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## RELEVANT DOCKET ENTRIES

Note: The proceeding below was technically original with the Arizona Supreme Court. There is no formal docket entry list. The following constitutes a list of relevant entries to the official file and the dates thereof.

<u>DATE</u>	<u>PROCEEDING</u>
1976	
March 2,	FORMAL COMPLAINT with exhibit and Notice filed.
March 23,	RESPONDENTS' Memorandum of Law filed.
March 23,	RESPONDENTS' Notice of Factual Issues filed.
March 23,	SYNOPTICAL STATEMENT of Position of Complainant filed
March 23,	RESPONDENTS' ANSWER filed.
April 8,	STIPULATION for Addition to Record filed.
April 8,	FINDINGS of Fact, Conclusions of Law, and Recommendations

DATEPROCEEDINGS

of Special Local Administrative Committee of the State Bar of Arizona for District No. 5, signed.

April 27, RESPONDENTS' Objection to Recommendation of the Administrative Committee and Request for Oral Argument before the Board of Governors, filed.

April 30, FINDINGS of Fact, Conclusions of Law and Recommendations of the Board of Governors of the State Bar of Arizona, signed.

May 4, RESPONDENTS' Objection to Recommendations of Board of Governors, filed.

May 7, STIPULATION and Order regarding timing for filing of briefs and waiver of

DATEPROCEEDINGS

oral argument filed.

May 7, TRANSCRIPT of proceedings  
before the Special Local  
Administrative Committee  
of the State Bar of Ari-  
zona for District No. 5,  
with Exhibits, filed.

May 7, BRIEF of the State Bar of  
Arizona to the Supreme  
Court of Arizona, filed.

May 7, BRIEF of Respondents to the  
Supreme Court of Arizona,  
filed.

May 17, Board of Governors of the  
State Bar of Arizona  
hearing transcript, filed.

June 1, MEMORANDUM re: Supplemental  
Citation with Exhibit and  
Affidavit of Service, filed.

June 1, SUPPLEMENTAL memorandum of  
Respondent and Affidavit

DATEPROCEEDINGS

of Service, filed.

July 12,	LETTER from William C. Canby, Jr. to The Honorable James Duke Cameron dated July 9, 1976 transmitting a copy of the U.S. Supreme Court decision in <u>Cantor v. Detroit Edison, Co.</u> (No. 75-122 decided July 6, 1976), filed.
July 26,	OPINION and ORDER of the Arizona Supreme Court entered.
July 26,	NOTICE of Decision by Clifford H. Ward, Clerk of the Arizona Supreme Court, filed.
July 28,	NOTICE of Appeal to the United States Supreme Court and Proof of Service filed.

DATE

PROCEEDINGS

August 9,

ORDER of Mr. Justice

Rehnquist staying order of  
censure, filed.



SPECIAL LOCAL ADMINISTRATIVE COMMITTEE  
OF THE  
STATE BAR OF ARIZONA  
FOR  
DISTRICT NO. 5

In the Matter of a Member of )  
The State Bar of Arizona )  
 )  
JOHN R. BATES and VAN ) No. 76-1-S16  
O'STEEN, )  
 )  
Respondents. )  
\_\_\_\_\_ )

FORMAL COMPLAINT  
(Dated March 2, 1976)

TO: JOHN R. BATES and VAN O'STEEN, Respondents;

Complaint is made against you as follows:

1. Respondents are members of the State Bar of Arizona.
2. On February 22, 1976 Respondents caused to be published in a newspaper, The Arizona Republic, an advertisement offering Respondents' legal services and publicizing fees. A copy of this advertisement is attached as Exhibit A to this complaint.
3. Publication of this advertisement is

in violation of the Code of Professional Responsibility of the State Bar of Arizona, specifically Disciplinary Rule 2-101 (B).

4. This formal complaint is issued and served by order of Special Local Administrative Committee S16 of the State Bar of Arizona pursuant to and in accordance with the rules of the Supreme Court of Arizona pertaining to discipline of attorneys.

Dated: March 2, 1976

By: Philip E. von Ammon  
Chairman - Special  
Local Administrative  
Committee

Exhibit A, copy of advertisement which appeared in the Arizona Republic on February 22, 1976, appears on page 409, infra.

SPECIAL LOCAL ADMINISTRATIVE COMMITTEE  
OF THE  
STATE BAR OF ARIZONA  
FOR  
DISTRICT NO. 4A

In the Matter of a Member )  
 )  
Of the State Bar of Arizona ) No. 76-1-616  
 )  
 )  
\_\_\_\_\_ )

ANSWER  
(Dated March 23, 1976)

For their answer to the Formal Com-  
plaint in the proceedings herein, Respon-  
dents John R. Bates and Van O'Steen allege  
as follows:

1. Allegations of paragraph 1 are  
admitted.
2. Allegations of paragraph 2 are  
admitted.
3. Allegations of paragraph 3 are  
admitted, but Respondents allege the in-  
validity of Disciplinary Rule 2-101(B) for  
the reasons stated in paragraphs 5 through

12 of this Answer.

4. Not having sufficient information to form a belief, Respondents deny the allegations of paragraph 4.

5. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced violates the rights of Respondents to freedom of speech and press under the First and Fourteenth Amendments to the United States Constitution.

6. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced violates the First, Sixth and Fourteenth Amendment rights of potential clients to receive information concerning the availability and cost of legal services.

7. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced violates Respondents' Fourteenth Amendment right to equal protection of the laws in that it generally prohibits advertising by attorneys

in private practice but permits advertising by qualified legal assistance organizations, and permits attorneys involved in political or (2) organizational activities to publicize themselves as attorneys.

8. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced violates Respondents' Fourteenth Amendment right to due process of law in that its prohibitions are so vague as to be incapable of informing a person of normal understanding what is prohibited and what is not.

9. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced constitutes a violation of 15 U.S.C. §1 (Sherman Act) in that it is an instrumental part of a combination and conspiracy to restrain interstate trade and commerce in the practice of law, and interstate trade and commerce which depends upon the practice of law.

10. Respondents allege that Disciplinary

Rule 2-101(B) on its face and as enforced constitutes a violation of 15 U.S.C. §2 (Sherman Act) in that it is an instrumental part of a monopoly and attempt to monopolize interstate trade and commerce in the practice of law.

11. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced constitutes a violation of Ariz. Rev. Stat. §44-1402 in that it is an instrumental part of a combination and conspiracy to restrain trade or commerce in the practice of law.

12. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced constitutes a violation of Ariz. Rev. Stat. §44-1403 in that it is an instrumental part of a monopoly or attempt to monopolize trade or commerce in the practice of law.

13. Respondents allege that the State Bar disciplinary hearing procedures under which Respondents' case is being heard violate Respondents' rights to due process of

law under the Fourteenth Amendment in that initial hearings and first review are conducted by practitioners interested in the outcome of the case by reason of their engagement in the private practice of (3) law in competition with Respondents and others who may wish to advertise.

WHEREFORE Respondents pray that this proceeding be dismissed.

Dated March 23, 1976

By: William C. Canby, Jr.  
Attorney for Respondents

\* \* \* \*

STIPULATED PRETRIAL ORDER  
(Title omitted in printing)  
(Dated March 25, 1976)

The parties respectfully request that the Disciplinary Committee enter a pretrial order as follows:

1. There is no dispute that Respondents violated Disciplinary Rule 2-101(B), and no evidence need be taken on the question of

whether they caused the particular advertisement to be printed.

2. The Respondents stand on their position that the rule is invalid and not properly enforceable, while the complainant takes the opposite view. The parties also differ as to the validity of the disciplinary procedure. The views of the parties in these respects have been set forth in memoranda already filed. Without in any respect waiving their positions, the parties waive oral argument on these questions, and stand on their positions as taken in writing.

3. The parties request the Committee to allow up to a day for the taking of evidence on this matter. The parties will work out for themselves a reasonable allocation of time to their mutual satisfaction. The State Bar of Arizona will produce for cross-examination the president of the State Bar of Arizona and the Respondents will produce for



cross-examination the two individuals against whom complaint has been made.

(2) 4. Both parties waive objections as both foundation and relevance as to any exhibits either side may wish to offer or any live testimony either side may wish to develop. In so doing, the parties are not acknowledging that any particular item of evidence is, in fact, truly relevant to the case. The object is, rather, to permit a record to be made which will permit each side to feel that it can fairly present its contentions both here and in other tribunals to which this matter may pass. Each party reserves the right to contend that whatever evidence does come into the record may be of no weight or persuasiveness. This stipulation reflects the wish of the parties not to consume time over points of evidence. Each side does, however, reserve the right to object to what it may regard as prejudicial leading or

excessive hearsay, agreeing that any question of hearsay shall be passed upon in terms of whether the contested material has any persuasive value.

5. The parties request the speedy production of a transcript. They reserve the right to request at the close of the hearing the possibility of submitting supplementary memoranda.

LEWIS & ROCA  
By: Orme Lewis and  
John P. Frank  
Attorneys for The  
State Bar of Arizona

By: William C. Canby, Jr.  
Attorney for Respondents

\* \* \* \*

(3)

ORDER

The foregoing stipulation is accepted and adopted as a pretrial order. This matter shall be heard on the 7th day of April, 1976, at 1700 First National Bank Plaza at

1:00 o'clock p.m.

Dated: March 25, 1976

By: Philip von Ammon,  
Chairman

\* \* \* \*

SPECIAL LOCAL ADMINISTRATIVE COMMITTEE  
OF THE  
STATE BAR OF ARIZONA  
FOR  
DISTRICT NO. 5

In the Matter of a Member of )  
The State Bar of Arizona )  
JOHN R. BATES and ) No. 76-1-S16  
VAN O'STEEN, )  
Respondents. )

---

TRANSCRIPT OF PROCEEDINGS

\* \* \* \*

(4)

THE CHAIRMAN: This is the time and  
place set for the hearing of the Special  
Local Administrative Committee of the  
State Bar of Arizona for District No. 5

in the matter of a Member of the State Bar of Arizona, John R. Bates and Van O'Steen, Respondents, No.: 76-1-S16.

The Members of the Administrative Committee being Carl Divelbiss, Mr. Ivan Robinette, and Mr. Philip von Ammon are present.

I'd like to hear the appearance also on behalf of the parties.

MR. FRANK: For the Complainant, my partner, Mr. Orme Lewis will join me in a moment. I will proceed, however, in the meantime I'm John P. Frank, and I have with me on table and am receiving papers from a paralegal assistant, Miss Lee.

THE CHAIRMAN: Mr. Canby?

MR. CANBY: My name is William C. Canby, Jr. I'm attorney for both Respondents, Mr. Bates and Mr. O'Steen.

(5) THE CHAIRMAN: I'd like to have the

original handed to the court reporter, who will mark it as Bar Exhibit No. 1, if there is no objection, Mr. Canby.

MR. CANBY: No objection.

THE CHAIRMAN: It may be received.

(Document marked Bar Exhibit No. 1 for identification by the Notary, and received in evidence.)

MR. FRANK: As Bar Exhibit No. 2, I advise the panel that we have made certain inquiries, as particular questions to some 14 Phoenix law firms. The answers have been compiled into Exhibit 2. We have stipulated that Exhibit 2 may be admitted and that the underlying letters will be maintained in our office, should either Mr. Canby or this panel or any later person reviewing the matter have any desire at any later time to have access to them. We have in this Exhibit substituted anonymous terms for (6) the names of the firms answering the particular questions, al-

though, we have listed the firms, and we have stipulated that that may be done.

