

SOA 2015 ANNUAL MEETING

THE PROFESSION'S RESPONSIBILITY TO THE PUBLIC

Session 40 – October 12, 2015 – 1:45pm to 3:00pm

Part II – Fred Kilbourne, FSA etc, Presenter

The actuarial profession's responsibility to the public:

- Obey the law, the code, the regs, the standards, the Crown!
- Unless, of course, there's a higher authority...

OBEY THE LAW!



- Krzys and Ken have admirably and accurately set forth the primary responsibility of the actuary to the public, which is to obey the law.
- The “law” includes legislation and regulations, and their professional derivatives, the Code of Professional Conduct and the Actuarial Standards of Practice.
- Not to overlook judicial decisions and executive orders.
- Also to be obeyed to the letter is the “custom”, which has been defined as “a rigid law that is unwritten for the purpose of ensuring compliance by avoiding any hint of ambiguity.”

UNLESS...



- Unless, of course, the law is superseded by a higher authority (such as a judicial decision).
- This was the case at Nuremberg after World War II, where the defendants argued that they were only following (legal) orders, but they were hanged nonetheless on the grounds that a higher authority trumped Nazi genocide laws.
- Such a higher authority, even if a Higher Authority, ultimately rests upon your individual conscience.
- This is the purpose of these slides – to assert and support those rare cases where the law should **not** be obeyed.



JURY NULLIFICATION

- Jury nullification dates from the Magna Carta, in 1215.
- The Crown nonetheless often punished jurors who voted to acquit against the evidence with fines and even worse.
- John Adams said that it is the juror's duty to find the verdict according to his own judgment and conscience, even if in direct opposition to the instructions of the court.
- Consider the Fugitive Slave Law in this connection.
- Consider also the California courts' question of wanabe jurors "Do you agree to follow the law as I shall state it?"



PAY THE PENALTY



- Henry David Thoreau refused to pay a Massachusetts poll tax, and was thrown in jail. Ralph Waldo Emerson visited him and asked “Henry, what are you doing in there?” Henry asked him in response, “Waldo, what are you doing out there?”
- A 1670 judge was unsympathetic when a jury tried to invoke jury nullification, and sentenced the jury to jail without food, water, heat, or a chamber pot. Jury foreman Edward Bushel still refused to pay, and his later acquittal confirmed the independence of juries.
- Sometimes the penalty is extralegal, such as loss of your job, or shunning by those who prefer that boats not be rocked.



TO SNITCH, OR NOT TO SNITCH

- Assertion – a majority of politicians during my lifetime have been elected by committing fiscal child abuse.
- Support – US debt exceeds \$100 trillion, and perhaps \$200T.
- Duty – actuaries have a duty to snitch on these politicians.
- Ken has admitted to having derelict discussions, yet I haven't reported him under Precept 13.
- I have testified a number of times that an actuary has failed to follow the Code, yet I may not always have snitched.
- You have the obligation to report me for this and, if you don't, Ken must report each of you.



SOUND THE ALARUMS



- About five years ago a social insurance actuary faced a dilemma. He was required, by both the law and the Code, to assume that current law would prevail forever, even though actuarial standards said otherwise. What should he do?
- More recently, another social insurance actuary faced a similar dilemma, since DOMA had been overturned by the US Supreme Court, but Obergefell vs Hodges had not yet been decided. What should she do?
- Some contend that actuaries, both individually and through their professional organizations, have an affirmative duty to the public to sound the alarums about the buildup of SIPF debt. Is this correct?



DO THE RIGHT THING



- You know right from wrong, whether it's innate or taught to you at an early age (and whether it's jury nullification or not).
- Doing the right thing often (but not always) pays off in the long run (whether here or after).
- I lost two major clients because my actuarial estimates (of their life, AD&D, DI, and workers comp programs) aligned poorly with client desires (my payoff deferred to thereafter).
- Sometimes we convince ourselves, occasionally correctly, that the right thing to do is elusive or uncertain or judgmental. But usually you know when something is wrong, and what you should do to fulfill your duty to the public.



