughes Butterworth and myself.

What the Title Insurance Task Force wants to do is to consider rewriting model codes and model regulation provisions for title insurance. But, work done in NAIC, if we want to be active, must be accomplished from inside NAIC. It cannot be done from the outside. It cannot be done from a monitoring position as we have tried to do in the past.

We have been fortunate, too, to prevail upon the incoming NAIC president, Pete Hudson, who I understand has now resigned from that office. Before he resigned, however, he appointed C. J. McConville to a high level advisory committee and several task forces. These several task forces will work on various aspects of open competition, how to promote open competition, and what should be the role of rating bureaus. This is not just for title insurance. This is for all lines of insurance.



So now we have someone working on the inside with that advisory committee. I believe there are 26 or 29 people on the advisory committee, including presidents of many of the casualty and life companies. McConville is there not only to make sure that they consider title insurance, but to report to us some of the ideas with which they are working.

In recognizing that we had to work from the inside, the ALTA Executive Committee authorized three people to attend the two regular NAIC conventions each year. These delegates are one member of the Liaison Committee with NAIC, one member of the Accounting Committee and one staff member.

Those of us who have attended—generally George Hursig, Bill McAuliffe and I—have come away from these meetings with the feeling that we must do more. We have seen what other national trade associations have done and we find that we have not been doing enough.

Last year the ALTA Executive Committee authorized us to put on a seminar at the Zone VI NAIC meeting in Salt Lake City in August. The NAIC organizes the country into six zones. Zone VI includes Montana, Idaho, Arizona, and everything west and north thereof, including Guam, Hawaii and Alaska. So it includes, I would speculate, a majority of the policies of title insurance written in the United States. This is also an area of the country where title insurance regulation has been active in the last two or three years.

At the Zone VI meeting there were really three important meetings. The Title Insurance Task Force with Don Heath met with the advisory committee for the very first time. The next day's agenda included a discussion of title insurance. As a matter of fact, it is the one subject that all Zone VI state insurance commissioners wanted to see on the official agenda. Thirdly, of course, there was the ALTA seminar the first morning, following the official NAIC program. We were fortunate to have our seminar announced in the mailing of the official agenda.

At the task force meeting, it was decided that the task force and the advisory committee would identify the issues and concerns and areas where regulation or legislation is needed in title insurance and work toward alternative model provisions. An interim report is to be made by the December 1979, NAIC meeting in Los Angeles. The final product report is scheduled for June of 1980. I don't expect that we will meet that final product deadline. Generally it will take two or three years to do this kind of work.

Basically, what we expect to do with this advisory committee is to rewrite the model title insurance code and to go away from a single title insurance code as a model and look at individual provisions.

I may have given you an example at previous sessions of the kind of thing we're looking at. There is no one provision that should apply to all mechanic's lien underwriting, because there are different lien priority laws

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## **"The insurance commissioners are unanimous in the belief that we need to find ways in which our industry can be more automatically self-regulating."**

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and there are different customs in different parts of the country. So maybe we need to look for alternative model regulatory or legislative provisions.

The same is true for agent licensing. A rate mechanism, prior approval, open competition and use and file are all things that have to be considered. The advisory committee will consider these areas and we hope will come up with some proposals that we can consider by December of 1979. We are now in the process of doing that.

I reported to the Liaison Committee with NAIC and I will report to you that I came away depressed after I attended the meeting of all the insurance commissioners. They expressed a strong desire not to regulate us at all.

I have heard many of you say that the insurance commissioners just aren't doing their job. If they would regulate us and use the laws that are on the books, they could clear up all our problems. The truth of the matter is that they don't think we are worth the time and effort. We don't pay them enough money. We are not a big enough factor in their organizational lives. We are not a big enough political factor. This is a new concept that came across to those of us who attended that meeting.

It was supposed to be a closed meeting. Only the commissioners and their staffs would have been allowed to be present. But they opened it at the last minute.

The meeting moderator was Dale Whitman, who some of you may recall has been active in promoting the Torrens system. He is a HUD consultant and cannot be considered a friend. He should not be considered an enemy though. We cannot afford to consider him an enemy and cut off communication. He has to be considered a factor in the future of your industry. He has to be reckoned with. We have to get inside his head and know him and know what his ideas and his concepts are so that we can fight him.

Representatives of the Zone VI insurance department's staffs said they wish somebody else regulated title insurance.

Commissioner Jack Trimble of Arizona reported that the banking commissioner regulates escrow activities of title companies in that state. The banking commissioner licenses the escrow activities but the rates are filed with Trimble. He indicated that maybe the whole operation ought to be done in the banking commissioner's office.

Angel Kachador and Wes Kinder of California said that they think title insurance ought to be regulated perhaps by the real es-

tate commissioner. Their discontent arises from what they say is our inability to regulate ourselves—our daily market practices. Now, they know and you know that we can't regulate ourselves. I can't get together with Fred Fromhold and decide that we won't do something in a particular area.

What they're saying is that our industry is inherently non-automatically self-regulating. Buzz Rosenberg alluded to the fact that we market through intermediaries. (See article on page 11.) That creates problems.

The insurance commissioners are unanimous in the belief that we need to find ways in which our industry can be more automatically self-regulating.

As part of his insurance department, Bill Fritz of Oregon has appointed an advisory committee to which he refers industry practices.

Monroe Gollaher of Idaho concedes that he has problems there, among them being controlled business and rebates. He is looking for answers. Many others such as Joe Driscoll in Montana, Dick Marquardt in Washington, Wes Kinder, Don Heath and Roger Day in Utah—all of them recognize they have problems. I don't know whether the commissioners in the other zones feel the same way, but I do know that they talk to each other. I do know that if you have six or eight insurance commissioners who feel strongly that title insurers are not doing their jobs and that agents are not exercising self-discipline, then they're going to carry some changes in our industry through NAIC as recommendations.

Thursday morning, immediately after the formal NAIC Zone VI meeting, the ALTA seminar was held. The ALTA and the Washington staff did a wonderful job in helping put it together. They prepared a packet of information to be distributed to each of the participants, the insurance commissioners and their staffs. It contained the 1979 ALTA Research Committee Report and copies of all the presentations that were made by the seminar program participants. I think the packet is a very valuable educational tool.

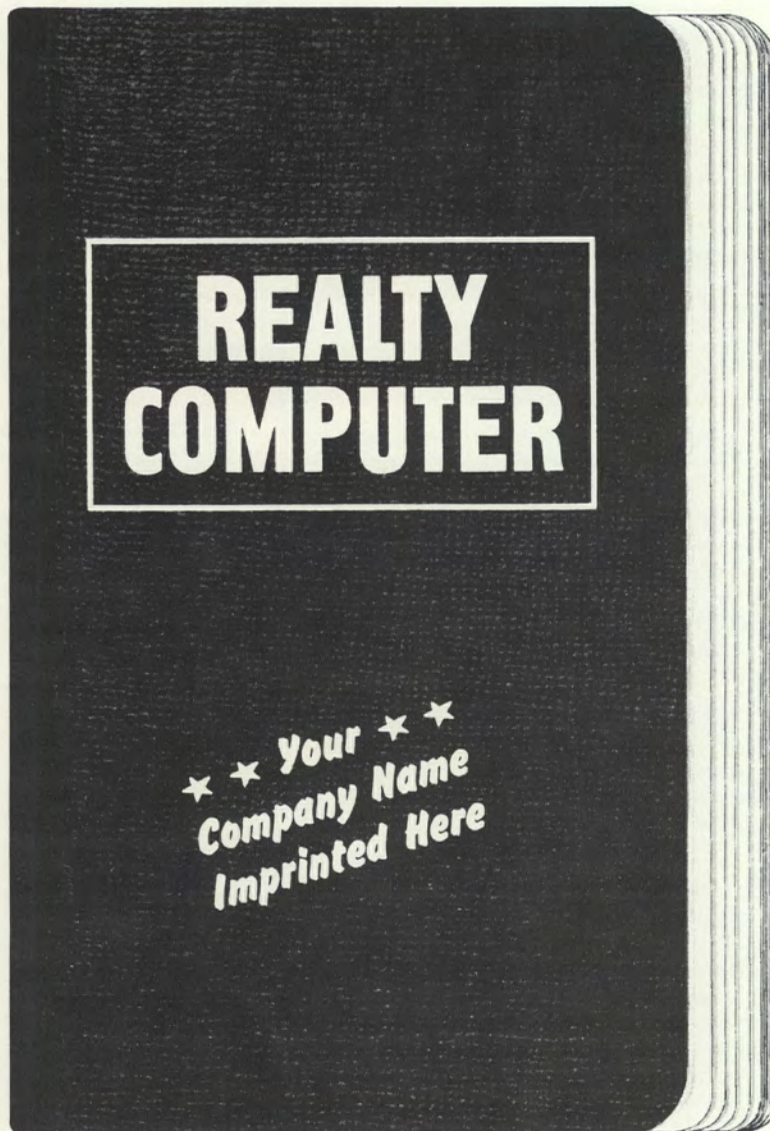
Fred Fromhold spoke eloquently on controlled business and Jerry Ippel gave a speech on operations. However, Jerry's most effective presentation was his anger at picking up a morning paper the previous day and seeing a news article reporting that Utah Insurance Commissioner Roger Day was irked at the title industry and giving the reasons why he was frustrated in his efforts to get the title industry to become more automatically self-regulating.

There were, I think, some misquotes in that article, but it is true. You will hear from Roger Day later on in this convention what some of his feelings are about the title industry in Utah.

Jerry answered Roger Day very effectively and very directly and I think received the respect of those present. He really was visibly hurt for the industry.

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# Report of the Title Insurance FORMS COMMITTEE

Marvin C. Bowling Jr.

The ALTA Forms Committee has had an interesting year. We were 12 attorneys trying to speak in plain English. You will see some of the plain English that we have come up with. Since it is aimed at the ninth grade level, I have a feeling you'll understand every word of it.

Because time is short, I will not describe in detail the work of the committee. Instead, I will discuss the two forms that we have for you.

One is a planned unit development endorsement.

As you know, the Association adopted a standard condominium endorsement form to be attached to either owner's or loan policies, providing special coverage that condominium unit mortgagees need.

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**"There are about 15 or 16 states that have passed statutes requiring policies of insurance to be in simple language."**

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The language of some of those provisions simply didn't make sense insofar as planned unit developments are concerned. So, in talking with the Federal National Mortgage Association and other purchasers of loans on condominiums and planned unit developments, we came up with a form that would more nearly fit planned unit developments. You have that form before you.

We will ask for its adoption at the general session on Wednesday. Please take a look at it so you can vote intelligently on its use.

About two years ago, the ALTA Executive Committee rose to the challenge of consumerism by requesting the Title Insurance Forms Committee to prepare a residential owner's title insurance policy that would be in easy-to-understand language and that would provide broader coverage.

Mr. Bowling chairs the ALTA Title Insurance Forms Committee. He is senior vice president and general counsel, Lawyers Title Insurance Corp., Richmond, Va.

There was some suggestion by the American Bar Association that we were not solicitous of the homeowner in that we did not try hard enough to get him to use owner's title insurance. So we came up with the idea of perhaps preparing a joint protection policy that would cover both the homeowner and his mortgagee and make this the standard form available so that when the mortgagee required title insurance the owner automatically received it because it was a joint protection form.

Our committee worked on that concept and concluded that putting mortgage coverage in with the owner's coverage would be very confusing to the homeowner. So we went to the concept of having a homeowner's policy with an endorsement that would run in favor of the home mortgagee. This concept is one of the alternatives that we will consider later.

In the meantime, however, we have completed the residential homeowner's policy for one- to four-family homes and condominium units. We did not finish this form until yesterday afternoon, so there has not been time to type, xerox and collate enough forms for you to look at it. However, we hope to have it available at the work sessions tomorrow so that you will be able to take a look at it overnight before you're asked to vote on it at the general session on Wednesday.

I think you'll find the form interesting. I'm sure you'll find it easy to read. We hope that you will take the opportunity to read through it.

Because of time limitations this morning, I will not go over this form. I'll give you an opportunity to read it when you receive it tomorrow. Then, we'll ask you to pass on it. Perhaps there'll be time for some questions, if you have any, at the general session.

Now, I will take a few minutes to back-ground you on the main necessity for coming up with such a form. There are about 15 or 16 states that have passed statutes requiring policies of insurance to be in simple language. The requirements of these statutes vary. Some of them leave it up to the insurance commissioner to determine. Some of the statutes are very specific and indicate that the forms must be in a certain format and that they must

reach a certain level on the Flesch test. As I've explained to you before, Rudolf Flesch wrote a book entitled *The Art of Readable Writing*, in which he presents a test to determine whether language is simple and easy to understand. The idea is to use short words, short sentences, short paragraphs and so forth. So you can put any policy on a computer, for example, and it will tell you its score on the Flesch test.

We have made an outline or resume of the statutes which are now in existence. The one in Minnesota, I believe, becomes effective in July 1981. Massachusetts has one that becomes effective sooner, I believe, but does not appear to cover title insurance.

The problem with some of these statutes is that it does appear to cover all policies, whether they are residential policies, commercial policies, mortgage policies or what have you.

Frankly, the Forms Committee hopes that insurance commissioners will not require us to put policies to be issued to sophisticated lenders and to sophisticated commercial developers in plain, simple language. We do not believe that those insureds want that kind of language. It is very difficult to satisfy plain language requirements and yet have the specificity of coverage that we like to give to our insureds and that they expect.

Certain phrases, words and whole paragraphs of our policy have been interpreted by the courts and are understood by us and our insureds. We hope that, as we go down the line, there will be an effort made by us and, hopefully, perhaps by some of our insureds to say to commissioners that as far as the consumer is concerned, we have a simple language policy for him, but don't make us turn into simple language the insurance policies in favor of sophisticated developers, lenders and builders on multimillion dollar projects. I think after you read this policy, you will agree with me that hopefully we can limit the form to the consuming homeowner.

Some of these statutes do talk about personal lines of insurance being in simple language. We have tried to design this policy so that it will meet the most stringent requirements of those states which now have such

(continued on page 53)

**President**—(from page 7)

for Atlanta is being planned for Feb. 22, and we have received a request from the Wisconsin Land Title Association to perform a similar seminar in that state.

The ALTA Liaison Committee with the National Association of Insurance Commissioners (NAIC) has been active. Chairman Erich Everbach held a first-time seminar for regulators at the Zone VI NAIC meeting in Salt Lake City in August.

We've been busy in the U.S. Supreme Court. We lost *Wilson v. Omaha* but we won in *Leo Sheep*. So we are batting .500 in the Supreme Court right now.

Also in the Supreme Court, the court refused to hear the Mashpee Indian case, therefore upholding the lower court's decision to the effect that the Mashpees are not a tribe. Because of lack of tribal status, perhaps it will forestall the filing of claims by tribes where there is any question over the status of that tribe.

In other areas of the country—in Maine and New York—proposed settlements are in the mill. There have been some tentative agreements although nothing has been finalized yet.

At the federal level we have a plethora of problems and actions. The lender-pay report is expected in November. The format of *Capital Comment* in which Bill McAuliffe reports on government activities has been revised. I think it's a much better looking publication now.

The Title Industry Political Action Committee (TIPAC), of course, is very active. You're going to hear more about TIPAC this morning. We are pleased with the amount of money raised and the number of people that participated this year. Both are on the increase and that is certainly a healthy situation.

We're continuing our working relationship with HUD. HUD, as I'm sure you all know, is charged with the responsibility of reporting to Congress next year about any revisions they think are necessary to the Real Estate Settlement Procedures Act (RESPA). Although we're not meeting on a daily basis with HUD, we're certainly maintaining close contact with the people in HUD responsible for RESPA. We're trying to tell them about the real world and the title business. At a meeting a few months ago, Shum Jensen and I really prevailed upon them to send people out to our companies in Wichita and Salt Lake to stay as long as they like and look at anything they want to. We'd like to have them see how the title business is conducted outside of the Washington, D.C., area.

So, you see, we're keeping in touch with HUD in order to know their thinking and to let them know about our thinking.

Recently the ALTA Executive Committee authorized a meeting between Dr. Irving Plotkin of Arthur D. Little and Peat, Marwick and Mitchell, the firm that HUD hired to do research work for the RESPA Section 14 study. The purpose of the meeting is to explain title industry rates and competition problems and to try to head off any misunderstanding at

which Peat, Marwick and Mitchell might arrive in the course of their study.

I spoke of NAIC a little bit ago and I would like to go back to that for just a moment and report that I appointed our distinguished immediate past president, C.J. McConville, to the advisory committee of the NAIC subcommittee on a competition model rating law. There already have been inquiries made of the title insurers as a result of that committee's activities. More information will be forthcoming from the Washington office in that regard. But we appreciate Mac's acceptance of that appointment and the work that he's doing on that committee.

We recently discovered that the NAIC is working on a model privacy protection law. NAIC Liaison Committee Chairman Erich Everbach and George Hursig, a member of that committee, returned from a meeting quite concerned about the effects of this model protection law if it were to be adopted by NAIC in its current form.

It conceivably could mean that individuals could come into any company that had a title plant, or for that matter I would assume, any company that had prepared a title report on any particular piece of property and had turned down the title for whatever reason and demand title files and probably pay only the reproduction expense. We felt that this probably was not really the intent of the commissioners and certainly not something this Association was in favor of.

We discovered that they adamantly refuse to exclude the title industry, as such, from the model law. We are trying to work with them to perhaps get a change in wording that will be something less than an outright exclusion, but the effect of it perhaps would be to make this inapplicable to property, or particularly real property transactions.

Nevertheless, we are, of course, going to notify the states and our members as to this law when it is in final form, so that you on the state level can watch for it and be on guard as to the adoption of this model privacy protection law by your particular state legislatures.

The Executive Committee in its session the day before yesterday, at the request of Marvin Bowling, chairman of the Forms Committee, authorized that committee to start work on a usury endorsement.

It is Marvin's belief and the Executive Committee agreed, that, in light of the existing mortgage market, usury problems and requests for usury coverage probably will increase. It was the feeling of the majority of the Executive Committee that we should have an approved endorsement on-line and ready to go to take care of that eventuality.

The Board of Governors yesterday adopted anti-trust guidelines prepared by Tom Jackson, to alert ALTA members to antitrust matters. We, at the national level, sometimes have to be reminded by Mr. Jackson as to antitrust implications of certain items of discussion or actions that we're contemplating. It was strongly

felt that the state associations should be provided with some guidelines as to antitrust matters. These guidelines will be forwarded to the state presidents and secretaries so that they can use them as they see fit in the operation of their particular state association.

In closing my report, I will say that, although the Association faces many problems—both externally-induced and some of our own making—it is going in the right direction. After four years of attending ALTA meetings and the state and regional conventions over the country and meeting with and observing the members of these groups, I can only conclude that the many problems that we face and new ones that will come tomorrow will be successfully resolved.

I feel very good about the ALTA and the direction it's going these days. We have a great number of competent people that are spending a lot of their personal time to try to solve some of the problems that you and I face in our title operations.

## Metrification Meeting Slated for March

A planning Conference on Metrification for Surveying and Mapping will be held in St. Louis, Mo. on March 12. Organized and sponsored by the American Congress on Surveying and Mapping (ACSM), the conference is designed as a national workshop of preliminary planning for conversion of survey techniques and measurements to the metric system.

The conference will include two plenary sessions and a selection of concurrent workshop sessions. Workshop sessions expected to be of particular interest to members of the title industry are those on land surveys and ordination. Gunther Greulich, founder and principal of the Boston Survey Consultants, Inc., and author of a recent *Title News* article (Oct. 1979, "The Solar Surveyor . . ."), will be the featured speaker on land surveys. Ralph A. Swenson of the National Association of County Recorders and Clerks will lead the recordations session.

Discussion during the plenary sessions will focus on the roles of the American National Metric Council and the U.S. Metric Board and include a panel of all conference speakers.

## Joint Policies Issued

Title Insurance Company of Minnesota and First Montana Title Insurance Co. will issue joint policies of title insurance throughout Montana. The joint announcement was made by C.J. McConville, president and chief executive officer of Title Insurance Company of Minnesota, and Donald D. Bricks, executive vice president of First Montana Title Insurance Co.

# Abstracters and Title Insurance Agents Meet

**Editor's note: The Abstracters and Title Insurance Agents Section used a new approach for its meeting at the 1979 ALTA Annual Convention. After the report of 1978-79 Section Chairman J.L. Boren Jr. and election of officers, five discussion groups assembled to focus on five different topics. Each meeting was divided into three, 20-minute segments allowing participants to attend all of three sessions or more between all five. Group leaders reported that the sessions were well attended. Following are their reports:**

## Advertising and Public Relations

Leader: Earnest Hoberecht, president, Blaine County Abstract Co., Inc., Watonga, Okla.

The discussion leader began each session by pointing out that everyone has an ego. "Our job is to play to that ego and get that client to willingly give us his money," he emphasized.

Attendees offered the following suggestions as techniques that they have used with success:

- Make personal calls on clients. Time devoted to calling and visiting is well spent.
- Send cards to clients thanking them for their business.
- Mail newspaper clippings which mention the client's name to him. Every person is happy to see his name in print and particularly pleased to receive a clipping. Congratulate the client on his accomplishment.
- Make personal calls on sales personnel at real estate firms and explain what abstracters and title insurance people can do for them.
- When a new plat is filed, mail out a copy and ask to handle the title work.
- Employees in your office who take orders should get acquainted and become friends with employees in offices that place the orders. Employees on the front lines of an operation often are as important as the top executives.
- You can make friends by mailing out a list of all mortgages filed. Some do this and sell the list as a regular service.
- One firm reported that it greatly increased its order by installing an in-coming WATS tele-

phone line so that long distance clients could place orders tollfree.

- One abstracter reported that he ran a humorous ad which, tongue-in-cheek, complains about attorneys then proceeds to tell just how valuable attorneys are and praises them.
- In one large city, a firm cut prices then launched a television advertising program with the message: "We're on your side." They found that being the first to use television advertising was a big advantage and reported a remarkable increase in business.
- Another firm bought a van, furnished it with a table and chairs, then sent a public relations person out to talk with builders and workmen on the job with the result that the firm's name was remembered.
- A company sends out business reply envelopes with postage paid so that clients can mail their instruments for filing in the courthouse.
- Several firms offer schools, church groups and civic clubs the use of slide presentations on their plants and title services in general.
- One company holds a gigantic Thanksgiving party which has become a local tradition. Yet another sends personally typed thank you letters to its clients at Thanksgiving.
- Many make good use of the radio to the point of sponsoring Paul Harvey in some areas.
- Good relations with Realtors can be cultivated by helping them obtain useful information such as comparable prices.
- At least one firm reported it sponsors motivation seminars for real estate agents and other clients.
- Still others assist clients in making sure that the names and legal descriptions are correct on documents that they draw.
- Many offer title plant tours for clients.

**Earnest Hoberecht recognizes an abstracter in one of the three discussion groups that he moderated on advertising and public relations at the ALTA Annual Convention.**

## Operations and Development

Leader: Joseph W. McNamara Jr., president, Security Land Title Co., Omaha, Neb.

Each session was based on the premise that the abstract and title business is a primary and essential service business and that any exchange about business development and operations is pointless if we cannot provide that service.

Major points on which attendees agreed are as follows:

- Public Relations is a very important part of every business. When dealing with customers, every employee is a public relations officer. Although larger offices have a separate public relations and new business department, the majority of discussion participants believed that company officers probably perform the most effective public relations job by handling many duties such as phone calls and





**Robert Meckfessel fields a question in one of his discussion groups on plants and systems.**

the Insurance Agents Section was "What can the section do for you or for the other person?" A discussion based on that query was followed by another, "What should the section be doing?" Each of the three discussion groups was asked these questions.

In most cases discussion participants voiced the opinion that the section is doing an effective job in meeting their needs. They approve of past section workshops and panel discussions. However, the opinion that ALTA does not spend enough time or emphasis on the abstracter was voiced more than once.

Some section members feel that too much of the effort of the national office, the Association itself and the Association officers is directed toward title insurance. It was suggested that an article appear each month in *Title News* that would be of particular interest to the abstracter.

Section members indicated an overwhelming support of the new convention format where meetings start and adjourn earlier each day, leaving afternoons free.

It was reported that the section Education Committee plans a questionnaire to determine interest among section members with respect to regional educational programs and to determine what topics they would like to cover in these programs. Most discussion participants felt that it would be beneficial and that they in

fact would attend or send people from their offices, depending on the location and subject matter of the seminar.

### **Plants and Systems**

Leader: Robert G. Meckfessel, director—title production systems, St. Paul Title Insurance Corp., Clayton, Mo.

An interesting feature of the discussion focusing on plants and systems was that although each of the three sessions was conducted by the same discussion leader and began with the same question, "What are your concerns in the area of title plants?", each branched off into three separate and distinct subjects.

The first session focused on the need to computerize. Although no conclusion was reached some of the issues discussed follow.

In what size county is computerization justified? Can the answer to this question be determined by population or recording volume?

A figure of 500 instruments per day was advanced as the point at which computerization of a title plant should be considered. Present costs of searching and maintaining a plant versus the cost of maintaining and searching a computerized plant was suggested as a measuring tool.

Degrees of computerization were discussed. They ranged from a full on-line system to a computerized booked plant where the data is indexed by a computer and the indexes printed on either hard copy or computer output microfilm (COM) by a service bureau.

deliveries. Many believed that having the boss drop by to see customers or deliver abstracts or title policies was of primary importance in any public relations effort.

- Larger offices, with one exception, felt that branch offices, whether acquired or built, were very important in their overall operations both from the standpoint of new business development and from the ability to acquire new business. Disagreement was voiced by a gentleman from Texas who called them a necessary evil.
- Training programs are equally important for small and large offices. The only major difference is how they are handled. Smaller offices generally use on-the-job training programs while larger firms use mostly classroom instruction.
- Although it was believed that the use of computers generally applies to larger companies, many discussion participants from smaller operations voiced the opinion that the computer age is upon us. This is particularly true with respect to title plant computerization. It was generally felt that agents and/or offices not prepared for computerization in the next five or 10 years will be left behind.

### **The Abstracters and Title Insurance Agents Section**

Leader: Thomas S. McDonald, president, The Abstract Corporation, Sanford, Fla.

The first question put before the discussion group that focused on the Abstracters and Ti-



**Thomas McDonald listens as a member of the Abstracters and Title Insurance Agents Section offers his views on what the section should do for him.**



**David F. Upton makes a point during the discussion that he led on the abstracter and title insurance.**

A discussion of computerization costs was limited mainly to equipment. It was agreed that hardware is becoming increasingly less expensive. These hardware costs can be expected to steadily decline, however meanwhile, programming costs will continue to rise.

Lastly, the potential of the joint-shared plant and its effect on computerization costs was discussed. In instances where automation may not be affordable or cost-justified by a single company due to recording volume (either low or high), several companies can join in a joint plant effort. Computerization readily lends itself to several users. The theory was advanced that competition lies in the area of marketing and in-house personnel and that a joint plant does not make its members equal.

The topic of the second discussion group revolved around arbing—when to arb, how and is it necessary.

Following are points raised dealing with what degree of arbing is necessary:

- Arbing can involve a set of plat maps for each parcel in a county, or selected parcels or areas.
- In sectionalized areas, property can be posted to 1/4 section, or down to 1/4, 1/4, 1/4, depending on need. Computerization can further index the property by creation of a grantor/grantee index within a specific 1/4, or even 1/4, 1/4 section.
- The cost of creating and maintaining an arb system must be measured against the benefit of improved search time.
- Most arb systems can be handled by a computer.
- An arb system can be started on a go-forward basis. There is no need to establish arbs for the entire county. This would be accomplished by arbing each deed after a certain date on a go-forward basis.

The second discussion period was devoted to the topic of plant maintenance costs.

First the existence of a plant as a money-saving asset was discussed. In area where a plant is not required by law, can operating expenses be reduced by building a plant? As with computerization, the discussions were mainly a cost-benefit oriented.

The use of parttime personnel or a night crew to post a plant was advanced as a cost reduction measure with full realization that plant integrity may suffer.

The largest sole reducer of plant costs was determined to be a joint or shared plant with several companies sharing plant maintenance costs.

Joint deed take-off or court abstracting were advanced as further means to reduce costs.

### **The Abstracter and Title Insurance**

Leader: David F. Upton, president, Southwestern Michigan Abstract & Title Insurance Co., St. Joseph, Mich.

Over 200 section members contributed their thoughts and ideas during three discussion groups on the relationship between the abstracter and title insurance underwriters. I concluded, based on the discussion, that probably as many different types of relationships exist as there are states in the nation.

Some states require very rigid regulation and examination of an agent and his

relationship with the underwriter. By comparison, other states regulate hardly at all. Following are examples of this contrast.

In Arizona, tests are required for title insurance agents and there are no abstracters in the state.

In Arkansas, abstracters are required to be licensed by the state but there is no regulation or license for title insurance agents. Instruction and selection of agents is left up to the title underwriter.

Abstracters are not licensed in Iowa and title insurance is not permitted.

Illinois has no test for either abstracters or title insurance agents.

Kansas abstracters are licensed and the department of insurance conducts a very stringent examination for licensing title insurance agents.

In Michigan, a license for abstracters is not required but title insurance agents must be licensed, although there is no examination before a license is issued. The underwriter assumes the responsibility for making sure his agent is qualified.

New Jersey is 100 percent title insurance and requires a license issued by the department of insurance.

No license is required in Virginia for abstracters or title insurance agents, but one must be a lawyer to sign a certificate of opinion which is used by title insurance companies in the issuing of their commitments.

*(continued on page 28)*



**Joseph W. McNamara moderates a discussion on operations and development.**

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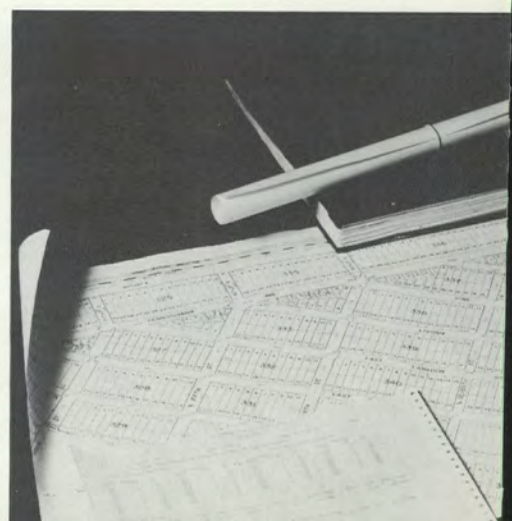
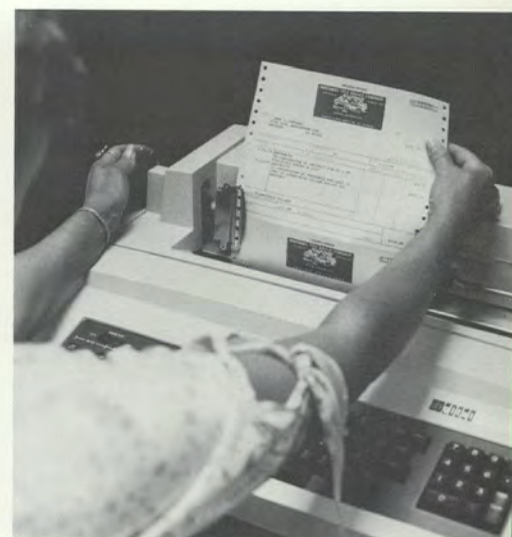
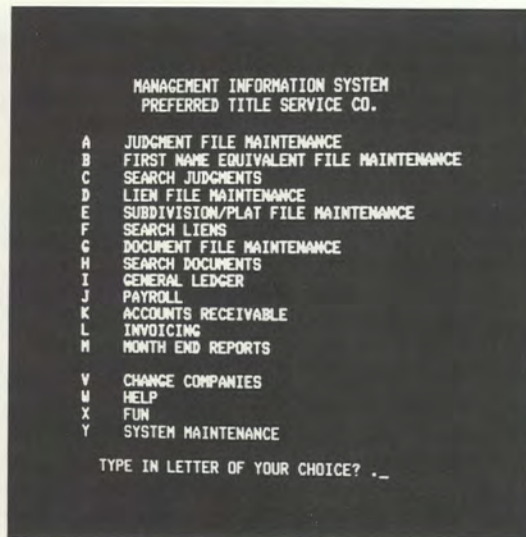
experience and may be shared by multiple title companies with protection for the proprietary data of each.

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# The TIPAC Report

Francis E. O'Connor

From its inception in 1973 through 1976, the Title Industry Political Action Committee (TIPAC) received approximately \$40,000 in contributions, all of which went to candidates running for federal office in 1976. Following the restructuring and strengthening of our organization in 1977, we raised approximately \$55,000 over a two-year period which was contributed to candidates during the election of 1978.

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**"A TIPAC contribution to a U.S. senator or congressman speaks for all members of the American Land Title Association. No elected official is likely to forget such a constituency."**

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Early this year, at meetings of the TIPAC Advisory Trustees, we established a goal of \$80,000 to be raised during 1979 and 1980 and to be used in support of friends of the title industry who will be running for federal office in 1980.

Your response to TIPAC solicitations has been enormously gratifying. To date, we have raised over \$40,000 from 1,100-plus ALTA members. With this type of response, it appears that we will achieve or exceed our goal of \$80,000 next year. Thank you very much for your support.

Also, I wish to express a special thanks to Mark Winter for his dedicated service, to our Advisory Trustees and to underwriting company TIPAC representatives throughout the country who worked so diligently at the grassroots level in support of this important program.

The 1980 federal elections are a year away. The attitudes and beliefs of those elected to Congress will have a substantial impact on the future of our industry. Torrens, McCarran-

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*Mr. O'Connor chairs the Title Industry Political Action Committee Board of Trustees. He is executive vice president, Chicago Title and Trust Co., Chicago, Ill. -*

Ferguson, lender-pay, and controlled business are some of the subjects that will be considered by future Congresses. In order for the title industry voice to be heard, TIPAC must continue to participate. Your personal contribution is the key to a successful understanding of our industry by federal legislators.