It is further stipulated between us that we have offered these persons for cross-examination. The other side waives cross-examination.

It is stipulated that the appropriate partners from each of these firms would give these answers to these questions if they were asked orally.

Mr. Canby, have I fairly stated our stipulation?

MR. CANBY: Yes. So stipulated.

MR. FRANK: I offer the original of this as Bar Exhibit No. 2, and give copies to each member of the panel.

(Document marked Bar Exhibit No. 2 for identification by the Notary.)

THE CHAIRMAN: Bar Exhibit No. 2 may be received in evidence, subject to the stipulation of the parties as stated for the

record by Mr. Frank.

(Bar Exhibit No. 2 received in evidence.)

MR. FRANK: There is a further stipulation I should have mentioned. One of the 14 firms which has answered the questionnaire is Lewis and Roca, of which I am a member. So, as to be scrupulously careful to avoid any problem about being both witness and counsel in the same (7) matter, Mr. Canby has stipulated with me that Lewis and Roca might give answers to the questions; that they might be included and I might nonetheless appear with Mr. Lewis as counsel, and there would be no prejudice on this to the other side; the answers being strictly informational in any way.

Mr. Canby, have I fairly stated that?

MR. CANBY: So stipulated.

THE CHAIRMAN: In view of the stipulation, the Respondents waive the right to examine any persons who are spokesman on

behalf of these firms, would seem to me, you wouldn't be under any liability anyway, Mr. Frank.

MR. FRANK: Now, we have taken a number of depositions -- indeed, most of the testimony is probably in deposition by now. I tender to the reporter the originals of the deposition of Doctor Helme and Robert Begam, noting simply by way of identification that Doctor Helme testified concerning the professional ethics of the medical profession, for such bearing as that may have on this case, and Mr. Begam testified in his capacity as president-elect of the American Trial Lawyers Association.

THE CHAIRMAN: Very well, the Deposition of Robert Begam will be marked as Exhibit No. 3, and if there is no objection, the deposition will be received in evidence.

(8) Is there any objection to the



receipt of Deposition of Robert Begam, Exhibit No. 3?

MR. CANBY: No objection, subject, of course, to our stipulation.

MR. FRANK: Yes. Our stipulation, I will note, again, for the panel, it is: Since this is not a jury case, that you will give such weight as it deserves to any portion of the materials. That's all.

MR. CANBY: No objection.

(Deposition of Robert G. Begam, Esquire, marked Bar Exhibit No. 3 for identification by the Notary.)

THE CHAIRMAN: Very well, Exhibit No. 3 will be received.

(Bar Exhibit No. 3 received in evidence.)

THE CHAIRMAN: The deposition of William Helme, H-e-l-m-e may be marked Exhibit No. 4 and may be received subject to the same stipulation.

(Deposition of William Helme, M.D. was marked Bar Exhibit No. 4 for identification by the Notary and received in evidence.)

MR. FRANK: Next, Mr. Mark Harrison, the President of the Arizona State Bar was that in a technical sense perhaps this is his deposition, but I had considerable direct, and I'd ask leave to offer it by stipulation, as Bar Exhibit next in (9) number.

THE CHAIRMAN: Any objection, Mr. Canby?

MR. CANBY: No objection.

THE CHAIRMAN: It may be received.

(Deposition of Mark I. Harrison, Esquire was marked Bar Exhibit No. 5 for identification by the Notary, and received in evidence.)

MR FRANK: A point of information, Mr. Chairman, I hold a copy of the advertisement which is the subject of this case. It is attached to the Complaint. Is there any point in having it marked, especially as an Exhibit, as well?

THE CHAIRMAN: Yes.

MR. FRANK: All right. I offer the advertisement as the Exhibit next in number.

THE CHAIRMAN: That's Bar Exhibit No. 6. Absent any objection, it may be received.

MR. CANBY: No objection.

THE CHAIRMAN: If you can figure out some evidentiary (sic) grounds to exclude it, Mr. Canby, I'd certainly be interested in your expose.

MR. CANBY: Especially since it's been admitted in our Answer.

(Copy of ad marked Bar Exhibit No. 6 for identification by the Notary and received in evidence.)

(10) MR. FRANK: Mr. Chairman, I now offer as the next three Exhibits three documents relating to the profession of accounting, which will be taken up in the course of testimony by Mr. Davidson, but since they will be admitted by stipulation, I present them at this time.

THE CHAIRMAN: I'd like to have them marked separately. You can choose the order, I don't care, but tell us what it is.

What is no. 7?

MR. FRANK: No. 7 is the "restatement (sic) of the Code of Professional Ethics" of the accounting profession.

THE CHAIRMAN: Any objection?

MR. CANBY: Let me take a quick look at those.

MR. FRANK: (Presenting)

MR. CANBY: No objection.

THE CHAIRMAN: Seven may be received, subject to stipulation of the parties.

(Booklet marked Bar Exhibit No. 7 and received in evidence.)

THE CHAIRMAN: No. 8?

MR. FRANK: These are the "Rules and Regulations" of the "Arizona State Board of Accountancy".

(Booklet marked Bar Exhibit No. 8 for

identification by the Notary.)

THE CHAIRMAN: Any objection to that,  
Mr. Canby?

(11) MR. CANBY: Again, may I see that  
for a moment?

THE CHAIRMAN: Certainly.

MR. CANBY: No objection.

THE CHAIRMAN: It will be received.

(Bar Exhibit No. 8 received in evi-  
dence.)

THE CHAIRMAN: No. 9?

