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BOOK REVIEWS

Courts of Injustice. By I. P. Callison. New York: Twayne Publishers. 1956. Pp. 760.

This is a long tiresome invective against the lawyer and particularly the North Carolina lawyer. The author professes twenty-five years intensive research went into this book, but only its length supports this claim. References and statements of existing conditions indicate the research stopped many years ago, comments by the author indicate the book was written by 1946. There is little to indicate any comprehensive knowledge of the last decade of the work of Bar Associations, Courts, Judicial Councils, Law Schools or other institutions attacked. Most of the objections he voices which have any merit have been the subject of study and corrective actions by these groups during this period.

The theme of the indictment against the lawyers and the courts is taken from a quotation from Dean Pound where there is a reference to an Act passed by the North Carolina Legislature in 1796 changing the powers exercised by the trial judge. Thirty-five states are said to have followed North Carolina and all of them are lumped by the author into a category of criminals and worse. A sample of page after page of unrestrained attack upon the legal profession and the courts is in this quotation from page 731:

So long as this condition exists, so long as the American judge remains a figurehead, so long as selfish men remain in control, just that long will the judicial system be subverted to serve the mercenary ends of a debauched profession. When it is pointed out that it was over a hundred and fifty years ago that lawyers in the North Carolina legislature strangled the American judge; that since that time the crime has been duplicated by the lawyers in thirty-six other states; that the policy has been endorsed in principle by lawyers in the remaining thirteen states; that not a single attempt has been made by the lawyer members of the legislature in any state to restore the judge to his rightful position as master in the courtroom; that without this the effective administration of the law becomes impossible—when these incredibly wretched facts are brought to mind the situation looks hopeless indeed.

Typical of the bewildering marshaling of facts is that it bothers the author the least of all that North Carolina plus “thirty-six other states” and “the remaining thirteen states” adds up to 50 states. What is

meant by the "effective administration of the law" is obscure throughout the book.

Referring again to the North Carolina crime compounded in the other states, he has this to say:

. . . The incredibly wicked deed was done with evil intent and malice aforethought in thirty-seven state legislatures and not one of the guilty parties has as yet been hanged. I use the word hanged advisedly . . . In fact it was that measure which gave our beloved America the most monstrous crime record of any nation on the face of the globe. I submit that this one indictment not only justifies but demands resort to radical measures, even hanging.

It is difficult to say whether the hanging of the North Carolina legislature of 1796 was advocated or not, and by page 731 all interest in finding out is lost.

The author pays his lack of respect to the selection and tenure of judges; the failure of criminal and civil justice; the lawyer; the rules of procedure and the law of evidence; litigation; and delightedly expounds the old catch-all, meaningless phrase "the law's delay." He holds up for emulation the English, Canadian and French judicial systems and demonstrates a superficial knowledge of these systems and little, if any, comprehension of their comparative historical development and the relationship there with the development in the United States.

The only satisfaction the book affords a lawyer is that feeling one has when the defense of a substantial action is undertaken and the plaintiff falls so far short of making out a case that there is no doubt about the outcome. The title can be rolled on the tongues of those ready to find fault with lawyers and the title demands serious consideration—but the book doesn't.

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Professional Ethics of Certified Public Accountants. By John L. Carey. New York: American Institute of Accountants. 1956. Pp. xx, 233. \$3.00.

This is a completely revised version of a book by the author which was published in 1946. For the past 26 years Mr. Carey has been closely identified with the accounting profession as Executive Director of the American Institute of Accountants, the national association of certified

public accountants. He expresses the need at this time for a critical review of the ethical concepts of the profession in the following language:

"A lot has happened to the accounting profession in ten years. The number of certified public accountants has increased from 28,000 to 54,000 and the membership of the American Institute of Accountants from 10,000 to 28,000. The stature of the profession has increased more than its size, and the scope of its services has broadened. It is attracting more public notice—and sometimes criticism. Ethical questions are arising which had not formerly required attention, and many of them cannot be answered by reference to the existing rules of professional conduct. . . ."¹

Today the certified public accountant performs a variety of services, the most important of which are auditing, tax and management services. In his traditional role as an auditor, the accountant is held to a special degree of independence which should be understood before approaching other questions of ethics. As the author points out:

"Independence, in the sense of being self-reliant, not subordinate, is essential to the practice of all professions. . . .

". . . .

