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Comment on Dean Griswold's New York Speech

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AMERICAN INSTITUTE OF ACCOUNTANTS

Memorandum from Mr. Carey — January 17, 1955

To Committee on Relations with Bar

Subject: Comment on Dean Griswold's New York Speech

At the meeting of the Institute's committee on relations with bar and the American Bar Association representatives at Washington, January 25th and 26th, references are likely to be made to the speech delivered by Erwin N. Griswold, Dean of the Harvard Law School, at the Association of the Bar of the City of New York, January 13, 1955.

Dean Griswold's speech raises certain questions as to the validity of the Institute's position and some of its proposals with regard to the field of tax practice, and Dean Griswold also makes certain suggestions looking to a solution of the problem.

It seems to me that it might be helpful to your committee, therefore, in this memorandum, to try to match up his comment with the reasoning underlying the Institute's position and its recent action in order that the underlying issues may be clear and not obscured by any misunderstanding.

If this memorandum is to be in your hands in time to be of much use in preparation for the coming meeting with the Bar representatives, there is not time to clear it in advance with our counsel or with the special committee on tax practice. Therefore,

the memorandum must be offered to you as a personal expression of my own understanding of these matters. Copies are being sent to our counsel and to the president of the Institute so that they may correct me if they think I am in error in any respect.

In order to make this memorandum as brief and as usable as possible, I shall condense the main points in Dean Griswold's paper into as few words as possible and state them underlined in the form of topical heading with page and paragraph references to the copy of the address which has already been sent to you. It is suggested, therefore, that you reread the address in conjunction with this memorandum.

Statutes in many states give lawyers the exclusive right to "practice law". The limits of that term are not wholly clear. (Page 2, first incomplete paragraph)

This is the root of the entire difficulty. Is it not time that the legal profession provided a general definition of the types of work to which lawyers are given an exclusive right? Such definitions are provided in England. The need for them has become greater, since every phase of economic activity has become subject to regulation or supervision by government agencies. Certified public accountants and other non-lawyers have no guide to proper conduct in dealing with the various agencies on behalf of their clients as long as the Bar Association insists that the "practice of law" is whatever the state courts say it is.

In most states there is no control at all over public

accountants, tax experts, and so on. Any who wants can set himself up as a tax expert even if he has been stricken from the rolls of the certified public accountants. (Page 3, first full paragraph.)

There is no particular reason why the organized accounting profession should be charged with the discredit of unqualified tax consultants. The fact is that the field of preparation of Federal income tax returns has not been established as a field of either law or public accounting, nor has it been preempted by the Federal government. One of the objectives of the Institute in supporting the Reed Bill is to clarify the authority of the Treasury Department to preempt the field of preparing tax returns and to set up standards for persons who may be permitted to do so. We can see no other solution of the problem. If preparation of tax returns were to be held to be the practice of law, then certified public accountants could not do it. Yet lawyers generally do not claim competence in the preparation of tax returns, nor do they wish to do this work.

A serious obstacle in the way of proper recognition for certified public accountants may be the fact that the certified public accountants seem to have deliberately chosen to take all of the other accountants and practitioners under their wing. (Top of page 4.)

The Institute has not taken all accountants under its wing, or undertaken to speak for them. The brief we filed in the Conway case in Minnesota, where a non-certified tax consultant

was involved, made it crystal clear that we were not appearing on behalf of the respondent, but were appearing only to ask the court to hand down its ruling in terms that would not make it illegal for certified public accountants, enrolled to practice before the Treasury Department, to continue their customary work.

In the Statement of Principles, the Institute speaks only for certified public accountants.

In the Bercu and Agran cases, certified public accountants were attacked by unauthorized practice committees of local bar associations. The unauthorized practice committees did not appear to distinguish between CPAs and non-certified accountants.

It is obvious that the separation of functions between lawyers and qualified accountants in this area is an extremely difficult matter. (Bottom page 5 and top of page 6).

