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Special Convention Issue

January 1981

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TITLE NEWS

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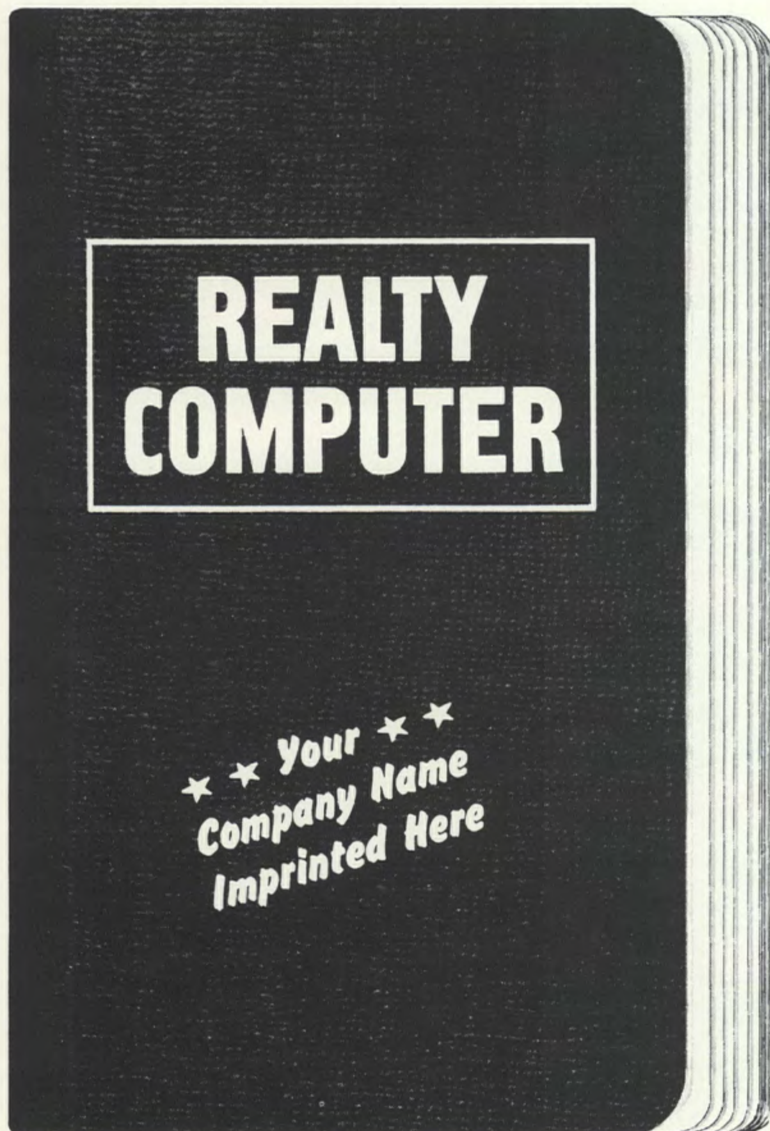

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A Message From The Chairman, Title Insurance & Underwriters Section

When I was asked to contribute an article for *Title News* I was astonished to learn that for the first time in my life there was no assignment of the usual dull topic. I was given no specific instructions, nor was there any apparent threat of censorship. Clearly a dangerous situation. I see no way to avoid full responsibility for the selection of a dull topic.

Think what could happen. I could devote this space, traditionally reserved for learned material, to a discussion of who attended the last ALTA banquet, who was wearing what, and who danced with whom.

More appropriate, I suppose, would be a discussion of the past actions of the Federal Reserve Board and their effects on our industry. One could perhaps suggest that the Fed economists should buy a new book and get a new game plan. The stodgy economic rules which everyone accepts as gospel, to wit: "The only way to curb inflation is to raise interest rates and induce a recession." haven't been at all successful during my 30 years plus in the business.

No. I take that back. They've been successful in part. They *have* learned to raise interest rates at will, ruin the real estate economy, and cause recessions. Now I wish they could learn how to curb inflation. Imagine, thinking a way to curb inflation is to increase the price of money. I thought inflation, by definition, was the process of increasing prices. (Webster, page 722).

I suppose I could comment on HUD and the report written by Peat Marwick & Mitchell, which turned out to be a $2 million rehash of material previously covered by impractical professors.

Finally, I could comment on the fact that if the economy doesn't improve, the subject doesn't matter anyway, because there will be nobody available to read this learned treatise.

But I've decided not to fully take advantage of my freedom of subject matter. The prospect of doing so is too frightening. I'm just going to ramble on without a subject.

Early in the new year it's only natural to look to the future and what it will bring for the title industry and our Association. Unfortunately, the health of the general economy, and the real estate economy, and thus the health of our industry, is much too dependent upon the actions of the federal government. Thus, it is evident that our relationships with the federal government at all levels become more and more important.

While there is little that can be done to influence the policies of the Federal Reserve Board, much can be done to present our viewpoint at other levels of the federal government. In recent years your Association, through its officers, staff and committee activities, has become a very effective and highly respected trade association in Washington.

The Association will be faced with two factors in 1981 which were not present in 1980. The first, of course, is a new administration headed by a *Californian*, with a different and hopefully better approach to the economy. While we all anticipate that the actions of the new administration will be beneficial to our industry and our country, the change of guard will bring with it difficult tasks for the ALTA staff, its attorneys and committees.

They will be dealing with a changed power structure in Congress (goodbye Senator Proxmire) and new leadership in the departments and bureaus. Hopefully, through the various arms of the Association, our viewpoints will be favorably received.

The second factor which, in my opinion, will have far-reaching effects on both our industry and our economy during the coming years is the new law with the somewhat cumbersome title of Depository Institutions Deregulations and Monitory Control Act of 1980. Unfortunately, it would appear that the terms of this Act are almost as bad as its title. Its effect on our financial institutions will be far-reaching and will probably change the entire structure of the banking and thrift industry as we now know it.

It is clear that the title industry in general and American Land Title Association in particular can anticipate a most difficult and interesting year. I am confident that the staff, the officers and the members of the Association can demonstrate the agility and the elasticity which will be needed to guide our industry and insure its prosperity in the future.

The views expressed herein are those of the author and do not necessarily reflect those of the Association or its members.

D. P. Kennedy

Section 13 of RESPA

Streamlining the Recordation Process

by Elizabeth A. Roistacher

The Real Estate Settlement Procedures (RESPA) was passed in 1974 and reflected Congress' concern with "unnecessarily high settlement charges." It mandated that certain actions be taken to deal with this issue.

"There is little doubt that improved public land title records will lower the cost of doing business for title insurers."

Among the objectives of RESPA is the reform and modernization of local land title record keeping. Specifically, Section 13 mandates that HUD place in operation on a demonstration basis a model system or systems to facilitate and simplify land transfers.

Section 14 requires a report to Congress on the effectiveness of the existing law and on the results of the Section 13 research and demonstration projects. My remarks will be limited to our Section 13 work and some of its implications.

Prior to undertaking the demonstration, we wanted to have a good understanding of the state-of-the-art so we would know what directions to move in. So, before beginning any of our demonstration projects, we conducted studies to see how local recorders' offices were functioning and to indicate what innovations should be included in the demonstrations.

Dr. Roistacher is deputy assistant secretary for economic affairs, Office of Policy Development and Research, U.S. Department of Housing and Urban Development.

Based on these studies, we designed a grants competition for local government, and about 75 applications for these grants were received. Between 1978 and 1979, seven grants were subsequently made. These seven grants cover nine counties because in the state of North Carolina three counties are being funded under one grant.

Project Sites

The demonstration sites include large urban centers, such as the city of St. Louis, which performs county as well as city functions. Rural counties also are included in the demonstrations, such as Chowan and Cherokee, North Carolina. Orange County, by the way, is the third North Carolina county and contains the famous Research Triangle. We are also funding a demonstration in a small rural county in Arizona—Pinal County. Table 1 summarizes our demonstrations and their characteristics.

Not only do the counties vary in size and density but they also vary in types of providers of settlement services. A number of the demonstrations are in markets in which title insurers customarily operate. Projects run the gamut from manual to automated to multi-purpose land data systems to registration systems. It should be noted that in addition to HUD funds, there were substantial contributions from local governments.

Before looking at the projects in more detail, let me clarify HUD's role. Since the research was completed, and the sites were selected, HUD's role has been one primarily of monitoring and evaluating the demonstrations. We will have a further function in the near future as demonstrations are completed and we move into the phase of the project which we call transferability, that is, setting up a design for transferring the demonstration systems to other local governments in addition to the ones that were funded directly under the project.

It is important to note that the projects were locally designed, managed and implemented. There was only an occasional prodding from HUD on these. The results are that the local governments have implemented successful systems of their own design, and HUD has been able to demonstrate a number of important innovations in terms of public land title recordation systems.

Parcel indexing is a fundamental feature of all the systems, be they automated or non-automated. It makes sense to have manual systems where there are smaller populations and lower amounts of land transactions and automated systems in larger jurisdictions.

Another basic reform is the creation of consolidated name indexes, which include title-related records from all offices (e.g., recorder, tax assessor, clerk of court) that are necessary for review by title searchers. Also automation and micrographics, which have been utilized less in the public than in the private sector, are employed in the demonstrations.

To the extent that automation has been utilized in maintaining land records, it has generally been for maintaining grantee/grantor indexes. The demonstrations use automation innovatively combining it with parcel indexing.

Traditionally, micrographics have been used for achieving security of records. The demonstrations use micrographics in a different way, to facilitate access to as well as duplication of records by the actual users of the system. This removes the necessity of unshelving and reshelving numerous heavy and cumbersome ledgers.

In addition to technical and operational upgrading, legal reforms often are tied into the improvement of these public land record sys-

tems. For example, parcel indexing may require a change in state law before a recorder may keep his or her books in that format.

Just before the demonstrations began in North Carolina, the state changed the law to allow parcel indexing to be the index of record once certification is granted by a newly formed state agency. Another interesting example of the legal change being sought is the method of calculating recording fees in the city of St. Louis. These fees are still computed on a per-word basis, according to a fee schedule set in the early 1900s. The system may have made sense in the day of the quill pen, but in the era of automation, it makes sense for St. Louis to move to a different process.

While real property conveyance reforms are not built into any of our demonstrations, they are critical to improving the general environment of land title records, as your organization's support of USLTA already indicates.

Since time prevents me from reporting on all seven demonstrations, let me highlight the two systems on display here today. These projects are headed by Edna Bowyer, the recorder of deeds in Warren County, Ohio and Kathy Stefan, project director of the St. Louis demonstration.

Let me first compare the two sites. As of 1975, Warren County had a population under 100,000 compared to St. Louis's 500,000. St. Louis has about twice as many parcels and yearly transactions as Warren County. The St. Louis system will soon be operational on a day-forward basis. This system also has been designed to be the basis of a multi-purpose land data system, with the enthusiastic support of the tax assessor's office.

Bowyer's system in Warren County is fully operational. The entire county is operating on a day-forward basis, but for approximately one-quarter of the county's parcels, an automated 42-year chain of title search can already be done. Over time, full historic searches will be possible for the entire county.

We trust that these demonstrations and the other five demonstrations that are being carried out under the Section 13 mandate, will help dissipate the notion that local public officials are not capable of being bold, innovative and successful in improving their land title records.

Elizabeth Roistacher

Who Benefits

While RESPA focused its concern on lowering settlement costs to the homebuying consumer, there are two other sets of winners in addition to the homebuying public.

A substantial stream of benefits should accrue to local government. More efficiently organized public land title records should result from the introduction of parcel indexes and consolidated name indexes; better data security is also an outcome of these systems.

Also we would like to emphasize that the demonstrations have induced improved productivity and accuracy of county employees, and this is particularly important at a time when local governments are faced with budget crises. Instead of having to deal with an expanding public sector in terms of a higher labor bill, automation allows increased productivity of existing personnel. In addition, there is potential to move these systems from land title recordation to multi-purpose land data systems.

The immediate beneficiaries are the local governments that participated in the demonstrations. As we promote transfer of these systems to other local governments to lower the initial cost of upgrading, the number of beneficiaries will grow.

The title insurance industry, which often finds its work and costs increased by the poor organization of many public land records, will also benefit from these projects. Let me just note a few of these benefits.

First of all, on-line CRT computer terminals allow faster access to public land title records. Easier identification of all claims against a specific property and person is possible through the use of the parcel indexes and consolidated name indexes. Also, microfilm provides a simpler means to access and review all identified land title documents.

Because of these improved systems there will be less need in the future for title companies to maintain duplicative records or to invest in the development of private title plants which add to the overhead costs of title insurance—costs which are passed on to homebuying consumers in the form of higher prices.

Prior to the initiation of the demonstrations, use of the public land title records for performing search and examination was minimal in the three sites where title insurance companies are involved in the settlement process, that is St. Louis, Warren County and Pinal County.

During the developmental stages of our demonstrations, industry representatives at each site were kept aware of project progress and provided input into the county's design of the system. To date, the feedback provided to project officials from the title insurance industry has been extremely positive. Let me give you a few examples.

In Pinal County, the insurers are providing spot checks of data to help implement the public system. In St. Louis, the title plant which serves five title companies is optimistic that the improved system will facilitate updating the plant records. There have even been discussions about the possibility of the title plant helping the city improve its own historical data base.

A key to the success of each project will be the degree to which title companies use the new public land title recording system. We foresee title companies actually installing CRTs in their own offices and linking up by telephone with the public system, avoiding the task of going to the county courthouse, not to mention having to deal with old-fashioned ledgers.

(continued on page 14)

Table 1
DEMONSTRATION PROJECTS
Nine, Two-Year Projects Were Funded and Initiated During 1978-79

	Sites	Major Provider	System Type	Estimated Population (1975)	Total Number of Parcels	Number of Recordings (Annually)
Recordation Sites	City of St. Louis, Missouri	Title Insurance	Multi-Purpose	525,000	140,000	30,000
	Warren County, Ohio	Attorney/Title Insurance	Automated	89,000	59,000	59,000
	Pinal County, Arizona	Title Insurance	Automated	86,000	90,000	30,000
	State of North Carolina (3)	Attorney	Automated and Manual	96,000	40,000	14,600
Registration Sites	Southern Middlesex Registry, Massachusetts	Attorney	Registration	1,399,000	300,000	15%-20%
	Hennepin County Minnesota	Title Insurance/ Attorney	Registration	916,000	290,000	38%
	Summit County, Colorado	Title Insurance	Registration	5,000	20,000	0%

RESPA Section 14: A Progress Report

by Richard Patterson

In enacting the Real Esate Settlement Procedures Act (RESPA) in 1974, Congress determined that settlement costs were unnecessarily high. Consumers were required to pay too much in connection with the purchase and sale of their homes. RESPA was intended to address this problem on three fronts.

First, through a series of disclosures, the consumer would become familiar with the settlement process and the costs he or she would be asked to pay. It was hoped that once consumers were aware of this information, they would be able to shop and negotiate for the best service at the lowest price.

"In making our recommendations to Congress, we don't want to create new problems for home buyers and sellers."

Second, the Act prohibited several abusive practices. It was believed that these practices increased costs to the home buyer and seller and were not legitimate needs of the settlement services industry. A prime example is the section of the act prohibiting kickbacks and unearned fees.

Finally, Congress directed HUD to conduct demonstrations and to prepare a report on the need for further federal legislation in the settlement area.

The legislation directs the secretary, after consultation with several other federal agencies, to submit a report to Congress within five years of the statute's effective date. The report was due on June 20. For a variety of reasons, we were not in a position to submit a complete and comprehensive report on that date. HUD is now aiming for Jan. 30.

Mr. Patterson is acting director, Office of Real Estate Practices, U.S. Department of Housing and Urban Development, Washington, D.C.

To meet the bare statutory minimums, the report must include the following recommendations:

- Whether or not lenders should be required to pay the costs of some or all settlement services normally paid by borrowers.
- Whether or not the federal government should regulate the charges made for some or all settlement services.
- Whether or not the federal government should provide incentives to local governments to modernize their methods of maintaining land records. If so, what types of incentives should be offered?

If we at HUD are to submit a complete and comprehensive report on settlement practices and costs we must go well beyond these minimums. Therefore, in preparing the report we are taking nothing for granted. No requirement or practice is exempt from review. We are esssentially undertaking a zero-based approach. This means considering fundamental questions.

Here are some of the major questions we are asking ourselves in preparing the report:

- Are settlement costs really unnecessarily high? We know that in both absolute and in relative terms settlement costs have increased since 1974. Our statistics indicate that settlement related charges now average 11-13 percent of a house's purchase price. Between six and seven percent of the total represents real estate sales commissions. The remainder is spread over loan fees, local charges, insurance premiums and other expenses.

While increases over the past six years suggest that costs remain too high, we do not feel comfortable making judgments based on this information alone. Our research contractor, Peat, Marwick, Mitchell & Co., has conducted extensive interviews with representative industry lenders to better understand how the settlement process and the respective industries work.

In order to answer the basic question of whether costs are too high, we need to know whether there is effective competition among providers of settlement services. We need to know whether there are inefficiencies or practices which impede competition. And, we need to know to what extent federal regulations add to costs and restrict competition. This leads us to the second major issue.

If costs are unnecessarily high, can governmental action reasonably be expected to reduce these costs while not adversely affecting

Richard Patterson

the availability or quality of services from which consumers may choose? There is a growing realization that government intervention is not a panacea for our nation's problems. Too often ill-considered or uninformed government actions actually can exacerbate the very problems they were intended to correct. Occasionally in resolving one problem, legislation or regulation creates new problems. We don't have to look beyond RESPA to find an example of this phenomenon.

The Reincarnation of RESPA

RESPA is in its second life. The original statute was in effect for about six months before it was suspended and ultimately amended. The reason for the amendment was the nearly unanimous opposition to certain provisions of the original act. These provisions posed obstacles to the closing of transactions while providing, at best, marginal benefit to consumers.

In making our recommendations to Congress, we don't want to create new problems for home buyers or sellers. If we conclude that some form of government action is necessary, we must tailor such action so that it has the maximum likelihood of success. Whatever we recommend must be practical, workable approaches to real world situations.

If we assume that costs are too high and that government action is appropriate, what level of government should take action? Historically, real estate and real estate-related services have been the province of state government. Over the last several years, however, the federal government has become increasingly involved in these areas. This is partially due to several supreme court decisions, most notably *Goldfarb v. Virginia State Bar* and *McLain v. New Orleans Board of Realtors*. We are only just beginning to feel the effects of these decisions.

Also, in the past decade, the secondary mortgage market has had a great impact on the mortgage business and its ancillary industries. With the passage of the recent banking deregulation statute, it is quite possible that the secondary mortgage market will assume even greater importance as traditional distinctions between the banking and thrift industries are dismantled.

Finally, federal consumer legislation has often used the federally related mortgage loan as its jurisdictional basis. Truth-In-Lending, Equal Credit and RESPA are ready examples.

Which Level of Government

In preparing the RESPA report to Congress, we must try to anticipate where events are taking us. We must try to assess whether the local firm will continue to be the dominant actor in all aspects of the typical real estate transaction or whether those who predict the emergence of a few large national or regional firms, operating in a number of states, are correct. To the extent that the activities of such firms influence and impact on interstate commerce, there will be those who argue that it only makes sense to have the federal government act.

I suspect that the fundamental question is really which level of government can take the most effective and least intrusive action. Further, it makes no sense to take action which burdens industry and offers little benefit to consumers. It makes no sense to have legislation or regulations which cannot or will not be enforced.

My personal belief is that neither the federal nor state governments are realistically in a position to take exclusive action in the real estate area. To the extent that government action is necessary at all, it seems that there are possible and appropriate roles for both the federal and state governments. The challenge will come in trying to determine where to draw the line and how to define each's responsibilities.

Now for the big question. What forms of action can government take to reduce unnecessarily high settlement costs? A good place to begin at the federal level is with the existing RESPA statute which combines disclosures to consumers with prohibitions against abusive practices. In concept, consumers will shop for the best service at the lowest price. We are evaluating how well this approach has worked. If it has worked there is no need to change the statute. If it has not fulfilled its purpose, the question becomes whether to modify it through such means as changing the content and/or timing of the disclosures and adjusting the prohibitions or to take another approach.

In Section 14, there are two alternate approaches to consider. The first is direct federal regulation of settlement charges. While the statute is not specific, this option would presumably involve the establishment of national, regional or local rates administered by a federal agency. It is not clear whether such rates would take the form of set fees, minimum or maximum charges or some variation thereof. Presumably this drastic solution would be appealing only if it was determined that costs were unnecessarily high and no lesser governmental or industry actions could check prices.

Lender Pay

The second option is generally referred to as lender pay. This term is actually a misnomer. A more accurate description of this proposal would be lender packaging. We all know that ultimately the consumer will bear the cost.

The assumption underlying this approach is that the mortgage lender, using its expertise and leverage with other settlement service providers, would determine which services it needs to make a mortgage loan and then obtain the best service at the best price. After assembling the package of services, the lender would offer the entire package to the consumer. Consumers would be able to shop from lender to lender for the most desirable package of services.

In addition to the two statutory options, other approaches are being considered. One approach, which has been suggested by title industry representatives, is referred to as seller pay. It is premised upon the notion that the seller is in a better position to shop and negotiate for services than the buyer because he/she has more time to shop, will have cash on hand to pay settlement costs and may be more knowledgeable about real estate transactions than the buyer.

The primary appeal of this proposal is that it would not require major structural changes

". . . neither the federal nor state governments are realistically in a position to take exclusive action in the real estate area."

in the way that the settlement services industries are structured. However, there is no indication that sellers would be any more inclined or successful in negotiating prices than buyers. Also, it must be anticipated that the seller would recoup his/her settlement costs by increasing the sales price of the house. This could contribute to the already spiraling cost of housing.

While each of these proposals can stand alone, thought is being given to how several of these approaches would work together. As you know, there are wide variations in the way that transactions are conducted across the country. While the underlying process remains essentially the same in all regions, there are enough variations in procedures to pose problems for any single solution. Perhaps one way of avoiding unnecessary dislocations would be to provide settlement service providers with some choices as to the statutory and regulatory requirements that apply to them.

In addition to these broad or systemic approaches to change, there are a number of industry-by-industry proposals that could be made either instead of, or in accord with, systemic changes. Among the areas of particular concern are the duties owned by professionals in transactions to consumers, conflicts of interest, and practices in each industry which limit or restrict the consumer's ability to freely shop.

At the state level, we have been carefully monitoring legislation and judicial decisions on settlement cost-related issues. We have had discussions with a number of state legislators and officials. We find that state officials are often interested in settlement costs and seek suggestions on how other states have resolved particularly troublesome problems.

In view of this interest, serious consideration will be given to recommending courses of action for state governments. Perhaps many of the industry specific proposals that I mentioned would be appropriate subjects for state action.

Those are some of the major issues that we have been wrestling with. They are provocative and important questions. We do not treat them lightly.

Representatives of offices throughout HUD are participating in the report project. Our research experts, headed by Gilmer Blankespoor, will play a very important part. They will work with the information developed by Peat, Marwick & Mitchell to assess how effective the existing statute has been.

Jerome Smith, also from our research office, will be in charge of the portion of the report that deals with land records demonstrations. His group will describe the demonstration results and formulate recommendations for ac-

(continued on page 14)

A Debate

State Or Federal Regulation?

Editor's note: The following is a debate which examines the pros and cons of federal versus state regulation of title insurance. Taking the side in favor of federal regulation of the industry was Chris G. Papazickos, senior vice president and general counsel, American Title Insurance Co., Miami, Fla. Arguing in favor of state regulation was Roger Williams, senior vice president, secretary and general counsel of Pioneer National Title Insurance Co., Los Angeles, Calif. The debate took place as part of a workshop program at the 1980 ALTA Annual Convention and was moderated by Joseph D. Burke, executive vice president, Commonwealth Land Title Insurance Co., Philadelphia, Pa.

Footnotes of Mr. Papazickos's portion of the debate begin on page 14.

Mr. Williams: If there ever was an industry that fits our historic concept of control by local government (except where the Constitution specifiically provides for federal control) it is the title business, starting with the small title operation in a county and then spreading throughout the business in all of its aspects.

Regardless of whether or not the McCarran-Ferguson Act is repealed, we still have the basic issue of whether we are going to be regulated, in whatever antitrust climate, primarily by the federal government or by the state legislatures.

For over 100 years, the states have regulated the business of insurance. They regulated it because they immediately perceived that we had a problem with too much competition in our business which endangered the availability of the "pot of gold" to pay off claimants when a catastrophe arose. That is the history of not only the title insurance business but also the insurance business generally.

Early on, the state legislatures started to correct the problem. They did it in two ways. First, they controlled our balance sheet to make sure that insurance companies followed conservative financial practices. Secondly, they controlled insurance rates in order that they would not be too low, too high or unfairly discriminatory. Experience indicated that unfettered rate competition drove rates low enough so as to endanger the "pot of gold" to pay claimants.

"If there ever was a business in the United States that epitomizes the need for local control, it is the title insurance industry. This is because of the local nature of real estate transactions."

The Sherman Act came about because producers of goods and supplies—most notably the railroads—got a little big for their britches. They monopolized; they restrained trade, and they conspired. What Congress saw at that time was traditional business competition in those areas going down the drain in the form of large trusts. Congress had a very simple solution to that problem: Free, open and unrestricted competition. They passed the Sherman Act, the Clayton Act, the Federal Trade Commission Act and others. Congress was looking primarily at hard goods and transportion.

The Supreme Court, for 25 years, held that insurance was not commerce and, therefore, not subject to the oversimplified motherhood type of approach by the federal government under the Sherman Act. The court seemed to recognize that the antitrust rules of the Sherman Act did not fit the insurance business. Then, in 1944, the Supreme Court reversed itself. Its new position was that insurance, like everything else, is subject to the Sherman Act. But, they overlooked the difference that I have been talking about. In this instance, Congress was smarter than the Supreme Court. It often is.