TIPAC has become one of the more successful PACs in the country for a number of reasons. The first and foremost is your involvement. There are, however, some other reasons for our unique success.

This year, the TIPAC Board of Trustees, in cooperation with ALTA staff, produced a 13-minute audiovisual slide show. The production has been shown at most of the state land title annual meetings and the ALTA Mid-Winter Conference.

The purpose of the slide show is to visually depict TIPAC's organization and how the State Advisory Trustees interact with the Board of Trustees in the identification of federal candidates worthy of TIPAC's support. The slide show also features interviews with Sen. William Armstrong (R-Colo.) and Rep. Dave Evans (D-Ind.) who vigorously express the belief that the business community needs to organize its political contributions through PAC operations.

Complimentary copies of the TIPAC slide show are available for your use. Arrangements should be made through the ALTA Washington office.

In order to facilitate paperwork connected with operating TIPAC, the Executive Trustees authorized the use of a computer to maintain TIPAC records.

Under the computerized program, State Advisory Trustees receive monthly print-outs listing companies that have given their authorization for TIPAC solicitation, individuals who have contributed, company totals and state totals. The computer also has the capability to expedite necessary Federal Election Commission disclosure requirements. In addition, the computer makes it possible to bring to the attention of State Advisory Trustees companies that have not responded to TIPAC permission or solicitation mailings.

You'll be interested to know that ALTA sub-

mitted a letter on behalf of TIPAC April 4 to the House Administration Committee opposing HR-1, a bill to provide for the public financing of general election campaigns for the House of Representatives. The letter, signed by President Roger N. Bell, stated that public financing of congressional campaigns would add to the inflationary cost of government and would increase the oversized federal bureaucracy. Also, the letter stated that the use of individual tax dollars to support any candidate, regardless of political philosophy, was unacceptable to the public in general.

In addition, the advent of congressional public financing would reduce significantly the ability of business and trade association PACs to participate in a meaningful and legitimate way in the electoral process.

This past summer the House Administration Committee flatly rejected HR-1.

Also, on Sept. 24, ALTA on behalf of TIPAC, submitted a letter to members of Congress expressing opposition to the Campaign Contributions Reform Act, HR-4970. The bill would amend the Federal Election Campaign Act of 1971 to reduce campaign contributions by PACs to candidates seeking election to the House of Representatives. HR-4970 would limit PAC contributions to individual candidates to \$2,500 per election, a drastic reduction from the present \$5,000 PAC ceiling. Also, the bill limits PACs to contributions aggregating not more than \$50,000 for primary, special and general elections per candidate. Presently there is no aggregate PAC ceiling.

We are of the opinion that this legislation penalizes challengers, reduces the ability of PACs to participate in the electoral process and could lead to undesirable legislation supportive of public financing.

As of this date, the House Rules Committee has granted a rule for consideration of this bill but no further action has been taken.

The question continues to be raised on the difference in impact and value between an individual contribution to a candidate for political office and the contribution made by TIPAC. Isn't one as effective as the other? The

*(continued on page 53)*

# The Need To Deregulate The Mortgage Lending Industry

The Honorable Alan Cranston

Today's news focuses on the economy in all its different aspects. We're in a period of extreme and rapid change. The times are exciting but not necessarily fun for everyone. Even conventions are turning out to be exciting, but not necessarily fun, as the American Bankers Association discovered in New Orleans just last week. There they sat, a captive audience, with the prime rate changing almost hourly and Paul Volcker lowering the boom.

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**"The decade of the 1980s will not be a time for the faint-hearted or for dilettantes and economic theory. The times will require hard work, level heads and the ability to persist through adversity."**

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Obviously, Chairman Volcker's actions—the actions of the Federal Reserve Board—will have direct impact on all of us and specifically on your industry. The challenge of the 1980s has begun.

First, there have been OPEC price increases totaling more than 60 percent this year with no end in sight. Second, there's been the Federal Reserve Board's strong initiative against an inflation powered by forces of immense velocity.

Last week, Alfred Kahn, President Carter's advisor on inflation, told the Senate Banking Committee that there is clear danger of moving into a period of higher unemployment and exploding underlying inflation.

In his view four sectors—energy, food, housing and interest rates—are directly responsible for the recent dramatic surges in inflation. He said that we can take successful action in the areas of food, housing and interest rates.

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*Sen. Cranston (D-Calif.) is a member of the Senate Committee on Banking, Housing and Urban Affairs.*

Energy price increases, in his words, "we probably will have to eat." Those words are ominous. That will be how we start the next decade, trying to swallow hefty increases in energy prices along with Volcker's bitter medicine.

The decade of the 1980s will not be a time for the faint-hearted or for dilettantes and economic theory. The times will require hard work, level heads and the ability to persist through adversity. Those individuals and nations who did not permit themselves to be distracted from their goals by momentary sensations or overblown and invented crises will win the rewards.

Some people think we shouldn't be as worried as we are about inflation. One constituent commented to me, "Inflation isn't all bad. At least it's made it possible for every American to live in a more expensive neighborhood without moving."

We in the Senate will focus immediately on efforts to help deal with the prime source of inflation—energy. Many people believe that we've taken entirely too long to set a program in motion.

In the Senate, we have now passed the Energy Mobilization Bill, designed to speed the decision-making process that has sometimes taken ten or 12 years on a given project and then even sometimes the answer is negative. The process will be speeded up by that legislation so we can at least get to the process of developing new forms of energy.

We have three bills to deal with in the next few weeks and we'll be devoting the next few weeks to them.

One is the energy sufficiency program, designed to focus resources on the development of new sources of energy, such as synthetic fuels, solar, geothermal and others.

Then we will deal with the windfall profits tax on the oil companies, designed to ensure equity in dealing with our energy needs and to provide resources to develop new sources of energy.

Finally, I trust we will pass a standby gas

rationing plan to ensure that if again we have a shortage, we will deal with it by a rational, equitable plan, not by a mad scramble at the gasoline stations.

If we put this program together, and I believe we will, we will be on the way to dealing slowly, but I hope surely, with our energy difficulties. It will take quite a while.

There are other things that we must do. We must move toward a balanced budget. The imbalances in the deficits are another source of our inflation. And we are on that way.

For three years now, there has been a substantial reduction in the deficit. Looming recession may delay that a little bit, but we will keep at it until we do get the budget balanced.

We also have to find ways to deal with the absence of productivity in our economy. That's very complicated. Changes in the tax laws are one approach to it. I support it and played a key part in getting through the change, the reduction in the capital gains tax. I think we also need investment tax credits, which will lead to investment and more rapid depreciation write-offs of property involved in production as a better way, as an additional way to get funding behind creative, constructive steps designed to make us more productive.

One of the major problems that we face, relates to housing in particular and to real estate transactions in general. This problem lies in interest rate ceilings on deposits. This has commanded a great deal of attention in Washington since the Gray Panthers and others attacked the unfairness of these ceilings on bank savings accounts and thrift institutions savings and loan accounts. This is not exactly a new subject. Everyone knows that Regulation Q, which keeps the differential and the ceiling, is most unfair to the small saver, the one who has few alternative deposit sources and who lacks the knowledge to take advantage of alternatives.

It's well known that Regulation Q has interfered with the efficient functioning of our financial system. But in spite of major areas of agreement on effects of Regulation Q and the agreement achieved in various studies over

the past decade, and recommendations for changes, little legislation or regulatory reform has actually occurred. Meanwhile, the financial economic environment has been changing very substantially.

In the past, the legislative impasse caused by the lack of progress in this area was often attributed to concerns that the thrift industry would cease to be the nation's housing finance specialist, if it were granted consumer lending and third party payment authority. It was also attributed to concern that variable rate mortgages would subject homeowners to unreasonable increases in mortgage interest costs. And it was linked to concern on the part of the thrift industry that removal of Regulation Q would expose the industry to competitive forces in the marketplace with which it could not successfully cope.

The impasse brought about by these concerns suggests that the legislative process has not produced a consensus nor have general circumstances among regulators, legislators, industry and consumers on how these problems should be resolved.

The Senate Banking Committee reported recently a major financial reform bill with attempts to address many of these concerns and others. The prospects for it are uncertain. The bill is highly controversial. It contains many new powers for thrift institutions that should allow them to innovate without impairing the potential for achievement of national housing policy objectives. The new powers include NOW accounts, increased consumer lending powers, trust powers, freeing up of restrictions on real estate lending and exemption from usury ceilings on mortgages. The bill also contains a step-by-step ratcheting up of interest rates and a phase-out in ten years of Regulation Q.

On this latter phase, I wound up voting for an alternative to that part of the bill. The prospects for action on this bill are uncertain. The Senate will have to deal with it before this year ends because we need to pass legislation to deal with effects of the court decision abolishing transaction accounts. And we will do that.

The House, meanwhile, has passed a far more limited bill. All that the House bill does is provide nationwide NOW account authority and deal with the court decision on transaction accounts.

The House leaders in this area have indicated that they will not accept the long complicated Senate bill with its many procedures and provisions different from the House bill and beyond it, until they've had a chance to have hearings and consider them. So I do not believe the Senate bill will pass in all detail.

**Becky Bostic, the wife of an ALTA Florida member, speaks with Sen. Cranston after he delivered his address before an ALTA general session.**

I do hope that we pass legislation dealing with the NOW accounts, the court decisions, and at least the usury provisions of present law which need to be changed. I am dedicated to seeing that they are changed, despite the political liabilities of being in the stance of saying you seem to be for usury, which, of course, we are not. We are dealing with reality.

The decade of the 1980s promises an era different in many respects from its predecessors. It's expected to be characterized by slow growth and high inflation for at least the early part of the decade. Yet one also in which potential housing demands will be greater than perhaps ever before.

While the political marketplace seems to be at an impasse which I hope we can break, forces in the financial marketplace will be a continuing challenge to the regulated financial industry. These forces are now blurring the institutional distinctions among traditional competitors, namely the commercial banks and thrift institutions. They also are recognizing the presence in ever intensifying competition from a widening range of new banks, credit unions, finance companies, major retailers like Sears, the address of money market funds, public utilities with a consumer denominator debt offerings, municipalities with their mortgage backed securities and so on. Many of these divert money from housing and that's a problem that we must find a way to deal with.

Non-bank competition is already growing at an alarming rate, unaffected by the old protection. No one is proposing seriously legislative efforts to restrain the growth of money market funds. If any were attempted, they might well prove ineffective even if they were successful in their original purpose because every time a leak in the dike is plugged, the market seems able to respond ingeniously by

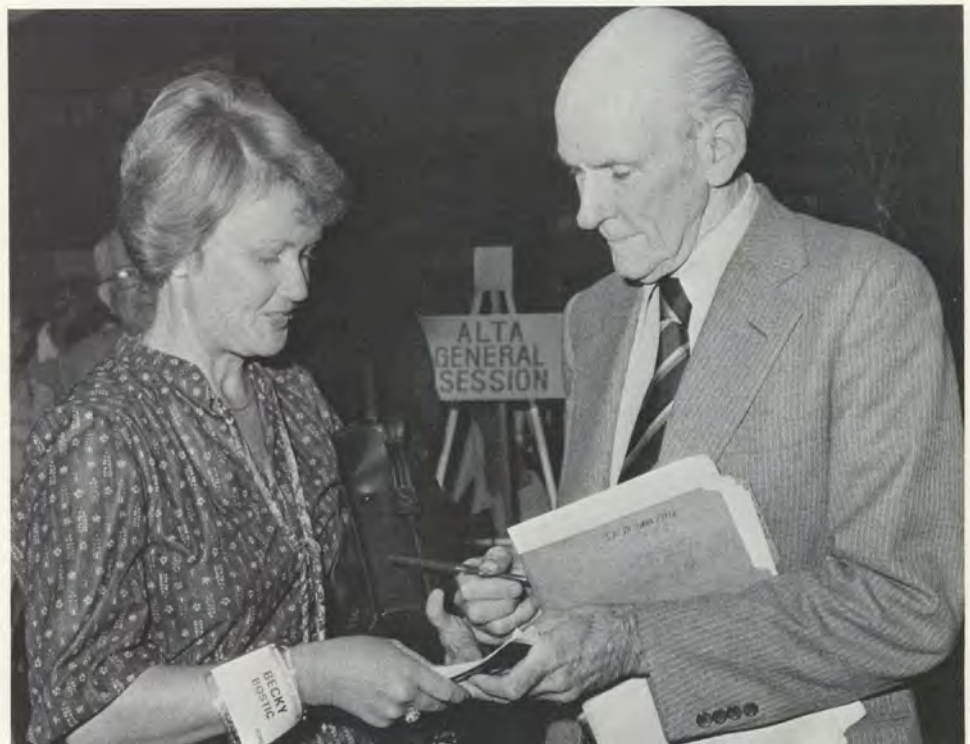
providing a new avenue for funds to seek the highest interest rate levels.

Consumer depositors are growing less security-minded in their savings habits and are also seeking high interest rate levels, along with convenient access to their funds. Given this environment, I think what is apt to replace protectionism in the marketplace for thrift is government-encouraged competition between all financial intermediaries.

I think we have to explore ways to make sure that money remains available for housing. And I've asked the Federal Reserve Board, rather the Federal Home Loan Bank Board, in a way that I think might help deal with this problem, to explore the potential of using the excess federal savings and loan insurance premiums and excess profits of the Federal Home Loan Bank to purchase the lowest yielding mortgages on the basis of some sort of a repurchase agreement.

I've also asked the Federal National Mortgage Association (FNMA) if it could undertake such a program. What we might work out is some sort of a program where the Government National Mortgage Association buys the old low interest, long term mortgages that are hamstringing the savings and loan institutions in some sort of a tandem plan selling them to FNMA in some variation of the Brooke-Cranston legislation that stimulated housing several years ago when that was needed in 1975.

I think FNMA should recognize its public responsibility. The Treasury backstop given to FNMA gives it the highest possible ratings and lowers its cost of going to the capital market. This enables FNMA to pay handsome dividends to its stockholders. In return for that Treasury backstop, FNMA should perform a public purpose. Otherwise, why should it be



given that backstop? I propose to explore all of that.

I, and others in the Congress, applaud all reasonable efforts to halt rampaging inflation. But let us not forget that one of the major causes of inflation has been housing shortages resulting in higher housing prices and rents. In fighting inflation, we must avoid crippling unemployment and increased housing shortages.

Unlike other periods preceding recessions, the past three years have not produced a surplus of homes or apartments. Vacancy rates and unsold homes are at a 35-year low. Therefore, a sizeable reduction in housing production would be inflationary; yet at the same time it would create massive unemployment. It would be a devastating blow to an industry that is just recovering from the housing depression of four years ago, induced by the Federal Reserve Board's high interest rate policy.

This could lead, if we face it again to a deep, uncontrolled recession as has happened in the past. Therefore, I urge HUD, FNMA, GNMA, The Federal Home Loan Bank Board and other federal agencies to take appropriate steps to prevent housing starts from going below let's say 1.5 million units seasonally adjusted in any one month which would be down from the 2.1 million level of one year ago and 1.8 million recently.

Among these steps should be the provision of affordable mortgage funds to America's home buyers so that their monthly housing costs will not increase at a rate faster than the rate of inflation that we now have. I am dedicating a great part of my attention to efforts to find ways to achieve this goal. I don't know how successful we or others working on this problem will be in finding workable approaches to this problem. Therefore, I hesitate to make any predictions about what housing starts will actually prove to be in the time ahead.

I'd like to report briefly on another regulatory development in Washington—revision of the Real Estate Settlement Procedures Act (RESPA)—which is being considered by a unit within HUD. A contract has been let to study how well RESPA protects consumers. A report is due Congress in June 1980. HUD reports to me that all data gathered so far are preliminary and do not exist in any really organized form as yet.

Apparently HUD will not recommend legislative changes until more information is gathered and analyzed. I will not make any editorial comment on that report. As lawyers like to say, it speaks for itself.

Another update from the deregulatory front. This one is from the Senate Subcommittee on Anti-trust, which is holding hearings on the Insurance Competition Improvement Act of 1979, otherwise known as the McCarran-Ferguson repealer.

Deregulation, like beauty it seems, is in the

eye of the beholder. As I understand the bill, it would remove the protection of the McCarran-Ferguson Act from the insurance industry and replace it with a limited safe harbor. The bill essentially follows the recommendations of the National Commission on Revision of Antitrust Laws.

The second portion of the bill, according to the subcommittee, doesn't affect your industry. It would establish federal standards for protection against discriminatory practices and other arbitrary practices in the auto, home and business insurance workers compensation field.

I have no prognosis on what will happen to that bill. Clearly it's highly controversial and will be the subject of intense debate within the Judiciary Committee and elsewhere.

It's equally clear that insurance and insurance-related questions no longer are immune from federal legislative or regulatory scrutiny. The product liability question and similar issues require federal solutions.

At some point, we will face again the question of limited tort recovery in private actions. Our society and economy cannot sustain for much longer inordinately high costs imposed because of limited recoveries in liability actions.

Limiting and regulating individual's rights to bring legal action, which are covered by insurers, will be accompanied by some form of federal action with respect to the insurance industry generally. Any federal action in this area must be undertaken with care and respect for the ability of individual representatives or members of the industry to do business without undue regulations or stifling of their ability to serve the public efficiently.

It is very apparent that regulation, like the other challenges we will meet in the 1980s will require an ability to sort the wheat from the chaff. A lot of what passes for deregulation is simply regulation in another form. Some other proposals for deregulation are simply attractive invitations to chaos and economic buccaneering of the worst sort.

Foolishness always dances behind a mask of labels, as Sally Rand proved so very successfully. If you keep the fans moving, nobody will see what you are hiding.

Because the times ahead will be trying for the American people, the lure of simplistic solutions will prove more attractive than perhaps at any time in our recent history. Common sense, which is Mother Nature's way of protecting us against ourselves, tells us that if problems really are as easy to solve as some tell us, then those problems would have been solved a long time ago.

I have confidence that our common sense will not desert us in the decade ahead. Let us trust our better instincts and not surrender to doubt and fear.

#### Abstracters—(from page 23)

Wisconsin requires that title insurance agents be tested. This, however, is not the case with abstracters.

It is evident that there is a great deal of difference in how an abstracter or title insurance agent enters the title business. However, whether or not the abstracter or agent is tested, his business knowledge is certainly of prime importance and eventually relates to the type of business enjoyed by his office.

There was a great division of opinion as to whether or not abstracters should represent more than one title insurer. In most instances, where the abstracter-agent felt that he should represent only one title underwriter, the underwriter was a dominant factor in his area and there had been long time relationships between the agent and the underwriter.

For those representing more than one underwriter, it was felt that the agent could take advantage of the various practices followed by the underwriters in their final approval of commitments and also the placement of national business with the agent could be forthcoming from more than one national underwriter.

In most instances, the agent is very alert to the type of response he receives from the underwriter in any problem areas. It appeared that the counsel of the underwriter is the key to proper communication between the agent and underwriter.

In the case where an agent represents more than one underwriter, there were different ways in which the agent would select the underwriter for a specific commitment. In one instance, an agent followed the practice of asking his customer for his preference of a particular underwriter. If the customer expressed no preference, the agent then would assign the commitment to the underwriter he felt could best handle the situation. In doing so, he would consider what type of reciprocal business he had received from the underwriter, whether or not there was any special counsel to be had with the underwriter and whether or not the underwriter deserved the business at that time.

In another case, the agent would try to even out the orders among his underwriters to the best of his ability. I received the distinct impression that the sales effort of underwriters through their field people plays an important part in the allocation of orders to their companies.

It was felt by most abstracter-agents that errors and omissions insurance is much too costly for their particular business. It was pointed out that this issue has been reviewed by ALTA and that new policies are being written, specifically by Title Pac, which most agents feel is more reasonable than others they have experienced in the general errors and omissions field.

# How To Polish A TARNISHED IMAGE

Richard E. Cruikshank

**D**oes the image of the title insurance industry really need polishing? It certainly does in California and I'm sure the industry has a few blemishes in other states.

This is true even though there are some talented people working hard to keep your image polished, including the public affairs staff of ALTA. Various state associations are also applying polish.

Who then is responsible for the blemishes?

Well, there are many detractors in California—land of the activists. A radio commentator recently tried to sully the title industry reputation during a talk show. His guest was Wesley Kindner, California state insurance commissioner. Here's the transcript of the show.

**Caller:** Hello, Art?

**Finley:** Hi.

**Caller:** This is Charley down in Saratoga. Would you ask the commissioner, does his commission also regulate title insurance companies?

**Kinder:** Yes, we do.

**Finley:** that's what I thought.

**Caller:** Well, a neighbor alleges that he owns 15 feet into my property and it has developed into quite a legal suit, and the title company says no, they have no legal right to defend me, and so I am in an awful problem. In other words, I can't go out and hire an attorney for a couple of thousand dollars to fight the title company and fight my case in court. So, what do you do?

**Kinder:** Yeah, I'd . . . Ah . . . It's again, I'm not certain of the answer to your question, Charley, I think that probably they are not responsible for the defense of which you speak, but if . . . if liabilities accrue to you . . . if . . . the suit is . . . if your neighbor's suit is successful, assuming he has lodged it, and it's found that . . . that the title you have is impaired in some way, I think the title . . . the title insurance company would be required to make you whole. But, here again, if you will . . . if you'll write to me

at the department, 100 Van Ness, San Francisco, and give me the specifics, I'll try to get you a specific answer.

**Finley:** Charley, this is really shocking.

**Caller:** Well, you see . . .

**Finley:** Really shocking. I'm really shocked, right out of my socks. I always thought . . . I have always thought that title insurance, anyway, was a useless excrescence on the bottom of humanity. I think it's madness that we have to pay title insurance and do it on such things as condominiums where its the same piece of property and everybody buys title insurance and it happens all the time and there's a reasonable alternative to it called Torrens and there's not a chance in God's green earth that . . . of ever getting it instituted in California and now you tell me that someone comes along and challenges your title and they've done nothing . . . absolutely nothing . . . except bleed you for a little bit of bucks when you buy that property and now they say that they're not going to defend what they are theoretically insuring?

**Caller:** That's right.

**Finley:** OHHHH!!!

**Caller:** Yeah.

**Finley:** Isn't it . . . Now, let me ask you, Wes, isn't that a shame and disgrace? Isn't that really hideous? What in the . . . they have no justification in logic or in law, it's only in tradition, and it's a sleazy tradition at best, this business about title insurance. Now, when they're supposed to produce, when they do nothing for it, and they're supposed to produce and they don't do anything . . . what can be their justification for existence?

**Caller:** To make money. Right?

**Kinder:** (Light chuckle). Well, I'm not here to defend the title insurance business either specifically (light chuckle) or generally, but again, Charley, if you would do that, please, I would . . . I would like to check that out to see if we can't give you a very specific answer.

**Finley:** Let me know, Charley, if there is nothing that can be done about it and I will continue my campaign to get title insurance outlawed.

**Caller:** Hey, great.

**Finley:** Thank you. I've been after that for some time, too. Well, listen, you know, Wes,

that I'm never going to say something behind your back that I would not say to your face and I'm telling you the truth. I think the idea of title insurance is an anachronism; it's ridiculous; it is a useless excrescence, and it's nonsense. The idea . . . here's a guy paying good money for title insurance, and it's a massive business in the state of California, and here if they don't deliver what he's paying them money for, what possible excuse can there be?

**Kinder:** Well, I would guess that they were insuring that he had good title . . . not to defend him against that, but . . . and that any . . . any . . . liability that accrued because he did not have good title they would be obligated to pay, but I don't know that defense of a suit is . . . is part of . . .

**Finley:** What are they there for . . .

**Kinder:** . . . of the provisions of the policy.

**Finley:** What are they there for?

**Kinder:** Well . . . you've indicated . . . (light chuckle) . . . your ideas as to why they're there . . .

That is not an isolated case. There are others adding tarnish. Last year another radio commentator in California referred to title insurance as one of the most "notorious punitive rip-offs in the financial world." That covers a lot of ground and is particularly galling in a state with one of the finest and most efficient title systems in the nation.

Newspaper writers have also been critical. One referred to your business as a "particularly ingenious form of nothing." All the denigrators are not in California. The Chief Justice of the Supreme Court has been publicly critical of the cost of land title searches.

Then there's Jack Anderson and Ralph Nader. There is currently a dispute reported in media in some states between attorneys and title companies.

Assuming there are some negative attitudes out there, what do you do to create a positive posture? How do you polish away some of the blemishes? The first step the California Land Title Association (CLTA) took was to begin as you all do when a title policy is ordered. They started with a thorough investigation.

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Mr. Cruikshank is vice president, David W. Evans, Inc., San Francisco, Calif.

Research helped CLTA determine the attitude of the general public and opinion leaders and to gauge how wide and in what area is the information gap. The results enabled the public affairs committee to target in on the problems as part of a public relations and educational program. It was the first step in image polishing. In fact, the published results of two research projects developed a lot of favorable media coverage and gave CLTA a chance to respond to key criticisms and misunderstandings.

Personal interviews were conducted by Field Research among 1,000 families most of whom had bought or sold homes. Another survey was subsequently made with a mailed questionnaire to a selected group of opinion leaders. These surveys—believed the first in the industry—indicated there is a need for an educational program in California, one that would augment the fine program of the ALTA. We discovered that not only the general public but many people in the real estate and mortgage lending industry are misinformed and uninformed.

The homeowner survey showed that 42 percent of those who bought and sold property either gave incorrect answers or don't know what steps the title company takes prior to issuing a policy. One-third were unable to voluntarily provide any description of the steps taken before a policy is written.

A large proportion of respondents were unaware of the cost of title insurance. One-third were unable to provide an estimate when asked to indicate the cost as a percentage of the value of the property insured. Another one-third over-estimated—suggesting percentages of from two to ten percent of the value.

Of those able to give an estimate, one-third believe title insurance costs are somewhat or very unreasonable. Considering that a number guessed the cost to be two, three, four and up to 10 percent of the property value, this is understandable.

Home buyers and sellers strongly associate title insurance with closing costs, more so than items costing more. This is particularly true in northern California.

Thirty-six percent of respondents don't know or couldn't answer the question "what items are included in the closing costs." Among those who did recall a component of closing costs, land title insurance was by far the most frequently mentioned. Forty-two percent mentioned it as against the 25 percent who mentioned the real estate commission. This would seem to indicate that many home buyers consider title insurance costs are the major expense in settlement costs. At least it's the item they think of first. There was also considerable confusion as to who orders and who pays for title insurance.

The second survey was made by mail among a group of opinion leaders that we classified as either insiders or outsiders.

Insiders included attorneys, mortgage loan officers, real estate agents, builders and de-

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**"A positive public communications program is the polish you need to overcome tarnish. You have a convincing story to tell and lots of misinformation to dispell."**

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velopers. Outsiders were media people, educators and government officials. The most significant finding was the lack of knowledge about title insurance coverage among "insiders."

An amazing 68 percent of insiders did not check "mental competency of seller" as a covered item in title insurance policies. And 40 percent checked as "not covered" errors in assessors' or recorders' records. Their opinions as to whether there is coverage of structural encroachments, illegal lot splits and problems disclosed by survey were about equally divided between "covered" and "not covered."

Another surprising revelation is that over two-thirds of insiders are unaware of the inflation endorsement and about one-half of insiders believe insurance rates are set by the state of California.

As we all know, there are people who have called title insurance a rip-off. We asked opinion leaders whether or not they believe this to be true. We asked them to state whether they agree strongly, somewhat or disagree strongly or somewhat to the statement "Title insurance is a rip-off to the home buyer." Three percent agreed strongly and 16 percent agreed somewhat. Five percent of outsiders among the opinion leaders agreed strongly and 28 percent somewhat.

These additional figures may be of interest. Twenty-nine percent of outsiders don't agree it is necessary to again search title for homes which are resold after a short period of time. Twenty-two percent feel strongly about this. At the end of the questionnaire respondents were asked for comments. Most volunteered them. A number mentioned that homeowners question the value of title insurance because they never hear of any claims being paid. There were over 100 respondents, mostly lenders and real estate brokers, who stressed the need for informing and educating home buyers. One savings and loan mortgage loan officer summed up what several others expressed, "Education is the key, together with cooperation within the industry. Buyers need good counsel and real estate people, lenders and the general public need to be more aware of what title insurance is all about."

I can't think of a better way to articulate the objective of an "image polishing" program. When the oil companies, the drug industry and the medical association realized there was a need for an educational program, they launched an intensive advertising program. That is perhaps the quickest and surest way to

reach the public and influence opinion molders. But it's expensive in a market the size of California.

Instead CLTA has embarked on a public relations program modeled along the lines of the ALTA program and those some of the state associations have developed, but adapted to title practices and customs in California. The program also includes press coverage of CLTA for its position on legislation affecting the industry, the association's viewpoint on controversial issues, problems besetting the membership and the creation of printed educational materials.

This first organized public relations program of CLTA has achieved some rewarding results in the seven months since its initiation. There has been excellent acceptance of an informative, bylined column about title insurance. Some 30 publications are carrying the column on a regular basis. These informative columns cover many of the areas where we found there are misunderstandings, criticisms or ignorance about the value and functions of title insurance.

To date we have prepared 20 different columns, most of which appear under the byline of CLTA Executive Vice President Sean McCarthy. They have covered such subjects as hidden claims, closing costs, types of protection and need for a new policy with each sale of a home. Most of these columns appear regularly in daily and weekly newspapers and the list is growing weekly.

The total potential exposures for CLTA to date is over six million readers, based on individual circulations for each issue which carried a column or news story relating to CLTA or land title insurance.

A series of educational folders is being prepared such as one entitled, "How to Conduct Your Own Title Search." It will take a misguided home buyer through the pitfalls of trying to make his own title search. It will use a humorous approach but the many skeptics who feel they could save money or who question the value of a title company's services, will find the message very sobering.

A few months ago CLTA published its first newsletter. Currently it is sent to members only. Consideration is being given, however, to making this an informative, regular publication for executives in the real estate, mortgage loan business as well as to distributing it to key state officials. It is inexpensive to produce yet effective as a communications piece.

The newsletter includes a brief digest of newsworthy items affecting property ownership and mortgage lending and keeps members informed of the CLTA activities and the value of membership in the association.

Members have requested copies of the informative columns and articles on title insurance and have used them in their own sales literature or obtained publication of them in their local newspaper.

(continued on page 67)

# Management of Title Company BUSINESS EXPENSES AND COSTS

The following workshop on management of title company business expenses and costs was arranged in three segments with three different speakers. Discussing budgeting was Gerald L. Ippel, president, Ticor Title Insurers, Los Angeles, Calif. Joseph D. Burke, who is executive vice president, Commonwealth Land Title Insurance Co., Philadelphia, Pa., spoke on productivity. Computerized closings were discussed by Robert D. Dorociak, chief executive officer, USLIFE Title Insurance Company of Dallas, Texas. Mr. Ippel was the lead speaker.

I will begin by saying that budget is a four-letter word. Now, while I'm saying this, I know you're mentally spelling the word and counting the letters and the count comes out to six, not four. But I submit to you that no six-letter word has had more four-letter words applied to it than the word "budget." Thereby I conclude it is a six-letter word which, through association, has been modified into a four letter word.

Certainly budgeting is not new to any of us, either in our business life or in our personal life. The trouble is that budgeting is so distasteful to us that we as managers generally try to avoid it by assigning this onerous job to our accountants, or in our personal lives, to our spouses.

In business, the manager absolves himself of the responsibility of guessing wrong on his company's budget by telling his controller or accountant to do the job for him. The controller then gathers as much historic data as he can, feeds it into his computer and hopes that his end product looks reasonably good.

Once the budget is finished, everyone breathes a sigh of relief and prays that no one will talk about it until next year. If someone does make an inquiry, the stock answers and the ready alibis are available.

For most businesses, the budget has become drudgery, an agony, if you will, to be endured until the next time. Once the budget is com-

plete, many companies revert to the cigar box method of financial planning.

Surely any effort which requires as much time and attention, as much manpower and as much intellectual perspiration should have greater value as a management tool for controlling costs than a budget has in most businesses.

What is wrong then? Why do we all work so diligently on a process which results in a mechanism of dubious value? The answer, in my opinion, is focus. When we budget, we focus on numeric conclusions—the bottom line. What we should focus on is not just the end, but the means.

Now, if you travel from Los Angeles to San Francisco by automobile, you drive up Route 5 or Route 1. Route 5 is a straight four-lane highway, an interstate route directly through the San Joaquin Valley, which unless you enjoy seeing agribusiness at its best, you will find dull, uninteresting and uninspiring. But it gets you to San Francisco in about eight hours.

Route 1 is slower and longer. It roughly follows the coastline, goes through several small California towns, hangs high on the rugged Pacific bluffs and on a clear day, is awe-inspiring, breath-taking and absolutely beautiful. It eventually gets you to San Francisco, but along a scenic route which you will never forget.

My point is that budgeting can be done quickly and directly, and dully and uninterestingly. It can be a process which gets you from point to point rapidly and just as rapidly is put out of your mind when it's over. It is doubtful whether this kind of budgeting has any real value to you or your company.

If you will, in your own mind try to analyze what you are trying to do when you budget. May I suggest to you that budgeting is an operating plan which is made up of various strategic components, none of which are free-standing, but each interdependent on each other.

I emphasize the word "interdependent." A budget is not just the sum total of sub-budgets

of various departments in your company. It is an operating plan for the entire company with each piece relating to every other piece.

But in order to have an operating plan or, in military terms, an attack plan, first you must have a battle plan or a business plan.

A business plan consists of a series of objectives which you want to accomplish. As a manager you have to determine exactly and precisely what you want your company to do. You will be forced to compile a series of goals, but you can't stop there. You want to perhaps develop a long-range plan over a span of years or a short-range plan over a span of months, as well as your plan for next year.

Next, you must establish priorities for your objectives and arrange them in some semblance of importance to your operation. This then becomes the general battle plan. It might consist of such objectives as increasing your market share, establishing a new branch office, speeding up your service, upgrading personnel, cross-training of staff, computerizing your escrow operations or changing your accounting procedures.

