MORE LIGHT THAN HEAT

ON THE LAWYER'S PARADOX: DUAL PRACTICE

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APOLOGIA

The Levy-Sprague article in the December *American Bar Association Journal*[1] calls for responses. This article is one writer's response. May it shed at least some light on what may be happening! May it direct more light to what could be a later and perhaps a devastating result! May it be as the nail that held the shoe that supported the horse that bore the rider.[2] May it prevent "A little neglect [that] may breed mischief."[3]

MORE LIGHT THAN HEAT!

In a subject which often generates more heat than light, it is difficult, and certainly quite a challenge, to create an atmosphere of objective appraisal. Such is the problem, the sad necessity, of the dual practitioner in law and accountancy. This article is addressed to the proposition that since it is obvious that more light than heat is greatly to be desired, and is the professional manner of settlement, then if heat is necessary to produce the light, it may be necessary to let the heat burn itself out in order that when the smoke and the ashes are cleared away, the professions may be enriched by recognizing a well refined product, dual practice, which has demonstrated its ability to withstand the crucible of rampant inter-professional intolerance.

It is inevitable that under a circumstance which, unfortunately, has already generated quite too much heat, some opinionated or prejudicial viewpoints have resulted, regardless of who may be called upon or permitted to give outlet to the expressions.

THE LEVY-SPRAGUE ARTICLE

With considerably mixed emotions,[4] members of both the accounting and the legal professions have read in the December 1966 journals, the

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1. The "Levy-Sprague" article refers to the widely publicized *Accounting and Law: Is Dual Practice in the Public Interest?* published simultaneously in 52 A. B. A. J. 100 (1966); J. ACCOUNTANCY, Dec., p. 45 (1966).
2. FRANKLIN, *Maxims,* prefixed to POOR RICHARD'S ALMANAC (1758).
3. *Ibid.*
4. Slavitt, *Views of Our Readers, Messrs. Levy and Sprague are Drawn and Quartered,* 53 A.B.A.J. 100 (1967). *Letters to the Journal, Re-accounting and Dual Practice . . .,* J. ACCOUNTANCY, Feb., p. 28 (1967).

exposition jointly authored by the two-profession co-chairmen of the National Conference of Lawyers and Certified Public Accountants. Little or no imagination is required to feel that from the data submitted by Levy and Sprague, unprejudiced readers may as readily conclude quite the opposite than those conclusions diligently pressed by the joint authors. In other words, it is easy to read between the lines that Messrs. Levy and Sprague failed to offer more than a modicum of substantive support for their purposeful and intensive objection to dual practice. A presumption would seem to be justified that those co-chairmen had made the best of their oportunity; their failure to be convincing must cast grave doubts upon the propriety of their obviously opinionated conclusions, which were repugnant to the opinions of many of the members of both the American Bar Association and the American Institute of Certified Public Accountants.[5] To many readers, it seems that the arguments presented by Levy and Sprague refuted as often as they supported their conclusions. At the very best, the product of their writing must be considered as less than impressive.

In Advocacy of Dual Practice

Persons who read beyond this point may well and properly accuse this writer of recreating the adage of the "pot calling the kettle black," for whereas the Levy-Sprague article seems to try to create the impression of objectivity, the background of expressions by those joint authors[6] belies the ostensible objectivity, even in greater measure than that the substantive matter they set forth fails to support their conclusions. On the other hand, this writer here and now puts his gentle reader on notice that this article is one of advocacy, for reasons set forth herein, advocacy of the obligation of both professions to recognize and support dual practice as a factor in the improvement of both the legal and the accounting professions and the services they render to the public. An opinionated person already opposed to dual practice will not enjoy reading further, but he is warned that as John Donne wrote, so we may say of the legal profession and on behalf of each of its members: "Any man's death diminishes me, because I am involved in Mankinde; and therefore never send to know for whom the bell tolls; It tolls for thee."[7]

The Pros and Cons

The Levy-Sprague article published in the December issues of the Ameri-

5. The *Views of Our Readers* and *Letters to the Journal, supra* n. 4, represent a very small sampling of the total reactions, but these reactants were eleven to one in favor of dual practice. This strongly suggests at least a heavy preponderance of opinion in its favor.
6. See Slavitt, *supra* n. 4, at 108.
7. Donne, *Devotions;* but this quotation is given currency as a prelude to Hemingway's For Whom the Bells Tolls.

