January 1983

TITLE NEWS

Convention Report

Sharing can save you

a bundle

Having TDI set up and maintain a joint plant system can be a viable alternative to your own computer system.

Not only does it offer the benefits of automation at a fraction of the cost, but our research has shown that some joint plant groups are realizing a savings of over $100,000 a year as compared to operating their own manual plants.

With TDI's joint plant system everything is taken care of by our staff. TDI personnel set up and run the plant and will even arrange to get the source documents. Yet with all this service you maintain control.

Plus with TDI's service, open-order information is kept confidential to each participating company, while insuring that each company gets the same high-quality service. All this at considerable savings as compared to maintaining your own plant—and as the number of companies sharing the plant increases—the cost to each decreases.

TDI's effective plant maintenance system provides:

- **Two-level, current, accurate and convenient microfiche indices to your title plant.**
- **Or a single-level online index accessible through your own terminals.**
- **Low-cost capture of essential document data with high accuracy resulting from extensive subdivision and section validity checks.**
- **Automatic updating on open orders with daily fallout reports.**
- **A variety of searching aids such as arbing in acreage descriptions.**
- **Control of requirements and services by participating companies.**

With over forty counties under maintenance in ten states, TDI has the background and expertise in the title insurance industry that you can depend on.

If forming a joint plant sounds interesting, call TDI toll free at (800) 525-8526, or contact one of our branch offices.

Title Data Inc.
1835 24th Street
Santa Monica, CA 90404
(213) 829-7425

3540 So. Poplar Street
Suite 201
Denver, CO 80237

901 North 9th Street
Milwaukee, WI 53233
(414) 276-2128

11899 Edgewood Rd.
Auburn, CA 95603
(916) 823-8620

100 No. Interegional
Suite 3700
Austin, TX 78701
(512) 478-0998

TITLE NEWS

Volume 62, Number 1

Title News is published by the American Land Title Association, 1828 L St., N.W., Washington, D.C. 20036. Telephone (202) 296-3671.

Commentaries—1982 ALTA Annual Convention

Departments

A Message From The President

The National Association of Insurance Commissioners' approval in early December of a model law including controlled business restrictions has set the stage for action in both Congress and state legislatures to curb the problem. The NAIC model law, expected to serve as a basis for drafting legislation in individual states, would place an annual limitation of 20 percent of gross revenue on business received by title insurers and title insurance agents from other real estate professionals with ownership interests in such organizations.

Approval of the 20 percent limitation in the NAIC model law demonstrates the concern among state regulators over anticompetitive controlled business arrangements. If controlled business is left unchecked, the inevitable result will be less competition in the marketplace and higher prices for title-related services.

This action of the NAIC should send a signal to the lawmakers, the regulators, and the title industry that controlled business will be dealt with. Many persons in our association deserve credit for this significant step.

Our Mid-Winter Conference will be held March 16–18 in Phoenix, Arizona. The meeting will be held at The Pointe, a resort convention center in the heart of Phoenix.

While attending the 1981 Arizona Land Title Association meeting, I took the opportunity to examine the facilities. The Pointe is nestled into 2,700 acres of protected desert scenery and offers 582 guest suites (at reasonable prices) and 30,000 square feet of meeting space. The environment is architecturally exciting, intimate, and relaxing.

The Pointe is a refreshing concept in the resort industry. The resort was built by an innovative Phoenix development firm, and many extras have been incorporated into the property: luxurious suites as the standard accommodation . . . pools with underwater music and swim-up bars . . . a nightly get-acquainted cocktail party with drinks on The Pointe . . . stocked wet bars in the suites . . . and more.

The Pointe is located in the center of the Valley of the Sun. Downtown Phoenix, Sky Harbor Airport, and Scottsdale are all only 15 minutes away. The Pointe is strategically located, but secluded by the acres of mountains and untouched land that surround the resort.

Plan to take time out to attend the Mid-Winter Conference and experience this truly remarkable convention site.

Tom McDonald

Thomas S. McDonald

Challenge And Change: New Sources For Home Mortgage Finance

The Honorable Richard Lugar (R-Ind.)
Chairman, Senate Housing Subcommittee

As a businessman in Indiana, I have been well acquainted with the structure that members of the land title industry bring to our communities—not only in professional services but also in community leadership. That is characteristic of the industry throughout the United States of America. You have come together at your convention not just as title professionals thinking through those things that are important in your profession but as Americans interested in the future of this country and in the future of our market system, the preservation of property values, the incentives that have brought a high standard of living to our country, and a life-style to which we have become accustomed and that for many has seemed threatened in the past few months or years.

For these reasons, our meeting is timely. The issues are many. I shall not try to cover them all, but I do want to zero in from some general perspective about the lay of the land as we see it. This is a time in which many persons in our country are deeply troubled about our economic future, clearly about our economic present.

There has been a fundamental debate, and I think a fundamental course change, in this country's politics and economics. It came with the election of 1980 and the accession of Ronald Reagan to the presidency. His articulation of general themes did not create them, but let me recite at least five things that it seems to me that election brought to bear. One of these was a desire on the part of the American people for some degree of control of federal spending—not reduction, but control of the increase. There are many persons who would be in favor of outright reduction, but that is generally not going to be feasible, given the demands that we have placed on ourselves, in promises to ourselves in the Social Security system, and a whole raft of programs of income support and a national defense policy that also came in with the Reagan administration.

There is a desire for reducing the tax burden on individuals, partnerships, and corporations. There is a desire for a degree of deregulation, or at least less regulation, of business, state and local governments, and our personal lives. There is clearly a desire for reducing the rate of inflation.

Clearly, there was a national consensus for a stronger national defense. That might take many different forms, and, indeed, the debate goes on in a lively manner as to which weapons systems, and how much and on which continents, and whether we shall be mobile.

Many people pointed out that at the outset that it would prove to be impossible, to do all five of these things. Some felt that it was ludicrous that we should try to control government spending and reduce taxes but, at the same time, increase the national defense and change the basic guidelines for many of our large businesses. But, nevertheless, the push to do all those things proceeded. In retrospect, perhaps even the President would admit that the probabilities of coming out whole in that exercise were slim but, at the same time, there was a desire on the part of people to get on with it and to make some fundamental changes.

Why did that consensus come? I would suggest—although people may not be able to spell out all the economic theory—it became apparent that 20 percent inflation and gusts higher than that would ultimately undermine most of our basic financial institutions, most contracts, most of our promises to one another. Twenty percent inflation, in essence, erodes through a very decisive tax about one-fifth of all values each year at that rate.

We have been through one sort of oscillation after another. I can recall, as most of you can, the dramatic speech of President Nixon on August 15, 1971, in which he came on on a Sunday night and said, "My fellow Americns we are going to freeze prices and wages." Fifteen different programs of vast controls were placed on our economy. The American public was frightened by inflation that had reached 4.5 percent, and the President was concerned about that. Now, in each subsequent recovery, and in boom and in recession, and then in recovery, the rate of inflation mounted ever upward. Finally, under the last administration, the inflation rate went past 20 percent, and many people saw no particular stoppers.

The structural rigidities behind inflation, cost-push aspects, are still there. We have enormous weakness in commodity prices and weaknesses, I suppose, in some fields in which sales are very small. Two of these fields come to mind, one of which is pertinent to this association—that of houses.

Houses simply cost too much. Cars have cost too much for a long time. For a while, not only with houses but also with cars and big-ticket items, if you assumed a 20 percent inflation rate, you were a fool not to buy. Get in at that point with leverage onward and upward. That certainly has been true in the most graphic example of which I can think. I'm an Indiana farmer with 604 acres outside Indianapolis. As most people who have 604 acres, I've enjoyed a period of seeing on paper my net worth go onward and upward. The price of that land, we are told, has gone up in Indiana between 1970 and 1980 by roughly 300 percent, and some people more euphorically will say 400 percent. Imagine that in just a decade an acre of land out there taking on those sorts of values. More millionaires in Indiana were created by sitting on farmland during the last decade than by any other method.

Now, the dilemma, of course, comes from what the *Wall Street Journal* would call "go-go" farmers. One farmer claimed to have learned that at Purdue University in a two-hour course—"go-go" farming. The thought was to put as little money down as possible, latch onto as much land as possible, and let inflation take its course. In that process, land isn't too high at all, nor are houses, nor are cars, nor is anything if you go at that rate.

A 20 percent inflation rate was a matter of fact, fairly mild in terms of many other nations in this world, and still is mild in comparison to some for which there seems to be no tomorrow. But I finally came to a point at which many Americans had a feeling that this really could not proceed. One reason for that feeling was simply that there appeared to be a worldwide shortage of capital. Now, maybe there is and maybe there isn't. Maybe there is an excess of boom and not of confidence, but if we were to come to the heart of the matter with regard to money for mortgages, money for houses, why very rapidly we begin to touch the mainstream of whether there is enough money on the face of the earth to do all the things that we want to do and to do them simultaneously. The age-old answer is there probably is not. Human wants and desires to escalate the standard of living everywhere probably exceed our savings and our capital pools.

Long before the Reagan administration came along, there was discussion in this country, about "How are we going to get peole to save more as opposed to spend more?" In an economy in which there appears to be no tomorrow and you moved onwards and upwards with inflation, the desire to save was diminished. In an economy in which savings were taxed at a fairly high rate of interest, so-called unearned income, there were no particular incentives to accumulate. In that way people spent. The money went into land or into proprety or into something that might take on that same inflationary situation. So people lamented in our country the fact that savings as a part of our gross national product was too small. People began to fear, as a matter of fact, as the threat of Japanese and western European competition in particular came to our basic industries, that we had not been saving enough to modernize our facilities to become generally competitive, and we were falling behind others. So all these things came to roost about the same time, and they led to a thought that by and large we had better try to get a handle on our federal spending, and we had probably better reduce taxes for two reasons.

One reason was to offer incentives for people to save, invest, invent, and initiate new procedures and modernize the equipment they had. We ought to offer incentives to persons to become more productive. We ought to make it worth while to work harder and to risk more. Most of us who believe in a market system believe that this is probably the way you approach it. There has to be a set of incentives for people to make rational choices that will benefit them and their businesses.

Now, the dilemma of all this I suppose came when we were in a recession, and perhaps we did not know it, and we were passing the tax bill. The tax bill of 1981 is a very important document. It offers tax cuts for individuals, depreciation-schedule changes, investment-tax credits, and state tax changes—a whole raft of things that are very important, if you ever get to the promised land having the money to invest and having some pretty good projects in which to invest. In other words, the potential for tax reduction is there, but it assumes a situation in which people are going about the normal business of investing and producing and that they have not always been doing so during the course of the recession.

As a matter of fact, we have a situation now in which the public psychology has changed very markedly. As *Fortune* magazine pointed out in a recent issue, Americans are, in fact, saving more than they have been saving for a while. Savings on a national level are rising. *Fortune* makes the point that the balance sheets of individuals are indeed a good bit stronger than they were a year ago and certainly two years ago. Now, that is contrary to popular wisdom—as one looks over the horizon, the news is replete of people who are out of money and who are in dire straits.

The point is that the vast majority of Americans have savings. What they have obviously been doing, to reduce it to commonsense levels, is that they have been letting the old car run longer and have not bought a new one. They have bought replacement parts and tried to keep it going—ditto for the washing machine and the refrigerator. They have not, as a rule, been going on a spree of buying new houses and refurbishing the whole thing. On occasion, people have tacked another room onto a house. They may even have split up either under the proper building codes or without that cover into apartments where additional members of the family are living. We have been very skittish about buying recently. We have been saving. We have been assuming that prices might come down but we're not sure that they will soon, and we've been paying off our charge-card expenses as opposed to going into abnormal new credit demands.

The same is true on the farm. Farm prices are low. They will be lower as an abundant crop of corn and soybean is harvested. As you wander to the implement dealers, they have a lot of tractors, but they are not selling them to anybody. It's not that the farmers don't need them—normally they would have, in the old days. But now they are patching up the old and making it do, and the new equipment sits there. Ditto for automobiles, and now the automobile companies are reducing their inventories. Take the U.S. Steel Mill Blast Furnace 13 in Gary, Indiana, the most efficient integrated blast furnace in the country. The mill has a computer that reacts daily to new car orders. It's a hand-to-mouth existence. There is no back-up of steel there.

This is a new phenomenon for this country, and it has been a tough one because it means that the turnaround is taking some time. As the turnaround comes, and the mechanization and modernization we called for occurs, the Chrysler plants, for example, in Indiana will be employing half as many people as they did before and producing slightly more than they were before. We all felt that was probably desirable if we are going to bring down costs and become competitive. But what about the 50 percent of employees who really have no chance of being rehired, upturn or not? What about the employees of International Harvester and other agricultural implement companies? And so it goes across the board. What about the 15,000 people out of work at U.S. Steel? Half of them may get back, but probably not more than that, even with a very sharp upturn in the economy.

In short, we began to do a number of things that philosopher King said we ought to be doing all along, that is, paring down costs, saving, and using scarce resources in a more efficient way. At a convention such as this 15 years ago, you might well have heard some farsighted person fresh from the Club of Rome talking about the limits of growth, that we might as a world run out of scarce resources, and that it was going to be touch and go given the population explosion—not so any longer. The market works, and at a certain price people stop buying. They simply do not at an infinite progression of decisions go off the curve.

But those are sharp changes, and they have not been assimilated by all Americans. At some stage they are, and the pain in doing so is substantial. I would simply say to you, I believe, that we are entering a healthier economy. I am certain that we will be more cost conscious. It's a frugal economy. We're saving more and the incentives to work harder are there, but the turnaround process is going to take some time, and most Americans know that. This is why the President says, "Stay the course."

Politically, the opposition is not suggesting a full-blown alternative. The opposition is, in essence, saying that times are bad and unemployment is double digit. The dislocation of farmers is intense, and property values in real terms are going down. The opposition would say, "Vote for us because these people have created some problems for you." In my judgment, that is a less than satisfactory problem for an organization, because you simply don't have at this point a full-blown theory of how else we would replace it. Now there could be some theory coming along the horizon. In the event that there is a full-blown alternative in essence to what Reagan and the Republicans in the Congress have been saying, it is very likely to come down to very massive federal government intervention in the economy. Many persons suggest a Reconstruction Finance Corporation. Many suggest massive infusions of capital in selected industry, with government making the capital allocation decisions and beefing up those things that are seen as vital to our country as opposed to those things seen as not vital. Now, I would be reticent ever to support such a thing, and I think most of you would be too. I think it is important to see what the alternatives might be.

At present, they are not being articulated. What is being articulated is, in essence, a certain harping about how times are hard, and indeed they are, and the question is whether we should have proceeded in this way at all.

Now, the dilemma for those of us who are involved in housing, in land, in real estate, and in anything touching upon this, I think, comes down to this. In the past, there were some institutions in our society that saw housing as a prime target for investment—indeed, as a high priority for all Americans, in terms of their life-styles and aspirations. For a long time, the tilt of tax law and of much administrative law has been toward the presumption that a high, if not the first, priority of domestic policy ought to be adequate housing for all, and beyond that, individual homeownership for a vast majority. Now, the question is "Is that still a national goal with the same strength and force as it has been?" Critics of the current administration have said that this is an administration that is antihousing. They've suggested that this is an administration that in its heart of hearts saw modernization of basic industry as the highest priority with the use of capital. I think most spokesmen for the administration have said that charge is unfair. It is not an antihousing administration, rather it is one in which housing must compete on a level with all other groups seeking capital. That, if true of course, would be a sharp change from a situation in which housing was clearly given priority.

Now, as a matter of fact, the market has taken hold. It's taken hold with regard to the Indiana farmland situation that I cited. If, in fact, my acreage went up by 300 to 400 percent in 10 years, it has come down mighty fast in the past two. Indiana has been an abnormal victim of this, and I appreciate in a sophisticated group of this sort that each of you has different estimates per acre in each state, maybe in each county, of this great country. But, at least in the Hoosier state, the estimates of the agricultural credit people are that we had a reduction of land values of about 13 percent—maybe higher than that in 1981 and in 1982.

That really throws some clinkers into the gears, especially so if you zip up in "go-go" farming, highly leveraged transactions for 10 years, and you have a lot of people heavily extended, many of them young, farmers who were ambitious, who tried to get a hold, bought some farm machinery in addition to land for relatively little money down and the equity and the balance sheet figures go very positively for a while but then suddenly in two years one-fourth of all of that is gone. Then you have some problems, and indeed the credit available for the purchase of farmland, in some cases, is hard to come by.

Many country banks and many that are not country banks are looking very skeptically at that whole procedure. Most, as a matter of fact, are in the process of granting leniency and trying to work out with the farmers what could happen. In two counties that I visited there's hardly been a farm transaction for the last six months. On the one hand, no one wants to sell land, having an idea that it is probably worth twice as much as in fact it would bring in a distress sale presently, and almost no one in the county has any money with which to buy it, or the ability to borrow the money to buy it. Which is pretty much of a standstill in terms of transactions, and bankers are hopefully waiting for the crop to come in so they can work out very difficult situations.

Strangely enough, the consumer price index continued for a long time to register a gain in terms of housing cost. The cost of living kept rising, the housing components rising along right with it, even though almost everybody involved in real estate knew that the real value of most properties was in decline. There is in the indexes, apparently, an inability to get into creative financing or to try to begin to measure what different sorts of interest arrangements and buybacks and all the rest may mean. Nevertheless, for those who are involved in the field it may mean less. In most cases, the losses are sitting there and, in many cases, they are growing.

This, of course, is a distressing situation with regard to capital. This has most recently, and graphically, been illustrated in the long debate we've had on the banking legislation that has taken two years to proceed through the House and the Senate and the major focus of which initially was to bail our the S&Ls in this country. Now, the facts of life are that in some months of this past year I am advised the savings and loan institutions' net input of new capital into the mortgage markets was zero, in fact, a negative figure. They were so busy—they were trying to stay alive—so busy in trying to find new powers and new authorities and new sorts of business that money might be invested at a higher return than they were getting with mortgages, that the mortgage business not only fell by the wayside but, of course, became a national catastrophe. It almost took down, or would have I suspect, in due course a third or a fourth of all the thrift institutions.

In the past, we relied on the thrift institutions for mortgage money. The point has been made that, in the future, we may not be able to rely on them for that much. Indeed, unless they have adjustable rate mortgages, or something that at least gives them an equal shot at the flexibilities and the ups and downs of the market, the possibilities for having those capital infusions are not there even in the future, apart from the emergencies of the present.

Therefore, the question for us, if we do want to have this American dream of individual homeownership and the availability of money, is where is the money going to come from? That is a fundamental question that comes back to where we started; that is, we try to guage how much of a capital pool there is in this country and in this world. I say in this world because in the event that other countries are willing to pay a higher rate of interest for capital, a lot of money is going to flow to those countries. That has been the common complaint of many western Europeans against us during the past three years—that high interest rates in this country have drained capital from those countries into our banks. It may have come for reasons of safety. It may have come for reasons of facilitating many transactions. But we are going to be locked into a situation in a way in which we are interconnected with the world's desire for capital.

The thought goes out now from most meetings such as this for the next great source of money, now that the savings and loans have depleted their possibilities. There are pension funds, and indeed that's right. There is all kinds of money being piled up in pension funds around the country, and in the past many pension-fund managers were under great constraints not to become heavily involved in real estate and especially in mortgages. People have seen this coming, and they have begun to try to devise instruments that would make it easier for prudent pension-fund managers to invest in the real estate market. I think we are some distance from the ideal vehicle, but my guess is that it will have a fairly similar form to a government bond or to an industrial bond or to something at least that is marketable in about the same sort of way as our other securities. They may be packaged in a way that makes it possible for somebody to claim prudence, to have ratings that go across the board as we have on almost every other kind of security of that sort.

In such a form, housing bonds, that's what they are, are going to be competitive with bonds for steel companies or for automobile companies or for anything else too. In other words, if in fact the market works and people make choices looking at yield and security, housing becomes another industry, albeit a very large one and a very important one, along with all other competing sources of capital, including the demands of the federal government to pay its debt.

Now, how housing will fair in that competition is, I think, the essential question. I suspect that there will be pools of capital, and they will never be adequate for all the desires of the American people. Interest rates will reflect that. What people will I suppose want to argue at some point is "Should housing securities or housing money once again take on a status of preference and, if so, how do you change the market or the tax code or the tax regulations to bring that about?

Now, it is not an insoluble problem, but it is a question that really has not been debated recently. We came as close to that kind of debate this year with my ill-fated housing bill. The plan was to spur housing and help solve the unemployment problem by reducing interest rates with a growing equity mortgage for new home starts. The thought was that as the houses were sold the governmental subsidy would be repaid to the Treasury. The idea was that all these houses had to be built in 1982 and that they would provide jobs for 700,000 people, building the houses, and in washing machine factories and in refrigerator factories and in all the auxiliary institutions. Given the status of the economy, it was our feeling that unemployment would decrease and, as a matter of fact, a good number of businesses would be stimulated in a healthy way so that more income came into the federal government and the deficits were decreased.

I think it was a good idea, and it passed the Senate five different times in various forms and challenges, and the House of Representatives likewise. It reached the President's desk. In the half-hour conversation I had with President Reagan in the Oval Office on the question, he raised some valid points, one of which was "If you do this for housing, won't there be demands on the part of others?" This

Continued on Page 28

Specialization Or Homogenization— The Financial Institutions Of The Future

Leonard Shane
Chairman Designate
United States League
Of Savings Institutions

SHANE: I am traveling the country with a message. I have traveled close to 150,000 miles domestically in the last 15 months. I don't become the chairman of the U.S. League until next month, when I am told I will do more than 200,000 miles, speaking throughout the country in the next 12 months.

I would like to share with you some observations. These will hit home to some of you here. Most of the states that I visit feel that they are in worse shape economically, as a state, than other states. One of the things that is very apparent to me is that there is a growing malaise in the country, and much of it stems from a feeling that we are in an unknown, uncharted, perhaps even undescribed, area. It's not just in our industry, which is housing and home finance in the private sector, and related industries, but it's in others.

A few weeks ago I had the opportunity to address the Michigan Savings & Loan League. When I finished my remarks, I heard applause in an adjoining ballroom, and out of curiosity I went to see who was meeting next door. It was the Michigan Automobile Dealers Association.

I went down one more ballroom and there was the Michigan Automobile Parts Manufacturers Association. All three of these conventions were making the point that their industry was under a terrible economic pressure and were perhaps considering how to survive these terrible times.

The day before yesterday I was in Oregon. In Oregon what you hear and what you see is that the state is confronted with an incredible economic disaster. A few weeks before, I was in Florida, and heard its problems, and in Nebraska. Colorado is not so bad. The New York League met in Hershey, Pennsylvania, a few days ago. I was there listening to their problems and discussing the phenomena with them.

It has become apparent to me that the time has come for us, and I include all of us, not just to compare notes, but to start taking a broader, more intense view of what is really going on.

I am sorry to have to report to you that the overwhelming majority of executives that I have spoken with, as it relates to housing and construction, look at the narrow parameters of their own industry, of

Continued on page 11

Mr. Shane is chairman of the board and chief executive officer, Mercury Savings, Huntington Beach, Calif.

A Look At The Housing Industry And The Future

William Francis McKenna
Chairman
President's Commission On Housing

McKENNA: I agree with Leonard Shane on several of the fundamental points he made. Housing is a priority and must remain a priority. This is a serious time in which the very structure of the constituents of the housing industry is itself threatened.

This situation is not by design. Its origins are very much as Shane said: excessive government expenditures over the past years, possibly since the mid-1960s. The effects have been on the whole economy, not just on housing.

