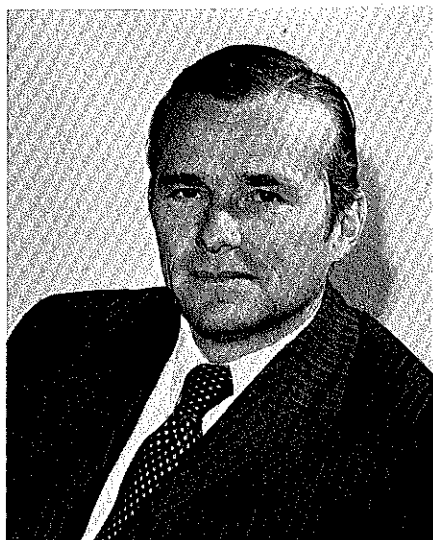


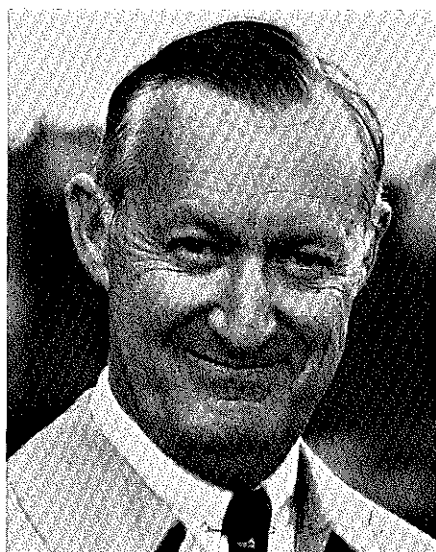


© Copyright 1980
The Jockey Club
All Rights Reserved

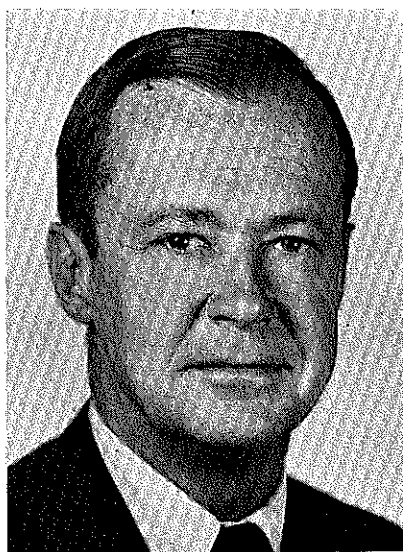
OFFICERS OF THE JOCKEY CLUB



Nicholas F. Brady, Chairman



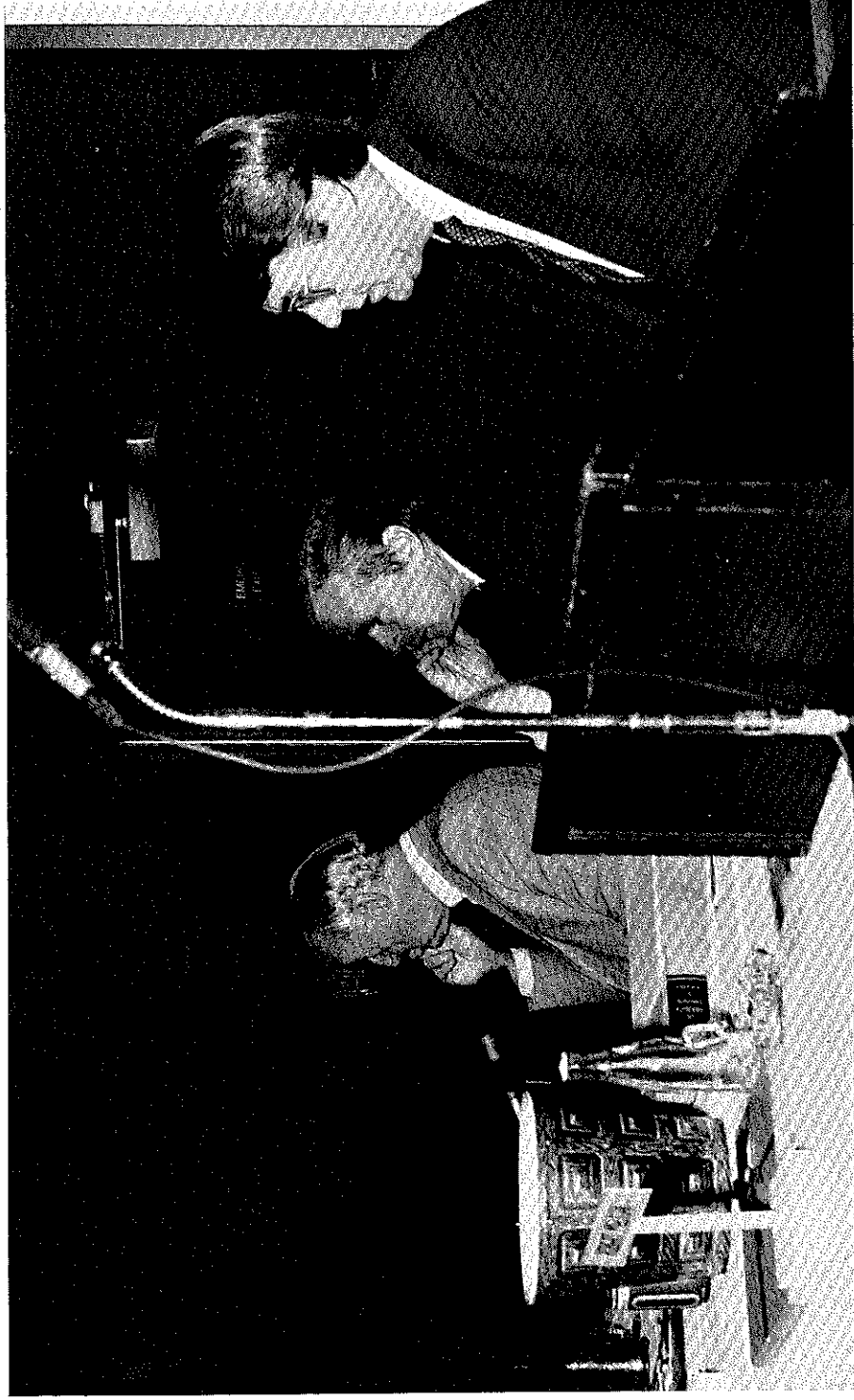
Paul Mellon, Vice-Chairman



G. W. Douglas Carver, Secretary-Treasurer



From left to right: Calvin S. Rainey, Special Advisor to the Stewards; Robert L. Melican, Executive Director; Paul Mellon, Vice-Chairman; and Nicholas F. Brady, Chairman



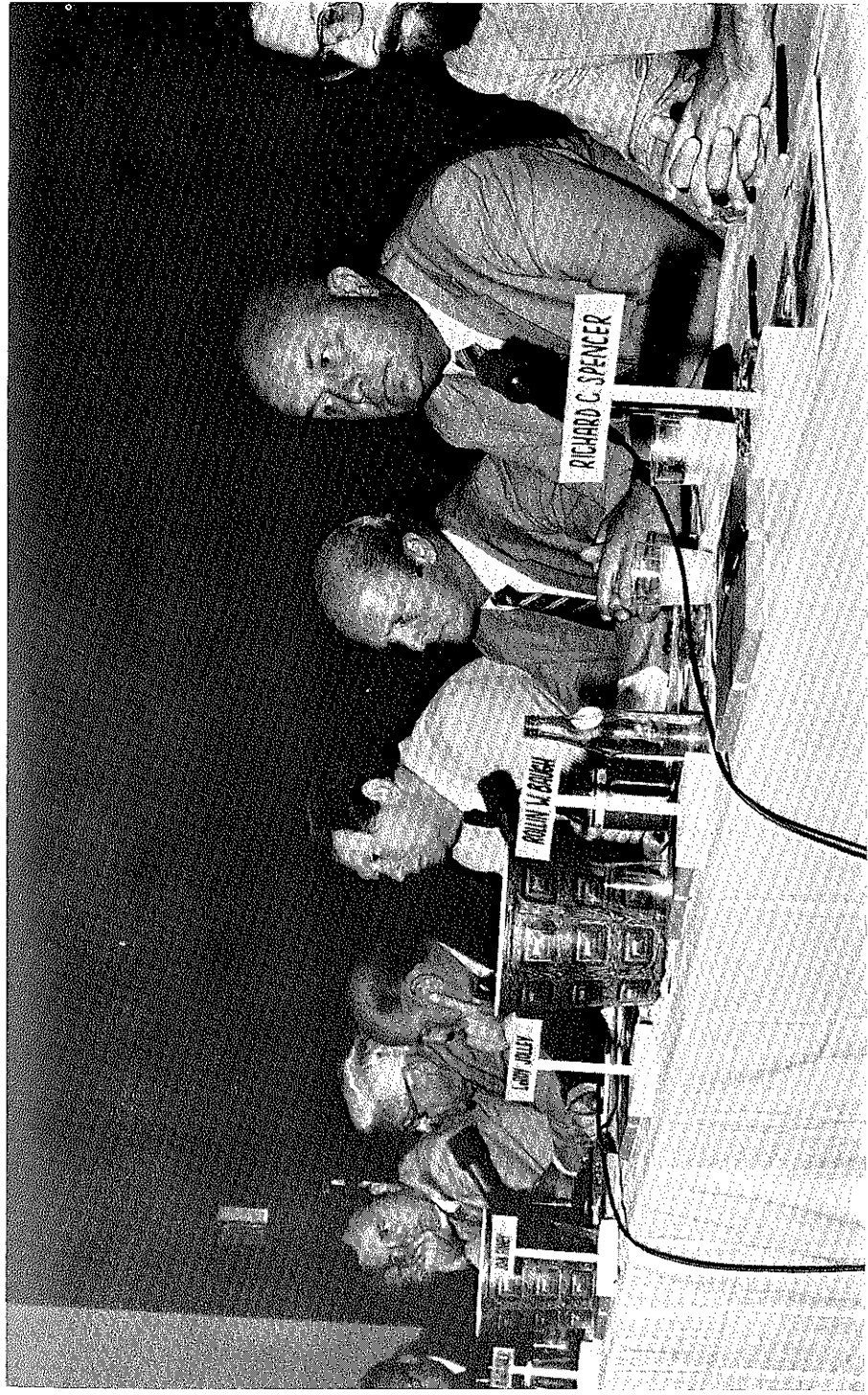
Paul Mellon, Vice-Chairman, Nicholas F. Brady, Chairman, and Robert L. Melican, Executive Director



Nicholas F. Brady, Chairman, addressing the guests on "The Need for a Common Response: Toward a Unified Agenda for Action"



The panel on "Policy Issues Affecting the Conduct of the Public Sales of Thoroughbreds," James B. Moseley, Moderator, James J. Hickey, Lee Eaton, M.D. Teigland, DeWitt Owen, Jr., John Finney, LeRoy Jolley, Rollin W. Baugh and Richard C. Spencer



The panel on "Policy Issues Affecting the Conduct of the Public Sales of Thoroughbreds," James B. Moseley, Moderator, James J. Hickey, Lee Eaton, M.D. Teigland, DeWitt Owen, Jr., John Finney, LeRoy Jolley, Rollin W. Baugh and Richard C. Spencer



A view of the panel on "Policy Issues Affecting the Conduct of the Public Sales of Thoroughbreds"

TWENTY-EIGHTH ANNUAL ROUND TABLE CONFERENCE
ON MATTERS PERTAINING TO RACING
HELD BY
THE JOCKEY CLUB
AT
THE NATIONAL MUSEUM OF RACING
SARATOGA SPRINGS, NEW YORK
SUNDAY, AUGUST 10, 1980

IN ATTENDANCE:

- *Dr. Eslie Asbury, Owner, Breeder
- Dr. Taylor Asbury, Owner, Breeder
- Peggy Augustus, Owner, Breeder
- *Charles Baker, Chairman, The Ontario Jockey Club; Director, Thoroughbred Racing Association; Owner, Breeder
- Mrs. Charles Baker, Breeder
- Rollin W. Baugh, California Thoroughbred Consultants, Inc.
- *John A. Bell III, Owner, Breeder
- Mrs. John A. Bell III, Owner
- *August Belmont IV, Steward, The Jockey Club; Owner, Breeder
- *James H. Binger, Steward, The Jockey Club; Owner, Breeder
- Mrs. James H. Binger, Owner, Breeder
- Edward S. Bonnie, General Counsel, Horsemen's Benevolent and Protective Association
- *James C. Brady, Jr., Owner, Breeder
- *Nicholas F. Brady, Chairman, The Jockey Club; Trustee, National Museum of Racing; Trustee, American Horse Council; Owner, Breeder
- Mrs. Nicholas F. Brady, Owner, Breeder
- J. Newton Brewer, Jr., Former Chairman, Maryland Racing Commission
- Dick Brooks, Sports Editor, The Saratogian
- Dr. John T. Bryans, Professor of Veterinary Science, University of Kentucky
- J. Elliott Burch, Trainer
- Gerard Burke, Steward
- Gustavo Zepeda Carranza, Vice-President, Hipodromo de las Americas; Owner, Breeder
- Mrs. Gustavo Zepeda Carranza
- Snowden Carter, General Manager, Maryland Horse Breeders Association, Inc.
- *G. W. Douglas Carver, Steward, The Jockey Club; Owner, Breeder
- R. Anthony Chamblin, Executive Director and Secretary-Treasurer, Horsemen's Benevolent and Protective Association
- *George M. Cheston, Owner, Breeder
- Mrs. George M. Cheston, Owner, Breeder
- Melville Churchill III, Owner
- John S. Clark, Special Counsel, New York State Racing and Wagering Board
- Albert G. Clay, Executive Committee, American Horse Council
- Charles Colgan, Executive Secretary, National Steeplechase and Hunt Association
- Brownell Combs II, President, National Association of State Racing Commissioners; Chairman, Kentucky State Racing Commission; Executive Committee, American Horse Council; Breeder
- *Leslie Combs II, Vice-President, Keeneland Association; Trustee, National Museum of Racing, Inc.; Owner, Breeder
- Ed Comerford, Columnist, Newsday
- John M. Dailey, Director, New York State Racing and Wagering Board
- Thomas A. Davis, Counsel, American Horse Council
- William M. DeHart, Member, Kentucky State Racing Commission
- Jack DeFee, National President, Horsemen's Benevolent and Protective Association
- Ted Demmon, Vice-President, Marketing, The New York Racing Association, Inc.
- L. P. Doherty, Grayson Foundation; Owner, Breeder
- Spencer J. Drayton
- Spencer J. Drayton, Jr., Vice-President, Thoroughbred Racing Protective Bureau
- Don Drew, Vice-President, Mutuels Department, The New York Racing Association, Inc.
- Francis P. Dunne
- Mrs. Richard C. duPont, Owner, Breeder

Lee Eaton, Director, Thoroughbred Club of America; Owner, Breeder
Lawrence E. Ensor, Jr., Vice-President, Fasig-Tipton Co.
*Thomas M. Evans, Trustee, National Museum of Racing, Inc.; Owner, Breeder
William S. Evans, General Manager, Keeneland Sales Co.
Mary Farish
*William S. Farish III, Trustee, American Horse Council; Owner, Breeder
Mrs. William S. Farish III
Dan Farley, Editor, Thoroughbred Record
J. B. Faulconer, Executive Vice-President, Thoroughbred Racing Association
Salvatore J. Ferrara, Steward
John M. S. Finney, President, Fasig-Tipton Co.; Trustee, National Museum of Racing, Inc.
Bertram Firestone, Owner, Breeder
Mrs. Bertram Firestone, Owner, Breeder
Thomas J. FitzGerald, Retired President, The New York Racing Association, Inc.
James W. Fitzsimmons, Attorney
*Anderson Fowler, Owner, Breeder
W. C. Freeman, Trainer; President, American Trainers Association
Charles Frenzt, Vice-President, Florida Thoroughbred Breeders' Association
George J. Fritz, General Manager, Hialeah Racecourse
Arthur Froehlich, Racetrack Architect
John R. Gaines, Trustee, National Museum of Racing, Inc.; Owner, Breeder
*John W. Galbreath, Steward, The Jockey Club; Trustee, National Museum of Racing, Inc.;
Owner, Breeder
*Edward H. Gerry, Owner, Breeder
Mrs. Edward H. Gerry, Trustee, The New York Racing Association, Inc.; Owner, Breeder
Manuel A. Gilman, V.M.D., Chief Examining Veterinarian, The New York Racing Association,
Inc.
*M. Tyson Gilpin, Owner, Breeder
Joseph A. Gimma, Trustee, National Museum of Racing, Inc.; Member, New York State Racing
Commission
Herbert Goldstein, Columnist, Daily Racing Form
*Gordon Grayson, Owner, Breeder
Robert L. Green, Member, Kentucky State Racing Commission
Frank Griffin, The Jockey Club, England
Fred Grossman, Editor, Daily Racing Form
*Winston F. C. Guest, Owner, Breeder
Robert S. Gunderson, President and Director, Thoroughbred Racing Association; President,
California Jockey Club
Leonard C. Hale, Racing Secretary, The New York Racing Association, Inc.
*Seth Hancock, Owner, Breeder
F. William Harder, Trustee, National Museum of Racing, Inc.; Owner, Breeder
Mrs. F. William Harder, Owner, Breeder
Russ Harris, Racing Editor, New York Daily News
James P. Heffernan, President, The New York Racing Association, Inc.; Director, Thorough-
bred Racing Association
*Leonard D. Henry, Trustee, The New York Racing Association, Inc.; Owner
James J. Hickey, Attorney
Joe Hirsch, Columnist, Daily Racing Form
Philip Hofmann, President, Florida Thoroughbred Breeders; Owner, Breeder
Mrs. Philip Hofmann, Owner, Breeder
Kent Hollingsworth, Editor and Publisher, The Blood-Horse; Trustee, National Museum of Rac-
ing, Inc.
Dave Hooper, Executive Secretary, Illinois Racing Board
*Fred W. Hooper, Trustee, National Museum of Racing, Inc.; Owner, Breeder
Mrs. Fred W. Hooper
*G. Watts Humphrey, Jr., Owner, Breeder
Jonathan Irwin, Goffs Sales, Ltd., Ireland
Eugene Jacobs, Trainer
John W. Jacobs, Owner, Breeder
*Walter M. Jeffords, Jr., Vice-President, National Museum of Racing, Inc.; Owner, Breeder
Marshall W. Jenney, President, Pennsylvania Horse Breeders Association, Inc.; Owner, Breeder
Philip G. Johnson, Trainer
LeRoy Jolley, Trainer
*Richard I. G. Jones, Steward, The Jockey Club; Director, Delaware Park; Owner, Breeder
Sam Kanchuger, Public Relations, Off-Track Betting Corporation
Wallace S. Karutz, Owner, Breeder

Stephen E. Kaufman, Attorney
John F. Keenan, President, Off-Track Betting Corporation
John L. Keenan, Director of Security, The New York Racing Association, Inc.
*Francis Kernan, Trustee, The New York Racing Association, Inc.; Trustee, National Museum of
Racing, Inc.; Owner, Breeder
*James R. Kerr, Owner, Breeder
Ray Kerrison, Columnist, New York Post
William R. Killingsworth, Killingsworth, Liddy & Company
Frank E. Kilroe, Vice-President, Los Angeles Turf Club; Trustee, National Museum of Racing,
Inc.
*Peter F. F. Kissel, Owner, Breeder
*John S. Knight, Trustee, National Museum of Racing, Inc.; Owner, Breeder
Mrs. John S. Knight, Owner, Breeder
Lawrence J. LaBelle, Attorney
Norman Lewis, Chief Racing Veterinarian, New York State Racing and Wagering Board
John Lohman, Vice-President, Louisiana Breeders Sales Company, Inc.; Owner, Breeder
Jane Lunger, Owner, Breeder
Patrick W. Lynch, Assistant to the President, The New York Racing Association, Inc.
William C. MacMillen, Jr., President of New York Division, Horsemen's Benevolent and Protec-
tive Association; Owner, Breeder
Anita Madden, Member, Kentucky State Racing Commission
Robert R. Mahaney, Attorney
John Mangona, Superintendent, Saratoga Racecourse
Mrs. Elaine E. Mann, Director, National Museum of Racing, Inc.
Landon C. Manning, Columnist, The Saratogian
John DeWitt Marsh, Owner, Breeder
*Charles E. Mather II, President, National Museum of Racing, Inc.; Owner, Breeder
*Peter McBean, Trustee, National Museum of Racing, Inc.; Owner, Breeder
Henry T. McCabe, Executive Vice-President, Off-Track Betting Corporation
O. Carlyle McCandless, Attorney
Jim McCulley, Public Relations, New York Turf Writers
J. Reiley McDonald, Fasig-Tipton Company
Edward J. McGrath, Member, Kentucky State Racing Commission
Patrick McGrath, Chairman, The Racing Board, Ireland
Mrs. Patrick McGrath
*Donald M. McKellar, Owner, Breeder
Robert L. Melican, Executive Director, The Jockey Club
*Paul Mellon, Vice-Chairman, The Jockey Club; Trustee, National Museum of Racing, Inc.;
Owner, Breeder
Harry Miller
MacKenzie T. Miller, Trainer
*James P. Mills, Owner, Breeder
Mrs. James P. Mills, Owner, Breeder
John J. Mooney, President, Laurel Race Course
Ronald Mooney, Chairman, Sawmill Brook Racing Association, Inc.
*John A. Morris, Trustee, National Museum of Racing, Inc.; Owner, Breeder
Mrs. John A. Morris, Owner, Breeder
Dr. John A. Morris, Jr., Owner, Breeder
*James B. Moseley, Steward, The Jockey Club; Trustee, National Museum of Racing, Inc.; Owner,
Breeder
Wayne Murty, Owner, Breeder
Barney Nagler, Columnist, Daily Racing Form
A. S. O'Brien, Breeder
Joseph C. O'Dea, Veterinarian; Member, New York State Racing and Wagering Board
Dr. Francis A. O'Keefe, Owner, Breeder
Cahir E. O'Sullivan, Keeper of the Match Book, The Curragh, Ireland
Dr. DeWitt Owen, President, American Association of Equine Practitioners
Joseph Palamountain, President, Skidmore College
R. Allen Paul, Chairman, Vermont Racing Commission; Vice-President, National Association of
State Racing Commissioners
*W. Haggin Perry, Owner, Breeder
Stanley D. Petter, Jr., Breeder
Joan L. Pew, Member, Pennsylvania Racing Commission
Stanley F. Phillips, President, Sportsystems Pari-Mutuel Division; Director, Thoroughbred
Racing Association; Director, Latonia
*Ogden Phipps, Trustee, The New York Racing Association, Inc.; Trustee, National Museum of