This paragraph is of major importance. It seems to say that once a CPA is admitted into the area of tax practice (no doubt it is assumed that this is short of litigation or formal adversary proceedings) there is no way of defining the line at which he must stop and call in a lawyer. Inside the circle, the CPA must be permitted to do whatever necessary in the light of the particular circumstances, but with the general understanding that he will voluntarily call in a lawyer when the circumstances of the case, or the limits of the CPA's competence, may make it desirable to do so. It must be assumed that the determination of when to call in a lawyer must be subjective and must be left to the voluntary action of the CPA.

Accountants and others who are not professionally qualified, however, might not be permitted into this "inner circle", although they might be permitted to do some things in the tax field, such as the preparation of tax returns.

For the sake of convenience, this idea will be referred to later in this memorandum as "the inner circle theory".

An important point is that it must be assumed that CPAs admitted to the "inner circle" would be permitted to interpret and apply the Internal Revenue Code in the determination of taxable income and the settlement of tax liabilities. Dean Griswold does not say this specifically in the paper, but the paragraph under discussion would make no sense if this assumption were not valid.

As a matter of fact, in answer to a question after the speech at the Bar Association, Dean Griswold made it clear in terms that a certified public accountant might properly interpret and apply the tax statutes in the determination of taxable income.

It may not be wise for an accountant to sue for fees for tax work. (Top of page 7)

This point is made several times in the speech. While it may be desirable to avoid these suits for the brief period during which this problem is being worked out, it does not seem that there is any lasting solution merely in the avoidance of litigation. There is evidence that lawyers are more and more frequently encouraging clients not to pay the accountants for tax services rendered in good faith. Certified public accountants, as members of a recognized profession, do not wish to practice under the shadow

of illegality, even though they might work out techniques for being paid without the risk of litigation. Reputable professional men do not like to be in the position of "bootlegging" professional services.

Conway, who was neither a lawyer nor a certified public accountant, prepared tax returns involving substantial questions of law. It is not surprising that the court held him to be in the wrong. Had he been a certified public accountant, the result might have been different. It is unfortunate that the Institute chose to support this unqualified practitioner. (Page 7, first full paragraph)

As pointed out above, the Institute did not support this unqualified practitioner. The brief asks only that the court's opinion make a distinction between certified public accountants and unqualified practitioners - which incidentally it failed to do.

This summary does not point out that the action was instigated by Ramsey County Bar Association, which framed the questions on which Conway was asked for an opinion. The questions included matters of general law and matters involving interpretation of the Internal Revenue Code and related regulations.

In holding that the respondent was "practicing law" when he dealt with "difficult and doubtful" questions of law, the court did not distinguish general law and interpretation of the Internal Revenue Code.

Technically, therefore, the decision might be held to apply to certified public accountants of Minnesota in interpreting the Internal Revenue Code alone, apart from any questions of general

law. This is exactly what the Institute attempted to prevent, but failed.

The Minnesota Supreme Court in the Conway case rejected the "incidental" test established by the New York Court of Appeal in the Bercu case. Certified public accountants generally had felt that they could live with the Bercu decision and continue their practice under its limitations. They were alarmed by the Conway decision since it had been instigated by a bar association. They feared that it represented a deliberate effort by the organized bar to build up a body of case law that ultimately would exclude all non-lawyers from all phases of tax practice.

The American Institute of Accountants filed a brief in the Agran case. (Bottom of page 7)

This in an error. The Institute did not appear in the Agran case. In the trial court, Agran had been allowed the full amount of his fee $2,000. On appeal, the representative of the California State Bar intervened as friend of the court. He contended that Agran had engaged in the unauthorized practice of law and should not be paid his fee. Thereupon, the California Society of Certified Public Accountants, alarmed and resentful at the intervention of the California State Bar, filed a brief as friend of the court, contending that as a CPA enrolled to practice before the Treasury, Agran was entitled to render the service he did render and should be paid therefor.