As you know, I have no portfolio from the administration; I am not on the payroll at all. I speak only for myself, but I will answer as to what my belief is as to this administration's philosophy on housing.

I can do it specifically from this point of view. The President had been in office four months when he appointed the Housing Commission. There are 30 commissioners. Without exception, everybody is oriented toward housing. Most commissioners believe in a priority for housing. We are from various elements of the housing industry. We were instructed by the President "to seek to develop housing and mortgage finance options which would strengthen the ability of the private sector to maximize opportunities for home ownership and to provide adequate shelter for all Americans." These are pro-housing words. We took them literally.

The President was obviously right in starting with a study of the overall problems of housing. His request was for a blueprint, for a reference book, for a basis for a national housing policy for this administration. We gave him a final report last April. He received it with enthusiasm. I believe he's on the right course.

It is not housing alone that is the problem. You don't look in a stagnant pool with no oxygen for a lively trout. Housing in the economic situation that has prevailed in this country could not prosper.

We have to look to the basic situation itself. The first thing that has to be done is to reassert fiscal responsibility. The word is getting through that this country, the administration, and both houses of Congress are indeed determined to do something about the basic problems of fiscal and monetary disarray and industrial decay.

But there is still no point in the future that you can point out to where we will have a substantial reduction in the deficit. Even that would be a long distance from predicting the point at which our revenues will equal our expenditures. In this light, inflation and interest-rate volatility have been natural and normal. These are the constituent causes of the problems that housing faces today.

Who is willing to put his money on the line for 30 years if he thinks he's going to get back dollars that are worth a fraction of the dollars he

Mr. McKenna is chairman, Federal Home Loan Bank, San Francisco, and partner, McKenna, Conner & Cuneo, Attorneys, Los Angeles, Calif.

paid out to the borrower, and interest rates that may be below his cost of money while the loan funds are still out? Now, at last, there are signs that the money market is beginning to believe that our government does have a commitment to the basics necessary to make housing a going industry again.

The inflation index is way down, but some people still doubt whether it will stay down. Confidence that we will achieve a permanent reduction in inflation and lower interest rates for a long spell isn't quite here yet, but this is the direction in which we are going at this moment. But we are getting closer.

In the meantime, however, while inflation has gone down, and general business activity has dropped and unemployment has risen, business corporations have been caught in a squeeze. Borrowing costs have remained high even after business became poor, and many of our national corporations are in serious trouble.

Housing has to live with the general economic malaise, because housing is part of the general economy. But housing in the post–World War II era has repeatedly led recoveries at this stage of cycles.

Not long ago, people were buying houses as much for speculation and tax shelter as for a place in which to live. This practice boosted the cost of existing housing to different degrees in different parts of the country. At the same time, the cost of producing a finished house also rose. Speculation brought to a fever pitch the bidding for existing houses so that prices went beyond what people were both willing and able to pay for shelter alone. We had the drop in housing construction, the drop in housing sales, high interest rates, high cost of production of new housing, and high prices. Added together this meant stagnation in the whole industry and with it the end of the housing boom.

Now, more recently, a couple of factors have been added. The purchaser of the house can no longer be confident that that house is going to be worth a great deal more in future years, and he is beginning to worry about his personal situation. Am I going to have a job? Even if I have a job, will my pay build up sufficiently so that I can take on this balloon payment loan with confidence it will be refinanced at the end of the term at a rate that I will then be able to afford?

But even with the federal government sponging up huge amounts of credit, we have no money crunch. With inventories not disappearing, with consumer credit not expanding at its usual rate, with business prospects appearing dismal and inflation down, the downward pressure on money is increasing. Low interest rates normally stimulate home building, home lending, and home sales.

So, by normal tests, better days do appear to be ahead for housing.

It is now time to remember that secondary financing and balloon payments have in the past been condemned as archaic. Nothing that has happened, except the unavailability of other financing, has made these home credit methods desirable. The fact is that the sins of creative financing will require great effort in the next few years to avoid excessive foreclosures and genuine hardship among those who bought homes on these bases. I am, however, increasingly confident that the drop in interest rates and what I expect will be a greater flow of funds into the thrifts will greatly moderate this situation.

We must recognize that judicial decisions, particularly some retroactively outlawing the due-on-sale clause, and some legislation in different states have created doubt as to whether the rule of "sanctity of contracts freely entered into" applies to home mortgage lending. Such doubt must be eradicated in money circles generally. Otherwise, an excessive premium may be necessary over the long pull for home financing.

The thrifts have been locked in by the combination of their income from fixed-yield loans in their portfolio, on one hand, and volatile money costs.

These associations are not merely fundamentally sound. If you compare their loans with those of any other existing financial institution, they have the greatest security and the greatest confidence that the principal amount of those loans will be paid back. We should remember that. Home loans are still the soundest, from the point of view that the principal will be repaid, of almost any type of loan.

While we are saying all this, we have to remember that another spectrum of the lending world has taken over the front page from home financing. That's the question of the huge debt that is owed to the free-world banks by the Third World. The effect of this on the economy generally, and specifically on housing because it is part of the economy, can be enormous. You have not heard the end of this, and this is itself one of our major problems.

It's going to be solved. All these problems are going to be solved. But they are going to be solved because this country, both domestically and in its foreign affairs, both government and individual businesses, banks, savings and loans, every other element of our economy, has to get tough again.

We are in the city that is the capital and the focal point of the history of the Yankee trader, a tough business man—one who knew what he had to get, and who drove a hard bargain. It's well that we are here because, unless we get back to that scheme of things, we are indeed in for a much longer period of trouble than we need have.

In the midst of all this, as I say, the President gave his Commission on Housing a mandate to come up with a basic housing policy for this administration, a blueprint for the 1980s, for the construction of housing, for the availability of housing, for the institutions that specialize in housing, and for the delivery of funds for housing. We gave him that report. It's done in detail, with the labors of 30 persons who spent their lifetimes in housing, who are dedicated to housing, who know their fields, with a staff of experts, with good scholarship.

The report does not lend itself to painting with a broad brush. It sets forth alternatives for the President, which is what he asked for. Not that we gave him a whole bunch of dissents and supplementary or additional views, rather we worked into the text to the satisfaction of every one of those 30 commissioners, and all the diverse groups that they represented, language that the proponents and the antagonists of each option agreed was a fair statement of it. As the President reads the report and goes through those options, he will have our views fairly presented of the pros and cons of housing issues across the board.

In no other way can this situation that we have be solved. It must be done laboriously and in detail, so that each part is consistent with every other action and under a general plan.

Behind it all, and all through it, we have to go beyond housing. You cannot have a satisfactory housing program unless you have fiscal responsibility in this country. You can't do it unless there is monetary stability.

You can't do that unless you have confidence that this country will at some time bring its fiscal affairs under control, unless we have general recognition of the fact that we cannot consistently print more dollars than we receive in revenues and unless the whole world community recognizes that we have controlled inflation—maybe no inflation at all, or the Eisenhower standard.

We must also have a stable interest rate and cost of money on which we can rely for some time. We had all these elements after World War II. We have to achieve something reasonably approximating that if we are going to have the housing that our people need.

The Housing Commission stated these and other basic housing premises. One of them is that the government of this country has a continuing responsibility to be concerned with the housing needs of the poor. That, too, is part of the report. The President has since publicly endorsed this commitment of his administration to housing the poor.

In the commission's report, we talked in terms of the need to revise the system for providing for the shelter needs of the poor. We talked in terms of the excessive cost of the system per unit of housing that has been in effect in the past, namely, a quarter of a trillion dollars already committed against future budgets, beyond the power of future Congresses and future Presidents to do anything about, for which your children and grandchildren are going to have to pay, because of this program of building in which the federal government has involved itself.

How successful has it been? Section 8 New Construction has produced marvelous accommodations for a tiny proportion of the people who are equally deserving. Each year, the cost goes up, and the number of persons taken care of goes down. Adequate housing could be provided for the same number of persons at half the cost by giving the money to the people who need it to get their own rental accommodations. The federal government can't compete with the committed entrepreneur who is trying to build for a profit. It takes a tough entrepreneur to do that. No government in the world can do it, unless maybe it's the Russian government with slave labor. We can't do it.

So we recommend, with exceptions, that the federal government get out of the business of building houses and give the money to the poor people to supplement their ordinary income to buy the kind of housing they can afford, all instances meeting certain minimum standards.

That has to be done because we cannot afford to build accommodations for what it costs the federal government to build. As a matter of fact, the housing for the poor that the federal government builds under Section 8 New Construction costs as much or more than 94 percent of comparable privately constructed apartment units in this country.

Even when you remove the waste necessarily involved when the United States government builds units, even when you take that out, the housing is in the upper 84 percentile of all housing of comparable nature in this country.

Now, I am going to address deregulation. Our studies indicate that one of the greatest unnecessary components of the cost of housing in this country is in fact the unnecessary regulations, the delays in the processing of permits, the number of permits that have to be obtained, the zoning restrictions—all the way up to federally imposed regulations.

All of these restrictions together add very substantially to the cost of a finished home. This is a very basic problem raised and discussed, and with respect to which recommendations are made, in the commission's report. Early in 1983 I expect you will see a determined national effort to eliminate regulations that unnecessarily add to the cost of producing a finished house in this country.

We make recommendations to facilitate home ownership on a broader base by people who are not now able to afford homes. We discuss in great detail what should be done to provide ample funds for housing in the rest of the 1980s and this century.

We have detailed recommendations. Many of them go to a great extent to the secondary market. Your involvement in that, of course, is critical. I have no doubt that a substantially increased amount of the housing funds that are available in the rest of this century will come from the secondary market, which means that there must be gross improvement, not only in the instruments used, in the means of marketing, and in the packaging but also in the confidence in the sanctity of the loan contract. As I said before, we must give confidence to a purchaser who knows nothing about the making of the loan, confidence to him that in fact he is getting what he had been told he was going to get.

Your role there is going to be a critical one and a much larger one than it necessarily has been up to now. Related to that, of course, is a less important question, but one that has to be faced. That is the relatively frozen position of the equity that a person has in his home.

When a homeowner wants to borrow $1,000 or less, he's often in no better position than somebody who has no home.

This is being faced by many of you here. We will require some restructuring of lien laws. There must be a somewhat different approach on the part of lenders and title people, so that in fact this additional lending can be made without costs that now attach. I've heard that some of you are in fact giving title policies that cover credit-card purchases. If so, a new area has been opened up.

I have confidence in 1983. I have confidence that the basic problems of housing will be directly faced beginning very early in the year. I had confidence in the 1930s and the 1940s when we were working out the format of the housing structure, the statutory structure, and the regulatory structure that persisted until the last few years. That confidence was well placed. It is within the ability of humans to plan in that manner. We can in fact do again what we did in the 1930s and the 1940s, structure a means for the delivery of housing funds, for the construction of houses on an economical basis, for the delivery to the people who need housing.

We are capable of that intellectually. We have done it before, and we are doing it now. The commission's report is not an idle piece of paper. Those of us who were involved in it before believe that we are at the initial planning stage of doing it again.

As Leonard Shane said, the single-purpose lender has a difficult problem today. But the thrifts are going to come through healthy and revitalized. They will become once again, and remain, critically important providers of huge sums for housing. These sums must be supplemented from other sources. We must use devices, as for example, a mortgage-interest tax credit, to get money from other sources. We must find a way to recapture those funds, which in the past went to housing, which don't go in the same relative amounts now, particularly, the long-term savings of the American people. Once those savings were under the control of the family, and they went to your local thrift, which lent them out for housing. Now, they are under the control of pension funds, sometimes huge organizations remote from the community, with no motive to put them back in the housing of that community.

In fact, there are many disincentives against pension funds investing in housing. When the commission reported this to the President last October, his instructions to the Secretary of Labor were that these obstacles be removed.

Progress has been made, as you all know, but we have to go further. Pension funds, if they are going to continue to accumulate more of the basic savings of this country, must to a certain degree go into housing. The disincentives that make it difficult now for the operator or the trustee to put that money there must be eliminated.

Again, I expect that you will see some surprising developments in the first part of next year, let alone through the year, in which these problems are attacked based on the general outlines of the commission's report.

SHANE—continued from page 9

the mechanics of the day-to-day operation without any real view of what this tremendous systemic change represents. I want to address that question with utter candor.

There are two philosophic positions. There are, of course, many takeoffs from each of them. But basically there are two philosophic positions rampant in our country today—rampant without being widely publicized and totally identified. Part of that is because of the press. Respected as it is, incisive as it is, the press has completely missed the story of what is transpiring because it is too complicated in its largest sense and too episodic in its narrowest sense.

We are in a period of time now where there are two philosophies at play. Depending on which of these you accept, not as land title people, not in my concern as a savings and loan executive, but depending on which of these you accept philosophically as an American, will be your reaction to what I am going to say.

The two positions are these:

One, home ownership in the private sector, the "American Dream," is of great importance socially, economically, and politically for the future.

Two, the other position is one which is 180° reversed from it without total identification as such, that is, the position that housing, particularly new housing, but housing as the American dream, housing as the manifestation of the great socio-economic phenomenon is indeed, *not* a top priority at this time.

Most people believe, correctly, that this nation, particularly since 1933, with the passage of the Home Owner's Loan Act, has had a firm, aggressive, planned commitment to making the United States into a nation of homeowners. You know better than anyone what has transpired.

In 1933, less than a third of the American people lived in or on property that they owned; that included small farmers. By 1980, as a result of the most successful planned programs, that one-third had grown to more than two-thirds, and of course the small farmer had generally disappeared.

We have become a nation of homeowners. Perhaps that explains to some degree why we have had more political stability and less revolution than any other nation in the Western world. Because the American people own a "piece of the action."

For that national housing priority not only to disappear but to be aggressively downgraded is in my judgment a terrible decision for this nation to have taken without public debate and without a braod awareness on the part of the people of this country.

There are many people who really believe that this current cycle that we are in—longer and more intense, with interest-rate waves that are more extreme—is similar to all other cycles and that it will end as the other cycles have ended with an incredible housing boom. Nonsense, that is not going to happen.

During this cycle, the delivery system for housing and home finance, and I include multiples and apartments, has been changed. I hope that it is not irretrievable.

I hope that we have not gone through a phenomenon that has led, or is leading, to a conclusion that changes a major social and political orientation of this country without a national debate, without a consciousness on the part of the American people.

I am going to deal with that very specifically. Everywhere you go in this country, there is a major industry oriented to housing other than the contractors, builders, financiers, and insurers. That's my relationship to the Oregon comment of a few moments ago. The facility for providing the building materials is being dismantled. Not just shut down, mothballed, and layoffs—literally dismantled.

The factories that produce plywood in the Pacific Northwest are not just shut down with layoffs; in many cases the equipment has been scrapped, and the people who work in those plants have moved elsewhere. It is for them a hopeless economic situation.

In many parts of the United States, the small builder, the independent builder, the one who has to do infill in urban areas or it isn't going to happen, has left the business. He will not be back. Part of that delivery system includes some of the most skilled artisans, journeymen, plumbers, carpenters, masons, and electricians—the people who had to build the houses with their hands. Houses don't come out of machines; nails have to be driven; walls have to be erected. The most skilled journeymen have said: To hell with it; I am not willing to be unemployed three or four months of the year, or two years out of every five. If I'm a good carpenter, I can be a good machinist and can be just as unemployed. At least when it comes back I'll work year round.

The materials, the developers, the builders, the artisans, and those that are most visible, are diminishing. The industry from which I come, the financing industry for housing and home finance, in the private sector, is being forced into other areas.

We have created in 50 years a delivery system for housing in this country that is the envy of the world. It wasn't broken, so we set out to fix it. I suggest to you that there is a magnitude of activity going on by virtue of the implementation of the second of the two philosophies that I described.

We hear cliches, and under the cover of those cliches the basic ideas are not being discussed. (I must tell you that I studied semantics, when I was in college, under the world's preeminent semanticist, S. I. Hayakawa, U.S. senator from California.)

What I learned, and what others learned, and many of you have learned over the years is that is you can devise a catch phrase, a cliche to advance a position, you don't have to argue or discuss the merits.

Sometimes cliches take on lives of their own. In this crazy phenomenon that we are experiencing now nationally, we are seeing some catch phrases or cliches that I believe are destructive to our system.

"Deregulation."—deregulation of airlines, deregulation of trucking companies, deregulation of financial institutions—deregulation. On the surface it sounds wonderful, because if we are talking about the elimination of oppressive regulation, overregulation, a needed regulation, red-tape regulation, we're all supportive.

When you leverage from that to a concept of deregulation for its own sake you are leveraging into very dangerous ground. Because regulation really means the ability, and the actions, of our society to protect itself and to accomplish its goals. Deregulation has taken on a life of its own.

"The level playing field," has taken on a meaning of its own. It doesn't really mean a darn thing.

"Homogenization" of financial institutions—that's the nominal subject of my remarks today. It sounds great. Everybody competes with everybody for everything. Does that satisfy the needs of the people of this country?

I want to tell you in all candor that I insisted that I be introduced as a housing activist because I sincerely believe that homeownership, the American dream, is critical to the continuation of the institutions of this nation. I do not believe at all that we can set aside such a major hope and aspiration and, yes, an expectation.

A whole generation is coming into the marketplace, educated, articulate people, who are going to react politically when they find that dream may not be available to them. It will be a political and not necessarily an orderly reaction. That's one of my concerns. One of my concerns is, very frankly, that we must deal in an orderly fashion with the institutions of this country that are important to the people of this country.

How did we get to where we are? Let me recount just a little tiny bit of history. During the 1930s, 1940s, 1950s, and almost into the 1960s in the United States, we were faced with enormous social problems. They were depression oriented. There were many different social problems.

The government of the United States turned to the campuses, and I'm not anticampus, and turned to the academic sociologists, who previously had been reporting phenomena and dealing in statistics in attempting to define phenomena.

For the first time we turned to the academic sociologist and said, "Come to Washington. Address our social problems; Assist us in making policies, and create programs to resolve our social needs." They did. They came to Washington and they created some tremendous social programs.

The only trouble is that many of those social programs were created without any consideration whatsoever of the economic ramifications.

As a result, we put into place some social programs that really did their job but also subsequently created economic problems that are horrendous and overbearing and in themselves threatening.

So, in the last decade or so we said, "We're going to do it better." We went back to the same campuses, and we found another group who also were reporters and analysts, and textbook writers, even prognosticators with one or more hands. We turned to the academic economists.

We said get us out of this mess. Come and analyze our problems in the economy, and let's overcome the difficulties that the sociologists put us into.

We have indeed in this country brought to positions of great power the academic economists, and we have made the mistake again, because they have neither concept nor interest in the social consequences of the programs that they are instituting.

It is only two weeks ago that an economist was newly appointed as the President's chairman of the Council of Economic Advisors. In his confirmation hearing, he said in response to question: "I do not believe in the priority for housing. I do not believe that we shall allocate capital and resources, I do not believe we have capital to allocate to housing in the next decade."

It's not a revolutionary position. Tony Downs, the economist at the University of Pennsylvania, said that six years ago, as we began to steer capital away from housing. Ladies and gentlemen, this is my point: This nation without public debate has undertaken an enormous policy and emphasis shift. I don't want to say it was done surreptitiously because that implies a conspiracy, but we have done it.

There exists a series of actions that when identified in the collective nature, when identified with a bigger picture, when identified with a national move, a national change of emphasis, becomes clear.

The first thing we did was begin reallocating capital away from housing, saying that we can no longer afford in this nation to have specialized financial institutions. We are going to homogenize financial institutions.

All this happened while some of the financial institutions were under great stress and the stress resulted from their having pursued the required mandate for many, many years. Suddenly the game was changed.

I want to assure you that the savings and loan industry as an industry is not only going to survive, it's going to thrive. The question is "What's it going to look like in terms of the services it delivers?"

This past week a bill was passed by the Congress of the United States. I would assume the President will sign it very shortly. It will give us the authority to broaden the areas in which we do business

Continued on page 36

Economic Outlook

Richard W. Kopcke
Vice President And Economist
Federal Reserve Bank Of Boston

Until recently, the press has blamed high interest rates for obstructing the long-hoped-for recovery—particularly for construction, for autos, and for other big-ticket items. Now that lower yields appear to be at hand for a while, the press reports that few signs of recovery are evident and that experts say we should not expect too much from the recovery when it comes.

I would like to clarify some of the issues surrounding the forecast—issues that dominate discussions both in Washington and on the hustings. I would also like to leave you with an equivocal forecast.

There is now no sign that a respectable economic recovery has begun. Retail sales, business investment spending, private housing construction, and other sensitive indicators at best give us hope that the recovery will begin sometime soon. By recovery, I mean the strong growth that significantly improves business conditions—the strong growth that matches the expansions we have experienced in the past recoveries. For example, the average rate of growth during the first year of a postwar recovery has been almost 7 percent at an annual rate. I think people now shrink from the prospect of 7 percent growth. We have been so accustomed to fighting inflation that our prospective recovery promises at best something like 3 or 4 percent growth.

No recovery right now means that short-term Treasury yields will remain low for a while. These yields should vary between 8 and 10 percent. No recovery now, however, does not necessarily mean low long-term yields. Unless the consensus forecast of inflation for the 1980s is 5 percent or less, long-term Treasury yields generally should remain above 11 percent.

After the recovery begins, I expect short-term yields to rise back to 10 or 11 percent. I expect long-term yields to rise to 12 or 13 percent. My forecast is of minimum Treasury yields. If we get a good old-fashioned recovery of 7 percent growth, or if inflation averages more than 6 or 7 percent next year, the yields will be higher than I predicted.

I am afraid that the recent rally in the bond market will not lead to big reductions in the mortgage rate. The biggest decline in yields has come in Treasury bills, commercial paper, and other short-term securities. Although Treasury bill yields have fallen 5 percentage points, corporate bond yields have fallen much less. There has been a flight to quality. Evidently, many investors prefer the security of Treasuries now that bankruptcies seem to be common.

The yields on mortgages may continue to exceed the yields on comparable corporate securities. The housing market still depends on thrifts, and thrifts are losing money because the yields on their existing mortgages do not cover the cost of doing business. Thrifts are looking for profits. There are two ways of gaining profits today: earning high yields on new mortgage loans, or seeking other loans, if necessary, to obtain high yields.

Life insurance companies and other secondary buyers of mortgages make up a limited market. They really have not got deep enough pockets to replace the thrifts. They can offer "marginal" loans, and they can offer loans when the supply of corporate private placements dries up, but life insurance companies cannot support the housing industry unless mortgages offer them a premium, because they cannot desert their constituency effortlessly and without cost.

You may have noticed that I believe the rate of economic growth and inflation are important determinants of yields. You may also have noticed that I made no mention of federal government deficits. If you have been paying attention to political debates in the past 10 years, you may find my omission of the deficit quite surprising. Don't big deficits crowd out private borrowing, driving up yields? Isn't the deficit supposed to exceed $100 billion as far as the eye can see? Isn't there some risk that the deficit may rise as high as $200 billion or $300 billion in the next few years?

My only response is that to assess the price of any product you have to know the market. Before we can reckon what government deficits may or may not do to yields, we have to assess the market for credit.

If we consider 1974, 1975, and 1976, we see a soaring deficit, both as a percentage of gross national product and in absolute dollars. Yet, at the same time, interest rates were falling, especially short-term interest rates. If we consider 1977, 1978, and 1979, the deficit was falling, yet yields were rising. During 1980 and 1981, the deficit rose only slightly as a percentage of GNP, yet yields marked up their biggest increase since World War II. Now the deficit is supposedly swelling, and we see declining yields. This evidence suggests that there is no simple relationship between the deficit and interest rates. The government is not the only borrower, and the supply of savings is not fixed. There is supply and demand in the credit markets just like in any other market.