Racing, Inc.; Owner, Breeder
 *Ogden Mills Phipps, Chairman, The New York Racing Association, Inc.; Director, Thoroughbred Racing Association; Trustee, National Museum of Racing, Inc.; Owner, Breeder
 James Picou, Trainer
 John P. Pons, Jr., Owner, Breeder
 John Pricci, Columnist, Newsday
 Jack Price, Owner, Breeder
 Robert E. Quirk, Vice-President, Pinkerton New York Racing Security Service, Inc.
 Virgil W. Raines, Trainer
 Calvin S. Rainey, Advisor to the Stewards, The Jockey Club; Trustee, Agriservices Foundation
 Mrs. Calvin S. Rainey
 Gilbert Razzetti, Assistant Treasurer, The Jockey Club
 William O. Reed, Veterinarian; Breeder
 *Reuben F. Richards, Owner, Breeder
 Gustave Ring, Owner
 Mrs. Gustave Ring, Owner
 A. Lennart Ringquist, Jr., Owner, Breeder
 Mrs. A. Lennart Ringquist, Jr., President, Thoroughbred Owners and Breeders Association; Executive Committee, American Horse Council; Owner, Breeder
 Milton Ritzenberg, Owner, Breeder
 R. Richards Rolapp, President, American Horse Council
 M. Jean Romanet, Director General, Societe d'Encouragement
 Franklin D. Roosevelt, Jr., Breeder
 Saul D. Rosen, Trustee, National Museum of Racing, Inc.; Racing Consultant, New York City Off-Track Betting Corporation
 *Donald P. Ross, Jr., President and Chief Operating Officer, Delaware Racing Association; Owner, Breeder
 John L. Rotz, Steward
 Bill Rudy, Writer
 *E. Barry Ryan, Owner, Breeder
 Walter Salmon, Jr., President, Grayson Foundation; Owner, Breeder
 Bertram D. Sarafan, Member, New York State Racing and Wagering Board
 John D. Schapiro, Chairman, Laurel Race Course; Trustee, National Museum of Racing, Inc.; Director, Thoroughbred Racing Association
 *Kenneth Schiffer, President, California Thoroughbred Breeders Association; Owner, Breeder
 Mrs. Kenneth Schiffer, Owner, Breeder
 *Reeve Schley, Jr., Chairman, Monmouth Park Jockey Club; Director, Thoroughbred Racing Association; Owner, Breeder
 Charles E. Schmidt, Jr., Vice-President, National Association of State Racing Commissioners
 Lewis M. Schott, Owner, Breeder
 Ed Schuyler, Turf Editor, The Associated Press
 Michael D. Shagan, Vice-President Security, The New York City Off-Track Betting Corporation
 *Bayard Sharp, Owner, Breeder
 Mrs. Bayard Sharp
 Harold Snowden, Manager, The Stallion Station
 Mrs. Viola Sommer, Owner
 Richard C. Spencer, Attorney
 John E. Sprague, Director of Customer Services, The New York Racing Association, Inc.
 David A. Stevenson, Vice-President Racing, The New York Racing Association, Inc.
 James D. Steward, Trustee, National Museum of Racing, Inc.
 Lynn Stone, President, Churchill Downs; Vice-President and Director, Thoroughbred Racing Association
 *George Strawbridge, Jr., Owner, Breeder
 Brian Sweeney, General Manager, California Thoroughbred Breeders Association
 *E. P. Taylor, Trustee, National Museum of Racing, Inc.; Owner, Breeder
 Charles Taylor, Owner, Breeder
 M. B. Teigland, Veterinarian
 William A. Thayer, Jr., Vice-President and General Manager, Arlington Park-Washington Park Race Tracks Corporation
 *Charles H. Thieriot, Trustee, The New York Racing Association, Inc.; Owner, Breeder
 Mrs. Charles H. Thieriot
 Whitney Tower, Vice-President, National Museum of Racing, Inc.
 Thomas E. Trotter, Racing Secretary, Arlington Park and Gulfstream Park
 Ralph Vacca, General Manager, Washington Horse Breeders Association, Inc.
 *Daniel G. Van Clief, Owner, Breeder
 Mrs. Daniel G. Van Clief

John Van Lindt, Chairman, New York State Racing and Wagering Board
 S. E. Veitch, Trainer
 Kenneth P. Veit
 Timothy Vigors, Irish Turf Club; Owner, Breeder
 Newman E. Wait, Jr., Trustee, The New York Racing Association, Inc.
 R. Eric Waldman, Fasig-Tipton Company
 *Joseph Walker, Jr., Trustee, The New York Racing Association, Inc.; Owner, Breeder
 Mrs. Joseph Walker, Owner, Breeder
 Thomas M. Waller, Owner, Breeder
 Mrs. Thomas M. Waller, Owner, Breeder
 Michael Wates, Chairman, Thoroughbred Breeders Association, England
 Kenneth Watt, Senior Partner, Tattersalls, England
 Charles Weatherby, The Jockey Club, England
 William H. Welch, Executive Administrator, New York State Thoroughbred Breeding and Development Fund Corporation
 David A. Werblin, President, Madison Square Garden Corporation
 Henry D. White, President, Thoroughbred Breeders of Kentucky, Inc.; Owner, Breeder
 *Wheelock Whitney, Owner, Breeder
 Mrs. Wheelock Whitney
 Wheelock Whitney, Jr.
 Clifford Wickman, President, Thoroughbred Racing Protective Bureau
 William H. Williams, Regional Manager, Triangle Publications, Inc.
 Jacques D. Wimpfheimer, Owner, Breeder
 Louis E. Wolfson, Owner, Breeder
 Mrs. Louis E. Wolfson, Owner, Breeder
 Frank Wright, Host, The New York Racing Association/Off-Track Betting Weekly Racing Telecast; Trainer

OBSERVERS:

Jackie Byrne	Wayne Lyster
Paul Cresci	Paul M. Marriott
Lucas Dupps	Mrs. Paul M. Marriott
James F. Edwards	Duane Murty
David Foye	Mrs. DeWitt Owen, Jr.
James Fullerton	James H. Peden
Mrs. James Fullerton	Stuart Rainey
Richard M. Hanellin	Doug Rawnsley
Reese E. Howard	James Ryan
Russel B. Jones, Jr.	Dr. A. C. Saake
Frank Liddy	Brough Scott

*Member of The Jockey Club

TABLE OF CONTENTS

	Page
Welcome to Participants and Guests	Nicholas F. Brady 8 <i>Chairman of The Jockey Club</i>
Policy Issues Affecting the Conduct of the Public Sales of Thoroughbreds	Moderator, James B. Moseley 8 <i>Steward of The Jockey Club</i>
Legal Issues Affecting the Sale of Horses, Typology of Problems in the Sales Environment	Richard C. Spencer 8 <i>Attorney at Law</i>
The Next Plateau: The Need for New Criteria and Tougher Standards	DeWitt Owen, D.V.M. 11 M. B. Teigland, D.V.M.
Who is Responsible:	
Consignor	Rollin W. Baugh 13 <i>Thoroughbred Consultant</i>
Buyer	LeRoy Jolley 15 <i>Trainer and Agent</i>
Sales Company	John M. S. Finney 16 <i>President, Fasig-Tipton Company</i>
Sin and Salvation: A Summary	Lee Eaton 20 <i>President, Eaton Farms, Inc.</i>
Proposed Federal Medication Legislation: The Political Environment in Washington	James J. Hickey, Attorney 22 <i>Smathers, Symington & Herlong Washington, D. C.</i>
The Need for a Common Response: Toward a Unified Agenda For Action	Nicholas F. Brady 26 <i>Chairman of The Jockey Club</i>

TWENTY-EIGHTH ANNUAL ROUND TABLE CONFERENCE

ON MATTERS PERTAINING TO RACING

HELD BY

THE JOCKEY CLUB

August 10, 1980

MR. BRADY: We're a little slow getting started. We're suffering some competition from the Travers Day Parade, but I think most everybody is here.

I want to welcome all of you to The Jockey Club Round Table Conference. The program today will be in two parts. The first will be moderated by Jim Moseley, a steward of The Jockey Club, on the policy issues affecting the conduct of the public sales of thoroughbreds.

Then we'll take a short break and get into the second part of our program. Jim.

MR. MOSELEY: Thank you, Nick. And welcome all of you to the 28th Annual Round Table Conference. We have a panel with us this morning. It has such a long list of distinguished accomplishments that I'm going to be very brief, but I'd like to introduce them to you before we get started and also I would like to make a change in the program. Where you see The Next Plateau: The Need For New Criteria and Tougher Standards, done by Dr. DeWitt Owen and Dr. Teigland, we are moving that up to just below the legal issues. So if you're following in your program there, you'll see that it doesn't go exactly according to schedule.

Our first speaker is Richard C. Spencer, a New Yorker by birth. He was admitted to the Bar in '69 in California, United States District Court in Northern and Central Districts in California. And he has represented interests in the Thoroughbred horse industry, including Fasig-Tipton, and the CTBA sales in California since 1970.

Seated next to him is Mr. Rollin Baugh, who is the President of California Thoroughbred Consultants and he has been president for 12 years.

Sitting next to him, I need not probably introduce, is John Finney, President of Fasig-Tipton Company, and next to him is Dr. DeWitt Owen, who is President of the American Association of Equine Practitioners, amongst many other distinguished things that he has done. Next to him is Dr. Teigland, who is President of the Florida Veterinarian Medical Association and past president of the AAET.

All of you know, I think, Lee Eaton, who has been in the horse industry for years, and I don't think needs an introduction. His qualifications, I think, are well known by everybody. And that is our panel this morning for the topic under discussion, which is Policy Issues Affecting the Conduct of the Public Sales of Thoroughbreds. And with that, one more announcement.

I would like to say that when we turn this over to questions, any examples should be hypothetical so that no actual horses or names are identified. And we're going to stick very closely to that. And with that, may I give the microphone to Mr. Richard Spencer.

MR. SPENCER: Members of The Jockey Club, fellow panelists, ladies and gentlemen. I am truly honored and privileged to be here. When Jim asked me to participate, it appeared to me that among this group of people in the industry, most of you have probably seen enough problems in this area to know as much about the legal issues involving the sale of horses as most lawyers do.

But I think lawyers tend to view the problems from a slightly different perspective, and that is when and if a problem becomes a legal problem, the courts, arbitrators, and decision-makers will tend to view the problem in a much more isolated situation. This is a highly unique industry and a very unique commodity, and the courts will tend to view the sale of a horse pretty much the same as the sale of any other product or commodity and view warranty questions similar to the warranty of a car, or a house, or other products. And as we all know, the sales environment in this industry is far different from that of the normal product, and for that reason it is important that the courts be educated in the difference between this and a normal product, and I think, on the other hand, the business people, the horsemen, have to understand that the problems will be viewed in this fashion by the courts.

I wanted to talk, just for a few moments, from that perspective and will hit just some of the highlights of the types of legal problems that most commonly arise in this field.

Essentially there are two aspects to the types of legal problems. The first is the relationship between the parties. The second are some of the more substantive issues relating to the actual sale.

There are some other collateral issues which I think we really need not deal with today. One of them, for example, is in connection with the public sale of horses, which is the primary subject here. There are a number, as we know, of sales companies throughout the world in the industry. To the extent there is agreement or considerable cooperation among sales companies, there are always anti-trust questions in this country raised, such as agreements that restrain trade, etc. There are other collateral issues of that type that I will not talk about.

The first issue is the relationship between the parties. The public sale is essentially a three way relationship between the sales company, the consignor and buyer. The relationship between the 3 parties is essentially structured by contract, and in most states in this country can pretty much be whatever the parties determine. The auctioneer or sales company, is essentially an agent for the seller, for the consignor, but in this industry the auctioneer must take a stronger position than simply being an agent, because it essentially is up to the sales company to establish and maintain its own integrity and reputation so that the integrity of the sale is maintained.

How much of the obligations and rights of the seller are shifted to the sales company again is a matter of policy decision and contract. For example, legally the credit risk in the public sale of a numbered horse can be shifted to the consignor. The sales company simply acts as an agent in the sale of the horse, the collection of the price, and the credit determination, but can shift that responsibility to the consignor. It typically does not, but again that is a matter of contract. If, for example, there is a protest on a horse, whether the obligation to pursue the sale and defend against the warranty claim is prosecuted by the sales company or the consignor is a matter of policy decision. The costs of litigating these kinds of disputes is another matter. All of these must be subject to a decision because legally they can be shifted either to the consignor or sales company.