Congress believed that the Sherman Act and other federal antitrust acts should not apply because they might prohibit much of the regulation in the state that is needed. So, they passed the McCarran-Ferguson Act. They took the view that as long as it is the business of

insurance, as long as the state is acting in the field and as long as you are not using coercion, then state law applies. I hope that the McCarran-Ferguson Act is never repealed.

But, if it were to be repealed, we still have the question of who will regulate us. It is true that if the McCarran-Ferguson Act were repealed, state regulation of rates would be affected because of the Sherman Act. But aside from that, the question of who will regulate us remains.

Imagine for a moment that we are federally regulated. Would we replace all of the state title laws and real property laws that are the basis of our business with national real property laws? How about mechanic's liens? Are we going to have national mechanic's liens laws that will be controlled by some group in Washington? You may respond that such a notion is idiotic, but who knows what they may have in mind.

Will we have a national recording act? A lot of new technology is being developed that can truly make us national title insurers. Would they say that because of this new technology, we should have national recording acts and that because we are serving the nationwide public that we also need overall federal regulation?

Are the federal regulators going to regulate your title plants? How about attorney opinions in the East? Will attorney opinions be federally regulated? What about federal control of underwriting criteria? Proponents of federal regulation may respond that in the underwriting area, all the federal government really is interested in is getting at the relationship with the consumer and the problem of reverse competition. I, however, would respond that the same considerations which have shown federal control won't work in other areas, also make it clear that it won't work here either.

To those who would say that the industry has a mess with forms and consequently needs forms control on a federal basis I would respond that no matter how big you get, the National Association of Insurance Commissioners is presently capable of handling any forms problems through their model laws. If we have deficiencies, I would rather have the states regulating us than I would Congress and the federal regulatory bodies.

Is my debate opponent going to suggest that we should have federally chartered title companies? How about business marketing practices? Maybe that is what we are going to control by federal legislation. Well it won't work.

Perhaps some of my opponent's reasons are economy of size or saving of government cost. Maybe he will say that we can save 20 percent on the cost of government if we have one regulator in Washington instead of 50 all over the country. One need only look at the Department of Transportation or the Department of Energy to see the folly of that reasoning. Their budgets and staffs have grown enormously. In addition, have you ever heard of a federal entity that went out of business or reduced itself in size or said, "Gee, you don't need us any more."?

There was only one that I can think of. It was the Un-American Activities Committee and it went out of active business a long time ago. Nevertheless, it had a paid staff and was completely organized until a few years ago. For years, they continued in existence and didn't do a thing before finally disbanding.

"I'd rather have 50 different areas where we try 50 different innovative approaches. If one or two or five of them are wrong, it doesn't destroy the entire industry."

Do we want that type of operation? Do we want everything that we do controlled from Washington, D.C.? Our costs would go up tremendously. Instead of merely dealing with 50 people in 50 states—and you will always have state insurance departments, I don't care what kind of federal laws you have—you would deal with the state department of insurance around the country and, in addition, would deal with the bureaucracy in Washington.

Washington would setup regions; regions would be split into districts; districts would be broken into local areas. You would have two layers of government where, before, you had one. There is no way that this scenario could be better than state regulation and no way in which it could help us.

Maybe my debate opponent is going to say that we need it for reinsurance which is handled on a nationwide basis. I say that you can handle reinsurance better state by state than you can on a federal basis. Reinsurance works very well today following state laws and with the current system that we have in the industry of handling reinsurance.

Maybe he will say that because of the national secondary mortgage market we need national title laws to help make it easier to move money and to get investors into real estate-based securities. You don't need that at all. All you need are state laws and state regulations that are competent and reliable so that you have recognition around the country that a loan in any state is a viable investment. You don't need a federal law for that.

Perhaps my opponent will say that we don't regulate enough in the states. I would say then that the state and the residents of the state can obtain more regulation in their state. If they need it, they will obtain it. Maybe some states don't need much. Others need more. Federal regulation would be uniform rather than tailored to the needs of each state.

Maybe my opponent will say that some of the state regulators are not qualified. I have seen a lot of state regulators and there are a lot of able-bodied, intelligent men. With regard to the few who may not be, that can be corrected at the state level. I would much rather have to get rid of one regulator at the state level than hope that I can get rid of people at the federal government who may be really endangering the industry.

Maybe what he will say is that with federal regulation you can have better planning because you have more resources to apply to one uniform approach to the business. I'd rather have 50 different areas where we try 50 different innovative approaches. If one or two or five of them are wrong, it doesn't destroy the entire industry. It will merely have to be corrected in one or two or five states—not throughout the United States.

I will concede that there is no way that we can live solely in a state-controlled world. We are controlled by hundreds of federal laws every day. We always will be. These are laws that affect not only us but also other businesses. I say regulation of our industry should remain in the hands of the states because they are doing a good job.

There is, however, one exception which we do not seem to handle very well on a state basis. The reason for this is not because state regulators may be incompetent but because of the nature of the problem. This one exception is the problem of controlled business.

Our state insurance commissioners cannot control or handle controlled business as adequately as they would like to because they have very little control over the controllers of the business. Controllers of the title business are people in other industries who are regulated by other departments. Here we need help from the federal government. But, we need it on a very restricted basis and we need it in the area of controlled business only. We do not need their help in everything that we do.

I will reiterate what I said earlier. If there ever was a business in the United States that epitomizes the need for local control, it is the title insurance industry. This is because of the local nature of real estate transactions.

Imagine the terrible burden that federal regulation would impose. There is an inter-agency council on accident compensation in insurance. It isn't our business, but it is an insurance business. It is a very narrow part of the insurance business. The council put together a partial inventory of current federal accident compensation initiatives and programs being handled at the federal level.

Bear in mind that the federal government does not yet have direct control of that business. This inventory list just reflects agencies getting their hands into that business. The list ran for 12 pages. There were 21 departments and agencies which were interested in what the insurers were doing and there were 67 different projects and subjects that the federal departments were looking at in connection with that very narrow portion of the insurance business. Imagine what they could do with the title business.

It happens that the assistant U.S. attorney general, John H. Shenefield, in a speech that he made two months ago at the American Bar Association convention said, "I appreciate this opportunity to share with you some thoughts on the relationship between the antitrust laws and insurance. No doubt the appearance of a federal law enforcement official to discuss insurance is something of a rare occurrence. For unlike every other type of American business, the insurance industry has largely escaped the scrutiny of both antitrust laws and the federal regulatory agencies." (From that, I infer that he was saying that we shouldn't escape.) "But, until recently this status did, however, have one

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rather adverse affect on those who make their living in the insurance industry. At social gatherings they alone could not regale their fellow businessmen with horror stories about their exasperating, if not downright bizarre experiences with federal bureaucrats."

There is another important thing to remember. There is a social philosophy held by some in the United States that government has a duty not only to correct ills when they arise but also the duty to entirely plan and control the economy and the businesses operating in that economy. That philosophy is much more prevalent in Washington than it is in any state house.

My opponent and Mr. Shenefield and all of his friends in Washington—of which there are legions—may be ready to have 60 departments come jumping down our throats right now but I am not. And, I don't think that any of you in the audience are ready for that either.

Mr. Papazickos: I respectfully urge that federal legislation should be enacted to regulate all aspects of the land title insurance business, because it is obvious that efforts to do so at the state level have largely been ineffective.

Before proceeding further in this discussion and presenting what I consider to be the more cogent reasons in support of the basic proposition—federal over state regulation—let me quickly and summarily dispose of several matters that invariably crop up whenever this question is raised.

First, there is the assertion, made by those purists among us, that insurance in general, and title insurance in particular, are not forms of interstate commerce.[1] Second, it is maintained that there can be no regulation of title insurance at the federal level because of existing statutory prohibitions. Third, these same purists will loudly exclaim that in the final analysis there should be no regulation of any kind on title insurance.

Taking the first assertion, can there be any doubt in this day and age that title insurance affects interstate commerce? I will not burden you with details, nor will I bother to retrace for you that all too-familiar history of a long line of judicial decisions involving insurance from *Paul* v. *Virginia*[2] in 1869 to *United States* v. *South Eastern Underwriters Association*[3] in 1944.

Instead, let me direct your attention to the following statements made by Chief Justice Burger, who, in 1975, speaking for a unanimous Supreme Court in *Goldfarb* v. *Virginia State Bar*[4] wrote: "In financing realty purchases, lenders require 'as a condition of making the loan that the title to the property involved be examined'. . . . Thus, a title examination is an integral part of an interstate transaction. Whatever else it may be, the examination of a land title is a service; the exchange of such a service for money is commerce in that most common usage of that word. . . .". So much for the interstate commerce issue.

Moving on to the second assertion, can there be any doubt in this day and age that Congress, if it saw fit, could impose its plenary jurisdiction upon the land title insurance business? The only major obstacles preventing Congress from doing so are the statutory prohibitions

"If we label proposed federal regulation 'a bureaucratic nightmare,' what about the expenses we have incurred and the time we have wasted by our separate efforts in fruitlessly wending our way through the morass of regulatory red tape at the so-called local level in 50 states?"

enunciated in the McCarran-Ferguson Act,[5] but this statute can be repealed outright or drastically amended at any given time.

Actually, several efforts now appear underway in Congress and elsewhere to do just that. All of you, of course, are fully aware of several bills in Congress[6] aimed at repealing or limiting McCarran-Ferguson. And there is the report[7] from the Justice Department antitrust task force which recommends drastic revisions to McCarran-Ferguson and the expansion of the Sherman Act[8] to all facets of insurance. These attacks on McCarran-Ferguson will no doubt itensify.

As for the third assertion of no regulation at all, can there be any doubt in this day and age that certain questionable business practices, formerly and currently taking place in the land title insurance industry across the nation, not only seem to require, but virtually demand, strict regulation immediately? Dramatic evidence of this need became apparent early from the anguish we suffered following the "slings and arrows" hurled upon us by our outspoken critics during the 1972 hearings regarding maximum FHA/VA settlement charges.

That in turn was followed by our experience during the events leading to the enactment of RESPA[9], a form of regulation at the federal level—which at least was favorable to us.

And lately we cried out for regulations against what pervasive and injurious phenomenon labelled controlled business, necessitating HUD's Interpretive Ruling[10] effective Sept. 4, 1980. I fail to see how we can avoid regulation.

With these diversions eliminated, we thus have arrived at that proverbial cross-road, and I believe it is time when we must now make that truly difficult decision for either federal or state regulation. At this time I am reminded of a story concerning the late Supreme Court Justice, Oliver Wendell Holmes, that exemplifies our indecision on this issue: "It seems that Justice Holmes once found himself on a train but couldn't locate his ticket. While the conductor watched, smiling, the 88-year-old Justice searched through all his pockets without success.

Of course, the conductor recognized the distinguished jurist. So he said, 'Mr. Holmes, don't worry. You don't need your ticket. You will probably find it when you get off the train, and I'm sure the Pennsylvania Railroad will trust you to mail it back later.'

The Justice looked up at the conductor with some irritation, and said, 'My good man, that is not the problem at all. The problem is not where my ticket is. The problem is—*where am I going*?' "[11]

It would be interesting to know where title insurance is truly going.

You have just heard my esteemed opponent argue most forcefully in favor of continued state regulation. Let me paraphrase his most telling arguments, and then let us see just how well they stand up under close scrutiny:

- The fear that we will be creating still another monolithic bureaucratic machine in the federal sphere
- The fact that we will probably have to pay for the attendant high cost of operating that new bureaucracy
- The waste of time and effort to comply with an endless sea of red tape soon to be generated by any such federal insurance bureau
- The dismantling of apparently satisfactory regulatory procedures that have been carefully nurtured at the state level over the past several decades.

In all sincerity, I do not find that these arguments are sufficient to dissuade one from the position that federal legislation will ultimately be the clear solution to the dilemma in which the land title insurance industry now finds itself.

If we label proposed federal regulation "a bureaucratic nightmare," what about the expenses we have incurred and the time we have wasted by our separate efforts in fruitlessly wending our way through the morass of regulatory red tape at the so-called local level in these 50 states? (I suppose I should make that 49 states since our land title insurance business has been foreclosed in one Midwestern state.)

I am sure that many of you often have been as confused and as dismayed as I have been trying to determine whether:

- In a particular state rates and forms must be filed, approved and then used
- Or if filed but not approved, then litigated before being used
- Or possibly filed and then used
- Or is it not filed, but just used?
- Is this done through a rate service organization or through an individual filing
- Do we attend formal public hearings or informal administrative conferences?
- Does the filing cover an all-inclusive rate plus escrow charges; or just fees for examination and premium; or only risk rates?

Unfortunately, decentralized state regulation has led in many instances to companies laboriously gathering, painstakingly correlating, econometrically measuring and ponderously analyzing reams of economic statistical data to justify a rate filing in one state—only to find that the same, or basically similar information will have to be reproduced and adjusted for presentation to support an equivalent rate filing in a neighboring state. Surely we can channel our resources into better activities and achieve

more productive results than to become bogged down in such quagmires.

And, finally, in arguing against continued state regulation, for those of you in the audience that are engaged in the financial activities of your respective companies, would not substantial savings be achieved, producing a better bottom line, if companies were not forced to pay varying premium taxes in each state; or to maintain segregated deposits in many states; or to compute your unearned premium reserves on a number of different bases; or to file a Form 9 in every state in which your company does business?

So, it is quite clear that this existing regulatory structure at the state level, on the contrary, is largely disorganized and extremely ineffective. It is a system that should not be perpetuated.

As an alternative, I urge that we streamline all of these activities by creating an all-emcompassing and highly organized system of federal regulation based upon appropriate legislative standards.

Although proposing such federal legislation would affect the business of title insurance, there is no necessity:

- To change the substantive real estate law in any state; or
- To impose any Torrens-style national land registration system throughout the nation; or
- To abolish the present methods of title abstracting and title examination.

Advocating federal regulation certainly is not new; nor is there anything unique or different in the basic concept. Political theorists have debated the principles of a unified commonwealth from Plato[12] to Locke.[13] In the United States, the merits of a strong central government have been adequately chronicled for us since 1790 by Alexander Hamilton through his essays in the *Federalist*.[14]

Indeed, how often just recently have we in the land title insurance industry welcomed those actions at the federal level that benefit us economically and solve problems at the national level that could not be solved quickly at the state level?

"An orderly scheme of federal regulation working uniformly throughout the nation is obviously more ambitious, but entirely feasible and workable."

In this regard, to name but a few, I am referring to:

- The pre-emption of interest rate restrictions on federally related mortgage loans[15]
- The adoption of rules and forms permitting federal lenders to offer a variety of variable rate mortgages now that older forms of fixed rate mortgages have become an undesirable investment[16]
- The expansion of RESPA to curtail the growth of controlled business[17]

As an advocate of strong federal regulation, I realize that perhaps these views might be considered as iconoclastic and breaking with the more traditional states rights position of assigning the regulation of title insurance to the several states. Also, it is apparent that this is the age of hasty deregulation of other industries and I may be tilting at windmills by urging strong federal regulation at this time. But the economic forces in the marketplace warranting deregulation of the airline and other transportation industries, for example, are not the same as the economic forces that play upon and influence title insurance.

An orderly scheme of federal regulation working uniformly throughout the nation is obviously most ambitious, but entirely feasible and workable. I am not offering simplistic solutions. I am instead trying to coordinate our efforts for a more productive result.

To achieve this orderly system, federal legislation must be enacted containing provisions to establish procedures for:

- The filing of forms
- The approval of all-inclusive rates and escrow or closing charges
- The periodic review of these rates and charges for adjustment in the wake of inflationary costs
- The gathering of statistical data to determine an appropriate rate of return
- The examination, licensing, bonding and commission return of title insurance agents
- The quality of abstract or title plants
- Specific restrictions or prohibitions on controlled business
- The right to perform and to receive payment for certain customary title insurance services without being subjected to complaints for the unauthorized practice of law
- The payment of a single rather than multiple premium or income taxes
- And a variety of other applicable items in the regulation of title insurance.

Let me summarize why federal regulation over the business of our land title industry is necessary and preferable:

- Easily identifiable standards will operate and apply uniformly throughout the country.
- Substantial savings in time, money and effort can be achieved by working with one knowledgeable and sympathetic entity, rather than by dealing with a variety of diverse and unconcerned regulators.
- Resources can be directed into more productive channels, once unnecessary and repetitive practices at the state level are discontinued.
- Since decisions regarding the flow of mortgage funds for the housing market are now firmly concentrated at the federal level, and since the land title insurance industry must of necessity operate within these established monetary parameters, our activities have national significance requiring recognition and supervision at that level.
- Solutions to our problems, and reactions to fast-changing conditions, that demand speedy attention, can only be achieved quickly and easily by a prompt response at the national level.

We can no longer afford to be parochial in our operations or provincial in our thinking. Lenders look to us for new coverages. Home buyers rely upon us for the protection of their investment. Title insurance is the foundation for security in the ownership of land. We must broaden our horizons and meet the demands of our modern, mobile society. Federal regu-

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Participants in the debate were (from left) Moderator Joseph Burke, Roger Williams and Chris Papazickos.

Section 13—*(from page 7)*

There is little doubt that improved public land title records will lower the cost of doing business for title insurers. The savings to the title insurers and other service providers is really only a means to an end, however. The question is whether the savings to providers will be passed on to consumers.

Consumer benefits depend upon whether providers of services will pass on cost savings to their customers. Our Section 14 research deals with this issue. The next question that comes to mind is just how important are these title-related costs with respect to the whole settlement package?

Our RESPA research shows that settlement charges on a house with a value of $53,000 average about $2,000. Of this total, the title-related costs account for about 16 percent of the settlement charges—about $320.

I should note that I have not included brokerage fees in these figures. (Of course, these are generally paid directly by the seller, although some portion is indirectly passed on to the buyer.) Brokerage fees by themselves are a large figure. On a $53,000 house, they are usually in the range of $3,000.

The point is that if you look at recordation problems in the larger context of total settlement costs, it doesn't look like Section 13 is necessarily the most powerful tool for reducing these costs.

This is one perspective to take—the perspective of a single consumer. But, another way of looking at it is to consider potential aggregate savings. Suppose we could lower costs not by $320, but by some fraction of that amount, say $50 or $75. A number like that may not mean much for an individual household, but multiply it times four million annual transactions and the potential cost savings really start to add up. Improved land title recordation systems can have a significant impact on lowering settlement costs.

The Torrens System

Another aspect of our demonstrations, a more dramatic method of affecting title-related costs, deals with registration or Torrens systems.

We had hoped to demonstrate improved registration in three sites, by improving existing systems in Hennepin County, Minnesota, and the Southern Middlesex Registry in Massachusetts (which includes the city of Cambridge) and by supporting implementation of a new system in Summit County, Colorado.

We have implemented demonstrations in two of the sites. In Hennepin and Southern Middlesex, automation is being applied to the processing of title certificates in an effort to reduce registration time and cost. These counties are also trying to streamline their systems through legislative reform.

Summit County, which is a rather idyllic place in the beautiful mountains just outside of Denver, is attempting to introduce registration utilizing the concept of possessory title registration. Under possessory title, registration certifiicates ripen over time as interests and encumberances are noted on the certificate on a day-forward basis. After a fixed time period, perhaps equal to the time frame associated with marketable title legislation, the certificate can be perfected through a judicial or administrative process. Possessory title is an innovative approach to overcoming the barriers of the high cost of initial registration. The Summit County registration system has been delayed since the state legislature rejected the necessary enabling legislation. This project, however, has not been idle since the first legislative effort last year.

A revised and simplified registration bill will be presented to the Colorado State Legislature around January of 1981. The legislation will allow Summit County to make the definitive judgment on the bill since a local ordinance would still need to be initiated by the county. The proposed state legislation would permit Summit County to make its own decision.

While registration has historically been primarily a means of quieting title defects, and consumer incentives have otherwise been very limited because of high costs of initial registration, it is still possible that changes in the legal framework, such as possessory title, can help overcome some of the difficulties and result in the long run in lower costs to consumers.

The research and the results of the demonstrations that are going on under Section 13 of RESPA are being consolidated into HUD's report to Congress due in early 1981. In addition, the report will address the relationship of land title records to title-related costs.

While each demonstration can be evaluated separately as it is implemented, the overall success of our Section 13 effort really depends upon the transferability of results to other local governments and the use of these systems by providers of title-related services.

Support by ALTA of improved recordation systems and legal reforms in public records and conveyance laws will help this process along.

RESPA, Section 14—*(from page 9)*

tion on improving systems for maintaining land records.

Jim Maher, from the office of general counsel, will be responsible for developing workable enforcement tools for any and all recommendations we may make to Congress. He has worked on the statute almost from the time of its passage and is well aware of the problems posed by nonenforcement of a requirement or prohibition.

I will be in charge of the group responsible for developing and evaluating alternative courses of action and formulating possible recommendations to Congress for the secretary's decision. All of us will be working very closely in coming weeks to get the job done.

We have pulled together representatives from nine federal agencies to consult with us and discuss our proposed recommendations. This group represents a wide spectrum of views and experience and will be most helpful.

Participation Important

We have put together a public participation plan that is intended to assure that there is some forum in which all views may be expressed. While the American Land Title Association has done an outstanding job in presenting its views, we encourage each member of the industry to express his or her point of view and opinion. I assure that every comment or criticism that is received is carefully reviewed. This is your opportunity to make a difference.

The department has an open mind on all questions. When the Peat, Marwick, Mitchell report is finalized next week, when the public comments and meetings have all been reviewed, and when the great wealth of information from all sources has been evaluated, we will begin making our decisions.

We will look for practical and workable solutions. These solutions may involve recommendations to Congress and/or state legislatures for specific legislation. They may involve recommendations to federal and state agencies on specific regulatory requirements and provisions. They may involve requests to the private sector to cooperate with us in resolving specific problems.

Over the past several years we have enjoyed a constructive relationship with the American Land Title Association and the title industry generally. While we have not always been able to agree on all issues, your willingness to discuss differences and work with us has been appreciated.

No doubt, if we conclude that settlement costs are too high and feel that congressional action is appropriate, there will be some recommendations which may not be particularly attractive to you. If and when that day comes, I hope that the same spirit of cooperation will continue.

It is important to remember that while HUD will submit its recommendations to Congress, Congress is in no way bound or restricted to what we recommend. Congress may accept, reject or change any of our recommendations. We, at HUD, believe that it is our responsibility to provide the best most accurate information possible to Congress. We are committed to doing that. Your past and future contributions in helping us accomplish this goal are gratefully acknowledged.

State v. Federal—*(from page 13)*

lation is the best means to accomplish these purposes quickly, safely and easily.

In effect, I envision the strict regulatory scheme now in use by the state of Texas being broadened and enlarged for uniform application in all states by mandatory federal legislation.

Our land title insurance industry requires immediate action now. I urge you to mark your ballots in favor of federal regulation after this debate; but now, in conclusion, let me leave you with this thought: "It is better to debate a question without settling it, than to settle it without debate."[18]

Footnotes

[1] United States *Constitution*, Article I, Section 8, Clause 3, Regulation of Commerce: "To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes."

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Where Do We Stand With NAIC ?

by Erich E. Everbach

I will preface my presentation by reminding you that the National Association of Insurance Commissioners (NAIC) is a little more than a loose confederation of state officials. The NAIC itself is not a powerful organization and so we should not fear it. We must accurately evaluate the role it plays in our industry. It is not much more than the sum total of all of its individual members and they often have difficulty agreeing on a course of action among themselves.

Like the ALTA, the NAIC is managed by committees, subcommittees and task forces and takes action only through its executive committee. When its executive committee acts, generally it is something that has been thoroughly considered, is not controversial and is not likely to cause too much problem to the insurance industry.

"There is no question that we must work on both the state and federal levels to try to find a solution to some of the problems facing us."

The NAIC does listen to industry even though it doesn't always agree with industry or do what industry wants done. We have had an especially effective year in speaking to them.

We really started off in December of last year when the NAIC Executive Committee proposed and adopted the privacy protection model bill. The privacy protection model bill was designed really to provide to life, health and automobile insureds the ability to find out what the insurance companies had in their files on the proposed insured which would be used to make underwriting judgments. Do we know that somebody is a bad driver? Do we know that somebody has had an illness? Do we know that someone is likely to be a high risk insured?

This bill was designed to offset a movement at the federal level for this same kind of national federal insurance privacy protection bill. The NAIC was urged into increased activity in order to forestall action by the federal government.

In looking at it though, we realized that title insurance would be affected just as any other insurance company. So, we moved in December of last year at a task force meeting where the privacy protection bill was being considered to have title insurance totally exempt from the bill. We raised the point that our title plants contain much personal information about individuals who may be proposed insureds and under the bill this personal information would have to be divulged to the people when it was collected. We would have to give them advance notice in accordance with complex notice requirements and disclosure requirements. That would have placed intolerable burdens on those of us who use title plants and maintain duplicate records of what is in the county recorder's office.

Another provision in the privacy bill would have allowed individuals to contest the material that is contained in an insurer's files and have it removed from the files. But, title insurers can't remove a judgment against someone from their title files. If it is to be removed, it must be removed from the public record. What is contained in a title plant is only a copy of the public record.

So, we attempted to obtain a total exemption. Angele Khachadour of the California Insurance Department surprisingly came to our aid and agreed that there should be, if not a total exemption, at least a partial exemption. When the bill was reported out of the task force, we did obtain a qualified exemption so that nothing in our plants that was also in the public record would be affected by this bill.

However, if we acquire information outside of the public record, then that information, although it is title information and is used in underwriting title insurance, is subject to the notice and disclosure provisions of the model bill.

That bill, the Insurance Information and Privacy Protection Model Bill, eventually was reported out by the NAIC Executive Committee. It was introduced in several legislatures and has failed to pass not because of any activity on our part but because the agents of casualty, life and health companies opposed some of the complex reporting requirements that were involved.

When the model bill was introduced in the California legislature, the California Land Title Association obtained a total exemption for title insurers. The NAIC Does respond to our suggestions. It doesn't always do everything we want, but it does listen to us.