After you've done this, then you can begin on your operating plan or your attack plan which becomes your budget. It is a series of choices based upon probable occurrences or on certain contingencies integrated with the objectives which you have perceived in your business plan.

Your operating plan actually consists of several budgets, which you put together almost simultaneously. They are a capital expenditure budget, an operating budget, a cash budget and a contingency budget.

Looking first at the capital budget, again, you are faced with a series of choices. What equipment, facilities, what automobiles are essential to your continued operation? What has to be replaced and what can be rehabilitated or refurbished? What additional equipment, personnel and facilities do you require to accomplish your business plan goals? If you delay these purchases, will inflation push their costs higher next year?

How do you sort out those items your staff tells you are essential from those that you believe may only be desirable? It's difficult. And you will make some mistakes. But you're forcing yourself to think about it. This is very important in controlling costs.

Your operating budget is the heart of the entire planning process. You must consider the following:

- How many orders you will take.
- What the order mix might be. (Some will be agency, some will be direct, some will be title insurance and some will be abstract.)
- What your average income per order will be. Here, you will have to rely much on historic data and add in an inflationary factor or quotient.
- What size staff you will need to produce the work. Unless you're making a quantum breakthrough in equipment, average individual output will not vary as the balance of work increases. As the volume of work decreases, average individual output will decline. People naturally slow down their production in order to fill the time of their work day. We all recognize that.

The problem for managers is to keep the production level at a norm when business declines by reducing staff. If a manager doesn't do that, when volume increases, his staff will produce less per individual employee than it did before the decline.

- Have you considered seasonal activity in the marketplace? The seasonality mix changes sometimes and you must gauge when that change may occur.
- What will the strategies of your competitors be and how will you respond? What must you do right now in anticipation of what their competitive strategy will be?

When you complete your operating budget, you start on the "what if" part of your planning. For example, what if business is not as good as you predicted? Suppose it's down five percent or ten percent? Suppose your seasonality pattern is off by 30 or 60 days? Suppose a new competitor enters your market? This is contingency budgeting and I find it's the most difficult part of business planning because in our business we are rarely presented with an event that triggers some contingent effort on our part.

Usually, the situation comes upon us slowly and almost imperceptibly. One morning we wake up and there it is.

In any battle plan, you must also plan your retreat—a fall back position. In today's environment, you damn well better know in advance where you can go and what position you can sustain.

Watch out for high fixed costs. They cut off your retreat and make it impossible for you to extricate yourself. Beware of those long-term triple net leases. They may choke you to death if you misjudge an office location or if the market turns down. Watch those long-term computer and equipment leases. Those payments

## Gerald L. Ippel

must be made whether business is good or bad.

Now, all of us are gamblers to a degree. This is the time to exercise prudence. Be cautious. When you have completed all these things your cash budget will naturally flow. It will tell you what cash reserves you will need and when you will need them. And how to avoid the clutches of your friendly banker.

My next suggestion to you is that when you've finished your budget, put it aside. Do something else. Think about other problems. A budget, like good whiskey, has to ferment for a while. So come back to it later and review the choices you've made and decide whether your reasons are still valid.

Remember that no budget is worth the effort of preparation unless you have a system of monitoring your progress. Controls along the way are vital. Financial reporting becomes your navigational star. Never, never fall into the trap of showing on a month to month basis how much money is unspent in your budget. This encourages your managers to be complacent.

For example, you may have budgeted \$10,000 for business development expenses and you've approved that expenditure for the year. If they see, for example, at the end of May that they've spent only \$3,000, they may sock it to you in June and you'll exceed the amount that you had planned to spend.

Periodic reporting from your subordinates is required if you want to control costs and expenses. You must insist on justification for any expenditure which is not budgeted or expenditure-overruns which exceed the budget. Here you must be flexible, but not too flexible. If you're too flexible, the expenses will run away with you. If you're flexible, you won't be afraid to re-forecast at mid-year, or quarterly or even at more frequent intervals. Remember no general ever won a battle without improvising as he went along. On the other hand, that's exactly what Custer said he was doing at Little Big Horn. Be careful!

The following are suggestions to guide you along the way:

- Within limits, you must encourage your people to spend less than is budgeted. Any accumulated surplus will quickly be used in other expense accounts where you are under-budgeted.
- Don't keep your business plan a secret from your staff. Tell them exactly where you want the company to be at year's end.
- Let the staff participate in goal-setting. It ensures their cooperation down the line. Also let them participate in periodic reviews that you make to determine where you stand in relation to your budget. If one office or department is in trouble, other managers may be able to suggest ways to help out. Not only that, but it's sometimes easier for a manager to explain



a bad budget to his superior than it is for him to explain it to his peers. Peer pressure can be helpful in attaining budgetary goals, so be sure to use it.

- Planning is equally important as execution, so be goal-oriented.
- Costs can be controlled only through their anticipation.
- Make planning a challenge. Give recognition to your employees who reduce your overhead, not just to those who increase your income.

## Joseph D. Burke

**B**ecause personnel costs are undoubtedly our single biggest expense, I will begin my discussion of cost control with some personnel considerations.

The title business, like other service industries, is a people-intensive business. A staff of qualified, challenged and rewarded people is our most important resource.

As managers, our task is to accomplish such staffing. Our goal must be to strive to develop stability in our workforce and avoid the terrible financial waste of excessive turnover. This can start with careful screening at the time of employment to anticipate the potential of the applicant, not only for above average performance on the first assigned job, but for growth and advancement to a better job.

It is then up to us to provide training and incentives, plus effective supervision. Good supervision cannot emanate from an ivory tower. It is absolutely essential that the supervisor operates on the line.

Secondly, while intuition about employees is a valuable attribute, the best results are more assured when conclusions about the work and production performance of employees are based upon well defined, and understood, monitoring systems which keep the supervisor and his officer-in-charge informed and involved. Record keeping may, in itself, represent additional costs but without it we are



helpless to find the right answers about real costs, or more importantly, excessive costs.

Some specific techniques of effective supervision are cross training of personnel, assignment of work in accordance with the skill level of personnel, fair production standards, follow-up, performance evaluation, control of backlogs and encouragement of cost-awareness by "all" employees. Add to this the good example of the supervisor, with regard to punctuality, conduct, absenteeism and diligence in work effort, and you have a reasonably good foundation for quality, cost-controlled payroll expense.

Incentive plans for manager and supervisors can help assure cost-awareness. Formulas, however, should be kept simple, not complicated, and calculated on the results of an entire year in order to avoid seasonal adjustments. If applied to production areas, incentives can assist in recognizing performance and by increasing productivity, reduce costs. But there are dangers.

Merely using previous individual output as a bench mark would be an error because it could reward the poor workers and penalize the good workers. Also, incentives require quality control and should not be used where supervision is weak. Haste can certainly make waste, and yes indeed, losses can result. Finally, recognition—a euphemism for payment—must follow quickly after achievement. It is in this reward that the employee sees his pay becoming proportionate to his effort. On the whole, incentives, though an expense in themselves, can be an effective contributor to overall cost control. It is much like investing a dollar for a return of \$10.

Consider also measurement techniques which represent another vehicle for controlling personnel costs and take many forms that are readily available. The level of staff must be consistent with the level of our business activity. Personnel must be made aware that performance evaluation has to be, and will be, based on fair production standards.

Recently, *The Wall Street Journal* featured an article on the increasing interest in productivity programs for the office. It quoted a management consultant who said, "Continually refining the productivity of the blue-collar worker while ignoring the white-collar worker is analogous to swatting flies while elephants

rampage around you." The article reported that a Chicago law firm had ranked some of its law cases according to degree of difficulty. By so doing, it was felt that productivity and adeptness of the lawyers in the firm could be better judged.

There are many measurement systems such as activity volume records, time observations, activity lists for each job and interviews. It might serve us well to look seriously at this approach.

Other areas of cost control are to be found in studies of work flow improvement and scheduling. Some people refer to these as work simplification programs. In any event, the general idea is to find the best way to get the job done at the least possible cost. Sometimes the work obligations of two departments, or two small groups of employees are so closely related that consolidation is an obvious improvement resulting in space-saving and providing the element of personnel back-up support in the event of absenteeism. A workflow chart will quickly demonstrate possible shortcuts, or indicate potential bottleneck situations to be avoided. At times, the use of interdepartmental forms and records will facilitate work movement, but excessive paperwork and "checking" must be avoided.

Speaking of the motivation of personnel reminds me of something that Daniel Yankelovich said in an article published in the recent August issue of *Industry Week* magazine.

On that occasion, Yankelovich, who is the president of Yankelovich, Skelly and White, a prominent public opinion research firm, said, "People who work at all levels of enterprise, and particularly younger middle-management people, are no longer motivated to work as hard and as effectively as in the past." He explained that where approximately one-half of the work force is concerned, the four basic management tools relied upon to increase productivity, have become "blunted." They are fear of loss of job, reliance on techniques that minimize the human factor (e.g. automation), money and the employee's inherent desire to do a good job.

Yankelovich concludes that management may have to develop a new concept regarding motivational incentives, such as tailoring the incentive to the individual, and then bargaining hard for performance (e.g. flextime, personal balance sheets, variety in work). It may very well be that to increase productivity and efficiency, and thereby reduce costs, these considerations will have to be given serious attention in the months and years ahead.

Now, let's move away from the subject of people and focus on office forms and supplies. Is our buying program nothing more than buying something when we need it? Would it be less expensive to purchase a reasonable quantity for three or six months, or even a year? Quantity discounts are usually available, in such instances. If our cash flow allows it, it

might be worth the investment. Do we have some kind of inventory control? Employees should be aware of their responsibility and accountability before requisitioning anything. Is there an orderly procedure for requesting supplies or forms? Is the department supervisor or officer-in-charge supplied with a report of the expense charged to the department? He is, after all, the first line of defense in avoiding waste or misuse. Also, good company policy dictates two or more competitive bids in purchases of items over a stated amount of money. Everyone requisitioning supplies should be met with the corporate challenges "Is this just something you want, or is it something you really need?"

Another factor that should be examined is general insurance. We are a very insurance conscious society. Let's look at the purchase of property and casualty insurance, fidelity insurance, employee's life, accident and health policies. Too often, many of these policies are automatically renewed year after year. I suggest that they should be automatically reviewed before being renewed each year to determine if the same needs still exist or to consider whether it would be feasible to be a self-insurer, or to possibly increase the deductible feature in order to reduce the premium. Insurance is a competitive commodity and my own company has found the services of a consultant to be useful and desirable. Perhaps this kind of specialist could be beneficial to you too, either in reducing premiums or increasing coverages.

The expertise of consultants is a valuable resource where in-house capability is lacking. Although the fees are high, their specialized knowledge is usually needed only for a specific feasibility study, an implementation effort, or a training project. The use of this talent can eliminate the need to employ hard-to-recruit and high-salaried personnel not really needed on a long term basis. This employment also permits an independent third party view which improves objectivity in our evaluations.

In considering the advisability of automation, or an assessment of a particular company insurance program, consultants can be especially helpful.

As a truism it can be said that without an order or application, all else fails. Every manager in our business who is responsible for a profit center understands that marketing is where the action is. It is also a fact that sales expenses are probably second only to personnel costs as the heaviest of title company expenses. What measures, if any, should be considered in coping with this problem? Well, for one thing, we should not be content with the status quo. Because we suffered a given expense for an extended period of years does not mean a commitment to the indefinite future.

Consider the possibilities, for example, of emphasizing use of the telephone for sales calls as an alternative to repeated personal visits requiring the attendant auto expense and loss of significant man-hours in travel time.



Joseph D. Burke



### Robert D. Dorociak

keeping, fee and policy records, payroll, claims, statistical reporting and title plant indices. Here, however, the key characteristics are high volume transactions, large files, printed summaries and quantified analyses and comparisons.

One of the most valuable potentials of computer systems is better integration of various operating and management activities which are very separate under manual systems. For example, order processing, plant maintenance and search, escrow bookkeeping and control reports are separate, but related, activities. The computer permits sharing of files and automatic production of these operations. But we must avoid automation just to keep up with the next fellow. We first must satisfy ourselves as to the cost effectiveness.

### Robert D. Dorociak

I am delighted to be here and be a part of the program as one of the panelists and share some of my company's experience with you in the area of computerization. I have some good news for you and I have some bad news.

As Fred said, inflation and the rising costs of real estate values have certainly kept a lot of us from going broke. Although there's a lot of truth in that, I don't believe that's the sole reason that we have survived.

The belief that inflated real estate values automatically provide enough revenue to offset the operational costs incurred by the inflationary spiral is a misconception.

Inflation generally impacts the expenses dollar for dollar, but revenues only about 70 cents per dollar. In other words, with an expected inflation rate of 11 percent, we can expect a minimum of an 11 percent increase in expenses, which assumes zero growth, and a recovery of only 70 cents to the dollar for a net loss of 30 cents. That means if you do exactly the same amount of business this year as you did last year and you didn't increase your volume at all, you're going home as the owner of a company with less money. You have to increase your productivity and/or produce more revenue by increasing your sales. Otherwise, you're on a ship that's going down.

We think that the key to industry profitability and certainly our company's profitability is and will be the complete utilization of computers. We are a labor intensive industry. Hopefully, the investment that we made in our computer program will pay off in the trying times that we will face. We have made a considerable investment, and I believe we made that investment during a period of time when the company could well afford to go through a period of experimentation in bringing our com-

puterized closing and integrated program on-line so that when we did reach a period in the market where we would be faced with declining sales and activity, we could better utilize the key people that we have and not replace those who perform some of the menial, repetitive tasks that are involved in a labor intensive industry.

Some time ago, the industry recognized that in order to reduce costs and efficiently maintain title plants in the larger counties, it would be necessary to create common facilities and utilize electronic data processing equipment. You can travel around the country today and see some of the finest title plant on-line systems that the mind could ever imagine. This is true especially here in California. They are absolutely outstanding.

I know that they have certain inherent costs, but the ease of handling a transaction, of searching out a title, is beyond comprehension.

Mag card typewriters and other semi-automatic devices are also used in title policy preparation. However, very little has been accomplished in the area of computerizing the closing process.

Several years ago, our company recognized the need and the opportunity to increase the productivity of our agents and our own employees. We felt that electronic data processing equipment could be utilized to combine the real estate closing process with the examination and the issuance of a title policy and other related documents.

We employed a systems company that had some programming experience in this area. With them we developed a program that has the capability to process an order from its inception to the final funding and policy issuance.

Mississippi Valley Title Insurance Co. I know, has done a lot of work in this area and has an excellent program. I've talked to some of their clients and they are well pleased with it. In talking with Rowan Taylor of Mississippi Valley Title, I learned that he has been able to increase the productivity of some of his key people by 300 percent. In other words, one person and the piece of equipment are producing what three people used to produce.

His system is a little different than ours. It's on a stand alone minicomputer while ours utilizes a central processing unit with remote terminals that have access to the data base. Rowan also told me that they were in the process of upgrading their system by bringing it on to a larger piece of equipment and then they will be able to utilize the remote access program.

All of us remember the good old days when the typist or the closer or the escrow officer would spend long tedious hours manually preparing documents that contained large amounts of repetitive composition. They also had to perform numerous manual calculations based on data obtained from tables for taxes,

Frequently, we managers lose sight of the cost of these hours of lost time in terms of payroll dollars. It is understood that nothing fully replaces the value and effectiveness of a personal call, but need it be a personal contact each time? For the same reason, the mails could be utilized for some, if not all responses to customer service rather than hand delivery. Once again, it is recognized that personal contact is superior to the mail. But the question of whether or not personal contact is essential in every instance remains. Are we digging our own economic grave by requiring heroic service at all times?

I will offer a final observation concerning marketing expense. Look closely at the volume and sources of cancelled orders. It may not be possible to reform the attitude of the real estate world, but we all understand the tremendous losses that we underwrite for orders that fail to close or come to settlement. Lenders, surveyors, appraisers and other real estate professionals have been known to require some payment toward fees in cancelled transactions. But for some reason title companies are expected to absorb the preliminary costs when closings abort. At the very least, it would seem that we should carefully scrutinize our customer lists and identify those who repeatedly favor us with orders which are subsequently cancelled. That kind of customer needs serious re-evaluation for cost control purposes.

Personnel costs in our people-intensive industry are increasing at incredible rates. At the same time, technology advances in recent years have reduced costs for automated equipment. However, automation is not an end to itself. It must increase productivity, improve customer service, improve decision-making or reduce costs. It must be evaluated purely on a cost-benefit basis.

Word processing is an emerging technology playing an important role in the automated office. In our business it is now often used to produce commitments and policies.

Data processing is also used extensively in our business. Typical jobs are escrow book-

interest rates, impounds, escrows, filing, title and escrow charges.

In the good new days, this waste of skilled personnel, who performed these tasks has been minimized by the use of data processing equipment. The system will in a few minutes produce complex documents that have previously taken an hour or more to prepare manually.

Our company recognizes the sales potential of our key people such as our escrow officers, our closers, secretaries and other people, who have customer contact. In order to better utilize this important sales force, we have tried to eliminate a large amount of their paperwork so it will free them to be able to spend more time with the customer in our marketing program. The customer benefits by a faster, more efficient closing of the transaction.

We are able, by automation, to prepare an error-free closing statement with up to the last minute changes. I know that many of you have been faced with problems that deal with last minute changes. You think you are prepared for the closing. You have prepared a closing statement. All the documents have been prepared. You have your HUD-1 form. Then the client walks in and says, "I'm sorry, but I neglected to inform you that even though the prorate date is July 15, the seller and buyer have agreed that the seller is going to retain possession of the property for several more days; therefore, we want to change the prorate date and change all other documentation." This created quite a burden on the office force; but in order to accommodate the client, the staff marshalled its forces and made the necessary changes while neglecting the orderly process of other closings.

Now it's a very simple process in our company. We merely call up the order on the screen at the work station, tell the computer that we want to make a change. The computer asks us what kind of a change do we want to make. We tell it we want to change the prorate date. We insert the new prorate date. It takes a matter of about 30 seconds to do the recalculating. And you merely insert the new closing statement form into the printer and in another 30 seconds the form is prepared and you're able to close the transaction.

If other documents need to be changed, it's very easy, you just ask the computer to make the various changes for you.

It automatically computes and does all the prorations. It will compute our charges. The machine has the capability of automatically pricing the title policy and any endorsement that you use. In this manner, we have been able to eliminate the loss of revenue due to failure on the part of the party that is closing the transaction to properly compute the escrow and title charges.

It will prepare various other documents. In those areas where permitted, it will prepare the note, the deed of trust, warranty deeds, and any other document necessary to close the transaction.

Preprogrammed title clauses are in this system so that you can insert an exception or delete an exception anytime the operator wants to without disturbing anything. It's very simple. The program has the capability to prepare all of your checks and do all of your escrow accounting.

As an example, we think that when our program is fully integrated in one of our larger operations, we will be able to produce checks in a matter of 20 minutes on all of our real estate closings that have occurred for that day. Now, it takes four people typing diligently for about five hours. There are obviously many cost benefits there.

It has various security levels built into the system. In other words, people who are not authorized to use the system cannot enter the computer or the data base and destroy any information there or play games.

It has the normal checks and balances that any good accounting department or firm would require. It will not prepare checks unless the account balances. Our system requires someone independent of the person who's closing the transaction to post the deposits to the account via computer so that we can eliminate the possibility of issuance of checks from the account when there aren't funds there to cover them.

Our data operations have also succeeded in eliminating a lot of paperwork for our agents. Instead of preparing time-consuming manual remittance forms that they normally prepared, they now just submit a batch of policies to us. We feed those policies into the computer. It automatically deletes the policy from their inventory, and rates the policy to be sure that it's properly priced. It tells us when the agent is running short on forms so that we can automatically ship him enough policies to keep him in business. In those states where statistical gathering is required, we designed the policy through the benefit of the computer to assist the agent in compiling the statistical requirements.

One of the things that we've been able to do has been to increase the productivity of our agency control department. As an example, prior to utilization of the computer, we had six people who were processing the policies as they came in from our various agents and subsidiary companies. They were pricing the policies. They were deleting them from the inventory. They were doing various tasks that were required. In addition, they were doing a little statistical gathering.

Now, we have the same six people. They are compiling all of the statistics that are required by our company in any state in which we're authorized to do business and the volume of policies they are handling has increased by three times. So we are quite pleased with the results.

Now, I've got some bad news for you. I gave you all the good news. The bad news is that we have had great difficulty in getting our employees to use the system. If you get involved in

computerizing your operations, you've got to establish the fact that your employees are going to use the system whether they like it or not, because if you don't, you're going to face all the problems that we did and we had all of them.

We had problems with the prima donnas in our company who didn't want to use it because they didn't have their own—they didn't need their own.

The one biggest problem we also had was that the software companies will put games on these computers. The theory behind that is that it will cause the people to use the equipment without fear. So they get involved in playing games.

We think that's the worst thing that ever happened to us because we found that our people were playing games and they weren't using the programs. So if you contract for software, tell the program suppliers to keep the games off. I'm serious when I say that. During visits to our offices I was quite pleased to see people utilizing the computer terminals until I discovered they were playing Star Wars.

If I told you all the things that happened to us in the formative stages, you wouldn't believe me. We would receive calls from our staff, complaining that the blasted CRT doesn't work. Our dialogue would go something like this:

"Are you sure? Did you call the repairman?"

"We've done everything."

"Are you sure?"

"Yes."

"What won't it do?"

"Well, it won't even turn on."

"Did you turn on the switch?"

"Yes, we've turned on the switch."

"Have you plugged it in?"

"Well, of course."

"Go look."

We found that they hadn't even run the electricity to the thing. There was no way for the machine to work because the facilities were not there to plug the machine in and yet they swore to us they had tried everything.

I would caution you to exercise great care when dealing with the companies who provide software services. You want to be sure that they have the ability to perform. You want to be sure that they have the ability to service the program after it's installed. You want to be sure that the hardware that you select can be serviced by people available in the immediate area so that when you need service you have it promptly and rather inexpensively.

The telephone company was also a problem. We would order specific telephone installations and the orders would never come out right. We also experienced some difficulty in

(continued on page 53)

# Effective TIME MANAGEMENT

John Lee

I will begin by asking how many of you lose 15 minutes a day trying to find things. Do you know that 15 minutes a day added up throughout the year means two weeks of lost work? What's the value of two weeks of work? Think about it a minute. It's opportunities lost and free time you don't get.

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**"There are things you can do to manage interruptions. You can't eliminate them but you can manage them."**

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Let's go a step beyond. By chance, is there anybody in this room that has a cluttered desk? Maybe I should have said it the other way. How many people have a clean desk? Let's see your hands high.

Now, think about this for just a moment. We're going to talk about something called interruptions which you all experience. One form of interruption is what we call self-induced. A number of years ago, when I got started, I didn't do speeches. I sold a computer service that showed you where time went. Later, I moved into videotape and we videotaped people at work and what we saw was this.

You're sitting at your desk with clutter piled up. All of a sudden you look up the right side and you see a pile of something you should be working on. You stop. You freeze. It's called self-induced interruption. It's just as if I walked in and said, "Roger, what do you think?" You stop and you look. You zero in on it. The end result is you've got another 10 or 15 minutes tied up in self-induced interruptions. Because of disorganization and clutter, in one day it's very easy to take 30 minutes out of a six-hour, desk-bound day. You're talking about a month's work lost to little things.

Let's keep on going. When I worked at the Florida Land Title Association on two occasions, we always discussed interruptions.

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How many times have you had an interruption and you put the phone down only to find that now you've lost your papers in the clutter? Or worse yet, you put the phone down and now you can't remember what you were doing. How long does it take you to get started up again? Or worse yet, the person walks out of the room and you've made an error which takes hours or days to correct or figure out. The result is a lot of wasted time and effort.

Think of it like this. A one-minute interruption doesn't take one minute, it takes about two or three minutes of your time because you've got to stop, go down and you've got to get back up.

If you suffer from seven or eight interruptions in one hour, at most you get 30 minutes of work done. You wonder why your days grow longer.

There are some things you can do to manage interruptions. You can't eliminate them, but you can manage them.

How many of you are familiar with a group called Make Today Count? Make Today Count groups are composed of individuals who have terminal cancer. They manage their time differently. They do it better. They have to.

Several years ago I had a chance to speak to a Make Today Count group. Before starting my presentation, I passed out materials. Having passed all the materials out, it occurred to me that the audience wasn't a typical audience because it was composed of terminally ill individuals. It suddenly hit me that I passed out the wrong handouts because in this particular package of materials is an exercise called *Write Your Obituary*. My first thought was how can I get the hand-outs back? My next thought was how can I avoid using them. We ended up using them because somebody said, "Let's do the exercise."

You know, they do a better job of managing time because it's limited and they place a higher value on it. They also do not get upset. They do the best they can with what they've got. We'll talk about some of their views because I think, without question, we can do a

better job with our time but unfortunately we often don't think enough about it.

In fact, when do you think about your health? When you're sick. When do you think about losing 10 pounds of weight? When you've already got it. When do you think about motivating your staff? When they're unmotivated. When do you think about delegating? When you're swamped. It's called dumping. In fact, when do you think about those you love? Often when you're in trouble. When do you start thinking about your time? When you don't have any or when it's starting to run out. It's one of the toughest things we've got facing us.

To be effective, we've got to think about our time now. You're in a labor intensive business, which is going to change. I think the comments earlier on the computer are particularly appropriate. Because traditionally you've had maybe \$2,000 or \$3,000 of capital for each employee. It's nothing in major industries to see \$100,000 in capital per employee. Their productivity per employee is substantially greater because of this investment. It justifies it.

May I see hands of all of you that have a good, functioning idea file system that you use to record the ideas you get day in and day out to improve the productivity of your operation? Ideas are the means for improvement. Thinking is the greatest timesaver, yet we tend to think after the fact. I'm going to share with you an idea system that you can take back with you. The potential pay-out is substantial. If you're talking in terms of going with computers, it takes you years in advance before you finally get ready to go because of the homework—the thinking—that's required.

What's the value of one good idea? Can you put a dollar value on it? You can't. How do you feel when you get good ideas? How do those who work with you feel when they get good ideas? It's the same thing. It's the excitement of management. The challenge is to use our abilities.

Idea management will be the major part of our talk today.

We're going to use a system called the 4 Ds. Let me run through it with you because that's one of the keys for time management. The 4 Ds will improve your paperwork and it will improve your thinking. It will, moreover, enable you to delegate more effectively.

The first D is the art of dropping things. Who taught you how to drop things? Nobody. You learned the hard way. A lot of times you're doing things you shouldn't be doing.

The second D is the art of delay. We're all good at delaying, however, we tend to delay the wrong things. The third D is the art of delegation.

How many of you have cats at home? When you get home from this trip, pick the cat up, walk over to the stove, turn the burner on lightly and drop the cat on the hot burner. Don't worry. When the cat hits the burner he'll be gone—out of there—in a flash.

The following day, if you can catch the cat, pick it up, walk over to that same burner but don't turn it on. Drop the cat. The cat will take out of there like a rocket because it learned that if it gets up there it will get burned.

The lesson is the same as most of us have learned when we delegate. When we delegate, people mess it up. So we've learned, if you want a job done right, do it yourself.

Most of you started at the bottom and worked your way up. A lot of you started your own businesses and you have the tendency to do it yourself when in doubt. And when you tend to do it yourself your employees will let you. In fact, your employees are really sharp. They have learned how to delegate upward better than you have learned to delegate downward.

Here's what happens. I'm one of your staff members. I come charging in and I say, "Boss, we have a problem." Notice I didn't say I've got a problem. I said, we have a problem. What you should say in response is "What are you going to do about it?"

Let me give you another example. The sharp employee will come into your office with a big smile and say, "Boss, I've got a problem that only you can solve." That's the appeal to ego and authority.

If you're really smart, you'll again ask the employee what he's going to do about it. Or you could really be tough and say, "If that's the case, why do I need you?" I suggest, however, that you consider your human relations. That second response is pretty tough.

The point is that you should start delegating more downward and avoid having things delegated upward. You want things going upward only when they're related to cross-functional problems—things that are unique, an exception or very important. We tend to be too available too often. Yet, we complain about interruptions when we get them.

The final D of the 4Ds is doing. Notice the doing comes after you've done some thinking. You see if you've dropped first, if you've

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**"I want you to delegate each day and I want you to look for things to delegate. If you delegate properly, first of all, you get the job done. Secondly, you develop your people. And, third, you redesign your job."**

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delayed and if you've delegated, now comes the doing. If we can get you thinking, the doing is going to be done right.

Before we go any farther, let's talk about creating conditions. The 4 Ds are one of the first conditions you want to create. You see if you get good at it you can get people to do the 4 Ds for you. You can get somebody to drop, delay, delegate and do for you. And that's the goal we want to work towards. But, getting people to use those same 4 Ds and get agreement on it is not easy.

The first rule is to separate your in-basket and your out-basket. You want a flow of paper going across your desk. Having done that, the first thing is dropping. That means you ought to have a wastebasket beside the in-basket. Notice the distance between the in-box and the drop-basket is very close.

Drop first by using the wastebasket. Secondly, where do the delays go? For most of us, the delays go to one place—right on the desk—which creates conditions for self-induced interruptions. We use the file-piling system—a pile here and a pile there. Throughout the day we keep looking at the piles and feeling guilty. The delays belong off your work space.

The first thing to delay is the emotional things. If something is emotional, slow it down for a moment. Too many times we hop into emotional things. How long does it take to straighten out the resulting mess when we accuse somebody of something which indeed we shouldn't have accused them of? We shoot the gun too easily.

Secondly, we automatically delay those things that are low priority. The tendency for most of us is to do the easy things first and we never get around to the hard things. The easy things are fun. For many of us, it's the easy stuff first and the hard things in the afternoon. When the afternoon comes, we will do the hard things tomorrow. Only tomorrow we have more easy things to do which means we will do them later in the week.

We delay low priority and we delay those things which have incomplete information. If you've got certain files with incomplete information—projects that are incomplete—someone else can get the information for you. You don't need to start running.

People tend to call you on the phone on things you're delaying. Where does the

telephone belong? Right beside the in-basket. That way, you can take care of the interruption with minimum motion. You can take care of it right there. We know for a fact, the shorter the interruption, the faster you can start back up.

When we did the videotapes, we had executives with their papers on their desk and their phone behind them. They spent the entire day swiveling. One \$60,000-a-year executive swiveled all day long. The interruptions they had were part of their jobs but they were so set up that they took twice as long to handle them. The end result is that they wasted a lot more time than they had to.

What else do people call you on? Think with me. They call you about things you're doing and things on your schedule—your calendar. You ought to have a master calendar and it belongs on your wall. Proper placement is a key. If you put it on the wall beside the delays, when things come in by telephone or by mail, where do they get marked? They are marked on your schedule because it's right there. Very simple and very effective.

If the system is set up right, your secretary or those who work with you can come in and look at your calendar. They then know what you're delaying on and they can help you.

Your desk, so far, is clear. You've got an out-basket on the far side. You need to put some delegation files there so that the other side of your desk is used to delegate. I want you to start delegating more things more often and more effectively.

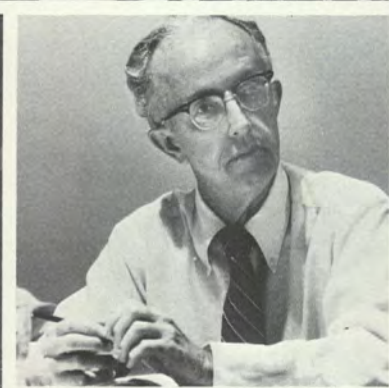
You see, if you've got delegation files—one file per person—you take a look and see people you should delegate to. Maybe you can't delegate everything now but you keep that group of people right there and eventually you start delegating more. Also, you start dropping more and more often when you see your wastebasket.

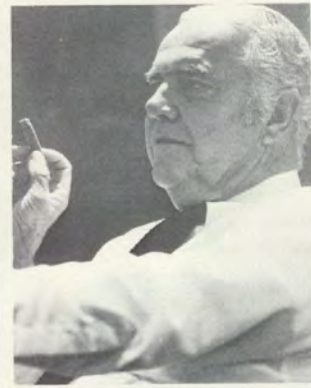
Notice the following desk arrangement. Delegation files are visibly in front of you and make you think "delegation." Most of us do not think delegation enough. In fact, let me see the hands of you that make a good "to do" list every day. How many of you make a good "to delegate" list?

Those who start delegation lists swear by it because it works. And the most important list for a manager is not a "to do" list, but a "to delegate" list.

I want you to delegate each day and I want you to look for things to delegate. If you delegate properly, first of all, you get the job done. Secondly, you develop your people. And, third, you redesign your job.

Now, let's go back to the desk. What side of my desk is clear when someone comes in to to meet with me? The left side of my desk is now clear. So, when someone comes in, we can talk there. I might even be able to delegate some things to him because the delegation file is sitting beside him staring me in the face.





If you have somebody who interrupts you all the time, each time they come in, give them something else to do. Pretty soon they don't come in as often.

Without question, the first most basic thing you've got to do is build your knowledge of what you actually do. What do you actually do? And that's where the doing comes in. Because you want to start doing the right things and the most important things. Knowledge is a prerequisite to effectiveness for you and those within your firm.

I want to see what you know about time so I'm going to ask you more questions. First of all, if you wanted to build a car, what day of the week would you have it built on? Wednesday? People work better on Wednesday. What's wrong with Mondays? Absenteeism is there always. But also employees do funny things with their hands on production lines. They stick them in machines. Industrial accidents are rated highest on Mondays and there are a lot of errors.

What about Fridays? How come you wouldn't want a car built on Friday? They might be there physically, but not mentally. Therefore, mistakes also sneak in on Friday.

What time of day do you think most people die from heart attacks? You'll find it's between 6 a.m. and 9 a.m.

Now, go back to your high school and college days. You've got a tough exam coming up tomorrow. You have two options. One, you stay up and study, go to sleep, get up and take the exam. Number two, you go to sleep, get up refreshed, study and take the exam. We know for a fact that the best option is this. You should have stayed up and studied, gone to sleep and gotten up and taken the exam.