Most of the sales problems in fact do not affect the sales company — consignor relationship. The second relationship, between the buyer and the sales company, is the situation that becomes the most problematic area. The primary aspect of that relationship is what assurances, if any, the sales company and the consignor are going to make to a buyer. You can run from one extreme to the other. The one extreme obviously is a sale that is an "as is" sale. You make no assurances to the buyer. What you see, is what you get, the old doctrine of caveat emptor.

On the other side, you can have a sale of, for example, race horses with a guarantee or warranty of racing soundness. That is also not the typical situation. But between those two extremes you have an unlimited set of combinations and permutations and I

will not discuss the detailed warranties. The doctors on the panel will discuss those a little more in detail. But the fact is that the warranties are a very limited type in this area, and the relationship between the buyer and the sales company also involves, for example, what does a buyer do — what are his remedies — if an assurance is made and the assurance is not kept.

On the other hand, if the buyer does not fulfill his obligation, that is, to pay the purchase price, what remedies are there available to the sales company? And there is also — and this is a relatively new area — the question of what the sales company can do to enforce the sale or to make a determination on warranty claims that will not take the extremely long period of time that litigation in large metropolitan areas involves.

Turning to the substantive issues relating to the sale of horses, the warranty, of course, is the most common area of dispute and there are a number of types of warranties. I will just mention certain categories or types of warranties that exist and are the most common subject to disputes.

There is, of course, the warranty of title. That is not ordinarily a very difficult one nor a much disputed one, but obviously the consignor warrants his title to the individual being sold.

There are express warranties. In the sales environment in the thoroughbred industry these include wind problems, sight problems, cribbers, etc. These sound relatively simple. They often present very, very difficult problems in defining what the warranty is and in applying the warranty to a specific problem.

Warranties by description are recognized by the law. These sometimes represent very serious problems because it is not necessary in order to have a warranty to say to a buyer, "I hereby warrant that," or "I guarantee that." It is often enough to simply describe the horse in a certain way and you have then, whether intentionally or not, created a warranty. And you as a consignor, as a seller, as a breeder, do not necessarily have to say that yourself. Any of your employees who make a representation to a potential buyer may be creating a warranty simply by describing the animal in a certain way.

For example, the sales of horses in training present a warranty that the horse is in training, whatever that means in the custom and practice of the industry or as defined by contract. Describing the horse as a race horse may present certain warranties.

There is another type of warranty known as an implied warranty. For example, there may be in most states an implied warranty that a product, a commodity, is fit for the purpose for which it is bought. In the sale of thoroughbreds, there are attempts made contractually to limit implied warranties and to exclude them from contract. But unless a specific act is done to exclude that type of warranty, the sale of a thoroughbred may carry with it an implied warranty that the horse is fit to do what it was purchased for.

One other issue that should be recognized is the area of commercial fraud, where a warranty has not been made or has not been breached. The buyer always has an option, if a representation was made or a specific act was done that leads to an inference. If that inference is false or a representation is false, the area of fraud has a very definite interrelationship with the area of warranties. It also is not limited by the specific warranty claim time period that most contracts carry. However, it is a much more difficult claim to establish and carries certain disadvantages.

Finally, I just want to note that because I view this industry and this particular commodity as very unique, I think the industry has been in recent times undergoing some significant changes and I think there are some trends appearing. I think the scope of potential buyers has been increasing. You have now in the field people who are coming in simply as investors or speculators. You have people who are attracted by the recent periods of very high appreciation in thoroughbreds. You have less sophisticated

buyers. You have less sophisticated sellers. You have people who are not traditionally horsemen, people who have not lived with the understandings, the gentlemen's agreements, the integrity of the industry. You have a much increased inclination to litigate instead of attempting to resolve the problem. I think there has been much more of this on the West Coast than on the East Coast or Midwest, but nevertheless it is true, generally, that people will now tend to fight much more readily, particularly the newcomers to the industry.

I think the industry has to recognize these changes, has to deal with them, has to view carefully the sales environment, the warranty situation, and the contractual situation. If the industry does not control these changes and limit these changes, the industry is going to be controlled by the changes with possibly very adverse consequences. That is one of the reasons that meetings such as this, and I think this type of conference is at the forefront, are so extremely important in this day and age because the industry must deal with these trends and these changes. Thank you very much.

MR. MOSELEY: Thank you. I'm just going to call our panelists. You in the parade, LeRoy? Everybody knows LeRoy, I'm sure. Again, he is on our panel, and he is representing, as trainer and agent, the buyer in this discussion.

Our second speaker will be Dr. DeWitt Owen.

DR. OWEN: Mr. Moseley, Members of The Jockey Club, Ladies and Gentlemen:

For the purpose of simplicity and better understanding, the topic assigned to Dr. Teigland and myself has been divided so that I may discuss the present day sales policies as they pertain to the usefulness of the horse and in particular yearlings. Dr. Teigland will present some thought provoking ideas for the future.

Before we discuss the topic at hand, I would like to explain what is meant by a "select yearling sale." I am sure most of you are completely aware of the meaning; however, two very astute horsemen have posed this question to me within the last month. A "select" yearling at Keeneland means two things. First the yearling is selected by pedigree — and it must be superb. Once he is accepted by the pedigree committee, he must pass the second phase of his selection. This second phase requires that he pass the veterinary inspection for conformation performed by Dr. Arthur Davidson and myself.

These yearlings are not guaranteed to set new track records, but they are truly "select" in every sense of the word.

Let's review the sale policies:

The opening remark in all sales catalogues states: "THERE IS NO GUARANTEE OF ANY KIND AS TO THE SOUNDNESS OR CONDITION OR OTHER QUALITY OF ANY ANIMAL SOLD IN THIS SALE."

There are exceptions to all rules, and to this one, the exceptions are thus stated:

Animals which are unsound of eyes, or possess any deviation from the norm in the eyes, are unsound of wind, or are "cribber" must be so announced at the time of sale. *In horses LESS than racing age, there is no guarantee as to soundness of wind.*

In addition, any horse of racing age which is nerved, is a "bleeder" or currently on the Starter's, Steward's or Veterinarian's lists must be announced at the time of sale.

Any animal whose condition is not so announced at the time of sale, is subject to return to the consignor within seven days of the sale. **IN THE CASE OF YEARLINGS ONLY, THE TIME LIMITATION SHALL BE WITHIN 48 HOURS AFTER THE START OF THE SESSION AT WHICH THE ANIMAL WAS SOLD.**

Sales, in general, always have been "buyer beware sales." We, at Keeneland, anticipate and *expect* the ethics of the consignor to stand behind his product — the

yearling.

In addition, at Keeneland, there is nothing expressed or implied that does not appear in the catalogue. There are no unwritten rules or private contracts unbeknown to the buyer. It behooves the prospective buyer to investigate this possibility when attending a sale.

The *only* function of the sales company is to act as agent; however, moral responsibility goes far beyond this. Furthermore, the integrity of the consignor to the Summer Sale is such that the reflection on the farm must be beyond dispute.

Now, where does this lead us? Dr. Teigland is going to discuss some very interesting variations pertaining to the sales arena but before he does, I would like to present for your discriminating judgement:

SOUNDNESS OF WIND — There is significant incidence of laryngeal hemiplegia and/or laryngeal hypoplasia at yearling age. Should yearlings be warranted for soundness of wind?

A CASE IN POINT — A buyer approached one of the yearling consignors and stated: "If I buy this yearling and after I buy him have him fiberscoped by my veterinarian and he says his throat is abnormal, will you take him back?"

"Cribbers" are presently announced. Are tongue suckers and wind suckers classified as cribbers?

Where do we provide for "stall walkers" and "weavers"?

Where do we classify yearlings with fractures or degenerative joint disease unbeknown to the consignor or buyer until after purchase.

To me, this all reverts to the moral integrity of the consignor and as expressed many times before: "Just know with whom you are doing business."

MR. MOSELEY: Dr. Teigland is going to speak on the second half of this.

DR. TEIGLAND: Members of The Jockey Club, Ladies and Gentlemen:

It is indeed a pleasure to be with you, particularly at Saratoga. It has been an enjoyable visit and I'm honored to be here. In every public sale, as Dr. Owen has described, the "Buyer Beware" philosophy is emphasized. Unfortunately, the exceptions relate mostly to veterinary decisions and sometimes there is disagreement among veterinarians, buyers and sellers because of inadequate definitions as to what defects disqualify the recently purchased horse.

A major dispute involves unsoundness of wind. Laryngeal hemiplegia (roarer) has been recognized for half a century. It is easy to agree that this condition gives valid reason to return the colt immediately if diagnosed immediately after purchase.

With the use of the sophisticated fiberoptic endoscope, we are learning of many other defects that will affect the horses' future performance.

The veterinary profession needs to define these conditions and establish standards that might be used by the industry as a guide. We have become familiar with new terms in recent years: pharyngitis, lymphoid hyperplasia, dorsal displacement of the soft palate, hypoplasia of the epiglottis, dorsal displacement of the soft palate, aryepiglottic fold entrapment of the epiglottis and many others. Some of these variations noted with the endoscope are acquired after birth, some are congenital. Some are correctible and others are not. A very perplexing problem arises when veterinarians are asked to determine suitability for racing. We are asked to determine if these marginal horses are going to race without any unsoundness of wind.

Pharyngitis has been described for many years and its significance is still not totally understood. Some believe it is a temporary inflammatory reaction that is related to immaturity and will eventually phase out. We all have seen some permanent damage in a few horses.

Dorsal displacement of the soft palate is a common finding. Some cases have been

approached surgically with success but many cases are unsuccessful. Many are apparently congenital but some seem to be acquired.

The hypoplastic epiglottis is a common finding. The normal epiglottis is made up of rigid cartilage. The hypoplastic epiglottis has little cartilage and might be flexible as a tongue. Others are totally entrapped permanently. All are smaller than normal as the name implies. Usually, nothing surgically can correct a deficiency in size or shape of the epiglottis. We are asked to predict the future effect on racing performance of this animal.

Entrapment of the normal epiglottis with the aryepiglottic fold is occasionally discovered. They are found in horses racing normally as well as horses that develop severe respiratory distress. What prediction do we give for the recently purchased animal with this condition?

I present some questions regarding soundness of wind:

Should endoscopic examinations be accomplished on all horses prior to the sale?

Should the buyer be responsible to request an examination prior to the sale?

Can acceptable classification of the variables be developed to be used as a guide?

Who makes the final decision in a debate after purchase?

We are trying to establish some standards and hopefully simplify disputes in the near future.

Soundness of limb warranties are very limited. There are sales that have warranties against fissures, fractures and bone disease that will impair the horse's soundness. Buyers often radiograph horses after purchase and find lesions that cause a dispute. Radiographs can determine relative ages of bone pathology. Often the pathology found may not be causing clinical problems at the time of purchase, but the buyer doesn't want to keep the horse because of the radiographic evidence because of the fear of future problems.

There are also some major bone disease problems found, cystic changes in bone involving the articular surfaces and secondary degenerative joint disease is a good example of a predictable unsound racing animal.

When horses are found to be lame after arriving at the buyer's barn, the buyer becomes suspicious that medication might have been involved. If the horse is lame without radiographic evidence to confirm that it was an old problem, the buyer finds no recourse. These limb unsoundness problems suggest more questions:

Should radiographs be a requirement for the seller to make available?

Should the buyer be encouraged to have radiographs prior to purchase?

Should medications be a matter of record in the sales horse?

Should medications be tested for with blood tests at sales time?

Should warranties be eliminated entirely?

You will notice I have chosen the easy way out in this presentation. I leave you with questions rather than the answers.

I hope the questions will stimulate some thought in solving the problem.

Thank you.

MR. MOSELEY: Thank you, Dr. Teigland. And now we get to who is responsible? And our first speaker on this subject will be Mr. Rollin Baugh.