At its December 1979 meeting, the NAIC's Title Insurance Task Force reported a reorganization and now involves the states of Nevada, Nebraska, California, Wyoming, Montana, Oregon, Utah, Alaska, Texas and Virginia. An advisory committee from industry was appointed to serve on that task force. Four or five ALTA members serve on that committee, including Bill McAuliffe, Bob Swift, George Hursig, Ted

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

Schneider and others. I am chairman.

After the committee was formed, I was notified by the chairman of the Title Insurance Task Force that Doug Miles of the National Association of Bar-Related Title Insurers also had been added and so the work of the advisory committee will reflect the continued involvement at the policy-making level of the NAIC by bar related title insurers.

NAIC Seminars

The 1980 objectives of the ALTA Liaison Committee with the NAIC included putting on two seminars in conjunction with zone meetings. The NAIC has divided the nation into six zones. Although we intended to put on two seminars, we have not done so. We found considerable resistance within the NAIC to providing time at NAIC functions for any segment of the insurance industry to make presentations. The NAIC views zone meetings as their own province, their own schedule and they don't want to make any time for private industry.

I did receive authority from the ALTA to put on these two seminars and I will report to the Board of Governors this afternoon that we have failed to do so and the reasons behind our failure. We will have to find new ways to communicate our views within the NAIC.

The Title Insurance Task Force has been looking at several aspects of the title insurance industry and we could not, as the ALTA representatives, give them any guidance without prior authority. So, in February of this year, the liaison committee asked both the Board of Governors and the Executive Committee of ALTA to give us some guidance on what we could do and what we could work for.

At an April meeting, the Executive Committee authorized the ALTA/NAIC Liaison Committee to press for inclusion of the following nine points in any model title insurance legislation or regulation proposed within the NAIC:

- There should be a uniform system of reporting financial data by all title insurance companies. ALTA recommends its uniform financial reporting plan now in use in several jurisdictions.
- There should be uniform standards for measuring title insurance company profitability and adequacy of rate tailored to the unique economic factors at work in title insurance. Rate of return on total assets or capital should be one if not the sole standard.
- There should be regulation of rates, rebates, kickbacks and unlawful inducements and an effective means of enforcement.
- There should be regulation of the entire charge to the public for title insurance services, whether performed by a title insurance company direct or through a title insurance agent, including title search, examination, risk and settlement, closing or escrow charges. The ALTA believes that at least four types of rate regulation should be included in model rate regulation and that should be promulgation of rates as in Texas, prior approval of rates as in many of our states, a file-and-use system which does not necessarily indicate prior approval and a more open competition or use-and-file system which allows use of the rate for a period before the filing. And, each of those should be available for selection by any state.
- There should be unfair trade practice regulation and an effective means of enforcement.
- There should be regulation of controlled business. A break between the ability to influence the placement of another person's title insurance business and the ability to derive profit from that placement.
- There should be regulation of the division of the total charge between the title insurance company and its agent, the agent's retention, including a requirement for uniform financial reporting by agents.
- There should be regulation of all title insurance agents through licensing and minimum financial responsibility requirements, just as there are similar regulations for title insurance companies.
- There should be a uniform maximum single risk limitation provision and the recent Minnesota enactment which is 50 percent of net assets or policyholders surplus was recommended.

"We have, at least, persuaded some regulators that there is no absolute standard of determining if a given rate is based in some way upon the value of the property."

Some of these points are significant departures from positions that ALTA has taken in the past or they are an authorization for concrete action on the part of the liaison committee with the title insurance task force and with the NAIC. They are significant steps and we have tried to get the title insurance task force of the NAIC to adopt some of these provisions.

There was a minor disaster in Florida with the Blanks Committee of the NAIC. It has been discussing the title insurance blank and has received some small number of amendments that the title insurance industry believes should be made in financial reporting on our annual statement.

Because of a complex group of factors that were generally beyond the control of the title insurance industry, we became the object of abuse when we appeared before the Blanks Subcommittee to present our amendments. Because we had not anticipated any opposition, we failed to get the changes we wanted. It was not the fault of the title insurance industry. Perhaps it is because we are a small voice to the insurance departments around the country and we had not done our political homework very well. We did not have the influential votes already committed.

Model Law

On another front, the NAIC is working on a model open competition rating law for all lines of insurance. Generally most of the lines would be fully open competition with no need to even file rates and certainly no need to get prior approval.

For title insurance, workmen's compensation and some other small lines, a prior filing requirement would have been imposed. We would have to file 30 days prior to use. It would not have required prior approval but certainly within that 30-day period there could be prior disapproval of the implementation of the rates.

The question then arose of who really had the authority within the NAIC to propose model rating laws for title insurance—the Title Insurance Task Force or the B3 Subcommittee on Open Competition Rating. C. J. McConville reports that the B3 Subcommittee is reconsidering whether title insurance is significantly different from other lines, that it should have prior filing requirements imposed and the Title Insurance Task Force is proceeding to create its own model title insurance rating law. It seems to be pretty clear that if the Title Insurance Task Force comes up with something meaningful, the B3 Subcommittee will back away from including title insurance in its more comprehensive model law.

With the advent of the interpretive ruling by HUD, I raised again with the chairman of the Title Insurance Task Force the matter of the task force's failure to take any action on controlled business in its June meeting in Denver. I really did not intend to, but I struck a discordant note with him in my letter. He seemed to read it as a criticism of his stewardship of the Title Insurance Task Force.

I received an angry letter from him, and I wanted to report that to the Underwriters Section, because it shows just how wrong we can be and what conflicting signals we can send when we think that we understand how regulators view our business and our reaction to the forces at work within it.

Following is a part of a paragraph from task force Chairman Don Heath's letter written to me after I suggested that the Title Insurance Task Force should take up immediately the question of controlled business now that the federal government appears to be content with coming out, at this point, with only the interpretive ruling:

"Some perceive that there is reticence on the part of your industry to fully cooperate with the Task Force, thus thwarting state action in regards to some of these problems. Others believe that you are trying to work both sides of the street in an attempt to frustrate regulatory resolution of this problem either at the federal or state level."

I cite this example because I think we should be aware as underwriters and as people who make our living in the title insurance industry, that our actions can be perceived by others to indicate something other than what we intend.

There is no question that we must work on both the state and the federal levels to try to find a solution to some of the problems facing us. But, in so doing, we must keep in the back of our minds a consistent policy toward solution of our problems and one that can be explained to both the federal government and the state authorities.

Title Insurance Dissected

In September, the Title Insurance Task Force Drafting Committee reported that it was not yet ready with the model rating law. However, they did allude to some parts of the rating law that I think are interesting and that show the extent to which we have been able to get them to listen to the nine points that the ALTA Executive Committee suggested.

It appears that the rating law that they will develop breaks title insurance into three parts: the risk rate; the search and examination fee, and the third part is other charges—escrow fees and settlement charges.

They approach it this way because they see that in some areas our industry charges only a risk rate. In other areas, we charge search and exam fee and a risk rate. In yet other areas, we have escrow fees, and so they think certainly there must be some way to break apart these three components of the way we obtain revenues.

They are concerned that our title insurance rates are subsidizing escrow operations. So, the model rating law probably will contain a provision that says that no escrow expense factors can be included in justification of risk or search and examination fees.

In other words, what they are suggesting to us is that we take our joint costs for our escrow operations, which, in fact, do much of our underwriting for us by deciding what exceptions will be in the policy, and that we somehow break that apart and assign or allocate even arbitrarily some of the joint costs to escrow and some to other facets of our operations.

We have a long way to go but at least at the NAIC level they appear to recognize that the entire charge must be regulated in some way or at least the regulator must have a clear view of the entire charge.

Another part of the proposed model rating law is that there should be a definition of who is profiting in the title insurance business—the insurance company or the agent. The regulator doesn't know at this point. The regulator doesn't know whether the agent is assuming some of the risk for policy loss or negligence or not assuming some of that risk.

The most important point is that the NAIC Title Insurance Task Force Drafting Committee will develop a model law that says that the standard for determining whether title insurance rates are excessive should be whether there is a long-term profit, unreasonably high, resulting from the rates. That is, we hope, our rate of return on total capital concept. We have, at least, persuaded some regulators that there is no absolute standard of determining if a given rate is based in some way upon the value of the property.

Today in Charleston, S. C., there is a meeting of the A3 Subcommittee on profitability measurement. George Hursig is there representing the Liaison Committee, Jim Dodson is there representing the ALTA Accounting Committee, Roy King of the ALTA Research Committee is there. Richard McCarthy, ALTA director of research, who was originally scheduled to be on this program, thought this important enough to go to Charleston, S.C., instead of coming to Honolulu to be on the program.

The A3 Subcommittee is considering a request by California and New York that the central office of the NAIC come up with a plan to include title insurance within the property and casualty profitability measurement data collection scheme.

George Hursig is working with the NAIC central office. He told them that if they try to measure title insurance profitability with the way each company separately reports its data on the annual statement form that they will come up with "a fruit omelet." I think that is fairly descriptive of the way in which we individually report our annual statement data, and, unfortunately this information would have to be taken off of annual statement information. Some uniformity must be achieved.

If individual state insurance departments require that we submit data to the NAIC on profitability, at least it should be done under a system that clearly recognizes the differences between title insurance and other lines. The NAIC -Title Insurance Task Force understands this and at this point opposes including title insurance within any property and casualty profitability study.

I despair of quick action in one area. The NAIC does not see controlled business as a high priority item. They will probably move to trade practices and perhaps controlled business after they develop a model rating law.

You have to recognize that the title insurance task force has been working eight years now and has come out with nothing. Task forces in the NAIC usually are in existence one or two years and are expected to have their work done.

I do know that at the state level individual influential members of the NAIC are aware of controlled business and the problem. At a speech before the Kansas Land Title Association, Fletcher Bell, Kansas Insurance Commissioner, stated, "The controlled business may well be the smoking gun that will prove fatal to the private independent title insurance industry." He is attempting to find out what he can do under existing state law and what changes can be made in the Kansas state law to control the problem.

In 1981, we will identify specific states and go after specific insurance departments rather than working entirely at the NAIC level. We will work with the local land title associations and local rating bureaus when we do approach specific states. We are exploring this method of communication as the way to go for 1981 and we will see if we can't bring this educational effort that we have been working on all these years to bear more fruit than it has in the past.

Appearing on the Title Insurance and Underwriters Section program were (from left) Robert Haines, who gave the Forms Committee report; 1979-80 Section Chairman Fred Fromhold; Thomas P. Jackson and Erich Everbach.

The Saga of the Bar Funds

by Thomas P. Jackson

When the ALTA Executive Committee gave us an assignment last June to review the status of the bar fund controversy, I was somewhat startled. I recall being a much younger lawyer myself some years ago when ALTA was attempting to dissuade the ABA from pursuing the "national fund concept." I also remember the general elation throughout our office when we learned that the then-president of the ABA, Edward Wright, had issued a formal statement, with the approval of his Board of Governors, disavowing any ABA support for national bar-related title insurance which had, not too many months before, appeared imminent.

Therefore, I was surprised when the ALTA Executive Committee not only had the subject on its agenda but also was generally agreed that a solution still needed to be sought. The Executive Committee asked the General Counsel's office to study the problem and report back with its recommendations, which we have done.

In preparing the report, we went back to the origins of the problem to place it in historical context. It is apparent to us that the headwaters of the entire controversy are to be found in the age-old competition between lawyers and title companies for real estate closing business. Were there not such a contest there would, quite simply, be no reason for bar-related title insurance to exist. It serves no function other than to enhance the lawyers' competitive position for that business.

Mr. Jackson is a partner in the Washington, D.C. law firm of Jackson, Campbell & Parkinson, the former ALTA general counsel.

Most lawyers,* to our observation, do not believe that title companies cannot or should not be permitted to conduct real estate closings. Most, I think, also believe that bar-related title insurance is unnecessary at best and actually illegal at worst. Its proponents seem to be a relatively small minority of the legal profession whose livelihood is dependent upon real estate closing business and who cannot meet the competition from title companies in terms of either service or price. Bar-related title insurance is their rather ingenious device to recapture a lost market upon which only those few lawyers are dependent.

ABA Policy Articulated

During the early part of the 1970s, ALTA made its first comprehensive survey of the state of the bar fund movement throughout the country. Fred Fromhold's committee made its report to the industry in about 1975, at which time there were nine bar funds in existence, doing business in some 19 states, one of which was clearly destined by the ABA to be the nucleus of the "national fund." It was about then that ABA President Wright's policy statement was published. He stated:

- The ABA does not sponsor any title insurance company or fund, and has no financial interest in any such enterprise.
- No committee, officer or agency of the ABA is authorized to state that the ABA does or will engage in such sponsorship.
- No committee, officer or agency of the ABA has any authority in its or his official capacity to participate in a stock solicitation drive of any such company or fund.

Other people may read the policy statement differently. But, I read it as placing the ABA squarely on record to the effect that bar-related title insurance was something the ABA did not want to get into, even if it were not prepared to declare unequivocally that it was a bad idea. We thought then that the "fund concept" had been discredited, at least on a nationwide basis, and that the individual funds would, over time, succumb to commercial competition and the problem abate.

That, however, has not come to pass.

Over the past year, we were told by a number of reliable people that, far from abandoning its sponsorship of bar funds, the ABA was in the forefront of promotional efforts for it.

For example, in the spring of 1980, we received from several sources a copy of a "Title Insurance Questionnaire" put out by the Committee on Title Insurance of the ABA's Real Property Section (*not*, you will note, by the ABA's Standing Committee on Lawyers' Title Guaranty Funds). The questionnaire's preface announces that its purpose is to "... survey (title insurance practices) and to monitor developing regional trends regarding the use of title insurance. ..."

Among the questions were ones such as, "Are lawyers customarily involved in an attorney-client relationship for standard residential real estate transactions?"; "Do title companies use independent lawyer-agents in your area?", and "In most transactions involving title insurance, do title insurance companies ... provide closing services? provide escrow services? provide

**I use the words "the lawyers" or "the Bar" interchangeably, and probably somewhat inaccurately.*

opinions on title? prepare instruments of conveyance including deeds and mortgages?"

It is difficult to perceive how these questions could contribute to a better understanding of "title insurance practices," but the answers could certainly supply intelligence which would be useful to proponents of the bar funds.

Two ABA Pamphlets

So we began our inquiries this summer by taking a look at the current state of the bar fund movement and the condition of the several bar funds themselves. We went to the Washington office of the ABA and asked directly for any information they could supply us which would set forth the ABA's position on bar-related title insurance. At no time were we ever told about, much less given a copy of, the ABA President's statement of five years ago. We were not even told that he had made a statement on the subject.

We were, however, given copies of two pamphlets. One is entitled *Bar-Related Assuring Organizations;* the other is *How to Do It: Bar-Related Title Insuring Organizations.* At the beginning of the former publication, the following passage is found:

A Test for Every Lawyer Regarding the Extent of His Real Property Practice

Survey your practice for a few weeks, tabulating daily your answers to these questions:

1. What is your gross revenue from real property work? Has it diminished because your former clients are patronizing lay agencies?
2. What percentage of your closings produce a fully adequate fee?
3. What percentage of your clients do you confidently expect to represent in future real property transactions?

Now, based on the survey data, make up your mind as to how important the bar-related title movement is—or can be—to you.

Accompanying the latter pamphlet is a set of appendixes consisting of samples of the various documents required to organize a do-it-yourself bar-related title insurer. (We think it's the height of irony that an organization dedicated to the proposition that filling in blanks on pre-printed instruments is "the practice of law" would be distributing, over-the-counter, its own blanks to fill in).

Both publications are copyrighted by the ABA and printed by the ABA Press. They are Appendixes A and B to our report.

The ABA Washington office also referred us to the National Association of Bar-Related Title Insurers which, we were told, functions as the bar funds' own trade association, and the National Attorneys' Title Insurance Fund, of which the ABA Standing Committee asserts that its "... aim is to mount a program to bring the benefits of bar-related title insurance to homebuyers and to lawyers on a nationwide basis. ..." (by maintaining) "... close liaison ... with the ABA Standing Committee. ..." The "National Fund" is obviously intended to be the nucleus of a "national" bar-related title insurer when the time is ripe.

"... bar-related funds do not compete fairly. ... they utilize their unique relationship with the legal profession to secure competitive advantages they would not otherwise enjoy."

From the Chicago office of ABA, on the letterhead of the standing committee, we received copies of the standing committee's occasional newsletters, additional copies of the two ABA pamphlets, and the name of the committee member who is the "liaison" for the bar fund movement in the Washington, D.C., metropolitan area. We also were given the name of the executive director of the bar funds' trade association who is also, not surprisingly, a member of the standing committee. Still no mention of the president's policy statement of 5 years ago.

These publications are informative, especially if the information you are seeking is the extent to which the standing committee is committed to the "fund concept" and willing and able to exploit the name of the ABA to achieve it. It is abundantly clear that the bar fund movement is alive and thriving throughout the United States. We learned from the standing committee's newsletter that all of the bar funds which were in operation in 1975 remain in operation in all of the states in which they were doing business in 1975 and that funds are being organized in three new states. The Florida Fund, the oldest and largest of the state funds, has acquired and is doing business through a sometime commercial underwriter throughout New England.

Florida Fund Instructive

Indeed, the Florida Fund has special significance for both historical and portentous reasons. The Florida Fund served as an example which inspired the entire nationwide bar-related title insurance movement and led in 1961 to the formation of what became the American Bar Association's Standing Committee on Lawyers Title Guarantee Funds (LTGF). It also demonstrated, over a 33-year history, that a bar-related fund can prosper over the long run, and it can do so in a state which has a relatively favorable climate for commercial title insurance operations. Finally, its management is demonstrating the most ingenuity in circumventing resistance to the idea of bar-related funds within the organized Bar itself.

After canvassing the ABA's public position on bar funds today, we undertook to determine just how well the LTGFs were doing. In this task we had the assistance of ALTA's able research director, Richard McCarthy. Figures were available for only three funds—Colorado, Florida and Ohio. But those figures disclose a steady growth in assets, operating revenue, and net income for all three funds.

Once again Florida is instructive. The Florida Fund's current assets exceed $22 million. Over the last five years, its total operating income has grown steadily by about a million dollars a year, and last year its pre-tax operating income was nearly $2 million dollars. Although its total share of the title insurance market in its home state has remained constant at about 10 percent—not a particularly alarming statistic—the figures for its operations in New England, where it does business through its commercial subsidiary as a *de jure* fund in Maine and a *de facto* fund in New Hampshire, Vermont and Massachusetts, are not available.

In sum, then, the "fund concept" has not been scotched. It has only gone covert. Every bar-related fund which was in operation five years ago when the Fromhold Committee made its report is thriving today.

The ABA Standing Committee on bar-related funds is ignoring its own Board of Governors' declared policy and is actively promoting bar-related title insurance throughout the country under the ABA banner. Bar-related funds are in various stages of formation in three additional states. The so-called "National Fund," although known to be doing business as an LTGF in only one state, nevertheless continues to be touted as the precursor of nationwide bar-related title insurance. Like a chronic infection, the bar fund movement has resisted all of our efforts to eradicate it and, if left to fester, could ultimately contaminate the entire commercial title insurance market.

In our estimation, it is only a matter of time before the ABA Standing Committee on bar-related title insurance will provoke yet another confrontation with our industry. And the Standing Committee and the adherents of the "fund concept" are, if anything, more militant today than they were five years ago. Considering the imminence of a "national" bar fund then, we think that ALTA can continue to ignore the bar fund movement today only at the harm to much of the commercial title industry.

Those of you who may have never encountered a bar fund as a competitor may be unaware of the reason why ALTA should want to oppose what would appear to be simply one more legitimate competitor when ALTA itself has always spoken out in favor of a free marketplace for title insurance business. The answer is, simply, that bar-related funds do not compete fairly. Rather, they utilize their unique relationship with the legal profession to secure competitive advantages they would not otherwise enjoy. If each of those advantages were exploited to their fullest, the bar funds would probably be able to overwhelm commercial competitors in short order.

Anti-Competitive Characteristics

The next step in our analysis was to study the structure and operations of the LTGFs to identify those anti-competitive characteristics. We have isolated at least eight. There may be more.

- They are established, owned and controlled exclusively by lawyers, and recruit all lawyers, but only lawyers, for membership.

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The Indispensable Tools of Training and Education

Editor's note: Following is adapted from a panel discussion on in-house training which was part of the Abstracters and Title Insurance Agents Section Meeting at the 1980 ALTA Annual Convention. It features Glenn Graff, manager, Lawyers Title Insurance Corp., Winter Haven, Fla., who discussed use of The Land Title Institute, Inc., and Jack Rattikin Jr., president, Rattikin Title Co., Ft. Worth, Texas, who talked about orientation and training of new employees.

Mr. Graff: The land title business, while not extremely difficult, is technical and in many respects scientific. While closely related to law, engineering and even accounting, it has characteristics which distinguish it from such related professions. Anyone entering the title business will soon realize that he or she has become involved in a highly respected, dignified vocation which is vital to the economy and which daily takes the responsibility of determining the ownership of real estate, the foundation of all wealth.

The land title business has its own language. It is English, of course, but English laced with a multitude of words, phrases and terms beyond the vocabulary and the comprehension of the layman. Perhaps the greatest difficulty in acquiring title industry knowledge is comprehending the language. Comprehension involves not only an understanding of specialized terms but also a visualization of the operational functions to which these terms apply.

In the title business one must develop a vivid imagination because many things in this business exist which are real but which cannot be seen, touched or felt. Such things exist because the law says they exist and describes them, their characteristics and effects. A title is of this nature.

"While on-the-job training is of utmost importance in accumulating the intangible tools necessary in our business, some organized educational training system is essential to assure the understanding and progress of the apprentice."

New employees in the title business are faced daily with many complex, confusing and frustrating circumstances. Only after a great deal of effort in study and experience do the pieces fall into place so that the puzzle becomes clear.

For many years, the training of new employees was carried on without the aid of any organized course material. As a result, in many cases, a new employee's learning process was limited to the knowledge and experience of his immediate supervisor. We have heard many times that a mechanic is no better than his tools. Likewise, the auto mechanic would have a very difficult time reaching the inner workings of an internal combustion engine without the proper tools. While it may not be quite as obvious since our tools are more of an intangible nature, it is nonetheless necessary that we title people have the quality and variety of tools to reach the proper conclusions in our daily search into the depths of real estate titles.

While on-the-job training is of utmost importance in accumulating these intangible tools, some organized educational training system is essential to assure the understanding and the progress of the apprentice.

In recent years, some of our affiliated state associations have recognized the great need for educational programs and they formed committees to carry on seminars and other types of training programs. These programs of specialized instruction are very important for the

few people who are able to participate. However, at best, only a few can be reached by the programs.

The ALTA Education Committee has wrestled for years with the problem of how to provide our members with an effective educational program. Frankly, it has been very difficult to produce a nationally adaptable series of materials. However, Hart McKillop, one of ALTA's honorary members, achieved what our committee had difficulty with in the development of the Land Title Institute.

Since 1970, Land Title Institute has been providing title industry educational courses for title people nationwide. These courses are conducted directly with the enrolled student by mail. There are two courses. The basic course consists of 12 sections structured for beginners and lower echelon employees. The advanced general course consists of 18 sections designed for the more advanced employee.

A recent appraisal report on Land Title Institute reads, "The land title industry is both unique and complex. From the courses (of the Land Title Institute) above described it will be observed that the text books cover a wide range of highly technical aspects, many of which are particularly peculiar to the land title industry. The geographic variables in the land title industry, particularly with respect to law, custom and practices, permits authorship of such texts by only the few having broad experience, knowledge and expertise in the industry.

"In an industry consisting of some 2,000 land title companies, the above mentioned texts provide the only comprehensive educational courses now available to the land title industry and the thousands of employees engaged therein. In this sense, the texts have a unique and special value. They are all copyrighted and the copyrights are owned by the Land Title Institute."

Because of his sincere interests in the educational process and in the land title industry, Mr. McKillop generously donated those educational courses along with other assets of Land Title Institute to a new non-profit corporation. The new corporation was formed for the purpose of accepting and administering these educational programs under the direction of the American Land Title Association.

A great deal of time and effort has gone into working out the mechanics for properly making the transition and transfer of these assets.

In addition to our indebtedness to Mr. McKillop for his great generosity, we owe much gratitude to Abstracters and Title Insurance Agents Section Chairman Tom McDonald, to ALTA Executive Vice President Bill McAuliffe and to ALTA General Counsel Tom Jackson for their expertise and diligence in bringing about this tremendous industry-wide opportunity.

I'd like to tell you what has been done and how we plan to continue offering these courses. First, let me assure those of you who have existing subscription contracts that we do not intend to change your participation and that your contracts will be maintained as originally agreed.

The Executive Committee of this Association first authorized the formation of a new non-profit corporation which has been done by Tom Jackson and his staff. The Executive Committee then appointed the first board of directors consisting of six members, namely Tom McDonald, Fred Fromhold, Bill McAuliffe, Hart McKillop, Charles Newman and myself.

"These courses have been used very successfully over the past ten years in the training of title people nationwide."

This board met and established certain guidelines for the continued operation of The Land Title Institute, Inc., which is the name of the new non-profit corporation. Basically, the plan is to continue administering the program from the office in Winter Haven, Fla., under the direction of Mrs. Ramona Chergoski, who also has been elected registrar. Mrs. Chergoski was with the original Land Title Institute at its inception ten years ago and is well qualified to carry on the excellent service to the students.

The board decided that the system for subscription and enrollment should remain undisturbed, at least for the present time.

Course Design

The design of these courses is such that they are not to be taken successively. The basic course was prepared to fill the need of new and lower echelon employees for orientation and background knowledge of the title industry. The first six sections of the basic course substantially parallel the first sections of the advanced general course, but are written, where appropriate, in an elemental and less technical vein.

By the time Section Seven has been reached by the basic course student, it is assumed and believed that he or she should be prepared to take a step upward. Therefore, Sections Seven through 12 of the basic course are the same as the corresponding sections of the advanced general course. The basic course is concluded with 12 sections in order to avoid tedium and discouragement among the new and lower echelon employees. The advanced general course extends over 18 sections, the last six of which are believed to be of more interest to the more advanced and the long time employee.