CHANGE THE LAW



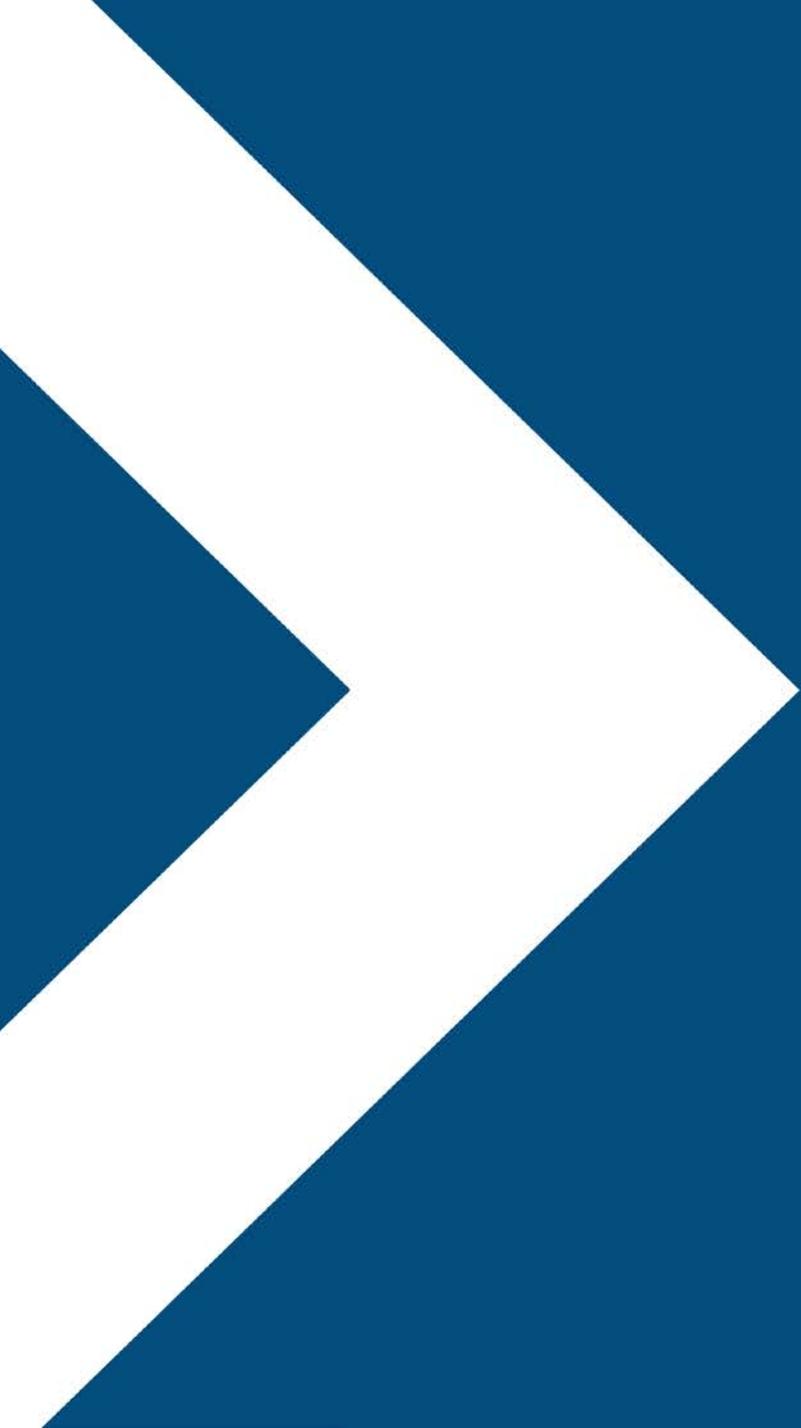
- The 1968 National Flood Insurance Program was not designed to be actuarially sound, and currently owes the US Treasury over \$20 billion. Consider the impact on the Program, and the Treasury, if global warming causes the oceans to rise.
- The PBGC was created as part of ERISA in 1974. Its current net accumulated financial deficit is over \$60 billion, and its exposure to future losses for underfunded plans is much more.
- The actuarial Code states that “Where requirements of Law conflict with the Code, the requirements of Law shall take precedence.” This should be changed (see prior slides), at least to require that the conflict be identified and quantified.



SAVE THE CHILDREN



- The current US national debt (federal, state, local) is a bit over \$20 trillion, whereas our annual GDP, is under \$20T.
- This doesn't include Social Security debt, which is said to be \$10T on a basis that assumes the program will sunset in 75 yrs.
- If the SS debt is valued w/o sunset, it is about \$25T. This is the amount that must be invested now to balance the program.
- The Medicare debt is much worse; adding Medicaid, PBGC, FDIC brings the total to \$100T+ (a recent estimate is \$211T).
- When this tsunami of debt comes due, at more than 5xGDP, it will sink the economy, and those who rely on it (see above).



Thank You