Let's keep on going. You have to sit down with some of your employees and straighten them out because they're not doing the job right. You have to pick the right time. It's called timing. The right time is important.

How many of you would do it first thing in the morning? How many would do it in the afternoon? How many would do it at the end of the day?

Standard industrial practice has been the following. To straighten an employee out, they've always said, the best time is at the end of the day for the simple reason that the employee will take the problem home on his own time and not waste company time.

Now, there's a problem. We know for a fact that man is his absolute nastiest at certain times of the day. The pinnacle of nastiness is right before meals. Go home and play with your cat and dog and see what happens. Just before dinner they're going to tear your arm off.

Sociologists have studied family fights. They tell us that family fights begin just before dinner.

The best time to straighten out an employee is right after lunch. The worst possible time is at the end of the day in most cases.

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**"Where does your day get messed up? It happens on take-offs. The first hour is the most significant. You've got to create conditions to get the most out of the first hour. If that first hour goes well, the rest of the day will fly."**

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What's the best time of the day to delegate tasks and duties to other people? The correct answer is the end of the day.

What's the best time to plan your day? The night before.

I want to show you two policies which if you use, will facilitate your performance especially when tied to the 4 Ds.

The first, the best time to plan your day turns out to be the end of the previous day. First of all, there's a concept called seasoning. If you put a plan together at 8 a.m., implement it at 8:30 a.m., then you have 30 minutes of seasoning. By 9 a.m. you're usually on plan 12. It's not enough time. You put a plan together at 4 p.m., at the end of the day, walk away from it, and you have maybe 16 hours of seasoning. So all of a sudden, what was number one yesterday now is number 13. What was a crisis is no crisis. What you had to do yourself when you thought about it could be delegated. That's seasoning. It's important. In fact, seasoning is fundamental.

Secondly, go back to last week. Think of the times you've sat down to dinner with family and friends and the only thing you could think about were problems at work. Does that happen to you? You see that happens all the time.

There's a concept in psychology called closure. Closure is fundamental. With closure you can put a plan together at the end of the day, get organized, walk away and forget about it. If you walk away and say the heck with it, and leave everything piled up on the desk, put no plan together, what do you do all night long? You think about it.

We know for a fact that the best way to improve planning is to precede it with evaluation. You must evaluate what you did today. If you evaluate what you did today, then you put your plan together. The best time for evaluation is not the following morning, because by the following morning you've lost 80 percent of the details and it now takes you three times as long to evaluate. That means you won't evaluate.

What we're saying is that it's basic for you to evaluate before planning. The right time to evaluate is the end of the day. Then you put your plan together. It's a good policy to have

that written plan established at the end of the day.

Where does your day get messed up? It happens on take-offs. The first hour is the most significant. You've got to create conditions to get the most out of that first hour. If that first hour goes well, the rest of the day will fly.

You make that first hour go well by planning and delegation at the end of the previous day. Notice what happens when I delegate at the end of the day. Let's say you delegate four different things, at 9 a.m., noon, 1 p.m. and 2 p.m.—four separate times, five minutes each time. That means 20 minutes are tied up.

If you held all those delegations in a file folder on your desk and simply did it all at one time, how much time would it have taken to delegate all four things? About five or 10 minutes. That's 10 minutes of savings right there. Add to that the interruption you gave to your employee and you get probably another 20 minutes right there, too.

If I, the employee, know I'm going to get delegations at the end of the day, I look for them and I build them into my plans.

All of a sudden, you get a lot more done because you're not limited to the time you put in. Through delegations you've leveraged yourself.

Those firms which grow greatly are those that learn to leverage their people and their talent—especially their top management talent. All of a sudden you can move beyond the 2,500 hours to maybe 100,000 hours at your disposal. And I think that's where the excitement comes in when you start leveraging yourself properly.

So let's just say that you adopt that policy of planning and delegating at the end of the day. You're leading by example. Now, let's go to the next step.

You see, what we're doing is creating conditions to succeed. One of the real conditions to succeed is to have them starting early, which you've all heard about. If you start early you've got time for making mistakes which are a part of life.

Starting early is basic and fundamental. A lot of us start a little bit too late. Then we wonder why things go haywire. I'm going to suggest a proven philosophy. It says nine times out of 10 you reach out and things are messed up. It's not worth getting upset about. But you've got to be prepared so that when things are messed up, you do well. That's where the excitement comes back in. And if you practice effective time management, you are prepared. So when you come in first thing in the morning, you are early and prepared. Things go well. Even if some things are messed up, you still do well.

Let's go on. I want to ask one or two more questions. When are human beings at their sexual peak? The answer is simple.

The human sexual peak is tied to hormone levels and body temperature. For most, it is the early morning.



What I'm throwing out to you is not an interesting discussion on sex and biological signs, but a demonstration of the fact that most of us have peak energy in the early morning. Moreover, our career success depends upon using that energy productively. Unfortunately, many times we create conditions in which we can't use that first hour of work productively.

I'd like you to think about starting early in terms of the difficult things done at work and having a psychological edge when things are going your way.

How many of you keep your alarm clocks beside your bed at home? That is mistake number one. Always move the alarm clock 13 feet away because if you move it 13 feet away and you walk 13 feet, we got you. If it's five feet away you can dive back to bed.

Also, the natural way to wake man up is with light. I've used it. I went out and got two spotlights, put them on the bed and got a timer for \$14.95. At 5:30 a.m. when the alarm went off, the spotlights turned on. This is called creating conditions. Make it so miserable you're bound to get up.

We know for a fact that you create conditions. For example, how many of you have indeed stayed over at a hotel or a motel and left a wake-up call that didn't come? Who suffers? You do. You've got to learn to create conditions. Leave two wake-up calls. You'll get one. Better yet, carry an alarm or wrist alarm to ensure that you get up.

So, I took the final step and hooked up my stereo system to the timer and lights so that at 5:30 a.m. on comes the lights and music. Have you ever heard the Boston Pops play *Up, Up and Away* simultaneous with an alarm clock? It really sets up a racket. You know what? After two weeks, I found myself getting up at 5:25 a.m. just to turn the stuff off.

I notice in your program that you have a convention coming up in Las Vegas. How many of you have been to Vegas before? When you walk in the door of your hotel what's the first thing you see right off the bat? Slot machines. Where is the registration desk? On the other side. By the time you've found it, you've lost \$50.

When you arrive at the registration desk and get set up, they tell you to go to the key line. You go over to get your key and what do they tell you there? They tell you that your room won't be ready for a couple of hours. If you put your bags in storage while you wait what might you do? Gamble.

You haven't even gotten into your room and you're down \$70. It's just like going to a restaurant and they tell you that your table's not ready and they direct you to the bar while you wait.

Do you see how Vegas has done the best job of creating conditions to win? When you look to find a clock on the wall in Vegas, what do you see? No clocks on the wall. How many of you have ever seen the walls? You decide to look outside to see night and day and what do

you see? No windows. You see, if you looked out and saw that it was 4:30 a.m. you'd realize you were sleepy. They don't want you to take off. They know the longer they keep you there, the more you're going to lose, because you do dumb things after you've been there five or six hours.

You're sitting there in a nice comfortable chair. That chair is triple padded and there are arm rests so you can prop up. Is the temperature in the casino too hot or too cold? It's perfect. What are the colors? They're red to keep you alive and going.

How often do they change dealers at the tables? Every 20 minutes. They know that pace is important. When things are slow, what happens? People leave. In fact, they'll put skills on the tables to keep the tables rolling. They have found that by changing dealers every 20 minutes, they keep the pace going faster. The faster the pace, the more you throw out. Whether you're winning or losing, you're still pacing.

What you want to do is keep a good, firm, fast work pace if you're going to be successful with your people. When you go peaks and valleys, ups and downs, the other people start getting in the habit of sitting back and taking off 30 minutes early.

I guarantee you if you haven't got a good pace set up, and don't work towards keeping a pace, you'll lose them. Keep on going.

Now, back in Vegas, you're having a lot of fun. You've been there for five hours now. What are they serving you to drink? Anything you want. It's free. Normally you wouldn't want a double, but you'll take it.

You're having a great time and you've had your fifth free drink. Now, with that in mind, are you playing with cash or chips? Not cash. If you had to throw out a 20-dollar bill, you wouldn't do it. It's plastic—plastic chips. They create conditions to make you lose.

You do the same thing in business. When you're disorganized, when you have clutter around you, when you don't manage interruptions, when you don't delegate properly, when you don't think about the future, you create conditions to make yourself lose.

Most of us have done the exact opposite of Las Vegas. We created conditions to make

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**“Create some conditions to succeed. Make the best use of your employee time and your own personal time. When employees join your firm, you ought to orient them how to manage time. You ought to show them what the value of their time is for themselves and for your organization.”**

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ourselves fail. We have solved too many people's problems.

When an employee comes in with a problem have a problem? They come right back. Then, suddenly you're no longer performing as a chief executive officer or as a manager, you're back being an operations person again. If you let people solve their own problems, they don't become dependent on you.

Create some conditions to succeed. Make the best use of your employee time and your own personal time. When employees join your firm, you ought to orient them how to manage time. You ought to show them what the value of their time is for themselves and for your organization. If you don't orient them at that time, six months later it's too late. Their future, their job and your firm's future depend upon the wise use of employee time.

Secondly, you should use what we call man-hour budgeting. You ought to know how many hours you have at your disposal and where those hours go.

I'd like you to take a look at all the basic policies you have. Moreover, take a look at which ones facilitate the wise use of time and which ones hamper it. Make some changes. Decide if you have planning at the end of the day. Decide if you have delegation at the end of the day. These are all basics.

I'd like to see you make use of the 4 Ds by effectively dropping things that you should drop, delaying things that should be delayed, delegating and doing. Notice that it's leadership by example. You can't tell people what to do, delegate and drop. You've got to lead by example.

How many of you are familiar with General Abraham's pig law? His law says “Never get in fights with pigs, you get all dirty and they enjoy it.”

There are certain customers and clients you want to give to your competition. Certain people you just don't want to do business with. The faster you learn to say no, the better off you're going to be.

Notice that we're dropping—the first basic thing. What kind of business do you want to drop? What kind of projects do you want to drop? The easiest way to drop is to follow the bankers. Bankers have learned that you drop by objectives. The clearer your objectives, the easier it is to say no. You can't be everything to everybody.

For effective time management, rule number one is quit trying to please everybody. You can't do it and, moreover, you shouldn't be trying. Learn to say, absolutely no. The higher you go, the better you should be at saying no.

The second step is delay. If you get the delays off your desk, you've delayed by priority. Assuming you all get good at this, what are you doing with delegations? You will start to delegate by objectives.

What happens to a lot of us is that we delegate bits and pieces. I delegate bits and pieces to four of you who work with me and

who does all the coordination? Me. What takes all the time? The coordination. In a lot of our delegation, we do the wrong things.

Delegate by objectives. Delegate the whole thing if you can. In fact, you ought to be aware of the basic distinction between delegation and a work assignment.

We started out initially in our business by making work assignments. We pick the right person, give him the task and we explain how to do it. That's a work assignment.

You probably make more work assignments in a normal day than you make delegations. When you delegate, you don't tell the person what and how to do the job. When you delegate, you select the right person, the right task and you explain why it should be done. You leave the how up to that person. If I tell that person how to do something he already knows, how motivated will he be? Not very.

Too often you're telling your qualified people how to do their job. Pretty soon they stop thinking. When they quit thinking, then you really have to start telling them how to do it. Then you have to supervise them closely. There's a big difference between delegating and giving a work assignment.

In delegation, you're going to get development. And when you get development, you've also a chance to get some mistakes, too. You're better off to have the mistakes initially just to cover yourself.

Never delegate to anybody who can do it as well as you because if you do, you won't delegate. You've got to learn to delegate to people that can do it well enough. And see most of us, we're good already. We're perfectionists. We've got it. And we try to have people to whom we delegate to do it the same as us. Initially they can't.

You've got to learn to delegate in such a way that you will develop your people, recognizing that when you first delegate they won't do it as well as you would like. They'll do it well enough to get by, but not as well as you'd like. That's part of the growth process. You work with them and eventually they start doing it as well. And eventually, in fact, they'll start doing it better. You've got to get in the habit of doing a little more delegation and a little more risk-taking, if you really want to start growing and you really want to start your organization growing.

Make delegation part of every day. Delegate at the end of the day. If you delegate properly, you will make a "to delegate" list along with your "to do" list.

If you'd like, when we finish with the program, if you give me your business card, I'll send you the form I use, which is a "to do and to delegate" form. I make a list of the things to do and the things to delegate at the same time.

The first thing I do when I make that list is ask myself what I can drop. Secondly, I ask myself what I can delay. There, at the end of my list of to dos, I ask myself which of the to

dos can be delegated. Then, I move them over to my to delegate file.

Now, you see how the 4 D's fit in the system. You'll see if you're managing editors, you've got the potential for more delegation, in the short run. In the long run, you may have a lot more potential and you have to add people. Maybe you have to change jobs, but all of a sudden you're going to have more time for the high pay-out tasks—the tasks that permit you to innovate, move forward, make your business be the kind of business you want it to be. That's when the fun starts. You see how we've gotten back to the idea of knowledge by thinking. You can't think after the fact. It's got to be before hand.

I always use the story about the attorney and the plumber. The attorney was mad as can be because the plumber had just stuck him for a bill of \$50 for five minutes of work.

So the attorney asked the plumber to itemize the bill. The attorney thought he had him. The plumber smiled, scribbled for a while, then turned the bill over and what did it say? Five dollars for knocking on pipes, \$45 for knowing where to knock.

The moral of the story is that you pay people for time, but you pay them most for knowledge. Most of you who are here have the knowledge, but you've underpaid yourself. You continue to underpay yourself and those that work with you that have the knowledge. You see with the knowledge, you get the potential to do a lot of great things. This is where an idea file comes in.

You should have three tools which you can use tomorrow. The first is an idea file. The second is a concept called after-action analysis. The third is a concept called two-for-one, and three-for-one.

You have got to get in the habit of recording ideas when they come. How many of you have had a great idea and you went to sleep on it and woke up the following morning and couldn't remember it?

Worse yet, you had a great idea, you wrote it down on the back of a matchbook and now you've lost the matchbook. That's upsetting. There's something worse than that. You had a great idea. You wrote it down and now you found it but you can't figure out what "PDGF" means.

You see, we get ideas all the time. We just don't know what to do with them. We write

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**“Delegate by objectives. Delegate the whole thing if you can. In fact, you ought to be aware of the basic distinction between delegation and a work assignment.”**

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them down on pieces of paper and we lose the paper. Now you're even more frustrated. You should get in the habit of recording ideas when they come up. Write them down or dictate them. In fact, I think you ought to have a standard policy that those who work with you get in the habit of carrying a pencil and paper with them at all times so they can capture their ideas.

To make an idea file work you have to record three separate things. The next time you have an idea, the first thing you write down is when and where that idea came from. If you do that you can look back six months later and all the details become clear.

Secondly, always write the idea out in at least one sentence. One word will not do it.

Third, ask yourself how you can use that idea. When you ask yourself how, 80 percent of your ideas get thrown in the wastebasket. We get a lot of dumb ideas.

The exciting thing is this. If 20 percent of your ideas work, that's still phenomenal. The pay-out is fantastic.

After you write your ideas down, ledger them and then file them. Don't file them immediately because you'll file them in the wrong places. You'll file them in one place when they should be filed in three areas. Or worse yet, you file them and lose them.

Then, once a week, you look down that ledger and here's what you see. Thirty ideas this week. You scan them. You see idea one, 12 and 23. Each came on different days. But, when put together, ideas one, 12 and 23 give you the answer. Ideas come in bits and pieces. Without this ledgered idea file, what most of us do is we write down the bits and pieces but never put them together.

I'd like to see you review that ledger once a week. I'd like to see you discuss it with those you work with. How much time does it take to run your ledger? Ten or 15 minutes.

When you're really good at it, all of a sudden you get ideas one, 12 and 23 and one of your employees has idea 30. He comes to you and says, "Here are my ideas. What are yours?" He spells it out and all of a sudden now it's his idea. You have just delegated it to him and it's so smooth. He thinks it's all his. What kind of enthusiasm do you get out of him? You get a lot.

But you see those at the top have got to be the ones to put forth the system and the ideas. It's up to you to create the system—not only the major systems, but also the smaller, support systems.

Now, if you do that, the next step is a little concept called after-action analysis and I'll show it to you in two ways. After-action analysis is the key to delegation but it's also the key to the idea system. The reason we don't delegate is not that we don't believe in our people, not that we don't have the desire, but it is rather that we don't have time to sit down for two hours and explain how to do it.

What I'm going to talk about is a system that will enable you to delegate more and more effectively. It's going to take some minutes and it's also going to get you some good ideas.

After-action analysis says that whenever you finish a project or a task that will be repeated, ask yourself three questions. You ask yourself what went right. Secondly, ask yourself what went wrong. Always leave more space for what went wrong. Invariably, more things are wrong. Third, ask yourself how can I do it better? Just by doing that, I eliminate repeated mistakes. What makes you feel worse than making the same mistake? Nothing.

If you have 10 of these after-action analyses, you would give them to your employees and they can read what went right, what went wrong and how it could be done better. Suddenly, in this manner, all this stuff that's in your brain, all the experiences you've had and the hard work you've put in can be transferred.

After-action analysis gives you a way to get better every day and it enables you to delegate more. Thirdly, it generates ideas because you're always asking yourself how you can do it better.

I want you to ask yourself daily how you can do whatever task better. You're going to find the difference in people isn't five, 10, 20, 30 percent, it's probably 1,000 percent. For real. A thousand percent. If you ask people to come up with ideas or better ways to do the job, their value is 10 times greater than anybody else around. You want to come up with a system to reward and encourage people to come forth with ideas but you've got to lead by example. After-action analysis can be your way to lead by example.

If you give me 10 after-action analyses on one function, I can pick it up very quickly. I've learned what goes right and what goes wrong and nobody tells me what goes wrong. I learned that the hard way. All of a sudden, your faith in me is substantially greater because you know that I know what the intricacies are. I know the problems.

How many things do you have in your head that can and should be shared with your people? How much do they have in their heads that should be shared with you? After-action analysis is one of the ways to share that information. If you have shared these things with me, all of a sudden you're going to find my respect for you goes up dramatically. You become a little more human and, moreover, I learn. I don't make the same mistakes.

If you start using after-action analysis, you're going to start delegating more and that's where the last concept that we want to deal with comes in. This is the concept called two-for-one and three-for-one. How do you feel when you get two things done at the same time? You don't have to have two people do it. When you get two jobs done at the same time with a little extra effort, how do you feel? You feel great.

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**"After-action analysis gives you a way to get better every day and it enables you to delegate more. Thirdly, it generates ideas because you're always asking yourself how you can do it better."**

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Getting two things done at the same time means your productivity factors go up dramatically. Labor costs are reduced. I want you to get some two-for-ones, three-for-ones and four-for-ones daily.

For example, what can you do when you exercise besides suffer? It can be a social time with family and friends and you can think.

When you drive, what can you do besides drive? You can listen to tapes. You can also dictate. You can do a lot of things. You can even hold a meeting. There are many opportunities for two-for-ones.

A long time ago, we did a computer base study with a firm in which we studied their sales people to see how they spent their time. We drove along with them. We found that the average person in their sales force spent 54 hours a week working, 40 percent of which was transportation time.

We tried routing them better. We couldn't route them better. They were already good at routing. What we did do was cut cassette tapes on their products so they could listen while in transit. They used them and when they made their sales calls they were better prepared.

Dead time became used time. Wherever there appears some slack time, you ought to have training set up. When people travel, they ought to be prepared to work. They do, but they don't always work too well.

You've got two-for-one time that you ought to look at. Every time you delegate, you get a chance at a two-for-one. You get the job done, but you also get development. You're better off to delegate because you get a higher pay-out. That's two-for-one time.

What's the two-for-one you get from the telephone? If you're properly organized, when the telephone comes on, what can you do? You can make some notes. You can file. You can get organized.

How many use your telephones to train people? The telephone is one of the greatest training tools in the world. A person calls in and a problem has to be solved. Put the speaker phone on. I listen with you. I see your style and pretty soon I learn how to solve it your way.

Role plays are nice, but real plays are much better. Telephone time is great training time. In fact, when you get an in-coming call which

is important, you ought to have your people in there. Let them have a chance to learn with you. They then develop your style.

An opportunity for a five-for-one would be when a customer calls up complaining about some work. You're going to try to solve that problem, whatever it is. You want to find out what the problem is and what the cause is. Now, that's a one-for-one. Then if you solve their problem, you can build a good relationship with them for your firm. So now you've got a two-for-one. To make that a three-for-one you get some leads out of it. If you've done a good job, somebody else might like to do business with you.

In other words, you might even get a recommendation from that person on how well you've done. And think about it, one of the things we all like is recommendations or letters that can be used for something in the future. We know for a fact that I'm more impressed by what other people say about you. When you do well in the crunch, when things are tough, that's when they really love you.

What else can we do? Along with gathering market information, we can learn how that problem came about. Then you eliminate the problem in the future. We not only solve it now but we solve it in the future. We might even have built the groundwork for a future sale. We did so well this time, he'll come back the next time.



**John Lee**

You ought to have your people always try to get a five-for-one. When they talk to a customer—whether it's a complaint or whether it's a sales call—it's always a five-for-one minimum.

In a sales call I'm trying to sell you. I want to sell you now. Secondly, I try to sell you for the future—the two-for-one. Three, I try to get some additional leads. Four, establish a professional relationship. You see how the thing starts to roll. You've got to be thinking, two, three, four-for-one.

Think about the two-for-ones and the three-for-ones, because when you start getting the two-for-ones, boy, you feel good. When your employees start getting the two-for-ones, how do you feel? Even better. When they start getting the three-for-ones, you start feeling great.

How many of you saw the movie *Rocky*? Remember that first fight? What was Rocky's objective? It was to go the distance, not win.

Do you ever have days in your business where you can't win? How do you feel when you do the best you can? Pretty good. How do you feel when you give up too soon? Horrible.

In the Make Today Count group, they all do the best they can. They have more problems than you and I have or could ever imagine, but it doesn't stop them.

Life is conflict. Life is misery. It's a fact. You can't do everything. You can't be everything. Things go wrong all the time. Maturity is learning to live with things going wrong.

Secondly, problems are secondary to solutions. The problems you face are secondary to solutions. Remember that you solve problems by thinking. You've got to have time to think. The best thing to do is to avoid the problem altogether. This brings us back to thinking in advance.

You start early so when you have crisis and conflict, you can solve it without killing yourself.

Now, when we were doing that Make Today Count group, there was the write-your-own-obituary exercise with the question "What will people remember you for?"

One gentleman pointed out that people will remember you for your accomplishments, but more than anything else they're going to remember you for your style—for the way in which you've treated them, how you believed in them, and what you've let them do.

You see for many of us, we're so busy getting the job done, we don't have any style. If you're disorganized, you have no style. If you're in a clutter, you've got no style. Of course, you want to be remembered for your achievements. But more than anything else, you've got to start working on your style and having the time for those people you care for—family and friends—those you love.

We get so busy in the process of building our businesses that we lose sight of some of the really basic objectives. It's called the activity

trap. You know for a fact that there's no such thing as one-dimensional happiness. Happiness has to have at least two dimensions—professional and personal life. The real benefit of effective time management is that it gives you time for family and friends and for yourself.

If you effectively manage time, you have that capability. Your people have that capability, too.

One of the last things that we did with the Make Today Count group was this. We talked about lists. One gentleman came up with a list which I've used myself and I'm going to encourage you all to use when you leave today. He came up with the idea of a list called "dumb things I've done."

He talked about how he'd learned to disco in his last year of life. He started doing things he's always wanted to do. He was having more fun and making more mistakes, but he was learning, growing and laughing at himself a lot more.

I thought so much of the idea, I decided to start the same list. Two weeks later I was speaking out in Denver, Colo., and stayed for a two-week vacation afterwards.

I'm from Florida. I don't ski much in the snow. I know how to water ski and I'm pretty good. After two weeks of having a great time, I decided I would enter a downhill slalom race.

I had never been in a downhill slalom race, but I thought they looked kind of cool.

On the day they gave us our numbers, they asked me what my previous race times were. I had no previous race time. I told them that. Tony, who was with me, also had no previous race time. So they started giving numbers out. The worse you were the higher your number was. There were 68 people in the race. I got 67. Tony got 68 because he fell down. All these little kids—15, 16-year-old kids—had numbers like 40 and 50, and there I was at the back of the line.

The day of the race came. I got my number and there I was—number 67—sitting up there. Number 66 had just fallen going down the hill. The previous 15 people in front of me had just creamed themselves and here comes my one big chance to be in a race. I looked down this hill and the only thing I could see was blood.

Going out of the gate, I looked fantastic. You see you're not going very fast going out of the gate. At the first pole I'm looking all right. At the second pole, I'm looking bad. At the third pole, I'm in trouble. At the fifth pole, I actually grabbed it.

My feet came above my head and I did what they call a helicopter. It took them 20 minutes to straighten the course out. There I was laying on the ground and a guy came over and said, would you like to try it again? I'll tell you what my response was. I said a couple of other things too.

I wouldn't do it again for all the money in the world. I am happy to have it to add to my list of dumb things I've done. I'd like to see you all

take a look at some of the dumb things you've done, which I think really can add some excitement and fun to life.

#### NAIC—(from page 17)

We are, as Dick Howlett says, a proud industry rendering a valuable service. If we are going to solve the problems of the industry, we need to talk together and open lines of communications—not give press releases to newspapers to inflame the situation.

George Hursig gave a very able discussion of some of the unique financial aspects of title insurance. Oscar Beasley made an extremely fine presentation on the McCarren-Ferguson Act. He spoke, however, more directly about the federal intrusion into the regulation of the business of title insurance.

As the moderator, I made, as I usually do, a few pertinent comments throughout the program. Another participant who should be recognized and who did an excellent job mainly by just being there, although he did not have to say much, was Irving Plotkin. By his presence he gave credence to what we said.

He was seated at a side table, between the panel and the audience, to stop us from saying something that was wrong or to correct something that was wrong. If somebody in the audience said something that was misconstrued, he translated it for us. We appreciated the valuable assistance that he gave us.

There were active discussion and questions. All of the insurance commissioners who attended participated. Some of them tried to participate more than even I would allow them. But we have established communication and I think we have to maintain it.

Recently there was a Zone VI meeting in Detroit. George Hursig attended that for Chicago Title. About a week before that meeting, I found out that there was a privacy protection model bill that was going to be considered, and so I asked George to look into it.

We should have had someone there for ALTA. We cannot expect Chicago Title or Commonwealth or Pioneer to carry the load for us. So the ALTA Liaison Committee with the NAIC, at its meeting yesterday, has voted to recommend to the Board of Governors that an ALTA representative register at and attend each of the six NAIC zone meetings in 1980 and that we should try to put on two, not just one, seminars next year on behalf of ALTA.

We must continue to work within the NAIC. We must get people on advisory committees. We must give the actual work product to the people within the NAIC so that we can control our own destiny and shape our own future. I think this Association is at a crossroads. It's also on a threshold. We can step forward from here and move into an area where we will become active controllers of our destiny.

# EXECUTIVE HEALTH

## or

### Don't Let Cardiovascular Disease or Other Chronic Illnesses Put You Out of Business

Ralph S. Paffenbarger Jr., M.D.

In terms of health or disease, and life or death, just as in business, each of us would like to know what our future holds. How long will we live? What will our interim and terminal illnesses be? When and which of the dreaded chronic diseases will we develop? We wonder especially about heart attack, cancer, stroke, the consequences of high blood pressure and other distresses of middle and later life.

Also, we would like the answers to similar questions as they pertain to our family members, our friends, society in general, and perhaps the world of the future. Except for common respiratory and gastrointestinal illnesses, we seem to have conquered most infectious diseases in the developed countries, but we wish we knew more about those other risks that we face every day—the chronic diseases of today's society that take such a heavy toll.

It is possible to find out more about the causes and consequences of chronic diseases, but that takes a lot of doing. It may be possible to intervene, but that takes real understanding. One promising and essential broad approach to dealing with chronic disease is the medical-statistical-social science of epidemiology, and that is the research area that I wish to speak about this morning.

Rather than limit my remarks to platitudes concerning the adverse health effects of cigarette smoking, hypertension, overeating, obesity, and the sedentary life style, I will ask you to follow the presentation of some scientific data that identify these and other characteristics of man and his environment that predispose to specific kinds of disease.

I will put special emphasis on research work currently underway. We are interested in physical activity of leisure time as that relates to risk of fatal and non-fatal heart attacks. Physical activity, smoking, high blood pressure, and overweight will be examined for their quantitative relationships to heart attack risk. I consider these points equally important

to men and women, but am particularly pleased that our ladies are here this morning in that they often are the primary determinants of our habits and ways of life.

Epidemiology, literally the study of epidemics, originally was confined to interests in infectious diseases, their causes, modes of transmission, and control. Today, however, the science is extended to the entire worrisome assault group of chronic degenerative disorders whose causes, pathways, and preventability are largely unknown.

As a model for the study of factors that predispose to chronic diseases, I will describe some observations made on over 50,000 male former students of Harvard University and the University of Pennsylvania. This group was composed of 36,500 from Harvard and 13,500 from Penn who entered their respective col-

leges between 1916 and 1950. These men have been followed, from the time of their entrance into college to the present, for the kinds and numbers of chronic diseases that have developed later in their lives. Members of these classes, if alive today, range in age from 45 to 85 years.

Essentially, this study is made up of two phases. In phase one, we looked at factors in youth that predispose to chronic disease in middle age. In phase two, we are looking at characteristics of alumni that predispose to chronic disease of middle and more advanced age.

Although we will not discuss them this morning, we also are following 3,500 women from the University of Pennsylvania for similar purposes. They are harder to follow because they change their names or change their



HUD attorney Reid Patterson (left) confers with Dr. Paffenbarger at the Convention.

*Dr. Paffenbarger is professor of epidemiology, Stanford University School of Medicine, Stanford, Calif.*

college allegiances. They marry men from Buzz Rosenberg's Dickinson College at Carlisle or men from Lehigh, Lafayette, Franklin and Marshall or another of those All American colleges scattered around Pennsylvania. These women become lost to study.

Physical, social, athletic, and psychological data that were recorded during college years from 1916 through 1950 have been examined for their relationship to later health status, as measured through self-administered questionnaires, follow-up physical examinations on a small number of alumni, and death certification. The Harvard and Penn records of socio-medical data obtained from their students on entrance to college were considered unusually complete, consistent, and reliable, while the character of the universities themselves insured conservative, yet workable, policies of access.

Equally important, the alumni offices provided vital cooperation in obtaining essential follow-up data from these thousands of alumni

about their sociomedical histories in the years since graduation. The alumni have shown themselves willing to put up with the burden or intrusion of having to fill out two-page questionnaires from time to time as response rates have been over 70 percent in each instance. Hundreds even graciously replied to telephone inquiries or submitted to the physical examinations needed to help evaluate the questionnaires as research instruments.

Physical examinations that were done on these men when they entered college and ranged in age from 15 to 24 comprised the major starting data for the observations that will be described. The first phase of this study involved following these men with respect to the relationship of their characteristics at the beginning of and during college to their risk of death as alumni, *i.e.*, from the time they left college to the present.

Questionnaires were sent periodically to all survivors in the 1960s and 1970s to learn about their health and habits. For example, we

queried Harvard men in regard to their current athletic interests, social habits, drinking habits, and smoking patterns. These responses represent base-line data for subsequent observations on predictors of chronic disease.

In the 60 years since original data were collected on the first of these 50,000 men, a total of 8,000 are known to have died: 2,625 from coronary heart disease, over 500 from other heart conditions, over 500 from stroke, 1,500 from cancer of specific sites, over 1,000 from other natural causes, 400 from military action, almost 1,000 from accidental causes and 475 as a result of suicide. Each of these conditions lends itself to epidemiological study that might identify antecedent predictors and possible causes.

In phase two of the study, we have been examining the surviving group of college alumni as adults, to try to identify characteristics of older men that predispose to chronic disease in subsequent time, that is, in middle to later age.