Recessions tend first to reduce spending on housing and on consumer durables, and inventory investment declines. As a result, incomes fall because of layoffs and reduced work weeks. Then government tax revenues decline and income support payments rise, increasing the deficit. At the same time, yields drop because the demand for credit is generally drying up. After all, it was the decline in the demand for housing and investment goods that led to the recession. So government deficits are drawn into the vacuum created by private borrowers as they desert the credit markets. There is a negative, passive relationship between deficits and interest rates during recessions. If, on the other hand, the economy were fully employed and government expenditures were increased sharply, we would see both the deficit and interest rates rise. So there can be a positive correlation between deficits and yields, but the magnitude of our current and prospective deficits is mostly due to no growth since 1979. We are not now flirting with full employment.

About two-thirds to three-quarters of the current government deficit is due to the recession. In fact, if the unemployment rate today were 6 percent, the deficit as a percentage of GNP would probably be the lowest we have seen in a long time.

Nowadays, big deficits mark a weak economy, and a weak economy means low interest rates. If we take this logic one step further, those who would have us increase taxes or cut spending drastically to balance the budget in the midst of this recession would not encourage a recovery by lowering yields. Instead, they would further weaken growth, thereby achieving lower yields at the price of sacrificing their ultimate goal.

One important determinant of interest rates is the rate of inflation. Why are long-term bond rates so high today? How can a Treasury yield of 12 percent be justified? A number of investors find themselves in the 40 percent income tax bracket. If such an investor buys a bond that is yielding 12 percent, the after-tax yield is a little more than 7 percent; if inflation is expected to average 6 percent during the life of the bond, the real after-tax yield is only a little more than 1 percent. As long as you are in the 40 percent tax bracket and are looking forward to 6 percent inflation, you are not going to be interested in purchasing a bond that is yielding less than

Continued on page 15

Decline Of The British Economy And Prospects For Recovery

Ian MacGregor
Chairman
British Steel Corporation

When Bob Bates asked me if I'd come here, I accepted because I thought it would be quite important to relate a couple of my past experiences to an audience with such a wide spectrum of relationships throughout the United States, who are clearly among the top opinion makers in the country. Your ability to affect your communities is immense, and I respect it.

Now, we have learned a lot from the Chinese. In view of your very large programme, I am going to condense my remarks by following that good Chinese adage that one picture is worth a thousand words. So, I'll show you a few pictures. The messages in them are very clear. One is that inflation, especially if it is hyperinflation, can destroy our industrial process. The other is that nationalized industries can become enormously inefficient. I think these are two very important messages.

Without further ado, let me sketch a picture of the company and the community that I work in—the British Steel Corporation and the United Kingdom.

The first slide shows the importance of exports to an industrial converting country such as the United Kingdom. If I may say so, in due course exports will become increasingly important to the United States. The figures show that only a small percentage of the United States' gross national product goes out of the country. A great deal of that is in the form of agricultural products. The European countries, particularly Germany and the United Kingdom, are largely dependent on the export of manufactures and/or services to buy the things they need, such as raw materials and additional food.

The outstanding and interesting thing about the chart is that while we all think of the Japanese as living on a bowl of rice and exporting everything they manufacture, the Japanese get by, believe it or not, by exporting less than 15 percent of their GDP. And, as opposed to the United Kingdom, which is self-sufficient in energy, the Japanese must import their energy as well. There is an important lesson in this.

The next slide shows the increase in industrial production in the period between 1975 and 1981. During this time, the United States fell behind Japan, but Europe as a whole fell behind the United States. Of course, the United Kingdom has a very sorry record. This means that the United Kingdom has lost a great deal of its position as a converter of raw materials. By the way, the United Kingdom, like the United States, has one extremely efficient industry—the agricultural industry. In the United States you produce food not only for yourselves but also to export around the world in increasing quantities. Less than 2.75 percent of the total labor force is employed in that production. Similarly, the figure in the United Kingdom is under 3 percent.

The next slide shows you what happened in U.K. manufacturing industries since 1975. In six years, some of the key industries in the United Kingdom declined substantially. Construction is off 22 percent; mechanical engineering, that is, products using steel and sold as exports, is down 23 percent; motor cars are down 33 percent; shipbuilding, which once was the backbone of the steel industry in the United Kingdom, is down 60 percent. How did these things come about? If we take the rate of inflation for 1975 as 100 percent and show the comparisons for the United Kingdom, France, the United States, Japan, and West Germany, we see that the United Kingdom in 1975 was going through a period of very high inflation, but it continued right through until 1981—far ahead of the rates of inflation in most other industrial countries. In the United States, we used to think we were bad compared with the Japanese and the Germans who contained their inflation very well.

What did this do to the manufacturing industry? The next chart shows that during the period 1971–81, the Japanese increased their productivity by 46 percent, the French by 32 percent, the Italians by 30 percent, and the Germans by 19 percent. The United States kept pace with the Germans, but the United Kingdom was the lowest of the lot.

In the last slide, we see what happened to unit labor costs. In that 1975–81 period, they increased just 100 percent in the United Kingdom; the United States was relatively good at 45 percent; the Germans increased only 20 percent in the period, and the Japanese only 4 percent.

Just the other day in the *New York Times*, there was an article by a man named Paul L. Pride, in which he said, "The economy's illness is being mis-diagnosed. Don't you realize that the United States is in the process of changing from being an old-style basic manufacturing industry economy to a new economy which is going to be based on micro-processors, silicon chips, electronics and," as he put it, "we're going to be engaged in production of information rather than production of products." Alas, I think that is wishful thinking, not only for the United States but for the United Kingdom as well. Are we going to be prepared to live with Japanese automobiles, with hi fis and TV sets that come from the Far East, with French aircraft, with Israeli tanks, with Canadian subway cars? I doubt it. I think both the United States and the United Kingdom have got to restore their manufacturing industries. The question is how to do this.

Well, ladies and gentlemen, we have got to get back our efficiency. This great United States used to be renowned for its production of highly efficient equipment at prices that made the world wonder how we did it despite our high wages. Remember Henry Ford and his enormous advances at a time when no one around the world believed it was possible to pay people $5 an hour on a manufacturing job? That type of operation made this country great. Unfortunately, we have been the victims of constant pressures for an easier life and have become victims of that lotus-eating idea that you can get something for nothing. The sharp lesson we are all learning is it isn't true. If you look around the world, you will see that it is the working people who are making progress and profits and savings. Senator Lugar pointed out that just a few days ago, figures issued by the Department of Commerce showed that savings rates in the country had increased to 8.1 percent, up from a low of 4 percent in August 1981. Maybe, as someone pointed out, this increase in savings is the result of fear, but the real problem facing us is that we are not setting aside enough for the capital necessary for the future.

If you look at the success in Germany and Japan, it is characterized by one thing: A higher percentage of the gross national product is saved in both countries and has consistently been saved in the last 25 years. Therefore, the capital is available for investment. Our problem is that we are not setting aside the kind of resources necessary for the future. If we had the Japanese savings rate, this country would have a disposable capital pool of close to $800 billion, instead of less than $300 billion for which everyone is scrambling, including the government. Alas, what we have been trying to do for the last two decades is to deliver benefits today on the basis of money that we are going to earn tomorrow. We finally are the victims of the fact that that idea doesn't work. It isn't a question of whether Reaganomics is sound or unsound. It's just that we keep spending more money than we generate. It's that simple. And it's up to people like you to make sure the public understands that, because there is no evidence that they do.

I am going to cut my remarks short, but I will remind you of one thing. Here in Boston, there was a handful of people who, 50 miles down the coast from here, within a few days of this date 351 years ago, had a celebration. The Pilgrim fathers gathered together to thank the Lord and to celebrate their first year in the United States, which had been a fruitful one. They had put aside crops and grain and other things that they could keep for the winter ahead. They were assured they would be fed through the winter. The good Lord had been sufficiently bountiful, and they had saved enough to put aside seed corn for the next year. That occasion has been institutionalized in Thanksgiving. Every year we should remember that if you do not set aside seed corn for the future, there is no hope for your children or your grandchildren.

KOPCKE—continued from page 13

12 percent. A 9 or 10 percent yield would not interest you unless you believe that inflation will be 5 percent or less. So a sustainable recovery in the mortgage and bond markets requires convincing evidence that inflation has been licked.

Another important determinant of yields is the rate of economic growth. When both economic activity and inflation are high, the demand for credit is great, and market conditions press up the price of credit, interest rates. This is where the Federal Reserve's role becomes most visible. The supply of and demand for credit depend on income growth. Income growth in turn depends on conditions in the credit markets.

As you know, the Fed sets monetary policy by adopting guidelines for money growth. Money as the Fed defines it includes cash, checking accounts, NOW accounts, time deposits, and money-market mutual fund balances. When the Fed reduces the provision of bank reserves to restrain the growth of this broad definition of money, the Fed is restricting the supply of credit through a broad range of instruments and through a broad range of institutions. Ultimately, this restriction must reduce the growth of GNP.

In the past, interest rates have risen in every recovery to match their prerecession level, despite the accommodative growth of money and credit. As a result of this accommodation, the Fed has been criticized for being too lenient during recoveries, for tending to hold interest rates constant, and for letting the growth of money and credit accelerate during a recovery. The critics have said that this accommodation only aids and abets inflation.

Since 1979, we have tried to observe specific guidelines for the growth of money and credit regardless of economic conditions. So, since 1979, recoveries have not benefited from an accommodative expansion of money and credit. In other words, in the past, credit-market shocks were absorbed by lasting variations of growth of money and credit. In the future, as is the case now, credit-market shocks will show up in yields. A shock to the credit markets caused by a strong recovery could push yields up sharply and quickly. This type of shock occurred in late 1980 and early 1981 as the economy began to recover from the 1980 recession. During the last half of 1980 and early 1981, short-term yields rose from 8 to 14 percent. Generally, GNP can grow only about as fast as the money stock for yields not to change.

The top of the Fed's announced target for broadly defined money growth is 9 percent in 1982. If inflation is as high as 6 or 7 percent, then an average recovery entails GNP growth exceeding 11 percent. With GNP trying to grow 11 percent and money being allowed to grow only 9 percent, sooner or later the recovery must produce sharp increases in yields, assuming the Fed sticks to its targets. There may be some leeway—money growth and GNP growth need not match quarter by quarter; we might not see rising interest rates until the recovery has been under way for a quarter or two.

Our only hope for low long-term yields is for lower inflation expectations and lower rates of inflation. If inflation is not so high as 6 or 7 percent, then our money-growth target may be entirely adequate to "finance" fully a complete and generous recovery. Many believe that the Fed's strict adherence to its money-growth guidelines is the best policy for reducing inflation.

Since last year, stock prices have risen about 10 percent. I cannot tell you why. The skeptics will say that recently we have had such rallies before and that they have fizzled. The optimists will tell you that the market anticipates a recovery and a rise in corporate earnings early next year. If the optimists are right, then the rally in the bond market must be short lived. If the recovery is vigorous and the Fed adheres to its targets, then yields will soar. If the recovery malingers, then yields will rise only to some middle ground.

The Fed's growth targets and the certainty of more tax increases may mean a weak recovery. A weak recovery means only slightly higher yields. For the housing industry, there will be no celebration, however. Unemployment next year should average more than 9 percent because the recovery will not be vigorous. This entails subsistence for some families and a dependence on one earner's income for other families. With many unable to find work, today's house prices must seem disturbingly high to most families, especially at today's mortgage yields.

Those workers who have retained their jobs have not enjoyed substantial increases in the purchasing power of their paychecks, and many employees have suffered wage freezes and outright pay cuts. This means that we cannot expect booming housing prices next year.

To make matters worse, the mortgage rate should remain above 12 or 13 percent. These yields will seem even more expensive than yesteryear's 14 or 15 percent yields because the future growth of family income and housing prices will not be nearly so great as it has been in the past. When inflation was very high, many people willingly paid 14 percent for a mortgage. But when the purchasing power of incomes is no longer growing, at best, and house prices are falling, many believe that mortgage rates of 13 or 14 percent are prohibitively expensive.

A recovery is imminent, but inflation is not yet licked. We have had three tough years since 1979, and we could have three tough years ahead of us. Unless inflation abates, the outlook for new home construction and house sales is restrained. Housing starts will do well to reach 1.5 million units at an annual rate by the end of 1983, averaging somewhat less than 1.4 million units for the year.

Eastern Indian Land Claims—Through The Looking Glass, Seeing Red

Allan van Gestel, Esquire
Goodwin, Procter & Hoar
Boston, Massachusetts

When I spoke in Phoenix four and a half years ago, we had just finished the Mashpee trial. It was an expensive effort but a significant victory for the title industry. I think that many people felt that that was going to be the beginning of the end of the eastern Indian land claims.

Shortly thereafter, the Narragansett case in Rhode Island was settled. In 1978, Congress passd federal legislation that resolved all the Indian claims in the state of Rhode Island. In 1979, the very large case in the state of Maine was resolved. It appeared at that time that there were only a few cases left in Connecticut involving some very small parcels of land and one relatively small, although significant, case in the state of New York, against two counties, with no private individuals or title insurance involved.

To the surprise, I think, of many people, the Indian land claims have not only gone away but have expanded dramatically. The Indian land claims have expanded in a way that is significant to this industry, even for those of you who are from the West. The eastern Indian land claims could have an effect on your industry as devastating as what you have been going through recently with the high interest rates on mortgages.

Let me tell you about some of the cases that have been filed and some of the decisions that have been rendered, including one that was rendered as recently as October 4, 1982.

These decisions and the situation that is involved remind me of Alice in Wonderland, especially of *Through the Looking Glass*. But when I look through this looking glass, I see red when I see what our courts have done and what our Congress has not done.

Shortly after the Mashpee case was resolved, a case was filed in the Northern District of New York in the federal court by the Oneida Indian Nation. That case challenged title to six million acres of land in a swath that ran from the Pennsylvania border in the south to the St. Lawrence River bordering on Canada on the north—a 50-to-60-mile-wide strip right through the center of the state of New York. The suit asked for a return of all that land to the Oneida Indian Nation and for monetary damages for trespass and dispossession for the approximately 180 years that the Indians claim to have been out of possession. The case is a defendant class action. There are probably in excess of a million landowners in the area.

No one anywhere can attempt to calculate the value of the land affected by the Oneida case. The case is by far the largest Indian land claim, in effect on people and in dollar value, that has ever been filed. The title industry is right in the middle. Unlike in Massachusetts, where title industry work is coming and growing, the title industry is already well entrenched in the state of New York.

You should be pleased to know that your industry banded together; six companies joined in the common defense of the Oneida case. That case is a tremendous threat to you all.

In October 1980, in South Carolina, the Catawba tribe filed a claim in the district court. That claim involves 144,000 acres of land and in excess of 20,000 landowners. It seeks monetary damages for 140 years of dispossession. It includes the entire city of Rock Hill and a great portion of the county of Lancaster.

In November 1980, the Cayuga Nation filed another claim in the Northern District of New York. This claim seeks recovery of approximately 64,000 acres of land—land that is owned by at least 7,500 people. In addition, this complaint contains a paragraph that says that later—and later may be very soon—the Cayugas intend to expand their claim for an additional 3 million acres in the state of New York.

On December 18, 1981, in Massachusetts where we thought the Indian claims were over, six claims were filed: a second claim in Mashpee, a second Chappaquiddick claim, a second Gay Head claim, a claim by a group calling itself the Herring Pond Indians down in the town of Plymouth, a claim by a group calling itself the Christian Town Tribe out on Martha's Vineyard in the town of West Tisbury, and a claim by something called the Troy Tribe in Fall River.

In July 1982, back again in the state of New York, the St. Regis Mohawks filed a claim in the Northern District. This claim involves approximately 11,000 acres of land on the Canadian border in the counties of St. Lawrence and Franklin, New York.

So what seemed like a problem that had been resolved is a problem that is growing. I suspect in part one of the reasons why the problem has been growing has been Congress's inaction in resolving these claims and the high court's very bizarre action in dealing with them.

I would like to discuss five decisions that have come down from the high courts relating to Indian claims. These decisions seem to me, at least in part, not only out of Alice in Wonderland but also a major reason why these new claims are being filed.

On June 20, 1979, the Supreme Court of the United States rendered a decision in a case called *Wilson v. The Omaha Tribe*. That was a case in which a statute that had been passed in 1822 but had essentially never been construed was interpreted by the Supreme Court for the first time in 1979. The statute pertained to the burden of proof in claims between Indians and non-Indians relating to property. As anyone knows, those claims, at least the ones we are facing in the East, involve transactions that occurred 100 to 150 to 200 years ago. The person who has the burden of proof probably will lose those claims if he gets to the merits of the issues of the cases. There are no witnesses to come in to testify.

The old statute that was being interpreted by the Supreme Court is a simple one. It reads as follows:

> In all trials about the right of property, in which an Indian [the phrase is an Indian] may be a party on one side, and a white person [and that is the phrase, a white person] on the other, the burden of proof shall rest upon the white person whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

What do you think the Supreme Court said those words meant? In an opinion written by Mr. Justice White, the Supreme Court said that the phrase "an Indian" means not just one Indian, not just three or four Indians, but also a tribe of Indians.

Now, a tribe of Indians is a sovereign entity. It is not like an individual landowner. It has all kinds of extraordinary sovereign powers. So the Supreme Court said the phrase "an Indian" includes a tribe of Indians, and it also said that the phrase includes a tribe of Indians even when the United States of America, through the Department of Justice, is representing that tribe seeking the land.

Then, Justice White turned his skills to interpreting the phrase "a white person" in a statute that had not been interpreted since 1822. Justice White figured out that a white person means everybody else, except for one kind of entity. It means not only a white man, but a white woman, a black man, a black woman, a yellow man, a yellow woman, a partnership, a corporation, a trust—it means any kind of entity that is deemed a person in the modern definition of our law; however, it does not include a state of the United States.

Now that, ladies and gentlemen, is bizarre, because in these eastern Indian land claims, if any wrong was done to anyone at any time, it has always been because a state—usually one of the original 13—has acquired land from an Indian tribe in what the courts have found to be a violation of law many decades ago. So, the only entity that conceivably did anything wrong, the Supreme Court, in its wisdom has decided does not suffer the white man's burden of proof, but everybody else does, including the innocent landowners today and those title companies who stand behind them.

The next decision that is of interest is not a land claim but a claim, nevertheless, that indicates the way the courts deal with these Indian claims. It is a decision that was initially rendered on May 6, 1980, in the United States District Court for the Southern District of Florida. The case is *Seminole Tribe of Florida* v. *Butterworth*.

Now it seems that the Seminole tribe had acquired some land in Florida about seven miles southwest of Fort Lauderdale. On this land, they were playing bingo—not just a little bingo, but a lot of bingo. Bingo went on six days a week in a bingo hall built at the cost of $900,000. The Seminoles hired professionals to run what was a multimillion-dollar gambling operation.

Butterworth, the defendant in this case, is none other than the sheriff of Broward County. The sheriff looked at the laws of Florida and said, "This kind of a gambling operation cannot go unregulated." He then attempted to regulate the Seminole's massive bingo operation.

The Seminoles went to court, and the United States District Court for the Southern District of Florida ruled that the sheriff of Broward County, and indeed the state of Florida, had no right to interfere on the land owned by the Seminoles. The court ruled that the Seminole land was sovereign property and the Seminoles could go right ahead with their gambling operation unhindered by the sheriff or by the state of Florida.

The Supreme Court, on March 22, 1982, refused to hear the Seminole case on a petition for certiorari, leaving it stand. I am advised that the Seminoles have now purchased another parcel of land within the city limits of Tampa. I assume we shall soon see another unregulated gambling operation by the Seminoles with the blessing of our federal courts.

On June 30, 1980, in a case called *United States* v. *Sioux Nation*, the Supreme Court (Mr. Justice Blackman, this time) wrote an opinion that fascinates me. It talks about Custer's Last Stand at Little Big Horn, and it does something that, perhaps more than any other case, will attract Indian tribes—and lawyers who want to represent Indian tribes—to bring these kinds of claims.

In the Sioux case, the Supreme Court had the opportunity to interpret an act of Congress that was passed in 1877. The act dealt with a transaction with the Sioux Nation in which certain compensation was given to the Indians in return for opening up the Black Hills to prospecting. Shortly before that time, there had been a gold rush in the Black Hills.

The United States Indian Claims Commission several years ago had decided that the United States government owed the Sioux Nation an additional $17.5 million in connection with that transaction that occurred in 1877. The Sioux Nation appealed, as did the United States, and Mr. Justice Blackman decided not only that the principal amount of $17.5 million was correct but also that this transaction must be treated as if it were an eminent domain taking a condemnation. Therefore, interest should be paid.

Interest was applied from 1877 to the present date. The Sioux Nation ended up recovering $105 million in that case. That's the kind of money that would attract any Indian tribe to think it should bring suit.

What happened to the poor lawyers who represented the Sioux? In May 1981, the United States Court of Claims, which has jurisdiction over these matters, approved the fee application for the plaintiff's counsel. The lawyers were awarded $10,595,943. I, too, would take a case for a fee like that.

In December 1980, the Second Circuit Court of Appeals rendered a decision in *Mohegan* v. *State of Connecticut*. I might digress for a moment to remind you that the Second Circuit Court of Appeals sits in Manhattan, which was the site of a much earlier Indian transaction. I am told that shortly after the purchase of Manhattan, Peter Minuit, the Dutchman who was involved, took the Indian chief over to the East River and looked across and said, "Wait a minute, isn't that Brooklyn over there?" The chief is reported to have said to him, "For $24 you can't expect perfection."

In the Mohegan case, the Second Circuit Court of Appeals had an opportunity to decide an important issue raised by the state of Connecticut. The issue was whether the Indian Trade and Intercourse Act, the statute that provides the basis for many of these claims, applied everywhere or just in Indian country. The state mounted a persuasive argument, supported by historical documents, that Indian country was what was intended to be dealt with by that statute. The Second Circuit Court of Appeals said no, ruling that the statute applied everywhere.

The state then petitioned to the United States Supreme Court, and this is one of the things that, I think, is most significant about it. On that petition the Solicitor General of the United States filed an opposition, taking the position that the United States Supreme Court should not grant Connecticut's request to review this significant issue. The Solicitor's opposition was contained in a brief in which he said, among other things, "It is equally relevant to stress the very limited prospects of substantial litigation that might be affected by the Court's decision in this case. Contrary to the State's contention, there are very few unresolved cases involving Indian land claims in the Eastern states and there is, moreover, good reason to anticipate legislative solutions of the few outstanding controversies."

Either the Solicitor General didn't have the vaguest idea about what was going on, or he was just plain blatantly wrong. The Congress has done absolutely nothing to foster the settlement and resolution of these claims. I had the opportunity, or displeasing occasion, to see red in June of this year, when I testified before a committee of the House of Representatives and a committee of the Senate on legislation to resolve the eastern Indian land claims, at least in South Carolina and in New York. I witnessed a situation in which one or two congressmen sat through the testimony, thoroughly opposed to the legislation, and paid no attention to it.

At the Senate hearing, Senator Cohen of Maine and Senator Goldwater of Arizona were present. Senator Goldwater said, "We've got 30 thousand square miles of Indian country in my state, I don't know why you fellows are so worked up about it in the East."