CAN BAR ASSOCIATION JOURNAL[8] and the JOURNAL OF ACCOUNTANCY,[9] and the responses which are expected to be published in the March issues of the same journals,[10] go deeply into the controversy. An earlier and quite methodical article by Louis Goldberg,[11] which appeared in the DUKE LAW JOURNAL, explores in such excellent and extensive manner the arguments pro and con, that little light would be generated if this article were merely to restate the underlying premises, the stated grounds of attack by a few of the bar association committees, and the defenses offered on behalf of the dual practitioners.

WHAT IS NOT OPPOSED

Only a relatively few people oppose dual practice, but, as clearly demonstrated in communist aggressiveness, only a few may be needed to generate a lot of heat. First by process of elimination, let's recount what those critics do not oppose: No one opposed to dual practice seems to criticize the high standards required for attaining the license to practice law or those requisite to become a certified public accountant. No one seems to feel that in setting those standards high, the legislatures of the several states erred. No one seems to feel that a person successful in thus attaining recognition in one profession should be precluded from preparing himself for and actually attaining like recognition in the other profession. No one seems to oppose, but some fail to realize, that the dual practitioner is required by each professional discipline to maintain ethical standards and that violation of either the Canons of Ethics[12] of the Bar Associations or the Rules of Professional Conduct[13] of the American Institute of Certified Public Accountants can and at times does result in the suspension or expulsion of the violator. Of the critics of dual practice, none seems willing to admit the obvious: that the Canons of Ethics and the Rules of Professional Conduct, together with the trial procedures for implementing their enforcement, provide to each profession full protection against violation by a dual practitioner on any of the grounds stated for their attacks.

WHAT *IS* A DUAL PRACTITIONER?

In order to seek an answer to the question of the grounds of attack, let us look, first, to see just what is this "awful thing" which has been designated as the dual practitioner.

8. Levy-Sprague, *supra* n. 1.
9. *Ibid.*
10. Mintz, *Accountancy and Law: Is it or Should it be Proscribed?* 53 A.B.A.J. 231, (March, 1967). Brent, *Accounting and Law: Concurrent Practice is In the Public Interest,* J. ACCOUNTANCY (March, 1967).
11. Goldberg, *Duel Practice of Law and Accountancy: A Lawyer's Paradox,* 1966 DUKE L.J. 117.
12. A.B.A., CANONS OF PROFESSIONAL ETHICS.
13. AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, BY-LAWS AND CODE OF PROFESSIONAL ETHICS.

For one thing, he engages in the practice of law, and at the same time, he engages in practice as a certified public accountant. Is that combination, per se, evil?

That a lawyer-banker or a lawyer-salesman or a lawyer-real estate operator could (and in fairness should) be similarly charged is overlooked by the opponents of dual practice.

That the dual practitioner is obligated to comply with both the Canons of Ethics of the legal profession[14] and the more stringent Rules of Professional Conduct of the accounting profession[15] would seem to mitigate the objections, especially when comparable objections could be raised against the dual activities of the lawyer-banker, the lawyer-salesman, the lawyer-real estate operator, not to mention countless others who are engaged in various business activities which are not controlled by any rules of professional conduct. So obviously, the mere engagement in another line of activity concurrently with the practice of law is not the damning circumstance.

In no state is a person who has passed the bar examination or the certified public account examination precluded, per se, from becoming a candidate in the other profession. No statute in any state precludes practice in both professions by a person who has successfully passed both such examinations, has paid the usual current fees, and has not been the subject of disciplinary action such as would disbar him or evoke his certificate.[16] That dual practice is subjected to attack from some quarters necessitates recognition of the stringent requirements which must be met by a person who thus becomes a potential victim of such attack. On the one hand, in order to be admitted to a professional examination in either law or accountancy, a candidate must, in many states, have a four year college education. In all states, he must accomplish work at least equal to a bachelor's degree. In each profession, he must prepare himself through self discipline and study to be admitted to and he must pass successfully the bar examination on one hand and the certified public accountant examination on the other.[17] In most states, a certain amount of practical experience in professional or high level accounting must be also accomplished before a certificate as a certified public accountant will be issued to him. In other words, the ambitious person who is tenacious enough to accomplish the coveted recognition of competency in two professions instead of only one must exert added effort, added self discipline, added study, and must, in general, be in the category of a more assiduously devoted student, a more widely educated person. Also he incurs voluntarily the continuing professional obligation to keep himself currently abreast of professional develop-

14. Goldberg, *supra* n. 11, at 121, 123, 125-230.
15. *Ibid.*
16. *But see* "Newsworthy Events" at the end of this article.
17. The relatively minor variations among the statutes of the several states are too numerous for listing here, but the requirements are at least reasonably stringent as to both professions in each state.

ments and advancement in learning in two professions, instead of only one. Would it not be most unseemly, or indeed unconscionable, for the attacks on dual practice to constitute penalties for perseverance, hindrances to education, and handicaps to acquiring and sustaining broader educational obligations?