MR. FRANK: No. 9 is an excerpt from what  
Mr. Davidson will identify as the standard  
text on the "Ethical Standards of the Ac-  
counting Profession" by Messrs. Carey and  
Doherty.

MR. CANBY: No objection.

THE CHAIRMAN: Did you say you had no  
objection, Mr. Canby?

MR. CANBY: No objection.

THE CHAIRMAN: Bar Exhibit No. 9 may

be received in evidence.

(Copy of excerpt marked Bar Exhibit No. 9 for identification by the Notary, and received in evidence.)

MR. FRANK: Exhibit 10, I'm told, by inadvertence is not in the room, but I'm told it will be brought in. I ask to hold the number. What it is is the revised disciplinary rule relating to discipline of the American Bar Association as adopted by the House of Delegates in February of this year, and by oversight it was not brought into the room.

(12) May I hold the number for that purpose and tender it as rapidly as it's brought in?

THE CHAIRMAN: You certainly may.

\* \* \* \*

LYMAN A. DAVIDSON, being sworn as a witness by the Chairman, was examined and testifies as follows:

EXAMINATION

By Mr. Frank:

Q. Mr. Davidson, until recently you have been engaged in the profession of public accountancy, I believe?

A. Yes.

Q. I think you have just retired; is that right?

A. September 30th.

Q. With what firm were you associated?

A. I was partner in charge of Ernst & Ernst, here at Phoenix.

Q. For how many years had you been in that position?

A. Well, I opened the office 16 years ago, and the one in Tucson 14 years ago.

Q. So that you were the officer in charge for the entire state; is that correct?

A. That's correct.

Q. Had you been in the profession of

accountancy prior to that time?

A. I had been in totally for 32 years, in which seven was on my own account.

MR. FRANK: Mr. Canby, I don't want to spend time needlessly on further foundation. May we have a stipulation that Mr. Davidson is an expert in the field of accounting?

(14)MR. CANBY: Yes.

THE CHAIRMAN: You didn't specifically establish whether he was a certified public accountant.

MR. FRANK: Thank you.

Q. BY MR. FRANK: Mr. Davidson, are you a certified public accountant?

A. Yes.

Q. For how many years have you been?

A. I think that that figure would be around 30 years.

Q. Mr. Davidson, is there some national organization in the field of pub-



lic accounting?

A. Yes.

Q. What is that organization?

A. The American Institute of CPA's.

Q. Are you a member of that organization?

A. Yes.

Q. Is there also a state organization?

A. The Arizona Society of CPA's.

Q. What proportion of the members of the accounting profession; that is to say of the certified public accountants of the state are members of the state association?

A. I don't have an exact figure available.

Q. Approximately?

A. Approximately 75 percent.

(15) Q. What offices, if any, have you held in the state profession -- state association?

A. I have been a member of the Ethics

Committee; a number of other committees, and served on the Board of the Society for a number of years, including the last one as president.

Q. Mr. Davidson, in addition to these two organizations, which I take it are voluntary organizations -- is that correct?

A. That's correct.

Q. -- is there also some state regulatory agency in the field of accounting?

A. The State Board of Accountants.

THE CHAIRMAN: Excuse me, Mr. Frank. The record will show that Mr. Orme Lewis appearing as additional counsel or associate counsel for the State Bar has joined us in the room.

MR. LEWIS: My apologies.

Q. BY MR. FRANK: Mr. Davidson, I believe the answer you just gave me is that there is something called the State Board of Accountancy; is that correct?

A. Yes, that's correct.

Q. And the State Board of Accountancy is, briefly speaking, what?

A. It's a regulatory state agency.

(16) Q. Established under state law?

A. Correct.

Q. I show you what has been marked into evidence as Exhibit 8, headed, "Arizona State Board of Accountancy Rules and Regulations", and ask you what that is? (Presenting).

Mr. Davidson, are those the regulations of the accounting profession?

A. These are the Rules and Regulations of the Arizona State Board of Accountancy.

Q. Have you had any official organization capacity with that organization?

A. I was a member of the State Board, which ended last year, June '74 -- or '75. I was president of that group.

Q. Mr. Davidson, does not the organization of accountants have some code of

professional ethics of some sort?

A. Yes, sir.

Q. I will show you what has been marked into evidence as Exhibit No. 7, and will ask you if that is a copy of what is called a "restatement (sic) of the Code of Professional Ethics" which is commonly used in your profession?

A. It is, sir.

(17) Q. Now, how, if at all, does that national code relate to the code, if there is one, in the State of Arizona?

A. They are very similar, if not identical.

Q. Would you explain, please, how this is achieved?

Is the national code adopted by the state organization?

A. That is correct. If they so desire.

Q. Has it been so adopted in this state?

A. It has been in this state.

Q. In addition to this, is it also adopted by the State Board of Accountancy?

A. Yes.

Q. So that in other words, the very same rules become national standards, state standards, and then state regulations, as well; is that correct?

A. That is correct.

Q. Are you generally acquainted with the system by which the American Bar Association drafts standards of ethical conduct for lawyers?

A. In general, yes.

Q. Are you acquainted with the fact that subject to such modifications as it may think appropriate, the State Supreme Court then adopts those rules or canons for the governance of lawyers in the State of Arizona?

(18) A. Yes, sir.

Q. Is the procedure by which the State

Board of Accountancy adopts the accounting rules of the national organization essentially analogous to the procedure with which the State Supreme Court adopts the rules for the profession of lawyers?

A. I would say essentially the same.

THE CHAIRMAN: Mr. Frank, are you undertaking to establish that the National Code of Professional Ethics for the Profession of Accountancy, by virtue of the adoption by the State Board of Accountancy has the force of law in this state?

MR. FRANK: I wish to show that it has the force of law, which will make it different from some of the other professions, but like that of the legal profession; then, go into its contents, yes.