The legislation, needless to say, has been killed.

The last decision that I want to speak about is one that was not originally included in my speech because it was just filed on Monday, October 4, 1982. I received a copy of the opinion on Tuesday, October 5, and had the discomfort of delivering copies to the American Land Title Association's Committee on Indian Land Claims later in the day.

This is a decision by the Second Circuit Court of Appeals, in the mammoth Oneida case in New York. As I told you, the case involves six million acres of land and in excess of a million landowners. The land is worth billions of dollars; its value cannot be calculated. No one knows what a strip of land that runs right through central New York State from Pennsylvania to Canada is worth.

The Indians have asked for a return of the land; they have asked for monetary damages. When the Indians get the land back—if they win—because of other decisions by our courts that Indian tribes are in fact sovereign governmental nations, there will be no longer a state of New York. Perhaps there will be an East New York and a West New York. I don't know if they will call them that. There also will be an Oneida in the middle.

Who knows what will happen to the representatives in Congress? Who knows what will happen to all the taxes that were paid to all the municipalities all these years? Who knows what will happen to all the people who are in prison for violating laws of a jurisdiction that the ultimate result of this case could indicate never existed? There will be a situation, if the court goes all the way and finds for the Indians, in which there is either the most gigantic bankruptcy every conceived or massive civil disobedience of a kind never before witnessed in this country. I suggest that the latter will probably occur. In my opinion, it is wrong for the courts to become involved in a situation in which they will bring this kind of situation into being.

I do not believe that in excess of one million people, when the judge writes his final opinion, are going to get up and walk off their land. I don't think anybody in this room could conceive of it. I don't know why the judges think this kind of case ought to go forward with that potential ultimate resolution.

The case is based on two transactions that occurred in 1785 and 1788. I remind you that at that time there was no United States Constitution; it did not become effective until the first Wednesday in March 1789. In fact, there was no United States of America under the government as we know it now. That was shortly after the Revolutionary War, and the 13 colonies were then loosely held together in a league of friendship under the Articles of Confederation. Those Articles contained a section that dealt with Indians. It is not too lengthy for me to read, and it is important. It says:

> The United States in Congress Assembled [There, when they were speaking of the United States, I remind you, it's not the United States of America, the government that we know today], shall also have the sole and exclusive right and power of regulating the trade and managing all affairs with the Indians [and that sounds like the United States has it], not members of any states, provided that the legislative right of any state within its own limits be not infringed or violated.

The trial court concluded that that latter phrase left the Articles of Confederation in utter confusion. On the one hand, it appeared that the United States had the power; on the other hand, it appeared, at least within the geographic limits of the states, that the states had their rights reserved.

We, and by we I mean my own law office with brilliant assistance from your former past president, Bob Bates of Chicago Title (the assistance was in breeding a son who is an utter genius, Jeff Bates, who is here with me today. Jeff is not only a great lawyer but also a scholar, with advanced degrees, in the area of the Articles of Confederation, put together a brief, and I mumbled the words by which we were able to convince Judge McCurn in the Northern District of New York that under the Articles of Confederation the states gave up powers only if the Articles expressly said so. We argued that the Indian powers clause of the Articles of Confederation was so confused that it could not be determined now, almost two hundred years later, to be the basis for saying that the state of New York had no power to buy land from the Indians in 1788.

Incidentally, under the Articles of Confederation, there were no federal courts. Thus, we have a situation in effect that cannot be cured. Congress cannot now amend the Articles of Confederation because they were created by a prior government. It's not like the Internal Revenue Code that can be constantly tinkered with. In any event, Judge McCurn, in his wisdom—and I suggest that on this occasion we had a judge with some great wisdom—wrote a 100-page opinion dismissing the Oneida claim.

The Indians, of course, appealed to the United States Court of Appeals for the Second Circuit. We argued the same issues before a panel of three judges, and on Monday, October 4, 1982, the opinion of that panel was rendered. The opinion was written by Judge Mansfield; one of the other three judges who heard the oral arguments did not participate. And the third scribbled two words, "I concur."

In that opinion, in my view, Judge Mansfield did things that reminded me of the ramblings of the Mad Hatter at the tea party in Alice in Wonderland. He said that Judge McCurn made a mistake because, in trying to figure out the meaning of the Articles of Confederation, he relied on historical documents and failed to have an evidentiary hearing on those historical documents. Therefore, he shouldn't have dismissed a case in which there may be factual disputes.

What did Judge Mansfield want Judge McCurn to do? What does he want me to do as the lawyer in this case? How can you have an evidentiary hearing on a transaction that occurred in 1788 and on Articles of Confederation that were drafted earlier? Do I call James Madison to the witness stand, or George Washington, or Alexander Hamilton, or any of the drafters and ask them to tell me, to testify? Of course not, it's absurd.

Do you have these ancient documents in court and have a hired expert on one side say, "Well, I think when Washington wrote this letter to Henry Knox, he'd been dipping into his brandy and, therefore, his head wasn't clear."? And do you have the other side's expert say, "No, Washington never drank, you know he had wooden teeth and it would discolor them."? It all sounds amusing, but the Second Circuit has presented an almost impossible situation for the trial judge. And the Second Circuit has done this with what seems to be a total disregard for the effect of the opinion.

What will happen to that six million acres in the state of New York now that the Second Circuit Court of Appeals has said that there might be a cause of action for the Oneida Indians under the Articles of Confederation? There is a cloud over that title, all six million acres of it. What do you do if you are a banker and you're about to lend some money secured by a real estate mortgage? What do you people in this room who represent a title insurance company do when you're asked to insure titles in the claim area? What do you do if you're a lawyer and you're asked to pass on a bond issue to build a public school or hospital in one of the affected communities? What do you do if you're an elderly couple living on Social Security and you want to sell your house so that you can move into a smaller place, but a potential buyer says, "There's a big cloud over your title. I'm sorry, sir, but I'm not going to pay full value, besides I don't have the cash to pay and the banks won't lend on this kind of title"?

What is the effect of that decision by Judge Mansfield on the other cases that are pending? What will it do to the Cayuga claim, in which the complaint says that the Cayugas have a three-million-acre claim based on asserted violations of the same section of the Articles of Confederation by similar purchases by the same state of

Continued on page 38

What The Underwriter And The Agent Expect Of Each Other—1982 Version

Harrison H. Jones
Senior Vice President
Commonwealth Land Title Insurance Co.
Louisville, Kentucky

Roger N. Bell
President
The Security Abstract & Title Co., Inc.
Wichita, Kansas

JONES: Two years ago, you kept hearing that the agency system was on its way out. You kept hearing that the underwriters were running around the country buying anything that was for sale. We bought a lot; every underwriter has bought his share. Today, we find that the underwriter would like to sell some of his stuff. He is changing back to the agency system. He's sold his branches, and the phenomenon is that he bought high and sold low. We all know what that means.

Anyway, we start out with the fact that the agent is an extension of the underwriter. We think that in many respects we give the agent a blank check. Many times, we write a check, sign our name to it, and say, "Here, be our agent." Roger and I decided that we would discuss certain aspects of the relationship, and then go back and forth on those aspects. The first thing we thought about was the exclusivity of the agent and the underwriter. The reverse of that is the nonexclusive agency.

When the agency system started out, we all had exclusive agents. There were few nonexclusive agents. The reason for that, I believe, is that there were only four, five, or six national or regional companies in existence. That made it easy to go out and sign up a particular abstract company and make it an exclusive agent. Then, as more companies joined the national title business, they sold agents on dumping exclusive contracts and taking on nonexclusive contracts. Nonexclusive contracts benefit agents. On the other hand, if I go into an area as a national or expanding underwriter and go to a nonexclusive agency, I benefit as an underwriter. And, I can get my product written. Usually, in those kinds of situations, your first priority is to get your product written on referred business.

We call that foot-in-the-door business. Once you get your foot in the door, you start wiggling it. And, you wiggle until you get your shoulders and everything else in.

Exclusivity is one of the big considerations for agents. Do you want to be exclusive, or do you want to be nonexclusive? I happen to know Roger's is an exclusive agency and has been, I think, since the company's inception.

I think it's time for Roger to say something.

BELL: Hatch, I was interested in your definition of an underwriter. I would like to say agents by definition are honest; loyal, clean, lovable, and, of course, very fine people.

I would like to start out with a disclaimer. Hatch let the cat out of the bag that I am an exclusive agent. Therefore, you all assume, of course, that anything I say has to point a finger directly at our principal.

I want you all to understand that my remarks this morning are a distillation of conversations with agents from all over the country.

I view some of the old days with a lot of nostalgia. Back when we had regional underwriters, everybody operated in his own backyard.

Heck, I can remember when we didn't have any manuals, when we had two types of policy forms—the old indemnity form and a loan policy. I had a whole bunch of rubber stamps made up to save typing on Schedule B. I found out some years later that I wasn't supposed to do that. Then the growth mania took over, and everybody had to go national. I think that's when most of our problems started.

We were in a discussion last night with some other agents. We think maybe the thing to do is to go back to abstracts. Life was just a hell of a lot simpler then.

You know, "Mr. Customer," here is a beautifully prepared abstract. It's got the whole history of the chain of title, not just one page. It's something you can depend on; you can take it to your favorite attorney and have him look at it.

Hatch, what do you think about commissions to agents? I could tell you what the agents think. We all agree there's no question about it. You guys should get something out of every deal! Now is as good a time as ever. Would you like to discuss commissions? I think that might be appropriate.

JONES: I'd like to discuss commissions because I think in many respects we are strangling, if not killing, the goose by the proliferation or widening of the division of premiums. We can't use numbers, but what has happened is this: The competition for business, which most insurance departments say we don't have, but we do, is competing with one another for the realtors' or lenders' business, not necessarily competing with the payer of the bill. We don't try to sell him; we just go to somebody who already has captured him.

But the competition has in many areas driven the price down. Where underwriters don't get adequate fees, an agent doesn't get an adequate fee for his search, examination, or plant. He can't make it on the ordinary division of premium in areas where we work on a premium basis plus an additional search basis. So he goes to his underwriter, and if he can't get to his underwriter, he goes to somebody else. He says, "I must have a better split. I'm not making any money. I've got to have a better split." For a while, we were able to give him some additional money, because the liabilities that we were writing kept going up. Inflation helped us in this area. The liabilities kept going up, so our income kept increasing.

We've searched for agents, and we've gotten all sorts of agents. Agents in this room, people who attend ALTA functions, are good; they are like Ivory soap as far as I'm concerned. They are 99 and 44/100 percent good agents. You're all the epitome of good agents, but there are thousands of others unlike you in the world whom we do business with.

Still, we have been driven to giving more commissions. Now our losses have increased; our take of the policy doesn't cover what we want to cover. We are unable to give the services that we would like to give. We can't keep up the same kind of business. The percentage of losses on the volume has increased, as we all know.

I see it as a diverging thing that we're going to come down to; maybe we're there. From the looks of some of the statistics I've seen, maybe we're there. We've given up so much. The agents had to give up their search costs in some areas. People in Texas say, "Well, you ought to be like us." Well, we should be. If we could all be like Texas, we would, but we're not. We've got many different ways of pricing our products. In those areas where we are unrestrained as to what we can do and what we can give and what somebody will cheat us out of, boy, we're easy!

I think we are headed down that old primrose path where we're coming right to a point. We can effectively come to a point of no return and, I think, it's fast approaching that point. As an agent, Roger, what do you think? You put me on as an underwriter about the commission. You said you thought we ought to earn something. The agent and the underwriter both have to be adequately compensated for their services.

BELL: There's no question about that. It's got to be a good deal for everybody, or it's not going to work. No thinking agent expects the underwriter to take on the liability without being adequately compensated. I can remember back to the old 60–40 days. That's when the principal got 60 percent, and I can't envision taking on the kind of problems you all have for 60 percent.

Of course, those days are pretty well gone. But, there's no doubt that, from what some of us hear at various times, things have gotten out of hand with commission splits. We agents think we want you around, Hatch, so we certainly agree that it ought to be more than 5 percent to you and 95 to us.

Underwriting helps. It seems to me that one of the most important things an agent needs from his underwriters is help in underwriting. We want it now, gentlemen; we want to have accessible people whom we can call. I can remember when we'd get turned down for making collect calls, so it's sure nice to have WATS lines these days. But we want people we can reach by phone. We want people with authority who can make decisions over the phone. We don't want committee decisions. That takes too long. We need an underwriter whom we can tell our problems to and who will say, "Gee, now how can we help out your customer?" That's the attitude we like to see. I think we can forgive almost any other omission if we get that kind of support. I know of an agent whose underwriting support was minimal. He had a good friend who worked for a competitor. He'd call that friend to get answers sometimes. That's pretty bad.

Underwriting help is critical to an agent. He's out in the field, and he's got people who want answers right away. We've got to have that kind of support. But I am sure that keeping these kind of people available, Hatch, has got to be a problem for all of you. Do you think you should be in the position of having to furnish that kind of immediate advice and having those people available at the call of an agent?

JONES: Yes, but I take this view: The agent should be able to give answers to the underwriter on particular questions regarding the local law. He should have that resource available to him. Maybe agents have to get together on what the law really is in a particular state. That's a fairly difficult endeavor for the underwriter, unless he has a qualified attorney for every state. Not too many of us have that kind of resource. We can't have a good title attorney in each particular state. We know what we think we can safely write and not write and what we can put in a policy, but we have to be led to it by the agent.

I think that agents should look to underwriters for the special concepts. I think our Forms Committee does a tremendous job for the industry, for the agents, and for the underwriters. I have always believed that the customized service manual, or policy manual if you will, is a tremendous help.

Most of us put out something that's nationwide. This is what we'd all like to have, but the words don't always fit the particular customs of an area. They should be customized. I think that it would be exceedingly helpful if we had customized write-ups for certain areas.

Years back in this industry, we thought of having write-ups, but we put the idea aside. It was going to be one of the functions of the Forms Committee, but we gave it up as a practice that we thought might be harmful to the industry.

These services that the agent expects the underwriter to render, and the responsiveness of the underwriter to the agent, are threatened as the underwriter loses money, or as the underwriter doesn't get enough to cover his particular cost of doing business.

This leads us into the area of losses. I think underwriting losses follow underwriting. So, what should be the responsibility of the agent for his errors and omissions? There is a great debate going on now about this. We had a meeting the other day on what should be the agent's responsibility. Should the agent have a responsibility? What should be the limit of that responsibility?

I have some thoughts about it. One is to consider a fellow who has a title plant, a good title plant, in an area where title plants are absolutely necessary. You say, "O.K., Mr. Agent, you are responsible for all errors and omissions." In the next state, we have an agent who doesn't have beans; he has no assets; he has no money; he's just there. You say, "O.K., Mr. Agent, you are responsible for all errors and omissions." If they both make the same error or omission, you attach the one with the abstract plant and get his assets. With the fellow who has no assets, you have nothing to attach. I really believe we have a serious problem. Years ago, we didn't think it was so serious. All of the companies have, from time to time, written contracts with agents that relieve the agents of, or limit greatly, their liability.

I think we do wrong in not making the agent responsible for something—and not just for gross negligence. I don't think there's ever been a good definition of negligence or gross negligence in the industry. We have been arguing about it ever since I joined the industry 35 years ago.

I think if everybody believes that the agent has no responsibility, we're going to get a lot of lawsuits. I think a lot of lawsuits have come up because we have given up the idea of the agent having responsibility for his product. He's got to have it.

There are a lot of other things we can say about this. A lot of other things are going to be said about this in the future from your Errors and Omissions Committee in this association. We have some thoughts, and we are going to put the thoughts out to the association over a period of time.

Roger, what is your attitude? I know what your company does, but what do you think, industry-wise? You're representing all agents. Should they have a responsibility? What should their responsibility be?

BELL: Hatch, our underwriter covers us, as you know, on our errors. At least, it has so far.

This reminds me of a discussion on a convention floor in Kansas about 25 years ago. The regional representative of a national underwriter was called on during a discussion of controlled business. We didn't call it that then, but that's what it was. He said, "Well, fellas, it may be bad if you don't have it, but when you have it, it's very, very good." Maybe we shouldn't be protected by our principals over our own errors, but fellows, when you have that protection, it's awfully nice.

Now, there is no question, Hatch, that the agent should have a feeling of responsibility, even if he doesn't have to worry about whatever the omission may be. If he doesn't have that sense of responsibility, his underwriting is going to go to pot in a hurry. I guess you all can cancel your contracts with us. I suppose I've never read one from that standpoint. I'm sure agents have to be careful in their operations to make sure they are doing the right thing.

My brother and I were brought up by my father, who loved to play pitch. It was six-card cutthroat. At the end of each game, everybody had to stand up and pay off. My father wanted to keep the books straight. He taught us how to handle our losses in that manner. When you have a loss, stand up and pay off, because that is the culmination of everything you do when you sell title insurance. You sell that protection feature.

In the area of losses, we want to see that kind of attitude on the part of our principals. We don't want delays or arguments over how much the settlement will be. We want it taken care of now, and if it's not taken care of that way, we're going to find another underwriter.

We don't expect you to pay off when someone is trying to get to you, but we do expect you to accept your responsibilities. All of us negotiate our own contracts with our principals. If you recall, this was first done when St. Paul Fire & Marine was canceling errors and omissions coverage all over the country. Agents had no place to go for that type of protection. We do appreciate having a principal stand up and take care of it.

The bottom line is that if the agent doesn't do the right kind of job, he isn't going to have any contract very long. We have to be responsible for what we do, and if we aren't, well, then you'd better cancel us.

I'd like to back up a minute to the manual. You were discussing underwriting manuals. I got a quote from Will Rogers I'd like to read to you all. It describes, I'm afraid, a lot of manuals that you read. Rogers said, "Everytime a lawyer writes something he is not writing for posterity, he is writing so that others of his craft can make a living out of trying to figure out what he said. 'Course, perhaps he hadn't really said anything and that's what makes it so hard to explain." Manuals are great. We have people in our office who just love to read them. They find some obscure statute or requirement and lose sight of the objective—to close the deal.

Sometimes, I think we would be better off to junk all of it. I used to be able to get along pretty well with one of those No. 4 spring clips. I'd put in little bits of information. I really got along pretty well with that spring clip. Now we have a whole shelf full of manuals.

Sometimes we get so much material in front of us that we (not only the agent, but the underwriter) lose track of where we're trying to go. You can't see the forest for the trees. We had a guy take bankruptcy. He had a first and second mortgage on his property. The property was exempted as homestead. He came back in and wanted to refinance the second mortgage. We have a lady in the office who is an attorney. She loves to examine titles. She became concerned about the bankrupt reaffirming the mortgage and called the underwriter, who also became concerned. I got a call from the attorney from the second mortgage company who said, "You guys have had that mortgage that we disbursed on and have held it off record for two weeks trying to get this reaffirmation done. If you don't get it done and filed today, I'm taking my business someplace else." Well now, I'll tell you, that gets a guy's attention.

I got into it, and all the lender really wanted was coverage for $3,000 new money it was advancing.

I called everybody, and they all said, "Yeah, if that's all he wants then we don't have to go through all this reaffirmation stuff." Sometimes we lose track of where we're trying to go. Those of you in the area of underwriting who do not have a closing department, get one. That's the greatest way ever to find out how you are handling your underwriting.

It puts people in your company on the side of your customer. You find out pretty darn quick if you're making too many requirements, if you're stubbing your toe. You may not hear if it goes outside the office because the business will go someplace else. A closing department is a great way to find out about the quality of your underwriting.

Hatch, you sort of touched on the fact that you all have to keep up on new things. I certainly agree with that. Agents expect that. Creative financing is really just a lot of old mechanics that have been in existence for a long time, with new jive talk. In fact, some of these deals get so darned creative you can't get them closed.

The Forms Committee does a heck of a job in this association. Although, forms can get you in trouble. Years ago, I discovered our principal had a forms book. In it I found a form that was a combination deal where you could write the loan policy and the owner's policy all at the same time, on one typewriter. It was just great. We ordered a whole batch of those forms and started using them. We used them for years, and they were the greatest thing since peanut butter.

Then we had a guy who filed a complaint with the company, was turned down, and then went to the insurance commissioner. The insurance commissioner said, "No, you don't have any coverage, but what in the hell form is this agent down in Wichita using?" That's when I found out the commissioner was supposed to approve forms before their use. We were in a peculiar situation of not having a loss, but we sure as hell had a disgruntled insurance commissioner.

I haven't built any kind of a question in all this rambling to you, Hatch, and I apologize to you for that.

JONES: I wanted to ask you a question. You ticked me a minute ago when you said you wanted the underwriter to stand up and pay off your customer. At that point, are you representing the customer, or are you representing the underwriter?

BELL: It depends how you're treating me. I may very well be on the customer's side. If I thought that a principal of mine was backing down on what coverage had been offered on that policy, in the way I understood it, and the way I sold it to my customer, you'd have to prove to me without a question or a doubt that there was a good reason for not meeting your obligation.

I may very well be on the customer's side if I think the principal is wrong in how it is handling the loss. You know, maybe I've violated every rule of agency in the book, but when we had losses and were responsible for missing taxes or whatever it was, we didn't argue. We wrote a check, and we got it in their hands, we sold the heck out of the fact they were getting paid. That's the way we want our principal to operate. Obviously, not every claim you get is going to be paid off like clockwork.

Hatch, if I think they aren't treating him right, they're gonna hear from me.

JONES: I would agree with that wholeheartedly. The agent is representing the underwriter, and again, where an agent has responsibility, the underwriter and the agent should get together and decide the value of a particular claim.

Certainly, if an agent feels his underwriter has not conducted himself properly, or he has a different view of a problem, the agent must go to his underwriter and argue his concept of the loss. Again, if he has no responsibility to that loss, he's going to be a hell of a lot more prepared to pay than the underwriter. The underwriter's going to have to pay his losses. The commissioners have gotten tougher on us in all the states. We had to respond to these losses.

When we get down to responsibility, I think there has to be some dual responsibility. But, it should be limited.

Frankly, I think it should be a part of the premium mix. That the agent has a certain portion of this premium is attributable to losses, and if the losses don't occur, then he should get that portion back. It's your turn, Roger.

BELL: Providing printed material is a great help. I think that most of the companies have regular publications with articles of interest. I'm all for it because it gets your name and their names in front of your customer on a regular basis. The printed promotional material that principals have available for their agents should give us room to put in our own names. When publications are passed out, people should know where to get in touch with us.

We would expect our principal to develop national accounts, referrals, or whatever you want to call them. To be very honest about it, some of the things are more trouble than they're worth.

There are people in some parts of the country who make deals we wouldn't make in our area for all the tea in China.

This leads into another subject. You principals need to do a better job in teaching your employees what the heck it is an agent is and does.

We employ a very sharp lady who runs our closing department. Our principal invited her to go to a seminar it was holding for its own employees to talk to them about closings from an agent's standpoint.

She arrived in midafternoon and was not introduced until the next morning. The first evening, she was sitting having a drink with the employees of our principal. They thought she was another employee. So, she learned what your employees, at least these particular ones, thought about agents. They had no idea what agents did. They were sure whatever it was wasn't being done properly. They thought all the company's losses were attributable to agents, who they felt had no expertise at all.

This lady from our office is not reticent. She proceeded to tell them just exactly what agents do. We find this attitude so often. We do all the work and probably before we get through, the deal is canceled and we have to eat the whole thing.

Referrals and national accounts give great business when conducted properly at the other end. I suggest that you look to those things.