WHO IS CHALLENGED?: "JAWBONING"

And yet the person described above, the person who has so perservered, so educated himself, so obligated himself to continually broadening horizons of professional attainment is the person who may expect any day to receive a notice from a bar association committee that, because of the possibility that one professional practice may become a feeder to the other, or to avoid the possibility that people may from him learn of his added accomplishments and qualifications, he must choose one of his two professions, must abandon the other, and must notify the bar association committee which profession he will abandon.[18]

NO PROHIBITING CANON OR RULE

No canon or rule of ethical conduct has been promulgated which would either authorize the committees to exact the dual practitioner's compliance with their instruction to choose one profession, abandon the other, and to notify the committee which profession is being abandoned. Thus by usurped prerogatives, the enactments of the legislatures and the supreme courts and appropriate administrative agency recognitions of a person's qualifications to practice one of the two professions are, in effect, vetoed by the bar association committees. Or in any event, they are vetoed to the extent that some of the dual practitioners bow to those unauthorized edicts of the bar association committees. This article, for reasons still to be stated, is, in part, an appeal to all dual practitioners politely, but affirmatively, to decline to yield their rights to the thus presumptive bar association committees.[19]

Let there be no misunderstanding: This is not an appeal against law and order; this is an appeal to abide by the law and order of all proper promulgations by all proper authorities.[20] On the other hand, no bar association has adopted a canon of ethics that would have the effect of a legislative veto by proscribing the dual practice of law and accountancy.

18. Such is the general pattern of notices sent to individual persons. To attempt to document examples would constitute unnecessary personal identification and would serve no good purpose here. This writer and many of his friends in different states were recipients of notices which follow the described pattern.
19. This, in effect, was the substance of a resolution adopted by the Board of Directors of the Texas Association of Attorney-Certified Public Accountants after being refused conferences with either a committee or the Board of Governors of the Texas Bar Association. The resolution appears in the semi-annual report dated December 12, 1966, by the President of the Texas Association of Attorney-Certified Public Accountants to its members.
20. *Ibid.*

It is the well considered opinion of this writer and many a dual practitioner that no bar association will ever promulgate such a canon of ethics for the very reason that any member of the bar (particularly in any state where an integrated bar exists) could successfully challenge the promulgation in court.[21]

With a single known exception, the dual practitioners who have had the courage to refuse to conform to the usurped prerogative of the bar association committees, and have refused to abandon one profession, have been free of further molestations as to their dual practices. The one dual practitioner who was made defendant in a state district court on charges growing out of his engagement in dual practice continues his dual practice. The case against him has been closed with concurrence by the prosecuting state and local bar associations.[22]

Adverting to Goldberg's theme, "Dual Practice: The Lawyer's Paradox,"[23] it seems to be just as paradoxical that in this "noble profession," which is the avowed champion of law and order, committed "to apply its knowledge and experience in the field of law to the promotion of the public good" and to the "maintenance of Justice pure and unsullied,"[24] there are committees which take unto themselves the prerogative of violating the legislative enactments. These committees also have nullified the findings of the administrative agencies, specifically of the supreme courts which generally set the bar examinations, and the findings of the state boards of public accountancy which set the certified public accountant examinations.

Dual Practice Needs No Defense

Thus authorized by legislative grace and policed by administrative recognitions of suitable competency, and buttressed by the maintenance of high ethical standards, dual practice needs no defense. Why, then, is it under attack, by whom, and on what grounds?