**FIGURE 1**

**Risk of Heart Attack, by Alumni Physical Activities**

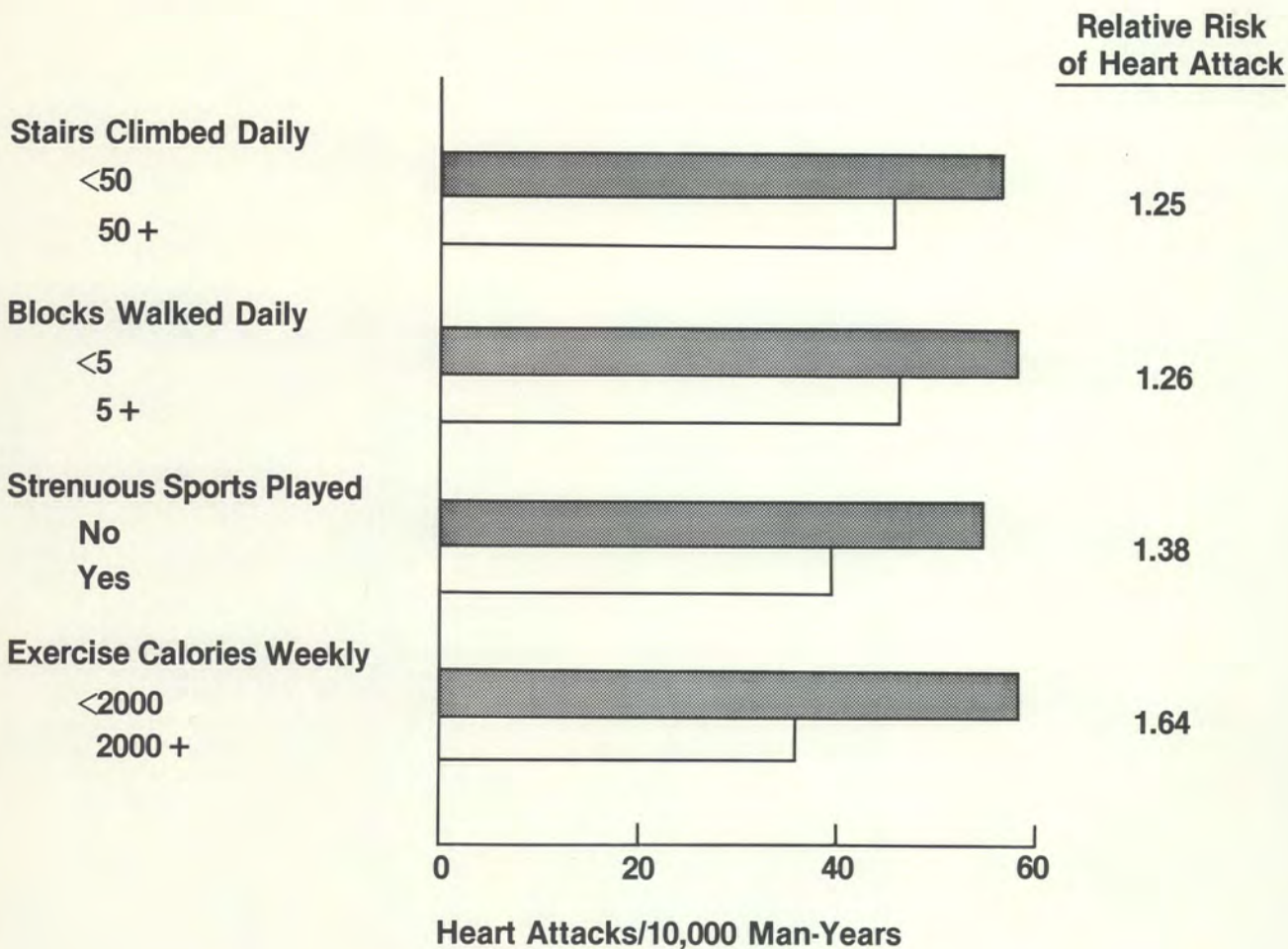
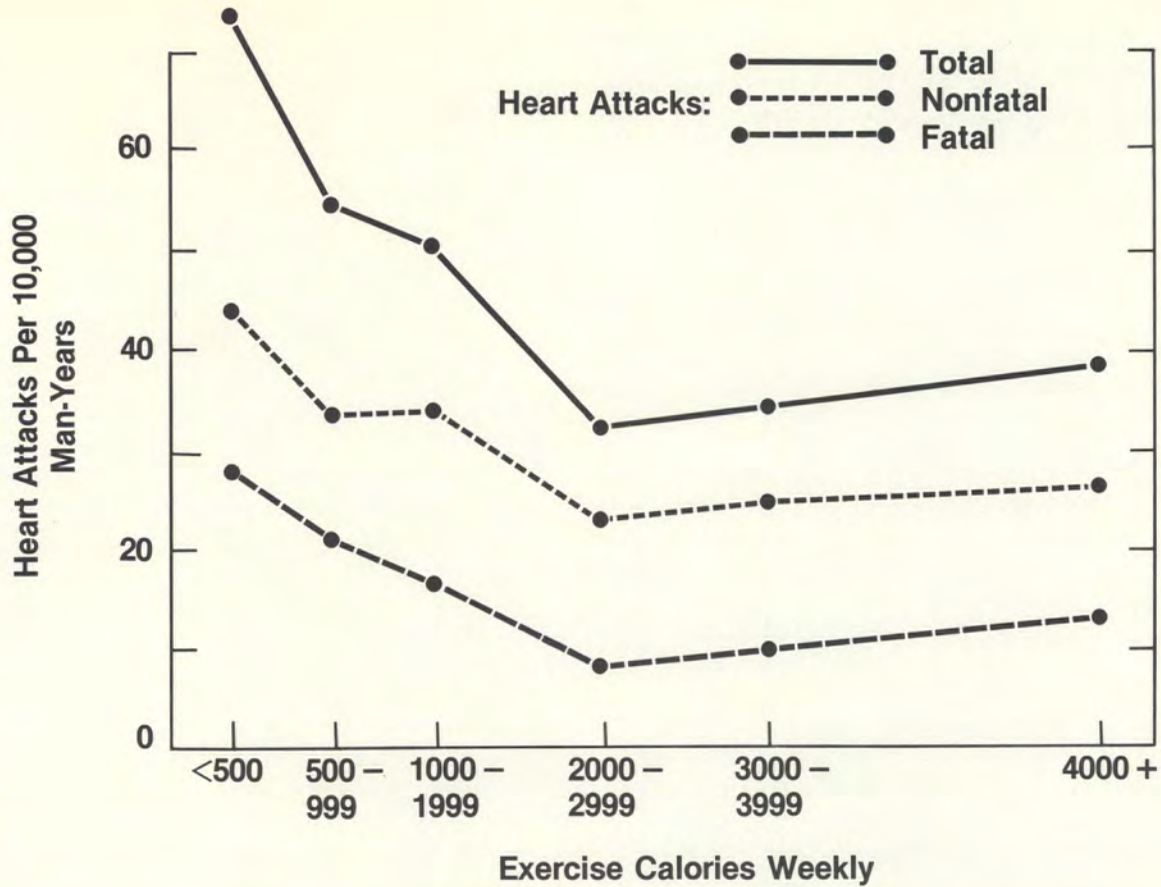


FIGURE 2



At this time, you may be wondering just how adequate the questionnaire is for the identification of chronic diseases. We learned in the Framingham heart study many years ago that the best way to determine if a person has had a heart attack is to ask him. A simple query is a better indicator than taking an electrocardiogram, and doing a physical exam or running laboratory tests.

The sensitivity and the specificity of all of the conditions that we will talk about were checked by interview with or through mail questionnaire of the study subjects' physicians and found to be of high order.

First efforts in phase one centered on college entrance records and a search for characteristics that might be early precursors or early predictors of eventual chronic disease. Chief among those that proved to show strong associations were blood pressure level, cigarette-smoking habits, and amount of physical exercise. Certain other characteristics, such as obesity, stature, heredity, and sociopsychological traits were also of interest but weaker predictors of most chronic disease.

A diverse array of chronic diseases was considered in these early explorations, including fatal and non-fatal coronary heart disease and stroke, hypertension, adult-onset diabetes, peptic ulcer, and even suicide and accidental

death. Varieties of cancer, while certainly of high interest, were to be studied later. Heart attack was a pressing topic, being the most common cause of death among the alumni. Heart attack, therefore, became the target of first investigation.

Accident and suicide were the leading causes of death in college and in the years immediately thereafter. Coronary heart disease, cancer, and stroke became more prominent during the fourth decade after entering college. In general, death rates for each cause followed the age-comparable mortality curves long recognized for white United States males.

The ranking of interim death rates over the 50-year period of study was, by cause: coronary heart disease, accident, cancer, suicide, and stroke. After an additional ten years, this ranking has changed to: coronary heart disease, cancer, all other natural causes except stroke, accidental cause, stroke, and suicide.

For the study of fatal coronary heart disease, the first 600 male coronary decedents were contrasted with a randomly selected group of 1,200 of their surviving classmates of equivalent age. A search of college records revealed nine factors that were precursors of the disease. These factors included higher levels of blood pressure, obesity, short stature, heavy cigarette smoking (not unexpectedly),

nonparticipation in varsity athletics, early parental death, absence of siblings, higher emotional index and a history of scarlet fever in childhood.

Estimated mortality rates were computed for paired combinations of the first five of these factors. Heavy cigarette smoking and higher levels of blood pressure, occurring together or in combination with other factors, showed the strongest association with subsequent fatal coronary heart disease. Increased body weight and short stature showed lesser effects. Participation in varsity athletics reflected the opposite influence—a decrease in the risk of coronary mortality.

Similar study of college data for 571 stroke decedents and 684 age-matched randomly selected surviving classmates revealed seven factors predisposing to fatal forms of stroke. These were higher levels of blood pressure, increased body weight, short stature, early parental death, heavy cigarette smoking, heart consciousness (palpitation), and again, nonparticipation in varsity athletics.

Let me simply tell you some of the strong precursors of other chronic diseases as uncovered from phase one of this study and derived from comparison of case and randomly chosen control classmates. Among the stronger early predictors of adult-onset diabetes were higher

levels of blood pressure, obesity, coexistent hypertension and coronary disease, and parental history of diabetes.

Peptic ulcer was foreshadowed by excessive cigarette smoking and coffee drinking, lower blood pressure levels, and low milk consumption. But none of the self-assessed personality traits or a similar battery of doctor-assessed psychological traits distinguished students who later developed peptic ulcer.

Loss of a father before college was the most striking predictor of both suicide and accidental death. The eventual suicides were prone to smoking and drinking, insomnia, worries, self-consciousness, and mood swings. They also were more apt to drop out of college. In contrast, the alumni who were destined to die from an accident had, as students, denied psychological traits such as worries, self-consciousness, and feelings of exhaustion. However, they resembled the suicides in paternal

deprivation, tobacco and alcohol use, and a tendency to drop out of college.

College men who were to become victims of Hodgkin's disease were less likely to have contracted the common contagious diseases of childhood. As college students, they were more apt to be obese and users of cigarettes and coffee, and more had lost a parent from cancer than had their classmate controls. The incidence of most of these chronic diseases increases with age, of course, and their continued surveillance should provide new etiological information that is greatly needed.

As you recall, phase two of the study concerns characteristics of alumni that may be precursors of chronic disease. With two levels of information (college data and questionnaire data), it is feasible to discover whether and how alumni have changed in their characteristics, habits, and susceptibility to disease since their student days. We can attempt to determine if familial attributes or youth ex-

periences are as influential as later predictors of disease.

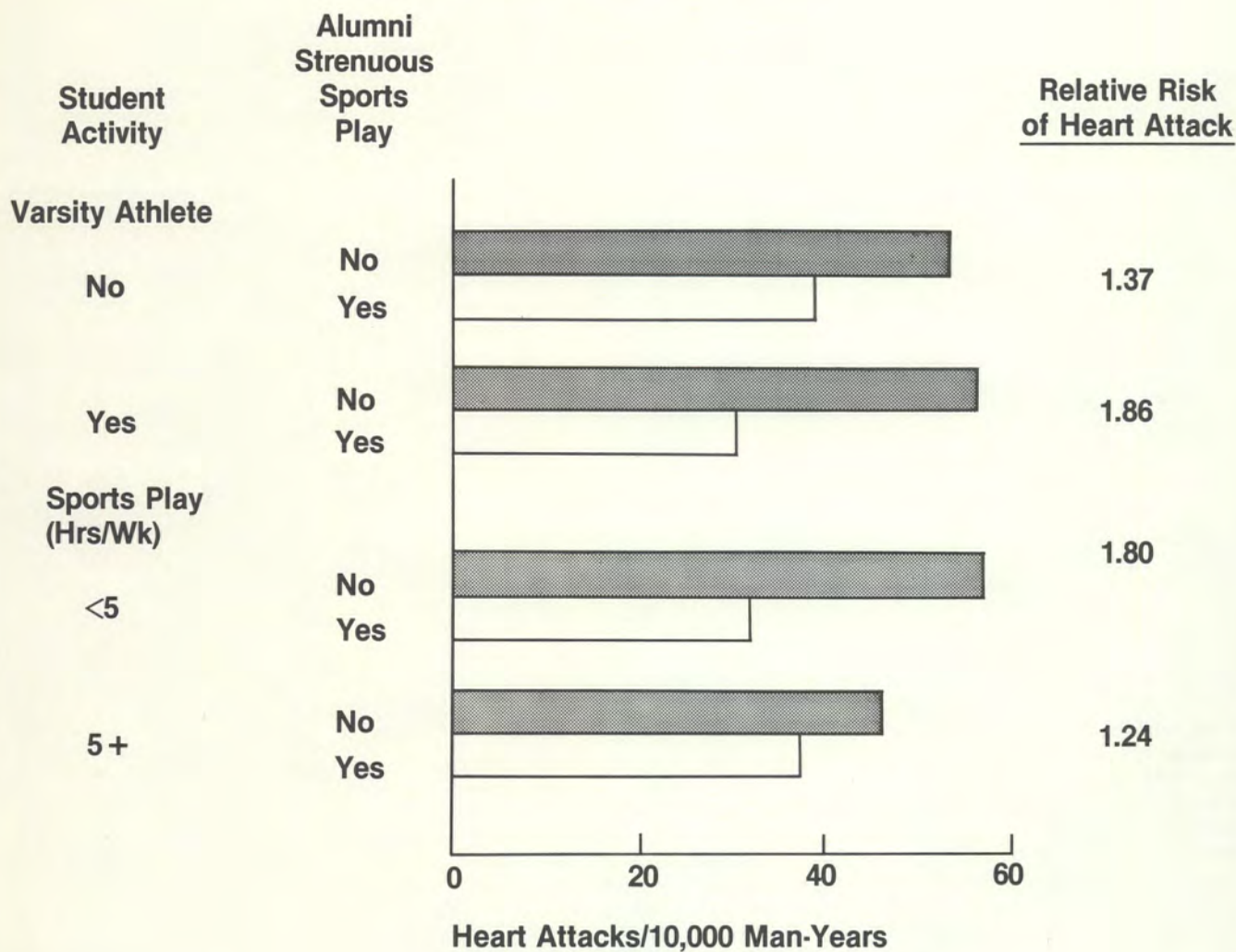
I turn then to our interest in physical activity during work and leisure time as that relates to the risk of fatal and non-fatal heart attacks.

Now everyone knows what exercise is—that which most people instinctively avoid. But now we define heart attack the same way, and we have come to realize that we may be unable to avoid both at once. For some reason our highways and byways are suddenly full of joggers and marathons, a trend of which we take note in conjunction with others.

The heart attack, or coronary heart disease, is a 20th century phenomenon which, even by exercise if necessary, we would like to put back on the shelf as the year 2000 approaches. If this can be done, it will require a combination of individual and community efforts. Not only jogging paths are needed, but broader adjustments in life styles and attitudes.

**FIGURE 3**

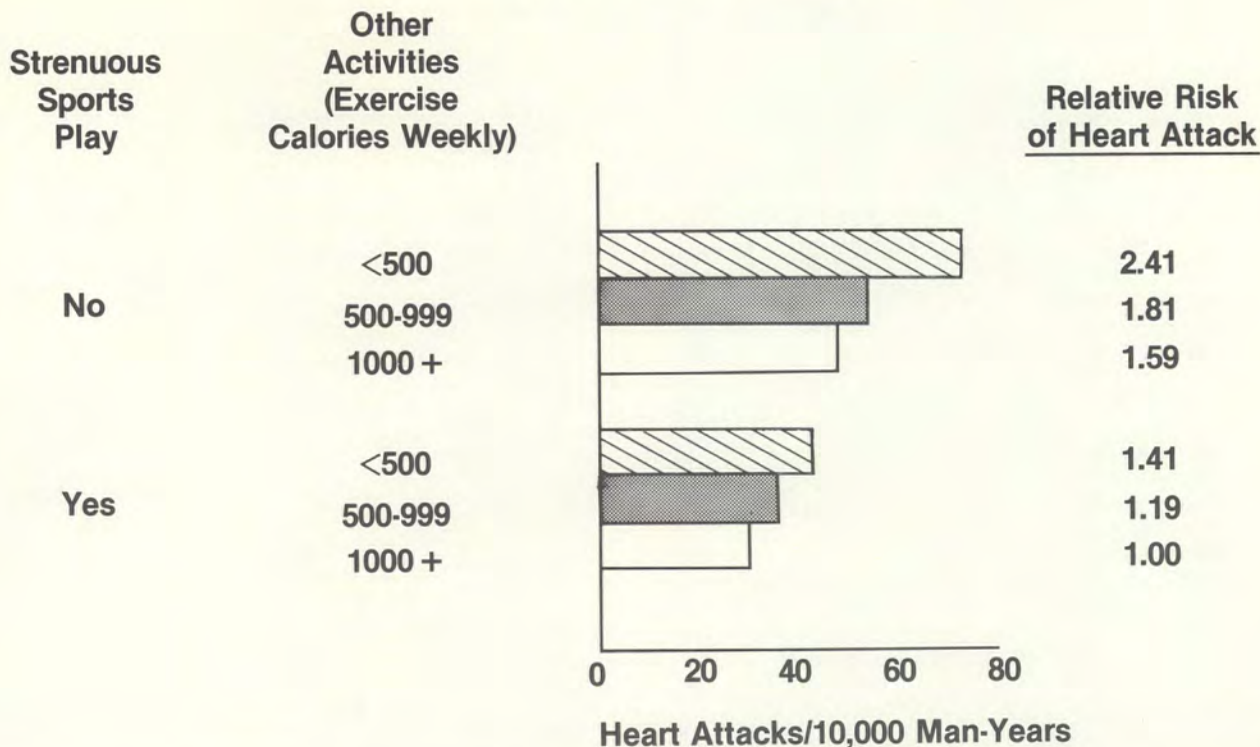
**Risk of Heart Attack, by Student and Alumni Sports Play Patterns**





**FIGURE 4**

**Risk of Heart Attack, by Alumni  
Strenuous Sports and Other Activities**



To coin a phrase, it is heartening that the latest vital statistics show a decline of about 20 percent from the peak incidence of coronary heart disease mortality reached in 1966. This turn of events is of such interest that an international conference was called to review it, the results of which conference were only recently published.<sup>1</sup> The American Land Title Association Annual Convention is therefore completely in tune with national efforts toward improving American health, and specifically in addressing the question of how to reduce morbidity and mortality from America's most serious chronic disease problem, coronary heart disease.

It is an intriguing question whether the boom in physical exercise over the past decade or so has helped to bring about the concurrent decline in fatal heart attack. Other trends, perhaps more important, must be considered, such as the decline in cigarette smoking by adults, better recognition and treatment of hypertension, altered dietary patterns and improved medical care programs. Without discounting any of these, let us now take a closer look at the potentialities of physical exercise as a defense against heart attack.

One noted pioneer in the field was Professor J.N. Morris of England, who with associates demonstrated in 1953 that London bus conductors had lower rates of heart attack than their

bus driver colleagues.<sup>2,3</sup> The conductors were continually scrambling about the double-decker buses, while the drivers merely worked sitting down at the wheel. Morris concluded that this difference in exercise was chiefly responsible for the difference in heart attack records.

Twenty years later, in 1973, Morris et al. published a study of British civil servants, sedentary workers whose physical exercise was obtained during their leisure time.<sup>4</sup> In a follow-up four years after surveying their habitual exercise patterns, Morris found again that the less active men were more at risk of heart attack.

Meanwhile, in California we conducted a study of energy expenditure and fatal heart attacks in a 22-year follow-up of 6,300 San Francisco longshoremen.<sup>5,6</sup> The work activities of these men were carefully monitored and classified as to energy output and duration. The most strenuous jobs were those of the cargo handlers, whose work expending 8,500 to 10,000 calories per week was physically more demanding than almost any other occupation. Followup of the longshoremen showed that these most active workers had 50 percent fewer fatal heart attacks than their fellow workers who expended fewer calories per day. The study of the longshoremen was centered on high energy output because union

rules required these men to work at least five years as cargo handlers. On the average, members spend 13 years in the job and some never leave it. The apparently protective benefits of strenuous exercise remained effective at all ages and independent of other risk factors such as smoking cigarettes or having higher blood pressure level.

But not many people work as hard as the longshoremen did. Even stevedoring jobs began to lighten as mechanization and containerization replaced much of the manual labor. If exercise reduces heart attack mortality, the longshoremen, like the rest of us, must soon find leisure time for energetic physical activity or run the risk of having higher heart attack rates.

Let's return to our study of Harvard alumni. On the questionnaires of the 1960s, men were asked to report on their current activities—number of stairs they climbed, number of blocks they walked, and kind of sports in which they participated—by day and weeks per year. They were also asked about their participation in sports over the years since graduation from college. Figure 1 shows age-adjusted rates and relative risks of heart attack according to differences in physical activities. The one-third of alumni who reported climbing fewer than 50 steps per day were at 25 percent increased risk of heart attack over

that for those who climbed more. Findings were similar for the one-quarter of men who walked fewer than five blocks daily as compared with former classmates who walked more. Not shown here, there was no difference in risk for the one-quarter of the population who played only light sports as compared with those who played no sports at all. In contrast, the 59 percent who played no strenuous sports were at 38 percent greater risk than those who did. A composite physical activity index compiled from the above activities and termed "exercise calories weekly" showed for the 60 percent of men who expended less than 2,000 calories weekly a 64 percent increased risk of heart attack over that for their more active fellows.

Figure 2 shows rates for both fatal and non-fatal heart attack at given levels of energy expenditure expressed as exercise calories weekly. It is clear that heart attack risk is reduced as physical activity increases through 2500 calories. Beyond this point the trends show no further significant change, and we are left to wonder if there is a plateau of benefit rather than a continuing decline, but the experience at 4,000 calories and above is limited in this study population.

We find that adult or current physical exercise is crucial in regard to lower heart attack risk. Men who had been varsity athletes did not retain their lower risk status unless they reported being still physically active as alumni—which two out of three fortunately did. On

the other hand, men who had been less active in student days but engaged in vigorous sports as alumni were also blessed with lower heart attack risk than their classmates who failed to devote sufficient time to exercise.

In Figure 3, alumni are cross-classified by their student and alumni sports play patterns. Rates of heart attack, among former intercollegiate athletes and their less endowed classmates, are lower only for those whose adulthood life styles include adequate high-energy output activities, i.e., strenuous sports play. Similarly, when men who played five or more hours per week of intramural sports in college are compared with classmates who were less active, their heart attack rates run inversely to their current vigorous sports play as alumni and are largely unrelated to their athleticism in college. Relative risks are 24 to 86 percent higher for adults who do not participate in strenuous sports. As might be expected, analyses show that vigorous sports such as running and handball are more influential than casual activities of stair climbing and block walking. Harvard alumni reported nearly 100 varieties of sports activities, which were rated as strenuous or light on the basis of energy output evaluations available from other investigators.<sup>9</sup>

Other analyses showed that men who engaged in vigorous sports were at lower risk than alumni who limited themselves to lighter sports such as golf or bowling. Men who engaged in strenuous sports several hours per

week were less susceptible to heart attack than those who played less.

When alumni are cross-classified by strenuous sports play and other contemporary activities as measured by exercise calories weekly (Figure 4), a steady increase in heart attack rate is seen from 30 per 10,000 man-years of observation for the most active alumni to 72 per 10,000 for the least active. This 141 percent increase in risk between the extremes of energy output displayed here refers to Harvard alumni ranging in age from 35-74 years, but results are similar in all age brackets included.

It often has been suggested that physical activity may merely identify the physically well-endowed individuals who have better cardiovascular systems with a built-in resistance to heart disease. There is no doubt that some people inherit a better headstart than others, and it is reasonable to assume that most of our college varsity athletes would be in this select category of supermen. But, if that is so, our latest findings show that such endowment alone is not enough to guarantee lower heart attack risk, as these varsity athletes did not retain their low-risk status if they did not continue exercising vigorously as alumni. If anything, they tended to be worse off than non-athletes if they gave up sports play after leaving college.

Contrasts between strenuous sports and less vigorous activities for their relationship to heart attack risk are displayed somewhat dif-

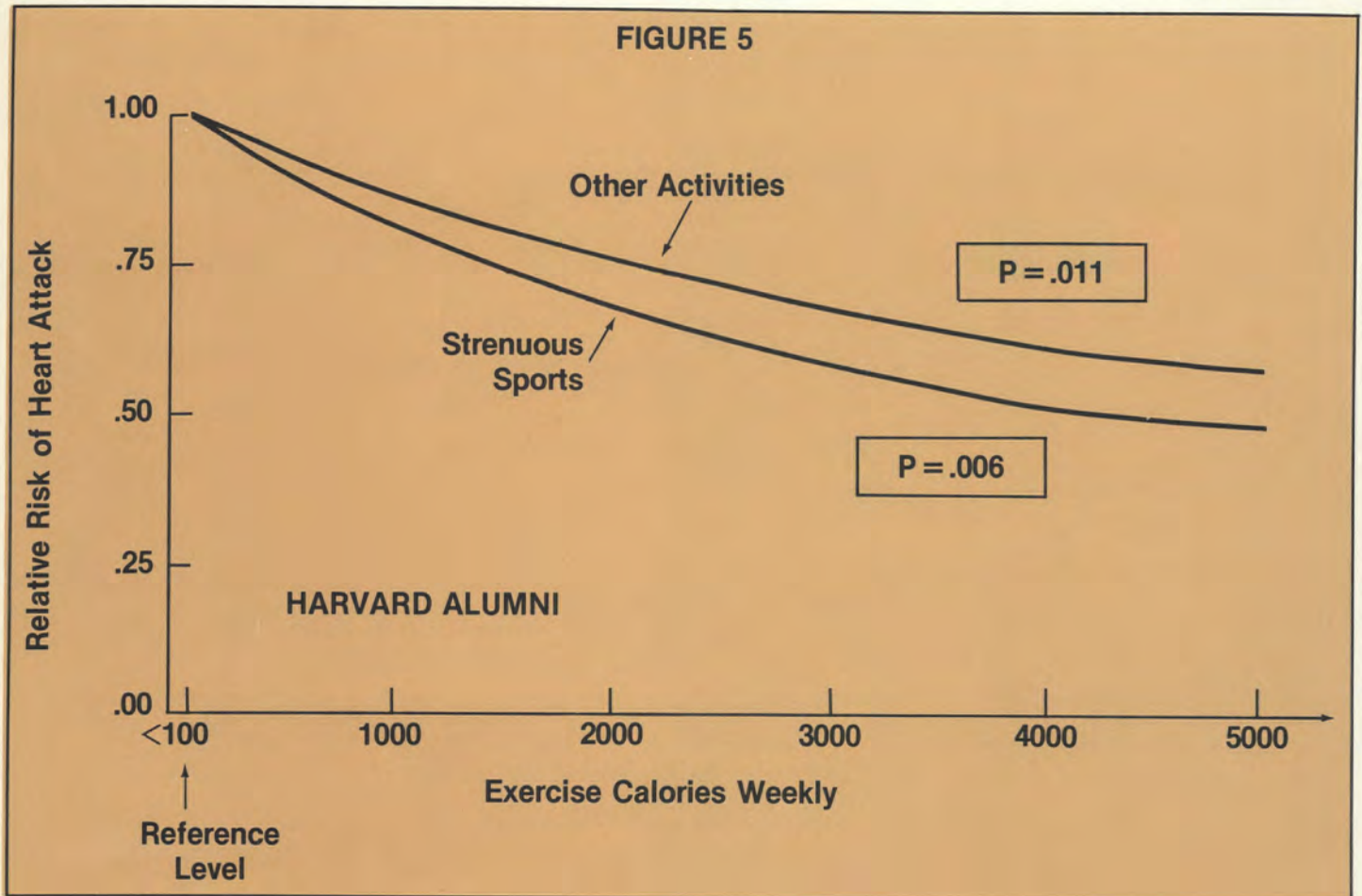
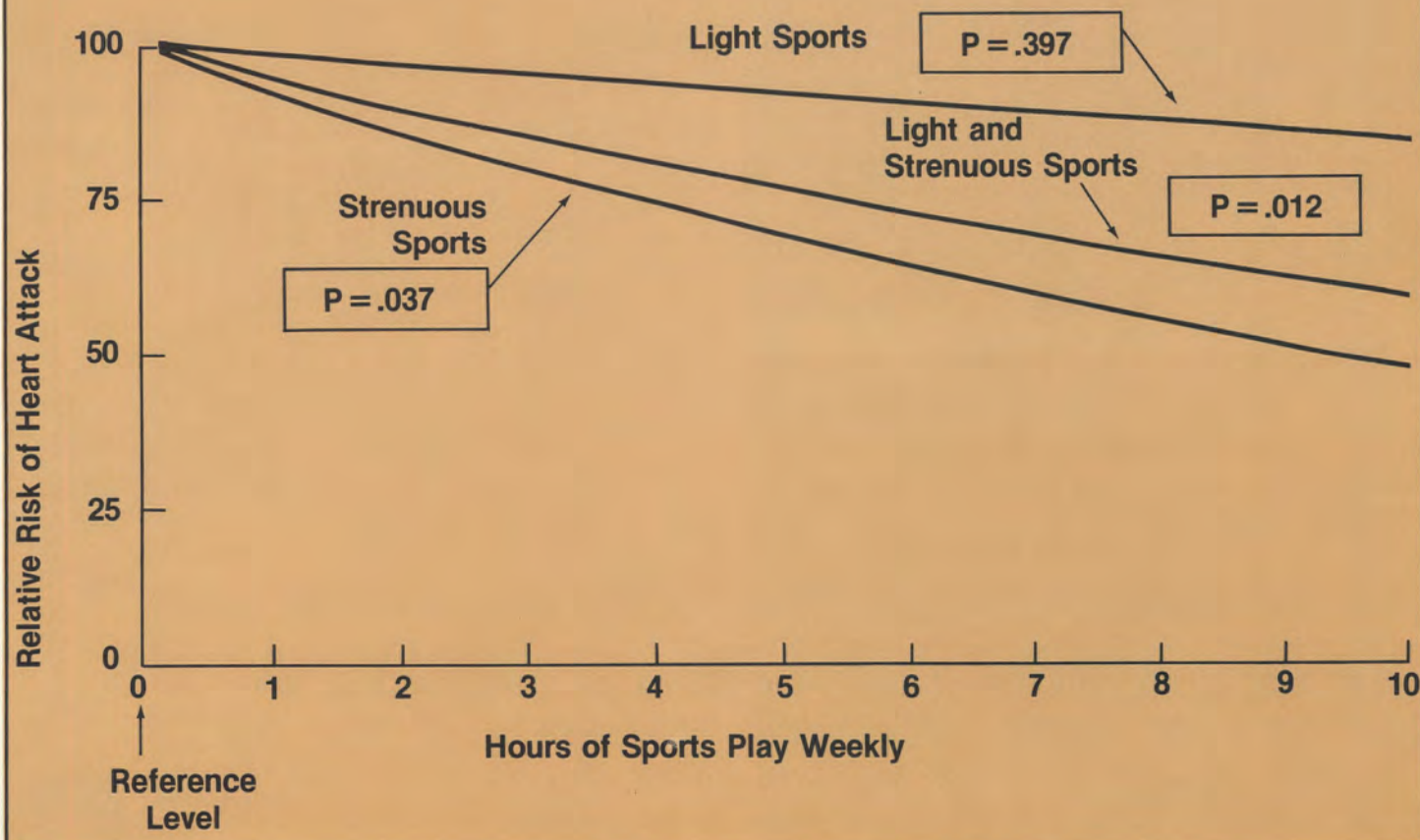


FIGURE 6

Risk of Heart Attack, by Alumni Sports Play Patterns



ferently in Figure 5. Using a reference level of less than 100 exercise calories weekly, each curve represents a reduction in risk for one type of physical activity with the effect from the alternate type of activity being held constant. A reduced risk of heart attack is seen with increasing energy expenditure from each type of activity, but at any given level of exercise calories weekly the risk tends to be lower for strenuous sports play than for more casual activities. Not shown here, when adjustment is made for adverse influences of cigarette smoking, hypertension, and obesity, the reduced risk of heart attack remains strongly related to strenuous sports play but loses a significant relationship with less vigorous activities (stair climbing, walking, and light sports play).

Figure 6 shows heart attack risks by kinds and amounts of sports—strenuous, light, and a combination of the two—expressed in hours of alumni participation weekly. Comparison is made with age-similar men who did not play sports (Reference Level = 0 hours per week). The data are adjusted for differences among the three groups in cigarette smoking patterns, history of hypertension, and degree of obesity. Risk is reduced as sports play is increased; e.g., at five hours of sports play weekly, the risk of heart attack is 30 percent lower for

men who played only strenuous sports, 22 percent for men who played both strenuous and light sports, and only seven percent for exclusively light sports players.

Adequate contemporary vigorous exercise emerges as one of the strongest positive influences in reducing heart attack risk. Another is abolition of cigarette smoking. Fortunately both sports play and smoking are subject to individual choice. Here we are the masters of our fate and captains of our hearts. In fact, strenuous sports play tends to discourage cigarette smoking and is one of the best and most enjoyable ways of doing away with tobacco indulgence.

Blood pressure level is more influential on heart attack risk than exercise or smoking. But blood pressure also is capable of individual control, and play or vigorous exercise is beneficial to that also. Our Harvard data showed that men with higher blood pressure (measured in their student days) were at lower risk if they exercised vigorously (as alumni) than if they were less active. In general, the evident beneficial effects of physical exercise in lowering heart attack risk were at least partly independent of any other characteristics shown to influence heart attack risk.

Table 1 estimates the potential reduction in heart attack risk among individual Harvard alumni if their adverse health characteristics had been changed from higher to lower risk levels. These estimates for specific kinds of physical activity, the cigarette smoking habit, hypertension, and levels of body weight-for-height, are theoretical in that they assume a cause-and-effect relationship between each characteristic and heart attack, and that the characteristics could be altered from higher to lower risk levels. An average reduction in risk is estimated for each unit change in a given characteristic after discounting the effects of age, the follow-up interval, and the other three characteristics listed. Thus, heart attack risk would have been reduced 5.4 percent for each one-hour increase in weekly participation in strenuous sports, or there would have been approximately a 25 percent reduction in risk for an alumnus if he had increased his participation by five hours per week. No appreciable effect would have been realized by increasing the number of stairs climbed by 100 per day (four percent), the number of blocks walked by 10 per day (five percent), or the amount of light sports played by five hours per week (seven percent). By adequately treating hypertensives, their risk of heart attack would have been reduced by 61.5 percent. If heavy cigar-

**TABLE 1**

**Potential Reduction in Heart Attack Risk From Change in Alumni Characteristics**

Alumni Characteristic	Unit Change	Average Reduction in Heart Attack Risk Per Unit Change of Characteristic (Percent)	P
Strenuous Sports	↑1 Hr/Wk	5.4	.002
Light Sports	↑1 Hr/Wk	1.4	.397
Stair Climbing	↑10/Day	0.4	.569
Walking	↑1 Block/Day	0.5	.256
Hypertension	Yes→No	61.5	<.001
Cigarette Smoking	1 + Pk/Day→None	51.1	<.001
Body Mass Index	↓1 Unit	2.2	.060

ette smokers had kicked the habit, their risk would have been reduced 51.1 percent. A decrease in body mass index of one unit (approximately 5 pounds) would have been accompanied by a minimal risk lowering of 2.2 percent; a loss of 20 pounds, by a modest lowering of 9 percent.