Since Agran testified that he had spent five days in the County Law Library reading tax services, cases, reports and

decisions, and reviewed over 100 cases on the proposition of law involved, it should not be unduly surprising that the court held that he had been practicing law. (Page 8, first paragraph)

This point is stressed more than once later in the speech. It is also stressed in the decision of the court in the Agran case. It raises the interesting question whether the fact that Agran acted and talked like a lawyer in contending for his fee might be of greater importance in the eyes of judges and of other lawyers than what he actually did in rendering the tax services under consideration.

CPAs have assumed that it didn't matter how Agran talked and acted: that what was of importance, was what he really did. He could have spent much less time reading the tax services in his own office, or in the office of the American Institute of Accountants and it would not have altered in any way the nature of the service that he rendered.

What Agran actually did after making out the tax return was to settle informally with the Internal Revenue Service a difference affecting the tax liability of his regular client. The difference arose from a transaction ending in a loss which could be argued to be a capital loss, or could be argued to be an operating loss. Agran argued that it was an operating loss, therefore chargeable against income which resulted in loss carry back to an earlier year. He won his point, and the case was settled on this basis.

In arguing his point, Agran naturally had to consult and interpret the Internal Revenue Code and related regulations, rulings

and decisions to ascertain the probability that the Internal Revenue Service would accept his contentions.

In holding that he had engaged in the unauthorized practice of law, the California court made two points: one point that was stressed was the point Dean Griswold stresses: that Agran spent time in the law library and read many cases. The second point, however, that the court made was that Agran had interpreted and applied the provisions of the statute.

The court cited a definition of the practice of law in support of its holding and, within this definition presumably, the court thought both of Agran's actions fell - reading law and decisions, and interpreting the provisions of the statute.

It is obvious that CPAs cannot practice in the tax field if they cannot interpret and apply the provisions of the Internal Revenue Code and related regulations and decisions. If the Agran decision were allowed to stand as a precedent, therefore, it seemed to CPAs that they were in danger of being excluded from tax practice.

Incidentally, it is of interest that the subject of operating loss carry back is categorized among a list of accounting subjects by the Minnesota Supreme Court in the Conway decision, where an effort was made to illustrate what the court thought were matters of accounting as opposed to matters of law. The California court in the Agran case relied on the Conway decision in large part in developing its theory, but ignored the fact that the item it had been dealing with had been characterized in that very Conway decision as a matter of accounting.

The "Statement of Principles Relating to Practice in the Field of Federal Income Taxation" is hopeful, worthwhile, statesmanlike. It should not get lost in the current shuffle. (Page 8, second paragraph and last paragraph, and top of page 9)

The Institute was proud of the "Statement of Principles" and its members were happy when it was adopted. It seemed to offer peace between the legal and accounting professions.

It was a shock to find the "Statement of Principles" cited against a certified public accountant by a representative of a bar association in the Agran case and to find the court in the Agran case applying meanings to the Statement which the Institute did not believe had been intended.

First, the Institute had thought that the Statement was a declaration of cooperation, designed to encourage voluntary action, not a contract to be construed in court. Second, in deliberately avoiding any effort to define the terms "law" and "accounting", as used in the Statement, the Institute thought it had been understood that accounting included accounting in accordance with the tax law. If it did not, the Statement became meaningless.

But here was a court citing this very Statement and holding that a certified public accountant had engaged in the unauthorized practice of law in deciding and arguing what he believed to be proper accounting in accordance with the requirements of the tax law.

It was also a shock to find a committee of the American Bar Association quoting from the Statement of Principles in a

statement opposing the Institute's request for relief through modification of the Treasury regulations, and, in its conclusion, accusing the Institute of attempting to "overthrow" the Statement of Principles to which it had subscribed only a few years ago.

The Institute has felt obliged to prepare an interpretation of the Statement of Principles which it is expected will be published shortly, so that its own understanding of what the Statement was intended to mean will be a matter of record.