Interlude

No doubt each reader heard as a child that "one bad apple will soon spoil the barrel." No doubt, also as a child, each reader had the misfortune

21. For particulars and grounds on which such a challenge could rest, see Goldberg, *supra* n. 11.
22. The cause of action instituted by the state and local bar associations against dual practitioner Swafford in a state district court at Chattanooga, Tennessee, was settled by mutual agreement of the parties, *i.e.*, it was not pursued to a court decision. By the mutual agreement of the settlement, Swafford is permitted to continue in dual practice. The case does not appear in any reporter series.
23. Goldberg, *supra* n. 11.
24. Article I of the American Bar Association Constitution provides that the Association's "objects shall be . . . to uphold the honor of the profession of law; to apply its knowledge and experience in the field of the law to the promotion of the *public good* . . . in the interest of the legal profession and of *the public.*" (Emphasis added). See also the Preamble to the A.B.A. Canons of Professional Ethics, which calls for "maintenance of Justice pure and unsullied . . . such as to merit the approval of all just men."

to have been stung by an insect, or to have had a boil. The sting or the infection started in a very small portion of his total anatomy. But as time passed, the sting or the boil may have developed as with a vengeance, until an arm or a leg or perhaps the entire body was feverish. If the body heat, through higher temperature, or fever was not high enough to "burn out" the infection, then minor surgery, a lancing, may have been required. In one way or another, it was necessary for the body to eliminate the poison of the infection before health could be restored to normal, and the victim's days returned to happiness.

We are all familiar with the circumstance that in this troubled world, a few plotters can gain strength and in time completely overthrow law and order. To cite a very few examples in recent history, we may think of Castro and of the Watts and similar riot incidents. Each was an outgrowth of a dissatisfied minority which, through lack of sufficient enlightenment of the value of law and order, sought to usurp power, to take the law into its own hands; each was successful in its immediate objectives, but with disastrous results.

In every walk of life, including the professions, some are found to complain. Generally, the complainers are the less fortunate, those who have not quite satisfied their cherished ambitions to shine as may some of their colleagues; those who, for one reason or another, are in the lower economic levels,[25] or those whose training may have failed to qualify them in some unidentified requisite to attain the success they covet.

By Whom Attacked

The attacks on dual practitioners stem principally from Opinions 297 and 305 of the Ethics Committee of the American Bar Association.[26] The Ethics Committee seems to have been prompted by the lawyer representatives on the Joint Conference of Lawyer-Certified Public Accountants, who have opposed dual practice for many years.[27] On the other hand, the representatives of the American Institute of Certified Public Accountants have followed generally a less belligerent and more moderate course; the American Institute has been consistent in a "hands off" policy as to dual practice.[28] Nor has the American Bar Association ever adopted a canon of ethics that would attempt to proscribe dual practice.

The official criticisms of dual practice emanate from the lawyer representatives on the Joint Conference and from the eight man Ethics Committee of the American Bar Association.

25. Examples would be pre-revolution Castro, and the inhabitants of the Watts (Los Angeles), Harlem, and other ghettoes.
26. A.B.A. Comm. on Professional Ethics, No. 272 (1946), superseded by Opinion No. 297 (1961). See Opinions No. 11 (Supp. 1924).
27. *Id.*
28. Goldberg, *supra* n. 11, at p. 123, citing 83 J. Accountancy 172 (1947).

INCLUDE ACCOUNTANCY IN THE PRACTICE OF LAW

To pose the problem and to compound the paradox, the American Bar Association Committee on Professional Ethics and Grievances, while declaring that "it is a violation of Canon 27 for a lawyer to hold himself out as qualified to practive both law and accounting" inconsistently adds that "he will not violate any Canon of Ethics merely because in rendition of legal services he utilizes and applies accounting principles." Opinion 297 also states that "The employment by a firm of lawyers of a public accountant on a salaried basis for the purpose of doing accounting work for the law firm in its practice of the law does not in and of itself result in the law being engaged in unethical conduct."[29] It would seem that though the Committee thus urged lawyers to encroach upon the discipline of another profession, they were quite unwilling to concede any encroachment on their own. Furthermore they would zealously guard against any encroachment, even by overlap, on their own. It is conceivable that considerable embarrassment could result if the public, or even if only the members of the two professions, were to construe this unseemly and inconsistent combination of pronouncements as attempts by the bar associations to evict certified public accountants entirely from practice in the overlapping areas of the two professions.

Whether such a trend, if continued would serve the public interest may be simply and reasonably judged by the results of more than fifty years in which the public has relied with considerable satisfaction on the accounting profession to resolve its problems in some of the areas of overlap.