JONES: Well, of course, the advertising concept that should be followed is local advertising. I think that should be done by the agent. National advertising should be done by the principal. We don't have many problems in the industry with acceptance of a particular company's policy, I don't think.

Years back, if you will recall, we had to go out and sell the use of a particular policy. It was much easier to sell if a good agent was selling it. The local people trusted agents, not underwriters. Roger represents one underwriter and probably could switch an underwriter, and nobody would ever know in his town. They would look at the name on the policy. If a local agent has a good reputation, he carries the ball.

JONES: You are backed up by the underwriter. We have been talking about that. There are services the underwriter is performing all the time for the benefit of the agent, and probably most are unseen.

We've all gone into relocation-type businesses. Some of us have our own companies; some just do business for those already in the business. We refer this business to our agent. The agent then does a job. In the meantime, that agent owes you money. You're trying to collect your money from that agent and he says, "Why should I pay you, when you owe me?" You really get into a song and dance there.

BELL: I'd like to mention two or three other things before we get to the subject we really should talk about.

Recognition programs—Agents love to be pampered and massaged. All that good stuff. We do enjoy hospitality rooms, if they are really hospitable. I think most of them are. We do enjoy them, and if you didn't do it, Hatch, there probably would be a problem.

We've run enough hospitality rooms of our own to know. Properly done, it's damn hard work. But for an agent, particularly one who's never been to a national meeting before, it gives him a haven. He can meet some of the hierarchy in his principal's operation.

Recognition programs are important whether they mean a plaque or a trip someplace. That reminds me of an old story about the husband reading *Playboy* and his wife asked him, "Why are you reading *Playboy?*" He said, "It's kind of like when I was a kid and I read *National Geographic*. At least I could look at color pictures of places I'd never get a chance to visit."

But the big advantage of some sort of trip to the principal is you get acquainted with your better agents. The agent appreciates that too. If he knows somebody he can call when he's having problems, it makes him feel good. Fellows, if the agents feel good, well, that's what it's all about.

I also like to have the home telephone numbers of everybody. When I work, I want everybody else right there with me. I have a list of all the principal's officers and their home telephone numbers. If I'm working late at night, I'll call my underwriter if I've got a problem. I expect him to be there. I expect him to to take the call and work along with me.

I would like to know when my principal closes his office, because sometimes the phone rings and rings. Put a recorder on, fellows.

We find offices close for the strangest reasons. It would be nice to know when you're going to be there. Then we won't embarrass ourselves by telling customers we'll get hold of someone who isn't even in his office yet.

Financial statements are a problem these days. It seems to me that they are hard to come by and that they do not contain profit-and-loss figures. Maybe that's because they would show all loss and no profit. When I mentioned this to Hatch yesterday, he asked me how reticent we were about giving out our own financial statement. That's a pretty good point.

One other thing and then I'll let Hatch make his rebuttal. New systems and products: Yesterday, Bud Morrow, one of the new kids on the block, mentioned computerizing his whole operation. I certainly hope he does. We won't have to worry about them if he does. I'm being facetious.

We used to want to know the latest systems, the latest computers, and the latest techniques. I was firmly convinced that you can't have a hand-posted tract-book system and run a real title company. Now I think we're going to stick with just that. We may get left in the dust, but so far, I think it works better and is cheaper than the new systems.

We're not so concerned these days about all the new gimmicks. We have come around to thinking that the old ways are the best ways. I guess this is exposing the fact that I'm getting a little older; however, we do use computers for our closings, and that's been very successful.

Hatch, do you have anything you would like to add to this rambling?

JONES: I've got the microphone back. I may keep it. Financially, of course, underwriters have to put out their balance sheet statements. We try to give these to the agents so they will give them to their customers. Many of us put out elaborate brochures and other expensive advertising pieces.

Then you go to the agent's office, and he's ordered 200 or 500 or 5,000 or something like that, and you find the dumb thing sitting in the backroom unwrapped. A 1981 statement doesn't do any good in 1982.

Most agents are undercapitalized. They have some personal wealth, perhaps, but as far as the companies themselves go, most are undercapitalized. When something happens, as it is today, their cash flow becomes very thin. Underwriter's cash flow becomes very thin. Then we see the agents sandbagging. They don't report the policy on time. If they report the policy on time, they don't pay for it on time.

They complain that they have accounts receivable, that people haven't paid them. I think that's true. I think there has to be leniency in that direction. But as Roger said the other day, he reports every other policy.

BELL: Well, I thought that was fair. We started that when we were on the 50–50 contract, we thought that's what it meant. We report every other policy.

JONES: If you have auditors in the field, I suggest you go to Roger's office. Anyway, how do we view the auditing situation in our industry? I always refer to years back.

We started auditing escrow accounts. Now we audit escrow accounts and policies. We try to get agents to keep policy registers. Some of them do; others don't. It's very important to the industry that we be properly controlled. We have not, I think, exercised proper controls in all aspects of the industry.

We have gone by the seat of our pants for many years. I think it has to come to an end. We have to be a sophisticated industry. We want to be sophisticated, yet we don't want to do the things that count sometimes.

I know we do extensive auditing now. We try to do it with field personnel. We do it with an auditing section. We get all sorts of rebuffs at times from agents, because they think we are interfering with their business. Well, that's our business.

I will go back and digress about losses. I have an agent who has been an agent for 35 years and who had not had many losses. He finally came up with a loss. When we said to him, "Well, this is your baby," he said, "What have I been paying you premiums for all these years?" I had to remind him that he was writing our policy, and that we were paying him a commission to write the policy. It came as kind of a shock to him.

I think it is imperative that the agent and the underwriter agree on how business is conducted and on how business is rated. I don't want Roger going back to the Great Ice Age days. I hate to see him roll up his sleeves and actually get dirty working again and making abstracts. But if that's what he wants to do . . . I don't think the attorney's opinion will sell in the secondary market.

I think we are headed towards a larger secondary market than this industry has ever known. I think the title insurance product, whoever may be its writer, has a lot of future. We have a lot of things to look forward to.

BELL: Hatch, I'm an agent. We've got lots of agents out in the audience. We've got a problem in the industry that some think may signal the demise of the independent agent. I would like to ask you why shouldn't agents tell their principals that they don't want them to engage in any more controlled business arrangements?

I'm absolutely sure there's not an underwriter that doesn't conduct some controlled business here and there. As Mr. Morrow said yesterday, the quantity of virginity is rather low.

Why shouldn't we say to you guys, "Look we've been in this industry a good long time." It was the abstracters that started ALTA. Why should we sit by with our hands folded and let our companies go down the drain? Why should we continue to represent you, if you're going to keep doing these kind of things? We'll put ourselves on the block, and whoever has guts enough to say, "We're not going to do it anymore," that's who we are going to write for. Why isn't that a proper position for us to take?

Continued on page 37

New Boys On The Block—A Look At Our Industry From Inside And Out

Donald P. Kennedy
Winston V. Morrow
Richard P. Toft
David C. Woodward

Mr. Kennedy is president, First American Title Insurance Company, Santa Ana, Calif. Mr. Morrow is chairman and chief executive officer, Ticor Title Insurers, Los Angeles, Calif. Mr. Toft is president and chief executive officer, Chicago Title Insurance Company, Chicago, Ill. Mr. Woodward is president and chief executive officer, Commonwealth Land Title Insurance Company, Philadelphia, Pa.

KENNEDY: Our subject is "The New Boys on the Block." There is a common thread through the lives of these three gentlemen, and it doesn't appear until later in life and that is that their parent company moved them into the chief executive officer role of a title insurance company.

Now, the reason I want to start with David is that as I understand it David has been at top-level management in his company and has run large corporations in Italy, France, and England. This, however, is his first experience in the United States, and I imagine it is a real shock to get into the title business with all its present problems.

He was made chief operating officer of Commonwealth in April 1980, so he isn't that new a boy on the block. He assumed the additional role of chief executive officer in December 1981. He also serves as president and chief executive officer of the Commonwealth subsidiary companies, Commonwealth Mortgage Assurance and Commonwealth Relocation Services, so he is a busy man. He is also a member of the board of directors of the parent company, which, I assume, is Reliance Company. Before joining Commonwealth, David worked with LEASCO, EUROPA Ltd., which is a former Reliance Group holding subsidiary concerned with computer leasing throughout western Europe. Before that, he started with LEASCO in 1968 as a sales representative, was appointed marketing manager in 1970, and was elected president of LEASCO in 1972. Before that, he was associated with IBM, with Frieden, and with NCR in a sales capacity. Let's give David a good hand.

We've had a number of meetings with David and find him to be good humored and bright. That's what scares me about these new guys; they are all bright. I'm not sure there is a place for me here.

Let's move to my left—Bud Morrow, a man from California, who was born in Grand Rapids. He lives in Palos Verdes, which is a delightful area, for those of you who have been to California. He also, I think, has a secret love, and that's the Meadowview Farm in Freedom, New Hampshire. He would rather be there than here I assume.

He is married and has two sons. He went to secondary school in Buffalo, New York, and to Williams College, sometimes known as the Stanford of the East. He was in the class of 1946 and is a Phi Beta Kappa. See what I mean? The competitors are too smart! He graduated from the Harvard Law School in 1950 and served in the Army for three years. He has been with Ticor as a director and is now president and director of Ticor Mortgage. In 1982, he became chief executive of the Title Insurance and Trust Company and Pioneer National.

Bud has an interesting background. He worked for Teleflora, but I gather that that was just as kind of an investment. That enterprise is engaged in wiring flowers, I think, back and forth across the country and, as I understand it, is very successful.

His basic working life was spent with the Avis Company, the Avis Rent-a-Car System, where he was employed from 1957 to 1976. He was chairman and president and chief executive officer and director from 1964 to 1976 of the Avis Rent-a-Car Company. Now, was it during that period of "We try harder"? Was that your game?

MORROW: Well, I was part of it, sure.

KENNEDY: I thought that was a good one. Before that, he was with a law firm, but I think one of the most interesting thing is the number of clubs Bud belongs to. I am not going to list them other than to say that I would like to know what the Bald Peak Colony Club is.

MORROW: Golf.

KENNEDY: He is very active in civic life in Los Angeles. With that, I give you Bud Morrow.

KENNEDY: Now, Richard's background is a little bit different from the others' in that when he graduated from college, the University of Missouri, in 1958 with a B.S. in business administration, he went right to work for Lincoln National Life in 1959 as a group insurance trainee, which I assume is right near or in the vicinity of the bottom of the ladder. He was in 1960 appointed group sales manager with offices in Chicago for the central region of his company, and then in the fall he moved to Fort Wayne, which is the headquarters town, as vice president with responsibilities for market planning and product development in the life and health insurance fields.

In December 1974, he was made vice president and was in charge of advertising and sales promotion. In 1978, he led a team evaluating the entry of Lincoln National into personal lines, property and casualty fields, and in 1980 he was elected treasurer of the Lincoln National Corporation and kept his other planning functions and duties. He is also chairman of the Lincoln National Variable Annuities Fund Board, and in February 1981 he was named president and chief executive officer of Chicago Title Insurance. In 1981, he was made president of Chicago Title's parent, which is Chicago Title and Trust Company. With those words, let's welcome Richard P. Toft.

I think it might be interesting to have a new viewpoint on our industry from somebody who is coming in and reevaluating both the industry and his company. I think most of us perhaps would like to start over with our job, but it's too late. Let's ask you David, before your appointment as president, what were your thoughts as far as title insurance is concerned? Did you have any at all?

WOODWARD: Well, I'm afraid I didn't, the reason being that title insurance is almost uniquely an American system of conveyancing, and nothing like it exists in Europe. The last thing I had to do before leaving Europe was to dispose of property that I had, in France and in England, and what I can say is that the system here works much better both in terms of how quickly you can actually conclude a deal and the security with which a seller or a buyer can move. It is far superior to anything that exists elsewhere. It is also very much cheaper than elsewhere. Fees for conveyancing are very large in Europe. So although I didn't know very much about it before I arrived, what I found was really satisfactory.

KENNEDY: I think we can use him in testimony before the Congress—not only the best product but the cheapest in the world. How about you, Dick? You were a little bit different from David. David looked like he just plunged in, while you were with the parent and had some background in title insurance.

TOFT: Well, I was with the holding company with an interest in Chicago Title and Trust Company, but my knowledge of the field was limited. The interest of the parent was very keen through the late seventies, because as the performance of the real estate economy began to slide, our concern with respect to the performance of our subsidiary mounted. I cannot claim to have had a very deep awareness of what was happening in the title insurance industry. Consequently, I have found the last 18 months to be very educational.

KENNEDY: How about you, Bud? You also were in somewhat the same situation in that you were on the parent company's board and were able to observe the actions of the title insurance industry.

MORROW: Well, what I could see at that distance it didn't make a lot of sense. I had some familiarity with the business way back when I was a young lawyer because the title company in Providence would regularly reject most of my proposed closings. I would have to redo them or get curative deeds or something. So I always thought it was kind of a pain. Nothing I have found recently lessens that sensation. With all that it's still a very challenging business.

KENNEDY: Let's see now, to sum that up, "it's generally a pain but a very challenging business."

MORROW: Challenging business.

KENNEDY: Do you think it is a valuable business and one that is vital in terms of the economy? Well, I can certainly agree with the pain part.

MORROW: What's painful about it is that it has such an important role, which seems to me it goes about the job in about as illogical a manner as one can because the industry has seen an enormous growth in what it is giving and I don't see any corresponding growth in what it is getting.

KENNEDY: Here, here give him a hand.

TOFT: I would agree that the industry seems to have a curious pattern of passive behavior until quite recent times. But the role of the industry is irrefutable and a very significant one. The industry should be rewarded more handsomely than it has been.

KENNEDY: Good. Well we're sure glad to have your help in that area. Now, I don't want any of you, and I know you won't, to divulge any trade secrets, but I am going to try to pry some out of you. What, and we'll start right here with Bud and go back the other way, are you trying to do with your company on a short-run basis right now?

MORROW: Well, we've gone into a fairly extensive restructuring of our operating philosophy as well as many operations themselves to eliminate the accumulation of many years of bureaucracy. I think we have achieved a much leaner organization. We basically now look toward states, and there used to be several structures of division and regional management that we found were more review than money making, so we have eliminated quite a bit of the paper handling between the point of sale and the home company. I think we have done a fairly extensive restructing and also undertaken a very comprehensive effort at full computerization, which unfortunately will take a couple of years, and I think that we've also reexamined those places where perhaps we should have agents rather than direct operations. Most of all we've taken action to make the reaction time in our companies a lot quicker than it used to be. So I would have to say we've had a very aggressive program over the last four months, and it will take about six or eight more months to complete it.

KENNEDY: Well, that is interesting. That is almost a total restructure designed to improve the profit.

MORROW: And the service. Oddly enough while we have eliminated a good deal of what I would say tiers of possibly not very remunerative review, we are spending more to increase the size of the underwriting staffs and the quality-control aspects. We're chopping where it doesn't help the product and increasing where it does, which I think is a proper emphasis.

KENNEDY: Well, as a competitor why don't you just take your time, Bud?

MORROW: We've been taking our time since about 1886, and it's time we got going.

KENNEDY: I think you are going to. You sound serious. Dick, how about you? What are you trying to do with your company in terms of restructuring?

TOFT: Well, most of what we are trying to do is certainly in pursuit of attaining and maintaining profitability and a more impressive rate of profitability. I will again say that I don't believe there has been sufficient focus on the very essential nature of an adequate return on the investment in this industry, and that is a very important focus of ours.

We have been attempting to do many of the same things that Bud has cited. We have reorganized the company. We hope that we are more responsive to the marketplace. That is certainly our intent. We are focusing on the customer as well as on the market. But it does take time, and it would certainly help if we had a little improvement in the real estate economy while we are trying to do this. That hasn't taken place, so our efforts to control costs have to continue, and we are continuing those efforts.

KENNEDY: David, what steps are you taking in this area?

WOODWARD: Well, I think the past tense is more appropriate, because the things that we have been doing over the last two or three years are now beginning to see some benefit, and I don't think we want to do too much more right now. We have made significant reductions over the last few years as everyone has. The company three years ago had a lot more employees than now, but we are still searching the same number of titles, and we are still putting the same number of policies out on the street. We are getting better revenues due to a greater emphasis on the high-liability end. So we really do feel, despite all the gloom, that everything is in place, and we really just would like to stay with it, and we think that we will be profitable. In fact, we are profitable as a company, and I see that continuing. So, really, we are not looking for any major changes, and I don't think we've ever had any major reconstruction; there was not that much that was fundamentally wrong with the company, and it was just a question of fine tuning. I think the fine tuning is paying off now. One and a half million housing starts, and I guarantee you good results at a million, it's still tough to make money, but I think it can be made.

KENNEDY: I do too. I think we are all somewhat depressed, each of you as you look back. We've all made giant cuts in staff, and it's sickening how much money we should have been making based on the productivity per employee we have now.

Now, I'm curious again to learn what you people think. The title insurance industry is a vital industry and will survive. I don't think there is any question about that—but in what form? Do you visualize continued ownership by large entities similar to what we have at this table?

WOODWARD: Well, I think what we are probably going to see once the industry returns to profitability is that it will suddenly come to the attention of a lot of big real estate–related companies. Lenders, particularly I think, will start to cast covetous eyes on the title insurance industry. What the legislative climate will be at the time, I don't know, but I assume the way things are going it might be quite practical for such mergers or acquisitions to take place. I see one-stop shopping becoming a possibility. I'm not sure it's necessarily in the best interests of the title industry, but it might well be in the best interest of the real estate industry as a whole. We just have to recognize these things and make sure we come out of it well. I do believe that we are going to see more of the lending institutions looking for access to the title insurance business, and I think they will get it.

KENNEDY: Dick, how do you feel about the one-stop financial centers that David alluded to?

TOFT: Well, I think that there will be more of that in the future as opposed to less. I don't know that I see it as a dominant theme for the near term, and I must say that throughout all this I'm not thinking a great deal about 1990. I'm trying to get through 1982 and 1983. So we may pay a price for a short-term focus, but we have to pay that because of the circumstances we find today.

I think there probably will be some integration of the real estate industry. I think that it will move faster in certain areas of the country than in others, and there is a great deal of this country out there. So what happens in Los Angeles, Don, may not set the pattern for central Indiana. We will be prepared to deal with what happens in the future, but I do not have a clear vision as to what form it will take. I think there will be more integration. I think it will probably happen in some of the major urban areas first. What then happens remains to be seen, but we will be prepared to deal with it.

KENNEDY: How about you, Bud, what is your vision of the future in that area?

MORROW: Well, I think I really am too new a player to have any deep-seated feelings. I suspect very strongly there will be many more players, which is not a good thought or a happy one, but I suspect that will be so. But I just don't know when it will come and what will be the role of the various elements within it as yet. I think I'm pretty much like Dick: At the moment I can think in terms of 1983 and backwards to now, but 1984 is another kind of specter. So I will just have to wait a while on that.

KENNEDY: What about the role of the small agent, the small individual operator who is really the backbone of our industry? Do you envision any real change in what is going to happen to him?

MORROW: If anything, I would suspect that role would probably improve or at least be more secure. I think that one thing must be obvious to most people, shall I say the large entities, is that they do fairly well in the major metropolitan hubs and they learn new ways to lose in the smaller ones. So that to some extent the avaricious aspect of the business, I think, should have been satisfied by all intelligent people by now, and I think the smaller agents will have a better defined role and also can hook onto some of the benefits of size thanks to the development of the minicomputers. They can acquire many of the advantages that formerly were pretty much reserved to users of large mainframes. So I see a fairly profitable area there, one somewhat to the ending probably.

KENNEDY: That brings up the question we've been debating in the industry for years and that is "Why an agent can make money and a title insurance company with a branch can't make money?" I think you come to the realization that the man with his own money at stake seems to do a lot better and work a lot harder than if it is somebody else's money. I know in our company we always say, "What would you do if it was your money?" And the answers are shocking. Why the hell haven't you done it then? They say, "I'd cut; I'd do this; I'd do that." How do you feel about the role of the small agent, Dick?

TOFT: Well, you've just stated a lot of what I feel. I've been dazzled by the efficiency and performance in this economy of some of the agents and agencies that I have visited over the last several months. The quality of the operations, what they have been able to do through these difficult times, has impressed me very deeply. It is very clear that we have to get more to that standard of performance in our company operations. I think the role of the independent agent in the future will be a significant one, particularly when one considers the size of this country. To assume that a given method of marketing our product in urban centers is the dominant theme throughout the land just isn't so, and the independent agent will have a role, probably an increasingly important role, if the underwriters learn from at least the current cycle and do not repeat some of the past nonsense.

KENNEDY: Yes, that is a fear, isn't it? That we will get right back on the track when business gets better. We'll go right back to the same old game. David, how do you feel about it?

WOODWARD: Well, I think the subject has been pretty thoroughly covered. Obviously, we all recognize how well agents can do, particularly in the smaller counties. Answering questions about the title industry is very difficult because the industry is so many different industries, depending on which part of the country you happen to be in. An agent in New York is in a completely different kind of business from one in the Midwest. In some areas the agent can compete and provide equal or better service; he can meet the underwriter head on, but I see that becoming increasingly difficult in the big metropolitan areas.

KENNEDY: On that subject, David, it is interesting to examine the agent activities in Los Angeles, which I guess is the largest real estate market in the country.

WOODWARD: Well, perhaps they would not be quite so large as they are today if they were paying a realistic premium.

KENNEDY: I'm with you. One of the things that just irritates the life out of me and that Bud has alluded to is the use of computers and the ability of those who control the computers to enlarge their responsibilities in an area without you noticing it. It is an art that they practice that is very expensive. You mentioned, Bud, that you were going to computerize the whole, I think you referred to it as the "whole mess." What plans do you have in that area?

MORROW: We have probably five discrete computer systems, which is probably four too many, around the country, all independent, and we are making an effort to at least study the architecture of a comprehensive computer system that will take care of statistics, accounting, financial data, and do the work of the title plant, and avoid having to reenter information continually up the chain of business. But that is a big project. It may or may not be successful. We're doing the architecture for such a plan now. I did it once at Avis and it worked, but that doesn't mean it will work in the title business; however, I think it can. Certainly there have been enough technological improvements.

The big thing is that we have gone, I think as an industry, into it in bits and pieces—something computerized here, and something computerized there, without much logic in terms of what we are trying to do, and it has been aggravated by the fact that companies have to do business in different ways in different parts of the country. You and I both have some experience with the computer system, I believe, with plants that are on their way out. So one hopes to do better than that. But the shared plant and many of the other things that come with the computer I think make a lot of sense.

KENNEDY: I'm being careful with this question as you can tell, either that or I am just tired and stuttering. Do you have people or are you (you said you put a computer system into Avis, which is obviously successful) and in doing that did you acquire enough knowledge so that you could ride herd on these wildmen that are in the computer business?

MORROW: Well, at vast expense you do learn to somehow tell whether a person who is sitting back in his desk and looking at the ceiling is thinking or sleeping. Those competitive secrets I won't share.

KENNEDY: How about you, Dick, on the computer aspects of our business?

TOFT: Well, it certainly is one of the more challenging dimensions of the overall challenge. There is no question about that. I for one would like to see it under proper legal guidance of the association or whatever is necessary. I would like to see more cooperation within the industry on the utilization of data-processing technology. It has been done in other industries, certainly, such as the airline industry where there is an industry-wide system. The investment that will be required to bring real efficiency to this industry will be very large, and probably a number of us are independently trying to achieve some of those efficiencies now. I would like to see some expiration of the opportunity for cooperation on the development of systems for the future. We are doing some of the things that Bud has referred to; however, we have also reduced the investment in data processing made by our company. We have had to, and we felt that it was possible to do that without too great a cost to the future. There is a little surplus in that area as there is in most if you look at it hard and long enough.