In Table 2, similar theoretical considerations are given to the three most potent of the characteristics identified in the population to be related to heart attack occurrence. It might be anticipated that in the absence of these three characteristics, rates of heart attack would have been substantially lower in this population over the six-to-10-year period of observation. If all alumni had expended 2,000 or more calories per week through stair climbing, walking, and playing sports, about one-quarter fewer heart attacks would have occurred. If all men had been this active and none had smoked cigarettes or been hypertensive, the corresponding total reduction might have been nearly one-half of all heart attacks observed.

It must be recognized that the proportion of heart attack reductions would vary with the strength of the relationship between each characteristic and heart attack. Also, the total influence of a characteristic depends on its prevalence or applicability. Hypertension is a potent factor, but only eight percent of the alumni had such a diagnosis. Men classed as overweight were 18 percent, and cigarette smokers 40 percent, of the study population. Control or elimination of these risk factors would reduce heart attacks only in these subgroups. Exercise, on the contrary, is a positive activity that related to all alumni, and insofar as it reduces heart attack risk everyone would benefit from adjustment to an adequate level of caloric input or vigorous exertion. There are signs that the college alumni are aware of this, as 41 percent are now reporting vigorous sports play as adults, and a trend to increased participation is appearing here as well as on the national scene.

Table 3 shows that physical activity is not a preventative for any and all causes of death. Exercise related inversely to risk of fatal heart attack, fatal stroke, and possibly to death from chronic obstructive lung disease, but exercise had no effect on rates of cancer, suicide, accidents, generalized arteriosclerosis, and various other less common chronic ailments. The influence of exercise on over-all death rate is due chiefly to its association with lowered heart attack risk.

The persistence and consistency of the data that we have discussed here strongly support a protective role for vigorous exercise in the reduction of heart attack risk. While innate or early acquired cardiovascular endowment may distinguish hardy from less robust individuals, or the naturally more active from the less active, it is not to be assumed that early selection accounts for all the difference in heart attack risk. Adequate energy output has its effect both in the presence and in the absence of other influences, and the beneficial relationship continues with advancing age.<sup>8</sup> If varsity sports participation reflects a selective attribute of personal health, such selection

alone is insufficient to explain lower heart attack risk in later adult years. Alumni who had not been athletic as students, but rated high in exercise calories weekly as adults, were at lower risk of heart attack than former athletes whose later exercise level was in the low-index category.

Since the experience of college alumni must resemble that of businessmen at large, the implication is clear that a suitable program of intervention would reduce heart attack risk by an appreciable amount. Every program ultimately comes down to dealing with a population of one—a person ready to listen. The combined approach of increasing one's physical exercise, decreasing one's cigarette usage, and controlling any hypertension that exists would lower the risk of putting one out of business.

**Footnotes**

<sup>1</sup>Proceedings of the Conference on the Decline in Coronary Heart Disease Mortality. NIH Publication No. 79-1610, May 1979.

<sup>2</sup>Morris J.N., Heady J.A., Raffle P.A.B., Roberts C.G., Parks J.W.: Coronary Heart Disease and Physical Activity of Work. *Lancet* 2:1053-1057, 1111-1120, 1953.

<sup>3</sup>Morris J.N., Kagan A., Pattison D.C., Gardner M.J., Raffle P.A.B.: Incidence and Prediction of Ischaemic Heart Disease in London Busmen. *Lancet* 2:553-559, 1966.

<sup>4</sup>Morris J.N., Chave S.P.W., Adam C., Sirey C., Epstein L.: Vigorous Exercise in Leisure Time and the Incidence of Coronary Heart Disease. *Lancet* 1:333-339, 1973.

<sup>5</sup>Paffenbarger R.S. Jr., Laughlin M.E., Gima H.S., Black R.: Work Activity of Longshoremen as Related to Death from Coronary Heart Disease and Stroke. *N.Engl.J.Med.* 282:1109-1114, 1970.

<sup>6</sup>Paffenbarger R.S. Jr., Hale W.E., Brand R.J., Hyde R.T.: Work-Energy Level, Personal Characteristics, and Fatal Heart Attack: A Birth-Cohort Effect. *Am.J.Epidemiol.* 105:200-213, 1977.

<sup>7</sup>Paffenbarger, R.S. Jr., Wolf P.A., Notkin J., Thorne M.C.: Chronic Disease in Former College Students. I. Early Precursors of Fatal

**TABLE 2**

**Potential Reduction in Heart Attack Risk From Elimination of Sedentary Life Style, Cigarette Habit, and Hypertension**

Alumni Characteristic Eliminated	Observed Heart Attacks Per 10,000 Man-Years	Potential Reduction (Percent)
1. <2000 Exercise Calories Weekly	35.1	26.0
2. Cigarette Smoking Habit	50.1	25.1
3. Hypertension	41.8	16.1
1. and 2.	65.5	44.6
1. and 3.	102.3	31.2
2. and 3.	79.5	36.7
1. 2., and 3.	201.9	48.2

Coronary Heart Disease. *Am.J.Epidemiol.* 83:314-328, 1966.

\*Paffenbarger R.S. Jr., Wing A.L., Hyde R.T.: Physical Activity as an Index of Heart Attack Risk in College Alumni. *Am.J.Epidemiol.* 108:161-175, 1978.

\*Passmore R. and Durnin J.V.G.A.: Human Energy Expenditure. *Physiological Review* 35:801-840, 1955.

**Forms—(from page 19)**

statutes. The highest Flesch test score that's required is 50.

Our policy, as best as we can figure, without putting it through a computer and doing the multiplication and division by hand, achieves about 70 points. So we really have a policy that will satisfy any of these requirements.

It must be set in 10 point type with 2 points leading and the margins must be reasonable, according to various statutes. The spacing must make it readable. The captions must be in bold face type. No part of it must unduly stand out. Connecticut requires certification of a policy's Flesch test score when it is filed.

The time when these statutes will come on line varies. Tables of contents or indices are required. We believe the policy that we have prepared meets the most stringent of these requirements and that it will be possible for members of the industry to use this policy to comply with the requirements of the various states in which they do business.

When we send this policy out to all ALTA members—assuming it is approved on Wednesday—we will include a list of citations from the states that we have found which have these readability requirements. This should be some help to you as you file and use this policy around the country.

With that in mind, when the policy does become available tomorrow, I think you'll find it's kind of interesting light reading. I hope that you will take a look at it and be ready to vote on it on Wednesday.

I would like to say one thing regarding my committee before I sit down. We miss Ed Healey. He had been a member of the committee for some time. As you know, he died this past year. He was a good committee member and always had good sound advice.

Bob Manuele, who was on the committee, resigned. We are pleased to have Bernie Rifkin of The Title Guarantee Co., New York, and Gerard Knorr of St. Paul Title Insurance Co. as new members on the committee.

We look forward to a year of activity in which we will consider the mortgage policy on the one- to four-family and trying to take some of that language, which is really legalese, and make simplified language of it.

**TABLE 3**

**Risk of Death from Specific Diseases, by Alumni Physical Inactivity (Sedentary Life Style)**

Cause of Death	No. of Deaths	Exercise Calories Weekly <2000		
		No. of Deaths	Relative Risk of Death	P
All Causes	695	500	1.57	<.001
Heart Attack	215	151	2.01	.001
Stroke	53	38	2.25	.030
Hypertension	5	2	—	.712
Arteries	19	13	0.94	.941
Lung, Chronic	14	10	—	.031
Pneumonia	10	8	1.01	.724
Cancers, All	196	138	1.14	.538
Lung	45	37	1.21	.620
Accident	44	32	1.94	.097
Suicide	50	43	1.58	.166
Other	89	65	1.48	.154

**TIPAC—(from page 25)**

answer is simple. In unity there is strength. An individual contribution may help a candidate remember you personally, but it does little to establish the title industry as a political force. A TIPAC contribution, by reason of its source and amount, will not be forgotten.

A TIPAC contribution to a U.S. senator or congressman speaks for all members of the American Land Title Association. No elected official is likely to forget such a constituency.

By channeling your contribution through TIPAC you have the opportunity to affect the competence, values and philosophy of our national government. Your money will be used to support federal candidates from all over the country whom TIPAC has determined to be sympathetic to the best interest of your business.

Our PAC is in total compliance with the law. Accurate records are kept and reports of all contributions are filed with the Federal Election Commission. All contributions become part of the public record and our reports are available from the Federal Election Commission.

Any individual TIPAC contributor can call or write the ALTA office for information concerning how TIPAC funds have been disbursed.

Federal law still provides for a tax incentive for individuals who contribute to candidates for public office. Although the Revenue Act of 1978 repealed the deductibility feature for political contributions, an incentive in the form of a tax credit is allowed up to \$50 for an individual and \$100 for a joint return.

With each succeeding Congress, there is the strong possibility of bills being introduced

which will affect our industry. Our voice must be heard when these issues are presented. As these bills are considered, our industry must have the support of many elected officials in order to accomplish positive results. Sympathetic legislators must be in the Congress to listen, understand and support our views.

I thank and congratulate all of you who responded to TIPAC's solicitation this year and in past years. Because the representation that we so vitally need on Capitol Hill requires the collective support of our membership, it is our hope that even more of you will choose to contribute.

**Dorociak—(from page 35)**

our ability to utilize remote access terminals in areas where the telephone company's equipment was inadequate. I would caution you to research the matter very carefully.

We installed a central processing unit in our San Antonio operation. It was to service not only San Antonio and all of its sub-branches, but also Austin and Corpus Christi. Everything proceeded very well. The Austin installation worked fine. We installed Corpus Christi and kept having difficulties. We thought it was the CRT. We thought it was the printer. We thought it was the modems. We fiddled with it for six months and after blaming the software people and the hardware people, we finally got the telephone company to admit that their telephone equipment was incapable of handling the remote access to the terminal in San Antonio.

You should also be careful in dealing with software suppliers to be sure there are no tie-ins where you are required to purchase your hardware from the software supplier. That may limit you in what you're able to do.

# Award of ALTA HONORARY MEMBERSHIPS

**Editor's note:** ALTA Honorary Memberships were presented to Richard H. Howlett, ALTA past president and retired president of Ticor, Los Angeles, Calif., and to J. Mack Tarpley, former chairman of the ALTA Committee to Establish Liaison with the National Association of Insurance Commissioners and retired vice president of Chicago Title Insurance Co., Chicago, Ill. Mr. Howlett's award was presented by C. J. McConville, ALTA past president and president of Title Insurance Company of Minnesota, Minneapolis, Minn. Presenting Mr. Tarpley's award was 1979-80 ALTA President Robert C. Bates who is executive vice president, Chicago Title Insurance Co., Chicago, Ill. The award was accepted on Mr. Tarpley's behalf by John E. Jensen, executive vice president, Chicago Title and Trust Co., Chicago, Ill.

**Mr. McConville:** The American Land Title Association has a reputation of being one of the most effective associations of its size in the country. I believe the reason for that is that top corporate officers in the title industry are willing to accept positions of substantial responsibility within our national association.

Today we are bestowing the high honor of ALTA Honorary Membership on an eminent titleman whose initiative, intelligence and energy characterize this spirit of commitment and leadership.

Dick Howlett joined Title Insurance and Trust Co. (TI) in 1946 in Los Angeles, leaving a private practice in Colorado after having received his law degree from the University of Colorado.

Over the years he served this corporation and its subsidiaries in a variety of functions, but his primary love was the law. He is remembered for his expertise in this field and through which route he became general coun-

sel of TI. He is also an able administrator and his last service with his employer was as president of Ticor, until his retirement in February of this year.

We probably could have based his honorary membership on one facet of his career within the association, and that was on the Forms Committee. He served on this committee 12 years, 11 of them as chairman. I served on this committee under him, and I can attest to his hard work, his dedication, his knowledge as a titleman, and, probably not least of all, his ability to get a lot of strong-willed individuals to work together to come to some solid conclusions which resulted in the standard forms that we still use today.

But our honorary member did much more than this. Let me tell you some of his activities.

I first met Dick 22 years ago in Washington, D.C., in a hotel room. What was he doing but working on ALTA activity. We did not have our Washington headquarters yet. That was still in Detroit. But there was a challenge to the industry. The government believed that under the "Capehart" housing program that title insurance wasn't necessary. "Let's have the government issue a red, white and blue title policy."

Dick worked hard. Through his work, and the work of others on that committee, ALTA was able to persuade the government to abandon this project.

While he was on the Forms Committee, he was also a member of the ALTA Liaison Committee from 1966 to 1971 and on the Board of Governors from 1967 to 1969. During this per-



**Mr. Howlett (left) accepts his ALTA Honorary Membership from C. J. McConville at the 1979 ALTA Annual Convention.**

**ALTA 1979-80 President Robert C. Bates (left) presents J. Mack Tarpley's ALTA Honorary Membership. John E. Jensen accepted the award on behalf of Tarpley who was unable to attend the Convention.**

iod, he managed to put in a very effective year as the president of the California Land Title Association. Also, he helped the Utah Land Title Association become reactivated. For his service to that association, he was honored by them by being presented an honorary life membership, the only non-Utahan so honored.

He went on to further serve the industry as a member of the Committee to Establish Liaison with the National Association of Insurance Commissioners, later became chairman of the Title Insurance and Underwriters Section and then became president in 1976. Of course, he served on the Board of Governors and Executive Committee during this span also.

He had a very productive year as president. Due to his initiative, much of the recent modernization of our association's structure came about.

Dick, and any person, could have rested on his laurels at this stage and become a distinguished elder statesman, but he did not. He jumped back into the fray after serving his term as president and became chairman of the very important Government Relations Committee—the committee that he had authorized while he was the president.

Upon nearing retirement, he showed he still had an interest in this association and he applied for ALTA Member Emeritus, a new membership category that was approved in Boca Raton last year. He is now our first Member Emeritus.

Although he has now retired, he certainly hasn't slowed down. He's gone into the nursery business, not the baby kind, but the tree kind, and you might say he started with a flair. No sooner had he bought this lovely place when he had a fire that destroyed everything. But he is undaunted. He's rebuilding it. And because he can't get people to rebuild everything the way he wants it done, he's doing some of it himself, which might explain why he looks so well. Climbing up and down ladders has done wonders for you, Dick.

It is really my privilege to present an ALTA Honorary Membership to an eminent titleman who is a vital force in the life of our industry. Please join me now in congratulating and expressing appreciation to our recipient, Richard Harlan Howlett.

**Mr. Howlett:** I promised Betty that I'd be short, but I must say that I thank you for the honor, for the nice things said and I wish you the satisfaction of service to this industry that I have had. Thank you.

**Mr. Bates:** Today, Jack Jensen and I have the privilege of honoring a man who spent 43 years in the title business, as a lawyer, an abstracter, a title insurance agent, and a title in-



surance company executive. He understood the complexities of the title business as well as anyone in the history of the industry. He developed and maintained many deep and sincere friendships from coast to coast and he combined that knowledge and friendship to influence the evolution of the title industry in a very beneficial and a very unique way.

That man is J. Mack Tarpley, retired vice president of Chicago Title Insurance Co.

Mack was born in Arkansas and he received his law degree from the University of Arkansas. During his career he and his wife, Victoria, lived in Little Rock, Kansas City, and Chicago. They have a daughter, Vicki, who is married and lives in New York City. Mack and Victoria now live in Rancho Bernardo, Calif.

During his career, Mack played a special role in the development of the title industry. He served as president of the Arkansas Land Title Association, member of the ALTA Board of Governors and chairman of the ALTA Liaison Committee with the National Association of Insurance Commissioners. He was the primary author of both the concept and the text of the model title insurance code and served as chairman of the committee which produced the original draft.

Mack was one of the first leaders in the title industry to recognize the inevitability of some form of regulation and to urge state regulation as opposed to federal. He was one of the first people in the industry to adopt a "global" attitude toward and understanding of the concept and value of title insurance, as opposed to the provincial attitudes which afflicted most of us.

Mack played a very influential role in shepherding a fledgling industry with a humble beginning to its current level of importance in American economy. He had an exceptional understanding of the changing needs of industry customers, coupled with the ability to see ways to meet those needs in a manner which was in the best interests of both the customer and the industry.

And it must be recognized that Mack was one of the best golfers ever produced by the title industry.

Mack is unable to be here today and Jack Jensen will accept this Honorary Membership in his behalf.

As a friend and business associate for 27 years, I am pleased and proud to make this presentation in recognition of Mack's many outstanding achievements and contributions to the industry and to this association. So, Jack, will you please accept this plaque for Mack, who can't be with us today.

**Mr. Jensen:** Thank you, Bob. Thank you, ladies and gentlemen, on behalf of Mack. I find myself a little out of character at this moment standing in and speaking for someone else, particularly when I'm speaking for someone who more than anything else in the world would like to be here today accepting this award in person.

I've known and worked with Mack Tarpley for many years, but not nearly as long as many of you in the audience have. Therefore, I'm sure you sympathize with me in recognizing that I can be but a pale proxy, both in my dress—I'm not wearing golf pants—and in my ability to be eloquent and humorous, the way Mack would be in accepting this award.

Therefore, let me just say, on behalf of Mack, that I'm sure he appreciates this award and the countless favors and courtesies from the Association throughout the years.

More importantly, I'm certain Mack would want to express and emphasize his feelings concerning the many warm personal relationships and friendships that he's developed with so many of you over the years. As Bob mentioned, Mack, who is retired and living in Rancho Bernardo, is not feeling particularly spry. Indeed, he has even given up golf—something he wanted to do every day in retirement and had looked forward to for so many years.

*(continued on page 58)*

# What Customers Expect from Title Companies

Donald A. Wiedmann

When the 1978 California Land Title Association President Jerry Lawhun asked me to address the CLTA convention last year, he asked me to talk about what Realtors expect from the title industry.

At that time I was a Realtor. So, I felt, with some degree of confidence, that I could address that subject. But, on the other hand, I did not really want to just inflict my opinions upon such a broad area.

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**"There are many of us within our industry who feel that it's none of our business what you charge. But, it is our business to be able to substantiate to our customers that they are getting what they're paying for."**

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What I did was to conduct a little research. We did some telephone sampling throughout California and talked to some of our members. In talking to those members, we asked them what it really is that they expect from their title representatives and their title companies. We then compiled the material that we received from our respondents and I will share the results with you today. I will add that although these answers were collected about 18 months ago, I don't believe the results would vary much if we were to conduct our poll again today.

The first thing that they said that they want is speed. They want the things that they need in order to get their transactions and paperwork moving as rapidly as they can.

We also found, in reviewing this that there is a dichotomy out there that maybe many of you recognize and some of you may not. That dichotomy is this. If my documents are not at

the escrow company office when I need them, the escrow company blames the title company. But when I go to the title company, they blame the escrow officers. In this situation, we, in our industry, are not sure where the problems are. But I can tell you that we—I speak about myself and my company before I sold it—used a standard clause in all of our escrows in San Diego that read, "This offer is contingent upon the inspection and approval of the preliminary title report within 72 hours of receipt of same. If not disapproved in writing within 72 hours, it is deemed to have been approved." We started using this standard clause about 10 years ago and it threw the escrow officers into a total state of shock.

As a result of it, we forced the escrow officers to get our title reports—our preliminary reports anyway—into our hands within 72 hours. Now, why did we use 72 hours? We used 72 hours because we were told by title companies that we could get our PRs on normal routine transactions within that length of time. In San Diego and in most areas of California, that's still possible.

In California, usage of this clause has become prevalent—especially among our more professional people. Yes, we have people that maybe are not as professional as we'd like to see them be. But, the best offices are all using it because we've found out that we'd better stop selling surprise packages to the consumer. That's really what we were selling to them because the escrow person was the only one who happened to see that preliminary title report.

It was the escrow person who determined whether there was anything in that PR that our purchasers needed to know. We felt that was basically wrong.

Please do not promise our people things that you cannot deliver. I hear title reps say to people out in the field, "Anything you want from our title industry we can get to you in 24 hours." But if you go down to the title plant and talk to the people that produce those documents, you will realize that there is no way you're going to get it within 24 hours. Nevertheless, that's what some of our people are being told.

Secondly, we want accuracy. You might say, "That's kind of strange. Most of our reports are accurate." But let me tell you that once a title company bungles such a thing as vesting, that gives our people an opportunity again to have to go back for one reason or another to discuss certain things with our buyers and our sellers in order to correct vesting.

We don't particularly feel that's our responsibility. So they're saying they want accuracy. On the other side of the coin, you should demand certain things from our people. We'll talk about that a little later on.

The third thing that they want is knowledge, both of the real estate and title industries. This is a questionable area. A few of the people last year that I talked to at CLTA came up to me afterwards and said, "We have found in our marketing that our people don't give a darn about whether or not title people in the field have any knowledge of the title industry or not. They're sales people." If that's what you choose to think, that's your decision. But I can tell you that our people want knowledge. They want people out there in the field not who are title examiners, but who at least can answer the questions that they have without having to go down to the plant. Or at least they should be able to put them in contact with a person who can answer the questions.

That places one terrible responsibility on your outside people. Maybe we ought to take a hard look at the types of people that we bring in to represent and work between our two industries as title representatives because our people need that professional knowledge. They're telling us that they want it.

As much as I hate to admit it, there are many people that hold real estate licenses in this state and across this country that shouldn't have them. There's no question about that. I'm the first to admit it.

Consequently, that throws maybe a little bit more responsibility on your shoulders to maybe help them until they get over the initial stages.

In addition to putting some of your outside people through your own in-house courses as it relates to the title business, maybe you ought

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Mr. Wiedmann is executive vice president, California Association of Realtors, Los Angeles.



to send them to some of our courses to learn a little bit more about what truly happens in the real estate field outside of the title industry. I think it will make them better title reps if they do.

Fourthly, they're saying that the attitude of that outside person as to what your company can do for them in the real estate business is important.

The fifth thing, which was kind of surprising to me, is that they're concerned with cost of title policies and title services. This concern is not whether the cost should be more or whether it should be less, but rather because our people would like some help in substantiating those costs. They have to substantiate costs today like they have never had to substantiate them before.

When we prepare preliminary closing costs statements for our buyers and sellers prior to the time that we even open up a title report, we have to substantiate every cost. That includes the title costs.

There are many of us within our industry that feel that it's none of our business what you charge. But, it is our business to be able to substantiate to our customers that they are getting what they're paying for. And I think this is an area in which your industry and our industry have to work more closely together.

The consumers today are concerned as it relates to the whole cost situation. This cost squeeze is something like we've never experienced in the industry.

Those are the things that they said to us about 18 months ago. If we conducted the same survey today probably the same basic things would come out. Why then is it necessary to continue to say the same thing over and over again?

I have a very good friend whom I've known for about 20 years. I was with him last night and he told me, "Don, you and I sat in our living room 20 years ago when I first came into the title business and we discussed the same darn thing. Why don't you just say the same thing you said 20 years ago?"

It occurred to me some things are said over and over but sometimes we never really react. Some of us do. We are as guilty in our industry in some of these areas as our allied industries are.

I guess maybe it is because we have a tendency too frequently to talk only to each other. We talk to the people that give us the answers that we want to hear. Think about that for a moment.

If the top corporate level of a title company is dedicated to improving the bottom line or improving the percentage of business that you're getting in your community then out of the hal-

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**"You are a very, very important factor in the lives of every real estate person who lives in your community. We are impressed with title people because you can do things for us that we can't do ourselves."**

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lowed offices of management comes a memorandum calling for a 15 percent increase in business instead of a 13 percent increase. That memo goes through the mimeograph machines and to the regional people. The regional people then take it on down to the district people and the district managers take it into their sales managers. The sales managers take it into their sales staff. The sales manager says, "We've got to increase business by two percent. How are we going to do it?"

What do the sales people in the field tell the sales manager? They tell him what he wants to hear. And what does the sales manager tell the district manager? What the district manager wants to hear. And so we get an inversion going back and forth. But how many of us ever talk to the consumers who are responsible for increasing our bottom line or increasing the percentage of business that we do? Maybe that is where we all fall down a little bit. I fall down with that on my own staff. Goodness knows I try desperately not to. But we automatically fall into that pattern.

If the Realtors of this state and of this country are responsible to help you improve your

bottom line or the percentages of business that you obtain in your local communities, then who better should you talk to than the Realtors of your community? You have to look at your individual communities. How do you do this?

Some of you have gone to advisory committees and you looked to those advisory committees to help you set policy and help you set goals within your company.

You are a very, very important factor in the lives of every real estate person who lives in your community. We are impressed with title people because you can do things for us that we can't do ourselves.

As I grew in the title industry and in the real estate industry and watched the various companies around the state grow, I was very impressed that I, Don Wiedmann, could walk into the office of a major title company and know that I would be received with open arms by the management.

When I had a problem, all I had to do was pick up the phone and call the examiner because I was privileged to know him on a first name basis. That was darned important to me. It also meant that they recognized that my business was important to them. That's what our people expect in turn for the business.

Yes, I've been around long enough to know that you used to get your business by giving things away. I remember when one of the top franchises in the United States started because they were allowed to use the financial statement of a major title company which would underwrite the loans through their compensating balances. Thank goodness that's changed. Thank goodness that the title companies in California don't have to spend



**Convention Chairman David Porter (left) and Donald Wiedmann confer after the latter's speech.**

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\$50,000 to wine and dine the Realtors of California. Better that the \$50,000 that you might have spent in those years be spent in better service to our people which ultimately is going to mean better service to the consumers.

Your competition has never been keener and it's going to get worse before it gets better. One week as I pulled together a year and half study of our long range plan within the California Association of Realtors, we came to the stark realization that things we were projecting in our long range plan were to become a reality. One of the things that we predicted long range is the fact that there will be more and more of an unbundling of services in all areas as they relate to real estate throughout this country, not just in California.

The unbundling of services means basically that a consumer can buy exactly what he wants to buy without having to take the whole package. In just one week—between Sept. 10 and 17—three things happened to confirm the predictions of our long range planning.

The first was the proposed merger of Century 21 Real Estate Corporation of America with Trans World. The leadership of Century 21 made the statement at the beginning of the week that the merger was announced that they were doing it to obtain the immediate capital that's needed to perform one-stop shopping in real estate in every one of their offices throughout the United States.

They're a major force throughout this country and as they move into the unbundling of services, it also means that they're going to be moving into your industry because they are no longer just real estate people. They are now involved with Wall Street and the financial interest of stockholders other than those involved in real estate.

Let me read to you from a Sept. 10 article which explains why Realty World picked Thompson McKennon of Wall Street as a financial partner instead of other cash rich firms which were interested. "Thompson McKennon is a very forward looking company," the Realty World president explained. "They are conducting a quiet revolution of their own by diversification. They have made some very good acquisitions in the insurance industry—acquisitions which will be useful to us in offering one-stop shopping service."

On Sept. 16, also within that same week, an article appeared in one of the news periodicals about Coldwell Banker. It reads, "How is Paulson describing his company's plans to offer one-stop shopping service in the area where Coldwell Banker is now operating? Let me tell you what we are trying to accomplish. When you make a decision to sell your present home and buy a new one, we would like to be the broker in the sale of your present home and help you acquire your new one. We would like to finance your new one. We would provide title insurance to you and a title endorsement to your lender, provide closing services, provide homeowner's insurance and be your life insurance agent in the new neighborhood." That's unbundling services.

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**"Better that the \$50,000 that you might have spent in those years be spent in better service to our people which ultimately is going to mean better service to the consumers."**

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We know that competition in all of our industries is keen today.

I believe that we're going to continue to see proliferation of that kind of activity in our joint businesses. We're going to see the major financial firms coming into the real estate business. They already are. This means that we are going to have to perform a better service than we've ever performed before to stay alive.

I do not think that the small brokerage firm is dead. However, the demands on them are far greater.

A number of you have asked me about my opinions on all the activity relating to broker-owner escrow companies. We are seeing more and more broker proliferation into this area of interest in title companies. I think it will continue.

One of the things that we're seeing in California is a larger percentage of non-controlled business going to companies that are broker-owned.

If these are broker-owned companies predominantly, they know what the demands out in the field are. If the administrations of these companies are responding to the demands in the field, then I can understand possibly why they might be obtaining a larger share of non-controlled business. If this in fact is true, I think we've got to look at that.

There's another thing that the Realtors of this country want from the title industry and that's your involvement with us in allied industry cooperation. We in California are truly blessed. Last year, Jerry Lawhum, the president of CLTA, and I, the president of the California Association of Realtors, formed an allied industries organization. That allied industry organization consists of everybody who is connected with the field of real estate—bankers, lenders, builders, title companies, savings and loans and Realtors. The chairmen of boards or the presidents of those corporations are meeting together twice a year in order to discuss where our legislative programs are going.

We will meet Dec. 12 in order to determine what things we can mutually support next year in order to introduce legislation Jan. 1 that we can all get behind in order to make housing a little bit better in the state of California. I urge you to help form that kind of alliance.

Of course, there will be times when we're not going to be together. But that won't happen

that often. So, when we agree, let's hold hands and fight our battles together because we see 1980 as the most major housing crisis that this country has ever seen.

I know that your organization historically has been a conservative one. So has ours. But we've shed that in the last couple of years. We found out that if we don't like the way government is going, there is only one thing to do to correct it and that's change the list of players that play in the game. The only way we in business and housing will do that is to band together and support those candidates who will also support the issues that we believe so strongly in.

For years I heard our people advocate getting involved in issues but not with candidates. The fallacy of that is who makes the issues? The candidates do. So it pleases me to learn that your political action committee has been so successful. I think probably one of the most important things that we've got to look at right now is the support of these PACs so that we can get the doors open to those candidates and legislators that we need to plead our case.

Yesterday, interest rates were at 14 percent. We're looking at usury laws in 21 states that are virtually going to freeze up all lending in those states. We're fortunate in California that most of those funds will come to us.

You're going to have to go back to the legislators and attempt again to get your usury laws changed. Get organized real estate behind you, because we've got some clout and we'll help you any way that we can because we have to solve this crisis together. In 1979 in California, our requirements in housing starts are about 310,000. This year with the new crisis that's just occurred, we predict that we might get 200,000 units. That means a short fall of 100,000 in 1979. We predict for 1980 a short fall of approximately 150,000.

What's that going to do to housing prices? What's it going to do with the supply and demand factor? It's a crisis that you and I are going to have to help address. It's not only in California, but it's throughout the entire country. We owe it to the people that we service to attempt to educate the legislators and the people in our own communities. We have to get together and recognize that we have a social responsibility in this matter.

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**Honorary—(from page 55)**

For those of you who know Mack, I'd be grateful and I'm sure he'd appreciate it if you would drop him a line congratulating him on this honor.

Finally, I'd like to add a personal comment for myself and on behalf of my associates at Chicago Title. Each of us thank you for honoring Mack. We realize full well that J. Mack Tarpley was a fixture within this group before many of us commenced attending these meetings. In honoring him, you have honored us and our organization. We thank you for that and most importantly, I thank you on behalf of Mack.

# The Evils of CONTROLLED BUSINESS

**Editor's note: Participants in this panel discussion on controlled business were James Maher, attorney adviser, Consumer Protection Branch, Office of the General Counsel, U.S. Department of Housing and Urban Development, Washington, D.C., and Roger C. Day, Utah commissioner of insurance, Salt Lake City, Utah. Irving H. Plotkin, vice president, Arthur D. Little, Inc., Cambridge, Mass., who moderated the discussion, was the lead-off speaker.**

While little good can be said about the controlled business problem, the last four years have at least produced a fairly general consensus with respect to some elements of controlled business, particularly its definition and its economic content. Also, the problem has now been directly recognized by both federal and state regulators as is obvious from the official designations of our panelists.

I will first attempt to set forth a definition of the controlled business question which has been widely recognized by most commentators. Then, I will set forth, from the point of view of all economists who have written on the topic, the consequences of controlled business.

I think it is fair to say that there appears to be general acceptance of a working definition which holds controlled title insurance business to be that business which a real estate professional, be he a real estate broker, an attorney or a mortgage lender, who, participating in his professional capacity in a transfer of real estate, directs to a title insurance agency or underwriter in which he has a direct or indirect financial interest. All three elements must be there: The participation as a professional in the transfer; the direction of the placement of the business, and the presence of a direct or indirect financial interest in the title insurance entity to which the business is directed.

As Buzz Rosenberg underscored in his exceedingly excellent presentation—and I urge those of you who have not heard it, to read the

full text—one cannot take offense at bar-related title companies without also condemning a title agency owned by a real estate broker or by a savings and loan service corporation. The same is also true for all forms of kickbacks and rebates.

The title of this panel should not suggest to any in the audience that there is a distinction between controlled business and the general concept of anti-consumer trade practices.

In terms of economic consequences, general agreement concerning these consequences has emerged from a large number of commentators. All commentators hold that in any meaningful sense a real estate professional in fact controls—or you might say directs or effectively dictates—the selection of the title insurer for the vast bulk of residential real estate transactions. This is true even when a party to the transaction strenuously objects to being steered in a given direction or requests to have a different company service that transaction.

However, this does not constitute controlled business. It is only two of the elements—a participating professional and the fact of direction.

First, I believe direction is good and proper, because what training I've had in economics and what little experience I've had in the real world, has taught me not to try to swim upstream. It is a fact of fundamental economic reality and no amount of consumer education or advanced disclosure is likely to materially change the relationship which leads the public to look to and rely on the real estate professional for direction of ancillary services. Nor does it appear to me to be wise to fight this natural monopoly of information. For those who would like further explanation of a natural monopoly in this sense, the article by

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\*Hofflander and Shulman, "The Distribution of Title Insurance: The Unregulated Intermediary," *Journal of Risk and Insurance*, Vol. 3 (1977).