It is apparent that the inception of the income tax was a major motivating factor in the phenomenal growth of the accounting profession from 1900 to the present time.

THE BEGINNING OF ONE AREA OF OVERLAP: TAXATION

For an example, let us look to a back-drop to the beginnings of one of the areas of inter-professional overlap, *i.e.,* tax practice in the United States substantially as it is known today. We may pass as irrelevant all matters of taxation antecedent to the Thirteenth Amendment to the Constitution.[30] When that amendment permitted the Congress to levy income taxes without reference to population or apportionment, it was the accountants who, by the very nature and characteristics of the subsequent assessments, stepped forward to serve the taxpaying business public in matters of taxation. In early Revenue Acts, "net income," strictly an accounting term, was used to measure the tax, but it was not defined in the Acts.[31]

29. *Supra* n. 26.
30. Ratified February 25, 1913, after Congressional enactment in 1909.
31. In 1920 the Supreme Court provided some clarification of "Net income" in Eisner v. Macomber, 252 U.S. 189 (1919); Merchants Loan & Trust Co. v. Swietanka, 255 U.S. 509 (1920). According to Marrs, "The legal concept if income has not yet been fully defined, if it ever will be, either as to (a) what is income; (b) whose income is it; or (c) when does income arise." MARRS, REFLECTIONS OF A REVENUER (1948).

In the passing of the years, the Bureau of Internal Revenue,[32] later called the Internal Revenue Service, was created.[33] As taxpayers' returns were challenged or questioned by the "Bureau," it was logical that the accountants who had participated in preparation of the returns would be called in to explain, interpret and defend the returns as filed. When an acceptable settlement of differences could not be evolved and court action by either the Bureau or the taxpayer was necessary, legal counsel was then called in and the controversy passed out of the hands of the preparers who were most familiar with the returns and into the charge of the lawyers. It was necessary, then, for the client/taxpayer to deal with a different group of advisers, *i.e.*, those representing a different profession. They would approach the substantive matters of the controversy from different angles, and would use entirely new methods to attempt to arrange agreement, either administratively, or in court.

Under such circumstances, the taxpayer was in a position comparable to the merchant, or manufacturer, or importer, who relied confidently on advice from various sources as to purchases, marketability, customer preference trends, manufacturing methods, or foreign sources of supply, each pertaining to its own specialty, until it became apparent that a legal controversy and legal facilities of settlement may be required. It would then be necessary to engage legal counsel.

It was thus that business proceeded with general satisfaction until the early 1950's, which was about the time when the administration at Washington proposed a new "codification" of the revenue acts.[34] It is entirely possible that the word "code," or "codification," being strictly a legal concept (in comparison to "revenue" which is strictly an accounting concept) may have acted as a catalyst in the thinking processes of some lawyers, for at about the time the revenue acts were to be codified into the INTERNAL REVENUE CODE, some accountants were experiencing some difficulties in collecting their fees for settling administratively the tax controversies of their clients.[35] Their necessity to sue for their fees, coming to the attention of bar association committees at about the time of the proposal of "codification" by Congress, may have provided added impetus to the bar association committees to call a halt to this apparently newly recognized "unauthorized practice of law."

It should be noted here that no objection is advanced to the conviction of accountants on unauthorized practice of law charges at such administrative levels. In fact, the accountants who went to court to collect fees for

32. For the organization, functions, and procedures of the Bureau of Internal Revenue, see 26 C.F.R. ch. I.
33. The designation was changed by INTERNAL REVENUE CODE (1939).
34. For the late 1940's and early 1950's background leading to codification of the Internal Revenue Acts, see Darrell, *Internal Revenue Code of 1954: A Striking Example of the Legislative Process in Action*, 1955 MAJOR TAX PROBLEMS 1-34 (1955).
35. New York County Lawyers Ass'n v. Bercu, 273 App. Div. 524, 78 N.Y.S.2d 209 (1948), *aff'd*, 299 N.Y. 728, 87 N.E.2d 451 (1949); Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954).

such practice actually made out against themselves prima facie cases of unauthorized practice of law.

It was in this aura of apparent long continued default by the legal profession, *i.e.,* default in not training themselves early to do accounting and hence tax work, followed by the 1950-55 series of prosecutions, that while lawyers generally were content to accept tax cases on appeal from the administrative level, the legal profession representatives on the National Conference of Lawyers and Certified Public Accountants apparently have recognized an opportunity to attempt a recovery of the earlier "fumble," *i.e.,* of the legal profession's erstwhile default, its failure to engage early in matters of taxation, and to try then to "run with the ball" in tax case practice.