WOODWARD: Well, I suppose my prejudice against computers comes from the fact that I spent about 15 years selling them and I don't really believe that any of the systems with which I was involved really delivered what was promised. Computerization is always a much more difficult and expensive task than you envision when you begin, particularly with large central systems. I am deeply suspicious of the cost effectiveness of many of the things you see being done on the computer today. I do think, with the advent of much lower priced hardware particularly at the mini and small workstation level, and with the increasing cost of labor, the case for using computers is going to become stronger in the title industry. The closing function, I think, is particularly well suited for small local computers.

Title plant work on computers depends on where you are. On this coast, I don't believe that the computer offers too many advantages, some of our manual plants are extremely efficient and built around local recording methods. After 105 years in a county, you expect a manual plant to be very comprehensive, and it's going to be a long while before a computer can beat that. But I think we will see more and more computerization, and it should become more practical as prices come down.

KENNEDY: David, in your company or either of the three of you, how do you control the giant amount of informaton that you get from a computer that you don't want?

WOODWARD: The great advantage of a computer, I used to tell people when I sold them, was that the computer could be selective for you. I do believe that exception reporting is one of the great advantages of the computer, and if you are getting informaton that you don't want, you should just not have it, you know, and it is capable of highlighting exceptions. If you can specify what it is you want to look at, it should be able to give you the reports of just that information. On the finance and accounting side, the system that was in place before I got to Commonwealth is a very fine one and does not overload us with too much irrelevant information. The trouble with exception reports is that you get to rely on them so much until one day you actually dig into the detail and you find out what the computer hasn't been telling you. But I think exception reporting is the answer.

KENNEDY: Dick, how do you treat the—I'm getting back again to the matter that David was talking about. Do you run a committee or, Bud, do you have committees that say, "Computer, this is what I want from you, and no more or no less"—is that how you do that?

TOFT: About a year ago we formed an automation steering committee—one had existed and had been allowed to disband or trail off in some way but we have formed a new committee—and we are finding it useful to use that device to focus on the utilization and the big financial questions with respect to where we are going with data processing.

MORROW: We have a review committee now and also a process of selectively eliminating reports and seeing if anybody knows they are gone, which is the best clue of whether you need them. It is surprising how many are not missed. So that is another way of going about it too. But we do have a review committee, in fact, several, and they do meet and they do have agendas. The idea is to work with the improvement of our system. It is quite true that if everybody can ask for a report then you'll get an infinity of reports.

KENNEDY: I think that is one of our problems. What, in your experience in the title business, fundamentally different problems are you facing than you faced in your prior work? I know that we in the title industry really haven't been used to people from the outside coming in. You read in the *Wall Street Journal* constantly where a manufacturer of toilets goes to the President of the bank and vice versa. There is no connotation of that at all. But we really haven't had that in our industry, and I am curious as to what problems you have run into. Bud, why don't I start with you?

MORROW: Well, the only other two businesses I was in with any continuity both had a very strong preeminent industry leader and, therefore, were rather organized. I don't find that in the title business at all. There is no single dominant company, and there is sort of a chaos in the marketplace I might also add. But one can get used to that I guess.

KENNEDY: If one wants to.

MORROW: One has to. The big difference that I see is that it is a very highly competitive and somewhat emotionally energized industry, and it hasn't really looked at its problems very clearly for a long time.

KENNEDY: I think I can agree with that. Mainly, we're going to lose our market share but we'll get some help from you anyway. Is that the way this is going to work?

MORROW: I wouldn't think of it, Don.

KENNEDY: You scare me to death. I've enough problems. What about you, Dick? Although you were in the general insurance industry, it's a little different game. We know we aren't really insurance.

TOFT: Well, I have to think very hard about if you stress the fundamental differences, I'm not sure that fundamentally there are that many sharp distinctions between this industry and other forms of insurance with a few exceptions. I do think that the risk appraisal and the risk-spreading devices in other lines of insurance are much better developed. Reinsurance pools and risk appraisal seem to be much cleaner in other lines of insurance, and I think that needs attention in our industry. I also think that the sheer amount of risk that is assumed, sometimes inadvertently, in the financial transactions is just mind boggling and our assumption of that risk, without adequate compensation, is just ridiculous. We are addressing it, but we have much to do, and we should certainly be paid more handsomely for the risk that we assume.

KENNEDY: Did you read the report by the Pennsylvania group? It holds very strongly that the title insurance industry charges too much for its service, and we paid $75,000 for that remarkable bit of information. David.

WOODWARD: Well, I think Dick has touched on the fact that shocked me so much when I came to title insurance as an outsider. The overwhelming fact about the title insurance industry is that we are too much at risk. An act of infidelity by someone you haven't met and don't even know exists and over whose actions you have no control can set a company back several million dollars. These kinds of losses are no longer theoretical; they are happening, and I don't know too many other industries that would be prepared to continue to face those kinds of risks in the way that we seem prepared to do. I haven't seen too much difference in the way the industry is operating following some of the major scams that have taken place. Maybe it's because we can't do anything about them. If we can't, then we have to take a casualty approach. If it has to become a question of accepting the random hits, then the rates simply do not support that kind of approach. Ours is an industry that traditionally has spent most of its dollars preventing claims, but now we are faced with large unpreventable claims. They are significant claims, and the few cents in the dollar that are left over to cover these risks are inadequate.

KENNEDY: So what do we do about that, David? That is an insolvable problem almost.

WOODWARD: Well, I suppose in most industries the market would take over and the rates would go up. Common sense would indicate that that is what must happen. But we appear to have an industry that is so fractured, where there are so many different groups involved, where there is so much competition that the likelihood of the industry of its own volition taking the necessary steps seems remote. We can't get together and talk to each other because of antitrust; even the rating bureaus are under attack. I don't know. I mean, "What is the answer?" Clearly, our rates should go up, but I don't think there is a single company even represented here today that has the nerve to do this in the present situation in any major market that it is involved in because the results would be immediate. The company will lose market share, and its competitors will quickly step in and take advantage.

The thing that I think amazed me more than anything else shortly after I arrived was to learn about one particular state where the rates were extremely low. As a result of a great deal of work and effort by the local rating bureau, approval was given to a significant rate increase. What happened was that the dominant company in that particular state declined to use the new rate and filed a deviation. When you have a situation like that, Don, I'm sorry, but I don't know the answer. It is a very serious problem to face, I think.

KENNEDY: I think there is a company here that has learned from that lesson.

This is not on the agenda, gentlemen, and you don't have to answer or say anything, which I know you won't if you don't want to, but have you given a lot of thought to controlled business? Shall I start with you, Bud?

MORROW: Well, only to the extent that it appears to me that it has to be looked at from both a federal and a state point of view, and I guess a searching examination of the industry suggests that the quantity of virginity in that area is very slight.

KENNEDY: The quantity of virginity. That is a good phrase. How about you, Dick? Have you taken a look at that?

TOFT: Sure. We've taken a look. Earlier in our discussion, we talked from a little different vantage point about perhaps the inevitability of further integration of the real estate industry, and I think that is what we are talking about here. There will be other forms of it. It will happen. But our focus will remain elsewhere. We think that the product will be distributed in the vast geography of this country by agents. We think their role is essential to the orderly process, and I think that they will, at the proper time, find ways to assert themselves with respect to this problem.

KENNEDY: That was another good phrase. David, how about you.

WOODWARD: Well, I think you'd have to define controlled business for me, Don, because there seem to be so many different interpretations to what it is. Clearly, there are situations that we see to be very regrettable in which an agency or a group interposes itself without adding any value or providing any service and takes dollars away from the transaction. I think that is regrettable, and I wish that ALTA's attempts to bring some legislative force to this problem had been successful, but they haven't been successful, and I see no reason to think that they are going to be successful, particularly with the present administration. So, we're left with a situation in which we have companies that we have to run and those companies are short of business. All of us are short of business, and so what does one do under such circumstances? Maybe President Reagan's attitude will in the long run prove to be correct, and the industry will be better and healthier if the doors are opened to controlled business. Frankly, I doubt it. I don't know which way we're going to go, but certainly trying to control it through ALTA has not yet been successful, and in the meantime we have to do our business.

KENNEDY: So, I think what you're saying is that you find controlled business regrettable, but you have to make money, and if that is the way to do it then you are going to have to do it, but that you'll cooperate with ALTA in any effort to control "controlled business."

WOODWARD: Well, I think we must draw the line somewhere, but I speak for every company when I say that. You know I'm not speaking for Commonwealth, because there is no title company that is not heavily involved in controlled business.

KENNEDY: That's right. Do you have any further comments, Bud?

MORROW: No.

KENNEDY: On a new subject—I think you people are better equipped to discuss the American Land Title Association than those of us who are close to it. Start with you, David, what do you think the role of this association should be in the future?

WOODWARD: Well, it follows a little bit from the previous point, I suppose. I don't see that ALTA has been as successful as it should have been on the lobbying side, and I would like to believe that we could be more effective and the interests of the land title insurance business could be better presented to government and that we could all benefit as a result.

Now, I assume that this is a question of dollars. If we are prepared to spend the dollars, then ALTA could be more effective than it has been. On the other side is ALTA's role in the gathering of statistics and uniform practices, etc., and everything that I have seen seems to be very well done and the service that we get is excellent. The standards that the industry adheres to seem to be fine. It's just what ALTA's role should be on the lobbying side, and if we decide we want ALTA to speak for us in government, I think we have to strengthen it and give it the resources with which it can do that.

KENNEDY: I think later on there will be a report from the people who are involved in lobbying efforts, and I think they have had a fair measure of success just recently in the area of controlled business so I would ask that you hear that report.

WOODWARD: I would like to withhold my judgments.

KENNEDY: That is fair enough. How about you, Dick?

TOFT: Well, it is somewhat presumptious to comment here, but that won't stop me from doing so. I've seen the association at work through two annual meetings now, this being the second that I have attended, and I've been impressed with the role of the association generally speaking.

I think the annual meeting of last year was far more substantive in its content than I suspected in advance. I have been to many such meetings in other lines of insurance where they do not do so good a job with respect to program content.

The role of the association in the future interests me because I think the political base of the industry is a very very significant one when you recognize that we have, or potentially have, a source of influence in every county in the country, and there are few industries that have that political opportunity. I don't think that opportunity has been utilized all that effectively, and I am sure that many of you in the association have worried over that for years. I do see a role of the national association in trying to make local associations and state associations more effective. I think political action kits for use at the state level or the county level should be looked at carefully by the association as it tries to think through how to make the entire industry more effective in the process of influencing legislation in which the industry is interested.

Now, unfortunately, the industry does not always have a common view as to what the form of legislation should take, but, generally speaking, there is more agreement than disagreement. I think the opportunity for influence is still there, but the direction should be reexamined. There has been a success recently, and we should be very grateful for that, but I would like to see more liaison with the state associations. I think that the power is really at the local level and should be pursued more actively in some cases. I also would like to see more focus by the industry on some of the matters of risk avoidance. There could be cooperation there and perhaps there can be cooperation on data processing. Those things are done in other lines of insurance. In the life insurance industry, the amount of cooperation and idea sharing is astounding, and it seems to get through it without any antitrust implications, and I think we should look at some of those opportunities as well.

KENNEDY: Thanks, Dick. Bud, how about you?

MORROW: Well, I certainly am a big believer in industry associations if they are effective and don't try to do too much, that is, I don't think you can get a monolithic structure that will cover all the requirements of the title industry, state and national, but I certainly see ALTA as representing the industry in the federal sense and it should be very active in that area. I also agree with Dick that much could be done in the technical and administrative areas of the title business too to help in some way or other reduce the cost of exploration for some of these avenues. So, I think it has a big role, but I'm not so sure I see it as especially effective going below the federal level and into the states. But, then again, I will have to confess I'm pretty green looking at things.

KENNEDY: Well, gentlemen, I think that about brings us to the end of the topics that we had, unless there are some questions from the floor.

LUGAR—continued from page 8

was sort of the same question we get back with the capital pool. Why housing? Why the preference? So I said, "Well it's not just housing, Mr. President, we're talking about jobs for a lot of people." This housing thing has many ripples. It takes in lots of folks, and I said we are going to have unemployment reports each month for the next four that are going to be worse and worse. The entire program that we are embarked on may come into some greater political jeopardy. It seems to be very wise to get unemployment down, to get back more people into houses and restore the American dream to a lot of young people who don't have much of that dream now. Unhappily, the President recounted a conversation he had had with a friend up at the United Nations who was a builder, who felt that interest rates were coming down anyway and that housing starts were going up and, in essence, my legislation might be coming behind the power curve of events. That did not turn out to be the case. The builder friend of the President was dead wrong. The blip at the time was HUD-sponsored public housing projects, not private starts in the market. Although the very last report gives us the first glimmer of hope that as interest rates are declining in the long term, we're beginning to see some people at the margins reentering the market.

We may need to take a look at such attempts as the housing legislation in the future if we are to get off dead center. I suspect we will need to do that to restore at least some vitality to a very large industry. But the question will still persist, and it is one that I hope will gauge your attention and imagination. Why housing? Why the priority? Is there something we have taken for granted all this time that was unjustified? Now my own prejudices are obvious. Housing, the ownership of property, the ability really to exercise that opportunity in our country, is the glue that holds together our democracy.

As a nation, we have made some bad business decisions. We made some labor contracts that were not wise. We were not so hard nosed as we ought to have been with regard to material costs, with regard to all the things. Businesses have changed. Individuals have changed. The process we are going through now is a result of all those changes coming down awfully hard on top of each other.

But this country's economy is fundamentally stronger. We are more competitive. We are tougher both at home and abroad. We are thinking through what our priorities ought to be both as individuals and in a public sense. I appreciate very much the sense of this competitive mechanism that you bring to it. I've supported in Congress this year those aspects of the banking legislation that you found most important in a procompetitive way. I've continued to do that, but I challenge each one of you as individuals, as thinkers in your own right, about the economic scene to think through along with those who have some public responsibility. What ought to be our priorities? What ought to be our incentives for saving? How should that precious capital be utilized? In what forms can it be best dispensed? If there is a general competition for capital, what will be the choice with regard to the housing component as opposed to other things? And should we change the rules of the game, tax wise or administrative wise, to make a tilt as a point of public policy?

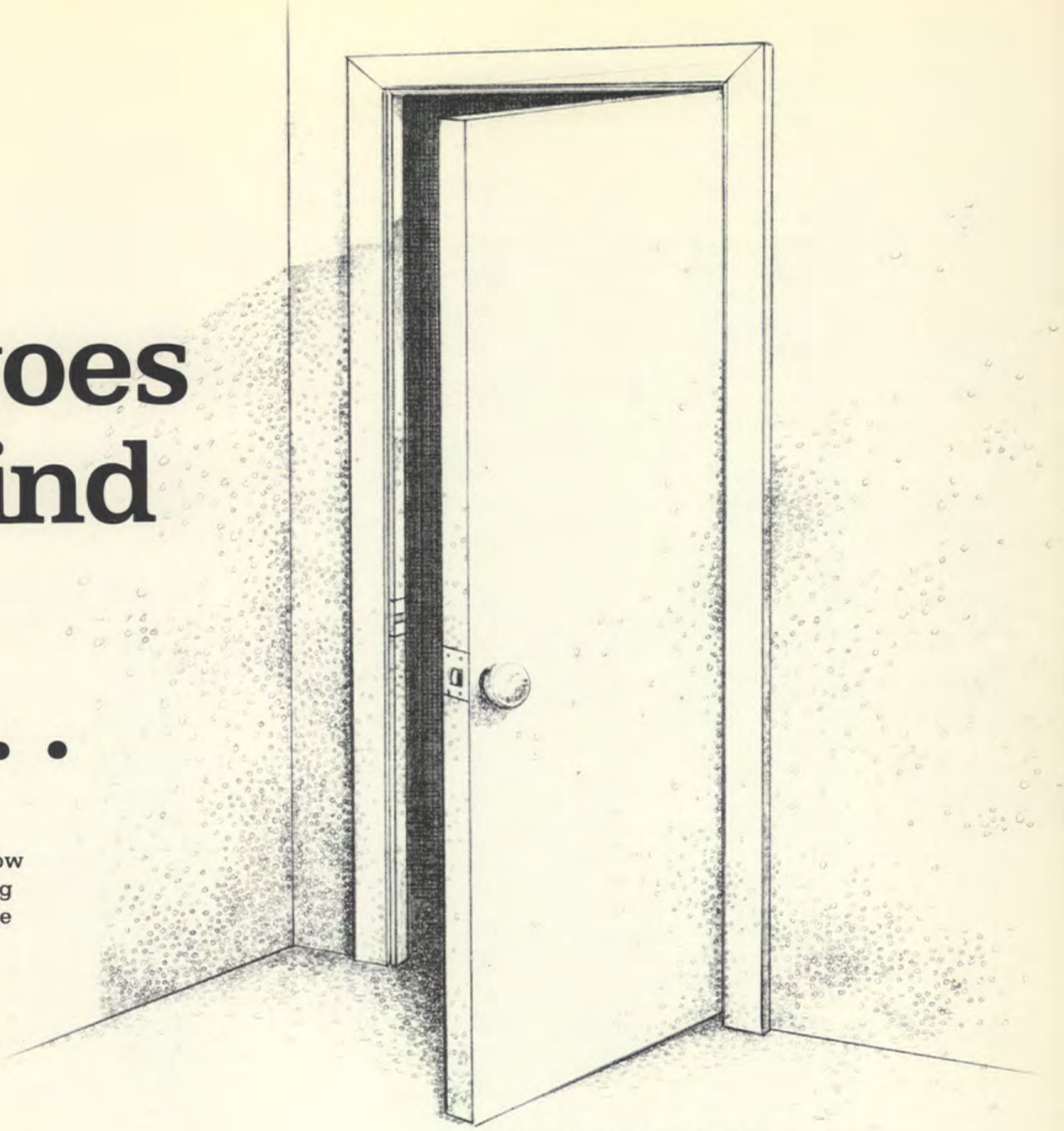
TITLE INSURANCE AGENTS, THIS IS NOT IMPORTANT PLEASE DO NOT READ

The Errors and Omissions Committee needs to know your problems and needs to know anything you know that might help your fellow agents. Write Errors and Omissions Committee, Box 966, Bartlesville, Oklahoma 74005, or call 918/336-7528.

What goes on behind closed doors . . .

in the title industry? Do your customers really know? The brochures and visual aids listed below can be a tremendous help in advising the public and your customers on the important and valuable services provided by the title industry.

These materials may be obtained by writing the American Land Title Association.



Brochures and booklets

*(per hundred copies/shipping and/or postage additional)

House of Cards.

This promotional folder emphasises the importance of owner's title insurance $22*

Protecting Your Home Ownership

A comprehensive booklet which traces the emergence of title evidencing and discusses home buyer need for owner's title insurance $30*

Closing Costs and Your Purchase of a Home

A guidebook for homebuyer use in learning about local closing costs. This booklet offers general pointers on purchasing a home and discusses typical settlement sheet items including land title services. $30*

Things You Should Know About Homebuying and Land Title Protection

This brochure includes a concise explanation of land title industry operational methods and why they are important to the public. $22*

The Importance of the Abstract in Your Community

An effectively illustrated booklet that uses art work from the award-winning ALTA film, "A Place Under the Sun" to tell about land title defects and the role of the abstract in land title protection. . . $35*

Blueprint for Homebuying

This illustrated booklet contains consumer guidelines on important aspects of homebuying. It explains the roles of various professionals including the broker, attorney and titleperson. $40*

ALTA full-length 16mm color sound films

A Place Under The Sun (21 minutes)

Animated film tells the story of land title evidencing $155

1429 Maple Street (13½ minutes)

Live footage film tells the story of a house, the families owning it, and the title problems they encounter. $140

The American Way (13½ minutes)

Live footage film emphasizes that this country has an effective land transfer system including land recordation and title insurance. $140

The Land We Love (13½ minutes)

Live footage documentary shows the work of diversely located title professionals and emphasizes that excellence in title services is available from coast to coast. $115

Miscellaneous

ALTA decals $3
ALTA plaque $3

Training, Education, Diversification, An Abstracter's View Of Title Insurance

Connie Wimer
John J. Roney
Thad Bostic
C. L. Hubbard, Jr.
David F. Upton

RONEY: Several months ago, I had the opportunity to spend several hours with Bill McAuliffe. We got onto the topics of employee training and training programs in general.

He asked me if we had a training program in our office and I told him we did. He asked if I would like to discuss, at the upcoming ALTA convention, what we do in our office; I said I would be glad to.

Next, I received a call from Connie Wimer giving me some details regarding what I was to speak on and, of course, here I am.

In preparing for my talk, I thought back to the discussion Bill and I had had and remembered he was somewhat surprised that we had a training program for our employees. Yet, I can't believe there are abstracters or agents who would hire an employee for a particular job without training him. Consequently, what I am about to say to you probably will not contain unique ideas or experiences, but by the same token, it may be of some help to you.

It might help you to relate to what we do if I told you a little bit about our area and our business. Our county population is about 25,000. That's the size of the year-round population. I'm told that in the summertime we get up to more than 100,000, but the population that gives us the work that we do is about 25,000.

Our office is located in downtown Traverse City, two blocks from the courthouse. We have eight employees. We have three typists, two examiners, one tax and courthouse person, who also does searches and abstracts, one final policy person, and one poster or private plat person.

The services we offer are searches, abstracts, title insurance, and escrow services such as mortgage closings and construction loan disbursements.

Our plant is a tract index. We operate with a tract and with private plats. The tract is maintained on a daily basis by obtaining hard copy from the register of deeds office and then posting it in our tract. We get the hard copy by making a copy of daily recordings. We also get our own tax information from the treasurer's office.

Every new employee we hire spends several hours each day for about two weeks at the courthouse, becoming acquainted with what we do at the register of deeds office and the treasurer's office. A new employee also learns how to get information we need from the circuit court clerk's office, the district court clerk's office, and the probate court office.

Our typists not only type but also are responsible for getting our hard copy from the register of deeds office, answering the phones, taking orders, and doing administrative work such as reporting to our underwriters and filing. When we hire a typist, the person must learn how to do more than type. The employee is trained by a woman I like to refer to as our girl friday. I'm sure most of your offices have one. She's been with us for about eight years. She came to us with some executive secretary training. She knows how to do just about everything in the office; she is someone whom we would be lost without. She is also one of the typists.

The new typist's courthouse duties are learned by teaching her how to use a Xerox machine and showing her what parts of the instruments we generally want pictures of. Becoming an accomplished commitment and policy typist is a little more difficult and time consuming.

We start our typists by giving them searches and abstracts to type. Then we give them policies, and finally, commitments.

Administrative duties are learned by teaching new typists how the rate schedule works. We have prepared a precomputed reporting rate schedule so that all they have to do is find the premium charge for a particular policy. Right next to the premium charge is the amount that we remit to the underwriter.

New employees learn how to take orders by listening on the phone while other employees take orders. This way, they become familiar with how to handle customers, what questions to ask, and how to put information on our application form.