Basic course students who make substantial progress and who display a good grasp of the subject matter are permitted, upon completion of the basic course, to enroll for the last six sections of the advanced general course.

Tuition for the courses is not based upon a set amount per pupil per course. Rather, the agreement entered into between a title company and The Land Title Institute, Inc., and the tuition charged thereunder covers enrollment for all or as many of the title company's employees as the company may wish to enroll.

Employees may be enrolled a number of times during the term of the subscription agreement. Upon enrollment, each student is sent a text booklet covering the first section, accompanied by a set of test questions and an answer sheet. Because most employees are adults, the tests are designed as learning tools which focus the student's attention upon the more important aspects of the text rather than as a measurement of the student's recall ability.

When the answer sheets which the students have completed are returned to the school, the answers are graded electronically and returned to the student, together with the text book covering the next section and materials for the next test. This procedure continues through the course.

A personal progress record of each student is kept and copies are sent to the subscriber at 90-day intervals during the term of the subscription. As such, the subscriber may know the progress of each enrollee and also be able to evalute the student's comparative competence.

These courses have been used very successfully over the past ten years in the training of title people nationwide. We are very fortunate to have the opportunity to perpetuate such a well planned and expertly prepared educational program.

We presently are preparing some new information sheets and other data regarding The Land Title Institute, Inc.

We urge you to do yourselves and your employees a big favor and take advantage of this excellent educational program.

Mr. Rattikin: My topic today is orientation of new people. However, I am going to expand that a bit because I think it is important for us to talk about the reasons why we need training as well as orientation. They are both necessary in any size company.

We have all been concerned about how to attract and keep new people. These are basic goals to be achieved in orientation. The title business is very technical and new people joining our companies often do not know what they will be facing. Therefore, it is very important that new and prospective employees have the right first impressions when they come to your particular company.

First impressions are important because you want to keep your people, you want to motivate them, and you want them to be interested. Working with titles, initially, is not the most fascinating thing in the world for a new person on the job, especially if he or she was not in the business before. So, a company needs to have various means to excite new employees and get them involved. Once they are involved, I think they become interested, and the work becomes a challenge.

We have people interviewing with our company constantly, and if they don't receive a positive first impression then they walk away believing it is not the career for them. Many people in this day and age are very mobile. In my father's day, people came to a job and it was a career, and they had one job for a lifetime.

Many of you probably had one job in your lifetime. But these days people go where the money and challenge are. Our job is to give that to them. We cannot continue to steal people from other companies and hope to make our industry grow. We need to bring new people into the title business.

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"Training gives your employees the feeling that you care about their future. Secondly, it teaches people your particular way of doing things."

One important attitude to impress upon new employees is informality. Our company strives for informality in our whole operation. We want to show new and prospective employees that each person in our organization is just as important as anybody else. I might be the president, but our delivery person is just as important a colleague as I am, because without each person the whole thing breaks down.

Another important first impression is friendliness. It's necessary to show people that you like them, you want to keep them around, that everybody is friendly with each other and not political or competitive to the extent that they are not friendly. We try and put forth an attitude of cooperation, one that says our door is always open and if you have a problem come to any of us and we'll help.

Teamwork is yet another positive first impression to get across. I push very hard for the idea that ours is a team organization. We are all members of the team, and in our initial interviews we try to emphasize that fact. It tends to make people feel important.

The Importance of Training

Now, about training. Let me first say how welcome the news is of ALTA operation of a national title industry training program, The Land Title Institute, Inc. Schooling is tremendously important. People enjoy taking classes and like the challenge. In our state, Texas, we have a school for people to learn the statewide type of operation. However, you can send only two people from your company, and so each year we have to think of other ways to educate our entire staff to keep us on our toes with the changing world.

I had a secretary who worked for me for about four years. She came into my office one day, closed the door and said, "Mr. Rattikin, I want to ask you a question. I am very embarrassed about it, but I think it is time I asked you." And I said, "Okay, by all means." She asked, "Would you please explain to me what is a title policy?"

That seems strange, but just think back to the early days. I was floored, but I remembered we had no training. My secretary was doing a job which she could do by rote. She really didn't know what our end product was or how we got there or what its importance was. That was when we started our training in earnest.

Many companies do not have a formal training program. If you are a one- or two-person operation, I am sure that you have on-the-job training but you might not have a training program. But no matter what size you are it is important to have a training program for your people.

Training gives your employees the feeling that you care about their future. Secondly, training teaches the people your particular way of doing things. If they worked with another title company before coming to you, they have been doing things differently.

The training can be very formal or very informal. But it certainly is the quickest way to competence.

People Problems

What are the biggest problems in our industry today? I think it is people. People problems certainly have been ours and I think probably everybody's. I think that too often we do not let our people know that they are important, needed and appreciated. Too often we don't give people the pat on the back they need to help their egos. We forget to tell them thank you for a job well done. We need people in our operations.

Another problem is communications. We have had seemingly forever this problem of how to communicate with people so they realize what it is they are trying to learn, or what you are trying to tell them, or what the company does. By definition, all communication is for the purpose of creating or altering belief. Give that some thought. That is the reason for communication.

We have found that the best way to communicate—and we are just beginning as novices in this area—is through television. Television is very much like the human senses. It involves more than just hearing. It is seen and sometimes touched.

Also, every one of us has watched TV in the past and watch it at home. We are preconditioned toward television and we accept it readily. An employee is more interested in your message when he or she can see the particular thing that you are explaining.

Our company has seen positive proof of the impact of visual communications in title work. It brings a new excitement to our service business while assuring that the message is absorbed more completely than through other methods. It is great for morale when people get involved in putting together television shows. We've all become movie stars.

Video Use

Have any of you here thought about using TV in training or orientation or have any of you had video tapes in your operations?

It may seem that use of television and video tape would be really expensive. It doesn't have to be. We, for example, took the economical route by doing it ourselves and it has worked out fine. We didn't need to hire outside producers.

I purchased the smallest color TV camera available, a used TV set, a used video tape player like many of you have at home, a half inch VHS, a home player and we were in business. The total outlay for all the equipment was under $1,500. When you think of what you can do with television—and we have found it fantastic so far—such an outlay is not very much at all.

You can spend thousands and thousands of dollars on this if you want to, and maybe we will come around to that if we become very good, but it is not necessary. We have had a large return for a small investment.

If your company puts together a television program you will need to start with a script. The script sets the tone of the program. It determines whether it is going to be comic or serious, documentary or entertainment. It establishes how long your program will be and sets your budget.

We first used television for orientation of new employees. We have had orientation programs for many years, not through any sort of mechanical gadgets in the past, but rather by word-of-mouth. We took new employees

Program participants of the Abstracter and Title Insurance Agents Section meeting were (from left) Jack Rattikin, Section Chairman Thomas McDonald and Glenn Graff.

around to our various departments. We tried to teach them what the whole thing was about, what our company did as a whole and the job of each person.

We decided that orientation by tour was taking more time than it should. We were using about half a day each time. We then put an introduction to the company on cassette tape. The tape, which featured a welcome speech by me and talks about the company by several other people, would be played for the new employee. But listening to a cassette tape uses only one sense and we noticed people becoming a bit bored. So, we went the route of video tape. The need for it is to show people what they can do.

Our orientation video tape begins with a welcome. I welcome the new employees to the company while walking around among the people that are working. I narrate a short history of the company and make them feel that they are part of an old organization and one that is still growing. We then move the camera to our various branch offices. If you are a smaller company, you may want to show an individual closing take place or another operation.

Next, our executive vice president, Phil McCulloch, describes what the company does while sitting at his desk and walking around. Our personnel manager is filmed describing the benefits and telling them what we offer. New employees also learn what our expectations of them are.

Some years ago, we had a full-time hired person to train people. The training program was good—we had every attorney in town asking for appointments to go through our two-week training course which we had designed for employees only. We started receiving more business because we were giving training to these people. But it required a full-time employee.

Now, we are going to tape a training program. We will tape it one time and will no longer need a full-time employee for the process. We have not completed this, by the way, but we are teaching closing, for example, by showing actual closings taking place. People can learn to be closing secretaries and learn on their own time.

We have used and plan to use the video and TV equipment for other purposes, too.

Other Video Uses

Every one of you go to seminars. We held one recently ourselves—a tax free exchange seminar. We invited every Realtor in the city to come. We seized upon the opportunity and took our equipment to video tape the seminar while it was going on, knowing that many Realtors could not attend.

The seminar was quite an educational event, for it took place when all the different types of creative loan ideas and new types of financing packages were put forward. The tax free exchange was a big topic.

We offered the tape to real estate people. They would furnish the tape and we would make a free copy of the seminar for them so they could show it at their own offices. Several Realtors had copies made. We also offered the film on loan, which many offices responded to.

"I cannot emphasize enough the necessity and importance of training people if you hope to keep them and make sure that their knowledge is always current."

Since we had our company name across the front of the film, it was a good public relations tool, too. All in all, the film was beneficial both educationally and for public relations.

We had a video tape of the seminar in our own office, as well, for our people to view at their leisure, during coffee breaks, after hours or whenever.

We plan to use the video tape equipment during various seminars. Most people don't mind, provided you ask permission.

Continuing education is another program for which video tape can be used. Our company thinks continuing education is essential to keep people up to date. If a closer doesn't know a particular new item, the customer will go to the competition. Our company has monthly meetings for continuing education, which are voluntary but to which a large percentage of our employees come and learn. We teach people about metes and bounds, probate law, and the like.

We have made substantial use of the video taped seminars for continuing education. We also quite often send people to seminars held

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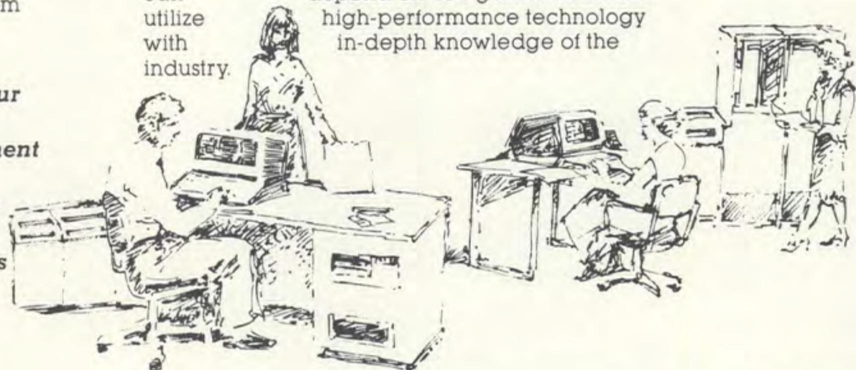

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by The Honorable Daniel K. Inouye

Indians, Appropriations and the 96th Congress

The rights of private citizens, the rights of Indians, the responsibility of our country and our responsibilities have combined to make Indian land claims a very complex issue.

I think most of us will agree that throughout history and especially in the last centuries, American Indians have often been abused and mistreated by the American system. History shows that this abuse perhaps has been a bit more than any other ethnic group has suffered in this country.

Today we are concerned about how well countries keep their promises. One of the arguments against SALT II is that the Soviet Union cannot be trusted with treaty obligations. And, yet when you look at the history of the United States and its relationship with the American Indian, it is a litany of broken treaties and promises.

We tried to do some research and found that of the hundreds of agreements and treaties entered into, we have fulfilled just about five. That doesn't speak too highly of our government.

In the process, one can say that Indian lands were stolen. I think no one denies that. The court cases have proven this. And, also in the process, inadvertently or deliberately, their culture has been destroyed and maybe the people themselves.

The time has come when our government will have to act with some decency and some honor in its dealing with the American Indian.

Sen. Inouye (D-Hawaii) is a member of the Senate Select Committee on Indian Affairs.

This brings me first to a happy note, because I think one of the brighter pages in our relationship with the Indians is the Maine Indian Land Claims Settlement Act of 1980.

This was a unique proposition before the Congress. It settled a dispute over tracts of land between a state and certain Indian tribes. In fact, at one time it covered most of the state of Maine and about 400,000 people.

It was also unique in its process, because for the first time, I believe, Indians, state, federal and private interests were able to sit down and come up with a settlement.

This decade, to some extent, will continue to experience what would appear to be a rash of Indian land claims against state and local governments and private individuals. And, if we are not able to resolve this as we did in the Maine Land Claims Act, you are going to be faced with years of litigation.

In the Maine case alone, it was estimated that if this matter had gone to court, as it would under ordinary circumstances, you would be lucky if you got out of there in 10 years. I think the more learned ones would say about 15 or more years. In the meantime, of course, the title of the lands covered by this litigation would be clouded. Those individuals who are now residing on such land are under the assumption that they own it but they can't borrow on it. The social and economic costs to the parties involved, I think, are beyond calculation.

There is some temptation to say, "Well, it happened so long ago, why not just forget about it? Give the Indians a few more dollars. They have been able to live this way now for 100 or so years. Why dig it up again?"

Some say that we can be concerned with

"The time has come when our government will have to act with some decency and some honor in its dealing with the American Indian."

honor and decency, but let's start with honor and decency today and forget about the past. Some have suggested that we pass a settlement act and just merely extinguish these claims by congressional fiat. It may be challenged in the courts but I think that Congress has a right to do that.

But, I think that for people who accepted in good faith our promises of sovereignty and protection and who now say that their good faith was ill-placed, this may not be the most just thing to do. As a federal court said, great nations like great men should keep their word. And, I would say that the Senate Select Committee on Indian Affairs unanimously agrees with that philosophy. So, if I were to predict, I would say that the Maine case has set a precedent for this committee in dealing with pending and future land claim problems.

Of all the known Indian claims, the Maine claim affected the largest land area—12.5 million acres or about two-thirds of the state. It affected about 350,000 to 400,000 people. All of you know that the claims of the three tribes in the state of Maine rested on the provisions of the so-called Indian Non-Intercourse Act, or the Federal Trade and Intercourse Act. This act was first enacted in 1790 and periodically re-enacted thereafter until it was made per-

The 1979–80 ALTA President-Elect James L. Boren Jr. (left) talks with Sen. Inouye.

manent law in 1834.

Among other things, the Act nullified land transactions between an Indian tribe and any non-Indian party unless such transaction was supervised and approved by the federal government. The genesis of this Act clearly was one of self interest on the part of the founders of the United States. It was not to protect the Indians.

Prior to, and during the Revolutionary War, the American colonists and the British were fully aware of the decisive military strength of the Indian tribes. Both the British and the colonists wooed the Indians to get their pledge of military support.

As a result, both the British and General Washington sent out agents to negotiate military support of the tribes. Two tribes sided with us and the remaining four went to the British. We told the Indians that if they fought on our side, their lands would never again be taken from them without their consent.

In 1781, the colonies adopted the Articles of Confederation of which Article 9 provided that the Continental Congress would have the whole and exclusive right to regulate affairs with Indian tribes.

As a result of continued encroachments of the colonists, a war movement arose among some of the tribes. The Continental Congress became fearful that these tribes would seek military alliance with tribes west of the Ohio Valley, thus creating an awesome military block. So they quickly passed a proclamation in 1783 which stated that any treaty or taking of land from a tribe was void without the consent of the Continental Congress. This proclamation was a forerunner of the Non-Intercourse Act and it formed the basis of the recently filed land claim of the Oneida Indian nation in the state of New York.

What Knox Concluded

In 1789, the first Secretary of War Henry Knox, wrote a lengthy report to President Washington assessing the military capacity of the tribes and the possible cost to the United States if war were to break out with the Indians. He was a very practical man and he concluded that we should assume a peaceful posture toward the Indians and this policy should be manifested through treaties of peace which would commit the United States to the protection of the tribes and their lands from any further encroachment.

In the first year of the First Congress under the new Constitution, the provisions of the Northwest Ordinance of 1787 were re-enacted. It provided: "The utmost good faith shall always be observed towards the Indians, their land and property shall never be taken from them without their consent. . . ." In fact, it may interest you to know that because of our concern over Indian military strength, the first five acts passed by that historic Congress related to Indian affairs. That is how much we were concerned. It was in the context of this historical backdrop that Congress enacted the first Indian Trade and Intercourse Act the following year, which set the policy of prohibiting the taking of Indian land without federal consent.

All these historic facts meant much to the Senate Select Committee on Indian Affairs. It was difficult, therefore, for us to take the attitude that these events were long passed and should be forgotten.

Accordingly, in December 1979, we began holding lengthy hearings and are happy to note that the settlement was finally passed and became law. But, there is something among the Indian claims that concerns us very much and here I think you can be an immense help. It is a small and new committee. It has never been given the priority that it deserves. As a result, our staff has been inadequate and small. We are concerned with what I foresee as a period of lengthy and bitter litigation if nothing is done. I refer to the 9,500 claims that have been identified and are now being processed by either the Justice Department or the Interior Department.

As a result of the evidence of these 9,500 claims, we extended the statute of limitation to Dec. 30, 1982 to give these departments sufficient time to look over these claims on the basis of merit and hopefully provide them an opportunity to negotiate amicable settlements with effective third parties where possible or institute litigation when necessary.

The Maine law is the first major land claims to be settled since the extension was granted. The committee believes that it justifies the philosophy that led Congress to extend the statute of limitation. I think it justifies our contention that these problems can be resolved without resorting to unnecessary litigation and that, though not always, it can help avoid unnecessary hardship.

Of all the 9,500 claims identified by the Department of Interior, the Eastern Seaboard claims, or those premised on the Indian Trade & Intercourse Act, are but a few. The Maine land claim was, of course, the largest. However, there are significant claims from the Oneida and Cayuga in New York, the Catawba in South Carolina and the Chitimacha in Louisiana as well as smaller claims in other states along the Eastern seaboard such as the Pamunkey Tribe of Virginia.

Cayuga Claim Legislation

Legislation was introduced in this Congress to settle the Cayuga claim which was supported by the tribe, the governor and by the New York State Senate. However, this settlement stalled in the House when an amendment was offered by the sponsor of the measure to require the approval of both Houses of the New York State Legislature. The Committee did not adopt this amendment and when the sponsor spoke against the bill, it didn't pass.

However, I fully expect that we will see similar legislation introduced on this claim early in the next Congress. In addition, I am advised that the Catawba claim is approaching settlement, as well as two small claims in the state of Connecticut. As you know, the claim of the Narragansett Tribe in Rhode Island was resolved during the 95th Congress.

So, it appears that many of the Eastern Seaboard claims, those based on the Intercourse Act, are well in hand and are moving toward early settlement based on the consent of all parties concerned.

Our major concerns at this time are the 9,500 individual claims. As you know, the character of these claims are significantly different from the Eastern Seaboard cases. The vast majority of these claims involve legal rights or entitlements of individual Indians, as opposed to claims by Indian tribes or Indian nations.

In the late 1800s, the United States adopted a policy, and I think the intention was good, to break up Indian reservations and assist the Indians in assimilating with the rest of America. We hoped to accomplish this by allotting to each individual Indian a specified parcel of tribal land to be used for farming or ranching. All of the surplus land would be thrown open

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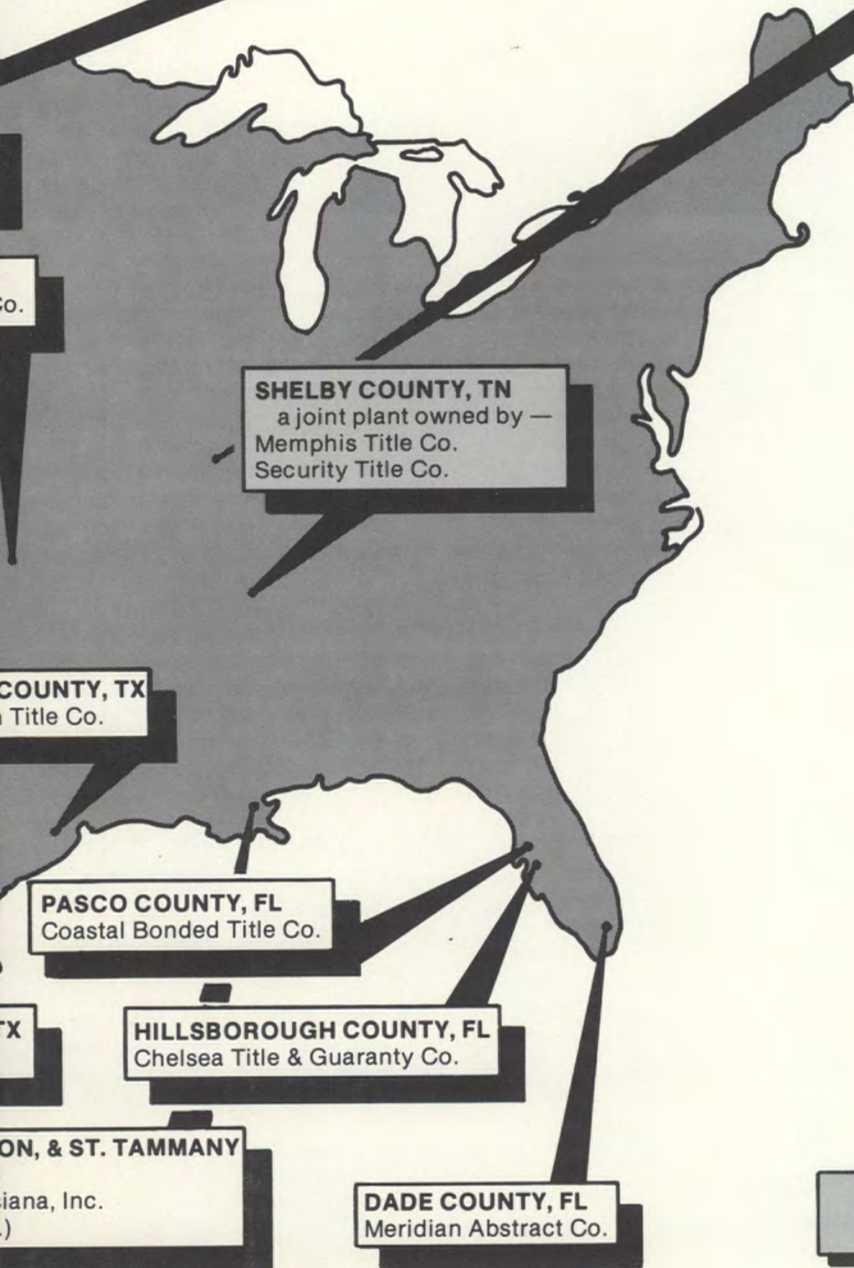

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by Arthur B. Laffer

Economic Policies For The 1980s

For generations, two schools of economic thought have been battling it out in the political arena of the United States and elsewhere in the world. For the sake of argument, I shall call one of them the redistribution school. The other I will call the income growth school.

In the 1920 U.S. presidential election, for example, Warren G. Harding, an income-growth candidate, faced his predecessor Woodrow Wilson's hand-picked candidate James M. Cox, who was a redistribution candidate.

Cox wanted to keep tax rates high after World War I to pay off the war debt. Harding, on the other hand, wanted to cut tax rates and cut them a lot. His campaign slogan was "Return To Normalcy." Harding won by the largest plurality ever in the United States. But, several things went wrong in the course of his administration.

The first problem was that he was involved in the Teapot Dome Scandal. The next, that bothered him even more, was that he died in office and Calvin Coolidge became president.

Andrew Mellon, who was secretary of treasury in 1922 and 1923, significantly cut tax rates. The highest tax rate of 78 percent was reduced to 25 percent. He cut the lowest tax rate from six percent to 1.5 percent.

The period immediately following Mellon's action came to be known as the Roaring 20s. We paid the war debt in six years. It was a period of incredible expansion.

Herbert Hoover, who was secretary of commerce under Calvin Coolidge's presidency, despised Andrew Mellon. So, when Hoover became the Republican party presidential nominee and was elected in 1928, one of the first things he did was to fire Andrew Mellon.

Then, seven months after his inauguration, he pushed through Congress the Hawley-Smoot Tariff Act which significantly raised duties on imports. The day this legislation passed the Senate became known as Black Thursday. It was that day that the stock market tumbled. Then there was another huge collapse when Hoover signed the bill into law.

What we see today in the United States—the conflicts and discrepancies—are not new. They have been around for a long time in the debate between proponents of income growth and redistributionists.

Then there's the idea that somehow people don't work to pay taxes. Some work to get what they can after taxes. The notion arises every now and then that businesses do not locate their plant facilities as a matter of social conscience. They basically locate plant facilities to make an after-tax rate of return on their investments.

Looking back into history, another conflict between redistributionists and growthists surfaces in the 1950s between Sen. Robert A. Taft and President Dwight D. Eisenhower. Taft managed to get an enormous tax cut through Congress. Eisenhower vetoed it.

"The period immediately following Mellon's tax cut came to be known as the Roaring 20s. We paid the war debt in six years. It was a period of incredible expansion."

In the next decade, the conflict occurred again, although this time the political parties switched. President John F. Kennedy pushed through a tax rate reduction for the country. He was opposed almost entirely by conservative Republicans who lambasted his tax policies as opportunistic demagoguery—just pure, irresponsible economic policies.

Again, today, we face many of those conflicts. There is the redistribution school—those who believe people work because there are jobs, not because they are paid. Those who believe that people save because their incomes are high, not because they make an after-tax rate of return. Those who believe that the best way of helping the poor is by taxing the rich.

The redistributionists are pitted against those who believe, as Jack Kennedy put it, that a rising tide raises all boats, that no American is made better off by trying to pull a fellow American down, and that all Americans are better off whenever any one American is made better off.

How will income distribution be rectified? How will the system be brought back into balance? Do we go all out for income growth or do we try to redistribute what income there is within the system?

The debate has not been confined to the United States. It surfaced most notably in the British House of Commons between 19th Century growthist William E. Gladstone and Benjamin Disraeli. While Gladstone was far and away the better economist and politician, he was noticeably inferior to Disraeli in the skills

Professor Laffer, an economist, is on the faculty of the University of Southern California, Los Angeles.

of debate. Disraeli took no small pleasure in crucifying Gladstone in their public debates.

