

REMARKS OF CHIEF ACCOUNTANT, JOHN C. BURTON, BEFORE THE MEMPHIS
CHAPTER OF THE TENNESSEE SOCIETY OF CPAS ON FEBRUARY 12, 1974

(These remarks constituted a part of a speech
which covered other topics as well)

Last week a jury in Federal Court in Oklahoma City rendered its verdict in the Four Seasons trial. Two representatives of Arthur Andersen & Co. were acquitted and the jury was unable to reach a verdict respecting the partner in charge of the engagement. Accordingly, a mistrial was declared as to him. In connection with this verdict, the firm of Arthur Andersen & Co. has issued a lengthy statement which has no doubt already been given extensive circulation. In this statement, the Chairman of that firm charges that "there have been significant improprieties by government representatives in this case from beginning to end," and adds that the firm intends "to review all legal recourses to hold accountable those whose purpose was indictment and conviction for the sake of winning in reckless disregard of the facts as well as personal liberties." These are serious charges indeed and they will not be taken lightly by the Commission. If they are justified, appropriate action will be taken to deal with the staff members involved and to assure that no recurrence will take place. If they are not justified, a grave disservice has been done to all parties in making them.

The Commission refers cases involving professionals to the Department of Justice for criminal prosecution only with the greatest hesitation and after being convinced that the grossest kind of professional deficiencies are involved. The Department of Justice must then be satisfied as well that a criminal action is warranted. The case is then presented to a grand jury which must decide whether an indictment should be handed down.

In the case of accountants, the Office of the Chief Accountant is responsible for advising the Commission as to whether or not a criminal reference should be made. The Division of Enforcement generally conducts the investigation and makes its recommendation and the Office of the General Counsel also serves in an advisory capacity. Our office would not recommend criminal prosecution unless the Chief Accountant was convinced that the accountants involved had taken actions which on the basis of their professional training they must have known to be wrong. An honest error in judgment would not be the basis for a criminal reference of a professional, unless that error was so gross as to constitute an act of closing the eyes so as not to see.

The Four Seasons case was referred to the U.S. Attorney during the tenure of my predecessor as Chief Accountant. He concurred with the reference. When I became Chief Accountant I was asked by the U.S. Attorney in charge of the case whether I agreed with that judgment and whether I would be prepared to testify. Before making my own judgment I assigned an Assistant Chief Accountant who had not been previously connected with the case to go to New York and review the evidence. He spent several months on this task and we reviewed the case in great depth before I advised the U.S. Attorney that I was prepared to testify. This Assistant Chief Accountant then spent several additional months preparing the accounting aspects of the case. Both I and the government's principal expert witness, who was the senior technical partner of a national accounting firm, separately spent several days in Oklahoma City reviewing the working

papers of the Four Seasons audit. We both came away prepared to testify and did testify that on the basis of our review we believed that a professional accountant would have known that the certified financial statements were false and misleading.

Despite this testimony nine of the twelve jurors concluded that the government had not proved beyond a reasonable doubt that the partner in charge of the engagement had knowingly certified false statements, and a mistrial was therefore declared. The jury acquitted the subordinates on the job. Andersen's statement concludes that the verdict "confirms our firm's position that the audits involved were proper and were conducted in a professional manner." With all due respect, I do not believe that the judgment of three quarters of a lay jury that criminal fraud had not been committed leads to the conclusion that the audits were proper, nor do I believe that the outcome represents a "complete vindication of our personnel." Such a verdict simply indicates that there was reasonable doubt as to criminal conduct. The adequacy of professional performance was not decided by the jury.

At the present time, to the best of my knowledge, no judgment has been made as to whether the partner in charge of the Four Seasons audit should be retried or whether any other actions should be taken in regard to this case. In the meantime, I regret that the firm of Arthur Andersen has seen fit to issue a statement designed to inflame emotions. It is my judgment that such an action has served badly the firm, the profession and the Commission, all of whom must work together in the years ahead.