Professors Hofflander and Shulman is an appropriate source.\*

Secondly, I believe also that all agree that the profits derived by the real estate professional from the controlled business activities are operationally equivalent to a rebate or kickback as those terms are used in the Real Estate Settlement Procedures Act (RESPA). I am speaking as an economist, not as a lawyer. Even a strong proponent of controlled business has admitted that it is operationally equivalent.

Third, from the economist's viewpoint, controlled business, that is, business directed under conditions of a financial interest, has all of the harmful effects of classical tie-in sales. The competitive vitality of both the consumer or demand market and the producer or supply market are seriously harmed, both in the short run and, more importantly, in the long run.

The interest of the buyers are subordinated in the selection made for him while competitors are foreclosed from competing for the buyer's business on the basis of their product's merits and price.

Furthermore, barriers to entry—here we get into the important long run effects—are erected as portions of a geographic market are effectively removed from the competitive arena. These barriers are in no way mitigated when the controlled agency also attracts some proportion of non-controlled business. In that sense, the proscriptions of the California Insurance Department are not sufficient in an economic point of view. The control of a sufficient proportion of the transactions in a market brings with it most of the evils. These evils are not diminished by servicing other, non-controlled business.

I have not pondered enough the remarks of the previous speaker, but he did invite me to comment. Let me just say that perhaps the comment could be the title of his talk. It seems to me that your customers are the buyers and sellers of real estate and not the real estate brokers, as Mr. Wiedmann would have you to believe and act.

Let me emphasize that these observations are no longer just theories. Rather hard evidence from many jurisdictions establish their veracity.

Let me read to you from a letter that was sent by a real estate brokerage firm to title insurance agencies that had been servicing that firm. Because it would serve no useful purpose, I will not disclose the names of the particular organizations involved.

The letter states: As you are certainly aware, since the end of 1978 we began enjoying the benefits of a title agency, which is a wholly owned subsidiary of our parent corporation. I paraphrased the first paragraph. Now let me quote the rest:

"I would like to take this opportunity to express thanks for the service provided by your company and its agents over the years and also to request that you instruct your representatives in the field to refrain from entering our office to solicit business and engage in public relations work.

"Inasmuch as we are now functioning on a competitive basis for title business, and since we do not enter your office to solicit business, I am sure you will agree that my request is a reasonable one.

"Again, thank you for your dedicated service in the past."

This was written by a real estate brokerage company saying that the Realtor would not enter the title company's office to solicit its business. Signed by the resident manager of an office of a real estate organization controlling a large proportion of the business in certain key counties in one of the most prosperous and largest states in the nation—whose earth quakes every now and then.

When I first testified that the effect of controlled business would be to foreclose competition for the portion of the business so controlled, it was dismissed as the speculation of an egghead economist. I must thank those who put in writing the application and working out of good economic theory.

Only harm to the consumer's interest can flow from such arrangements. The consumer is likely to end up paying a higher price, receiving poorer service, and, to me most disturbing, unwittingly accepting faulty title examinations from controlled business companies.

In addition, title insurers—both the participating underwriters and those which do not participate, at least in some sections of the country—will be materially harmed, ultimately becoming mechanical appendages of other real estate professionals. This has not been so widely understood.

The vast majority of competing independent title agencies will probably be the earliest and

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**"The consumer is likely to end up paying a higher price, receiving poorer service, and, to me most disturbing, unwittingly accepting faulty title examinations from controlled business companies."**

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most obvious fatalities of the controlled business system.

Accordingly, I know you will join me in listening with great interest to the views of first a federal and next a state regulatory official. For not only will we learn something about the future treatment of the controlled business problem, but we will also be privileged to witness an important element in the rapidly unfolding discussion of state versus federal regulation of the business of insurance in general.

**Mr. Maher:** As attorneys often do, I would like to begin by attempting to limit my liability. I am here as a HUD spokesman in an area in which the department has taken no official stand. Anything said here today should not be taken as an indication of the direction the department may be heading with respect to the legal question of whether Section 8 of RESPA prohibits controlled business arrangements.

Notwithstanding this limitation, however, I wish to advise you that several offices in HUD are actively considering this question and we are hopeful of some public action in the near future. Moreover, the program office in HUD, in evaluating the probable effects of controlled business on consumers and on settlement service industries, has concluded that this arrangement, if not prohibited under current statutory authority, probably should be. Finally, the department's research effort also will

focus on controlled business generally and, depending on the findings of that effort, might propose additional legislation.

I would like to present three areas of discussion. The first is the legal contentions regarding Section 8's application to controlled business. I propose to present the objections to such an application and the possible responses, without commenting upon the merits or relative weight of each position. The second area is the nature and methodology of HUD's research efforts in this area—both in general and with respect to controlled business. The third area of discussion will focus on possible courses of action available to the department, assuming certain resolutions of the central question.

Before I embark on that itinerary, I think a working definition of controlled business is required. I have heard controlled business defined as the compensated referral of settlement services from one entity to another in which the referring entity has some ownership interest. The ownership may be a partnership interest or stock arrangement and the compensation may be in the form of a partnership profit distribution or stock dividend. But the essential aspect of this arrangement which sets it apart from the classic kickback or referral fee paid between independent actors is the ownership or controlling interest which the referrer has in the entity to which the referral is made. An example—one which is not uncommon—would be the creation of a title agency, underwritten and possibly staffed by a title insurance underwriter. Local lenders, real estate brokers and/or attorneys have a stock interest in the title agency to which they refer business, and from which they derive regular dividends.

Let's review the basic elements of a Section 8 offense. The operative section of the statute reads as follows: "No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to an agreement or under-



**Participants of the panel on controlled business were, from left, Irving H. Plotkin, Roger C. Day and James Maher.**

standing, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any persons."

The first element, therefore, is the payment and receipt of a thing of value. Some of those who have discussed this issue with me have indicated that it is their opinion that a controlled business arrangement is not a Section 8 violation because no thing of value is given or received. Their contention is that dividends paid or profits otherwise distributed, if based on acceptable accounting standards, is a return on capital invested and not referral compensation. They further contend that a referral fee must be either a flat, per transaction fee or must otherwise bear a relationship to the volume of business referred.

The counterarguments are as follows: Both the statutory and regulatory definition of "thing of value" are very broad and the regulatory definition specifically includes dividends and distributions of partnership profits. Advocates of this position question the "return on capital invested" argument, not only on the basis of empirical evidence of unjustified rates of return, but also on the nature of the controlled business relationship itself. The contention that a thing of value must bear a relationship to the volume of business referred, it is argued, is not an element of an offense under either the statute or regulations. The only time that the phrase "volume of business referred" is mentioned is in 24 CFR 3500.14(c), which administratively establishes a presumption regarding the presence of one of the other elements.

The next element of a Section 8 offense is the existence of an agreement or understanding to refer business incident to a settlement service. This element is not often discussed in this controversy because of an administrative presumption which enables this element to be established by showing a pattern or course of action. By the very nature of the controlled business arrangement, such a pattern is generally present.

The last element involves a "federally related mortgage loan"—the jurisdictional criteria—which must be established on a case-by-case basis but does not concern us here.

The next area pointed to by opponents of a Section 8 application to controlled business is the absence of legislative history on the point. They cite the House and Senate reports on the original legislation as indicating that the focus of Congress in enacting the Section 8 prohibitions was on the interaction between independent actors in the settlement process. Corporation tie-ins and stock ownership arrangements such as are typical in controlled business were not considered. They also point out that the 1972 HUD/VA Report on Mortgage Settlement Costs—the clear genesis of Section 8 and other RESPA provisions—contained no reference to controlled business arrangements. Their contention, therefore, is that Congress did not intend such an application.

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**"Therefore, the question is . . . whether an application of Section 8's (RESPA) prohibitions to controlled business would be consistent with congressional purpose in enacting the provision."**

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Advocates of this application do not dispute this lack of specific congressional consideration. The absence of any discussion of controlled business, they contend, however, is understandable in light of the relatively low frequency in 1971 of examples of controlled business. They further contend that the subsequent enactment of Section 8, together with the changed economic and regulatory environment in which the settlement service industries operate, has resulted in a trend toward controlled business. They hold that a failure of Congress to focus on a specific problem in the legislative process is in no way limiting upon the application of a statute's prohibitions to activities which have evolved since the passage of the legislation, provided such activities offend the congressional intent in enacting the original legislation.

Therefore, the question is not whether controlled business was addressed in the legislative process but, rather, whether an application of Section 8's prohibitions to controlled business would be consistent with the congressional purpose in enacting the provision. The advocates point out that the legislative history demonstrates a clear congressional purpose to eliminate the pecuniary interest of the referrer from his consideration in making a referral. They argue that controlled business eliminates objectivity in referral and greatly lessens the opportunity to shop, another purpose of RESPA. They argue that this is clearly a violation of the intent underlying the enactment of Section 8.

The final area of principal controversy regarding a Section 8 application to controlled business is the apparent conflict which such an application would present with existing practices. Opponents of the application point out that numerous corporate arrangements would be rendered illegal or otherwise placed in considerable doubt by such an interpretation of Section 8. They argue, moreover, that many such investments may be specifically permitted or authorized by federal or state statute or regulation.

Advocates of the application counter by stating that their interpretation in no way prohibits ownership of a settlement service entity by another such entity. Rather, it prohibits either the referral of settlement services for compensation or the compensation of such referral. They contend, therefore, that no conflict exists.

Again, I wish to point out that I take no of-

ficial position with respect to the merits of any of these arguments.

Although the research that HUD is conducting regarding settlement service industries and the effectiveness of RESPA have been described to you previously, I would like to just briefly summarize the methodology and intended scope of that research.

Section 14 of RESPA requires an evaluation of the statute and the need for additional legislation in this area. It specifically mandates the department to examine two alternative schemes for federal regulation in the settlement cost area. Those two mandated schemes are lender-pay and direct federal regulation of the industries themselves. Both such schemes, as well as an evaluation of the effectiveness of RESPA, require an analysis of the competitive structure of the various industries which provide settlement service. The research is, therefore, primarily designed along economic analysis lines.

The primary categories of input upon which such analysis will be based are as follows: A nationwide sampling of HUD-1 Forms numbering approximately 20,000 with concentrations in eight separate market sites; interviews with consumers and settlement service providers in each of those eight sites; interviews with national industry and regulatory representatives; and extensive secondary data collection and review.

The eight market sites involved are Boston, Washington, D.C., Jacksonville, St. Louis, San Antonio, Denver, Seattle, and Los Angeles. I urge the cooperation of all those who may be approached by our prime contractor—Peat Marwick Mitchell and Company. Their contact will be, as noted, at both the local and national levels. It may include a rather extensive advance questionnaire to be picked up at a subsequent interview. Your assistance in this area will be most appreciated.

With respect to controlled business and other "interlocking relationships," the research design is divided into a four-step analysis. The first step is to determine the prevalence of an extensive list of hypothetical interlocking relationships as they exist or fail to exist in the real world and to determine what additional relationships may be prevalent. It is anticipated that this step will be accomplished through a combination of interviews at the local or national level with both consumers and industry representatives and contact with regulators at the state and federal level.

The second step will be an examination of existing legal constraints affecting such relationships. The source of such information will be the extensive secondary data collection effort in which our contractor is currently engaged. It will focus on state statutes and regulations and on federal regulation of depository institutions.

The third step in this process will be an economic analysis of the various relationships which we have described as interlocking to determine if and when they can be expected to yield profits and prices which are significantly

higher than a more nearly competitive market would yield. This reflects, again, our emphasis on the economic structure of the industries we are examining.

The fourth step will be to determine what effect these relationships have on the price and quality of the services provided the consumer. In this last analysis, with respect to controlled business, it is anticipated that not only the price on a per transaction basis will be evaluated and analyzed but also the long-term impact of such relationships on industry-wide pricing structures.

I will now address the department's possible courses of action, assuming certain resolutions of the central question.

If we assume HUD will determine that Section 8 is applicable to controlled business, the following steps might then be taken: The department could prepare possible amendments to existing regulations under Section 8 and/or additional fact comment patterns for Appendix B, illustrating controlled business violations. These draft amendments would serve as the focal point for meetings with appropriate federal agencies. The initial contact, of course, would come with the Department of Justice. That agency would be consulted for their prosecutorial position and their legal advice regarding the position taken. Because such amendments would take the form of interpretative rules, it is likely that, given existing interpretations of the Administrative Procedures Act, the department would publish such regulatory amendments as final rules with a delayed effective date of perhaps 30 days.

If, on the other hand, we assume that HUD will determine that Section 8 is inapplicable to controlled business arrangements, the following two alternative courses of action would be open to the department, depending on the results of the research: If the Section 14 research were to support a conclusion that controlled business arrangements were inimical to the public interest, the subsequent report might include a recommendation for action and possible legislative amendments to accomplish a controlled business prohibition. If the research failed to support a conclusion that controlled business was detrimental to the consumer interest, the department would undoubtedly report the existence of this trend in industry structure, and its evaluation thereof, for congressional consideration. In any event, the issue of controlled business will be brought to congressional attention by HUD's research effort in this area.

In summary, I wish to emphasize that the department has not reached a conclusion on the central question of Section 8's applicability to controlled business. We are examining the question intensively and we hope to have a public response in the near future. Regardless of the result of that examination, however, the department's consideration of controlled business will not cease. The research, which will continue through mid-1980, will provide HUD with an opportunity to examine not only the legal but the economic and practical conse-

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**"It's important to recognize that we are at a very early stage within state regulation generally on such topics. We also are in a state of neglect to a large extent in considering our regulation of title insurance generally."**

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quences for the consumer of this arrangement and may result in additional or substitute legislation in this area.

**Commissioner Day:** We've entered into a dialogue between the title insurance industry and the National Association of Insurance Commissioners (NAIC). It's a pleasure for me to be here and to be part of that dialogue. There are a number of interesting topics that I think will require some explanation as we proceed down that road. Controlled business may be one that not too much can be done about, I'm afraid. With Dr. Plotkin, I not only don't want to swim upstream, I don't want to drown while doing it. I'm afraid that might be the fate of anybody who enters that thicket.

I would like to emphasize that one of my main reasons for being here is to further the dialogue that Erich Everbach and others have initiated with the NAIC generally, and that many of you have initiated specifically with the state of Utah. I will try to keep my remarks short, both in consideration of the time and also to allow for some comments and questions.

My remarks concern a number of factors that are in a state of flux and formation within the regulatory arena, especially within state regulation. By those, I mean essentially the economic considerations and definitions of what are fair markets and what are fair market practices.

I believe the thrust of insurance regulation at the state level through the 1980s will be a further articulation of limits and practices within these areas through the Unfair Trade Practice Act and its predecessor acts, rather than only emphasizing and focusing upon financial solvency regulation which has historically been the watershed of state regulation.

It's important to recognize that we are at a very early stage within state regulation generally on such topics. We also are in a state of neglect to a large extent in considering our regulation of title insurance generally.

I would like to emphasize that my remarks are obviously colored by my perception of the Utah experience, and Utah's a little different. In fact, we have a slogan—"The Different World of Utah." I'm not sure if that's what people say that come there or whether we tell them that to entice them to come. But, we are a little different in title insurance as well as in several areas that I think are significant to controlled business.

First, we maintain a tract indexing system in the state and we have no statutory requirement to conduct an adequate title search. The insurance department has not historically conducted an adequate examination of the competency and professional standards of people that it licenses to engage in the title insurance agency business. So, it has been possible for a large number of people—and this has increased as we have undergone a dramatic real estate boom in the last decade—to become involved in the title agency business in Utah with no barriers of any kind.

Many have exploited, in my perception, the controlled business niche in order to continue and perpetuate their existence. That has resulted in some evils.

To summarize those quickly, I think that the central evil of concern to me and, I would hope of concern to you, is the growth of what I would call the casualty model of underwriting in title insurance. What this means is that a greater percentage of premium dollars are focused on obtaining business and a lower percentage focused on risk elimination. In my definition of controlled business I don't make any distinction between that which is owned or that which is steered, as long as there is a tangible reward that goes to controlling the placement of business. I think it has the same effect whether it's paid in a dividend or a rebate or whatever.

In terms of whether there is or is not a RESPA violation, I agree there are significant distinctions there. However, our experience has been that there has been little enforcement of RESPA in Utah. Although people have now become aware of it, and that's had a certain chilling effect, I'm not sure it has dramatically affected the marketplace as a whole or improved it.

In any case, the casualty model, I think, would not only be incredibly destructive to the industry as it is now structured, but it would do incredible harm to the public good that arises from title insurance and the way it now operates.

Unfortunately, at a superficial level, the casualty model, from an insurance department standpoint, may appear to be more efficient or to ensure that the industry is doing what some departments could perceive as its job—that of paying loss costs. Your loss costs are now rising. I know that's of concern particularly to the underwriters.

From an insurance department standpoint, it can be perceived that getting loss costs up is what the insurance department is about, with the corollary or the conclusion being that more public good is being done if more dollars are flowing back to the public.

Now, I do not agree with that model but there are departments who have suggested that to me. I think that casualty model, therefore, is an enormously important threat to keep in mind. It will both destroy the structure of the industry as it now operates and do enormous harm to the public good.



Another evil of substantial magnitude is the conflict of interest that is introduced, usually to a professional party that owes a duty to the person being steered, that tends through that steering relationship, to come into conflict with other duties that he may owe or that the person paying the inducement may owe to the principal in that transaction. We have long tolerated forms of controlled business through bar-related companies that suggest the same series and sets of arguments and ethical questions for the professions involved.

One of the things that we have heard is that we're only becoming concerned about this late in the day as it extends to other professions. As long as it was only the lawyers who were doing it, it was tolerated. As long as there were other forms of controlled arrangements in the marketplace that inured to the benefit of our major companies and agents, it was tolerated. Only now that other people and usually smaller people have come in, have we become concerned.

Unfortunately, in a time sequence that is true. But, I don't think that our concern was based on the fact that it was lawyers or people we liked doing it before and now it's people we don't know. I think, in fact, the whole issue has become more dramatic as our state has grown, as the real estate boom has developed and as enormous pressure to keep all prices down in all lines of insurance and keep essential services to consumers as affordable as possible has occurred. We are concerned with anything that creates economic waste or threatens those interests.

One of the other evils—I don't know that I'd necessarily call it an evil, but I think it will interject some waste and confusion into the whole process—is that as controlled business is defined and prohibited, like water, it will go around whatever those prohibitions are and find a new way to effect an equivalent arrangement. That in turn will lead to a new regulatory threshold and regulators of some form or another, whether on a federal or state level, will be brought further and further into title insurance transactions. That will be at some expense and some inconvenience both to the parties of the transaction, as well as to the regulators.

I have a slogan for you that nobody ever heeds, but I repeat it anyway: "The fox shouldn't run anywhere that he doesn't want the hounds to follow." In the case of title insurance regulation, I think that is true.

However, I'm not sure we can rely on self-discipline or professional standards within any of the professions involved here to preclude problems. It is imperative that everyone understand that we are in an evolutionary process here. As long as these marketing practices result in public injury, there will be an attempt to at least constrain and define them and limit their course. That will bring more regulation to title insurance transactions. It would be better if that did not have to happen.

I think also the set of conflict points or leverage points that are established through the

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**"The federal standards that are already in place will also tempt many within the industry and maybe even within the ranks of state regulators to say that there is a sufficient preemption of the field of title insurance regulation and that we ought to let that regulation occur at the federal level."**

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variety of controlled business mechanisms that I recognize also tend to weaken the responsibility and accountability of title insurance underwriters. That is unfortunate because I do not believe it is possible for an insurance department, by itself, to adequately regulate the business of title insurance, without the cooperation and aid of the industry.

I think it will be necessary that we rely upon and use the control position and perspective of title underwriters to effect the regulations that we would like to see created or the effects in the public market that we would like to see created.

If the underwriter is not in a position to do that, because he's responding, in effect, to blackmail or extortion demands, be they formal or equivalent, their ability to cooperate and aid will be eroded and our ability, therefore, to have a coherent policy and to develop a well structured marketplace also will be eroded.

Controlled business also misdirects the service and quality competition that I think is the most important form of competition in the title insurance marketplace. I'm under no illusions that we will have significant price competition, but I think we can. For most of the marketplace in Utah, we have had important service and quality competition.

If controlled business becomes the more meaningful competitive factor, quality and service competition will be eroded and innovation will then be directed toward new and different forms of controlled business that are not violations of the law, instead of new, different and better forms of either title insurance coverage or better service parameters to both the first layer of recipients—the real estate agents and brokers, lenders and others who rely upon this industry—and to consumers who are general citizens. That is another evil that ought to be kept in mind.

Unfortunately, as I survey the Utah insurance laws, I don't find we have adequate legal authority presently to define and constrain the controlled business that we now have operating. Our definition of rebate is not adequate and is probably not appropriate to either the owned or the steered model of controlled business, and RESPA has not been enforced ade-

quately. I don't have enough knowledge to say it hasn't been enforced at all in our state, but it hasn't been a major concern to the people that I have talked to and it doesn't appear to have had much of an impact on the market.

As recently as last summer, we have had some people from federal agencies doing some field investigation. I hope that investigation will produce some enforcement action, but that has been too recent to affect the market structure generally.

That summarizes what I would perceive the evils of controlled business to be. The most obvious evil is that it diminishes the security which your insureds look to you to provide if an inadequate search is conducted because the expense of money and effort that should have gone into the search has gone instead into buying the business, whether that is an ownership or a kickback or award. I think that's important to be understood at the regulatory level, as well as within the industry and at the public level. It is something that initially takes some baptism into the structure and services of the title insurance industry to be well understood by insurance departments.

I cannot overemphasize another point that industry must consider. That is the current and increasing stresses that are being placed upon departments generally across the country. There are very few departments that I know of that are looking for new work or who are adequately staffed to perform the work they now have. If we can't find a way to simplify title insurance regulation in fairly coherent and logical form for insurance departments there will be great temptation, I'm afraid, to say that they should not regulate at least the search portion of title insurance or to just withdraw from the field of title insurance regulation generally.

The federal standards that are already in place will also tempt many within the industry and maybe even within the ranks of state regulators to say that there is a sufficient preemption of the field of title insurance regulation and that we ought to let that regulation occur at the federal level. As we began our investigation of the current market standards and practices of title insurance in Utah, we completely rethought the question of who should regulate title insurance.

Very frankly, my initial desire was to say that we would not regulate the search portion of the service because, though it impacted on risk, it was not within the classic concept of insurance any more than sprinklers should inherently be regulated because they affect the severity of fire losses. I also considered that there would be some residual benefit to not regulating the search portion in that we would be able to tell the Federal Trade Commission that we had deregulated an area and allowed the anti-trust laws to apply. The more I investigated and explored partial or total deregulation, the less responsible I thought such course of action would be.

We also considered other agencies within our state government, including the Division of

Real Estate and others that might be able to better effect some regulatory control and protection of public interest than the insurance department had been.

I concluded also that no other agency was better prepared to regulate title insurance than we were, particularly because there would not be the same sensitivity to the public good that does come from an adequate search. Also, I could not assure that that public good would continue to occur if we were to abdicate our responsibility and turn it over to someone else.

From all of that study and effort, we did produce a new bill which some of you may have read or seen. Not to be flippant, but for those who may have had a chance to go through that, it is about as stimulating as I found Dr. Plotkin's monograph on title insurance pricing to be the first few times I read that.

It is not necessarily stimulating reading, but I do think that it does raise a number of issues that need to be considered. That legislation was not passed, primarily because of the scope of that effort, but also because we have a very short legislative session and a number of factors came into play. But it was incredibly resisted, not so much by what I would call the responsible segment of the title industry either at the underwriter or the agency level, but it was incredibly resisted by the controlled business entities in Utah—the steered as well as the owned. The argument that was advanced was that the effect of that bill would eliminate their ability to come into protected status as controlled business entities and therefore would diminish competition within our marketplace.

The argument goes a bit beyond that to a novel—if not bizarre, position which is that we needed to avoid limiting anti-competitive conduct in the title insurance marketplace to the extent that we can in the first place in order to further later competition. I could never accept that reasoning.

We have seen an erosion of professional standards in Utah. Now, the vast majority of our market share is in the hands of people I deem to be fully competent, fully qualified and rendering a very valuable service, but it is difficult for me to believe that such people can for much longer restrain themselves from retaliation in kind to the controlled business competition that they now face. Were they to do so, they would maintain their market share and perhaps survive adequately, but I think it would unquestionably be at the expense of the public good in both the cost and quality of title insurance.

So controlled business is something that I do think state regulation is going to have to deal with and that the industry, especially at the underwriter level, is going to have to become more responsible in and achieve greater discipline in dealing with. Hopefully, even if we can't swim upstream, at least we can channel our efforts to provide less threat of public harm if not actually some public good.

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**“But what most concerns me about any unbundling is that new costs are introduced for services that either weren't charged for before or were defrayed by other charges and that makes the total price go up.”**

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**Dr. Plotkin:** Inasmuch as we do have some time, I would say that the floor should be open for at least a few questions. Incidentally, Commissioner Day is a rarity—an insurance commissioner who both cares about and obviously understands your industry. From what I know of him and his general work in insurance, he listens to comments and uses your thinking in these types of sessions.

**Question:** A previous speaker has discussed the unbundling of services by the national real estate organizations. Commissioner Day, would you care to speak on the bundling or unbundling concepts of one-stop real estate services?

**Commissioner Day:** I hate to miss a great opportunity. My first reaction is to say that those are technical terms, both in economics and in antitrust law. I'm not sure that I am qualified without better research and some reflection to comment in an accurate sense within that context, so I do not mean to do that in response to your question.

The main area of unbundling that is of concern to me currently is occurring in hospital services where new services are being defined and charged for in order to create more income to the health care institution and at the same time not raise the bed rate, which has been the main indicator of hospital costs.

I would be extremely concerned if, in this unbundling process, ways were found to generate new sources of income, some of which could be used to further controlled business relationships for services that previously either hadn't been rendered at all or hadn't been defined and separately charged for as services. And I would not be surprised if that were to occur as part of the unbundling.

Within that one-stop shopping context, which is a consolidation of services that are sold on an unbundled basis, that could either be the same as we now have them from a cost standpoint or it could produce a greater margin for the people selling them than the individual margins and costs now being achieved when they're sold on a fragmented basis. Whether that is good, bad or indifferent, I'm not sure.

But what most concerns me about any unbundling is that new costs are introduced for services that either weren't charged for before or were defrayed by other charges and that makes the total price go up.

**Dr. Plotkin:** Listening to Mr. Wiedmann presented certain definitional problems. It is true

the trend is toward unbundling of all forms of professional services and other items, such as computer hardware and software. However, Mr. Wiedmann spoke about creating an integrated financial organization, which might, or might not, charge separately for each of its services, many of which the real estate broker does not currently offer. Hearing him describe this as “unbundling” reminded me of the problem I am having in helping my five-year-old child learn to fasten his shoes. Observing him, I am not sure whether we are talking about tying or untying.

Are there further questions?

**Question:** When RESPA was passed in 1974, we in New Orleans really looked for some improvement in the methods of operation. Frankly, I thought it would assist us in really cleaning up the act of our industry, primarily in the metropolitan area.

After about a year and a half, I was in Washington, where I met with Mr. Maher, and we discussed the situation. At that time we had no prosecution, but I think you did feel that some would be forthcoming and at least there had been a number of complaints.

About two years ago in Phoenix, a gentleman from your department told us that there still had been no indictments and no prosecutions. I asked him why but his answer was not particularly adequate.

So the point I would like to make to you is this: It's my understanding that there still have been no prosecutions. RESPA will be five years old in December. If you don't know where the violations are, please call me.

I'm not trying to be flip. I am trying to make the point that any type of governmental regulation can in itself become an evil if the regulator does not enforce the regulation. I'll be parochial and say that you have now put me in a position where if I'm a good guy, there are certain things I cannot do, and the bad guys are really giving it a fit. So I think either we should have regulations and enforce them or not have them at all. Would you comment?

**Commissioner Day:** I think that's correct. I think there are a number of significant social questions involved with that as well, or in that as well. Your point I think is not only well taken, but absolutely critical at the state level because the insurance codes of the several states give within the industry or as much as anyone within the industry to curtail its spread nationally and to assist in the development of good regulations nationally are appointing a majority of controlled business agents within our state.

I find that perplexing and ironic, but nonetheless factual. So part of the answer if we are not going to have public regulation is private discipline.

**Mr. Maher:** I too would have to agree in the absence of vigorous prosecution of the defined public offense that those who observe the

(continued on page 70)

# Report of the INDIAN CLAIMS COMMITTEE

Marvin C. Bowling Jr.

I'm happy to see that more people are worried about controlled business than they are about Indian claims. A couple of years ago I might have said that there will be controlled business—controlled by the tribe.

I have both good and bad news on Indian claims. I have spoken to you at the Mid-Winter Conference and the Conventions, each time bringing you up to date on where we stand in that battle. So I shall briefly review for about five minutes where we now stand. I think you will see that it is indeed a mixed bag.

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## **"The most significant case from the standpoint of damages and land claims to the title insurance industry is in Maine."**

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I will run down the most important cases very quickly because I know that you'll be interested, particularly in the cases that involve land in your state.

In Connecticut, the Mohegans, the Schaghticoke and the Western Pequots are in the pleading stages in their cases. As you know, they are asking for significant parts of the towns of Ledyard and Kent and other areas. In these cases, there are no specific particularly significant developments. The cases still grind on, the legal fees still mount up and title insurance companies that have insured those properties are paying those fees.

In Florida, the Seminoles and the Miccosukees appear to be negotiating with the state and it appears they will receive significant state land and some money.

In Louisiana, the Chitimachas have three cases going. These also are in the motion and pleading stages.

The most significant case from the standpoint of damages and land claims to the title insurance industry is in Maine, as you know. The Passamaquoddies and the Penobscots are negotiating with the United States, with the paper companies, and with the state of Maine.

That negotiation apparently will result in some \$79 million in various methods of payment being made by the federal government to those two tribes. There is, however, a key word that is holding up the negotiations. That is the question of jurisdiction. Those two tribes do not wish to be a state tribe or federal tribe, they wish to be an Indian nation. I'm sure you can understand that the Governor of Maine says that he does not intend to have a separate nation within his borders owning significant property.

So while the land has been agreed upon to some extent and the federal money has been agreed upon to some extent, jurisdiction and sovereignty over the Indians' land is a sore point in that negotiation. Hopefully it will be settled because I say to you that if litigation begins for the 12 million acres the tribes want in Maine, it will indeed be significant in many ways.

In Nevada in the Western Shoshone case, a summary judgment has been requested by the defendants. There are some large acreages of grazing lands there at stake. The defense has been that Mr. Dunn, who brought the case, cannot do so on behalf of the tribe. The tribe must bring it. So we are waiting to see whether that case can be dismissed. I think we can agree, however, that it will probably be started over again.

In New York, the Cayugas have settled with the state and have been given a state park. Federal legislation is now necessary to extinguish the interest of the tribe in the rest of the state.

The Shinnecocks on Long Island had claimed some very valuable property, including a well known country club. The U.S. Department of Interior has said to the Justice Department that this is not a tribe, so don't bring suit. Of course, the Shinnecocks will appeal and fight that decision. They wish to be a federally recognized tribe.

The Oneidas who won their case in Oneida County, insofar as the decision is concerned, actually own the county of Oneida. They have only asked for damages for use of public roads and so forth. That is going to be appealed to the United States Circuit Court of Appeals. I don't have any feelings on how we're going to win that case, but at least we are now stepping into the picture and that case will be appealed.

Winning that case encouraged the Oneida tribe to ask, as you know, for a 50-mile swath through New York from Canada to Pennsylvania and all the tolls ever collected on the New York Thruway. That case is in the pleading stage. The defendants have filed a motion to dismiss. It may or may not be denied. I have a feeling the motion to dismiss will be denied and unless there is some significant New York land turned over to the Oneida Indians there will be a very important case going on in the federal district court there. There doesn't seem to be much question but that the Oneidas are a tribe and that they have some significant treaty rights that will be litigated.

In South Carolina, there is still settlement discussion, but no suit.

I have saved Massachusetts for the last because I have some good news from Massachusetts. First, however, I will say that in the Chappaquidick case, the plaintiff's suit has been dismissed and they have appealed. On Gay Head there is a negotiated settlement and the Wampanoags on Gay Head will be given some acreage.

The case in which the ALTA and title companies have figured most heavily is the suit on Mashpee in Cape Cod, which has been going on for about three and a half years. That case has now been ended because of the refusal of the U.S. Supreme Court, just handed down on Oct. 1, to hear the case. Certiorari was denied. Therefore, the decision of the First Circuit Court of Appeals was upheld to the effect that the Mashpees were not a tribe and, therefore, did not have jurisdiction to bring a suit claiming violation of the Federal Non-Intercourse Act.

(continued on page 67)

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Mr. Bowling chairs the Indian Land Claims Committee and is senior vice president and general counsel, Lawyers Title Insurance Corp., Richmond, Va.

# The Title Business: A PROUD INDUSTRY RENDERING A VALUABLE SERVICE

Richard H. Howlett

There is basically always a reason for acts and for events or reasons why the acts or events did not happen. Sometimes the reason is a logical development of an idea or it may be an illogical conclusion based on a false assumption. This meeting has both connotations.

To justify spouses' attendance at conventions under current Internal Revenue Service rules, there should be some portion of the business program designed for their benefit. You will note that the leaders of our association reasoned that the word "benefit" did not include entertainment and asked me to participate in this discussion.

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**"We cannot expect the public to understand what we do and the value of that service until we understand and instill in all of our people pride in being a part of this industry."**

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Having participated in the business of title business as a private practicing attorney in Colorado, a title company lawyer and officer, and as an active participant in our trade Association over a span of 40 years, I welcome this opportunity to discuss with you some of the problems that face our industry, the efforts that we are making to meet those problems, and to ask for your support in helping our Association and our people to successfully meet the problems that face us.