David Everett's famous lines tell us that "Even as large streams from little fountains flow, tall oaks from little acorns grow"; it readily follows also that great practices from little cases grow.

It was in this aura, too, and as a part of later Opinion 297, that the American Bar Association's Ethics Committee first urged its members to include accounting work as part of their practice of law.[36] Unfortunately, the Committee neglected to propose any consideration of objective standards by which a lawyer's accounting proficiency or the lack of it may be judged; the Committee neglected to suggest creation of any educational projects by which any lack of proficiency in accounting, and of a foundation for practice in taxation might be overcome. In passing, the reader may note the absence of any effort by the accounting profession to oppose the American Bar Association Committee's aggressive advocacy of encroachment on the accounting profession's discipline.

TAXATION IN THE BAR EXAMINATIONS

Research of all the state bar examinations has not been undertaken for the purpose of this article, but it is believed that generally, prior to about 1956, the bar examinations did not include questions on taxation, but that from about that year forward, questions on taxation have been given increasing prominence in the bar examinations. The inevitable result of this expanded inclusion has been likewise to expand the teaching of taxation in the law schools.

OBJECTIVE DISCUSSIONS REFUSED

Up to this point, nothing in this article, appearing alone, would suggest any suspicion that any underlying plot or policy was in existence. However, having "jawboned" many dual practitioners out of dual practice, and apparently having begun no later than in the Levy-Sprague article in December 1966, what could readily become a broad scale smear campaign

36. OPINION No. 297, *supra* n. 26.

for the purpose of discrediting as a class the practitioners who are courageous enough to prepare for and to engage in dual practice, as if it were either illegal, immoral, or unethical, some bar association committees and at least one state bar association at the same time refuse to enter into objective discussions of the merits or lack of merits of dual practice. Diligent efforts to arrange conference table meetings for the stated purpose of showing the detriments to the bar associations of their opposition to dual practice have been met with pre-emptive refusals to permit such meetings.[37] The question is inevitable: Does such refusal of confrontation mean that the "jawboning" and smear campaigning have the tacit approval of the governing boards?

In Perspective

Now, for the sake of perspective, let us review, briefly, the peculiar combinations of circumstances thus far noted, so that we may inquire further whether a policy trend is in the making, and if so, whether its effects may benefit or retard and handicap the public interest. If a policy trend is in the making, is it to be super-imposed by a small minority on an unwitting and unwilling majority of the American Bar?

First, we have observed that the legal profession early and long neglected to participate in or to prepare its members to participate generally in matters of taxation except in appeals above the administrative levels.

Second, the bar associations successfully prosecuted certain accountants for unauthorized practice of law as result of the accountants having engaged in administrative settlement of tax controversies.

Third, without purporting or undertaking either to create educational projects in accounting or to establish objective standards by which either to test or improve the accounting proficiencies of its members, the American Bar Association Committee on Professional Ethics and Grievances urges lawyers to include accounting as a part of their practice of law.

Fourth, from about 1956, taxation questions have been included in the bar examinations with some indications of increasing importance, *i.e.*, a belated but commendable effort to induce expansion of the teaching of taxation in the law schools.

Fifth, bar association committees "jawbone" dually qualified practitioners out of their earned right to practice one or the other of their professions.

37. In a letter of September 2, 1966, the President of the State Bar of Texas instructed its Executive Director as follows:

"Please poll the Board by mail as to whether or not they wish to hear [the representatives of the Texas Association of Attorney-Certified Public Accountants] . . . .

So far as I am personally concerned, I stand fully behind my Chairman and my Sub-Chairman and am not interested in going beyond their decision.

The members of the Board should have a copy of this letter so that they will know what we are doing."

On October 11, 1966, by letter the Executive Director informed the President of the Texas Association of Attorney-Certified Public Accounts that "they have voted against inviting you to appear . . . ."

Finally, some bar associations or committees thereof adamantly refuse to permit conference table types of discussions between the opponents and the proponents of dual practice, discussions of the merit or lack of merit of their own committee attacks against individuals who have earned the right to practice in both professions.