Though the Rocky Mountain Law Review article by Carey first seemed inflammatory, it was reread in connection with preparation for the present speech, and "I do not find much in it now that disturbs me. It is a dispassionate, well-tempered discussion of the problem from the accountant's point of view, with clear references to the Statement of Principles of the National Conference of Lawyers and Certified Public Accountants". (Page 9, first full paragraph)

This may be a statement of major significance. The Rocky Mountain Law Review article contended that the interpretation of statutes, regulations or court decisions was not ipso facto the practice of law; that the field of Federal income tax practice was not exclusively within the field of law; that the certified public accountants' position in the field of tax practice was a natural and proper one, developing from their competence to deal with tax accounting problems, not as a result of a default of the lawyers; that accounting involved application of a large body of theories, principles, the exercise of judgment and delicate distinctions - in

other words, it is not merely a mechanical process; that neither all lawyers nor all accountants are necessarily competent in taxation; that the solution to the accountant-lawyer controversy was voluntary cooperation in tax practice.

If Dean Griswold accepts these propositions, he should provide powerful support for settlement of the difficulties acceptable to the Institute.

It may be that it is the position of the accountants that there is nothing at all in the tax field that they cannot properly undertake, short of appearing in a regular court. (Page 9, last incomplete paragraph)

The Statement of Principles makes it clear that the Institute does not take this position and the Institute has not repudiated the Statement.

If it is agreed that the lawyers should be brought in when legal knowledge, or a lawyer's viewpoint, would be helpful to the client, some people might think that a lawyer should have been brought in, in conjunction with the problem which involved "reading a hundred cases in four or five days' study in office and county law library". (Page 10, first incomplete paragraph)

As pointed out above, in discussion of the Agran case, CPAs have felt that the subject matter of the problem Agran dealt with was accounting subject matter, and that it made little difference where he read it, or how long it took.

The Agran case seems to have frightened accountants unduly. It is just another case decided by a minor court, effective

only in a limited jurisdiction. The facts were not strong for accountants. Lawyers are inclined to wonder why accountants are so excited about the Agran case. (Page 10, first full paragraph)

This is a very important question.

The Institute was exercised about the Agran case first because it was the most recent in a chain of cases which seemed to be building up a body of judge-made law, the logic of which would lead inexorably to the conclusion that CPAs had no place in tax practice, except conceivably in the preparation of returns not involving difficult or complex questions.

Even before Bercu, in the Loeb case in Massachusetts, a bar association had contended that the preparation of income tax returns was the practice of law. Only a year ago, the Rhode Island Bar Association made the same contention before the Supreme Court of Rhode Island in the Libutti case, but was not sustained.

The philosophy set forth by the New York Court of Appeals in the Bercu case represented a compromise which certified public accountants thought they could live with. It permitted them to make out tax returns, give tax advice to regular clients and to do all things which the Treasury regulations permitted them to do if they were enrolled agents. But the Conway case rejected that philosophy and substituted a vaguer test - that only a lawyer could deal with "difficult and doubtful" questions of law presumably whether general law or tax law. The standard of difficulty and doubtfulness was very vague. The Agran case also rejected the Bercu philosophy and followed the Conway reasoning. More important, the Agran decision was the first case to be

decided against a certified public accountant, enrolled to practice before the Treasury. If this case were allowed to stand as a precedent, it appeared that state courts might limit or even nullify the non-lawyer's right to practice before the Treasury Department.

If all these cases had been isolated and accidental, certified public accountants might not have been so much concerned. What concerned them most was the attitude in the statements issued by the Bar Associations. In their briefs in the Loeb, Bercu, Conway and Libutti cases, bar associations had taken a very stringent view of what non-lawyers might be permitted to do in the tax field. In addition, committees of the California and Florida Bar Associations issued statements indicating that certified public accountants should yield to lawyers in tax cases where a thirty-day letter had been issued and that generally accountants should confine themselves to the arithmetical phases of tax computations. Threatening statements were being made by spokesmen of the bar associations of Texas, Tennessee and other states.

The Unauthorized Practice News, published by the American Bar Association, continually published references, referring to the unauthorized practice of law by accountants in the tax field, which seemed likely to encourage action by local bar associations against certified public accountants. The American Bar Association was backing a new form of administrative practitioners' bill which would have limited the activities of non-lawyers in practice before Federal agencies. The American Bar Association's representatives

on the National Conference of Lawyers and Certified Public Accountants were pressing the accountants to agree to statements further limiting accountants' activities in the field of giving tax advice.