THE CHAIRMAN: Okay.

Q. BY MR. FRANK: Now, Mr. Davidson, is there some provision in the "restatement" which is before you which deals with the topic of advertising?

A. Yes.

Q. And you have obviously told me about this in advance. I believe it's Section -- well, I don't know. What Section is it? You have it.

A. I beg your pardon. Are you referring --

(19) Q. -- to the provision dealing with solicitation and advertising in the booklet, which is now in your hands, the "restatement" of the national code.

THE CHAIRMAN: That's Bar Exhibit No. 7.

MR. FRANK: Thank you.

A. If I may read from it --

THE CHAIRMAN: What rule number?

THE WITNESS: "502 Solicitation and advertising".

"A member shall not seek to obtain clients by solicitation. Advertising is a form of solicitation and is prohibited."

Q. BY MR. FRANK: Mr. Davidson, I

now show you Exhibit 9, which is the extract from the works of Carey and Doherty on "Ethical Standards", and will ask you what that is?

Who are Carey and Doherty?

A. I beg your pardon. John Carey was the highly respected Executive Director of the American Institute for CPA's for 20 or 30 years, and in the opinion of my peers in the accounting profession, was probably one of the most knowledgeable people about the accounting profession, because of his long association.

Q. I take it the second author is someone associated with him?

A. He was an associate, correct.

(20) Q. In the extract which you have before you, there is some textual expansion of just what advertising is, as what is prohibited; is that correct?

A. That's correct.

THE CHAIRMAN: That's Bar Exhibit No.



9 which the witness is referring to?

MR. FRANK: Yes, Bar Exhibit No. 9.

Thank you.

Q. BY MR. FRANK: Mr. Davidson, does the State Board of Accountancy in its capacity as the disciplinary body for accountants deal with cases of accountants who are charged with having violated the rules of which we speak?

A. Yes.

Q. And take, for example, a recent year, 1974 -- I believe you gathered the figures as to the number of cases that came before your board concerning solicitation or advertising in that year; didn't you?

A. Yes.

Q. You are free to look at your notes.

A. May I look at my notes on that?

Q. Yes. Tell us what actually happened in a given year on that score?

A. The year 1973, the board considered

26 complaints concerning solicitation and advertising. That would be exclusive of so-called advertising in the Yellow Pages or the Telephone Book. Those were considered to be minor.

(21) The figures given to me this morning by the current Executive Secretary of our State Board said that in 1974 we revoked one certificate and censured another firm.

Q. Mr. Davidson, for how long has your profession had a written rule prohibiting solicitation and advertising?

A. My authority is Mr. Carey's book, and he states that the Rules of Ethics have been under an evolutionary for the past 70 years; and my 32 years in accounting, certainly, there has been this prohibition. I can't give you the exact date that it was adopted.

Q. Is the prohibition on advertising generally honored in the profession?

A. No question about it, sir. Yes.

Q. So that in your many years in this state, have you ever seen, for example, a newspaper ad by an accountant?

A. No, sir.

Q. So, as far as you know, has there ever been one?

A. So far as I know, there never has been one.

Q. What becomes, then, of the young accountants who come to the community and who wish to develop their professions?

How do they do that?

(22) A. Well, they seem to have no difficulty. I don't know of any accountants who, because of his inability to advertise has ever had to go out of practice.

Q. In short, has it been your observations that young accountants come to this community and so, in fact, get professionally started without any particular difficulty?

A. Yes, sir.

Q. And that's a widespread generalization?

A. If I may say so, Mr. Frank, we do require in this state two years of experience in a CPA firm, after passing the examination and, of course, that means that these people not only do, but must pursue that course, so that that gives them an opportunity, if I may say so, to go out in practice on their own.

THE CHAIRMAN: Do you mean they have to work for a firm of CPA's before they receive their own certificate?

THE WITNESS: That's correct, before they receive a license to practice. Certificate is correct.

THE CHAIRMAN: All right.

Q. BY MR. FRANK: Mr. Davidson, do you regard advertising as desirable for your profession?

Would this be a helpful innovation,

in your opinion?

A. I would say it would be a disaster.

(23) Q. How would the public interests be disserved if you were to repeal or abrogate your rules of ethics in this respect?

THE CHAIRMAN: Did you say "served" or "disserved"?

MR. FRANK: "Disserved". Thank you.

A. I think the public would be disserved, because the idea is to have the public to understand that we in the profession know we have a code of ethics that is to their best interest.

Q. BY MR. FRANK: Would you be concrete about that?

Just where would the harm be if the accounting firms were to put ads in the paper saying, audit so and so much per hour, or some other kind of commercial display of that type?

A. Well, again, I think I should go back to the point that at one time the accountants were not engaged as a profession. This would have been in the early 1900's, and they found out at that time that they would not be considered anything other than businessmen, unless they did have a complete set of rules of conduct.

Q. How is the accountant different from a businessman, as you have just used the phrase?

A. Well, first of all, I think we are distinguished from the businessman by reason of the fact that we must be absolutely independent. We may be engaged by a client (24) and find that his books are not in good order, and so state, for the benefit of the public.

We do serve the public, basically. I think that distinguishes us from any businessman.

Q. And that public service to which

you describe, by virtue of your independence, do you have an opinion as to how that would be affected if you advertise and solicited and went out looking for business?

A. Well, I think anytime you advertise you imply that some kind of a profit motive -- that your first obligation is not to the public, it is to yourself, to make a profit. That is my feeling, and the way it would be taken.

I think the public, over this period of 70 years has been educated to the fact that accountants do not solicit or advertise, and it would be degrading to the profession and not in the best interest of the public if they did.