Over 30 years ago, Betty and I moved to California from Colorado, and since there was no reciprocity for a practicing attorney, I had to wait and pass the bar examination before I could be a lawyer.

My father-in-law, a delightful, retired gentleman, would introduce me to his friends as a lawyer who had to work for a title com-

pany until he passed the bar. The friends all understood my reason for employment—"You just don't pass the California bar the first time, you know." But, all referred to my employment as "that racket."

My older brother—actually my only brother—when he learned of my employment, expressed concern over whether or not the California title system would last long enough to see me through the period until I passed the bar because no one bought title insurance unless there was something wrong with the title, and, therefore, there was not much future for that industry.

I remember an ALTA convention. It was called ATA in those days. When a participant in the open forum section asked a question concerning the propriety of a growing title practice he admonished that no one from California should answer the question. Then there was the convention where the president of a member company suggested that it was improper to insure the title to mineral lands, but he declined to return the premium of a policy issued by his company covering 16 unpatented mining claims based on my approved attorney's opinion.

What is the title business? That is not only the question, it is the problem. We cannot expect the public to understand what we do, and the value of that service, until we understand and instill in all of our people pride in being a part of this industry.

First, we must educate the public in general—legislators and governmental regulators, in particular—so that we can overcome the public misunderstandings that led to the Emergency Housing Act of 1970 and the subsequent Real Estate Settlement Procedure Act.

We must not permit government regulation that is not in the best interest of the public. The personal experiences that I have related establish that we, as an industry, do not agree on what is our business. We as an industry fail to recognize that we are a service to the real estate industry and unless we supply and meet the needs of the real estate industry, our services will not be sold.

We must develop a program that explains to the people and to the public what we do and why it is valuable. But first we must understand what the public thinks about us.

My company produced a program aimed at our own people. I would like to share with you a film of two segments of that program. The first one deals with misconceptions about our business. The second one gets more into the pride of what we do. (*The films were then shown.*)

I think it is a good idea to participate in a program where you find out what the other half do and I want to also say that I doubt if there was anything new in these slides. But maybe it did give you a thought or two of how we can help correct the misconceptions about our business. And how we can get over the failure to meet all of the needs of the real estate industry, expand our service and cover them.

It is not improper to insure or furnish a title service for a form of real estate interest that hasn't been covered before. It's a way for our industry to grow.

There is one thing we ought to remember about the title business. We talk about the proof of ownership. Now, what is ownership and what is proof of ownership?

We have a pre-conceived idea that ownership and the proof of ownership is a chain of records in the county recorder's office. But, there is a different meaning to ownership. What can I use property for? If I can't use it for the purpose that I bought it, it's not a good investment. Proof of right or extent of use is a service that our industry has failed miserably in supplying. Covenants, conditions and restrictions on the use of land we understand because they are part of the public record, but we say we shouldn't touch zoning. We try to exclude that. Zoning affects use and if I can't use it for the reason I bought it, it's valueless to me.

Why don't we sell protection as to use? It's as much title insurance as proof of record ownership.

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Mr. Howlett is an ALTA past president and retired president of Ticor, Los Angeles, Calif.

I think you can be proud of the part title insurance companies played in that case. As you may know, five companies defended on behalf of their insureds. They hired a law firm which gave significant defense to the individual owners of property on Mashpee. Not only did our

## Report of the ALTA Executive Vice President

William J. McAuliffe Jr.

During the past year, the Association has been very active. The officers of the Association, in recent years, have positioned the Association so that we anticipate matters of concern and move immediately to meet these challenges. It is the objective of the officers that the Association take prompt action instead of merely reacting to events.

Recent examples of this approach are found in the ALTA commissioning Arthur D. Little to study and report on Torrens in the United States, which subject HUD is examining under RESPA Section 13. Another example is our commissioning Dr. Art Warner of the University of South Carolina to study lender-pay of settlement costs. This is another subject being considered by HUD under RESPA Section 14. A third example is the Association's recognition of the growing problem of controlled business. ALTA is in the process of developing a position paper on this subject.

The ALTA functions through committees which address a variety of very important matters. You have just heard from the Title Insurance Forms Committee. During this convention, reports also were presented by the Liaison Committee with the NAIC and the Indian Land Claims Committee.

Our Public Relations Committee and Gary L. Garrity, our public affairs director, have achieved great success over the past years in obtaining positive exposure for the title industry through public service radio and television. This year our public service radio and television material again has received national use in broadcast time for which ALTA makes no payment. Recently, the ALTA "Sgt. Braxton" radio spots were named the best in the country by the Information Film Producers of America and received the Gold CINDY Award of that organization.

Our Research Committee and Richard McCarthy, director of research, have published a significant statistical report which has been distributed to all members. Also, ALTA has entered the world of the computer. We are pleased to report that in order to better handle statistical research in the future, the Association has purchased a Texas Instrument Silent 700 portable data terminal and has entered into an agreement with Boeing Computer Services, Inc., to use their computer.

insureds benefit from that, but the defense which we put on by the very able firm of Goodwin, Proctor and Hoar insured to the benefit of those who did not have title insurance.

Now the town of Mashpee, through Mr. James St. Clair's firm also provided defense for the town. But title insurance companies spent over \$500,000 in providing defense for

The Title Industry Political Action Committee (TIPAC) Board and Mark Winter, the TIPAC executive secretary, have arranged the first TIPAC luncheon, to be held at this convention, for the purpose of encouraging member involvement in political action. Hugh Sidey, Washington contributing editor for *Time* magazine is the speaker.

This spring, ALTA held a successful title insurance seminar in Boston for attorneys, lenders and other real estate professionals. Plans are now under way to hold another seminar—this time in Atlanta on Feb. 22

There appears to be a growing trend in the Bar to attempt to restrict the activities of title companies in real estate closings by charging unauthorized practice of law. The Association is aiding affiliated associations and individual members involved in this kind of problem. Our general counsel, Thomas S. Jackson, and his law partner, Patricia Gurne, have developed sound title industry positions concerning unauthorized practice of law. They can be of great help to any member involved in such a dispute. I urge you to inform us of any movement by the Bar in your area with respect to this subject. We want to keep on top of developments in this area.

Maxine Stough, editor of *Title News*, has improved both the appearance and content of the monthly ALTA magazine. We are always looking for good articles and encourage you to submit story ideas for *Title News*. Next year, we plan to carry more articles on subjects of concern to title insurance agents.

The attendance at this convention is the largest we have had in my memory. David McLaughlin, our business manager, has handled the details in a very professional manner.

Next year we may see HUD's recommendations to Congress under RESPA. Some of the unauthorized practice of law cases may be brought to trial. There will be a national election, the results of which could significantly change the make-up of Congress; this could have critical implications for the title business as the Congress considers legislation impacting on the industry. And, in 1980, we will hold our Annual Convention in Honolulu—a first.

So, you see, 1980 promises to be an exciting and interesting year. Your Association is prepared to meet its challenges as they rise.

its insureds in Mashpee and we have gained a significant victory not only because we have saved some 16,000 acres, but also because of the precedent that has been set. That precedent is that any group of Indians that hopes to take away land titles because of violations of the Non-Intercourse Act must prove that it is a tribe. The defense in this case showed that that may be difficult to do.

It showed that ethnic historians are going to examine very closely the background of the tribe and its members and open up all of the questions as to whether over the past 150 years they have in fact maintained tribal loyalty and leadership. So, it may discourage some suits in the future by those groups of Indians who really have abandoned all tribal relationship but now suddenly feel "There's land to be gotten so let's get together and try."

So I think we can feel that that's a significant thing from our standpoint. We can be proud of the part that title insurance companies played.

The only other matter that I'll mention is, unfortunately, we did lose the case of *United States v. Wilson*. The American Land Title Association provided amicus curiae briefs and entered that case as amicus curiae. However, the U.S. Supreme Court upheld a federal statute enacted back in the 18th century which still provides that in any case involving Indian land, the white person shall always have the burden of proof, as long as the Indian can show that at one time he occupied the land. This will not be too helpful in future cases, because in those instances in which the tribe, for example, can show that this used to be its tribal land, the burden will be placed on the defendant to show that the title is good in the defendant.

Usually, as you know, a plaintiff has to carry burden of proof. In this instance, where Indians are on one side and a "white person" is on the other side, the burden of proof shifts automatically.

This case did hold that corporations and individuals are considered white persons but states are not considered white persons. These are very strange cases and very strange law, but we have learned to live with them.

### Image—(from page 30)

Despite the critics, and the woeful lack of information about title insurance among the very people who pay for it, your industry unquestionably provides a valuable service.

A positive public communications program is the polish you need to overcome tarnish. You have a convincing story to tell and lots of misinformation to dispell.

The combined efforts of ALTA, the various state associations, individual members, plus the real estate and mortgage banking industry provide a sizeable, persuasive communications network. Once the facts are known, a lot of the tarnish will disappear.

# Beach Island Site of ALTA Mid-Winter Conference

**T**he luxurious beach island of Hilton Head, S.C., will host the ALTA 1980 Mid-Winter Conference March 12-14. For three mid-March days on an island off the South Carolina-Georgia coast, ALTA members are invited to trade in the chill winds of winter for more temperate breezes, take up the step of the springtime sportsman and meet with industry colleagues to discuss and analyze current issues facing the title industry.

Hilton Head is aptly described as the beachgoer's dream and the sports enthusiast's paradise with its white sand beaches stretching uninterrupted for miles and its plethora of recreational opportunities. The 372-room Hyatt Regency Hotel—site of the ALTA meeting—is the island's largest resort hotel and is known for its elegance.

The semiannual general meetings of the Association are occasions at which forward looking title people can plan for the future and learn the details of the issues and events facing the industry. Although subjects and speakers for the conference have not yet been set, the business program will include section meetings and general sessions. The conference officially begins with the Ice-Breaker reception 6:30 p.m. Wednesday and adjourns at noon on Friday.

For non-business hours, a welcome awaits members at the Hyatt's 25-meter swimming pool which lies adjacent to the wide, dune-edged beach; two, 18-hole golf courses; 25 tennis courts, and facilities for canoeing, sailing, fishing, biking and horseback riding. Tours leave daily for historic Savannah, Ga. A wide array of dining and entertainment spots are located within the hotel.

Recommended transportation to Hilton Head is via Savannah, Ga., which is 31 miles from Hilton Head. Three major airlines and Amtrak service Savannah. The 45-minute distance between Savannah and Hilton Head can be traveled in airport limousines or rental cars. In addition, a commuter airline flies directly from Savannah to the island.

Deadline for reserving a room at the Hyatt is Feb. 12.



The 372-room oceanfront Hyatt Hotel at Palmetto Dunes on Hilton Head Island, S.C., is the site of the 1980 ALTA Mid-Winter Conference. The hotel grounds (below) offer a variety of leisure activities such as the George Fazio Golf Course.



USLIFE Title Insurance Company of New York announced three new appointments to its national division. **Charles W. Fouquet Jr.** was appointed resident vice president and New Jersey state manager. In his new position, he is responsible for the operation and development of USLIFE's marketing program for the state and works out of the Manasquan, N.J., office.

**Alan Greene** was appointed national counsel, with responsibility for underwriting in the national division. He works out of the national division headquarters in New York City. **Stephanie Butler** was appointed director of national services. In this position, she coordinates New York and national title transactions and works from the New York City office.



**Charles Fouquet**



**Alan Greene**

Also new at USLIFE of New York are two promotions in the White Plains, N.Y., branch office. **Robert L. Schoeber** is now area vice president for upstate New York operations. His new responsibilities include managing the White Plains office and supervising the network of USLIFE Title agencies throughout upstate New York. **Augustine Arena** was promoted to office counsel in the company's White Plains office, formerly an office counsel in the New City office.



**Robert Schoeber**



**Augustine Arena**

**Ray D. Martin Jr.** was appointed regional vice president—southeast region for Title Insurance Company of Minnesota. With headquarters in Jacksonville, Fla., the company's southeast region includes Delaware, Florida, Georgia, Maryland, North and South Carolina, part of Tennessee, Virginia and the District of Columbia. Most recently, Martin served as vice president and Florida state manager for the company. He is

## Names in the News . . .

chairman of the legislative committee for the Florida Land Title Association.

**Charles B. Schiereck Jr.** of the Wisconsin division of Chicago Title and Trust Co., was appointed an assistant vice president. Schiereck, who has been with the company since 1970, most recently as manager, escrow operations and title operations officer, will work out of the Waukesha office.

**Larry Quinn, Nancy A. Weiss, Larry J. Harms and Dianne Allgaier** of First American Title Insurance Co. in Santa Ana, Calif. have received promotions. Quinn is now manager of title operations, a newly created position of supervisory responsibility over the title and subdivision departments. He was formerly title department supervisor. Weiss was promoted to chief title officer from her former position as claims, training and special projects officer. The former assistant vice president-senior title officer, Harms, was promoted to assistant vice president-senior advisory title officer. The new assistant claims officer is Allgaier, formerly a training title secretary.



**Dennis Plank**



**Loren Duensing**

**Dennis L. Plank**, a vice president of Title Insurance and Trust Co. (TI), Los Angeles, was appointed manager of the company's Los Angeles/Ventura division. With this promotion, Plank assumes responsibility for directing all TI title insurance and escrow business in a two county area. He joined the company in 1955.

Chicago Title Insurance Co. announced 11 appointments recently. **Karen Butler**, a title operations officer in Edina, Minn., was appointed resident vice president. **Loren Duensing**, the resi-



**LeRoy Schoch**



**John Cooney**

dent vice president and manager of Kansas City metropolitan operations, was elected vice president. **John Cooney** of Arlington, Va., the resident vice president for the capitol division was elected vice president. Also in the metropolitan Washington, D.C. area, **E. Neil Rogers**, assistant vice president and branch manager, was appointed resident vice president for the Fairfax, Va., office.

**Daniel Ryan**, a Boston area sales representative, was elected assistant vice president—sales. **Joseph Santosuosso** was promoted to division manager of the Pennsylvania/South Jersey division. Previously he was vice president and area manager for North Jersey operations. **Lawrence Fineberg**, a claims attorney in New York City, was appointed title officer. **Paul Muley** was appointed title operations officer and continues as title plant manager in Tampa, Fla. **Marna Miller**, of Los Angeles, was promoted to escrow manager from escrow officer. Also in Los Angeles, **Fredda Alston** was promoted from her attorney position to assistant divisional counsel.

Two new managers for the company are **Herman Bolton** in Houston, Texas, and **Nadine Shropshire** in Omaha, Neb.

**LeRoy D. Schoch** was named president of the operations division of the Industrial Valley Title Insurance Co. (IVT), Philadelphia, Pa. He joined IVT in 1964. Since 1976 Schoch has served as president of the Continental Title Insurance Co. and will continue in this position.

**Gary Gatten** joined Mid-South Title Insurance Corp., Memphis, Tenn., as regional director of marketing. Gatten fills a newly-formed position which gives him responsibility for all marketing activities in Tennessee, Mississippi and Arkansas, with emphasis in Shelby County, Tennessee.

**Martha F. King** was appointed an associate counsel for Pioneer National Title Insurance Co. In her new position, she will be responsible for underwriting in Pennsylvania, Delaware and West Virginia.

requirements will suffer in the marketplace at the hands of those who take their chances and wind up having the better bed of it.

I know that that's the view of the Department of Housing and Urban Development.

It is true that there have been no prosecutions and no indictments. We have actively under consideration nearly 30 complaints. The HUD Office of Inspector General investigates complaints received. We have devoted

substantial resources in a number of individual cases and overall to the investigation of those complaints. I don't wish to pass the buck, but at this point the buck does stop at the Department of Justice.

If Justice's priorities are such, or if its judgment of the cases which it has before it is such that it doesn't wish to go forward with prosecution in an individual case or generally, HUD will make its feelings known and will attempt to change Justice's opinion either with respect to an individual case or generally. Ultimately, if HUD finds this to be unsuccessful, it

will have no recourse but to go back to Congress and announce that the statute is unenforceable and seek additional legislation if Congress still believes that such a policy is in the public interest. This is where we are right now in our discussion with the Department of Justice. I don't believe I'm saying anything out of school, as it were. But we are talking with them about the enforceability of the statute, what defects, if any, the statute may have, and if we cannot achieve any kind of resolution of the questions or differences that may exist between the departments, the congressional action will undoubtedly be the next step.

## ALTA Booklet Aims at Future Home Buyers

A new home buyer protection information booklet, developed by the ALTA Public Relations Committee and staff, is now in its second printing and is available to members through the Association's Washington, D.C., office.

Entitled *Protecting Your Home Ownership*, the booklet is geared towards the prospective home buyer and informs him of the function of title insurance and the reasons for its need in real estate transactions. Copies have been distributed to nearly 900 newspapers and accompanied by a press release. Each ALTA member also received a copy. The text of the booklet describes the role of the title insurer in locating and eliminating title problems before transaction closings and how insurance covers the owner from potential title problems that even thorough title searches may not reveal.

Illustrated by an artist's line renderings, the booklet gives a brief history of the evolution of title insurance and explains the difference between owner's and lender's policies.

Copies of *Protecting Your Home Ownership* are available in bulk to members for a nominal fee per hundred by writing ALTA.

## Trans Moves Phoenix Office

Transamerica Title Insurance Co. announced that the company's Phoenix, Ariz., title plant and offices will be relocated during January 1980, to a 35,486-square-foot facility in Tempe, Ariz. The move is expected to facilitate work flow and title order processing because all facilities will be on a single floorplan.

According to Ron Erhardt, vice president of Arizona operations, the work flow pattern in a title plant is optimized when all related functions are on the same floor.

The company's Tempe plant and offices are located in the Eaton Business Park at 48th and Southern streets.

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In California and Tennessee

## 2 ALTA OFFICERS FEATURED IN COMMUNITY PUBLICATIONS

In Orange County, Calif. and Memphis, Tenn., the public received a lesson on the valuable services provided by the title industry when two top title executives and ALTA officers were featured in major publication of their respective communities. Donald P. Kennedy, president and chief executive officer of First American Title Insurance Co., was profiled in the lead feature article of the December issue of *The Executive*, a monthly business magazine published in Orange County. On Dec. 7, the *Daily News* of Memphis, Tenn., one of the city's major newspapers, ran a front page article with a photograph about James L. Boren Jr., president and chief executive officer of Mid-South Title Insurance Corp. Boren is ALTA's president-elect and Kennedy is chairman of the ALTA Finance Committee.



D. P. Kennedy

In both articles the executives are characterized as community and business leaders, highly competent in their executive roles, and the industry the two men represent is explained in a positive light.

*The Executive* feature on Kennedy describes how he engendered the growth of the company from an exclusively Orange County operation to the large, nationally-active title company it is today. Four pages of the magazine trace this growth of the past 20 years, explain the activities and services of the company and give an insight to Kennedy's personality and biography.

An explanation of title insurance is interwoven with a chronicling of the company's growth. One passage reads, "Put simply, in a real estate sale it is the title insurance company's job to insure that the seller is accur-

ately reflecting the title of the land. Specifically, a policy protects the buyer from title belonging to someone else, outstanding liens against the property, lack of access to the property and the unmarketability of the title."

In the *Memphis Daily News*, the very first lines of the front page article identify the title insurance industry in a positive light. "Title insurance companies, which operate to protect the consumer's interest when looking into real estate investments, are often misunderstood by the general public."

Boren is described as bringing a message on the services of title insurance to locations nationwide in his capacity as ALTA president-elect. In addition, he continues to lead Mid-South Title which has offices in three southern cities. In the article, Boren explains the emphasis of title executives during the past year on educating the public on the services title companies offer.

The fine reputation the company and its chief executive enjoy in the Memphis community is apparent in the story. This is also evident



J. L. Boren Jr.

in *The Executive* profile of Kennedy, whose company is regarded as the county historian and genealogist.

## PENNSYLVANIANS OPEN SCHOOL



The Pennsylvania Land Title Institute (PLTI) began its first semester of instruction and operation this fall at Villanova University with an enrollment of 141. The institute's purpose is to begin recognition of the contribution that title professionals make to the public and the real estate industry and to develop specified professional criteria for potential title people. Pictured are, left to right, Marvin New, who is PLTI vice chairman, Sebastian Rainone, instructor, and Edward Schmidt, PLTI administrator. The institute is the educational arm of the Pennsylvania Land Title Association whose public relations department designed the newly incorporated program.

# ALTA RECOGNIZES JOURNALISTS

## The Judiciary Committee reports . . .



Winners in the recent ALTA-sponsored Consumer Information Category of the 1979 National Association of Realtors Real Estate Journalism Achievement competition were presented awards by ALTA representatives. In the top photo, ALTA President Robert C. Bates (right) and ALTA Public Relations Committee member Francis E. O'Connor (left) congratulate first place-winner Gary Washburn, real estate editor for the *Chicago Tribune* (middle, left), and second place-winner Donald DeBat, *Chicago Sun-Times* real estate editor. Below, ALTA Public Relations Committee Chairman James W. Robinson (left) and ALTA Executive Vice President William J. McAuliffe Jr. (right) award the third place honor to *Washington Star* Real Estate Editor Lew Sichelman.



**Editor's note: ALTA Judiciary Committee Chairman Ray E. Sweat has submitted for publication the following uniform probate code case recently decided in Montana.**

*In the Matter of the Estate of Charles Livingstone Holmes, Deceased 599 P. 2nd 344, Supreme Court of Montana (1979)*

Testator, 12 days prior to death, executed a will devising all his property to crippled children's home. Testator was survived by two adult sons.

Montana, along with six other states, has a mortmain statute enacted several years ago which allows only one-third of testator's estate to pass to charity under will executed within 30 days of testator's death.

Montana subsequently enacted their version of Uniform Probate Code which contained a provision stating "should any provision of this code conflict with any provisions of other statutes of the state of Montana and relating to probate, guardianship, or other subjects incorporated in this code and such other statute or statutes was or were adopted prior to the enactment of this code, the provisions of this code shall be deemed controlling." (Section 72-1-106 Mont. Code Ann.)

At question was whether or not the Montana Uniform Probate Code repeals by implication Montana's mortmain statute.

It was held that it does not repeal the mortmain statute. Of the seven states which have a mortmain statute, only Florida, Idaho and Montana have adopted the Uniform Probate Code. Florida and Idaho do not have a repealer section such as Montana has nor has either of these states addressed the question of repeal of their mortmain statute.

The court went on to say that given the rules of construction and their specific implementation under Montana case law, the mortmain statute must be declared impliedly repealed by the adoption of the Montana Uniform Probate Code if the statute conflicts with the uniform code so as to be wholly inconsistent, incompatible and not capable of being reconciled with the code.

The court reserved the question Uniform Probate Code would have on Montana statutory safeguards provided for an omitted spouse or pretermitted children.

# Controlled Business Topic at ALTA SEMINAR

Unless prompt corrective action is taken, problems of controlled business across the nation threaten to increase settlement costs for home buyers while undermining the quality of title insurance protection, congressional and federal agency personnel were told at the most recent ALTA federal seminar held in the nation's capital.

Speakers at the seminar defined a controlled business arrangement as one where certain real estate professionals—such as brokers, lenders, attorneys, builders and developers—use their position of influence regarding the consumer's selection of a title insurance service provider to financially benefit themselves instead of the home buying consumer. An example would be a real estate broker who influences the consumer's selection of a title insurance order by placing the order with a title agency in which he has a financial interest.

ALTA President Robert C. Bates said title insurers now are under great pressure to provide excellent protection at competitive prices—particularly from lenders who trade in the secondary mortgage market. He said controlled business practices should not be allowed to reduce the present quality of title services.

"Our product must be sold on its merit and we are convinced it will sell on its merit," Bates said of title insurance. "Controlled business is taking an anti-competitive direction and should be stopped."

William T. Finley, Jr., a Washington, D.C., attorney, said the Real Estate Settlement Procedures Act (RESPA) prohibition of kickbacks for referral of settlement business in one- to four-family residential transactions with federally related loans actually has stimulated controlled business activity among real estate professionals as a means of receiving additional compensation while avoiding direct kickbacks that are in clear violation of the law.

Finley said real estate professionals should make recommendations or referrals of title insurance service providers solely on the basis of the interests of the home buyer, rather than on the basis of any financial interest they may have in the entity to which they refer the business. He defined the interests of the home buyer as price, quality, service, solvency and business reputation of title insurer and extent of policy coverage.

James Maher, a HUD attorney, said the agency presently is studying the controlled business problem as part of its land transfer and closing costs research under RESPA. RESPA Section 14 requires HUD to report back to Congress by June, 1980, on additional federal legislation that may be necessary in the real estate settlement area.

Dr. Irving H. Plotkin of Arthur D. Little, Inc. said profits that real estate professionals receive through controlled business arrangements produce economic effects identical to those of kickbacks received for referral of settlement business or tie-ins under the antitrust laws. He said the evidence is clear that controlled business arrangements are increasing rapidly and that the effects of such arrangements include barriers to entry by competitors in a given market, increased costs to consumers for title insurance, and increased pressure by controllers of business, such as real estate brokers, for title companies to overlook

problems found in title searches so that transactions can be completed and the brokers can receive their sales commission.

Roger McNitt, San Diego attorney and former California chief deputy insurance commissioner, cited his recent experience as a hearing officer for the state insurance department of Montana in examining one controlled business problem in that state. He said a controlled business title agency formed as a cooperative in which real estate brokers owned shares had increased its local market share from 11 percent in 1974 to more than 50 percent in 1977, as a result of business referred to it by its owners.

In a white paper released at the seminar, ALTA called for federal action to prohibit controllers of business from realizing any financial benefit—directly or indirectly—from their recommendations regarding referrals of title insurance business.



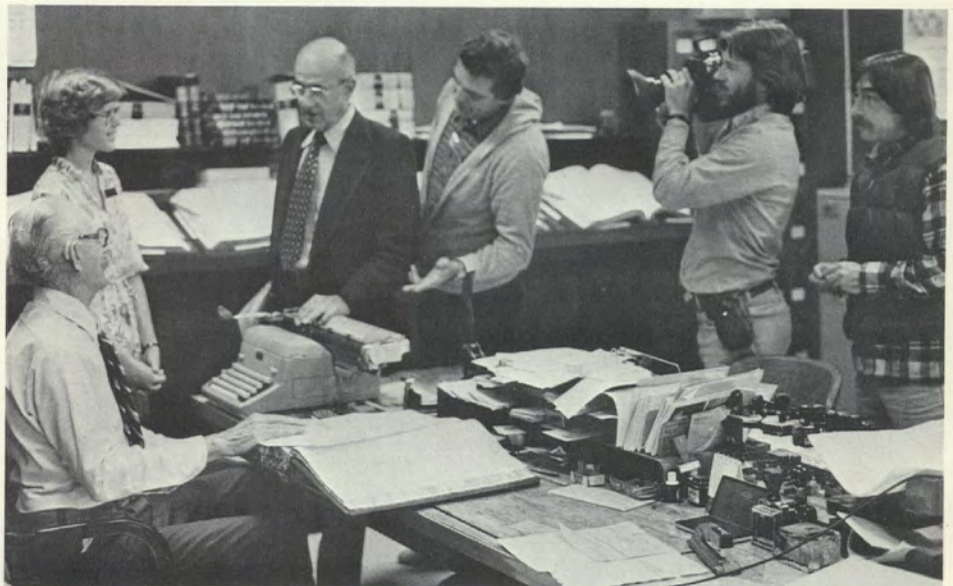
Part of the federal seminar was a question-answer session on a "Meet the Press" format. Questioners were Stan Strachan, editor of *National Thrift News* (left) and Kenneth R. Harney, executive editor, *Housing and Development Reporter*. Program speakers were the respondents. The dialogue was moderated by John E. Flood Jr.

# Production of NEW ALTA FILM IS UNDERWAY

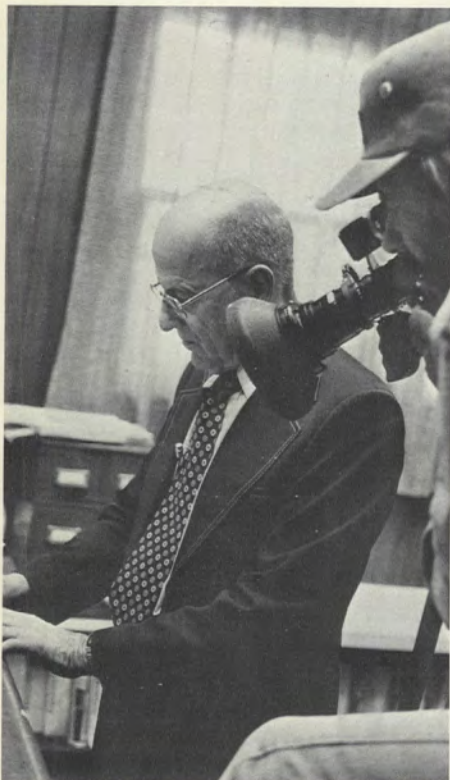
**L**and title protection in different parts of the nation is the subject of a new ALTA quarter-hour television public service film scheduled for completion in 1980 as an activity of the Association Public Relations Program. The film also will be available for purchase by ALTA members.

Shooting began last fall in Pottawatomie County, Kansas, where the camera crew followed the work of Tom Hart, owner-manager of Pottawatomie County Abstract Co., who is based in the city of Westmoreland.

Additional segments are scheduled for February, 1980, filming in Bath, Maine, and in Los Angeles. Shooting of the final segment is planned for this spring in an eastern city. The photographs on this page capture activity during the Kansas filming.



In the below photo, Hart (second from left) discusses the shooting schedule with, from left, ALTA Vice President—Public Affairs Gary Garrity and Jack Jones and Dick Ridgeway, respective writer and executive vice president for the production company, Corporate Productions, Inc., Toluca Lake, Calif. Above, Hart visits the office of Erwin Scott (seated), Pottawatomie County register of deeds, in order to check the public records.



The close-up lens focuses on an entry made by Hart in his own office.



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# Calendar of Meetings

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National Association of Corporate Real Estate Executives  
Walt Disney World  
Orlando, Florida

## March 12-14

American Land Title Association  
Mid-Winter Conference  
Hyatt on Hilton Head  
Hilton Head, South Carolina

## April 17-20

North Carolina Land Title Association  
Sheraton Hotel  
Myrtle Beach, North Carolina

## April 24-26

Arkansas Land Title Association  
Camelot Inn  
Little Rock, Arkansas

## April 27-29

Iowa Land Title Association  
Gateway Convention Center  
Ames, Iowa

## May 1-3

Oklahoma Land Title Association  
Elkhorn at Sun Valley  
Sun Valley, Oregon

## May 1-4

New Mexico Land Title Association  
Inn of Mountain Gods  
Mescalero, New Mexico

## May 8-10

California Land Title Association  
Silverado Country Club  
Napa Valley  
Napa, California

## May 8-10

Texas Land Title Association  
Hyatt Regency at Reunion  
Dallas, Texas

## May 15-17

Tennessee Land Title Association  
Fairfield Glade  
Knoxville, Tennessee

## June 1-3

Pennsylvania Land Title Association  
Buck Hill Inn  
Buck Hill Falls, Pennsylvania

## June 8-10

New Jersey Land Title Insurance Association  
Seaview Country Club  
Absecon, New Jersey

## June 13-14

South Dakota Land Title Association  
Holiday Inn of the Northern Hills  
Spearfish, South Dakota

## June 19-21

Land Title Association of Colorado  
Wildwood Inn  
Snowmass Village, Colorado

## June 19-21

New England Land Title Association  
New Hampshire

## June 26-28

Michigan Land Title Association  
Sugar Loaf Mountain Resort  
Cedar, Michigan

## June 26-28

Oregon Land Title Association  
Sun River Lodge  
Bend, Oregon

## June 27-29

Illinois Land Title Association  
Marriott Pavilion Hotel  
St. Louis, Missouri

## July 10-13

Idaho Land Title Association  
Elkhorn at Sun Valley  
Sun Valley, Idaho

## July 11-12

Utah Land Title Association  
Holiday Inn Park City  
Park City, Utah

## July 17-19

Wyoming Land Title Association  
Laramie, Wyoming

## July 31-August 6

American Bar Association  
Honolulu, Hawaii

## August 7-9

Montana Land Title Association  
Edgewater Inn  
Missoula, Montana

## August 14-16

Minnesota Land Title Association  
Sunwood Inn  
St. Cloud, Minnesota

## August 15-16

Kansas Land Title Association  
Ramada Inn  
Topeka, Kansas

## September 6-9

Indiana Land Title Association  
Sheraton West Hotel  
Indianapolis, Indiana

## September 7-9

Ohio Land Title Association  
King's Island Inn  
Cincinnati, Ohio

## September 7-10

New York State Land Title Association  
Kutsher's Country Club  
Monticello, New York

## September 11-13

North Dakota Land Title Association  
Holiday Inn  
Fargo, North Dakota

## September 17-19

Nebraska Land Title Association  
Holiday Inn-Old Mill  
Omaha, Nebraska

## September 17-19

Washington Land Title Association  
The Alderbrook Inn  
Union, Washington

## September 25-26

Wisconsin Land Title Association  
Playboy Club  
Lake Geneva, Wisconsin

## September 26-28

Missouri Land Title Association  
Almeda Plaza Hotel  
Kansas City, Missouri

## October 14-17

American Land Title Association  
Honolulu, Hawaii

## October 24-26

Palmetto Land Title Association  
Myrtle Beach Hilton  
Myrtle Beach, South Carolina

## October 26-29

Mortgage Bankers Association  
San Francisco, California

## October 30-31

Land Title Association of Arizona  
Westward Look Resort  
Tucson, Arizona

## November 5-8

Florida Land Title Association  
Don Cesar Hotel  
St. Petersburg Beach, Florida

## November 7-13

National Association of Realtors  
Anaheim, California

## November 16-21

U.S. League of Savings Associations  
San Francisco, California

## December 3

Louisiana Land Title Association  
Royal Orleans  
New Orleans, Louisiana

American  
Land Title  
Association

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