"But independence has come to have a special meaning to certified public accountants in conjunction with auditing and expressing opinions on financial statements. . . . It is most important that the CPA not only shall refuse to subordinate his judgment to that of others but that he be *independent of any self-interest which might warp his judgment* even subconsciously in reporting whether or not the financial position and net income are fairly presented. Independence in this context means objectivity or lack of bias in forming delicate judgments."²

This "independence" is required of the certified public accountant because his audits may be relied upon by third parties, such as banks, stockholders, bondholders or credit organizations. The Securities and Exchange Commission has promulgated rules which set objective standards of independence for auditors in preparing reports for that agency.

When the accountant undertakes to perform other services, such as tax and management services, the accountant is not held to the standard of "independence" which is required by his auditing services. Dean Griswold has questioned this dual standard of responsibility in the following language: "Can this independent quasi-judicial function

¹ CAREY, PROFESSIONAL ETHICS OF CERTIFIED PUBLIC ACCOUNTANTS, p. vii (1956).

² CAREY, *op. cit. supra* note 1, at 20-21. (Italics in original.)

[auditing] be properly performed by a person who also undertakes to act as advocate for the client?"³ Leaders of the accounting profession have replied that by giving an independent opinion on financial matters, the accountant should not be foreclosed from serving his client in other ways.

The author poses the question as to "whether the accounting profession has wholly avoided ambiguity in delineating its own concept of 'independence,' as it may apply to various phases of the certified public accountant's professional work, or to various situations in which he may find himself."⁴ Certainly this is a phase of ethics in which the accountant's position is vulnerable. Since independence is a state of mind, occasions may arise in which there is a conflict of interest between the accountant's role as independent auditor and his other services. Since the Rules of Professional Conduct do not deal directly with this problem, it seems that there may be a certain gray area in which the accountant operates when rendering services in addition to his auditing function.

In the field of taxation, accounting and legal questions are often mingled. The filling out of a tax return usually involves the assembly of financial data which is an accounting function while tax litigation is in the legal field. In the intervening area unanswered questions of ethics continually arise. Mr. Carey divides these questions of ethics into two categories as follows: (1) ethical responsibility to the client, government and to the general public, and (2) ethical questions involved in relations with the legal profession.

The accountant's primary responsibility is to his client and it is here that the accountant departs from the standard required of him in rendering auditing services to become his client's advocate. In this capacity the accountant is limited to some extent because he is not entitled to "privileged communication." He has a responsibility to the government as an agent enrolled to practice before the Treasury Department and as a professional man he has a general responsibility to the public at large.

In regard to the second category the accountant has the ethical responsibility to safeguard the best interests of his client by refraining from giving service or advice which requires the training and skill of a member of the legal profession. Therefore, when a question of law arises, the accountant should advise his client to seek legal advice. This view is in accord with the Statement of Principles Relating to Practice in the Field of Federal Income Taxation promulgated by the National Conference of Lawyers and Certified Public Accountants in 1951 which

³ CAREY, *op. cit. supra* note 1, at 31, quoting from J. ACCOUNTANCY, Dec. 1955, p. 31.

⁴ CAREY, *op. cit. supra* note 1, at 48.

emphasized the need for cooperation between the two professions. The Treasury Department, which regulates the practice of agents before it, issued a statement on January 30, 1956, which indicated that enrolled agents and attorneys should respect the appropriate fields of each in accordance with the Statement.

The main difficulty in determining the proper sphere of accountants in tax practice is in determining what is "a question of law." Since the publication of Mr. Carey's book, cooperating committees of the American Bar Association and the American Institute of Accountants have worked out a plan whereby questions that may arise between the two professions concerning the field in which a particular matter falls may be resolved by a national committee and state committees of lawyers and certified public accountants set up for that purpose. By this procedure, precedents will be built up which will serve as a dividing line between the two professions and the problem of defining "a question of law" is avoided.

The employment of lawyers by certified public accountants has been sharply criticized by members of the legal profession. Mr. Carey is of the opinion that a lawyer may be hired "as a member of the staff of an accounting firm if he does not hold himself out as a lawyer or render any services to clients of the firm which his employers are not authorized to render."⁵ This principle was agreed upon at a meeting of the National Conference of Lawyers and Certified Public Accountants on February 9, 1953. Nevertheless, it is to be expected that this practice will continue to be criticized and the problem remains of determining the services which the accounting firm is authorized to render. The joint committees of lawyers and certified public accountants, previously referred to, can do much in this area to promote harmony between the professions.

The above discussion has covered the main areas of this book which are of interest to the legal profession. Lawyers who come into contact with financial statements prepared by certified public accountants will find of interest the section concerning Opinions on Financial Statements.

Mr. Carey has performed a service to the accounting profession in making this comprehensive study. This book should be a valuable source of reference for practitioners and required reading for all aspiring certified public accountants.

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⁵ CAREY, *op. cit. supra* note 1, at 18.