Q. I take it it is your opinion it could be incompatible or it would be incompatible with the independence of your audit if you hustled the business in the first place?

A. No question about that.

MR. CANBY: Excuse me. Was that intended to be a restatement of his testimony?

(25) MR. FRANK: I'm trying to find out what it is that he is saying.

Q. BY MR. FRANK: So, let me ask: Was that a restatement of your testimony?

A. I would say yes. In fact, I'm willing to say it again: I'm saying it would certainly reflect upon the independence of the accountant if we were to put ads in the paper or solicit in any other form.

THE CHAIRMAN: Mr. Canby, for the sake of the record, I believe that Mr. Frank did, in essence, restate the nub of Mr. Davidson's testimony. I think that the thrust of it was that he believes that the independence of the accountant, and therefore the objective of their audits would be threatened or jeopardized by advertising.

What I have not heard yet is why he



believes that to be true; just what the causal connection is between the two.

Q. BY MR. FRANK: Why do you believe that to be true, Mr. Davidson?

A. Well, it seems to me it is self-evident that if you advertise your attainments, your independence is absolutely subject to question.

Q. Are you able to expand on that any further for the benefit of Mr. von Ammon and the record, of course?

A. Is it permissible --

(26) Q. I think you have the volume -- I'm aware that you have been prepared for this testimony, and a passage of Mr. Carey's book appeals to you and a better statement than your own statement. I'm sure you can have access to it.

MR. CHAIRMAN: That's fine. Will you tell us the page number?

Q. BY MR. FRANK: Do you want to pull out the book itself? I don't think we

Xeroxed that page.

A. Page 47, which is an Exhibit here.

Q. Is that the passage that we duplicated?

A. Yes. Section 28, page 47.

MR. DIVELBISS: What Exhibit?

THE CHAIRMAN: Exhibit No. 9, Carl.

MR. FRANK: Since it is very short, would you mind, Mr. von Ammon, so that if the record ever gets disassociated from the Exhibit, it can be readily understood; may I ask Mr. Davidson to quote the passage which I take it he relies upon?

THE CHAIRMAN: Certainly.

Q. BY MR. FRANK: Would you do that?

A. "The general prohibition against advertising is accepted today without much question. To be sure, there is nothing illegal or immoral about advertising as such, but it is almost universally regarded as unprofessional."

(27) "Younger accountants are some-

times tempted to advertise or solicit, and they may suspect that the rules are a result of a conspiracy among their older colleagues to protect themselves against new competition."

"Actually, the rule against advertising has many sound reasons to support it. In the first place, advertising would not benefit the young practitioner. If it were generally permitted, the larger, well-established firms could afford to advertise on a scale that would throw the young practitioner wholly in the shade. Secondly, advertising is commercial. Professional accounting service is not a tangible product to be sold like a commodity. Its value depends on the knowledge, skill and honesty of the CPA. Who would be impressed with a man's own statement that he is intelligent, skillful and honest? Lastly, advertising does not pay."

This may be a direct conflict with

some other testimony, but that's the way we feel about it. And that's it.

Q. But there is another passage. This will be my next question.

In the volume which you have at your side, there is, I think, near the beginning of it a passage dealing with the concept of the independence of the accountant and the relation of that independence in ethics.

(28) THE CHAIRMAN: This is from the same work from which Exhibit 9 has been extracted?

THE WITNESS: Yes.

Q. BY MR. FRANK: Am I correct in my memory of that point, Mr. Davidson?

A. Concerning advertising?

Q. No, the relationship of ethics, generally, to the accountant's independence, or is my memory at fault?

A. Well, I think I would have to say that as far as this volume is concerned, the matter of independence is discussed.

thoroughly. It's certainly a major part of our Code of Professional Ethics, but as far as relating this to advertising, I think I'd have to stand on the testimony that I have given to date.

Q. Do you adopt as your own the statements by Mr. Carey, as to your views?

A. I do.

MR. FRANK: That's all I have.

THE CHAIRMAN: Mr. Canby.

\* \* \* \*

EXAMINATION

By Mr. Canby:

Q. Mr. Davidson, did I understand your point to be that a beginning accountant here in his two years of service in a firm has an opportunity to develop clients (29) from that contact?

A. Oh, I think that opportunity exists. If I may refer to your term "beginning accountant", I'm referring to the man who has passed the CPA exam in the State of Arizona

and must serve his two years under a CPA.

Now, we obviously have reciprocal privileges with other states. A man from another state, in other words, provided he meets the specifications of the State Board of Accountancy can enter practice in this state, and many do.

Q. You don't know of any certified public accountants who have simply been unable to attract a viable clientele here in Arizona?

A. No, not to my personal knowledge.

Q. Is there more certified public accountant business than can reasonably be handled?

A. I think it is becoming that way.

Q. I realize it's a general question, but what is the general nature of the certified public accountant business that you get? What kind of clients would you do business for?

A. We would do business, I think,

for almost all kinds of clients in a national firm, which we are. General services performed by CPA's are in the area of auditing, tax service and in an area called management (30) services.

The clients would range from small to medium, to large.

The type of service required, of course, would depend upon the type of industry we were talking about.

Q. Are all these clients in some sort of business?

A. No, some are tax clients who are retired.

Q. And the auditings, you mentioned three categories; two of which are auditing and management services?

A. Yes, sir.

Q. Presumably, that would be for people who are engaged in business; is that right?

A. That is correct. I might add; also

point out to you sir, that about 70 percent of the work of a national public accounting firm is in the auditing area, which requires the independence factor.

Q. About 70 percent?

A. Yes.

Q. Thank you. Are you familiar, Mr. Davidson, with a letter of the Arizona Attorney General to the State Board of Accountancy in regard to advertising? It's dated September 19, 1975.

MR. CANBY: May I have this marked?

