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## What's Wrong with the Professions?

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# DICTA

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## Calendar

- March 1—Denver Bar Association regular monthly luncheon meeting, 12:15 P. M., Chamber of Commerce dining room.
- April 5—Denver Bar Association regular monthly luncheon meeting, 12:15 P. M., Chamber of Commerce dining room.
- May 3—Denver Bar Association regular monthly luncheon meeting, 12:15 P. M., Chamber of Commerce dining room. This is the annual election meeting for the election of officers, trustees, and members of the Board of Governors of the Colorado Bar Association, and is the final regular monthly meeting until fall.

## What's Wrong with the Professions?

By EDWARD B. WILCOX

*Of Chicago, President of the American Institute of Accountants. An address delivered at a banquet of the Colorado Society of Certified Public Accountants, April 22, 1947, at which members of the Colorado bar were guests.*

It may not seem entirely gracious to address representatives of two honored professions on the subject of what is wrong with them, but such is my respect for both of them that I think an inquiry will disclose only faults that are mostly superficial, and virtues that are relatively profound. A prominent philosopher, statesman, and educator from my part of the country once said that the trouble with government was that there were too many people mixed up in it. That is probably what is wrong with the professions. I have heard it said that accounting couldn't possibly be as difficult as some think, because—well, just look at the people that are in it. Of course you all know that a public accountant is only a bookkeeper who drinks out of a job. And in case you don't know the description of him popularly attributed to Elbert Hubbard, here it is:

The typical auditor is a man past middle age, spare, wrinkled, intelligent, cold, passive, non-committal, with eyes like a codfish, polite in contact, but at the same time unresponsive, cold, calm and damnably composed as a concrete post or a plaster of paris cast; a human petrification with a heart of feldspar and without charm of the friendly germ, minus bowels, passion or a sense of humor. Happily, they never reproduce and all of them finally go to Hell.

On the other hand, I have been reliably informed that the law business

is the backbone of the legal profession, and that the theory of our courts is that if two liars are set to tripping each other up, the truth will emerge. I have also heard not so long ago about the lawyer who won a difficult case and received the favorable decision while his client was out of the city. The lawyer telegraphed in some jubilation. "Justice has prevailed." His client wired back: "Appeal at once." And when the lawyers get me down, I take some comfort in thinking about a course in accounting offered to lawyers by the School of Commerce at Northwestern University in Chicago some years ago. The course had the inspired title, "Accounting for Lawyers."

Perhaps the trouble with the professions is that they set high standards for people who are only human. It would be a fair question to ask, "What is a profession?"; and it may be an equally fair one to ask why people seem to want to be regarded as professional. The prestige of the term apparently does not apply in the field of athletics, nor have I ever observed that membership in the oldest profession is regarded as strictly honorable. Alexander Woolcott has contributed a story to the anthology of professionalism. It begins with a touching picture of an old broken-down tragedian sharing a park bench with a bedraggled and unappetizing street walker. "Ah Madame," says the tragedian, "Quelle ironia! The two oldest professions in the world—ruined by amateurs."

Webster tells us that a profession is a calling in which one has acquired some special knowledge or skill and offers to use it in instructing, advising, or serving others. But in this day of specialized occupations, that would include almost everybody. There is undoubtedly some professional nature to the services of barbers, manicurists, hairdressers, pullman porters, and book salesmen, but we need a narrower definition than that. Services become more highly professional when they require so much training and experience that the layman who depends on them cannot measure their value, and must rely on his confidence in the professional man. It then becomes an obligation of the profession to set up standards of practice and codes of ethics to protect laymen from the incompetent and the unfit. And I think the highest degree of professional attitude is achieved when the ideal of service is placed ahead of desire for reward. The profit-motive is appropriate to business but not to the professions. The ideal of service seems to me to be evidenced in the legal profession by acceptance of the obligations and restrictions placed on one who becomes an officer of a court. In public accounting it finds its highest expression in an acknowledgment of a primary obligation to the entire public, whenever an opinion is furnished with respect to financial statements.

It is gratifying that the professions of law and accounting have recognized that service comes ahead of reward. A National Conference of Lawyers and Certified Public Accountants created in 1944 by the American Bar Association and the American Institute of Accountants adopted as an initial resolution the following objectives:

1. To further the development of professional standards in both professions.

2. To encourage cooperation between the two professions for the benefit of each and of the public.

3. To consider misunderstandings involving fundamental issues between the two professions and recommend means for disposing of them.