MR. BAUGH: Thank you. Members of The Jockey Club, I'm very honored to be included in this discussion. I think it's a very important one because I think we're arriving at a point in the marketing of animals where the crossover of consumer protection legislation is going to start impacting us rather severely.

We have started to see it primarily at the two year old level in California where we have a large sale out there now where horses are starting to bring some rather large

prices, and with this we're finding that an unfortunate idea has come into the buyer's mind and that is that these animals are offered on a free trial exchange basis. We sell the animal and expect the animal to have changed hands within a period of 72 hours to 7 days. In our sales conditions there is a 7 day period in which we are attempting to give the buyer protection from any medication that might have been used or anything along those lines. But in 7 days there can be a great many things done with a horse to find out if he is exactly or she is exactly what you wanted. And where they have found the horse to be less than they wanted, or are experiencing buyer's remorse, they go to their veterinarian and seek a remedy to undo the sale. And those remedies initially were the pharyngitis area. We have found that at that stage of the horse's training, there's a very high incidence of that. It may be as high as 50%. So if you take the issue that the horse is subject to a wind condition that varies from the norm, the buyer needs only get an attorney, who might not be very sophisticated in the horse business, who will take this matter and say, well certainly you have a completely defensible case and the buyer calls the sales company, says we are returning the horse and we're not going to pay for it.

Then you can say that's wrong. That isn't industry practice. That isn't the way we do it. But if he isn't going to pay you, you know you've got a problem. And usually it's going to take you 3 or 4 years to get to a courtroom, and they don't write many races for 5 year old maidens.

The problem goes with both the new and old buyer. Some people will say, well this is just the unsophisticated coming into the industry that don't understand how the game is played. Unfortunately, that's not true. There are several cases that we have experienced in California, very prominent owners and trainers who have purchased animals without any level of inspection, or minimal levels of inspection, walked back to the barn 10 minutes later with their vet and told their vet to go over the horse and "see if I want to keep him."

So I think what we have to arrive at is a point where the buyer is given maximum opportunity to evaluate his animal. The most unfortunate part of all of this is that when you have these horses returned, there is generally an underbidder or underbidders that have done their lessons well, that have gone and had their horses X-rayed or scoped or evaluated to the degree that they're satisfied, and they are left out. They have gotten on the plane, they have left town. In many cases you're not even aware of who they are. So that you don't have the opportunity to return to them and say well fine, here's the horse, this is what you want, everyone's happy.

In an attempt to solve this, or to try and work toward a solution, we are considering in California with regards to the two year old in training sale, a very highly publicized veterinary week encouraging the scoping of horses, the X-raying of horses. The veterinarians as a practical matter will pool their data so that I don't think one has to fear the continuous scoping of an animal with fear that it might represent danger to the horse.

We are also going to require that all medication used or administered be turned into the office, to the state veterinarian who is there in California, with an explanation of why it was used. In many cases it is appropriate and not a sinister thing. The training of the horses for the last two weeks at the track will be monitored and documented both by the consignor and by the sales company. The consignor will submit a chart stating what has occurred with the animal, and the sales company will also hire personnel that will monitor these animals on a daily basis, so that if over a 2 or 3 day period the horse does not appear on the racetrack, the sales company will go to the consignor and ask what is the reason? And there certainly can be many reasons that it hasn't gone to the track and that'll be fine.

But if we're getting into an area where there are some questions we will at least be

able to, if a dispute were to arise, in some way document what has happened to this horse in that critical 2 or 3 week period before the animal sells.

And I think it's going to go a long way to help. In addition to the 2 year old sales, which is the basic problem, I can see it easily spilling over into the yearling area.

The next area, and I'll just touch upon it briefly, is the older horses, the horses of racing age. Most everyone here treats that in the classic sense of buyer beware. We know that aged horses will usually have some infirmity that just goes with the territory. But we have a growing number of people that feel that they are going to buy the horses, examine them later, and they've gotten it even to a more sophisticated level. They don't want to turn it back. Once they've examined it they've determined, well, it's worth 60 cents on the dollar, so they come to you and say, "Well, I don't want to turn it back, but I'll give you 60% of what I bid."

Again, the underbidders are out of town. Here you stand with somebody who wants to disagree with it and there's not a whole lot of things that you can do.

I think to a consignor that everyone I've talked with about this — I've never talked with a consignor who doesn't want to make a maximum disclosure and wants to afford the buyer every possible chance of determining that that animal is what he wants. But they are not interested in free trial exchange, because that just isn't fair. I hope that this is something that we can reduce to some kind of a contract or some kind of a method where the buyers understand the rules. I know the consignors want to reach out and make the horse available for inspection, but it always has amazed me as a consignor and representative of consignors how infrequently people will ask for information that most consignors will readily supply. Thank you.

MR. MOSELEY: Thank you, Rollin. Our next speaker, speaking for the buyer, is LeRoy Jolley.

MR. JOLLEY: Good morning ladies and gentlemen. As I am representing the buyer on this panel, I would say that the greatest thing that a buyer of any horse can be, is his own self defense. The more you find out, the more discriminating buyer you are, the better chance you have to be happy with your horse, instead of unhappy and wanting to return him. In the case of yearlings, I think that you should look at them more than once and look as hard as you possibly can. If you're not an expert on horses, I think the best thing to do is get somebody who does know and have a veterinarian X-ray him and with the new fiberoptic scopes that they have, the danger of hurting a horse is very much lessened. So I think very few consignors would object to these things.

Know your consignors and you know, as you go along in the business, you will find consignors that have sometimes steered you away from horses that they felt had problems or would not make you happy. And these are people that you gain a great deal of confidence in, and over a period of years you will return more often to those people because you've had good luck and been happy with the product that they've sold you.

I think probably most of the problems that arise are with horses in training, and I think in that area you can be a very discriminating buyer. The first thing is, why is the horse being sold? I think you can protect yourself if you try to find out some idea of why the horse is being disposed of to begin with. And by looking at the horse's racing record—in most cases if the horse has a problem of some sort, the people oftentimes will tell you that he has this problem or that problem and he's been able to successfully race with it. It's an old problem. And many times those statements are true.

Sometimes there are other hidden problems that people are just trying to get rid of the horse.

I think the warranties in the catalog probably protect us more in the area of black and white than in gray, and I think most of the disputes that we've seen are in the gray

area, particularly in the area of wind problems. If we have 5 veterinarians examine the horse, usually we get 5 opinions varying to some degree. And again I think that the greatest possible protection you can have is yourself — if you're a very discriminating buyer. Because in most cases when you buy the horse you're going to end up with him.

One area that I would very briefly touch on that I'm afraid might be irritating to some people, but I think that we could improve in the area from the time the hammer falls until the buyer picks up the horse. So many times you'll buy a horse, whether it be for a small amount of money or for a large amount of money, and practically from the time the hammer falls, the consignor will be in great haste to go on to some other sale or go on to some other thing.

But I do believe that during that brief period, whether it be 24 hours or 48 hours, those horses are deserving of some sort of surveillance and care, and it's not always done. The buyer is a little bit unprotected there because he doesn't always have the facility to immediately move the horse or immediately take the horse into his care.

And again, I would say that the greatest friend you can have, as a buyer, in avoiding hassles is yourself. Look, find out, examine, and I think if you do that you'll have many more enjoyable horses than you will problems. Thank you.

MR. MOSELEY: Thank you, LeRoy. Our next speaker is John Finney.

MR. FINNEY: Mr. Moseley, members of The Jockey Club, ladies and gentlemen. I must say when this idea was first proposed to us by Mr. Moseley, I couldn't understand why as varigated and distinguished a gathering as this would be interested on a pretty Sunday morning to see our dirty linen hung out. But in thinking about it, it occurred to me finally that in fact practically everyone associated with this business is forced at one time or another to go to the auctions. That is to say, there are forced sales or horses that must be acquired, outcrosses or whatever, and, however unwillingly, practically everyone in the industry is at some point brought into contact with the auction houses.

I feel that there's a great lack of understanding generally about the problems we have and what we're trying to achieve and what we're not trying to achieve.

We have to accept the fact that while it's the seller's horse and the buyer's desire to own one, it's our marketplace, and we have to operate it like any other business as a matter of enlightened self interest. The only product that we have to sell is service; and in order to sell that product we have the horse and we have to have the buyer — which means that we have to have the confidence of both buyers and sellers.

In this discussion this morning, we've concentrated rather heavily on two year olds in training. It would be perfectly legitimate to ask why, when in the past three weeks or so over 100 million dollars worth of yearlings have been sold at the major auctions in Kentucky and here, would we deal with two year olds in training? Well, we feel that this is the most dramatic area on which to focus because the nicest thing about selling yearlings is that so little about them can be tested for so long. We've already been paid before the buyers find that they're defective.

This is not true with two year olds in training. With horses of racing age, older horses, people assume that they're buying used cars. They assume that they are going to a flea market and taking their chance. But buyers tend to look at a two-year-old with the standards of a yearling. That is to say, they're buying a fresh horse; they're buying a new car; they expect it to perform.

Sellers, on the other hand, are required, in order to get top dollar, to expose the horses to pressures and trauma that yearlings are not necessarily exposed to.

This brings us to the two people that come into play when that trauma produces an ill effect which is apparent either before or after the sale, the lawyer and the vet. Dick

has very well laid out the problems of the custom of the trade against consumerism. And this is true. The custom of this trade is founded in English common law. It's been around for a long, long time. Most of us grew up with it. We know the way the game is supposed to be and we assume that it should always be that way. We assume that the future will be essentially similar to the past.

But we've also heard the people from Pugh-Roberts here over the last several years tell us that we need new capital in the game. New capital means new faces. New faces mean lack of familiarity with the customs of the trade of this industry and that naturally takes us to several questions. What industries are these people familiar with? Where did they make their money? What are the warranties for the automobiles they sell or the refrigerators that they manufacture? They're thinking of this game in a different way.

What we must do in operating our marketplace is to, while keeping the confidence of the seller, gradually adapt the custom of the trade, to insure that the decisions we make will be borne out by the courts. We simply have to accept that consumerism is an idea whose time has come. It goes with a whole new way of thinking that is essentially a populist way of thinking. I won't say a socialist way of thinking, but clearly a populist way of thinking. And the ownership of Thoroughbred horses which might win Triple Crowns has not been essentially a populist notion.

We, as an industry, are something of an anachronism in this day and age and we must be sure that we shape our conduct to respond to where the world is going. Otherwise, like the dinosaurs, if we can't adapt we will perish; and that would be particularly painful to me.

With respect to the lawyers, all of us who have created businesses or operated businesses are aware that if we let the lawyers run the business, we'd never do any. They are necessarily very conservative. This is their correct function. It's up to us to create employment for them. I never saw a happier lawyer than Dick Spencer the morning he opened up the catalog that said instant race horses on the cover. I think he could picture from that one representation five years' litigation that would make him a rich man. Fortunately, we ducked.

With respect to the vets, they also have to be cautious. When they are called on to express judgments, they are necessarily going to be more critical than if this were a matter of a homebred coming into the barn. You know the horses you breed; you know the horses you bring to the training barn; and you know the defects they have. You give them to the trainer; the trainer uses the vet as he needs to, and he feels his way along. And since the horse is already in the barn, you're not worried about whether it's good, bad, or indifferent. You've already got it, it's already yours.

But when you're examining one with the thought of buying it, and when you're hiring the vet, he is called on to express professional judgment and he is necessarily going to be far more critical because his reputation is at stake. While there is an outside chance that he may end up turning down for you a horse that turns out to be good, there is an infinitely better chance that he may end up approving for you a horse that is not going to be good; because, as we all know, the majority are not as good as we hope they'll be.

I think that the biggest problem facing the vets, and one that is bringing this issue very much to the fore, is the fact that with the new technology, whether it be X-ray or fiberoptic endoscope, they can see so much more than they used to. We used to get certificates stating that a horse either was sound of wind, or a roarer. Now we get a certificate that he has a slightly abnormal left aretenoid cartilage; and in consequence we get into many situations where we simply cannot determine, without the test of performance, whether the horse is all right or not.