We had occasion about six months ago to hire a person to do our posting and private platting. He started his short tour of duty at the courthouse. Fortunately, he had some surveying background, so legal descriptions and drawings were not new to him. But he had to learn the nature of various in-

Ms. Wimer is president, Iowa Title Company, Des Moines. Mr. Roney is president, Grand Traverse Title Co., Traverse City, Mich. Mr. Bostic is vice-president, Lawyers Title Group, Inc., DeLand, Fla. Mr. Hubbard is president, Stewart Title of Glenwood Springs, Inc., Glenwood Springs, Colo. Mr. Upton is president, Southwestern Michigan Abstract and Title Company, St. Joseph, Mich.

struments that are recorded, and how to post them properly in our tract.

We trained him to do that by letting him work with another employee who knew how to post and took on the posting duties for a while. He learned first by watching, then by posting lots in the subdivisions, and finally by posting the acreage. Of course, one of our people checks his posting and will for quite some time. Eventually, he will also do searches and abstracts. He'll start with simple interim searches and then graduate to more complex searches.

As you may have guessed, two or three of our people are cross-trained to do posting and closings, title insurance, as well as final policies.

We train our examiners by teaching them how to do searches and abstracts and how to put together a chain of title. Then they work for a while in the final policy department learning how a commitment is set up. Finally, they start as examiners, doing reissues and graduating to the more difficult orders.

I might add that whenever we have had to replace employees other than typists, we tried to upgrade our own employees by giving them more responsible positions. We can then hire for a simpler job and also have a built-in trainer.

Our ongoing training is usually handled through seminars put on by our underwriters or by the Michigan Land Title Association Education Committee. We also work in a large open area and try to communicate with one another, thereby teaching one another through the question and answer system.

I think that you all will agree that when you have to hire a new employee, it would be very simple if you could shut down your offices for a week or two and give them constant training. But of course, we can't do that.

So I think these three items are very important. Number one, try to upgrade your own employees. Give them more responsibility, and then you can hire somebody for a simpler job.

Two, try education by example. We do work in large open areas. From time to time, I get a call from somebody who wants to ask a question. I give an answer, and someone asks me what the question was. Then I go through and explain what the problem was and teach in that manner.

Finally, try cross-training. I think cross-training is awfully important. If you cross-train, you've got two or three people who can do various jobs.

Of all the suggestions I've made, those three are probably the most important.

BOSTIC: How many of you know that the association has a Land Title Institute? Good.

The Land Title Institute was founded by Hart McKillop, who previously served as senior vice president in charge of employee education and training for Lawyers Title Insurance Corporation.

During the past 50 years, McKillop has built more than six title plants and has managed and directed title company operations in several states.

Since 1970, the Land Title Institute has provided title industry educational courses for title company employees throughout the nation. These courses are conducted directly with enrolled students by mail. There are two courses. The basic course has 12 sections that are structured and designed for beginners and lower echelon employees.

The advanced course has 18 sections designed for more advanced employees.

I have passed out some application forms. On the back of the forms you can see the topics covered in the two courses.

When a student is enrolled in the program, he is sent a text booklet covering each of the sections, accompanied by a set of test questions and a mark-sensing answer sheet. The tests are open-book tests and have true-or-false and multiple-choice answers.

Because most students are adults, the tests are designed as learning tools that focus the student's attention on more important aspects of the text, rather than measure the student's recall ability.

The tuition rate for companies with less than 50 employees is $50.00 per month for a term of 12 months, plus $2.50 for each section book.

Here are several comments from some of the leaders of our industry:

Boren: "Your courses provide an excellent foundation for in-house job training programs. Our employees and officers are favorably impressed."

We all know how important Jim Robinson has been to various training programs. He and several others in Florida put together a *Land Title Manual*. It is a fantastic book. Anyway, Jim says this particular program is "the first breakthrough in title company employee training in the industry's modern history."

Fred Benson: "The Land Title Institute program has been of significant value in the productivity of our employees."

WIMER: Our next topic is diversified services. I want to thank you for your response to my questionnaire. At that point in time, we had not chosen a speaker, and I was amazed at the number of returns. I don't know quite what I expected, but there were more than 400 returns.

The bad news is that almost all the respondents indicated that there had been some layoffs or cutbacks in hours and salaries. It was quite a negative reflection of our industry. There were about 35 of the 400 who had gotten into some new and diversified services. Well, I sent those questionnaires on to our next speaker, who is Carlton Hubbard. He has been in that company since 1950.

HUBBARD: What is the outlook for the title industry in the eighties? This is a question that all industries are asking themselves. We know the business climate is less than bright in most parts of the country, so we must readjust, regroup, survive, and thrive.

As abstracters, we have only one product to sell—information. Normally, this is provided to the customer in the form of an abstract, a title commitment, and/or a title policy. Our information comes from the county courthouse, so anyone else in the world has access to the same information. But how we obtain, store, disseminate, and market this information is the secret to our survival. As an ongoing task and expense, we must obtain on a regular basis a copy of every instrument recorded in the courthouse, transport that copy to our base of operation, post it to a geographical or an alphabetical index of some sort, and then store it until we are called upon to provide a product for a customer. Thus, our expenses are never-ending, but we may be able to cut corners along the way.

The most common way to cut expenses is to reduce employee costs. This fact was evident in responses to the questionnaire sent out by Connie Wimer, to which more than 400 of you responded. The majority of respondents cut expenses by reducing staffs and hours. Others opted to cut salaries. Still others announced that there would be no pay raises nor any new hirings.

According to the survey, the second most common way of cutting costs was to cut down, or completely cut out, advertising costs. A great number of the members polled have chosen to increase prices as a means of combatting the business downturn.

But what if you have done all the cutting you can possibly do, have also raised your rates, and are still operating on what the government fondly refers to as a "deficit budget"? What do you do then? The survey was quite enlightening as to the steps some of you have taken to stay alive. Instead of retreating and hoping things will get better, many members are trying to capture a larger market share. Some of the methods employed are quite innovative. Increased advertising and the employment of public relations persons were the most common means of garnering additional business. Other ideas worthy of note follow:

- Holding seminars for realtors, lenders, and attorneys
- Using additional underwriters to provide title insurance coverage for all situations
- Preparing various documents and performing real estate and loan closings
- Making various selected personnel available to attorneys, realtors, etc. for "Girl Friday" services
- Providing information to realtors for preparing listings and drawing up contracts
- Maintaining quality control on your work and providing good service.

If you have implemented any or all of these ideas for increasing your percentage of the market and are still having a tough time making a profit, or even keeping your doors open, then let's study other forms of providing information and charging for the same, thus supplementing our income:

- Preparing reports to customers concerning transactions, encumbrances, and liens on a subscription basis
- Providing ownership reports to various

government agencies for zoning changes, subdivision approval, and special use permits (Usually, the applicant is responsible for obtaining this report)
- Providing surveying, mapping, platting, etc.
- Conducting various courthouse searches on a specialized basis, that is, probate and liquor license searches
- Adding general insurance business
- Renting tract books to appraisers, oil companies, etc.
- Adding a craft shop and toy factory
- Subleasing space
- Providing various computer services

It is on the last two items that I would like to expound for a few minutes. All of you remember certain dates in history that will always stay with you. Unfortunately, some of these dates are directly tied to something unpleasant that you would just as soon forget: December 7, 1941 (Pearl Harbor), is one example. May 3, 1982, shall always be deeply imbedded in my mind. It was on this date that I picked up the morning paper and read the shocking news that Exxon had pulled out of the Colony oil shale project. Now, maybe that wouldn't shock most of you too badly, but we had been doing a majority of the title work connected with their oil shale venture and the building of a new city called Battlement Mesa near the town of Parachute in western Colorado. For a small office such as I run, this could have meant a tremendous loss of revenue, and suddenly my breakfast did not seem so appealing.

Perhaps fate planned it that way, but I was scheduled to have a meeting with three of Exxon's Battlement Mesa personnel at 9:00 a.m. that day. At that meeting, I learned that two of the three had learned of the Exxon pullout from television, while the third had received a phone call from his superior informing him of the sudden move. Imagine what a startling revelation this must have been to these people to learn that suddenly their jobs were in jeopardy.

Some of my employees came to work that morning with a certain amount of apprehension and trepidation. Some knew that they had been hired specifically to work with the Battlement Mesa project and were rightfully concerned. I was concerned.

During the period of time we worked with Exxon and its subsidiary companies, we developed certain reports that they required periodically regarding landownerships surrounding their PUD perimeter, as well as outstanding surface and mineral ownerships "within" the PUD.

They used these for various hearings before the county planning commission for subdivision approvals. When they first requested these reports, there wasn't any computer service available to us in Glenwood Springs, so we worked out a method whereby we could feed information into a computer system in the nearby town of Eagle by means of the telephone lines. It worked, but it was expensive. We passed the cost on to the customer, but a more efficient method needed to be implemented.

The computer company, also looking for new customers, decided to move part of its operations to Glenwood to try to expand their services into a new area.

It happened that we had some extra floor space available in our building that they wanted to sublease from us. The timing could not have been better.

What has evolved from the ashes of a certain disaster is this:

- We have subleased approximately 20 percent of our floor space to the computer people at a profit to us
- We use the equipment they moved into the building without having to outlay funds to acquire our own terminals or printers. We do pay an hourly charge for using the computer, but until it becomes cost effective to obtain our own equipment, we have the best of both worlds
- The programs we first developed for the Battlement Mesa project are now marketable items that we are proposing to other developers. New projects such as Beaver Creek and the recently approved Adams Rib project are both areas in which this same kind of reporting system could be implemented.
- Once we have determined all the record owners adjacent to the project area, we assign arbitrary numbers to the various tracts, maintain a map showing these parcels, and then have the posters make note of any changes in ownership status of these parcels. This information is plugged into the computer so that our ownership lists are brought current daily.

Another innovation we are trying to get programmed is our order book. When this is completed we will be able to pull up many of the reports necessary to the everyday operation of a title insurance agency and an abstract office. Some of the reports it will provide are

- Back-up files according to description or name
- The number of orders received from any customer over a given period of time, either monthly or year to date
- The number of loans a particular lender has made, and their amounts
- The number of orders more than a certain dollar amount

We have tailored this program to fit the abstracter/title agent such as most of the smaller offices in Colorado are, and we hope to be able to market this package to other offices in our area. Because we own a percentage of the package, we will receive income from the sale of any program. The company with which we are working does work for several nearby counties, so we are optimistic about our future in the computer business.

I recently read an article about surviving in this economy. There were several maxims set out. I would like to share a couple of them with you at this time:

- ON CONSULTANTS—Consult with yourself frequently. If you don't like the advice, you're under no obligation to use it.
- ON EMPLOYEES—Show them love by treating them like members of your family. Sure, they will complain about taking out the garbage, but they'll do it.
- ON ADVERTISING—Not to do it is like winking at a girl in the dark.

WIMER: We'll go on to our next subject, which is title insurance. It is going to be presented by David Upton.

UPTON: When we were talking about this meeting at the Executive Committee meeting in St. Louis, it was thought that many abstracters are afraid of title insurance. They do not handle it and they are concerned about how title insurance fits into their program.

I have been an abstracter as has Connie. By law, she has to in Iowa. But title insurance, I found, is a new field for many people. Our company has been running title insurance for 20 years. Only in the last five or six years, however, have we concentrated on selling the need for title insurance to bankers, realtors, and people we deal with on a daily basis.

They are all a little bit afraid of title insurance policies or commitment. They don't understand what it means. They want the old abstract in their hand.

How many of you are title insurance agents? Most of you. How many of you are not? Are you all from Iowa, or somewhere?

What I have to say this morning is directed mainly to those who don't handle title insurance. Maybe those who have can let you know how we've expanded our other portion of business in the title insurance area.

First of all, when we started, we had to assume that realtors and lenders did not know a thing about title insurance. They relied upon the lawyer's opinion and the legal feeling that the deals they entered into would be all right with their association, their connection, or whatever it might be.

So, we had to start an educational program for realtors and lenders. We developed a tape show, which I brought along with me this morning, but had the same problems that our previous people had in big rooms. The microcassette didn't play. So I had all the pictures without the words. Today, I figured I would just give you the words and forget about the pictures.

Through this program, we were able to tell realtors and lenders just what title insurance was able to do for them. The secondary money market is certainly a big area in which title insurance is required. If you don't have title insurance, lenders or realtors cannot take advantage of this tremendous secondary money market.

We had to explain to the lenders and to the realtors the cost of title insurance and how it related to what they were accustomed to paying for abstracts.

Now, in abstract service we have always undercharged as an industry. Title insurance rates in Michigan, anyway, are regulated by law, so there is no difference between what my competitor might charge and what I might charge.

We had to work at developing the variance and cost between title insurance and abstracting. Title insurance is usually a little bit higher than the abstract cost. We were able to point out to them that after they took the abstract to the institution or buyer, they had to have a lawyer's opinion. That title insurance policy, of course, included an attorney's opinion, because our commitments were reviewed either by in-house counsel or by other lawyers.

We also told them that when they went into the secondary issue of commitment after the primary issue that the rate would be further reduced. So, the overall cost of a commitment, a title insurance policy in our area, would actually be less than continuing a property on abstract fees.

We then had to train our personnel how to write commitments and what type of equipment to get so that we could be of service to our lenders and to our realtor friends.

We decided to go to word-processing equipment, which then allowed us to go into the automatic typing of commitments. That would go into policies, which would save us time checking back and forth. We found that to be a tremendous help to us. This was done about seven years ago, before we talked about computers. Those of you who have computers can do the same thing that we do with our word processor and probably a lot better, with better information.

We can also do other work for our friends besides preparing commitments and policies. We can type deeds for them, prepare deeds for them on our word processor which they can take and use for their own purpose. They may call this doing legal work, but we don't add anything. All we do is give them a description of the property. They can take that to a lawyer or whoever they have to prepare the deed for completion. In Michigan, we cannot legally prepare a deed in the abstract office.

Then we work with realtors and lenders going out in the field and talking with various associations about the need for title insurance and how it affects the community. I think this has done more for us than anything else, because once they knew we were trying to work on community development and providing additional money to the community through secondary money markets, they began to understand what title insurance can do for them.

As an agent, we started out with one or two companies. Now we represent six companies, so we are a multiple agent. We find it to be to our advantage and to our customers' advantage, because we find that while one underwriter might not take the opportunity to write a commitment, somebody else might do so.

We try to identify the various underwriters we work with in various advertising. As Hub said a few minutes ago, "If you don't advertise you might as well be winking at a girl in the dark." You have to be advertising out there in all types of media. We do advertising on the radio. We do some advertising in the paper. We work with the realtors and bankers and their associations, trying to let them know that our company is out there supporting them in a way through which we can improve their services.

The overall area of development in the title insurance area as far as our business is concerned is that in 1976 we were writing a very small amount of title insurance. About 20 percent of our business was in title insurance. Now it has just about turned around. Our major business is in title insurance. I think for our own company this has been a tremendous boon to our business and for our financial standing. We are able to pay our bills.

During the past year, we've had to reduce our staff because of reductions in business. But, because of the word processing equipment, we can still put out as much title insurance work as we could a few years ago. It is mainly the abstract work that has been falling off.

So, our revenue is almost as high as it was a year ago (which is rather remarkable in our field), because we decided to be a title insurance agent more than an abstracter.

These are general remarks that I had to make without the help of my slide presentation. I think that as agents we can try to help educate our community as to what title insurance is. It is not a risk-taking field like a casualty insurance, but so many people try to relate our business to casualty insurance.

We have to talk to people about our business, how it relates to the housing business,

Continued on page 38

Bates Chooses Early Retirement

Robert C. Bates, executive vice president and general counsel for Chicago Title Insurance Company, Chicago, elected to take early retirement effective January 1, 1983.

Bates is a past president of the American Land Title Association and has served as chairman of the ALTA Liaison Committee with the Mortgage Bankers Association. He continues as an executive trustee of TIPAC, the title industry's political action committee.

Bates, who has had a long and distinguished career in the title industry and with Chicago Title, attended the University of Missouri at Columbia and received a law degree in 1950 from the University of Missouri at Kansas City School of Law.

What Are We Doing To Survive?

Phillip B. Wert, Manager
Johnson Abstract Company
Kokomo, Indiana

I was asked to share with you how Johnson Abstract Company has survived, and I already did that in the July 1982 *Title News*. So if you all get out your copies and read that article, you will spare yourselves the agony of this next few minutes.

My subject is "What Are We Doing to Survive?" The last two and a half years have been pretty tough, and I think it is obvious that you figured out how to survive; you're here. So I'm not too sure that I could add much to what you've already found out and know about it.

In 1974, we faced a similar situation, but it was not so protracted. At that time, we had to wrestle with similar problems, no business and lots of overhead.

I then met with the employees and gave them a choice of cutting back to a 32-hour work week or laying off some staff. Their choice, which really was my choice also, was to go to a 32-hour week. So we had a little bit of experience with that already.

When problems came along in 1979, I didn't hold a meeting; I just told the employees that we were going to go to a 32-hour week. They all sensed that something was coming, and I think they were quite relieved to know that it was a 32-hour week and not layoffs.

To achieve maximum results, I wanted to cut overhead other than labor. So we cut office hours at the same time. In 1974, we did not do that; we were still open 40 hours. We ran 8:00 a.m. to 4:00 p.m. and 9:00 a.m. to 5:00 p.m., depending on the work areas.

This time, we started closing at 4:00 p.m., which the courthouse does, and we closed Wednesday afternoons; come to find out, most of our customers thought we were closed Wednesday afternoons anyhow. Financial institutions are closed that afternoon, so it worked out very well.

We also cut donations on a percentage basis the first year that we made cutbacks. We tried to keep it fair. To get into the second year, we have to become more arbitrary than going across the board; you have to finally start cutting some organizations out.

How does it work? Well, everybody loves the 32-hour work week. As long as they are getting paid for working only 24 hours and are getting a 32-hour check, they like it. But really, I have lost no staff. They get off at 4:00 instead of at 5:00 p.m., and they like that. They also like the Wednesday afternoons off.

If anything, when we look as though we need a 40-hour week, I see that I'm going to have trouble getting them to increase from 32 to 40 hours, but we'll face that problem when it comes.

They are happy to be employed, and that's the key. You can maybe better understand that statement if you better understand Kokomo, Indiana. It is an automotive community. We've had 18 to 20 percent unemployment for the last 18 months at least. So in that atmosphere, people who have jobs are darn glad they've got them.

Well, how does it work? As I said, I still have the experienced staff. I am here—and with a good case of nerves to go with it—and in some months, we've even showed a profit, so I guess it has worked.

The other side of that coin is not just cutting costs; you have to do other things: expand the revenue base.

I've ventured into some areas that I really didn't want to get into. The "curbstoners," or I've coined a new word, the "wheelstoners," run around in Chevettes from major metropolitan areas to the various courthouses—that is, when they can't get a deputy recorder to do the search—and they "finger-search" records and provide a cut-rate search for small loan companies. This has been going on for sometime, and it is a hazardous area.

I wanted to stay out of that area, but then if that's where the market is, that's what you have to do. I developed a form called the title memorandum and went out and sold it to some lenders—first to several local banks that were making installment loans; as a matter of fact, one of them was using one of these services.

Some of the small loan companies that I later talked to that came to us said they were following the "curbstoners" around. After they got the search back, they went to the courthouse and went through the same routine and were finding things that they weren't even trained for, that the curbstoner didn't find. So that was really a plus for us. We were able to move into their market.

The memorandum has done well. It is geared strictly to the second-mortgage market. We have several small loan companies, the two main local banks, and our main savings and loan getting that service from us, and we do anywhere from 20 to 30 of them a month.

There is a lot more market there, but some of these offices are chains. They have to deal with supervisors, and supervisors like uniformity. It's a problem, but with perseverance and because of all the errors they are making, perhaps we can obtain more of that market.

The second thing that we tried was a total bust, at least so far it has been. Maybe when people have more dollars they will be willing to spend them this way. The service is a historical sketch of individual properties.

Our particular area has really been getting into the historical district preservation. People want to preserve a lot of historical buildings, and I tried to play on that theme and get people to buy historical sketches of their historical houses—just a thumbnail thing. We can find old plats in our files, copy those, and put them in an interesting form.

I really haven't been too successful with that program, but I think it's still an idea that's worth pressing at the right time.

The other thing I wanted to comment on is future hiring, if necessary. I have, in the past, talked to this same group concerning some state and federal programs. There are many tax-credit programs that, when you're thinking of hiring a new employee—and you may be faced with that if you lose somebody—even in down times, with some programs you can get up to 50 percent tax credit on their salary. That is not a bad deal when you're in a training period, and this can be extended over a one-to-two-year period, maybe as long as three years for some programs, which gives you a good training period and time for the economy to come back a little bit at the same time.

But the way that our state has plugged this is with this particular brochure, "How would you like to hire eager, qualified employees and at the same time save up to $4,500 on each employee that you hire." Not bad. "This dreamlike situation can become reality if you make the TJTC Connection."

TJTC stands for targeted jobs tax credit, and it allows you as an employer to claim a credit against your company's federal income tax. With certain limitations, you may take the maximum credit of $3,000 for each eligible employee's first year's wages and $1,500 for each eligible employee's second year's wages.

That's—I think you will agree—something worth checking into if you ever have to look for additional help.

The other one, I really don't want to get into a lot of this. It is a fairly detailed publication with full examples. This is put out by the Department of Treasury, Internal Revenue Service, and it specifically deals with the targeted jobs. We're glad to let you look at it or even have it if you want it, but the groups that they've targeted are locational rehabilitation referrals, economically disadvantaged youths,

Continued on page 37

Washington Report

William J. McAuliffe, Jr.
ALTA Executive Vice President

In this 75th anniversary year of your national association, economic adversity has become all too familiar in the title industry. The effects of a recessed market are clearly shown in reduced dues income for your association. Your governors, officers, and staff are making every effort to see that, despite the growing financial pressure, ALTA remains able to deal effectively with a variety of important national challenges.

You heard about a number of these challenges earlier in this convention. Most of them have not diminished in proportion to the slump in title business and ALTA dues revenue; yet we must often take immediate and continuing action in these areas of need for the benefit of the entire title industry in years to come.

Economic adversity is nothing new in the 75-year history of ALTA. Our members have survived before—prevailing in spite of cyclical business swings that batter the market. This has been possible in part because ALTA members have maintained their association as what it has been from the beginning—a vital instrument for the furthering—and, indeed, the preservation—of the title industry.

As such an instrument, ALTA is unique.

The association is not a company, charged with producing a profit for its shareholders.

During a business slump, the association often cannot cut back its activity as readily as an individual company can without serious long-range consequences in areas of priority concentration. As suggested earlier, national problems faced by ALTA frequently remain just as intense—if not more so—when business conditions in the title industry are poor.

What is urgently needed in this time of economic distress is undiminished support and involvement from ALTA members throughout the country. This type of commitment has made the association an influential force for 75 years. More of the same is called for if we are to prevail over the serious national challenges that surround us.

With this level of commitment, your association will remain a viable instrument and—like a successful title company—will pay attractive dividends. The dividends from ALTA are a prosperous future for private enterprise land title evidencing.

There are two especially important factors contributing to the present effectiveness of ALTA.

One factor that already has been alluded to is an unusual degree of involvement and dedication from governors, officers, and committee members. Today, there are 292 committee members serving on 31 ALTA committees for the benefit of your association membership.

The other factor has been mentioned briefly and deserves amplification. I am referring to the highly competent and productive ALTA staff that works on your behalf every day in our Washington office.

Back in 1965, when I joined the association, there were three professionals on the staff. Now, there are five. And, in 1982, we regularly called on outside expertise in confronting the problems of your industry—something that was not done in 1965. This year, we have an outside general counsel—and we have used an economist, a financial researcher, and an actuarial consultant at various times.