4. To devise ways and methods of expanding the usefulness to the public of both.

5. To seek means of protecting the public against practice in these respective fields by persons not qualified to serve the public.

The language of those objectives put service ahead of profit and is professional in the highest sense. Then, coming closer to the areas of cooperation and conflict, which are only opposite sides of the same coin, the national conference adopted another resolution:

WHEREAS, Lawyers and certified public accountants are trained professional men, licensed by the several states, and required to bring to their public service qualifications both as to competency and character; and

WHEREAS, The American Bar Association and the American Institute of Accountants have adopted codes of ethics to assure high standards of practice in both professions:

BE IT RESOLVED, In the opinion of the National Conference of Lawyers and Certified Public Accountants:

1. That the public will be best served if income tax returns are prepared either by certified public accountants or lawyers.

2. That it is in the public interest for lawyers to recommend the employment of certified public accountants and for certified public accountants to recommend the employment of lawyers in any matters where the services of either would be helpful to the client; and that neither profession should assume to perform the functions of the other.

3. That certified public accountants should not prepare legal documents such as articles of incorporation, corporate by-laws, contracts, deeds, trust agreements, wills, and similar documents. Where in connection with such documents questions of accountancy are involved or may result, it is advisable that certified public accountants be consulted.

This resolution, like the one setting forth objectives, is on a high professional level of service. It recognizes that law and accounting naturally supplement one another by bringing different points of view and different backgrounds of training to the solution of common problems, and it seeks to maintain the individual nature of those different services so that they may both be of greatest value. Every lawyer or accountant who places service ahead of profit will endorse that resolution.

One of the fruits of the last war is the laboratory experience of lawyers and accountants, working together in matters of public service. They met and worked together in devising the legal and accounting framework of our tre-

mendous war production. In cost determination, renegotiation of war contracts, and contract termination, lawyers and accountants served the government and learned increasing respect for each other. And our government has learned more about using them both than it ever knew before, so that it now seems to have adopted a permanent policy of calling on these two professions as a matter of course whenever problems in their fields arise in public affairs. And they have not stopped arising. It is doubtful that revisions of utility regulation, to cite one example where legal and accounting problems are closely interwoven, will ever be attempted without help from both groups. And it is probable that no corporation laws which necessarily include legal requirements and accounting terminology, will ever be drafted without aid from the legal and accounting professions. And this aid will be, as it has always been, purely service without hope of reward.

Possibly this unpaid service may lack charm to some of us. I am reminded of the bridesmaid who said to another bridesmaid, "Well, the groom certainly got a prize." "Did he", said the other, "What was it?" But I think the test of the truly professional point of view is in the eagerness with which opportunities for service are welcomed, and I think the record set by lawyers and certified accountants, is of great credit to them both.

In the service of our clients the opportunities for lawyers and accountants to supplement one another, to the ultimate advantage of the client, are broad and varied. The field of wills, estates, and trusts affords one of these opportunities. The drawing of the original document, probably a will or a deed of gift, is unquestionably a job for a lawyer. But if the resulting trust estate is at all involved, this original instrument will require accounting interpretation. It would be well, therefore, to have an accountant collaborate at the outset. Thereafter the job of auditing to verify accountability is obviously in the field of accounting, but as legal interpretations of transactions are required, the lawyer should collaborate. Similarly mortgage indentures, profit sharing agreements, and percentage leases are legal documents, involving legal liabilities and consequences in which the accountant is not versed, but they also contain accounting terminology and require accounting interpretation. The mortgage indenture which specifies maintenance of an ill-defined working capital is apt to be as productive of trouble as one with a defective title. The profit sharing agreement which is vague as to the determination of profit to be shared, or worse, which attempts an unworkable definition of it, is just a bad job. And a percentage lease based on profits, for example, of a chain store unit, which omits to say whether or how general overhead may be prorated against the individual store, simply paves the way to controversy. Neither a lawyer nor an accountant can handle such matters alone with safety to his client's interest.