It seemed to the Institute that the organized bar was conducting a calculated campaign to drive the accounting profession far back of its present position in the tax practice field. When the Agran decision came, involving a CPA enrolled to practice before the Treasury Department, it appeared that unless the matter was brought to the attention of the public and the Federal government, all might be lost in the near future.

In seeking to have Treasury Circular 230 amended, the Institute may have thought the time was propitious, in view of the fact that the Commissioner of Internal Revenue was a CPA and former president of the Institute. (Page 10, last incomplete paragraph)

Actually, the Institute had sought amendment of Circular 230 before the Agran case, because the proviso of Section 10.2(f) was being cited as justification for a client's refusal to pay fees of members of the Institute for tax services. It did not believe that the Treasury intended the proviso to be used to prevent its agents from getting paid for work which the Treasury was permitting them to do. The Agran decision confirmed the Institute's worst fears in this regard.

The attempt to have the Treasury's regulations clarified would have been made undoubtedly regardless of who was Commissioner of Internal Revenue. It is not the Commissioner's regulation in any event, but the Secretary of the Treasury's and, as it happens,

the Secretary is a lawyer.

The Institute introduced a bill in Congress which provides that "no person shall be denied the right to engage" in settlement of Federal tax liabilities "solely because he is not a member of any particular profession or calling." (Page 11, first incomplete paragraph)

The Reed bill, supported by the Institute, provided that the Secretary of the Treasury may set the standards, as he now does, for persons engaging in settlement of tax liabilities with the Internal Revenue Service. In addition, the bill would clarify his authority to set standards for persons who prepare tax returns.

When the Institute decided that the time had come to take a stand, it also decided to exhaust all possible remedies, to have the Supreme Court review the Agran decision if possible, to have the Treasury amend or clarify its regulations, and to have the Congress make a clear declaration of policy with regard to Federal tax practice.

Note that neither of these proposed changes is limited in its scope to certified public accountants, but they would be applicable to all persons who wanted to act as accountants or tax consultants regardless of training or professional standing. (Page 11, first incomplete paragraph)

Practice before the Treasury Department is not now limited to lawyers and certified public accountants. Former Internal Revenue Agents, public accountants and others may be enrolled to practice after passing an examination set by the Treasury Department, which is fairly difficult, indeed, embodying some parts of

the Uniform CPA Examination.

The Reed Bill contemplates that that situation will be continued, but it would guard against the possibility that the Secretary of the Treasury might make a rule permitting only lawyers to practice before his department.

In other words, as things stand now, any one at all can prepare Federal tax returns and any one whom the Treasury chooses to enrol can settle tax liabilities with the Internal Revenue Service.

The Reed Bill would not change the present situation at all, but it would give the Treasury clear authority to regulate the preparation of returns if it wanted to.

"Helping the Taxpayer" is "slick", is not a fair presentation of the problem, indicates that there is some threat to the right of accountants to make out tax returns, and makes no reference to the Statement of Principles. (Page 11, first full paragraph)

"Helping the Taxpayer" went through about fifteen drafts, was reviewed by tax experts, and legal counsel. It is believed to be a precisely accurate statement of what it purports to state.

It was intended to be as simple and direct as possible; the statement of the problem raised by the Agran case; the need for amendment of the Treasury regulations; and Federal legislation to solve that problem.

The pamphlet was not intended to be an overall discussion of relations between the accounting and legal professions, but was pointed to one specific problem. It was addressed to laymen.

There is some threat to the right of accountants to make out tax returns. As noted above, bar associations in Massachusetts and Rhode Island have contended that the preparation of Federal income tax returns constitutes the practice of law. In the Agran case, it was noted that accountants may make out tax returns, except where substantial questions of law are involved, and this exception is echoed in the statement of the American Bar Association committee to the Treasury Department on Circular 230.