If the horse were a homebred, it wouldn't be a problem. As he's an auction yearling,

it is a problem, because the horse goes into limbo until the controversy is resolved.

I think that the problems of sellers and buyers have been well pointed out by Rollin and LeRoy. Obviously, Rollin is representing the straightforward square seller. The only thing that I can say there is that unfortunately there are a given number of sellers who do not sell in good faith. We must insure that the rules that we put in place can be uniformly enforced, and are enforceable; and while we must not tie the hands of the legitimate seller, we also must not be victimized by the unscrupulous seller.

The same situation applies on the other side, although, in my opinion, among the buyers there's not as much bad faith. There is the question of lack of professionalism, lack of doing one's homework. LeRoy has certainly touched on that.

This brings us to the question: what is the responsibility of the sales company? This is what I'm supposed to be addressing, and I once again confess that my wife tells me that I'm the only person in the world who when asked the time of day, explains how to make a watch.

Where does Fasig-Tipton fit into this? Incidentally, I would like to point out one little change in the question of selection. DeWitt explained to you the basis of selection at Keeneland. At Saratoga we have, in my opinion, a far more pure (as a matter of fact, throughout the Fasig-Tipton organization) a far more pure method of selection. We try to select that body of horses from among those offered which will fit in the available stalls, which will bring the most money. It's as simple as that.

It's a different standard. First off, they have more stalls than we have; at any rate, we do select a little differently.

The question as to the responsibility of the sales company—it has been suggested, and I think it's in many ways a desirable suggestion, that we have all these horses X-rayed or scoped or formally checked by a veterinarian before sale. Where we have run amok on that is the fact that if the sales company does this and the buyer is not satisfied, there is a broad area of liability on the part of the sales company which has made a representation to the buyer which the consignor has not made. And if the sales company's professional employee, the veterinarian, makes an error, then we're in a position where it is entirely possible that the sales company will be obliged (as its employee made the error) to accept return of the horse.

The one underlying principle on which we've worked ever since Benny Fasig and Eddie Tipton got together in 1898, is; it may be your horse, or it may be his horse, but it ain't our horse. This makes it difficult for the sales company to go into the presale inspection side.

I do think that we're getting, particularly in California, a group of consignors who are prepared to make warranties that go beyond the conditions of sale. In other words, this (as far as the sales company may be concerned) may be, in fact, an extra contractual warranty made by the sellers that goes beyond the normal conditions of sale. If so, I think that these sellers will be greatly rewarded by the increased confidence of the marketplace in what they've done.

It is an area in which we're moving. We haven't gotten it all resolved.

The other side of the coin says caveat emptor. That's the way it's always been; that's the way it should always be. I've mentioned that the courts no longer bear this out in many places and in many cases. But there's another thing that's important. In many of the sales we run, the fact is that the reputation of the sales company is greater than the reputation of the seller. When the buyer comes to the sale, he looks on that Fasig-Tipton seal on the cover of the catalog as something akin to the Good Housekeeping Seal of Approval. He expects certain standards and expects us to back them.

If we operate our market on a caveat emptor basis, then the unscrupulous seller can come in and take a horse that he could not sell privately out of his own barn, a horse that's known to have a fracture for example, and use our good offices, our reputation,

to purvey goods he knows to be damaged. And since there is no representation as to their not being damaged, we are not in a position to return them to him. So we do need some protection there. This is again something that we continue to play with.

As far as I'm concerned, ultimately it's the responsibility of the sales company to run a fair exchange. We must have the confidence of both buyers and sellers. We must have the blessing of both vets and lawyers. We must have confidence that our decisions will be borne out by the courts when disputes occur. This means that our rules must be uniform, they must be uniformly applied, and they must be enforceable. For example, we worked on the brood mare condition on examination of a barren mare and the barren mare certificate. The old certificate most conscientious and competent vets wouldn't sign, because it said that the mare was sound and clean for breeding; and if the mare wasn't in season, if you couldn't take a culture on her and test it, then most vets were not prepared to sign that certification.

We wrestled with it for several years and we finally came up with the language, "based on manual and spec examination she is apparently free of infectious vaginal disease and in sound breeding condition."

Inserting the one word, "apparently," meant that the seller's vet could go in within ten days of the sale and based on all the evidence available to him through manual and spec exam he could say, "She looks all right to me;" and give that certification. And the buyer's vet, who was required to make his examination within 24 hours — his vet was in a position to make the same certification. Now it may very well be that the next time she comes in season she's dirty, but the transaction is concluded.

What we need to do is to come up with the same sort of thing for yearlings and horses of racing age. To this end there are three recommendations or three directions of thrust that we would like to take.

One is definition; two is education; and three is arbitration.

The definition question: when we were discussing some of these points yesterday morning at breakfast as kind of a warmup for this panel, Nick Brady said to be sure that when you deal in a technical area you define, so that the people will know the parameters of what your discussion is. Well, we're sitting with rules that have been in our conditions of sale since the company was incorporated in 1898, which have never formally been defined by us, by the lawyers, by the courts, or by the veterinary profession. They have simply been accepted in custom of the trade.

I think that the direction that Dr. Teigland is moving in — seeking to assemble a body of opinion which will be the basis for better definition of what is soundness of wind according to a sales condition will be very helpful.

I think we must also make a strong thrust through all of our publications and our educational media and the sales companies themselves to educate new buyers and some of the old buyers who may not be aware. I know I've been tempted for years to throw one line of the Lord's Prayer into the conditions of sale in some catalog to find out if anybody will come and ask, "What is the Lord's Prayer doing in the catalog?" because I don't believe that most of our best customers have read the conditions of sale in the last ten years. Their response is they haven't had to; they understand how the rules work in practice and they have confidence in us. Well, it's a great expression of confidence, but in fact not a very intelligent way to do business.

The education side: I think that when we've achieved these definitions, we need to have available to new buyers, or print in the catalog, or put in the publications, exactly what the definitions are in these various problem areas in the sales.

The third area is arbitration. We know that litigation is troublesome in three ways: one; it is so long delayed; two; it is so expensive, and three; very often the matter ends up in a court which has no competence to deal with it.

One recommendation that we've made informally to AAEP which has been well

received, but nothing formal has or will be done on it for some time, is the question of taking these various problem areas in sales, and having from the membership of AAEP a panel of arbiters who are willing to deal with them. These veterinary arbiters would be experts on any particular problem so that if there were a list of twenty such vets, immediately when a dispute came up about degenerative bone disease, you would look at that list of twenty and from that list the seller would select one man he's prepared to go with; the buyer would select another; and these two would select a third arbiter. These veterinary experts, immediately on the scene, would freeze the determination of actual condition of the horse. That is to say, they would determine what the condition is, in much the same way that in stallion fertility insurance you have a panel of vets; and if they decide that a given horse cannot pass the test on that day, then the insurance claim is paid.

If we can seek to freeze the actual condition of the horse through examination by experts immediately after sale, then when we get to the next step we at least avoid arguments two years down the road. We have a formal report which has been issued by a panel of experts which contractually will be the binding report. I think that if we can get this done, it will be very, very helpful.

I think that this brings us to the question of who should be the referee? The lawyer feels that he should be the referee because there's a dispute that may involve litigation. The vet feels that he should be the referee because, after all, you're arguing about a veterinary condition of the animal. The sales company feels that it should be the referee because, after all, it's the sales company's marketplace and the transaction is conducted in its market.

The fact of the matter is that the ultimate referee is the courts, and this is where the professional arbiters are very helpful. In dealing with professional arbiters, your chances of getting a man who really knows something about your field are greatly enhanced; and the expense is greatly reduced; and the speed is greatly increased. It's now possible to have arbitration cases that look like they'll be resolved within five to six months of sale, which previously would have taken two to three years. They'll be resolved, because it's a less formal proceeding at considerably less expense.

We've just started on this; it's only been in the last year that we've put arbitration in our contract. It is now very rough and unformed. We're feeling our way through it, but I think that in these cases it will be the best way we can make the marriage between custom of the trade and the prevailing consumerist attitude. --

I know I've overrun my time. I thank you.

MR. MOSELEY: Thank you very much, John. And on a beautiful Sunday morning, I can't think of anybody better to talk about sin and salvation than Lee Eaton.

MR. EATON: Good morning, ladies and gentlemen and members of The Jockey Club. I think that first we should recognize the courage of our chairman, Mr. Moseley, in selecting me at 11 AM on Sunday morning with my Christian beliefs to talk on sin and salvation, and you may not get out of here for the first race.

My mind is really spinning with all that we've heard this morning. It's my task to try to summarize it. I'm going to hit the high spots as I see it. I feel that John Finney has gotten quite a bit of the detail for which I'm very thankful because he understands it far better than I. It seems to me that from what we've heard we're dealing in a very fast changing marketing situation with many more sales, much higher prices, many new people, many new reasons for purchasing, different personalities, an entirely new atmosphere over the last 5 years or so.

I think to cope with it we're going to have to educate ourselves as the members of the sales company, the consignors, the buyers, the selling agents, the buying agents, and

we're going to have to communicate.

I think it's important to recognize that we're dealing with the problems that can be associated with at least 4 types of sales, and we may have to have different definitions and different rules for each of the 4 types of sales.

It would appear that the two year old in training sales may be the area where the greatest problems have arisen in recent years. It would seem that possibly some of these problems could sift down into the yearling sales — also the paddock or race horse type sales. However, as John mentions, people are aware they're buying a used car. And the buyer beware approach seems to be more in order. Of course we have the breeding stock sales. With more and more new people coming in with the emphasis on buying yearling fillies, we can well expect the breeding stock to become more precious, the problems to become greater. And I think that the type meeting we're having this morning, exchanging these ideas and stimulating thought, could help us to educate ourselves to some of those problems.

I think that both the consignor and buyer can lessen the incidence of conflict during these fast moving times and I feel that communication between the two is important. I think that the consignor has a responsibility to make his horses available for inspection well in advance of sales time, thereby eliminating any excuse that the buyer might have for not having adequately inspected the horses.

I think that when a consignor is questioned, he should give a complete disclosure with regard to the question. Please note that I say, "when questioned." If you've bought a car lately, as most of us have, the dealer will tell you if you question him that the car isn't likely to give you the mileage that the little sticker on the window says, but he certainly isn't going to volunteer it. So I think most consignors, irregardless of the integrity that they may possess, will not necessarily volunteer the fact that the horse may have a defect that may not be readily noticeable.

I do feel that most consignors will give honest answers and I think the buyers should ask the questions.

I think that there are times when horses need to be on medication prior to sales. I sell many horses. Many of these horses have been on medication, but it is our policy, and I feel it's the policy of most consignors, to withdraw any medication that's capable of masking lameness well in advance of sales time. And an example of this might be a yearling that when reset just prior to the sale may come up a little bit sore. The shoes may pinch him; the blacksmith may have taken a little too much foot off. Frequently you will put a yearling like this on Butazolidin. I see nothing wrong with this to ease the horse's pain in order to get him to the sale, if the horse is withdrawn from the Butazolidin well in advance of sales time. Certainly no horse should be sold on this type of preparation.

LeRoy mentioned, "after the sale care" and I think this is an area that we have historically been very lax in. The consignors are tired, the pressure of the sale is over, and you want to go lay down someplace. But we certainly as consignors owe it to the buyers to care for the horses for no less than the 24 hours required by the sales company, and I think we have a moral obligation to carry it further than that.

I believe that nowadays most consignors are willing to stay around and look after the horses for two or three days after they're sold if that's necessary.