Can it be that the cumulative effect of these six stated circumstances reveal or else strongly suggest an underlying purposeful strategic policy which becomes embarrassingly apparent when viewed in perspective? Could this series of observations manifest a trend being steered by the bar association members of the National Conference of Lawyers and Certified Public Accountants? Is this a smear campaign against dual practice intended to be continued as an implementation method to push the certified public accountant completely out of tax practice? And if so, is the purpose such that the bar associations can condone the policy? Or is the trend dangerously near to the point of professional demoralization, being motivated by the mercenary purpose of "capturing" the tax practice fees which to some underprivileged single-practitioners may seem to be attractively lucrative?

Tax Practice History

Whether such a trend, if continued, would serve the public interest may be simply and reasonably judged by the fifty years in which the business and taxpaying public, generally with satisfactory results, have relied heavily on the accounting profession to resolve their tax problems.

Slow Murder

In view of the total lack of propriety of any "smear campaign," is the "Noble Profession" wittingly or unwittingly engaging in a scheme so maliciously to discredit dual practice as to preclude the better tax lawyers from accepting, for instance, employment as lawyers on the staffs of the larger firms of certified public accountants?

At one time in history, it was a crime to commit murder by abrupt, instant, violent, or traumatic means, but it was considered to be acceptable practice to bring about the slow death of an intended victim.[38] Are the bar associations of our "Noble Profession" wittingly or unwittingly attempting to bring about the slow death of a companion profession?

Quo Vadis?

It is the writer's fear that this is so, but his fervent prayer is that it is not so. But if it is not so, then it would seem to behoove the bar associations to cause their committees to convert from destructive to constructive tactics, to have their governing boards to do some diligent introspection. They can demonstrate clean hands by directing their presumptive commit-

38. Groseclose, Money and Man (1961).

tees to cease and desist from efforts to "jawbone" dual practitioners out of one profession.

It would seem to behoove those bar associations which are integrated bodies and those which purport to be associations of professional integrity either to cease from urging all their members to include accounting as part of their law practices, or else to create some objective standards which would induce competency in applying accounting to their practices of law.

It would seem to behoove the bar asociations and the accounting societies to join in efforts to encourage broader education in both professions. They could well work together to the end of combining college curricula in law and in business administration, so as more effectively to train students in both fields of learning at the same time.[39]

Above all, it would seem to behoove the bar associations to act in the best interests of the public, and not in the limited selfish interests of lawyers alone.

It would seem to behoove the bar associations to encourage objective discussions of the merits of dual practice, and to encourage, if the objective studies so indicate, the recognition of this dually trained product out of the crucible of the now rampant (but in some limited quarters only), interprofessional intolerance. Failure to do so may so undermine the integrity of the bar associations as to merit disrepute and disgrace instead of public respect.

To the Critics

If the critics of dual practice are covetous of either the dual attainments or of the only sometimes lucrative returns therefrom, would not those critics benefit themselves much more by subjecting themselves to the sacrifice of the time and the efforts, thus to prepare themselves to engage in dual practice, rather than to pursue the self-defeating objectives of destroying those who have subjected themselves to the dual-discipline? Little or no gain can result from merely criticizing others; may those critics put themselves in a position to be worthy of the esteem and respect of their colleagues, rather than only to pursue damaging tactics, which avail the critics principally frustration and disillusionment?

Many writers have studied ways to increase professional practices and the income realized therefrom. In each such objective, the practice must be built on public confidence which, in turn, must be founded on rendition of valuable service to the clientele. Lacking the latter, a practitioner can hardly warrant or attain success.

But how best can a practice in taxation be developed? Must not the logical answer be through rendering the service at its grass roots? In this in-

39. It is understood that some universities, including the University of Minnesota and the University of Southern California, now offer such combination courses leading to degrees in both law and business administration.

stance this would be accomplished by the preparation of tax returns. Is not such service the most natural and logical ingress to a valuable experience of working with the basic tools and the fundamentals of taxation? Does it not follow, "as the night the day," that on examination of returns by the Internal Revenue Service, the controversies are uncovered which, in time give rise to the court determinations of the fine points of tax law and practice? And does not favorable publicity in such cases lead to the public following which not only justifies but requires the services of both the accounting and the legal professions?[40] This writer recognizes the facts of life, that the foregoing series of events may be the lot of an individual (including dual-practitioner), but it is not the lot generally of the larger firms of either lawyers or certified public accountants. Realized, too, is the circumstance that in many instances the practitioners in each profession recognize the need for the cooperation of members of the other profession.