There seemed no particular reason why the pamphlet should refer to the Statement of Principles. It is believed that there is nothing in it which is inconsistent with the Statement of Principles.

The American Institute of Accountants has twice sent members letters asking them to write their Congressmen and Senators and talk with their clients in support of the Reed Bill. It is hard to suppress the feeling that the Institute is seeking to free its members and all other accountants from all restraint in tax practice and that it has repudiated the Statement of Principles. (Page 11, second complete paragraph)

There is nothing in what the Institute has done that seems inconsistent with the Statement of Principles and the Institute has not repudiated that Statement. It is, however, preparing to publish its own interpretation of what the statement means, which is different from the interpretation given in the Agran case.

The Institute believes that unless the Federal government will preempt the field of Federal income tax practice, it will become chaos. It seems inevitable that if the courts of the 48

states, by a slow and painful process of evolving common law, have to deal with all aspects of Federal income tax practice, the results are bound to be inconsistent and confusing for many years to come.

If the Federal government has power to levy a tax on income and to administer the law which levies that tax, it seems only common sense to assume that as part of that administration it may determine who, and under what conditions, may help taxpayers to report their income and settle their tax liabilities.

When the words of the Statement of Principles are laid alongside the actual facts of the Agran case, it suggests that the Agran case was a poor case for the accountants. (Page 11, last complete paragraph.)

It is difficult to reconcile this statement with Dean Griswold's "inner circle" theory set forth on pages 5 and 6 of the speech. Agran had all the qualifications an accountant can have to engage in tax practice. What he did was settle a regular client's tax liabilities in an informal proceeding with the Internal Revenue Service. The Statement of Principles says he can do this. Dean Griswold recognizes that if certified public accountants are to be let into the field at all, there can be no sharp dividing line marking the boundaries of what they can do.

To strike out the proviso of Section 10.2(f) of Circular 230 is the equivalent of saying that non-lawyers may practice law. (Page 12, first incomplete paragraph)

It is difficult to see why this would be so.

The Treasury has the right to decide who can help taxpayers settle their Federal income tax liabilities. In its rules it says that lawyers and certified public accountants, and others under certain conditions, may help taxpayers, and once being enrolled to do so, they may "deal with all matters" involved in the presentation of a client's interests to the Department.

There is no authoritative definition which says that the things enrolled agents do, in accordance with Treasury permission, constitutes any part of the practice of law.

It seems inconceivable that the Treasury could have intended under the proviso of Section 10.2(f) to invite the state courts to place undefined limitations on the extent to which its enrolled agents could proceed to do what the Treasury had clearly authorized them to do - deal with all matters involved in the presentation of a client's interests to the Department.

Might it not be a better approach to have a further proviso added to the effect that nothing in the regulations would prohibit a CPA from practicing certified public accounting. (Page 12, first incomplete paragraph)

It is difficult to see how this would help. What would its effect have been in the Agran case?

It is interesting to speculate, however, what would be the effect of a parallel proviso to Section 10.2(f) to the effect

that "nothing in the regulations in this part shall be construed as authorizing anyone not a certified public accountant or a licensed public accountant to practice public accounting. It happens that the regulatory public accounting law in California does prohibit anyone not a CPA or a licensed public accountant from filing financial reports with government agencies. This would appear to make it impossible for anyone except CPAs and licensed CAs to prepare or file Federal income tax returns.

Any suggestions that the accountants might try to keep the lawyers from practicing accounting in the tax field, while the lawyers try to keep the accountants from practicing law in the tax field, all through the medium of the state legislatures and the state courts, certainly seem to point to the desirability of preemption of this entire field by the Federal government.

Lawyers will oppose an attempt to centralize authority for regulation of tax practice in the Federal government. (Page 12, first complete paragraph)

The Institute expected the opposition of the legal profession. It saw no alternative to Federal regulation of tax practice, except chaos and the eventual elimination of accountants from the field. It was perfectly willing to let public opinion decide the issue. It is the public who pays the bill.