The considerable abilities of the staff—coupled with this outside expertise—have greatly expanded the effectiveness and involvement of your association in relation to growing needs and problems.

One of the major objectives of your association is creating favorable public awareness of land title services in local communities throughout the country. This is being accomplished on a modest budget with substantial assistance from Gary L. Garrity, who writes and produces the successful ALTA television and radio public service spots that reach an ever-changing national audience of millions all year long.

Another important area of concentration is the battle to address the controlled business problem at the federal level. Working with counsel, Mark E. Winter has made key members of Congress aware of the ALTA position on this issue—and has mobilized the ALTA membership so that the industry is doing a much better job of communicating with Congress and the White House. As a result, our federal influence in Washington has increased significantly.

When I first joined the association, there was no ALTA research activity for developing a statistical profile of the title industry. All that has changed considerably over succeeding years. Through the work of Richard W. McCarthy, ALTA in 1982 published the first fact book on the title industry—which contains a great deal of information collected through our ongoing research activity. Association members and those outside the industry alike regularly call on ALTA for statistical information developed as a result of our research.

Many important services of the association—including arrangements for this convention—are handled by David R. McLaughlin. He provides widespread assistance in a variety of areas ranging from membership processing to meetings and the ALTA Directory.

All of us on staff are continually at work as a resource on your behalf. We handle a wide range of matters and inquiries and, in doing so, provide an essential link between ALTA and its members—and between the association and important outsiders. I am pleased and proud to report that we are dedicated to the industry and that we care about it, as you do. If we can help you, please call on us.

As we celebrate the 75th anniversary of ALTA at this convention, we can point with pride to all that has been accomplished since 1907.

With more of the dedication and commitment that has made this possible, we shall surely reach even greater heights in the years ahead.

SHANE—continued from page 12

and in a sense deemphasize the areas in which we have done business in the past. Not by choice.

The typical homeloan is 30 years or 25 years. One of the things mandated in this bill is the creation of a universal new account, which has even shorter maturities (no days), uncapped interest rates. There will be a transfer from present forms of investment already with very short maturity to extremely short maturity.

What does this mean in the narrow aspect of housing? I don't want to talk about the competitive aspect yet. It means that 4,000 housing lenders in this country are going to be expected to make 30-year loans on one-day maturity money. That's crazy.

A month ago we got a seven-day maturity account that was supposed to do great things for housing in this country among other things. That's crazy.

We have new policies in this country that are specifically designed to steer folks away from any form of credit that requires a longer term maturity. By longer term, I include refrigerator financing, automobile financing, and all kinds of accounts receivable and other kinds of financing.

The real phenomenon that has taken place in the credit markets of this country that we should be screaming about is that we have shortened the maturity to zero and still expect long-term capital to be available.

I want to talk specifically about the money-market mutual funds. I want to talk about them as a cancer on the economic body of this country. I assume that most of you out there have funds invested in the money-market mutual funds, and I don't fault you for that, because like a mountain, you climb it because it's there. You put money in a money-market mutual fund because it's there.

The money-market mutual funds are a phenomenon of the last couple of years. Currently, they have a depository level of a quarter of a trillion dollars.

Up until a few weeks ago, when they started lengthening the maturities, in order to take interest-rate risks, which they are not really supposed to do, their average investment maturity was nine days.

A quarter of a trillion dollars, moved into a new phenomenon that is not in anyway within the economic system of this country, not reserved, not examined. A quarter of a trillion dollars has moved, and economists were saying they don't really know how to explain a 7 percent inflation rate, a 12 or 13 percent T bill rate, and a 15.5 percent prime.

If you read the analysts, they were saying the phenomenon that we are seeing cannot be occurring. Well, it is.

Almost anything we all do these days is indexed one way or another to the Treasury Bill auction that occurs every week.

That auction has some unique features to it. Among other things it must take place. There is no way for the Treasury to say, "We're going to call it off this week, because we are having to give too much interest, or we don't like the price." They have to fund and refund the national debt, every week.

By the way, the total short- and intermediate-term national debt at this point is $600 billion. A quarter of a trillion dollars is now in money-market mutual funds. Some say that money has just moved through intermediaries and back into the market place. That's not true. Get yourself some of the prospectuses from the larger and more active money-market mutual funds. Look at the percentage of American saver–investor dollars that have been exported to Europe. The largest single part in several of the portfolios is now invested in Eurodollars, in overnight float of governments and banks in Europe. The funds have been exported.

This means jobs have been exported, and an overwhelming majority of dollars in several of them and a large portion in almost all are in commercial paper, not T bills and reverse repos.

How many of you saw that one sentence in the May 31 *Newsweek*, which said that one money-market mutual fund had a quarter of its total assets in Drysdale Reverse Repos, and they thought that's why the Fed moved quickly, not to save Chase and several other banks.

How can we deal with a restructuring of our total economic system, which was designed to develop and deliver according to national policies with specialized financial institutions and answer the phenomenon of an unregulated, renegade, runaway idea? Money-market mutual funds are outside of the system.

One day maturities? You can't do that and have the first philosophical position, one that supports housing.

The Garn bill did things for our industry that we fought for. It's a good bill, and the additional powers are important for us to iron out the peaks and valleys. It also says that by January 1, 1984, there will be no more housing differential for depositors.

This country has steered money into real estate for 50 years. I'm not talking about going back to low passbook rates. I'm talking about indexed market rates, if we as a nation really want capital for housing in the private sector. You see I don't talk about the alternative. If we totally dismantled the private-sector system there is an alternative, but it is so unthinkable to me I am afraid to mention it.

What will happen when we have total, complete, and unbridled competition for capital? Our business, the savings and loan business, will in fact become more like banks. We will compete, and those of us that are good will succeed. Those that are not, will not. We're able to compete.

The real issue is housing and home ownership. The issue is home finance. The issue is credit for real estate.

Open competition for capital means that homeowners will have to bid against commercial and industrial corporate borrowing in the capital market. There are only two major forms of credit at this point in this country.

One is real estate credit. The overwhelming majority of it, individual. That's the largest investment, the largest credit that they can assume in their whole lives. It is unique because to obtain that home loan, regardless of its size, you first must in fact qualify, second you must pay it back with your own resources over a long period of time, and third it impacts your life-style.

The other major form of credit is commercial and industrial. Without exception, that form of credit becomes a factor of pricing for goods or services. The borrower neither has to qualify nor obviously does it affect his life-style.

When you have a shortage of capital, and you have those two elements bidding for it, housing loses. We knew that in 1933; we knew that in 1940; we knew that in 1950 as a nation; we're a little reluctant to talk in frank terms, but we knew it. We said we want the people of this country who want to own a home to be able to finance that home and, therefore, we're going to give them an edge.

The housing edge, not the savings and loan edge, and we're going to say to a financial intermediary, if you will commit in excess of 80 percent of your assets to housing, we will allow you to get an edge on capital to put into that housing. Otherwise, the money wouldn't be there.

We created the most successful delivery system in history. Please understand, I am not making a plea for the good old days. Oh no, because there were many differences in the good old days. Interest rates didn't vary very much. There wasn't interest-rate sophistication. None of this. No, we have new days.

We need devices for attacking elimination of the delivery system.

It may be too late. I don't honestly know. But the later it gets, the longer it goes, the harder it is going to be to restore an orderly system.

We must restore the housing coalition in Washington. We don't have one now. You have a lobby, we have one, lots of other people, but we don't even have a major legislator, in the senate or the house, the equivalent of a John Sparkman, who spoke for housing day in and day out.

If you believe in the second philosophical position, you've got to be prepared for the political consequences. I've used no statistics in my remarks, but now I am going to give you in my closing a couple of statistics.

First statistic: During this present period, starting a couple of years ago, and extending at least another four years hence, we have a net increase in household formations of more than two million per year. That's a net increase in household formation. This is a result of the second-wave baby boom and so forth.

That includes the removal of those households that are destroyed either by death or by separation or by some other method. It includes all new households being formed. The number is two million per year, NET.

Some housing units are disappearing from the market each year through total dilapidation. We might think that dilapidation level should go to a lot more houses, but I am talking about total dilapidation; no one can live in them—a half a million units a year.

Now that's two and a half million a year as a base demand, not poverty level, for this country. We are as we all know struggling to justify a million starts. Maybe we'll make it, maybe we won't, maybe we'll make it on paper and we won't make it in brick and mortar. I don't care how you do your arithmetic—new math, old math, side math—you got a million and a half shortfall per year, and I don't care how large an inventory you think we've got out there. You get yourself six, seven, eight years of a million and a half shortfall a year; you're talking about well over 10 million needed housing units that will not exist.

The problem is so big that nobody is willing to conceive that maybe it really is in existence. Ten million units of shortfall, 10 million households and for those who argue, O.K., let them go double up the extended family, means that for every one of those who moves in with someone else you've got another 20 million households involved. These are not fictitious numbers. These numbers are real.

We are far past the time of looking only at the tip of our nose, at the tip of our own business, regional or local problems; we are now responsible nationally, because if we don't, all of us, no one will. We are responsible for attempting to preserve, recreate, or whatever it takes. We are responsible for preparing to do battle for a real delivery system for housing and home finance in the private sector.

I guess in a way I have deviated totally from the subject matter given to me. Forgive me, but what I am really doing is inviting ALTA and any others who believe in the American dream and its worth for the future to get into this fight. Let's get into this crusade to bring the money-market funds and their nine-day maturities into the system, yes with reserves, yes with examinations, yes with all the things that regular financial institutions have.

Let's bring the rate structures and the incentive programs into existence so that we can house the American people—not for just economic reasons, but for social, political, democratic, and demographic reasons. Get into the fight!

JONES—BELL—continued from page 22

JONES: You said something very interesting. The underwriters control the business. Believe it or not Roger, the agents have control of the business.

I've known agents who abstract, abstracters who were interested in the local savings and loan, and the real estate business. I've known them to sit on bank boards. I've known them to have money invested in the bank, in the savings and loan, in the title companies, in the agents, and in the underwriters.

I think every one of them, somewhere along the line has had some controlled business. It's nothing new. Only when it affects me directly do I get upset about it.

Industry-wide, I think, if one company controlled all business that would be bad. It would be bad for everybody. It wouldn't be a business.

I don't think that the independent agent is in any trouble because of controlled business. I don't believe that the controlled aspect of our business will ever proliferate to a point that it causes that kind of problem.

I can't say a whole lot at this point. There is a lot to be said about the problems. I have one of the problems.

I take that responsibility. It doesn't bother me. I hollered about it eight years ago. Some guy took a lot of business away from me, and I hollered. He's sitting in this room today, and he knows who he is.

There's nothing wrong with hollering. I think RESPA is going to help me. Well of course it hasn't. The only thing RESPA has done is attack three guys in Chicago. Other than that, I don't know of any blessed thing it's ever done. Yet, they want to amend it. Amend it to what?

I'd rather they try to enforce what they've got, instead of amending what they've got. I don't want the business to be controlled. I think the definition of controlled business is difficult, because we all engage in some business in our particular companies that has the aspect of being controlled. The necessary thing is in an agency operation. If an agency is a so-called controlled business agency, and if it's doing 100 percent of the work, and if it's not getting a free ride, an assured amount of money for referring the business, I don't see anything wrong with it.

We take exception, but I don't see anything wrong with it. Years ago, my title company was in the mortgage business. In fact, our parent company was a mortgage company. We wrote our own title policy. Nobody hollered about that being controlled business. We finally sold the mortgage company out, and for a long time we thought we sold the wrong company. Now, we're glad we did.

I think we have a lot of serious considerations to give to what people call controlled business. What is a business that is controlled, that is wrongly controlled, or illegally controlled, or wrong for the consumer? Let's give some real hard thought to this.

BELL: Well, we're certainly not going to settle this in the next three or four minutes. There you have two viewpoints, ladies and gentlemen. So obviously, there are at least two.

We didn't even discuss who was going to end this, but I guess you started it Hatch, and it's fair for me to end it.

I would like to say, from my standpoint as an agent, what I want from an underwriter is somebody I can be proud to represent. I want one that's maybe going to force me to be a little better operator, every once in a while. I want one that has people on its staff that I can be proud of, particularly when they are in contact with my customer. I want one that follows the two rules, one of which we already discussed: When you got a loss, you stand up and pay off.

I also want one that can look at itself in the mirror every morning. I want one, I guess, that follows the golden rule, not the current definition that says, "He who has the gold makes the rules," but the Biblical one that says, "Do unto others as you would have them do unto you."

I want to represent somebody who has integrity. We try to demand that of ourselves and expect it from our principal.

WERT—continued from page 34

economically disadvantaged Viet Nam veterans, Supplemental Security Income recipients, General Assistance recipients, and youths participating in cooperative educational programs. That's a real good one to work on. I've done that before, but before they had the credit program, too, I might add.

Also included are economically disadvantaged exconvicts, involuntary terminated Comprehensive Employment and Training Act, or CETA, employees, and eligible Work Incentive employees.

Now, how do they define an economically disadvantaged family? I thought this was interesting. A person belongs to an economically disadvantaged family if the certifying agent of the certifying agency determines that the person's family income was at a certain level—was less than that certain level during the six months before the month you hired the person. It occurred to me that many of us probably qualify for that right now. But we can't hire ourselves again, I guess.

In summary, let me just say, cut costs and increase revenue. That's the key to survival. The other survival we're dealing with, I didn't even think about.

VAN GESTEL—continued from page 18

New York in 1789? The Cayugas' lawyer will be under heavy pressure if he doesn't file that complaint very soon. When he does, there will be three million more acres with a cloud over them.

I am appalled by the lack of practicality and good sense of the court in dealing with these issues. I think it comes about in part because judges aren't used to doing what they must do in these cases. The normal function for a court is to take an old statute or a constitution and interpret it and apply it to a modern situation. When that application is made, modern philosophies and trends and ideas are brought to bear. That's what judges do all the time.

In an Indian land claim, however, when you're trying to determine the legal effect and meaning of something that was governed by what can only loosely be called a law, drafted at the time of the Revolution, on a transaction that occurred in 1788, you've got to pick up that looking glass and look through it the right way. You've got to look back and see what those laws meant to the people who wrote them then and who applied them then.

Let's not forget that Thomas Jefferson was a slave owner. What do you think his view would be of a court decision saying that in 1788, when the state of New York bought land from the Oneidas, the tribe could turn around almost two hundred years later and get it all back? Absurd.

What do you think the states (who at the time right after the Revolutionary War were very independent, fiercely independent, indeed I remind you that State's rights was a concept that didn't die until well after the Civil War) and their representatives would think if they could come back and see what the court today has ruled is the effect of what they did in 1788?

When you look through that looking glass you must look through it the right way. When you see what the courts have done, you can do nothing other than see red.

I see that I have run close to the end of my time. I've done that deliberately because I'm also supposed to give you the solution. I think I would rather run out of time than attempt to divine the solution. The solution is not easy; there are several things that can happen.

You all know what happened in the asbestos cases. The Manville Company found a solution. It filed for protection under Chapter XI of the Bankruptcy Act. I certainly do not recommend that the title industry or the individual companies involved look to Chapter XI.

You could ignore these cases, but you would do so at your peril.

I think the only real answer is to fight them all on fronts. And the most significant front is where there has been the least amount of activity, the United States Congress. The United States Congress can deal with these cases, but it has an enormous educational process to go through.

Continued on page 39

UPTON—continued from page 33

and how it helps people finance their homes more so than the old savings and loan concept, where all the money was coming in from the local institutions.

Do you have any questions on anything? Yes, sir?

A VOICE: Do you have attorney agents in your area?

UPTON: We have no attorney agents, sir. We had several companies that had attorney agents. We let the companies know that if they wanted us to be their agents, they had to get rid of the attorney agents. We could not underwrite for them if they had attorneys writing for the same company.

A VOICE: Do you have dual representation with other agents?

UPTON: We may be dual agents in one or two instances. Other than that, he has his stable and I have mine. Yes, sir?

A VOICE: Do you have in-house counsel?

Continued on page 39

Names In The News . . .

W. Clark McFarland was promoted branch manager and assistant vice president of the Title Insurance Company of Minnesota in Tucson, Arizona. A 20-year veteran of the title industry, McFarland has worked for title insurance companies in Flagstaff and Phoenix, as well as title insurers in Los Angeles. He joined Minnesota Title in 1972 as a chief title officer.

Wade F. Hill was appointed vice president and branch manager of Commonwealth Land Title Insurance Company's new branch office in Toms River, New Jersey. Before his appointment, Hill was branch manager for another national title insurance company. He has more than 35 years experience in the Ocean and Monmouth counties title insurance industry.

Commonwealth also announced the appointment of **Larry P. Deal** as manager of the company's new title information servicing office in Orlando, Florida. Deal, who has nine years experience in the Orlando title industry, was employed with another title insurer before this appointment.

Monica Scagliotti was promoted to branch manager of Title Insurance and Trust Company's Gilroy, California, office. Before her promotion, she was a senior escrow officer.

Stanton S. Roller was elected vice president and named New Jersey state manager for Pioneer National Title Insurance Company. He oversees operations in New Jersey, Pennsylvania, and Delaware. Before his election, Roller was chief executive officer of a New York-based title insurance company. His 20 years of title industry experience include the development of title insurance markets in the eastern United States, Canada, western Europe, and Mexico.

UPTON—continued from page 38

UPTON: No. I can make that decision on my own. I have omission insurance to cover me if somebody does write the policy without a lawyer's opinion on it. Actually, I feel my abstracter can give me as much advice as a lawyer can many times, and I feel almost as safe with his opinion as I would with a lawyer's opinion. We have several lawyers who do write opinions for us. Yes?

A VOICE: What title insurance commission do you receive?

UPTON: Basically, it is 80 percent commission.

A VOICE: How are your commissions determined?

UPTON: That is done by contract for the underwriters. The law established the rate we have to charge, and the commission is based on the arrangement we have with the underwriter. But, basically, it is 80 percent. It can get down to 50 percent over a certain amount of money.

A VOICE: Who pays for attorney opinions?

UPTON: That comes out of my commission. It does not necessarily have to, but it does in my case. I absorb that cost. Any other questions? Yes, sir?

A VOICE: What other costs do you have?

UPTON: The other cost I have is maintaining a plant. We have a complete plant. I allocate plant cost for title insurance, as well as for abstracting, but that is the only basic cost.

A VOICE: Are survey costs additional?

UPTON: Any survey cost is additional. If the commitment requires a survey, then that cost is added to the fee. Yes, sir?

A VOICE: Does your radio program help business?

UPTON: I think it does. It gives us recognition. We work different ways. We recognize realtors and bankers on the radio and say, "Thanks for helping us out last week."

A VOICE: What is your program?

UPTON: We sponsor a program called "Point of Law." It is a five-minute program. In that program, we have about a minute and a half to say what we want to. We either recognize a realtor for getting the top award of the month, or a lender who has made a loan to an industrial firm, or something like that.

Any other questions? Thank you, Connie.

WIMER: Thank you, David. I have not told David about this yet, but I wrote him a letter about the program. It was mistakenly sent to St. Joseph, Missouri. There is only one title company there. I got a phone call from the gentleman there saying, "I never heard of David Upton." But, we got into a discussion about title insurance.

He indicated that he had just done an analysis of his figures for the prior year. Twenty percent of his business was title insurance; 60 percent of his income came from that 20 percent of the business. He said that after recognizing that, he was encouraging people to buy title insurance and he had raised the prices of his abstracts a good deal.

That concludes our program. I thank you all for your attention. If you have any suggestions for the next program, we would certainly appreciate hearing from you. Thank you.

VAN GESTEL—continued from page 38

When I was testifying in June, a representative from the state of Connecticut (and there are three Indian claims in the state of Connecticut) brushed aside the position we were taking by saying, "How would you feel, Mr. van Gestel, if you were trying to get back your old homestead and Congress passed a law that said you couldn't do it?" Well, with all respect, that man doesn't understand that the old homestead is owned by the innocent landowners of today and that the people who are bringing these lawsuits didn't lose anything, nor does he seem to comprehend that the Indian tribes are not individuals but, rather, sovereign governments.

In the Mohawk case, for example, the group involved comprises all Canadians. Whose old homestead is at stake there? How do you convince one of these congressmen to face up to reality? Do we have to have the ultimate decision in the Oneida case? Do we have to have massive civil disobedience in the state of New York? Do we have to have the biggest government, private, and municipal bankruptcy in history before some congressman will be smart enough to think we ought to have some legislation to deal with the problem? I hope not.

This industry is in the forefront of these cases, and it can, and should, bring its many talents to bear to make Congress face up to its responsibility.

Calendar of Meetings

March 9–11
Florida Land Title Association
Ponce de Leon Lodge
St. Augustine, Florida

March 16–18
ALTA Mid-Winter Conference
The Pointe
Phoenix, Arizona

April 21–23
Arkansas Land Title Association
Little Rock Excelsior
Little Rock, Arkansas

April 28–30
Oklahoma Land Title Association
Lincoln Plaza Inn
Oklahoma City, Oklahoma

May 1–3
Iowa Land Title Association
The Red Fox Inn
Waverly, Iowa

May 11–13
Virginia Land Title Association
Tides Lodge
Irvington, Virginia

May 12–15
Texas Land Title Association
Westin Oaks Hotel
Houston, Texas

May 19–21
New Mexico Land Title Association
The Inn of the Mountain Gods
Ruidoso, New Mexico

May 19–21
North Carolina Land Title Association
Williamsburg, Virginia

May 22–24
Pennsylvania Land Title Association
Hotel Hershey
Hershey, Pennsylvania

June 5–7
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 12–14
Oregon Land Title Association
Salishan Lodge
Gleneden Beach, Oregon

June 16–19
New England Land Title Association
Lake Morey Inn
Fairlee, Vermont

June 23–25
Land Title Association of Colorado
Keystone Resort
Keystone, Colorado

June 24–26
Illinois Land Title Association
The Westin Hotel
Chicago, Illinois

July 13–16
Wyoming Land Title Association
Hotel Washakie
Worland, Wyoming

July 14–16
Utah Land Title Association
Snowbird Ski and Summer Resort
Salt Lake City, Utah

July 31–August 2
Michigan Land Title Association
Bay Valley Inn
Saginaw, Michigan

August 4–7
Idaho Land Title Association
Elkhorn Village Inn
Sun Valley, Idaho

August 11–13
Kansas Land Title Association
The Holidome
Topeka, Kansas

August 11–13
Montana Land Title Association
Ramada Inn
Bozeman, Montana

August 18–20
Minnesota Land Title Association
Holiday Inn
New Ulm, Minnesota

September 9–11
Missouri Land Title Association
Sheraton Westport Hotel
St. Louis, Missouri

September 10–13
Indiana Land Title Association
Sheraton-West (Airport)
Indianapolis, Indiana

September 15–17
North Dakota Land Title Association
Town House
Grand Forks, North Dakota

September 21–24
ALTA Annual Convention
Boca Raton Hotel and Club
Boca Raton, Florida

September 28–October 1
Washington Land Title Association
Thunderbird Motor Inn
Yakima, Washington

October 2-5
New York State Land Title Association
Sky Top Lodge
Sky Top, Pennsylvania

October 6–8
Wisconsin Land Title Association
Paper Valley Hotel and Conference Center
Appleton, Wisconsin

November 9–12
Florida Land Title Association
Hyatt Palm Beaches
West Palm Beach, Florida

American Land Title Association
1828 L Street, N.W.
Washington, D.C. 20036

BULK RATE
U.S. POSTAGE
PAID
Silver Spring, Md.
Permit No. 550