I believe we were told 100 million dollars worth of yearlings have changed hands in the last 3 weeks or so. The people who bought these yearlings, I'm sure, would not buy a \$30,000 lot without first having the title searched and without having the property line surveyed. Yet many buyers will buy yearlings without adequate inspection, without hiring when needed a competent purchasing agent or trainer who is properly compensated for the work that he's doing. Many fail to have a yearling vetted by a vet who will charge a very nominal fee and I think that these things are directly a parallel

with title searches and property line when buying real estate.

I like to think that the good experience that we've enjoyed over the years has probably led to this faith that allows us to deal in this much money on this casual a basis, and I hope that it will continue. But I certainly would encourage all buyers to use the maximum in researching before making their purchases.

Not to oversimplify our problem and being aware that I may be accused of oversimplification, I would close by pointing out that our Creator gave us a very simple set of rules to live by. He didn't call them the 10 suggestions; he called them the ten Commandments, and I think this is something that applies to the horse business. Thank you.

MR. MOSELEY: Thank you very much, Lee. And now I would like to throw it open to questions from the floor. I will remind you that we are not going to deal in specific names or cases, so if there is any question of a general nature that you'd like to ask any one of the panelists, we'd love to hear from you. Are there any questions? No? Everybody's that confident in buying a good yearling? All right, if there are no questions, I would like to thank our panel, many of whom have come a great distance, some only a short distance. But I want to thank all of them for being here today and participating here in the conference. Thank you very, very much.

MR. BRADY: Thank you, Jim, and thank you, panelists. We'll take a 5 minute break and then try and have you all out of here by noon time.

MR. MOSELEY: Have we got everybody? Thank you. The second part of the Round Table Conference on matters pertaining to racing is going to be on the Proposed Federal Medication Legislation and the Political Environment in Washington. James J. Hickey will address this topic. Jay is an attorney with Smathers, Symington and Herlong in Washington, D.C. That firm has been general counsel for the American Horse Council since its inception. Jay.

MR. HICKEY: Thank you very much. It's a great pleasure to be here.

I've heard a great deal about Saratoga for many years and I'm very happy to have the chance to come up here and see the beautiful track and the fantastic hospitality first-hand. It's lived up to all my expectations.

My father always told me that the track was the only place where the windows clean the people. But in fact I had the winner yesterday and I want to thank The Jockey Club for arranging that. I can now go home whole, I think. What I won will pay for perhaps a half-day of the motel charges.

I have been asked to discuss the political climate in Washington regarding the so-called "Corrupt Horseracing Practices Act of 1980." It is very unlikely that any action will be taken on this bill this year and it is difficult to predict what might happen next year. Nonetheless, the general mood in Congress is, in my opinion, receptive to this kind of legislation. I would like to discuss some of the reasons for this and why it is so very dangerous. The proponents of this bill, primarily humane groups, are organized, united and committed. The public perception of racing, in general, and of the use of drugs in particular, is unsympathetic and minimizes the chance of any broad-based public support we might be able to muster against the bill. The nature of the bill, its characterization as a measure to protect horses from abuse, makes it difficult for a member of Congress to vote against it without substantial political risks. The present lack of agreement on the drug issue in the industry itself now prevents the formation of

the solidarity necessary to oppose it effectively. And finally, the lack of a uniform rule on medication and the apparent inability to effectively enforce such a rule undermines the argument that the industry, rather than the Federal Government, should continue to regulate in this area.

Most of you are familiar with the provisions of the Federal anti-medication bill supported by the Humane Society of the United States. This bill was introduced in Congress last May. The bill pulls no punches. It charges that the use of drugs corrupts racing, misleads the public, subjects jockeys to unreasonable risks, and is cruel and inhumane to horses.

The bill prohibits the administration of any substance "foreign to the natural horse" prior to a race. It requires prerace testing of blood samples, a physical examination of the horse one hour before the race, the analysis of samples after the race, and the storing of frozen samples for future analysis.

The penalties are stiff, ranging from a \$10,000 fine and/or one year in prison for a first offense, up to \$25,000 and/or three years in prison for subsequent convictions. Under certain circumstances, these penalties can even be assessed against an owner, who might be a thousand miles away.

The disqualification provisions are strong. An offender is banned from racing for one year for the first offense and five years for a second. The horse involved is suspended for six months for the first infraction and one year for a second.

The bill gives enforcement authority to the Drug Enforcement Administration of the Department of Justice. An initial appropriation of \$5 million is authorized for enforcement. After the first year, DEA is directed to assess tracks a fee for each day of racing in order to provide funds for enforcement and research. Prior drafts of the legislation called for assessments of \$1,000 per track per day of racing. Now DEA is given full authority to set a fee schedule.

Tracks are required to provide DEA inspectors with onsite facilities for inspection purposes. The specifications for these testing facilities will be determined by DEA.

The legislation provides the DEA may exempt any state from the operation of the Act if its medication rules are comparable to the Federal requirements and, more importantly, if its testing laboratories meet Federal standards. Even if exempted, a state is still subject to annual review by DEA to determine that its program continues to meet Federal standards.

The bill is very strong and leaves much to the discretion of the Drug Enforcement Administration. If past experience is any indication, this authority will not be shyly exercised.

The primary proponents of this bill are humane organizations. Take no solace in that. If you envision the proverbial "little old lady in tennis shoes" tottering up to Congress to gnash her teeth over America's horses, think again. She will be there, but she will be accompanied and supported by well organized, well funded, very effective, and committed groups. These groups have already enacted the Horse Protection Act, which regulates the showing of Tennessee Walking Horses. They have dealt with many bills in Congress regarding the humane treatment of animals, have headquarters in Washington, and well-paid lawyers and lobbyists to coordinate their efforts.

Let me give you an example of the commitment of these humane groups.

The National Park Service recently decided that wild burros were becoming too prolific in the Grand Canyon and that there were three to five hundred too many. The Park Service determined that it would cost \$30,000 to shoot the animals and \$360,000 to catch and move them. So it was decided to shoot them. As a recent editorial in *The Washington Post* noted: "The reaction among humane societies and the environmental groups can best be described as ferocious." The groups filed a lawsuit to prevent the shooting and, while the suit is pending, have provided \$225,000 to catch the bur-

ros, move them to a ranch in Texas, and eventually distribute them to people across the country as pets.

Only two weeks ago, the humane groups backing the anti-medication bill held a press conference in the Capitol at which Lorne Greene, the television personality who is also the Vice-Chairman of the Board of the American Horse Protection Association, announced the formation of a "Coalition for Drug-Free Horseracing." The Coalition's major goal is the passage of the anti-medication bill. At that press conference, Mr. Greene stated that "the use of drugs in horseracing is a national concern, and we are here today to declare war on that use of drugs in horseracing."

The Coalition includes the Humane Society of the U.S., the American Horse Protection Association, veterinarians, horse owners, breeders, and many members of Congress. Another of its goals is to broaden support further.

At this same news conference, the President of the Humane Society stated "the drug problems at our nation's race tracks are significant. All types of drugs, legal and illegal, are widely used to manipulate betting odds, relieve pain so injured or unfit horses may compete, fix races, and deceive potential buyers in claiming races." Not to be outdone, Congressman Bruce Vento of Minnesota, a principal sponsor of the federal bill, stated that "there are powerful and well-financed forces which do not want racing cleaned up. They are already working to defeat our bill and to prevent the public from knowing about the drug abuses that now occur as a matter of course."

These are strong and inflammatory words. They state matter-of-factly that legal and illegal drugs are used to "manipulate betting odds" and "fix races" and that opponents of the bill do not want racing "cleaned up" or the drug abuses that allegedly occur now "as a matter of course" to be publicized. These statements are not generally backed by facts and are not likely to be during any Congressional hearings on the bill. But they will be made and will serve the purpose of the proponents of this bill, which is to feed the public perception of racing as fraught with the illegal use of drugs.

Believe it or not, Congress listens to its constituency. It has its finger on the public's pulse. It knows when that pulse quickens. On this issue, rightly or not, it has and the public support does not seem to be with racing.

The media has been devastating on this issue. Out of numerous articles I have seen, only one even suggests there may be arguments for medication. *Sixty Minutes* aired its piece on drugs and horses three times — an unprecedented action. *The Washington Post* recently ran an entire series on the integrity of racing and concluded it was wanting.

All of you remember the headlines following the finish of Dancer's Image in the Kentucky Derby: "Doped Horse Wins Kentucky Derby." Straightforward and sympathetic reporting is unlikely with respect to this complicated issue. This will not help us with the public.

For this reason the most important threshold issue — whether certain drugs, properly administered, may be therapeutic to the horse — may have already been decided in the public's mind which is the forum that will be most important when Congress takes up this bill. The issue of illegal drugs versus controlled medication and its therapeutic affect is likely to be blurred and overlooked. Any attempts by the industry to clarify these issues will be characterized in Congressman Vento's already-expressed words as attempts "to prevent the public from knowing about the drug abuses that now occur as a matter of course." No matter how articulate we may be, our opposition to the bill may be misinterpreted and could make the public's perception of racing worse. The proponents of the bill know this and know how to take advantage of it. It is unlikely the industry will enjoy the widespread public support necessary to its efforts to keep the Federal government out of racing.

The very nature of the anti-medication bill makes it difficult to muster Congress-

sional opposition. First of all it is considered a humane bill, drafted by humane groups and intended to protect horses. How can a member of Congress vote against protecting horses? How can he explain that to the folks back home? Horses are very popular in America. Racing is our number one spectator sport. Opposition to the bill may be considered a vote for doping horses. This will be enough to scare many members of Congress. Other members who never vote with environmentalists may view support of this bill as an inexpensive way to get points with such groups.

In addition, this bill deals with racing, a subject many members of Congress shrink from because of its gambling aspects. The bill will be characterized by Congress as an attempt to "clean up" racing to give the racing fan (he won't be called a bettor) a "fair shake." The popular support will be for that proposition. Many people consider racing and gambling more than illegal. They consider it sinful. How can a member of Congress from such an area oppose this legislation? Any such opposition would be interpreted as support for racing and, implicitly, gambling.

The bill now has sixteen co-sponsors in the House and four in the Senate, more than double the original number. The co-sponsors are almost evenly divided between Democrats and Republicans giving it bi-partisan support. The bill has been referred in the Senate to the Judiciary Committee and in the House jointly to the Judiciary Committee and the Commerce Committee.

One-third of the members of the subcommittees handling the bill have no racing in their states. The chairman of one subcommittee next year will likely be a Congressman from Detroit, an area that has recently had unfortunate trials and publicity involving horseracing. The ranking Republican on the House Judiciary Committee is a co-sponsor of the bill. These committees cannot be characterized as sympathetic.

Still, most of the members come from racing states; but will this necessarily be helpful? This bill is proving to be extremely popular with racing fans who have a poor perception of racing. These fans have more votes than tracks or horsemen.

Finally, the subcommittees to which the bill has been referred deal with criminal justice. While the legislation is aimed at the use of medication on horses, it may be very tempting to go into other areas. It may be very difficult for a member of a criminal justice subcommittee, during hearings on the Corrupt Horseracing Practices Act, to ask only technical questions regarding the effects of drugs on horses.

As part of the legislative process, various Federal agencies with alleged expertise in this area will be asked for their views. To illustrate the typical government thinking on this issue, at the American Horse Council's Annual Meeting in June, a veterinarian from the Food and Drug Administration, after making the customary disclaimer that his opinion was not the official position of the FDA went on to say that "it is my judgment that the racing industry would best be served by placing drug control in the hands of the Federal government. It is abundantly clear that drug abuse has reached an unacceptable level in the racing industry, and while a few states make a credible effort in enforcing medication rules, it is also clear that the cost of enforcement, for whatever reasons, are unacceptable to most states." It is not difficult to guess what the likely position of the Food and Drug Administration might be on this bill!

Let me briefly discuss the scenerio which would ensue if hearings were held on this legislation next week.