A Federal statute might not accomplish what the accountants want. The courts might not support it. (Page 12, last complete paragraph)

Counsel for the Institute advises that if the Congress

preempted the field of Federal tax practice, state courts could not interfere successfully with enrolled agents. Counsel is preparing an exhaustive brief on this subject which will probably be available within a month.

The accountants should pick a better case than the Agran case the next time they appear in court. (Page 13, second complete paragraph)

The accountants can not pick cases. The American Institute has never initiated a case in this subject. The cases are initiated and therefore selected by the bar associations. The accountants must always be on the defensive and it may be expected that the cases will not be favorable from the accountants point of view.

There should be a complete moratorium for a year or even more. (Page 13, second complete paragraph)

The Institute would undoubtedly welcome a moratorium of indefinite length if it could be assured that its members could collect their fees for the tax services they render and that local bar associations would not initiate tentative action against certified public accountants or others, involving situations in which the decisions could adversely affect certified public accountants.

The Institute should speak only for CPAs and differentiate itself from other practitioners of accounting. (Page 13, third complete paragraph)

The Institute does speak only for CPAs and does differentiate between CPAs and other practitioners.

It does not, however, wish to appear before the public in the position of trying to exclude from tax practice all non-certified accountants who are presently in the field. The Institute does not believe that the field of Federal income tax practice in all its phases can be successfully regulated under state law, or that persons other than certified public accountants or lawyers who now work in this field can be expelled from it.

The only solution would seem to be overall regulation of all phases of tax practice by the Treasury Department which would require demonstration of such professional qualifications as it felt necessary.

An agreement has already been reached between the two professions in the Statement of Principles and we should return to that. (Page 14, first incomplete paragraph)

The Statement has not been repudiated. It provides no protection for CPAs against attack by local bar associations.

Both the Bercu and Agran cases were cases where accountants started the proceedings in court. The Institute might advise against fee suits except in cases where the grounds were clear. (Page 14, first full paragraph)

Actually, the Bercu and Agran decisions were the result of intervention by the New York County Lawyers Association and the California State Bar respectively. The lower court in the Bercu case had denied the CPA his fee, and in the Agran case, had awarded it to him. There would have been no trouble, if the bar associations had stayed out.

Incidentally, it has always been a source of regret to the accounting profession that counsel for the New York County Lawyers Association in the Bercu case was a member of the National Conference of Lawyers and Certified Public Accountants representing the American Bar Association.

Solution of the problem through the National Conference machinery was attempted with great labor and good will. It broke down because local bar associations attacked certified public accountants in spite of existing machinery for peaceful settlement of differences.

In other common law countries, this problem does not exist. (Page 14, fourth complete paragraph)

It is significant that in England, in Canada and in Australia, accountants are permitted to engage in all phases of tax practice short of the regular court, as they have been permitted to do in the United States until recently.

Certified public accountants are qualified in tax matters. That being established, it would seem better to let the public select what it wants and to let the matter work out through the ordinary channels of competition. (Page 15, first incomplete paragraph)

If this proposition were acceptable to the legal profession generally, it should not be difficult to provide CPAs with reasonable security.

What objection could there be to the American Bar Association joining with the Institute in asking the Treasury Department to amend its regulation in Circular 230, leaving the

proviso in Section 10.2(f) untouched, but writing into the regulations an expression of what enrolled agents may do, consistent with Dean Griswold's "inner circle" theory, endorsement of the Rocky Mountain Review article, and his answer to a question indicating that he believed certified public accountants may properly interpret and apply the provisions of the Internal Revenue Code and related regulations and decisions.

This is the crux of the matter. If state courts could be effectively discouraged from holding CPAs to have engaged in the practice of law merely because they interpret and apply provisions of the Internal Revenue Code and related regulations and decisions in the course of their ordinary tax practice, CPAs could breathe easily and resume their normal cooperative relations with the legal profession, which CPAs earnestly desire.

The Institute would then be only too glad to strengthen its canons of ethics and to encourage its members to cooperate with lawyers in all suitable circumstances.

In the present climate of insecurity and resentment, cooperative relations between the two professions seem bound to deteriorate.