One story of an especially bitter Gladstone-Disraeli exchange relates that in a peak of rage, Gladstone turned to Disraeli and said, "Sire, may you die in an asylum of social disease."

Without a moment's hesitation, Disraeli is reported to have replied, "That, my dear sir, depends upon whether I embrace your policies or your mistress."

The Present Debate

The debate has been going on for a long time. I will give you the current version of the debate, which I think you'll recognize.

Demand-side economics is a school that arose in the post war era and became very powerful in academic institutions. The failure of classical economics was deemed complete in the 1930s. They were rejected at the libraries and were burned. Basically, the academic institutions throughout the Anglo-Saxon world focused almost entirely upon demand side economics.

Demand-side economics presumed that supply would accommodate any increase in aggregate demand and that whatever happened to demand, supply would automatically go along with it.

There are demand-siders at my old university. They are called monetarists. Their basic presumption is the only way that government can change aggregate demand in the system is by printing more money or by destroying money.

Their argument goes along like this: If you print more money, more people have more money in their pockets. They buy goods and services which in turn, creates jobs and helps employment income. Supply just automatically goes along with that increase in demand. There is, however, a nasty little side effect. After a long lag, prices start to rise because if you want to increase demand output, employment and production, you have to pay for it.

Although nowadays this monetarist theory is challenged at Harvard, Yale, MIT and the University of Minnesota, Milton Friedman does have a point in all this that's true. There is some effect there because if you increase government spending, people have more disposable income in their pockets. They then buy food, clothing and shelter, which, in turn, increases jobs, outward employment and higher income.

Now, there's a cascading effect on the system. By increasing government spending, we can increase aggregate demand and again, supply which automatically accommodates that increase in aggregate demand.

I hate to tell you, but the bad news is that if aggregate demand is increased too much, you get closer and closer to full employment. You get capacity constraints and bottle necks. As this occurs, inflation gets higher and higher. There's the trade off between inflation and unemployment. If you are going to reduce unemployment, you have to have higher inflation. Sounds familiar, doesn't it?

The ways of stimulating the economy are printing more money and increasing government spending. Now there is one policy that they all agree on. It is a demand-side policy

Arthur B. Laffer

and you may recognize it. It essentially involves stealing demand from foreigners. This means that we make our goods more competitive. If our goods are more competitive, we will be able to get demand from foreigners by devaluing the currency. Our goods are then cheaper; foreign goods are more expensive, and foreigners will buy more of our goods.

Our exports will increase. Our demand will increase. If foreign goods are more expensive, our citizens will buy fewer foreign goods. Therefore, our citizens will buy more of our own goods. That will increase demand and we will get an increase in output.

There is a slight drawback, however, in that if you devalue your currency, prices of imported products go up. As they wind their way through the economy, slowly but surely, you get higher and higher rates of inflation.

Again, you can see that basically the demand-side view is that supply automatically accommodates any increase in demand, and that the way to stimulate the demand is through government demand-oriented policies. The cost of the demand policy, however, is always higher inflation.

The three basic policy tools of the redistributionists, or the demand-siders, is to increase government spending, increase the quantity of money and devalue the currency.

In December 1971, the Counsel of Economic Advisors announced that the devaluation of the dollar alone created 500,000 new jobs in America.

Wage and Price Controls

One other economic policy that I would like to mention to you concerns regulations. Imagine, if you will, a cabin way back in the woods. Scraps of profligate demand-side policies—little pieces of bone and bread—litter the floor of the cabin.

A closet door squeaks open and out comes a woman with a broom to clean up the mess. Her name is wage and price controls. She's not fully attuned to demand. If we could stimulate aggregate demand, we could have an increase without inflation.

The inexorable conclusion from the demand-side economists is that ultimately if you are going to stimulate demand and keep the economy in full employment, you must have a system of wage and price controls to stop inflation.

It was about 1965 that demand-side economics was finally put into place. We finally were able to cure your problems, even though you may not have recognized how wonderful our theories were. You can see how successful we've been. Just take a look at how far we have advanced since 1965. The unemployment rate in 1965 was a little less than four percent. The inflation rate was about 1.5 percent. By the way, that's when they measured unemployment and inflation per year, not per month, the way we do now. The federal budget in 1965 carried a slight surplus. The prime rate in 1965 was about 4.5 percent.

Classical economics, on the other hand, focuses almost entirely on economic incentives. At the heart of classical economics is that people have a choice in how they allocate their time and their wealth.

In general, if you increase the incentives for doing an activity, people will do more of that activity. If you reduce the economic incentives for doing an activity, people will do less of that activity. People allocate their time according to economic incentives. And when you change those incentives, people change their behavior.

As an example, you may recall that in the first five minutes of your first economics lecture in college, you learned a basic principle which still stands. It is this: In general when you tax a product, you get less of it. When you subsidize a product, you get more of it. Taxes reduce a quantity of a commodity. Subsidies increase the quantity of a commodity.

If you look at U.S. policy in this perspective, you can see that over the past 15 years we have been doing basically two things. We have been taxing work, output and employment and we have been subsidizing non-work, leisure and unemployment.

Based on this principle from Economics I, it should come as no shock why we are getting so little work, output and employment and why we are getting so much non-work, leisure and unemployment.

The real difference between classical economics and demand-side economics, is focus on economic incentives and the reasons why people work, why they save and why they produce.

Kennedy Economics

Jack Kennedy's administration of the early 1960s is noted for one thing on the economic front. During that administration taxes were cut

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"The three basic policy tools of the redistributionists, or the demand-siders, is to increase government spending, to increase the quantity of money and to devalue the currency."

"In general when you tax a product, you get less of it. When you subsidize a product, you get more of it. Taxes reduce a quantity of a commodity. Subsidies increase the quantity of a commodity."

a lot. In fact, what President Kennedy did is the precise opposite of what his brother Ted said at the Democratic National Convention last August. Jack Kennedy cut taxes the most on those who made the most. He cut taxes the least on those who made the least and he didn't cut taxes at all on those people who didn't make anything. He cut the 91 percent tax rate to 70 percent and the 20 percent tax rate to 14 percent.

He cut taxes on business a great deal. He cut the corporate profit tax rate from 52 percent to 48 percent. He tried to cut the corporate rate from 52 percent to 46 percent but the conservatives in Congress blocked him, saying that it was an opportunistic policy that would lead to roaring deficits and rampant inflation. He wanted to cut the capital gains tax rate but it wasn't even proposed, because he knew he couldn't get it through Congress.

He also cut taxes on business by accelerating depreciation. You may remember that in the early 1960s depreciation was accelerated, which lowered the effect of tax rates on business. Kennedy also put in something for the first time in the United States called the investment tax credit. He also cut tax rates on traded products. It was called the Kennedy Round Tariff Negotiations.

His arguments were very simply stated in a special message to Congress on tax cuts in 1963. He said that we are re-instilling a fundamental American principle into American life. That is that if a man works harder, if he produces more and earns more, he deserves to keep some of his increased earnings.

From 1961 through 1966, U. S. real GNP on average grew 5.4 percent per year. The unemployment rate in 1961 was 6.75 percent. By 1965, it was below four percent. The inflation rate during the Kennedy administration and to 1966 was between one and two percent a year. The stock market rose, interest rates were low and the economy sharply expanded.

What happened to the federal budget? In 1961, the federal budget was in deficit, by almost $4 billion. By 1965 it was in surplus. Yet, Jack Kennedy had a reputation as a wild spender. If you look at it, federal government spending as a share of GNP fell precipitously during the Kennedy administration.

He argued very strongly that the best form of welfare is a good, high-paying job and that the best way of creating wealth and reducing government spending is by creating jobs in the private sector—to expand it so you don't have to have welfare spending.

It was with Richard Nixon that demand-side policies were fully put into effect. The first thing that President Nixon did was to double the capital gains tax rate. During 1969-72 we had a little bit of inflation which pushed people into higher tax brackets.

In fact President Nixon increased the rate of growth of the quantity of money. Government spending increased fairly substantially during that administration. Then in 1971, we devalued the dollar and imposed a ten percent import charge on products imported in the United States.

So, let's analyze the results of these demand-side policies. If you look at it from 1969 through 1975, U. S. real GNP on average grew less than 2.5 percent per year.

The unemployment rate went from 3.5 percent in 1969 to almost 8 percent in 1975. The stock market tumbled. Interest rates rose. Inflation averaged seven percent per year during the Nixon administration.

In 1969, the federal budget was in surplus by $8 billion. By 1975, there was a slight deficit of a little bit over $70 billion. That's when we resurrected Everett Dirkson's observation, "You can take a billion dollars here and billion dollars there, but sooner or later it adds up to real money."

Nixon-Kennedy Comparisons

Let's compare government spending during the Nixon administration with spending under Kennedy.

Under Kennedy, defense spending in real terms increased dramatically. His argument was that your best defense spending is always wasted. Whenever you have to use your military hardware and prowess, it is a clear sign that you have not spent enough. His argument was that putting a lock on your door is not wasted money.

During the Nixon administration, defense spending fell sharply in real terms. But social spending, on the other hand, was the largest increase as a share of GNP of any administration in U.S. history.

The first theorem of classical or supply-side economics is quite simply this: When you lower tax rates, you increase the incentives for production and you will expand the tax base. When you raise tax rates, you lower the incentives for production and you will contract the tax base. As tax rates rise, growth rates fall. As tax rates fall, growth rates rise. If you look around the world, you can see other examples of it.

Take, for example, post war Germany and Japan, two major developed countries. They have cut their tax rates consistently throughout the post war era. Compare their growth rates to ours, and that of the United Kingdom and Italy. If you like, compare cities. Compare New York City which has raised its tax rates dramatically with Houston, Texas. See which one is doing better.

"Jamaica has the highest tax rate of all the islands. Bermuda has no income tax whatsoever. Which one has more poverty, more dispair, more unemployment? Which one is bankrupt?"

"We have been taxing work, output and employment and we have been subsidizing non-work, leisure and unemployment."

Compare islands in the Carribean. Jamaica and Bermuda were both formerly British colonies. The population of both are generally one-half black, one-half white. Jamaica, however, has the highest tax rate of all the islands. Bermuda has no income tax whatsoever. Which one has more poverty, more dispair, more unemployment? Which one is bankrupt? Which one has taxi cab drivers who can send their children to finishing schools in Switzerland?

If you look at growth rates among states, compare New Hampshire with Vermont. Look at what happened in my home state, California, since Proposition 13 passed in 1978. Our growth rate has increased dramatically. In fact, the one especially noteworthy fact of Proposition 13, and all the tax cuts that came with it, is that our unemployment rate which was substantially above the national average is now well below the national average.

If you look at what happened since Ed King was elected governor of Massachusetts you will see that their unemployment rate has gone from more than two percent above the national average to slightly below the national average.

Politicians and economists have a great deal in common, as you probably know. In fact, they overlap almost precisely. There's only one big difference that I can think of between politicians and economists. You'll often hear economists politicize but have you ever heard of a politician who economizes?

The next theorem of economics is very important and I think it will be the essence of the 1980s and 1990s. It's the notion that somehow the incidence of tax is the same thing as the burden of tax. The notion that somehow we can change the distribution of income by changing the tax structure and the spending structure.

The whole basis of the progressive income tax is the more you make, the better off you are and the more you can afford and therefore you should pay higher tax rates. The less well off you are, the less you make and the tax rates you pay are lower.

Obviously, if we have a certain amount of government spending, you should give that spending to those who need it the most—the poor. So therefore, you have a needs test and income test. This means the more you make, the less you get; the less you make, the more you get.

I am sure that you recognize the model. Jimmy Carter's first statement in the budget this year was that this budget, first and foremost, is fair. This means that we have not failed to recognize human values and we have not sacrificed people by taking away from those who are poor. Therefore, we give more to the poor

to help them as a social gesture because it's fair. It's equitable. It's decent.

Do you recognize what I'm talking about? Redistribution. The idea that the incidence of tax is the same as the burden of a tax. That model makes sense in every field of academic endeavor I know of, except economics.

Robin Hood's Economics

Our first lesson in economics and, in my view the worst story in economics, is the story of Robin Hood.

I will retell the story of Robin Hood to demonstrate that there is no relationship whatsoever between the incidence of a tax structure and the burden of that tax structure.

If you remember, Robin Hood would wake up in the morning in Nottingham. He would don his light green leisure suit and go zipping out into Sherwood Forest. He would wait by the trans-forest thruway and when a real rich merchant would come by, he'd stop him and chat with him for a while. Then, he'd take everything the guy had and let him run naked out of the forest.

Well the man was rich. He could afford it. If another person came by who was only doing fairly well, Robin would take a chunk from him. But he wouldn't take it all, because he was less rich than the first type and therefore couldn't afford that much.

If a person came by who was really poor, Robin would only take a token amount from him. He only stole from the rich, because they could afford it and they still had a lot afterwards anyway.

At the end of the day, he would take his contraband back into Nottingham and wander the streets. If Robin found a person who had nothing, he would dump a lot of goodies on him.

Walking a little further, he found a guy who might classify as working poor. He earned minimum wage—maybe $6,000 or $7,000 a year. He didn't need it as badly as the first guy, so he gave him a little less, but it sure helped him a lot.

Then, he found a normal, average citizen whom he greeted, "My name is Robin Hood. I'm your local redistributionist agent. I just want to tell you that I love you dearly. You are my people. I want to give you a little token. I know you are doing all right and that you don't need much but here are a couple of dollars."

You may remember that one from President Gerald Ford. You remember when he said, "My name is Jerry. This is my wife Betty. We just want to tell you we love you all here in the United States so much and that we want to give you each a $50 rebate. Take your wife out to dinner. I know it won't pay for the wine but it's on me and Betty."

"I am now optimistic that leaders are realizing that you can motivate people to work for a while on nationalism, on religious fervor, on even oppression, but basically, if you want workers to work, you have to pay them — and after tax."

"If I ran this class the way your government runs your country, I would flunk all the 'A' students and give all the 'F' students scholarships."

Basically, Robin stole from the rich and gave to the poor. The rich could afford it and the poor needed it desperately.

Imagine, for a moment, that you are a merchant in the ancient days of Nottingham. How long would it take you to learn not to go through the forest? People do not work to pay taxes. People work for what they can get after taxes. In today's world, of course, people get Newport Beach condominiums, special write-offs, tax exempt bonds and Bermuda corporations.

Of course, in ancient days they didn't need those things but some of the merchants would decide that they couldn't afford to go through the forest any longer. So, they would go around the forest.

Now that route was a lot more expensive. It has bumps and was a lot longer. It cost them a lot more to trade to the neighboring villages.

Other merchants hired armed guards to take them through the forest. Now, armed guards were expensive in ancient days in Nottingham. Just as they are now. It cost them a lot more to trade in the neighboring villages. If it cost merchants more to trade in the neighboring villages, did they sell their goods to rich and poor alike at higher or lower prices?

Robin Hood realized that the only merchants coming through the forest are so heavily armed that he can't rip them off. So, at the end of the second day, he walked into Nottigham empty-handed. By stealing from the rich and giving to the poor, he has made the poor worse off by forcing them to pay higher prices for the market system than they otherwise would have.

There is no relationship between the incidence of the tax and its burden. As often as not, by stealing from the rich and giving to the poor, you make the poor worse off.

I was born in Youngstown, Ohio, and raised in Cleveland. We had a story back in Cleveland that our truck drivers' wages weren't very high when there were no trucks around to drive.

If you overtax capital savings and investment, you are going to get less capital savings and investment. There are going to be less trucks around to drive and the wages of truck drivers should be lower.

The truck drivers, as often as not, are better off by lowering tax rates on capital formation. Symetrically, capitalist profits are, as often as not, better off by lowering taxes on the wages of workers. There are no wages when there is no capital and there are no profits without workers.

Capital and labor aren't enemies in the production process. They work together. The more capital there is, the higher the wages of workers. The more workers there are, the higher the returns to capital.

To make the point to students, I've got to make an example that hits right close to home, *i.e.*, their personal lives.

Classroom Economics

I try to combine these first two theorems of classical economics for my class. I say, "If I ran this class the way your government runs your country, I would flunk all the 'A' students and give all the 'F' students scholarships."

My "A" students are a little bit brighter than my "F" students. Once they know the rules of change, my "A" students can get lower grades than the "F" students because they don't randomly make a mistake of guessing a right answer.

As you can see very clearly by the example, I have not changed the distribution of grades in the overall system. The same students get all the scholarships, the same students are still flunked out. But what I have succeeded in doing by changing the rules is to destroy the quality of the entire educational process.

Fiscal policy cannot effect the distribution of after-tax spending power. But it can affect the total volume of spending power. What we have done in the last 15 or 20 years in this country, is use our tax structure and spending structure to redistribute income which it has not done. We ignored in its entirety the creation of wealth and income in the system, which it has destroyed. Fiscal policy cannot change the distribution but it can change the total volume.

I was talking to my Dad about some of our family traits and he said, "Son, you know we in the family have been noted for a lot of things for years, but one of the most important characteristics that we've ever been noted for is that we've left some of the finest countries in the world."

In fact, the family motto is that when the going gets rough, the Laffers get going. I was debating leaving this country. I saw what it was doing to my kids and did not see the future to be very encouraging. Then I started seeing some changes.

Tax rate increases were stopped. In the state of Washington they knocked down a 12.5 percent corporate profits tax. Massachusetts voters rejected the progressive income tax. Other encouraging things happened in New York, Puerto Rico, Wisconsin and Massachusetts. It started to make me feel a little bit better.

I am now optimistic that leaders are realizing that you can motivate people to work for a while on nationalism, on religious fervor, on even oppression, but basically, if you want workers to work, you have to pay them, and after tax.

"By stealing from the rich and giving to the poor, he has made the poor worse off by forcing them to pay higher prices. . . ."

The American Economy in The 1980s

by Richard W. McCarthy

I will discuss some of the important changes that have occurred in the world economy and point out the problems that these changes have engendered for the United States.

These changes have caused the business community to view the role of the nation-state in a different light today. That is, business in the past viewed the national interest as being paramount to individual corporate interests. At the present, the opposite is true which the following quotes illustrate: "If might and eminence of a country consist in its surplus of gold, silver, and all other things necessary or convenient for it subsistence, derived, so far as possible, from its own resources, without dependence upon other countries, and in the proper fostering, use, and application of these, then it follows that a general national economy should consider how such a surplus, fostering and enjoyment can be brought about, without dependence upon others or with as little dependence as possible upon foreign countries. . . . neither sympathy nor compassion should be shown foreigners, be they friends, kinfolk, allies or enemies. It is better to pay for a poorer quality article two dollars which remain in the country than only one which goes out."

The second quote, which is shorter, is: "I have long dreamed of buying an island owned by no nation, and of establishing the world headquarters of my company on the truly neutral ground of such an island, beholden to no nation or society. If we were located on such truly neutral ground we could then really operate in the United States as U.S. citizens, in Japan as Japanese citizens and in Brazil as Brazilians rather than being governed in prime by the laws of the United States. . . . We could even pay any natives handsomely to move elsewhere."

The first quote was taken from Phillipp Von Hornick's *Austria Over All If She Only Will*, published in 1684, while the second was made in 1972 by the Chairman of the Dow Chemical Co., Carl A. Gerstacher, in *The Structure of the Corporation* which was prepared for the White House Conference on the Industrial World Ahead. To quote the spokesman of a competitor of Dow, Union Carbide, "It is not proper for an international corporation to put the welfare of any country in which it does business above that of any other."

Emphasis Shifts

What is important about these quotes is the shift in emphasis from the equating of national and corporate well-being to the anti-national consciousness being sought by today's Multinational conglomerates. For example, the names "American" and U.S. are disappearing from some of the Nation's oldest and most prestigious firms. American Metal Climax is Now "Amax," American Brake Shoe is now "Abex," and U.S. Rubber is "Uniroyal," to cite a few.

"Globalization has weakened or totally negated the ability of national governments to adjust their own economies."

The growth of multinational firms has led to a number of developments. First, technology in the production process of any corporation has become relatively standardized worldwide. Second, communications between branches and subsidiaries have become instantaneous. Third, when a national corporation evolves into a global one, the basic change in goals is that of maximizing the long-run profits of the parent's total global system.

There is now abundant empirical and mathematical evidence to prove that global system profit maximization does not necessarily mean the maximization of each subsidiary's profiits —the goal becomes global tax minimization which is achieved by, among other things, transfer pricing. This aspect of a global corporation makes uncertain whether a parent's operation of any given subsidiary will be in harmony with a given country's national welfare. Lastly, the multinationals engage in the planning of total corporate strategy worldwide.

The growth of multinational firms has been going on since the 1950s. However, the structural transformations of the U.S. economy seem to have occurred somewhere between 1965 and 1967—which was also the beginning of the "stagflation" phenomenon. This turning point in the transformation of the economy can be seen from the following. In 1960, the proportion of total corporate U.S. profits derived overseas was seven percent, with exponential increases beginning around 1967. Today, more than 30 percent of total U.S. corporate profits are derived from overseas. In 1957, U.S. corporate investment in overseas ventures was nine percent of total U.S. corporate domestic investment. By 1970, it had reached a figure of 25

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percent—with exponential increases beginning in the years 1965–1967.

In 1961, sales of all U.S. manufacturing abroad represented seven percent of total U.S. sales. By 1970 foreign sales were more than 13 percent of total sales of all U.S. manufacturing corporations. Once again, the major spurt began in 1965.

In the U.S. banking sector, current foreign dollar deposits of the nation's largest global banks are estimated at more than 65 percent of their domestic deposit holdings—the figure in 1960 was 8.5 percent. In the U.S. domestic economy, the years 1955–1970 were years of unprecedented increases in industrial and financial concentration.

I have centered my attention of the years 1955–1970 because it is in this period that the U.S. economy became both more highly concentrated and more dependent on the foreign sector.

Stagflation

The outcome of this growth in foreign dependence and the increase in centralization has been, to repeat, a new phenomenon—"stagflation," and beginning in 1965, the synchronization of the business cycles of the industrialized nations. Prior to 1965, the downturns in the U.S. economy coincided with upturns in most other foreign economies.

This new phasing of business cycles has a great deal to do with the speed at which the world political economy is being integrated through the globalization of its largest corporations. Due to revolutionary developments in international management and communications, an event in one part of the world has an immediate impact in other parts. Global corporations and banks act as instant transmitters. Then too, because production changes are dictated centrally by the global headquarters but are carried out in many different countries, changes in productive output are, increasingly, occurring simultaneously across the planet. This new stage in global interdependence is shortening what economists call the "foreign trade lag" or the time it takes to transmit supply and demand changes between different economies. The convergence of business cycles is a major factor complicating the task of maintaining stability in each national economy.

In the past when the U.S. economy was in a slump and the Europeans and Japanese had upturns in their economies, the effect was positive, since strong markets abroad for U.S. goods at a time when domestic demand was slackening helped restore balance to the U.S. economy. Similarly, when the U.S. economy was booming and the other industrial nations were on a downturn, the effect was a healthy one. Foreign nations would reduce their own demand for American products and increase their exports to the United States, thus adding to the supply of goods in the United States and decreasing inflationary pressures. But today, when all industrial nations experience upturns and downturns together, world trade no longer functions with such positive consequences.

The rise of multinational banks and corporations has brought about a global interdependence which has caused the traditional Keynesian and monetarist approaches to economic stabilization to become increasingly useless and simplistic.

"The reason that the United States has lost sovereignty over the money supply is because of the ability of multinational banks to use the Eurodollar market to circumvent U.S. monetary policy."

Both as an undergraduate and a graduate student in economics, I was taught that there were basically three policy tools available to influence national economic activity. These were:

- Exchange rate policies to cause imports and exports to change and thus affect the balance of payments and gross national product through aggregate demand,
- Fiscal policy (tax changes, change in government spending, changes in depreciation allowances, investment tax credits, etc.) which could be used to influence consumer demand and/or business investment and thus aggregate demand and GNP, and
- Monetary policy which impacts on interest rates and prices and thus on corporate borrowing for investment. This again, with foreign sector repercussions in capital flows, affected GNP.

However, globalization has weakened or totally negated the ability of national governments to adjust their own economies. As the editors of *Fortune* noted, "... the more a country becomes part of the world-wide market, the more it loses control over events."

Dollar Devaluation

For example, in the area of exchange rate policies, in December 1971, in response to a worsening trade deficit, the United States devalued the dollar 11 percent. According to traditional theory, this should have stimulated lagging U.S. exports because U.S. goods would become more attractive for foreign consumers. The balance of trade would be further helped by the corresponding rise in the price of imports in the United States since presumably demand would fall. However, the real volume of exports and imports did not change perceptibly.

The reasons why the devaluation did not work are: First, foreign multinationals exporting to the United States and the overseas subsidiaries of U.S. global firms, fearing the loss of their share of the U.S. market did not permit their prices to rise by the 11 percent dictated by the devaluation—they trimmed their profit margins to assure the long-term stability of their market shares. Second, Europe, Japan and the United States were all beginning to recover from downturns in their economies. This meant that Japanese and European consumers, instead of being at the height of their "boom" as in the 1950s and 1960s, did not have the relatively larger quantities of disposable income to buy significantly larger amounts of American goods. Thus the devaluation failed to achieve its desired results—a reduction in the trade deficit and a stimulus to gross national product.

Therefore, in 1973 the dollar was devalued another six percent. This time, all the industrial countries were in the "boom" phase of their business cycles. Demand was high in Europe and Japan for U.S. products. By September, the United States had a trade surplus of $873 million. However, the cut in the price of U.S. goods abroad and the rising demand there resulted in massive exports from the United States at a time when U.S. consumer affluence was rising, thus causing a dramatic price rise here because the domestic supply of goods was decreasing due to rising exports. Concurrently, prices of imports into the United States, many of which are basic consumer items, rose 17 percent in a year. Thus, the devaluation solved the trade deficit but the cost was rapid inflation.