But these are only a few of the common fields where law and accounting come together. In mergers and tax-free reorganizations both legal and accounting experience are required. The preparation of a corporate charter is a

legal job, but an accountant can help in determining a natural business year, probably much more advantageous than one selected by the blind process of writing down December 31. And perhaps most important of all are those areas of service where the accountant is the expert witness or arbiter, providing that independence on which both parties in any situation may rely, while the lawyer has the role of advocate for his client. All of these areas of service and many more, offer opportunities for cooperation by which nobody is hurt and everybody benefits. It would seem that lawyers and accountants would be constantly calling on each other for help in the affairs of their clients, and that their own interests would engender the utmost goodwill toward each other. And, in fact, this is my own experience, and that of most accountants whom I know.

But as between the organized professions there is an unhappy area of conflict in the income tax field. This seems to arise largely from the view that income tax practice really belongs to lawyers but has fallen into the hands of accountants because the legal profession ignored it in its earlier years, and the accountants picked it up. To the best of my recollection I have never encountered a lawyer in connection with my practice as an accountant, who held this view, but I have encountered bar association committees that held it. And obviously that view leads to the conclusion that this lucrative field should be restored to those to whom it rightfully belongs. Because this conflict is so regrettable between the professions which have so much in common and such great cause for harmony, I wish to speak for a moment about the assumption that I think underlies and causes it.

This assumption is basically that income taxation lies in the field of law because the tax is levied by virtue of a statute. But clearly when men pursue specialized callings they have to be in a position to advise clients about the law which is directly applicable to the work they are called on to do. An architect, for example, when he draws plans, has to be familiar with a multitude of statutes and rules and regulations and their interpretations by administrative agencies and courts, and he has to discuss these matters of law with his client, and advise him about them. The same might be said of engineers, chemists, real estate brokers and many others. The question about income tax practice, therefore, is not whether it is affected by law, but whether it is primarily a matter of law.

Our first income tax laws were difficult unworkable things defining income and deductions in most unrealistic ways, and creating a threat of prolonged and involved confusion in the determination of taxes. One of the earlier evidences of cooperation between lawyers and accountants was the group of volunteers who aided Congress in curing this situation by drafting the Revenue Act of 1917 and the regulations under it. In these regulations, again and again, controlling recognition was accorded to approved standard methods of accounting as the basis for determining taxable income. It was this law and these regulations which really placed income tax practice squarely

in the field of accounting, not the fancied alertness of accountants. And the necessity for this step became evident from the failure of prior attempts to define taxable income by law, instead of by reference to generally accepted accounting principles. Taxation based on income, is therefore clearly an accounting problem, and knowledge of income tax laws, regulations, and decisions is a necessary part of the training of accountants.

It might be argued that much of the ground gained in 1917 has been lost, and that income taxation has become increasingly statutory and judicial. There is some truth in this, but to a considerable extent that is what is wrong with income taxation today. There is an interesting article on this very point entitled "Tax Accounting Incongruities", by J. K. Lasser in the March 1947 number of the *Journal of Accountancy*. Here the author lists examples of bad accounting which have become established in the determination of taxable income. Even a brief summary of that list will show how far afield we have gone.

A contested expense item is not deductible.

Excessive depreciation on assets sold cannot be corrected.

Receipts are taxable even though they may have to be returned.

Income received in advance is taxable even though there are unfulfilled obligations to perform future services.

Reserves required by proper accounting are denied.

Discounts on sales are not deductible until the customer pays his bill.

Salesmen's commissions are not deductible if contingent on collection, even though the related sales were taxable.

Those are the items listed by Mr. Lasser as bad accounting in the rules applicable to taxpayers on an accrual basis. I have chosen this list rather than the one referring to taxpayers on a cash basis because the latter is seldom adopted by corporations, and has little relation to good accounting anyway. It is a fundamental rule of accounting that income be determined by a process of matching costs and expenses against related revenues. This is the rule which is violated by these examples. And the examples are predominantly the work of courts and the Board of Tax Appeals which is now a court. These are among the things that make us complain today about the inequities and complications in our tax structure, and their cure lies in the restoration of income determination for tax purposes to the field of accounting where it logically belongs, and where it was clearly placed in 1917.

Oddly enough we find endorsement of this view by the Supreme Court of the United States in its decision in the *Dobson* case handed down on December 20, 1943. The court said in part:

"After thirty years of income tax history the volume of tax litigation necessary merely for statutory interpretation would seem due to subside. That it shows no sign of diminution suggests that many decisions have no value as precedents because they determine only fact questions peculiar to particular cases. Of course frequent amendment of the statute causes continuing un-

certainty and litigation, but all too often amendments are themselves made necessary by court decisions. . . . Our modern income tax experience began with the Revenue Act of 1913. . . . The law was an innovation, its constitutional aspects were still being debated, interpretation was just beginning, and administrators were inexperienced. . . . Precedents had accumulated in which courts had laid down many rules of taxation not based on statute but upon their ideas of right accounting or tax practice. . . . But conflicts are multiplied by treating as questoins of law what really are disputes over proper accounting. The mere number of such questions and the mass of decisions they call forth become a menace to the certainty and good administration of the law.”