But while each may frequently need the services of the other, is it inevitable, or even logical, to assume that the services of both professions may not be satisfactorily combined in one person, the dual-practitioner? And does any logic support a contention that dual practice is either evil, or never to the advantage of the client, or impractical, or per se unethical, or per se incompetent as charged by Levy and Sprague?

THE HEN OR THE EGG?

Then does any difference appear merely because the dual practitioner may have become first a certified public accountant and then a lawyer, or first a lawyer and then a certified public accountant? May the best combination not be found in one who has pursued studies and preparation in the two professions concurrently?

These questions are propounded for the purpose of inviting attention to the great potential of education and training in both professions concurrently, in the interest of providing to the dual-practitioner perhaps a broader perspective and balance. With concurrent training in both professions may he not be better enabled to weigh the relative viewpoints to the end of avoiding the unfortunate possibility that either a legal or an accounting viewpoint or concept may be stressed in greater measure than the particular circumstances may warrant? Certainly a practitioner trained in a single discipline only is not necessarily in the best position to weigh competing concepts or viewpoints objectively.

FOR WHOM THE BELL TOLLS

It is recommended that the gentle reader take to heart these questions, for while the dual engagements which he pursues may not be enumerated

40. The "Statement of Principles," adopted by the National Conference of Lawyers and Certified Public Accountants in 1951, stresses that the joint skills of the two professions are "in the best public interest." 89 A.B.A. REP. 55 (1964); Goldberg, *supra* n. 11.

herein, is he not just as vulnerable? Do not justice and equity demand similar treatment of all who are engaged in dual-vocations? We advert Ernest Hemingway's novel prefaced by John Donne's admonition "Do not send to know for whom the bell tolls; it tolls for thee."[41]

If it tolls for the lawyer-accountant, will not its harmonic counterpart ultimately toll also for the lawyer-banker, the lawyer-salesman, the lawyer-whatever you are? "It tolls for thee."

We may advert once again to John Donne and quote "But I do nothing, upon myself, and yet I am mine own Executioner."[42] It tolls also for the Joint Conference of Lawyers and Certified Public Accountants, and for the vetoing committees that usurp the power of the legislatures, the supreme courts (or other lawyer licensing agencies), and the state boards of public accountancy.

NEWSWORTHY EVENTS

After the above paragraphs of this article had been prepared for release, two news items came to light:

1. At its semi-annual meeting in Houston, and despite the lack of a Canon of Ethics to proscribe dual practice, the Board of Directors of the American Bar Association adopted on February 10, 1967, a resolution to reject applications for membership in the American Bar Association by dual practitioners in law and accounting.

A telegram sent by the President of the American Association of Attorney-Certified Public Accountants to the President of the American Bar Association, with copies to the Chairmen of the Board of Governors and the House of Delegates, then still in session, included the following:

> I URGE YOU TO RECONSIDER YOUR ACTIONS: TO OPEN YOUR DOORS AND MINDS TO THOSE OF US WHO HAVE FELT COMPELLED TO FURTHER OUR EDUCATION TO BETTER REPRESENT THE PUBLIC; TO RECOGNIZE THE POTENTIAL INFLAMMATION IN CLOSING MEMBERSHIP EXCEPT TO THOSE WHO AGREE WITH EVERY ACTION OF THE AMERICAN BAR ASSOCIATION, AND TO PREVENT YOUR ACTION FROM BEING RECORDED AS A VOTE TO LIVE IN INFAMY.

2. One bill to prohibit dual practice by dually qualified attorney-certified public accountants,[43] and an opposing bill to prohibit interference when such persons engage in dual practice have been or will be introduced in the legislature of the State of Maryland.[44]

41. *Supra* n. 7.
42. DONNE, DEVOTIONS.
43. H.R. 326, by Boyer of the Judiciary Committee, introduced without indication of sponsorship by either the Baltimore or the Maryland Bar Association.
44. As reported by the Maryland Association of Attorney-Certified Public Accountants, via the American Association of Attorney-Certified Public Accountants.

It would seem to be inevitable that if the bill to prohibit dual practice were to be enacted, a challenge to its constitutionality would end with a result similar to the *Swofford*[45] case in Tennessee. Swafford continues to be engaged in dual practice. Is this a manifestation that dual practice is beyond the power of the bar associations to regulate?

45. *Supra* n. 22.