THE CHAIRMAN: Yes. What we will do is to (31) continue with the numbers seriatim, and we will identify this as Respondents' Exhibit No. 11.

MR. FRANK: Why don't I put in 10 right now, as long as we are at a break? May I do that? It's here.

THE CHAIRMAN: Yes. Bar Exhibit 10 is the revised disciplinary rule relating to the advertising, adopted by the House of



Delegates by the American Bar Association.

MR. FRANK: Yes. I would like to note for the record, I put it in because it is applicable here. It has not been adopted by our Supreme Court, but simply for the completion of the record, that if it should be useful at any point.

THE CHAIRMAN: With that avowal, I guess there is no objection.

MR. CANBY: I have a question or two. I have no objection.

The question is whether this is effective; whether there is any action of the House of Delegates or the American Bar Association required to make it official ABA policy?

MR. FRANK: It's my understanding that is official ABA policy, by virtue of the action of the House of Delegates.

THE CHAIRMAN: Do you have any different understanding, Mr. Canby?

(32) MR. CANBY: I have no knowledge of a difference. I had simply heard some-

where that there was one more meeting in which they have to consider it by the House of Delegates, as a whole. I may well be in error.

THE CHAIRMAN: Before the record is closed, can we get some kind of a stipulation between the parties with respect to this fact?

I think it can be determined by inquiring of some person who is knowledgeable in the ABA organization.

MR. CANBY: I'd be happy to stipulate to it on the basis of a telephone inquiry or anything else.

THE CHAIRMAN: We will receive the stipulation later on, once we know what the facts are.

In the meantime, Bar Exhibit 10 may be received.

(Document marked Bar Exhibit No. 10 for identification by the Notary and received in evidence.)

THE CHAIRMAN: Now, No. 11 has been described as --

MR. CANBY: -- a letter from the Attorney General of Arizona to the Arizona State Board of Accountancy, September 19, 1975, reported in the 1975-2 "Trade Regulation Reports".

Do you want to mark this?

I'll be happy to offer it in evidence.

MR. FRANK: I'd like to have it put in evidence.

THE CHAIRMAN: Do you have any objection to (33) offering it in evidence?

MR. FRANK: No.

THE CHAIRMAN: Very well, Respondents' Exhibit No. 11 may be received in evidence.

(Document marked Respondents' Exhibit No. 11 for identification by the Notary and received in evidence.)

THE CHAIRMAN: Mr. Davidson, I am placing in front of you Respondents' Exhibit No. 11.

THE WITNESS: May I take time to read it?

MR. FRANK: I believe this was issued subsequent to Mr. Davidson's retirement, on July 7th.

MR. CANBY: I gather that is correct.

Q. BY MR. CANBY: You left in July of '75?

A. That's correct.

Q. I think any knowledge of that would be indirect. I think you had heard of it or were aware of it?

A. I am aware, sir, that they did eliminate our rule against competitive bidding. The rule as stated previous to that was that there would be a prohibition against competitive bidding on a price basis.

Nevertheless, the accounting profession has always said that the client is entitled to be informed of the amount of the fees for the engagement. It was our position at the time the best qualified firm should be select-

ed; fee discussions should be held. If the client (34) were dissatisfied, he could call on the next qualified firm.

The Attorney General said, yes, that the competitive bidding rule of the state is illegal. I have not seen the opinion. If it refers to advertising, I was not aware of that.

Q. I'm sorry. Competitive bidding is what I meant. I misspoke, and I apologize.

A. Without reading it, Mr. Canby, may I ask you: Is advertising mentioned in here?

Q. No, it is not, to my knowledge. I misspoke. I'm sorry about that.

A. It is true.

MR. FRANK: What question is before the witness, Mr. Canby? I'm mixed up.

MR. CANBY: The question is: Was he familiar with the Attorney General's letter on competitive bidding.

THE WITNESS: Yes.

MR. CANBY: He has testified that the rule has since been abandoned.

Q. BY MR. CANBY: Was it a part of the ethics of either the national or state association that there not be competitive bidding?

A. This has a long history, going back some years.

The American Institute of CPA's did have a rule (35) against competitive bidding, and by agreement, as I understand it, that the Justice Department did eliminate the rule from their Code of Ethics. They, also, at the same time stated that as to what the states did would be entirely determined by state law.

The State of Arizona, up until this ruling, has maintained a competitive bidding rule; prohibition against it, and I guess I would have to correct my former testimony -- this is one departure from the rule of ethics that we have in Arizona, as compared with the American Institute, which I readily concede.

Q. What was the reason behind the

ethical prohibition on competitive bidding?

A. The basic reason is that we believe very strongly, and still do -- most of us in the profession -- I cannot speak for everybody -- that the quality of service will definitely suffer; the clients will also suffer, because the quality of service will go down.

Q. That is your view?

A. That is my view, and I am joined in that view and have been for seven years by at least the members of the Board of Accountancy and by many others in the profession.

As a matter of fact, sir, that view was held by the American Institute for many, many years.

(36) Q. I so understand.

Lastly, you do agree, don't you, there is a profit motive in the business of accounting, or the profession of accounting, as well as other motives?

A. I do not disagree with the statement that the profit motive exists, but that is not of a basic motive in public accounting. The basic motive is, frankly, service to the public.

MR. CANBY: I have no further questions.

MR. FRANK: I have no questions.

May the witness be excused?

THE CHAIRMAN: Well, wait just for a second, please.

For the record, it appears to me from examination of Bar Exhibit No. 8, which is the Rules and Regulations of the State Board of Accountancy that the rule to which the Attorney General's opinion, which has been marked Respondents' Exhibit 11 refers is Rule 9-E(6), which is captioned "Competitive Bids". Is that the rule which appears to have been stricken down by the Attorney General?