It seems to me that these words go even further than recognition that determination of income for tax purposes is inherently a part of the field of accounting. I think they charge the accounting profession with a duty to help in the establishment of a sound national tax program and policy—a duty which the American Institute of Accountants has long recognized. For many years the institute has urged Congress to appoint a non-partisan tax commission, on which accountants among others would serve, to develop a program of tax simplification and to establish a sound and consistent tax policy. But if this public duty rests on the accounting profession, there can be no question as to the place of accountants in income tax practice.

On the other hand, there are parts of the field of income taxation which clearly require the services of lawyers. Questions of domicile, validity of marriage, construction of wills or other legal documents on which tax liability may depend, and research requiring knowledge of law outside the tax law itself, should be handled by lawyers. Sometimes there are problems in the preparation of tax returns which have no relationship to determination of income. An example of this, although an outdated one, was the surtax on undistributed profits which we had in 1936 and 1937, in the case of a corporation legally unable to pay dividends. And it scarcely needs saying that the prosecution of tax cases in courts of law is the business of lawyers, not accountants. But the selection of experts to render professional services in the tax feld should always be made from the single standpoint of maximum safety and service to clients, and no other consideration should be controlling.

It is at this point that I come closest to my announced topic, “What’s Wrong with the Professions,” because considerations of the public interest may easily be perverted into self-seeking. Certainly any proposal that rights to practice in an income producing field be limited to a restricted group, may well be suspect. And the professions, like Caesar’s wife, must be above suspicion. Rights, privileges, and immunities accorded professions are only justifiable to the extent that they are in the public interest. When they are turned to uses of personal aggrandizement, they fail in their purpose, becoming only smug abuses of power. And privilege and prestige will most surely be lost if they are guarded over-jealously with forgetfulness of their purpose. The professions depend on public confidence. To be maintained that confidence



must be deserved. But it will be lost if the professions engage in unworthy jurisdictional disputes which seem designed to obtain privileges for some rather than protection for others.

The American Institute of Accountants has recommended uniform state accountancy legislation intended to limit the practice of one aspect of public accounting in a way which may appear to violate the principles I have just stated. I want to talk about this recommended legislation for a few moments both because I hope you will join me in the belief that the position of the institute is soundly based on the public interest, and also because I think it affords an illustration of the optimum extent of restriction on rights to practice.

When a public accountant furnishes an opinion on financial statements it is with the expectation that third parties and the public generally will place reliance on that opinion even though the persons doing so had no voice in the selection of the accountant, and may have no knowledge of his qualifications. And the public accountant acknowledges a primary duty to this unseen audience. It is therefore in the public interest that only qualified and responsible persons be permitted to render this particular type of service. Since the best available mark of fitness is the C.P.A. degree, it is the recommendation of the American Institute of Accountants that this activity be regulated by law and restricted to certified public accountants, subject only to additional registration of others already in practice. But it is not proposed to regulate or restrict practice in any other part of the field of public accounting. It might be argued that some of these other parts of the field should also be regulated because clients can be victimized by incompetent services, but in those cases the argument is neither so clear nor so strong. Third parties are not involved, and the client selects his own accountant on the basis of confidence in him. It is doubtful that limitation of his right to make such a choice could be justified, or that it would do more good than harm. The accounting profession, therefore, has suggested only what seems clearly essential in the public interest, and has avoided that area in which motives might appear to be mixed.

In all of this discussion I have alluded to what might be called a public relations aspect. This is important, not so much as salesmanship of our services that we may become rich, but fundamentally because the value of our services depends on public confidence. It goes without saying that that confidence must be based on merit, but merit is not enough. To attain maximum usefulness we must be understood, appreciated, and trusted. Realizing this the American Institute of Accountants recently caused a small pilot survey to be made in which 216 highly placed executives including bankers, general businessmen, manufacturers, labor leaders, and investment analysts were interviewed on their attitudes and beliefs concerning various professional groups. We found out what they thought of accountants, and in the process we also found out what they thought about lawyers and some others. While this survey was too small to be entirely conclusive, I think you may be interested in some of its high lights.