A few weeks ago *Fortune*'s cover carried a picture of Paul Volcker with a headline, "Why can't he hit his targets?" This referred to the fact that the Federal Reserve Board is having trouble controlling the money supply. The reason the United States has lost sovereignty over the money supply is because of the ability of multinational banks to use the Eurodollar market to circumvent U.S. monetary policy. For example, the Federal Reserve Board tries to restrict credit by decreasing the money supply which causes interest rates to rise. But the higher interest rates attract the short-term liquid assets of global corporations and banks which are held in the Eurodollar market. Thus dollars begin to flow into the United States. This negates and can even outweigh the decrease in the money supply that the Federal Reserve Board was aiming for because of the rising interest rates. Not only dollars but other currencies will flow into the United States and if the United States wants to maintain the international value of the dollar, these other currencies must be purchased by the monetary authorities *with dollars*.

Thus, again, we are forced to move in a direction directly opposite to that which was intended. When the authorities try to increase the money supply—the opposite happens—interest rates begin to fall causing the multinational corporations and banks to shift their funds to their European subsidiaries—thus reducing that which was to be increased. Volcker has attempted to solve this problem with an eight percent set aside—however, it appears that this is not enough.

The decade of the 1980s will prove to be a time when the economics profession will have to undertake spring cleaning or nations will continue to lose sovereignty over their domestic economies.

It is time to throw out simple economics and simplistic economists. Monetary and Keynesian policies do not work because they were drawn up in and address a world that no longer exists. The answers that David Hume, one of the first monetarists, gave to inflation and other

(continued on page 34)

Unauthorized Practice—*(from page 19)*

• Their title insurance is available only through lawyers, and only in conjunction with the purchase of other services which a prospective insured may not need or want.

• They maintain a close relationship with the organized Bar in the states in which they do business.

• They advocate the use of bar-related title insurance exclusively.

• Their own activities are purposefully confined to the business of insurance and do not extend to providing closing services.

• They do not compete with one another. Even though several LTGFs do business in several states, no two or more do business in the same state.

• They rebate to their lawyer-members any "excess of remittances over costs" in proportion to the amount of business referred.

• Their demonstrable (if not avowed) purpose is to preserve and expand the lawyer's role in real estate transactions.

As we noted, the bar funds are an outgrowth of the perennial competition between lawyers and title companies for real estate settlement business. Having been generally unsuccessful over the years in attempting to prevent title companies from making settlements by calling them "the practice of law," the lawyers retaliated with the "fund concept" which was intended as the carrot to entice the public back to lawyers for the performance of settlement services while the Bar would continue to beat the commercial title industry with the "unauthorized practice" stick.

Where unauthorized practice litigation has actually gone to judgment, the title industry seems to be holding its own. But, the threat of prosecution remains a significant inhibiting factor for most title companies who would like to vie openly for settlement business. And the lawyers' ability to offer their own title insurance—which is, even the Bar admits, the principal protection to which real estate investors now look—while holding the commercial title industry at bay with the unauthorized practice of law rules enables the lawyers to exert significant control over the placement of title insurance business to their own considerable advantage.

If the lawyers were to place that business even-handedly on the basis of the purchaser's best interest alone, perhaps the situation would not be so bad. But the inducements offered a lawyer by the local bar fund to place the insurance with "his" own underwriter tempt the lawyer to subordinate the prospective insured's interests to his own. He and his brethren "own" the fund. If it is profitable he will profit. Moreover, the bar fund promises not to compete with the lawyer in offering settlement services, and it will not sell insurance without him.

The bar funds themselves are relieved of many of the expenses their commercial competitors must bear related to the cost of competition itself. They do not need to advertise to attract customers. They do not even have to offer the best title insurance bargain. They need only persuade their lawyer-members of the advantages to them of steering title insurance business to "their" bar fund. They do not need to pay agents, for the lawyers are their exclusive agents.

"Their intimate relationship with the legal profession always allows them to call down the 'unauthorized practice' authorities if the commercial competition gets too close notwithstanding."

To the extent that closing services do represent a necessary adjunct of the title insurance business, they are relieved of that expense as well, for those services are performed, at no cost to them, by the lawyers who charge "clients" for them. And, finally, their intimate relationship with the legal profession always allows them to call down the "unauthorized practice" authorities if the commercial competition gets too close notwithstanding.

Whither Government Regulation?

In summary, were the legal profession not what it is, were it not for the prestige of the ABA and the general public willingness to assume that what the ABA does must be "legal," this pathological combination of lawyers and lawyer-owned title funds would long ago have felt the impact of state and federal laws intended to promote competition.

In one significant respect, the times are not what they were five or ten years ago. The amenability of the organized Bar to federal and state legislation designed to promote competition is not only being openly spoken of today but also actively demonstrated in litigation. Thoroughly responsible parties, public and private, are successfully asserting legal positions which the same people might have dismissed as frivolous five years ago.

The last portion of our study was an analysis of the potential for legal action against the organized Bar and the bar funds, and our conclusion is that it is substantial. The Bar and the LTGFs are not above the Sherman and Clayton Acts. Filling in blanks on deeds and mortgages and on HUD Form 1s is not automatically "the practice of law" because lawyers sometimes do it. Payments which are clearly compensation for the referral of business rather than fair value for services rendered are not free from being suspect as illegal "kickbacks" merely because they are made to lawyers. And bar associations are not necessarily able to operate with impunity by claiming that they are merely implementing the declared public policy of a state.

To be sure, it cannot be said, until the Supreme Court says it, that the converse of any of the above is true. But the questions are now being asked, and asked openly, and asked by others than merely the title industry.

In the appropriate cases, we think that ALTA can and should actively participate in presenting them to the courts to be decided, and we are confident that, on balance, the tide is with us and the results will be favorable.

The Economy—*(from page 33)*

problems are inapplicable today because they don't work. Keynes' solutions were envisioned at a time when multinational firms hardly existed. Economic theory, mired in an outmoded world view continually suggests solutions to problems that it cannot begin to fathom.

If nations, in the 1980s, are to be able to control their own destinies they must seek solutions to the problems of inflation, unemployment and the slowing down of the growth of productivity, given the parameter that the U.S. economy is becoming increasingly international. If economists and politicians fail to address the fact that the world of the 1980s is different from that of the 1950s, the United States will increasingly be unable to solve its own domestic economic problems.

State v. Federal—*(from page 14)*

[2] *Paul v. Virginia*, 75 U.S. (8 Wall) 168, 19 L.Ed. 357 (1869) - Justice Field.

[3] *United States v. South-Eastern Underwriters Association*, 322 U.S. 533, 64 S.Ct. 1162, 88 L.Ed. 1440 (1944) - Justice Black.

[4] *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 95 S.Ct. 2004, 44 L.Ed. 2nd 572 (1975) - Chief Justice Burger.

[5] "McCarran-Ferguson Act", 15 U.S.C.A. Section 1011, et seq.

[6] "Insurance Competition Improvement Act", Senate Bill No. 2472, introduced by Senator Howard Metzenbaum (D - Ohio).

[7] "The Pricing and Marketing of Insurance" by the U.S. Department of Justice (1977).

[8] "Sherman Antitrust Act", 15 U.S.C.A. Section 1, et seq.

[9] "The Real Estate Settlement Procedures Act", 12 U.S.C.A. Section 2601, et seq.

[10] HUD Interpretive Ruling, "Effect of RESPA on Certain Practices Known as Controlled Business" Federal Register, Vol. 45, No. 144, Thursday, July 24, 1980 (effective September 4, 1980)

[11] "Podium Humor" by James C. Humes.

[12] *The Republic* by Plato.

[13] *Second Treatise of Civil Government* by John Locke.

[14] "The Federalist" by Alexander Hamilton.

[15] "Depository Institutions Deregulation and Monetary Control Act of 1980" 12 U.S.C.A. Section 1425 et al.

[16] Variable Rate Mortgages, Rules by the Federal Home Loan Bank Board, 12 CFR Section 545.6-4a.

[17] HUD Interpretive Ruling, op. cit.

[18] *Remarks of Famous People*, by Jacob M. Braude (attributed to Joseph Joubert).

Real Estate in the 1980s

by Thomas S. McDonald

The real estate and the housing markets in the 1980s will be good. It is simply a matter of numbers. With more than 40 million Americans reaching age 30 during the 1980s, the rate of housing units will accelerate, creating an effective demand. Realize that this is a demand, and not sale, of $2.5 million each year in the 1980s. As most of you know, this year they estimated less than $1 million.

"We have found that subsidies are not the answer but that tax incentives, if properly done, could be the solution."

In the 1980s, one-third of all housing starts will be condominiums. In 1979, one-fifth of the starts were condominiums, which was considered high.

New methods of financing will be the key. If we can find the right method of financing homes, in order to tap this ever-increasing demand, we will have some prosperous times in the title industry—assuming we solve a few other problems.

You will see more duplexes, more quadraplexes. In general you will see better use of land because of the high cost of land. You will see smaller but more efficient units. This will be good for a number of reasons. You will have smaller, yet ample, living space with less to clean up and less to maintain. Your yards will be smaller. This will be good news unless you are lucky enough, as I am, to have a wife who likes to cut the grass.

But, again, we have to solve that one big problem called financing. How are we going to finance this demand for housing? We have found that subsidies are not the answer but that tax incentives, if properly done, could be the solution. I think that we ought to have tax incentives in two areas. First, we should have more tax incentives in the area of savings, so that S&Ls and other lending institutions will have the funds available at a cost that people can afford. With the financing and the demand we will have a boom in housing.

Savings rate in the United States on per capita income steadily has declined over the last 10 or 15 years. It is now less than four percent, whereas in other industrial countries, the savings rate of individuals is 17 to 18 percent. In one country it is as high as 25 percent. If we could just raise our savings rate 3 or 4 percentage points, we would have more than adequate funds to finance housing starts.

The other tax incentive that I would like to propose to be studied by the Ways and Means Committee, is a tax credit annually for housing, on your individual personal income tax—that the head of the household has something in the neighborhood of $3,000 a year and for each dependent $500 a year, if they actually spend that amount for housing.

With these incentives I think that we could have a healthier economy for housing in the future.

Appearing on a workshop program entitled "The 1980s—Challenge and Change" were (from left) Roger Bell, Thomas McDonald and C.J. McConville. Also on the program was William J. McAuliffe Jr. who presented Richard McCarthy's paper.

Mr. McDonald chairs the ALTA Abstracters and Title Insurance Agents Section. He is president of The Abstract Corporation in Sanford, Fla.

In The 1980s

An Agent's Guide To Survival and Service

by Roger N. Bell

What is so special about the 1980s for title insurance agents? Certainly, business will be good. I don't think there is any question about that. Projections for the decade are all up. The problem for the independent agent seems to be, however, whether or not he will still be here to enjoy it.

I believe that the competitive pressures that have been building on the national scene since the early 1950s will come to a head this decade. This, coupled with new developments in office equipment and technology, the make-up of customer groups and a whole new generation of employees who perhaps won't think quite like older people in our organizations will contribute to the problem of serving and surviving.

Well, what specifically are some of the problems? National title insurance companies, as opposed to the local and regional ones that we knew 20 or 30 years ago, have helped transform our business from abstract to title insurance but they also have presented the independent agent with some problems. Purchase of agency operations and the opening of company stores in various areas present agents with new problems.

A hot-shot manager brought in from out of the area to run one of your competitor's operations can bring a lot of good and a lot of bad practices to your locale. It can cause a great upheaval in the way that you conduct your business.

Mr. Bell is president of The Security Abstract and Title Co., Inc., Wichita, Kan., and is an ALTA past president.

National customers, too, are having an impact on the marketplace. We have seen the franchising of real estate firms grow tremendously over the country. Insurance companies are making direct loans. They are placing the orders that we used to receive from hometown people.

RESPA, HUD's report to Congress, Torrens, lender pay, seller pay, lender packaging, controlled business and demonstration recording systems are all having a great impact on the agent and the title business in general.

Demands for new services also affect how we do business. Our mobile population understands how business is done in California and when they move to Kansas or Minnesota, they may want the same services that they got in California. We have demands for closing and escrow services that many of us previously did not provide.

What I call esoteric insurance coverages such as zoning protection, usury endorsements and RRM endorsements also have changed how we do business. We are now asked to prepare instruments. We used to think that that was the lawyer's domain. Now, however, we find that our competitors will do it, so we had better, too.

"We now have a new generation of employees who are much more aggressive as to their demands and expectations of management."

The New Employee

We now have a new generation of employees who are much more aggressive as to their demands and expectations of management. They want to know what to expect as far as salary, advancement and their responsibilities are concerned. We cannot operate on the old, we'll-take-care-of-you premise. We have to plan and we have to manage our employees in a much better manner than we have ever done before.

The reorganization of banks, savings and loans and credit unions into what may be called financial institutions will impact tremendously on one of our largest customer groups. It will produce an effect that none of us can really guess at right now.

New equipment, of course, is changing the picture as far as how we operate our plants, how we conduct our business and produce our products.

Probably the greatest danger that the independent agent faces at this time is controlled business. The growth has accelerated, many of us believe, because of Section 8 of RESPA. We have seen the growth of savings and loans and broker- and attorney-owned agencies. We see Merrill Lynch and Sears planning to vertically integrate the real estate industry. In the absence of some type of regulation, we know that they will get into the title business as a result of that vertical integration.

What do we do to survive all these challenges? Well, I chose seven agents from various parts of the country who I thought represented various size communities and methods of doing business and I asked them for their answers.

I received responses from Shum Jensen of Utah, Sam Mansfield of Florida, Cal Johnson of Illinois and John Cathy of Oklahoma. All respondents agreed that service is the key to survival in the title business.

It reminds me of Hakala's Rule of Survival: "Pack your own parachute." We, in this industry, have to pack our own parachutes. We must run our own shops and decide how in the world we will make it through the 1980s.

Some of the suggestions beyond the general idea of service that these gentlemen and myself propose include having the friendliest employees in town. Another mentioned free tract book information, looking up legals, checking ownerships and the date someone took title. One of the respondents mentioned an excellent telephone operator, who happens to be a lady who also greets the customers and establishes rapport with them. Also mentioned was the importance of keeping current with the new ways of financing that are coming on line.

Try every possible way to make your company *the* title company in your particular community. The timely delivery of accurate work is very important. It is often easier to get the work in than it is to get it out when it is promised.

One respondent suggested that a solution might be found in being an agent for as many underwriters as possible. This would help engineer better commissions. Underwriting requirements vary from one underwriter to the other; what one won't take, perhaps the other one will. He felt it was good for image to represent as many underwriters as possible and that it impressed his customers. That is contrary to what we have always believed. We think it is better to have one principal. You have more clout. There are obviously two divergent opinions when it comes to representing underwriters.

To provide all the services demanded of you, you may do closings, provide copies of instruments, handle escrows, offer zoning endorsements, inspect properties and whatever the customer wants. We are going to have to satisfy our customers.

Cost Controls

We have been through a very slow period this year. Did you review your expenditures? Perhaps advertising should be placed more selectively rather than shotgun style.

One idea was to reduce the underwriter's fee. We must, however, remember that underwriters have to make a profit, too. We have to be an asset to our underwriter if we are going to justify our existence. Obviously, we also have to make a profit. We need them as much as we hope that they need us.

Another suggestion was to watch your losses—especially mechanic's liens. One respondent suggested that we should look for builders who are in trouble—maybe they have put second mortgages on their homes or sell their boats or motor homes. Well, we worry when our builders start to buy boats or motor homes. But, I guess if they have them and start selling them, that is a tip-off, too.

Joint plants, joint take-offs, joint delivery service and putting a timer on your heating and air conditioning systems at the office are all ways of economizing. Because we are closed more hours of the week than we are open, you can expect to make a big saving on energy costs by installing a timer.

"We, in this industry, have to pack our own parachutes. We must run our own shops and decide how in the world we will make it through the 1980s."

Review your medical, pension and profit-sharing plans to be sure that you are getting the best value. Work smarter, not harder.

Try to think of some incentives for your employees. I have a friend who has started giving his employees incentive pay for bringing in good, new employees. He would rather pay them than an employment agency and that makes good sense. Our experience has been that new employees recommended by present employees are our best bet.

You might want to check your turnover. In these inflationary times it is difficult to stay up on salary and fringe benefits. If you don't, you will lose good people.

Employee training is another area that we should give attention to. We need to spend more time on indoctrination and training if we are going to have good people who can produce the kind of service that will keep us in business.

Business Promotion

Certainly, we want to keep active in Homebuilders, Real Estate Board and other civic affairs. We need to invite customer groups into our office to see our operation. Perhaps you could have a wine and cheese party after 5 p.m. or an office luncheon, if you have the facilities for that, and give them a tour of your plant. You'd be surprised how fascinated people are with what we do. Don't be complacent. Remember that "if everything seems to be coming your way, you are probably in the wrong lane."

This business of ours can only be successful if it is carried on in a free enterprise environment. Well, you say, "That's great. Free enterprise is what our country is all about." But, what do you call the following situation which is excerpted from testimony made by an independent agent at hearings conducted by HUD in California last September?

"Our branch manager meetings were like wakes, as managers and escrow officers described their setbacks and refusals when asking for business. Over and over, we heard, 'I asked my good customer of 10 years standing for his next house sale and he responded that he couldn't because he owns stock in X-company.'

"Quite often it was said in an incredulous tone. One broker said, 'Why it would be silly under the circumstances to bring business to you.

"Another told our branch office, 'You did a fantastic job closing this difficult sale. Thank you very much. I should warn you in all fairness, however, that you will not get another deal from me. I have just purchased stock in X-company.'

"A second type of complaint was more numerous. Sales people complained that they were no longer able to bring deals to my title company. Their broker bosses are owners of title and escrow companies or the title company forces them to take their deals with the broker that could make money on the transaction. Many sales people brought us orders which they said they were sneaking to us, pretending that the fellow had insisted that they go to our company. They pointed out that was not something they could claim too often.

"We understand a California Association of Realtors meeting was disrupted by associate Realtors who, although independent contractors complained, were forced to use tie-in companies that were not as efficient and that cost more to their client.

"One sales person told our branch, 'I was told if I bring you another deal, I will have to come pick up my license. I hate dealing with the boss's escrow company but I cannot afford to make a move now so I shall not be sneaking anymore deals to you'."

Is that free enterprise or freedom of choice? No, we all know that it is controlled business.

The balance of the independent agent's testimony described how her company, having 40 percent of the market prior to the advent of the controlled business situation, lost over half its business in five years. After trying the governor's office, the insurance commissioner and attorney general, with no interest shown anywhere, she filed an antitrust action under California law. After three years and on the advice of her attorney, she settled out of court. She now regrets having done so.

I would like to tell you the dollar amount but that is under a gag order and I have been advised by counsel that I should not repeat any figures. The only thing that I can tell you is that the figure reported to me is substantial—more than the surplus that we have been able to accumulate in 30 years of business.

The salient points of her testimony were firstly, the loss of the business of those owning controlled business companies and loss to her. Second, the loss of employee morale when business started down hill, which I had never considered. Thirdly, the actual loss of employees to the new companies or elsewhere, to the degree that her ability to compete for remaining business was impaired. Fourth, the loss of business of those not in the controlled business company because of pressure by controlled business brokers on cross sales. They evidently

(continued on page 40)

"If we can make sure that the free enterprise system is allowed to work in the title industry and we can give the service that our customers deserve, then we will survive the 1980s."

The Underwriter's Problems and Direct Operations

by C.J. McConville

There are numerous changes underway from an underwriter's perspective. In parts of the country where title insurance is used on virtually every transaction, a number of these changes have already occurred so that they are really not new at all for those areas. And although my crystal ball is no better than any one else's, my experience has been that ideas do have a tendency to move across the country so that what we are seeing in one area today may well become a practice in another area shortly.

Companies Expand

During the 1960s and 1970s, underwriters entered into substantial expansion plans. Companies that had never gone west of the Rockies entered the California market. Conversely, large underwriters in that state moved east. The result was both good and bad for the title insurance agent. It was good in that the increased competition tended to raise commission rates. It also gave the abstracter-agent more potential buyers for his company if he decided to sell out or retire.

It was possibly bad for some abstracter-agents because it increased the number of competitors in their counties. And it raised the specter of the big title insurance company coming in and gobbling up the smaller abstracter-agent.

I believe that most of these latter fears are exaggerated. In the first place, most underwriters are not interested in long-distance operations, particularly in smaller counties. Even in big cities, the company that is locally owned often runs rings around the branch office of the big company. In the 1980s we will see more and more evidence that the underwriters recognize this fact.

Mr. McConville is president of Title Insurance Company of Minnesota, Minneapolis, Minn. and an ALTA past president.

"So I think you will find that in some markets where national underwriters have branch offices with marginal profitability these offices will either be closed or sold."

I know of several instances where an underwriter has run branch offices removed from its home territory that were losers or marginal at best. They have made the decision to sell the branch and take back an underwriting agreement. Presto—that branch with the same management has all of a sudden become a winner. I know of one large national underwriter that has done five of these conversions already this year and has announced that it will do more.

The fact of the matter is that a title insurance company is often further ahead just to get the underwriting—plus, perhaps, some monthly fee for the leasing of his title plant—than to manage from a distance and to be saddled with the high overhead of a branch office.

Do you realize that the average operating margin of the 10 insurance companies from 1974 to 1979 was only 4.6 percent? So out of every $100 in operating revenues, only $4.60 came down to the underwriter's bottom line. You can do better putting your money in a bank or savings and loan.

So I think you will find that in some markets where national underwriters have branch offices with marginal profitability these offices will either be closed or sold.

Controlled Business

This, of course, brings us to controlled business. If a title insurer has decided to sell an office, the question naturally arises: why not sell to a group of Realtors or to a savings and loan service corporation or a group of attorneys—depending on who directs the title business in that market?

Controlled business will be a continuing and probably even a bigger problem in the 1980s than it has been in the past. All major underwriters, with one possible exception, have some of this business. Unless and until controlled business is stopped by HUD, the insurance departments, the Justice Department, the Federal Trade Commission or someone, it will continue to be a problem for the industry. I do not see the industry stopping the practice voluntarily.

I should emphasize that this is not just a problem for the title insurance company. Actually it is the abstracter-agent who can be hurt the most by controlled business. The following is an example which occurred in my home county, Hennepin County, Minnesota. The largest savings and loan association in the state, through its service corporation, acquired a 52 percent ownership interest in one of the abstract companies in Minneapolis which represents a national title underwriter. In just 12 months, the amount of business that this abstract company is doing in Hennepin County

with that savings and loan has gone from 18 percent of that savings and loan's business to 90 percent. Since this is the largest lender in the county, you can imagine the effect this has on the seven other companies that are trying to compete with it.

Business Centralization

The real estate business is becoming more and more centralized. In the past, the real estate firms with which we did business were locally owned and generally operated only in one metropolitan area. Now, there are national franchising real estate firms; there are companies like Merrill Lynch, Coldwell Banker and Berg Enterprises that are acquiring major real estate firms around the country, and there are home transfer companies that control a large volume of business throughout the United States.

Of course, there have always been lenders in the secondary mortgage market that crossed state lines such as the life insurance companies, the savings banks and governmental and quasi-governmental entities such as FNMA, GNMA and Freddy Mac. All of this increasing centralization—and I predict there will be more in the 1980s—has made it more and more important for the underwriter to have a national sales program. These large controllers of title business prefer to deal with one entity—to make one telephone call to a servicing representative—and be assured that they will be treated throughout the country like a preferred customer, will get priority service, will get the best price available in that marketplace, and will obtain a policy meeting their requirements.

Of course, having an underwriter that is heavily involved in such a program is a big advantage to the title insurance agent. It is also an excellent marketing tool for the underwriter to secure new agents by being able to offer some significant business that the agent otherwise would probably not get. There will be more and more competition by title insurance companies to secure business from the nationally operating customers.

Full Service Agents

I believe that in the 1980s more and more abstracter-agents will become full service title agents. Right now, in a large portion of the United States, the abstracter-agent does nothing more than prepare the title search. He does not do the examination of the title but turns an abstract or search notes over to an attorney for the examination—based upon which the abstracter-agent issues the title commitment and the title policy. In fact, in some states, a title opinion from an outside lawyer is required by statute.

In other parts of the country, the agent will do the search and examination and issue the Commitment to Insure but does not handle the closing of the transaction. In still others, he may perform all of those functions but the drafting of the legal instruments, that is the deed from the seller and the mortgage or deed of trust from the buyer, are handled by an outside lawyer. I believe we will see a definite trend to the title insurance agent performing most of these functions.

"Actually it is the abstracter-agent who can be hurt the most by controlled business."

I am sure that more and more title agents who provide settlement services will use automated systems which will prepare the HUD forms, do the truth-in-lending disclosure document, prepare the legal documents and, as a by-product of the automated system, also prepare the title commitments and policies. These systems are currently being used in certain areas of the country and I am confident that they will be much more widely used in the 1980s.

Joint Title Plants

In the major metropolitan areas today, costs have already dictated the need for joint title plants. When joint plants first started, they were generally housed in a separate, neutral facility and all of the participants had office space in that central facility.

The more modern joint plant permits the participant to search the title in his own office either through on-line capabilities linked to a central computer or by having daily updates delivered by the joint plant organization to the participant's office in the form of microfilm, microfiche or hard-copy printout. And of course, each participant has his own film library of the recorded documents on site.

In addition to the obvious cost saving advantages, there is another plus in the joint plant. That is, the ability for the participants to exchange their prior examinations of title. Although a participant uses another company's search and examination at its own peril, it has become the accepted practice to start your own search and examination from the date of the other company's commitment or final policy. This obviously reduces a great deal of search and examination time.

If property turns over on the average of once every eight years, you need make only an eight-year search instead of one all the way back to sovereignty or the last time that your own company handled that piece of property. In some areas of the country, a company will charge for the use of its starters, but in most joint plants the cost of keeping track of who owes what has caused most companies to exchange starters with the other participants without charge.

New Financing

In the 1980s, we will see a number of different types of financing that will require more sophistication on the part of the title insurance agent. You have heard of the RRMs, the VRMs, the wrap-around mortgages and the like. Your underwriter should be a big help to you explaining how and when endorsements on such instruments can be issued or if they can be used in your state.