First of all, the industry could not approach Congress united and speak with one voice. After thirty years of debate, it is still far from reaching a consensus. Various groups, and even factions within those groups, cannot agree on the medication issue. It is likely that some groups would oppose the legislation in any form, some would oppose it in its present form, and some would support it. With the overwhelming and united pressure from the proponents of the bill on the other side, it would be extremely difficult to stop it or even appropriately amend it.

Even with unanimity, we would have a difficult time at the hearings.

Our first argument would be that racing is an area that has traditionally been within each state's right to control. While the state's rights argument seems to be making a comeback in the country, it has not been fully recognized in Washington. This argument has traditionally fallen on deaf ears and is likely to continue to do so.

Another argument would be that the industry and states have and will continue to effectively regulate racing. But is the record of effectiveness good enough to stand up to questioning? The humane groups will document our past efforts. There is no uniformity with respect to medication requirements. While many states have now adopted the NASRC guidelines others have not and some have adopted them only in part. Even if all states adopted the guidelines they would be difficult to enforce because there are too few effective laboratories to do the testing required for enforcement. Unless the states and the industry provide funds and labs for effective testing, the proponents of the bill can continue to argue that Federal legislation is necessary to ensure that there will be adequate testing for the enforcement purposes.

Finally, we can argue that certain drugs, properly administered, are safe and therapeutic. As I discussed, this issue may already be lost in the public perception. But experts are divided. This would ultimately involve a battle of experts, perhaps proving nothing in the end.

In closing, let me quote from Senator Mac Mathias, from Maryland, who has been most supportive of racing in the past. In a speech on the Senate floor last November he urged his colleagues to attend the Washington, D.C. International at Laurel. He warned, however, "of a small dark cloud on the horizon — the possibility of Federal legislation on the problems of horse drugging. Such drug treatment is deeply inhumane to horses," he said, "and in addition, it is unfair to the bettors." He urged his colleagues from racing states to press their racing commissioners to ban drugs. "The last thing the horsemen of this country need is the muscle of the Federal government in their stable," he warned.

What the racing industry does in the next several months will determine whether or not that small dark cloud, which Senator Mathias mentioned, will grow larger or disperse.

Thank you very much.

MR. MOSELEY: Thank you, Jay. And now, I introduce Nicholas F. Brady, chairman of The Jockey Club, who will speak on The Need for a Common Response Toward a Unified Agenda for Action.

MR. BRADY: Jay Hickey referred in his remarks to the formation of the coalition for Drug-Free Racing and quoted Lorne Greene as saying that its purpose is "to declare war on the use of drugs in horse racing." It is becoming increasingly obvious that we are at war on the issue of medication — at war with the humane associations, at war with the public and the media, at war with the Congress, and even at war among ourselves.

We will lose the war by default if every organization in racing continues to forge its own consensus on medication. The time has come for us to end our internal disputes and work together to find an equitable solution to this problem. I recognize that it is a complicated problem, and that feelings are strong and polarized, but if our industry wants to control its own destiny, if we are to prevent Federal legislation of unknown consequences, we must develop support for an industry-wide medication policy and then take effective actions that will restore public confidence in racing.

What should we do?

First, we must have a reasonable, fair, enforceable and uniform rule adopted in all

racing jurisdictions. I commend the NASRC for drafting guidelines to achieve this purpose. Unfortunately, those guidelines are not being universally adopted. Proponents of Federal legislation and members of Congress are highly critical of racing commissions for failing to adopt and enforce a uniform rule. If we are to argue effectively against the need for Federal intervention we must, at the very least, have a uniform policy.

Research has repeatedly demonstrated that furosemide and phenylbutazone, when properly prescribed and administered, are safe and effective for use in horses. However, most people in racing must recognize that current practice includes frequent inappropriate administration of these two substances. We lack a workable system of controls to prevent overuse or improper administration of therapeutic tools, and until such controls are developed and rules adopted to prevent abuse, *The Jockey Club recommends an immediate suspension of all medication programs including controlled medication.* We simply must face reality, stop arguing whether medication is good or bad, and move toward a restrictive policy.

All segments of racing — Thoroughbred, Standardbred and Quarter Horse — should meet together perhaps under the aegis of the American Horse Council to consider this recommendation and to agree on a unified policy. This meeting should include spokesmen for owners, trainers, breeders, jockeys, veterinarians, race tracks, racing chemists and commissioners.

I recognize that a return to "hay, oats and water" is feasible only if there is a commitment on behalf of the industry to the preservation — or, if necessary, creation — of well equipped laboratories, staffed by competent chemists. Stringent minimum laboratory standards should be developed to insure that all racing jurisdictions are utilizing testing facilities capable of detecting prohibited substances to the limits of current technology. Racing should seriously study the feasibility of combining resources to form or employ regional laboratories, which could maximize enforcement while actually serving to reduce total costs.

If we do not have adequate, competent laboratories, all other steps to control and/or eliminate the use of drugs and medications are useless.

The states should participate in insuring the capabilities of these labs, for it is they who derive the most from racing. Over the past five years, the 30 states with parimutuel wagering have derived an average of \$688 million per year in direct parimutuel revenue from racing — and that is revenue derived at a collection cost to the state of about 1% of total revenue, whereas other forms of taxes range as high as 25% of revenue in cost of collections.

As an example, if the states would allocate 1% of their revenue — not 1% of the handle, but 1% of revenue — there would be approximately \$7 million a year in additional funds for research on the pharmacological effects of drugs and for improving laboratories.

It is possible that the difference would be more than made up by an increased handle which would accrue through increased public confidence in racing.

In the 50s and early 60s when racing entered its suicidal course of year-round racing and proliferation of racing dates, many warned that it would be necessary to medicate horses in order to fill the additional races.

On the contrary, however, horses have been making *fewer* starts per year. If you look at the statistics, you will see a drop from an average of 10.1 starts per year in 1969 to 9.5 starts per year in 1979. The races have been filled, not by horses racing more, but by a 43% increase in the number of runners since 1969. But, even that has not been enough to keep up with the increase in races and racing dates, and the size of the average field has declined from 8.9 in 1969 to 8.7 in 1979.

The solution is not more medication, but fewer racing dates.

We should make a commitment to determining the actual causes of lameness. Are we exacerbating our problems through training methods? By action in the breeding shed? In our methods of raising and breaking young horses? In track construction?

I suspect the answer embodies elements of each, but it is imperative — as Manny Gilman and other prominent veterinarians have been asserting for years — that we do the research to determine the major cause of lameness and then *take action* to correct them.

We must make a commitment to improving track surfaces and elevations. For a number of years, physiologists, experts in biomechanics, and engineers have told us that our racetracks are badly designed. What would be wrong with racing a second or two slower on a vastly safer surface?

Finally, there must be a renewed commitment to integrity and security. Since the 1930s our industry has expended great effort to prohibit drugs which directly affect the performance of a horse. The use of stimulants, depressants and narcotics, which could affect the outcome of races, are prohibited in every state and we should rededicate ourselves to removing violators of these rules from racing. The states must back up, even urge racing officials to assess more severe penalties than have been traditionally imposed and do it right now before the Federal Government does it for them.

One could say — all that you have said is commendable, but what specifically is The Jockey Club's position and what do you plan to do?

Our position is no medication, *none*, until laboratory testing procedures have reached a level where violators of reasonable controlled medication programs can be detected. Until this goal is achieved we will join forces, testify and work with those who have the same goal.

At one time there was no starting gate, no film patrol, no photo finish camera. The Jockey Club was instrumental in instituting these three improvements in the sport and we hereby commit ourselves to use our offices and resources to help create highly technical, competent testing equipment so that those who seek to degrade man's centuries long love affair with the horse can be driven from the sport.

Lastly we do not believe there is any place or need for the Federal Government in Thoroughbred Racing. The Federal Government hasn't cured the energy shortage, it can't balance its own checkbook and its record in running the Post Office and Amtrak is hardly overwhelming. The Federal Government has plenty to do in Washington, D.C. We are able to take care of our own problems — let's get to work.

Thank you.



A view of the Conference in session.



A view of the Conference in session.



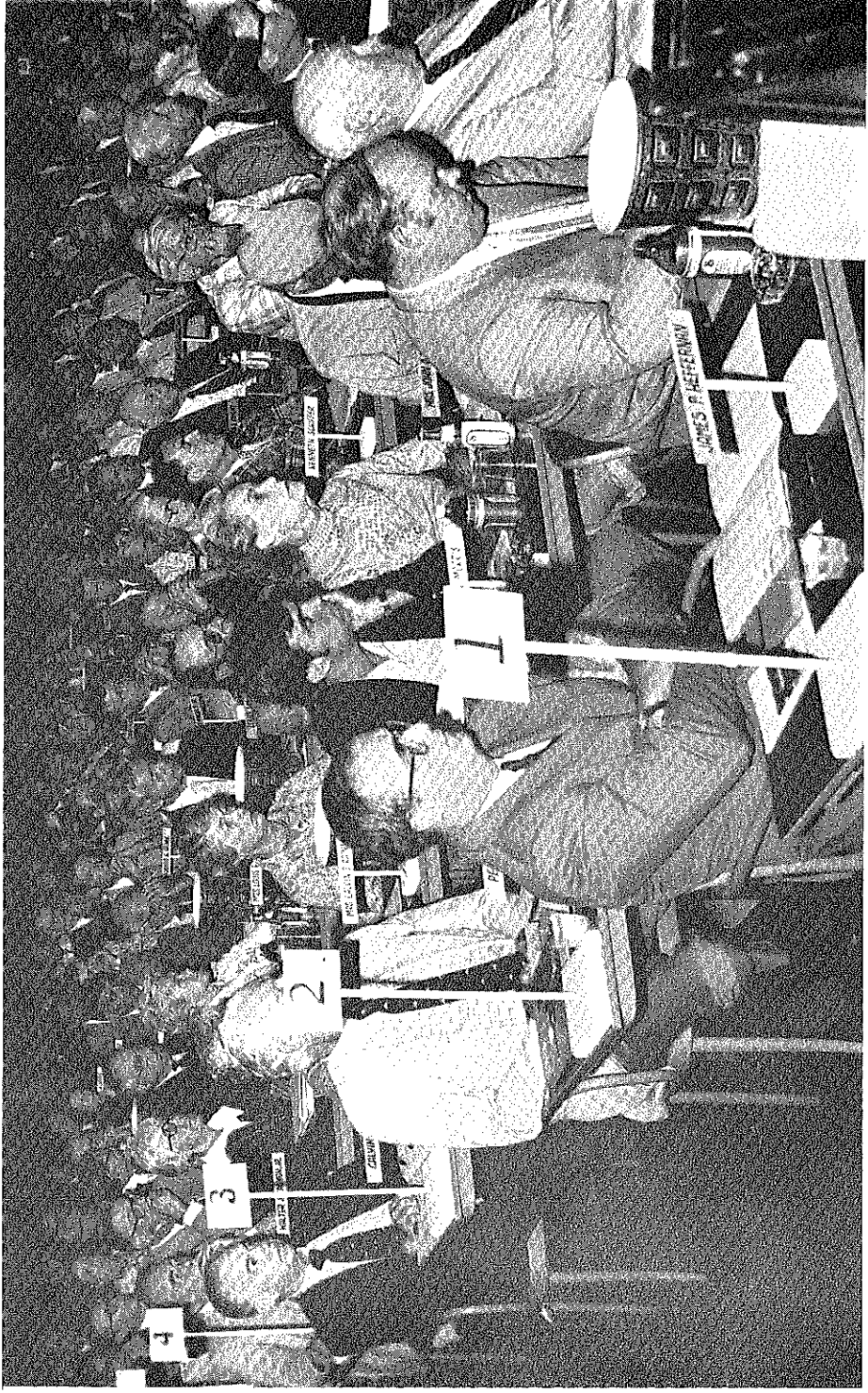
A view of the Conference in session.



A view of the Conference in session.



A view of the Conference in session.



A view of the Conference in session.