When asked about professional groups these executives thought first of physicians and second of lawyers. Certified public accountants stood sixth in a list of fifteen. Perhaps this is even better than the accountants might have expected because their professional status is relatively new. Teachers were regarded as the group maintaining the highest standards; certified public accountants were second, and lawyers were third. The teachers stood high because they were regarded as idealistic, altruistic, ethical, and important to the community. It may come as a shock to some of you that certified public accountants considerably outranked lawyers on the ground that accounting was effectively controlled by laws, professional organizations, and other means. The lawyers, on the other hand, were criticized as being interested only in fees and private gains, and willing to do anything to please an employer. The principal criticism directed at certified public accountants was that they were interested only in their work, and participated but little in community life. Possibly that bears out Elbert Hubbard's idea of us. Accountants were regarded as highly ethical, and most of those interviewed believed that a C.P.A.'s certification on a financial statement was pretty strong evidence that the statement was complete, accurate, and impartial. When doubts were expressed they were mostly on the grounds that the accountants' investigations were lacking in thoroughness.

When Robert Burns offered up his prayer that some power give us the gift to see ourselves as others see us, he probably had not heard of opinion surveys. But his prayer has been answered. It must be remembered that the summary of findings I have just given you is based on a very small number of interviews, and yet I think it is highly probable that a larger number would show similar results. But it is another matter to decide whether these opinions of us fairly reflect our faults and virtues, or whether they indicate that we are misunderstood. I think both of these possibilities are true to some extent, and that is what is wrong with the professions. It's really quite simple. We need only to correct our faults, improve our virtues, and make known the truth. And although that simple task is tremendous, it is worthy of all the effort it may take, because our opportunities are so great.

It may be presumptuous in a layman to tell lawyers where their opportunities lie, but I remember the stirring words of President Conant of Harvard, a few years ago, when I heard him award degrees to graduates of the law school. He said, "I now declare you competent to practice in the field of those wise restraints which set men free." We in this country pay a high price in political mediocrity and governmental inefficiency, for our civil liberties and our popular control of government. I think it is the great opportunity of the legal profession to see that that price is not paid in vain, that a government of laws, not of men, truly serves our people, and that the restraints of law lead always to freedom.

The opportunities of the accounting profession are of a different nature,

but they are no less far reaching. It holds in its hands the conscience of the business community in this country. It is the guardian of our business ethics. Individual businessmen may from time to time chafe at restrictions and confuse a reasonable desire for freedom with a longing for a license to cut too many corners. It is the responsibility of the independent public accountants, in so far as financial representations of businessmen are concerned, to see that everything is kept upright and square. Ours is an economy in which freedom of action is still cherished as a right in the field of business and is believed by many to contain the essential elements of continuing and growing prosperity. One of the great reasons for confidence in this economic scheme is that it has itself created the accounting profession. The independent certified public accountant as the insurer of integrity in financial representations, has been developed by the need which has been felt within what we generally call our free enterprise system.

When Christ spoke from the mountain to his disciples he said, "Ye are the salt of the earth; but if the salt have lost its savour, wherewith shall it be salted? It is thenceforth good for nothing but to be cast out and to be trodden under foot of man." That could have been said of us.

But if we succeed in meeting the need for integrity and dependability in financial representations, and if we continue to adapt ourselves to the growing and changing needs of the business world which we serve, then we will be providing one essential ingredient in the scheme of American economy which is necessary to stability and prosperity. And anything which can do this increases the probability of a successful solution of the greatest crisis that the world has ever seen. A stable and prosperous America can be a foundation for world credit and world trade, and credit and trade can create those healthy conditions throughout the world which are essential to peace. American economic stability and prosperity will answer the question which the world is asking today, whether economic collapse is a price which our form of economy must pay for peace. And if we can prove that it isn't we need have no fear from the battle of ideologies that rages across the frontiers of the world today.

There really isn't very much wrong with the professions. But the opportunities that face us are so great that we may well pause in humbleness before them, and question whether we are equal to them. Certainly we have no excess capacities to waste in quarrels between ourselves. Nor have we anything to gain. Rather, by joining in service to that community in which all men live, the professions of law and accountancy can make great contributions to the building of a better world than we have known.