"Insurance departments are becoming more and more concerned with the solvency of title insurance companies."

Pressure by states and environmentalists to preserve the beaches to the states, Indian claims, consumer protection laws and more sophisticated and litigious insureds will require a higher degree of skill and care by the policy issuer. Most title insurance companies will increase the amount of educational training for their agents and company personnel to keep abreast of these developments.

Condo Conversions

The conversion of apartments to condominium units has been booming. We will see more and more of that in the 1980s. This can create a challenge for you. For instance, mass closings. This was going to be part of my educational message but because of time limitations and competition being present whom I don't want to educate—I will skip this except to say that this may offer you a good business opportunity.

Second Mortgages

Another segment of the business that is burgeoning is the second mortgage business. We, in the title industry, tended to reject this business in the past because it was low liability, often involved borrowers who were high credit risks and we often had high cancellation experience. To a large extent, that is no longer true.

More and more homeowners are borrowing on the substantial equity that has been built up in their homes through inflation. Rather than refinance the first mortgage at the current high interest rates, it makes more economic sense to keep the lower interest first mortgage intact and put on a second mortgage. The effective interest rate on the two mortgages combined is lower than the current rate for a new mortgage in that same amount. I have seen many second home mortgages in excess of $100,000. I know of a finance company active in California whose *average* second mortgage is $30,000.

Since the second mortgagee often does not require as complete a coverage as the first mortgagee—for instance, they probably are not concerned with CC&R, surveys and similar items since they are loaning on a home that has been in place for some period of time—you may be able to negotiate with that second mortgage lender and take exception to items that would not be acceptable to a first mortgagee. By taking such exceptions, you can cut back on the amount of search and examination that you have to do. In most states you would still be able to charge the same filed rate for the second mortgage policy with these exceptions and more limited search as you do for the first mortgage policy.

Thinned Ranks

In the 1980s we may find fewer title insurance companies in the business. As mentioned earlier, some underwriters will pull out of unprofitable markets rather than continue loss operations. In addition, we saw a number of acquisitions and mergers of underwriters in the 1970s which will continue into the 1980s.

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Underwriters—*(from page 39)*

There are some regional title insurers who just cannot compete with the national underwriters for agents. Because their policies are not as acceptable as the national underwriters' their agents are at a disadvantage. The regional underwriter cannot afford a national accounts program which also puts him at a disadvantage with a prospective agent. Requirements by regulators in some states to keep statistical data places a financial strain on small title insurers.

So, we may find local or regional insurers either selling to national companies or acting as an agent themselves for a larger underwriter where there is a problem of acceptability of their policies or where the national insurer is able to direct business to the regional company—but of course wants its own policy to be issued.

Insurance departments are becoming more and more concerned with the solvency of title insurance companies. A department may not allow an underwriter to continue to write in its state if it continues to lose money there. It may require it to raise its rates. It will not permit the insurer to subsidize a losing state's operations with premium income from states in which it makes money.

We have a recent example of that in one of the Rocky Mountain states where the rating bureau had succeeded in securing a rating increase. One of the members filed a deviation back to the old rates claiming that to charge the increased rates would cause it to have excess profits from that state. The insurance department accepted the deviation. When that happened, other companies also tried to lower their rates back to the old level to meet this price competition. But the insurance commissioner has refused to accept the later deviations without a hearing.

If those companies cannot justify the fact that they can make money at the old rates (and don't forget, they had just gone to the insurance department and convinced it they were not making money at those old rates), the insurance commissioner may not let them lower the rates even if it would obviously be a benefit to the consumer for the lower rates to be charged.

However, the possibility of impairing the financial stability of the underwriters is what is causing that insurance commissioner concern. But consider what may happen if the insurance department will not permit the other companies to lower their rates. It may result in forcing some of the other underwriters out of that state because they cannot compete successfully with their higher rate structure.

The Role Of The Rating Bureau

There is no question that the insurance commissioners in this country favor free rate competition. They believe that if the marketplace is allowed to operate freely that rates will get as low as possible—to the benefit of the consumer. The National Association of Insurance Commissioners is studying this subject at the present time. The industry task force, which is advising the NAIC, has recommended that title insurance be treated differently than most lines of insurance because of reverse competition. It recommends prior filing of rates for title insurance as being in the best interest of the consumer rather than the open competition form. Whether or not the NAIC wil adopt that posture is still in question.

I personally feel that insofar as the title industry is concerned, rate regulation or rating bureaus, backed with sufficient statistical data, are essential for our salvation. The main reason is because I have seen some of the rate-cutting practices in states in which there is little rate regulation.

From the consumer's standpoint, he is best served with rate regulation or a rating bureau in this day of controlled business. The controller of business wants to charge the most that it can since it benefits in direct proportion to those charges. Therefore, I feel that the rating bureau approach not only protects the solvency of our industry but also protects the consumer.

More Services

Finally, I think that in the 1980s you will find that the underwriters will be supplying you with more and more services. Many of us are currently preparing policy registers for our major agents. The agent sends in the policy copy, the insurer prepares a policy register and sends the agent a bill for what is owed. Some underwriters will even do some of the agent's accounting for him.

Most national title insurers provide WATS lines so you can call the underwriter to ask your questions at no cost to you. It's interesting to note that although we always told our agents if they had any underwriting questions to call us collect, we found some reluctance on their part to do so. On the other hand, they do not feel this same reluctance to use the WATS line.

Most of the underwriters have internal audit staffs who will work with the agents to improve their accounting systems and their controls. Title insurers customarily have considerable experience in the area of data processing and can be helpful in the agent's decision-making process as to whether or not to automate, what type of hardware to get and even supply him with software packages.

There is no doubt that the 1980s will be a period of change. We will all have to be alert to take advantage of those changes. By 1990 you and your company will not be the same as you are today. You will either have progressed in the marketplace or you will have gone the other direction. Your challenge and mine is to be a gainer and not a loser in the 1980s.

Agents—*(from page 37)*

thought it was in their best interest to go ahead and send their business to the controlled entity even though they did not own stock in it.

The Toll of Controlled Business

The testimony was a confirmation of ALTA's position that the result of controlled business is higher prices and a deterioration of underwriting standards. It serves no purpose here to give the background and history of controlled business. It is a reality that is with us now. It is the greatest threat to our business existence.

I believe that the industry—the insurer and the agent alike—now recognizes the dangers of the controlled business arrangement. None of us professes to be for it. But, as agents, we must do our part to help our industry out of this nightmare that we have brought upon ourselves. To do otherwise would mean that the independent title insurance agent is through.

If you want to do your part to make sure that that does not happen, I would make a few suggestions. First, continue to support ALTA. I have been very proud of this Association as it faces up to its responsibilities in this area. We have brought the problem to the attention of Congress and HUD. We are making progress in calling it to the attention of the National Association of Insurance Commissioners (NAIC).

We would like to hear from agents fighting controlled business situations. Write to me or Bill McAuliffe in Washington. We want to know who you are so that we can talk to you when the time is right. We small businessmen have a lot more clout than a lot of people give us credit for. If we need to testify on state or federal levels or before the NAIC we want to be there. We want to have those people who have controlled business in their counties to be there. We want to be sure that we know who you are.

Second, you should remain active—or become active—on the political scene, on the state, federal and state association levels because if the battle comes to Congress we are going to need the support of the independent agents.

Thirdly, sit down with your underwriter or underwriters and discuss your feelings about controlled business. Let them know that they have your support if they are resisting the temptation to get into such arrangements or trying to divorce themselves where they are involved. I would suggest that you give long hard thought to whether it is in your best interest to be an agent for any company that is signing up controlled business agents.

If you do think it is a practice that is bad for your industry and the public and one which endangers your company's existence, then I believe it is time for you to let your underwriters know exactly how you feel. If all else fails and you are confronted with a situation such as the California agent faced, you should be making up your mind now as to what courses of action are open.

Perhaps in a few months we will see Congress and/or HUD impose satisfactory restrictions upon controlled business. If not, I firmly believe that you should give serious consideration to antitrust legislation if it is at all possible in your state.

It is a long, tough, expensive road. But it may be our only salvation. It is an antitrust matter because controlled business is anticompetitive. It is a tie-in. It is a boycott. It is not fair and it is wrong. If you and I are going to be here in 1990, antitrust legislation may be our last line of defense.

If we can make sure that the free enterprise system is allowed to work in the title industry and we can give the service that our customers deserve, then we will survive the 1980s.

Controlled Business: A No-Win Situation

by Irving H. Plotkin

As a look at the convention program indicates, the controlled business issue is clearly coming to a head. There are four presentations on your program specifically addressed to controlled business, and the issue has come up directly or indirectly in many if not virtually all the speakers' addresses. It is appropriate that the ALTA program has drawn the attention of its membership to the question of controlled business. There are two principal reasons for that right now.

The first is that there is probably no stranger force which will shape the future of your industry and its ability to serve the public. There is nothing on the horizon, including a continuation of the disastrous economic conditions for the housing industry that you are now experiencing, that is more important to whether or not you will survive, in what form you will survive and how your product will be delivered to the public.

Secondly, many interest groups are focusing attention on federal officials as HUD prepares to submit its Section 14 report to the Congress. Many of the arguments raised just last week suggest a certain desperation on the part of some advocates; other arguments suggest a lack of economic understanding on the part of some analysts, and most recently the presence of a very strong and effective lobby in favor of controlled business.

Because of these very recent and still unfolding developments, I have modified the remarks I originally prepared for this meeting. The full title of my presentation is, "Controlled Business: A No-Win Situation for Consumers, Agents, or Even Participating Underwriters."

Dr. Plotkin is vice president, Arthur D. Little, Inc., Cambridge, Mass.

"The truly independent agent must face the fact that his stake is the one that is total and that the underwriter's stake is only partial."

The bottom line of my message is that the situation needs the close and active attention of all of you, not only those who have already participated in mustering the evidence and presenting the arguments, but many of you, and especially the agents as opposed to the underwriters, who, while feeling the pressure and having some concern, have left the battle (including, the mustering and presentation of evidence) to others—others who you believe have a larger total stake.

However, the truly independent agent must face the fact that *his* stake is the one that is total and that the underwriter's stake is only partial. Hence, the burden should be taken up by the agents as well as the underwriters.

I am sure there is no need to tell you of the force and influence real estate professionals hold over the placement of business. A recent hearing before the insurance department in Texas brought out in graphic testimony, given under oath by third parties—mortgage lenders, Realtors, and people who service the title industry—dramatic evidence of how persuasive is the power of the real estate professional when he has a financial interest in a title entity.

One incident involved a group of attorneys who owned both an S&L and a title agency. The president of the title agency reported that he observed that a certain builder had not placed specific title orders with him but rather had gone to a competitor for the title insurance. That builder, however, had financed these two projects from the S&L owned by the attorneys who also owned the title agency. The president of the title agency testified that he called the president of the S&L who in turn called the builder. The builder appeared before the two operating presidents (of the S&L and of the title agency) and was severely lectured for borrowing from the S&L and not using its title agency. The builder promised to reform his practices.

Evidence also pointed to a very interesting set of problems which an underwriter who participates with a controlled agent may experience. The first was the extreme pressure for poor underwriting practices in the interest of closing of the deal, writing over and writing around certain exceptions which an underwriter would otherwise like his agent to take and show on the policy.

But, secondly, (proving that controlled business may well be a two-edged sword) was the substantial evidence of the loss of business by the controlled agency from competitors of the controlling real estate professional. When the controlling real estate professional was a Realtor, other Realtors refused to refer any business to that agency. When it was an S&L, other S&Ls refused to refer business to that agency, because they felt they would be indirectly helping a competitor. In at least two documented situations the ownership was dissolved because it turned out to be more harmful than helpful.

(continued on page 42)

"Your choice will determine the type of business you become and whether or not you control your future or merely become the vassal of some real estate organization. . . ."

I understand from a number of studies of insurance data the nature of fixed costs in your business and the cyclicality that plagues your operations. I can understand how useful it is to have an assured source of, let us say, 1,000 title orders a year as well as how useful it is to have a single title policy for a shopping center at $5 million or more. The economics are clear to anyone who would take even a brief look at your rate schedules and your cost functions. Nevertheless, the price of selling your independence for that kind of assurance can be very, very high. Your choice will determine the type of business you become and whether or not you control your future or merely become the vassal of some real estate organization, such as the holding company for an S&L or a large, national real estate or stock brokerage chain. This should make all the difference in the world to you as independent businessmen.

Back in 1600, when there was such a concept as illicit sex, Shakespeare wrote a sonnet about it, trying to give advice to the perplexed. In part it warns:

"Enjoy'd no sooner but despised straight,
Past reason hunted, and no sooner had
Past reason hated, as a swallow'd bait
On purpose laid to make the taker mad"

Whatever its relevancy today for our fun and games, it is precisely relevant for those agents and underwriters tempted by controlled business.

I urge those who are tempted by, or concerned about, controlled business but who have not seen actual developments under controlled situations to read the testimony of the fact witnesses presented to the Texas Department of Insurance. It should give you great pause.

The picture painted in the testimony is not consistent with a healthy independent industry. It is consistent with a service department within a large financial organization. Whether that would best serve the public and best allow you to fulfill your function is the very serious question that, in part, will be decided by HUD's review of the unsupported findings of Peat Marwick; its contract research organization; its own research, and its report to Congress.

In the Texas case, very forthright testimony was given by an attorney for the largest S&L in Houston. He testified that should a lender desire, the lender could certainly direct the placement of title insurance business and do so in ways so subtle no one could ever prove that there was any wrongdoing. This sworn testimony is most noteworthy because it was given by an attorney working for the applicant and in a hearing concerning the creation of a controlled business entity, wherein a holding company would own both an S&L and a title underwriter.

Recently presented evidence has shown the dramatic and almost instantaneous shift in the business given out by a particular real estate professional (an S&L) from a mix of title companies to a newly established, controlled, interest in a particular title agency. Market foreclosure, which is a fancy economic term used in the antitrust literature, has never been more dramatically and graphically illustrated. Yet, there are those in the research community who look at these facts and seem to feel that they are not even worthy of comment in their analysis of your industry.

Let me turn to some arguments that have been raised recently. The S&L industry argued that there is no ability to direct the placement of title business, because the lawyer tries to influence, the Realtor tries to influence and the lender tries to influence. These three factors cancel each other out, and hence, they argue, the consumer reigns supreme. However, all researchers, including those in favor of controlled business, have uniformly concluded that the consumer does not make an informed choice (even with the RESPA booklets and the best intentions) and he cannot and should not be put in the position of trying to evaluate something that is 16 percent of closing costs and maybe a fraction of one percent of the house price. To argue, as a representative of the S&L industry did recently before HUD in Washington, that direction does not and cannot take place is to fly in the face of established facts.

Another argument that has been raised (and one which has a superficial economic attraction but which has absolutely no content when looked at carefully) is that the establishment of a title agency by a controller of business is additional competition. Even the Federal Trade Commission recognizes that one does not simply count the number of firms and say an increase in the number of firms means an increase in competition. When one considers the way market shares shift to this newly established controlled entity, one must conclude it produces a cartelization of the market and is destructive of meaningful competition. Much evidence given under oath concerns title companies' closing down operations or failing to enter areas where a significant portion of the market is out of the realm of competition because of a financial relationship between a controller of business and a title agency. The most anticompetitive relationships are those which exist between a title agency and a savings and loan or mortgage lender.

Another argument that has been raised is that there is no harm brought about by controlled business because the researchers could not observe any increase or change in price. To begin with, that argument flies in the face of established facts, but it also is a most shallow economic argument because it is not relevant.

Under conditions of tie-in sales and frequently under conditions even of outright price fixing, one does not observe a change in price. Yet the whole literature of antitrust economics and the very well-reasoned legal literature of tie-in sales strongly argue that a cartelization of the market, which hinders the supply side, is destructive of competition and, hence, destroys the possibility of the lowest possible price emerging in the long run. Even if there were no evidence that prices were greater (and there clearly is evidence that prices are higher in controlled situations), no well-trained economist ought to conclude that controlled business is not harmful because we do not observe an increase in price. Yet the accountants and researchers at Peat Marwick appear to have reached that conclusion.

Another argument is that there is no use trying to stop controlled business, for the profits will merely flow back to the title companies or their agents. Such analysis shows no knowledge of the strong competition within the title industry, even in the rate regulated and rating bureau states. Consider, for example, the recent situations in Colorado and Montana. In Colorado, after the industry obtained approval for a rate increase, one company refused to go along and the rate increase folded. On the other hand, in Montana, one or two companies tried to increase the rates, obtained individual approvals, but could not maintain the higher rates because other companies did not raise their rates. To conclude, as some have, that because prices are uniform in a given area there is no price competition or that any savings would only go back into profits is not at all to engage in economic analysis; it is rather to engage in propaganda.

A final argument which has been raised is that rebates and kickbacks are not bad for they ultimately filter down to the customers of those who receive the rebates and kickbacks.

Now, laugh though you may, the most well-reasoned paper in favor of controlled business, a paper by Professor Bruce Owens of Stanford, who is now chief economist in the Justice Department, argued precisely that. He argued more honestly than those who make the arguments I just discussed, because at least this argument states clearly the public policy issue that must be decided. The other arguments fail to say that, but ultimately lead to the same conclusion because one cannot find any difference between the dividends paid to a real estate professional under conditions of controlled business and the rebates and kickbacks that were paid prior to RESPA.

Bruce Owens immediately states their equivalency. Other people who have looked at it impartially also have stated their equivalency. Yet some claim (in my mind with utter hypocrisy) that they are against rebates and kickbacks and suggest that RESPA should be retained,

"The latest and most potent force on the Washington scene is the S & L industry. It argues loudly and strongly that because the industry is regulated by the Home Loan Bank Board it can do no evil."

"You are playing hard ball, you are playing with very big and powerful interests, especially, in the S & Ls and Home Loan Bank Board."

strengthened, and even enforced in that regard (although that is something that is probably too much to hope for), but that one ought to take no action to prohibit controlled business. Somehow passing the rebates and kickbacks through the baptismal font of the corporate structure into dividends, cleans them of their otherwise antisocial properties. This, of course, is economic nonsense but may be useful political rhetoric.

The latest and most potent force on the Washington scene is the S&L industry. It argues loudly and strongly that because the industry is regulated by the Home Loan Bank Board it can do no evil. They contend that as long as no loan is explicitly conditioned on the use of their service corporation's title agency, then there is nothing amiss and no injury to the public or to competition. If it just so happens that when an S&L has a financial interest virtually all its title business is conducted by its controlled agent, this is merely accidental and of no concern, we are told.

The Home Loan Bank Board appears to agree and has argued against the need and propriety of HUD's attempt to invade its regulatory turf by prohibiting S&L referrals to a controlled entity. Out of that debate, the Bank Board has produced a most inventive use of the English language; even Shakespeare would have to tip his hat to this one. It is the concept of the "neutral list." That is a list of five or more title insurance agencies which may include S&L's own affiliate. I do not disagree with such a list in one sense. I violently disagree with calling it "neutral." It should be called "non-neutral" or "slanted" because that would be an apt description of a list that shows directly (what already would be common knowledge within the real estate community) the vested interest of the lender in a particular title entity.

The evidence that I already pointed to in the Texas hearing demonstrates dramatically that the mere knowledge that a lender has an interest in a title entity is enough to condition virtually all loan applicants (generally handled by the Realtors) to preselect that entity if for no other reason, as one witness said, "on the theory it can't hurt."

Now, who are these people that get involved in the selection process? It is primarily the Realtor who desires to complete the deal and earn his commission. Financing is the one element that especially today is absolutely critical for the completion of a real estate deal. It has never been truer that the power to finance is the power to control and also to enjoy the fruits of control.

This is precisely what is happening in those parts of the country where lenders are establishing title entities. Many lenders are not interested in this business. They do not feel it appropriate or worthwhile. But where it has happened, as far as I can tell, it has uniformly resulted in an almost overnight channeling of business to that lender's controlled entity.

The evidence I have seen has convinced me that when the lender has a financial interest, all other interests, including those of the Realtor, the developer, and the attorney will give way. The incident about the builder who borrowed from a lender and didn't use that lender's title company and, therefore, was disciplined shows that even a sophisticated buyer (not an individual home owner who may do this only once or twice in his lifetime) recognizes the importance of obtaining financing and will certainly give way to the lender's desires.

To my mind, allowing the lender through the service corporation concept to avoid any possible forthcoming regulation of controlled business is to have gained a most hollow victory in the public interest. If the lender is allowed through the service corporation to have a controlled title entity, then the fact that others may not have it is immaterial. Yet the battle will be a hard one, for the S&L's have much sympathy in Congress and their federal representative, I should say, regulator, is rightfully concerned about the fragile financial condition in which the S&L industry now finds itself.

The Home Loan Bank Board appears to have decided that maximizing the use of the service corporation concept as a vehicle for strengthening the basic S&L industry is very much in the public interest, for the provision of home financing surely is in the public interest. There is no doubt that you will agree with me that providing home financing is indeed a laudable goal and, further, that the service corporation concept has indeed strengthened the S&L industry. But whether one should be prepared to sacrifice the independence of the title insurance industry and the regulation of that industry by the states to the goal of strengthening the S&L industry is a very difficult social problem.

It has been shown that mortgage insurance should not be provided by the same company which owns the mortgages that are ultimately insured. Likewise, title insurance should be provided by an independent, impartial intermediary, for the ultimate good of the S&L industry as well as the public.

The one ray of hope that I can give you is that even if the controlled business issue is decided against you and the problem created by RESPA is not further addressed by Congress, if you live long enough the title industry will be reinvented when lenders will once again need an independent source of title guarantee and when the public records will once again need that kind of maintenance you give them. However, that would be a costly way to go about it, not only to the industry but also to society as a whole.

It seems to me that the independent agent is a great strength within the industry. However, it is also an endangered species. Under conditions of a controlled title industry, the one element that is absolutely unnecessary, that is worse than a fifth wheel, is the independent title agency. What need is there for an independently owned and operated full service agency if the S&L or the Realtor has his own agency to which he directs the business and the underwriter by competition is forced to do most of the title work for that "agency."

Although the role and future of the truly independent agent is most in jeopardy, the same agent is perhaps the most powerful force to explain and stop what is happening. Even if the economic arguments which I discussed are too subtle for the executive and legislative branches (and I do not believe that they cannot understand them, I believe that it may be politically wise for them not to understand them), the one argument that they surely must be responsive to is the effect of controlled business on the future of small, independent business men and women in the title industry.

I urge you to consider the implications and to work with your state associations and with the ALTA in bringing the facts of life as you see them in your particular communities to the attention of the decision makers. I do not think this has been adequately done. I think too many agents have rested on other people's labors.

You are playing hard ball, you are playing with very big and powerful interests, especially, in the S&Ls and Home Loan Bank Board. This was clearly illustrated in the Texas and Washington hearings and in the Peat Marwick report to HUD.

I hope you will make your case because I think it is an honest and a good one. The case raised by your opposition is at variance with the teachings of the last 100 years of economic literature, back to Adam Smith. They embrace the Republican theory of welfare and argue that via the trickle-down effect rebates and kickbacks and their disguised form in controlled-business dividends will ultimately benefit the consumer. However, it seems clear to me that unless you fight hard for your case you will not win just because the merits are with you. I urge you to fight hard.

"... unless you fight hard for your case you will not win just because the merits are with you."

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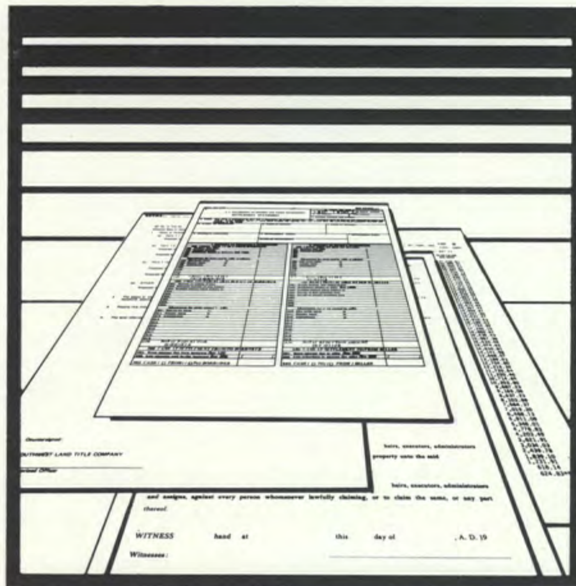

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PHILIPS

Controlled Business: Past, Present and Future

by Mark E. Winter

As you know, controlled business is the number one problem and concern of the ALTA. In the spring of 1978, the Association's Executive Committee, in concurrence with the Board of Governors, authorized the production of the controlled business white paper by Tom Finley and Sheldon Hochberg. It described the nature and growth of the controlled business problem and set forth the Association's objectives towards eliminating this most serious problem.

In light of the difficulties of developing a comprehensive approach to the controlled business problem—either through Section 8 of the present RESPA law or the fact that existing federal antitrust laws do not provide a satisfactory solution—the need became apparent for federal legislation that would prohibit controllers of business from realizing any financial benefit from their ability to refer title insurance business.

The Association's white paper was circulated widely. Distribution was made to HUD officials, to the Department of Justice, Federal Trade Commission, State Insurance Commissioners, real estate editors, and of particular interest, to members of Congress and congressional committee staffs.

So the education process was underway. To compliment the white paper, ALTA sponsored a controlled business federal seminar in the Rayburn House Office Building, Nov. 13, 1979. Invited to the seminar were the policy-makers from Congress and the appropriate federal agencies.

Mr. Winter is ALTA vice president—government relations.

Roger McNitt, former chief deputy commissioner of the California Department of Insurance; Counsel Tom Finley, and Irving Plotkin of Arthur D. Little addressed the problem of controlled business and the impact of such arrangements on competition and consumers. Also appearing at the controlled business seminar was HUD spokesman Jim Maher who indicated that the subject was being reviewed by HUD with an eye towards issuing regulations addressing the problem prior to dissemination of the RESPA Section 14 study.

The Association continued its efforts to educate the congressional decision-makers by holding numerous meetings with members of the House and Senate Banking committees and their staffs. The banking committees are important to the success of curbing controlled business arrangements in that they are charged with the responsibility of processing this type of legislation.

ALTA also met with HUD officials on numerous occasions which has led to a continuing dialogue on the controlled business subject. Also, ALTA, at the request of HUD, met with Peat, Marwick, Mitchell & Co., the RESPA Section 14 contractor. Peat, Marwick, Mitchell & Co. has recommended to HUD that a controlled business prohibition be considered as part of HUD's RESPA alternatives report to Congress.

On July 24, 1980, HUD published an Interpretive Rule on the scope of RESPA Section 8. In that rule HUD indicated that controlled business relationships may be violations of the antikickback prohibitions of Section 8. The publication of the department's Interpretive Rule represents a major step forward in achieving the goal sought by Congress in enacting Section 8—to ensure that recommendations made to consumers by knowledgeable parties in the residential real estate transaction are made on the basis of factors that serve the consumer's best interest rather than on the basis of financial self-interest of the person or entity making the recommendation.

Although the Interpretive Rule needs further regulatory clarification so as to assist our members and other real estate settlement service providers in understanding what is not prohibited by Section 8, the Association is encouraged that, by publishing the Interpretive Rule, HUD has taken positive action to deal with what the Department of Justice has characterized as a development that "may ultimately cause a problem worse than outright kickbacks."

In a recent and related development, HUD sponsored two public hearings seeking comments and suggestions from real estate professionals and consumers with regard to the effect RESPA has had on practices, procedures, and costs relative to real estate settlements. Far and away the most discussed topic at the hearings was controlled business. In fact, an attorney from Atlanta, Ga., referred to the public hearings as controlled business hearings.

The Association is deeply indebted to title industry witnesses who appeared at this public hearing. They include Robert Peiper, Quaker City Agency, Philadelphia; Jack Donnell, Jefferson-Pilot Title Insurance Co., Greensboro; Clyda Guggenberger, Valley Title Insurance Co., San Jose; Jim Garst, Commonwealth Land Title Insurance Co., Houston; Sean McCarthy, California Land Title Association, and John Hall, retired general counsel, Transamerica

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Indians—*(from page 25)*

for homesteading by non-Indians.

Although the aim was laudable, the policy was disastrous because in a 50-year period of time, two-thirds of these parcels were somehow lost and the allotment policy was ended with the passage of the Indian Reorganization Act of 1934.

As the records of that time indicate, Senator Dawes, the sponsor of this allotment bill, wanted to christianize American Indians and assimilate them in the mainstream of America. He thought this could be accomplished by having one lot with an Indian and his neighbor would be a non-Indian. The non-Indian, by his example of Christian values, would teach him the American way. But, unfortunately, as it often happens, the more cynical types who were interested in acquiring these lands joined forces with Senator Dawes to seek its passage.

Forced Fee Claims

It was understood that most Indians were not then competent to manage their own affairs and so it was thought that some protection had to be provided. Otherwise, they would be swindled out of their property. So the law provided that individual allotments should be held by the United States in trust for the individual for a period of 25 years. Later, the time period was extended indefinitely.

These allotments could not be sold without the approval of the secretary of the Interior, nor were they subject to taxation or levy by judgment creditors. However, the secretary of the Interior could, upon petition of the individual Indian, issue a fee patent to the individual or, in the alternative, issue him a certificate of competency. Taking either of these steps terminated the trust status. Then the property would become liable to taxes, free for sale and usable for execution of judgments.

Throughout the 19th Century and well into the 20th Century the Indians, under this program, became prime targets for fraudulent dealings. In fact, the first federal officer impeached by the Congress was an Indian agent. He was involved in such dealings.

From 1887 until the 1920s was a period of much corruption within the Bureau of Indian Affairs and the Department of Interior. It was common to find Indian agents working in concert with traders, with ranchers and farmers, all with one thing in mind—to keep these lands away from the Indians.

It became common practice at the turn of the century to issue Indians a fee patent or certificate of competency even though they had not requested it. The result, of course, was that taxes were levied on their property, tax liens attached and, before they knew it, somebody bought it. These are what we call forced fee claims. The majority of the 9,500 Indian claims are forced fee claims.

Fortunately, much of the land involved is still held by state and local governments. Therefore, these can be, I think, rather easily negotiated and resolved. But, at the same time, a large amount is presently held by Americans who, in good faith and in absolute innocence, purchased these parcels. Now they find them-

"It became common practice at the turn of the century to issue Indians a fee patent or certificate of competency even though they had not requested it."

selves faced with a situation where there is a terrible cloud over their title and no way to alienate it and no way to borrow money on it. The research necessary for either litigant—the Indian or the non-Indian is burdensome.

Clearly, a solution based on a reservation-wide settlement is desirable but it is not possible in every case. The Minnesota Chippewa case can be handled, for the most part, on a reservation-wide basis. But, it is not possible for the others. We are in a quandary. It is one thing to deal with a local or state government, where one can argue that these are extensions of the federal government and that is under the authority of the government that claims ownership of this land.

But, when an individual is involved, especially if this individual is not the immediate purchaser but one who is the successor in interest to this fee over the many decades and now holds it in complete innocence and in good faith, what do we do with him? Or, with her? We seem to be prepared to assist the plaintiff in covering the cost of his research. But, no provision has been made to cover the cost of the research that the residing individual might wish to do. We really don't know how to solve this problem.

We know, on one hand, that the original allottees of these 9,500 plots somehow got conned out of them. We know that in many cases the facts indicate that these lands were literally stolen from them. It would be unjust at this time in history to say, "We are sorry, it has taken too long, let's just forget about it." On the other hand, there are innocent parties involved.

Industry Assistance

We would welcome whatever you would like to submit to us. After all, you are the people who would handle the technical part, and oftentimes in the closest contact with the parties involved. The government is a third party. Whenever an impersonal third party is involved in negotiations, it is hard for it to take into consideration the individual problems. I think you can. We would greatly appreciate anything in the way of legislation that you can present to us that would settle these claims in an honorable fashion.

The Senate Select Committee on Indian Affairs, after succeeding in the Maine matter, feels that it is time to handle the other cases. But, I look at the 9,500 cases as something that may be too big a bite for us. On the other hand, we all know that as it stands now, with the filing of claims, clouds hang over these titles and if it's left up to litigation, it may take a decade or two to resolve. I would hate to be the people who are now sitting on that land and who once believed they owned it in clear fee but now are unable to alienate it or use it as others could.

We will appreciate anything that you can provide us, recognizing your background and your expertise in handling this type of case.

While so far we have been successful in handling the Eastern Seaboard type claim, the forced fee claim, I think, is another ball game. So, whatever you have to offer us, don't hesitate because I'm certain some of you are handling some of these forced fee cases.

As for the Select Committee on Indian Affairs, I believe that what I expressed represents the view of most, if not all, of the members. In fact, I made it a point to confer with the staff before putting this statement together.

Again, if you know of some way that we can handle these forced fee claims, please let us know. Right now we are in a quandary. We know, for example, that we can't very well apply the Eastern Seaboard claims process to the forced fee claims. It is a problem that must be settled and the committee apparently is intent upon settling it. If you don't help us, the solution may be something that we will regret in years to come.

Controlled Business—*(from page 45)*

Title Insurance Co., San Francisco. All of these witnesses described their own personal experiences with the growing controlled business problem and the subsequent disastrous consequences such arrangements have held for competition and consumers alike.

The Association's 1979-80 president, Robert C. Bates, testified and submitted a lengthy statement that, in part stated "federal action on the controlled business problem is appropriate because, to a large extent, the problem has reached the proportions it has because of Congress' efforts to eliminate financial inducements for the referral of business in the form of kickbacks and referral fees."

While RESPA Section 8 can be utilized to attack many types of controlled business arrangements, the Association believes it is desirable for Congress to enact new legislation that would clearly spell out the prohibitions on the financial relationships between controllers of business and title insurance entities.

HUD recognizes that the controlled business problem is not an isolated phenomenon in one or two states, but is a problem that has infected virtually every state in the country. A nationwide solution is required to deal with a problem of nationwide proportion.

Positive developments have taken place over the last couple of months: the Interpretive Rule, HUD's public hearings, the RESPA Section 14 report addressing the controlled business problem. All are steps in the right direction. Your Association will continue to work closely with HUD, members of Congress and key staff personnel in an effort to resolve this most serious problem. It is our hope and goal that the RESPA Section 14 report will contain recommendations to Congress on how the federal government should curb controlled business arrangements. This subject should be the centerpiece of the Section 14 report. It is that important.

The Report of the ALTA President

by Robert C. Bates

This year the format of the committee meetings was changed so that all of the major committees of the Association could have their meetings before the Executive Committee and the Board of Governors met. Historically, the Board of Governors and Executive Committee meetings were held at times determined by the president and the staff, without reference to the schedules of other committees. This new plan to coordinate the timing of important meetings has already proven its worth.

The Executive Committee met on Tuesday and, by avoiding unnecessary duplication of work undertaken by other committees, was able to complete its deliberations in four hours, about half the time formerly required. The same held true for the Board of Governors which did not meet until Wednesday, the first day of the sessions. Again, avoiding redundancy or the consideration of unnecessary items, the Board completed its assignments in about two hours. This streamlining allows us to deal more meaningfully with substantive material and not repeat a lot of the work that has already been handled by another committee.

These are important changes that I believe will be followed in the future, as we strive to develop a more efficient and effective organization through which to deal with ALTA matters.

Mr. Bates, the 1979-80 ALTA President, is executive vice president, Chicago Title Insurance Co., Chicago.

At its meeting on Oct. 14, the Executive Committee authorized the Research Committee to develop a proposed ALTA loss-reporting plan for use by all of our members. This will include the collection of loss data by the ALTA staff, through the Research Committee, on an industry-wide basis. Working with this data, the Research Committee will undertake to develop a standard formula which can be utilized by title insurance underwriters in meeting the new obligation we have of maintaining a loss reserve for incurred but not reported losses (IBNR). This type of reserve has been used in the property casualty industry for many years, but it is a new concept to the title industry.

Robert C. Bates

Historically, most title underwriters have reserved for title losses on the basis of estimated settlement cost of known claims. To comply with various state laws we still must do that. Most of us are being faced with establishing Generally Accepted Accounting Principles (GAAP) reserves for estimated losses that inevitably will flow from the business that we are currently writing.

We used to think a title policy had a "claim tail" of two or three years. We are learning that the "tail" now is at least ten years, with 95 percent of our claims probably being made known to us within ten years. Part of the work of the committee will be to develop an acceptable standardized approach to the IBNR loss-reserve requirement. Hopefully this will help us avoid going in different directions at great cost of money, time and effort to provide a reliable standard form IBNR loss-reserve formula.

NAIC Form 9 Data

In addition, the Executive Committee approved the Research Committee recommendation that ALTA begin releasing by company the NAIC Form 9 financial information that ALTA now collects on an annual basis. I think most of you know that most of the underwriters send their NAIC statutory information to ALTA at least annually. The Research Committee compiles that data and has it available for many purposes, including inquiries from Congress and regulatory bodies as well as for the members of the Association to the extent they request it. Up to now that information has been available only on an industry basis. The names of specific companies were never directly as-

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sociated with any of that data.

Since the information is a matter of public record in the individual states and most of us also have been gathering that data by individual company and using it for numerous purposes, it seemed a waste of time and effort for the individual title insurance companies to be duplicating an existing ALTA activity. Inasmuch as the ALTA Research Committee has gathered and consolidated the data, it is simply a matter of releasing it to those who want it to the extent those companies who have supplied the data are willing to allow themselves and their data to be specifically identified.

So those of you who are interested in participating in the program will be asked to do so. The data will then be published and made available on an industry basis as well as on a company basis. We think this is a major step forward in improving the productivity of our industry and controlling the cost of doing business.

The Executive Committee agreed that the ALTA will seek to file an *amicus curiae* brief in *Newark* v. *Natural Resource Council*, which is a case pending in New Jersey. We will do that if the United States Supreme Court grants *certiorari* in this litigation. This is another very serious wetlands case.

If this case goes in the wrong direction it could be catastrophic to underwriters doing business in the New Jersey area (which is most of the major companies in the country). So we think it is quite appropriate, particularly in light of the success that the industry has had with respect to previous ALTA *amicus curiae* briefs.

Reinsurance Manual

The Executive Committee approved a recommendation from the Reinsurance Committee that the first installment of a reinsurance manual prepared by that committee be approved and distributed to ALTA members. This

"These are important changes that I believe will be followed in the future, as we strive to develop a more efficient and effective organization through which to deal with ALTA matters."

is an attempt to standardize and improve needed risk-spreading arrangements within permissible bounds of collective member action. It will benefit all of us because it will speed up the process and clarify the arrangements that will exist between ceding and issuing companies in reinsurance transactions throughout the nation.

The Reinsurance Committee has been working for three years to develop this process, always under the guidance of outside counsel to be sure that we are in compliance with all trade regulation and antitrust requirements.

The Executive Committee elected David McLaughlin, who has served for several years as ALTA staff business manager, to the position of vice president—administration. Last year, Mark Winter and Gary Garrity were elected vice presidents. We think these gentlemen need and deserve these titles. Their promotions have been for both recognition and to provide them with the tools to do their jobs.

David McLaughlin handles the logistics for ALTA activities. An important example is the preparation of all of the arrangements for activities such as this convention. It involves a lot of hard work, much negotiation and much contract review and approval. In addition, he handles all of the administrative work including accounting activities of the Association's central office. He has earned this promotion.

Upon the recommendation of the Planning Committee, the functions and responsibilities of the Government Relations Committee and the Federal Legislative Action Committee have been reviewed in depth. Historically, the scope of the Federal Legislative Action Committee was very narrow. It dealt only with legislation pending before Congress. As recently as 1975 it was not felt that the Federal Legislative Action Committee should include activities at the state level, regulatory activities at the federal level, and a mass of other kinds of activities relating to the various government subdivisions with which we do business. So the Government Relations Committee was formed in 1975.

Since that time these two committees have commenced to work much more closely together. It then developed that a person serving on both committees found himself attending two meetings at the Mid-Winter Conference and at the Annual Convention that were essentially the same meeting. So we decided that it was time for a change. As a result, those two committees have been abolished and a new committee, the Government Affairs Committee, has been created. This was done under a special provision of the ALTA Bylaws, Section 2 of Article 10. By a two-thirds vote of the Executive Committee and a two-thirds vote of the Board of Governors, the new committee has been authorized. These changes, again, are in the interest of improving efficiency and simplifying the environment in which we work.

The Government Affairs Committee will have no specific number of members or membership representation from any particular committee. Up until this change was made, the Government Relations Committee was composed of all of the committee chairmen of the Association. The new committee will operate under a steering committee consisting of the ALTA president, the ALTA president-elect, and the chairman of the Government Affairs Committee. It will function in a way that will bring into the committee activities various people who will deal with the affairs of the organization as they are needed. The steering committee will decide from time to time who should deal with specific problems as they arise. This plan will no doubt require some changes as the days, months and years go by, but we think it is a good start toward streamlining the manner in which ALTA operates.

Meeting Sites

The Executive Committee and the Board of Governors approved holding the 1984 Mid-Winter Conference March 28-30 at the Capital Hilton Hotel in Washington, D.C. We have noted a good deal of comment from the membership that we should consider holding the Mid-Winter meetings in an environment which is not quite so oriented toward recreation as some of the locations visited in recent years. A consensus seems to be developing that at least every other year we should hold our Mid-Winter meeting in a major city rather than a resort area.

Also, concern has been expressed about the accessibility of some of the locations that have been selected in the past. A place like Washington, D.C., is easy to get into. Although it is easy to get into, it's hard to find a place to stay and hard to get out of, but we are going to try Washington, D.C., in 1984.

The 1981 Mid-Winter Conference, as you know, will be held at The Homestead in Hot Springs, Va. It is a beautiful facility. It is hard to get to but it is a great place to stay and an easy one to get out of. I'm sure that once you get there you will enjoy it. The registration fee has been set at $50 for members and spouses and $150 for non-members. This represents no change. The 1981 registration fee is the same as it was for the 1980 Mid-Winter Conference.

This is my last formal report to you as your president. I want you to know that we have a strong, dynamic organization in ALTA. It has a well managed, highly competent central office staff. The Executive Committee and the Board of Governors oversee the affairs of this organization in a superior way. The interests of all our members are being looked after in a way that is honorable, efficient, professional and effective.

Syndicated columnist Robert D. Novak was the featured speaker at the TIPAC luncheon.

Report of the ALTA Executive Vice President

by William J. McAuliffe Jr.

The Association has matured. Its staff and committees have much to offer. Following are some recent examples of Association assistance.

At the request of a state title association, the ALTA vice president—government relations attended a meeting involving members of the state association and a county recorder who plans to seek state legislation to carry out a HUD Torrens demonstration. The ALTA staff representative was able to bring to that meeting a broad perspective on the Torrens proposal.

Through the ALTA general counsel's office, a small title company has been given assistance in connection with unauthorized practice of law charges brought against that company by a county bar association. The matter was brought to the attention of the Antitrust Division of the Department of Justice. Following an investigation by the department, the matter is now being considered by a Federal Grand Jury.

The Lands and Natural Resources Division of the Department of Justice recently was experiencing difficulty obtaining title and related information in connection with its attempt to obtain the names of owners of the sites containing tailings from old uranium mines. The department had a short time frame in which to obtain this information because of budget considerations. They sought and obtained the assistance of the ALTA staff in connection with this matter.

The ALTA Committee on Reinsurance is developing a manual for the use of industry people involved in the reinsurance function. The first portion of this manual was approved by the Executive Committee and Board of Governors at this Convention. It will contain:

- brief definitions and guidelines with respect to the actual ministerial duties in connection with the execution of reinsurance agreements;
- brief explanatory discussions regarding such matters as retrocession, direct access, co-insurance, etc;
- a few specimen forms commonly in use;
- and the ALTA facultative reinsurance agreement.

The Association's Committee on Internal Auditing is developing escrow internal control guidelines. It is the hope of the committee to have this work done soon and to distribute this material to member organizations. It is the belief of the committee that these guidelines can be very helpful in assisting company management in establishing sound internal control procedures.

Recently the ALTA vice president—public affairs assisted the Florida Land Title Association in customizing the ALTA award-winning Sgt. Braxton radio spots into a Florida Land Title Association radio package to be sent by that association to radio stations in Florida later this year.

The ALTA Sgt. Braxton radio spots have been so popular that ALTA has had to make extra copies for some members who have taken them to their own local radio stations. I am happy to report that they have been played by many of those stations.

A Rapid City, S.D., newspaper reporter, working on a story on an Indian claim in that area, was referred by the ALTA vice president—public affairs to appropriate people in Masphee, Mass., when he sought information on the experience of a community faced with a large Indian claim.

On a number of occasions, *Title News* has been devoted to a single theme. The wetlands issue which contained articles by wetland experts from the title industry has been very well received. It came to the attention of members of the American Congress on Surveying and Mapping's Interdivisional Committee on Marine Surveying and Mapping and prompted them to hold a meeting with the ALTA Wetlands Committee. As a result, the two organizations have agreed to update the minimal standard requirements for land title surveys which were adopted by the ALTA and the American Congress on Surveying and Mapping in 1962.

The Research Committee recently has published its report. This document has been distributed not only to ALTA members but also to insurance commissioners, members of Congress and federal agencies. The material in this report is designed to give readers a true picture of title company profits and losses over the past decade. Many persons, especially in government, have an erroneous impression in these areas. One of the articles concludes that over the past 12 years title insurers have earned only modest profits and that profits have plummeted whenever inflation has heated up.

The ALTA director of research furnished national title insurance data used in insurance committee hearings in Minnesota in connec-

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Mr. McAuliffe is ALTA executive vice president.

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Training—*(from page 23)*

by other companies. And, we send interested employees to school. Some go to typing classes, others to real estate school—things that are tied to our business. This has successfully resulted in better trained people and more interested people.

We plan to launch into video tape use for public relations functions. We will make films of our operation, similar to the films of title operations the ALTA Public Relations Committee has put together.

I cannot emphasize enough the necessity and importance of training people if you hope to keep them and make sure that their knowledge is always current. Today's competition is fierce. In our state, we have nothing to sell but service. Rates are totally regulated by the State Board of Insurance and all title companies use one rate. If our company can sell trained people, then we think we can get the customers, and we can keep those customers.

We have put a little bit of Hollywood in our company. I think that each of you should consider doing the same. People really enjoy it. If you can have fun in your business, it will improve it a great deal. If people are involved and participating, then they will stay with you.

Regardless of whether you use video tape programs, on-the-job training or any other method, I urge you to train your people. Avoid the frustration that employees may have when they are handling a $100,000 deal or a million dollar deal and they worry about the responsibility of it and the fact that they accidentally could break your company by one stroke of a pen. If they are trained, such a scenario is not likely.

Ours is an extremely technical business. The people must know what they are doing so that they can avoid loss to our underwriters and make our customers believe we are perfect.

Executive Vice President—*(from page 49)*

tion with a proposal by the commissioner to limit the total liabilities that an insurer could assume to 10 percent of surplus as regards policy holders.

Working with local title associations, the ALTA has sponsored successful seminars designed to inform attorneys and others about title insurance. We held our first one in Boston in cooperation with the New England Land Title Association in April of 1979 and had 240 people in attendance. Our second one was held in February of this year in Atlanta in cooperation with the Dixie Land Title Association and 148 people attended. In September we held our third seminar in Milwaukee in cooperation with the Wisconsin Land Title Association and 151 persons attended.Our next seminar is to be held here in Honolulu on Saturday following this convention. When I left Washington, 180 Hawaiians had registered for this meeting.

All of these examples attest to the Association's ability to respond to calls for assistance and to provide service to members at the local level.

What about the Association's involvement in the future?

You have already heard about the creation of the Association's Government Affairs Committee whose purpose will not only be to work at the federal level but also to improve understanding of the title industry on the part of state legislators and regulators.

You have seen earlier in this convention the new ALTA film, *The Land We Love*. It should be of great use to members in explaining title insurance. It will bring the title industry message to millions of people through public service telecasts.

To maintain its high quality *Title News* will continue to need articles written by members. I am pleased to report that the editor states that when she calls upon members to write articles, very few refuse to do so. I encourage any member with a story to get in touch with our editor for possible publication of it in *Title News*. We are always looking for good articles.

1980–81 ALTA Officers Sworn In

ALTA officers and board members sworn in at the 1980 Convention are (from left): Sam Mansfield of Ocala, Fla., member-at-large, Abstracter-Agent Section; Fred Fromhold of Philadelphia, president-elect; Mary Feindt of Charlevoix, Mich., board member; James Boren Jr. of Memphis, Tenn., president; C.J. McConville of Minneapolis, Minn., treasurer; John Flood Jr. of Los Angeles, chairman, Finance Committee; Robert Dorociak of Dallas, member-at-large, Title Insurance and Underwriters Section; Joseph Mascari of Los Angeles, board member; Donald Kennedy of Santa Ana, chairman of the Title Insurance and Underwriters Section, and Thomas McDonald of Sanford, Fla., chairman of the Abstracter-Agent Section. Not pictured are Joseph Burke of Philadelphia; David Lasseter of Belle Mead, N.J., and Calvin Johnson of Princeton, Ill., all new board members.

Calendar of Meetings

March 25-27
American Land Title Association
Mid-Winter Conference
The Homestead
Hot Springs, Virginia

April 30-May 2
Arkansas Land Title Association
Lake DeGray Convention Center
Arkadelphia, Arkansas

April 30-May 2
New Mexico Land Title Association
Holiday Inn
Las Cruces, New Mexico

April 30-May 3
North Carolina Land Title Association
Litchfield Inn and Country Club
Litchfield, North Carolina

May 3-5
Iowa Land Title Association
Holiday Inn
Amana, Iowa

May 7-9
Oklahoma Land Title Association
Sheraton Century
Oklahoma City, Oklahoma

May 14-15
California Land Title Association
Islandia Hyatt House
San Diego, California

May 14-16
Texas Land Title Association
Palacio Del Rio Hotel
San Antonio, Texas

May 28-30
Tennessee Land Title Association
May 28-31
Opryland Hotel
Nashville, Tennessee

May 31-June 2
Pennsylvania Land Title Association
Shawnee on the Delaware
Shawnee, Pennsylvania

June 7-9
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 22-24
Oregon Land Title Association
Ashland Hills Inn
Ashland, Oregon

June 25-27
Land Title Association of Colorado
Sheraton Steam Boat Resort
Steamboat, Colorado

June 28-30
Michigan Land Title Association
Grand Traverse Hilton
Traverse City, Michigan

July 16-18
Wyoming Land Title Association
Ramada Inn,
Casper, Wyoming

August 6-8
Montana Land Title Association
Sheraton Hotel
Billings, Montana

August 6-9
Utah Land Title Association
Elkhorn Village
Sun Valley, Idaho

August 13-15
Minnesota Land Title Association
Holiday Inn
Grand Rapids, Minnesota

August 14-15
Kansas Land Title Association
Holidome
Dodge City, Kansas

August 20-13
Alaska Land Title Association
Juneau, Alaska

August 30-September 1
Ohio Land Title Association
Hyatt Regency
Columbus, Ohio

September 1-4
New York State Land Title Association
The Otesga
Cooperstown, New York

September 9-12
Washington Land Title Association
Thunderbird Motor Inn
Wenatchee, Washington

September 11-13
Missouri Land Title Association
Lodge of the Four Seasons
Lake Ozark, Missouri

September 13-15
Indiana Land Title Association
Merrillville Holiday Inn
Merrillville, Indiana

September 20-23
American Land Title Association
The Broadmoor
Colorado Springs, Colorado

October 2-4
South Carolina Land Title Association
Hilton Head Island, South Carolina

October 15-16
Wisconsin Land Title Association
Pioneer Inn of Lake Winnebago
Oshkosh, Wisconsin

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