THE WITNESS: That's correct. Yes, Mr. Chairman.



THE CHAIRMAN: Could I ask a question of the witness, for clarification?

MR. FRANK: May I send that Exhibit out to be duplicated, or do you need it for your question?

(37) THE CHAIRMAN: No, I don't need it.

\* \* \* \*

EXAMINATION

By The Chairman:

Q. Mr. Davidson, are you generally familiar with the function of the community organization which is generally referred to as the Legal Aid Society?

A. Yes, in general.

Q. Are you familiar with what is known as the Lawyers Referral Service?

A. Yes, to some extent.

Q. As I understand it, the Legal Aid Society is an organization which attempts to provide for delivery of legal services to indigent persons, and the Lawyer Referral

Service is a service which purports to provide access to lawyers for potential clients who are not indigent and who are guaranteed the opportunity to have legal services at some kind of a stipulated initial consulting fee, with an arrangement for making agreements on compensation after the initial consultation.

Do you understand that?

A. Yes.

Q. Does the accountancy profession have any kind of an activity which is comparable either to Legal Aid or to Lawyer Referral that will make the services of the (38) profession available either to indigent or to persons who have no access to accountants?

A. I would say to a certain degree that is true. We have in our Arizona Society of CPA's a committee which lends aid to minority groups on a for-nothing basis. There is no charge, and various firms have

contributed the time of their people to efforts of this kind.

In addition, a great many of our charitable organizations have benefited from the services of CPA's at either no cost or a very low cost on the auditing or other standpoints.

As far as referrals go, we do not have a standard process of referrals. However, we do have an executive secretary, and I checked with him very recently -- like this morning -- and said, "How many calls do you receive?"

And he said, "Quite a few."

I said, "What do you do?"

He said, "I ask them basically what their problem is; where they are located, geographically, and we will give them the names of three firms to call, three accounting firms. Also, present them with a roster, which we have of all of the ones that are listed in the Board of Accountancy Di-

rectory."

We do have that type of referral.

(39) He also makes it clear that they should discuss the fee with the accounting firm before they do, and the flat question, check the quality of their service before they engage any services with them.

Q. The other question that I have is whether members of your profession, among other services, also provide tax advice and assist in the preparation of state and federal income tax returns?

A. Yes, sir.

Q. I think we are all generally familiar with the activities of an organization called H & R Block. Do they engage in furnishing tax advice and the preparation of income tax returns?

A. Yes, they do.

Q. Do they advertise?

A. They do.

Q. Are they certified public account-

ants?

A. They are not.

Q. If they were, in fact, CPA's, would that advertising be a violation of the Code of Professional Ethics?

A. Very definitely.

THE CHAIRMAN: That's all I have.

THE WITNESS: I'm hopeful, if I may say so, that we, in no way, as an accounting profession, would be (40) considered at the same level of H & R Block.

THE CHAIRMAN: I'm not going to draw any inferences as to which is at the higher level, but they are not equivalent; is that true?

THE WITNESS: Right.

THE CHAIRMAN: Thank you.

MR. FRANK: May Mr. Davidson be excused?

THE CHAIRMAN: You may be excused, and thank you very much for your assistance.

MR. FRANK: Mr. Canby and I are now

able to stipulate that the action of the House of Delegates is the official and binding action for the American Bar Association as to Exhibit 10.

THE CHAIRMAN: So, as of right now, Bar Exhibit No. 10 constitutes the final official, binding action of the American Bar Association?

MR. FRANK: That is correct.

THE CHAIRMAN: But it is not a part of the body of law of this state until such time, if any, as the Supreme Court incorporates it into their rule.

MR. FRANK: That is correct.

Right Mr. Canby?

MR. CANBY: Right.

MR. LEWIS: Mr. Chairman, may I be excused for a few (41) minutes?

(Mr. Lewis excused from the hearing room.)

\* \* \* \*

DEPOSITION OF BERNARD VAN O'STEEN, JR.  
AND JOHN RICHARD BATES

\* \* \* \*

BERNARD VAN O'STEEN, JR., a Respondent, being sworn as a witness by the Chairman, was examined and testifies as follows:

JOHN RICHARD BATES, a Respondent, being sworn as a witness by the Chairman, was examined and testifies as follows:

THE CHAIRMAN: Now, the rule is you only speak when spoken to, so there isn't suddenly volunteering.

EXAMINATION

By Mr. Frank:

Q. Mr. O'Steen, would you give us your full name, for the record?

A. BY MR. O'STEEN: Bernard Van O'Steen, Jr.

Q. Mr. O'Steen, are you a member of the Arizona Bar?

A. BY MR. O'STEEN: I am.

Q. And a graduate of the ASU Law School?

A. BY MR. O'STEEN: Yes.

Q. What year?

A. BY MR. O'STEEN: 1972.

(42) Q. Are you engaged in the practice of law in this community?

A. BY MR. O'STEEN: I am.

Q. A member of a firm?

A. BY MR. O'STEEN: Yes.

Q. What is that firm?

A. BY MR. O'STEEN: Legal Clinic of Bates & O'Steen.

MR. FRANK: Now, I will turn, if I may, to Mr. Bates and bring him up to date.

Q. BY MR. FRANK: Mr. Bates, are you also a member of the Arizona Bar?

A. BY MR. BATES: Yes.

Q. Are you a graduate of ASU?

A. BY MR. BATES: Yes, I am.

Q. When did you graduate?

A. BY MR. BATES: 1972.

Q. Are you the Mr. Bates who is the member of the firm just described by Mr.



O'Steen?

A. BY MR. BATES: Yes, I am.

THE CHAIRMAN: Would you be kind enough to state your full name?

MR. FRANK: Thank you.

WITNESS BATES: John Richard Bates.

Q. BY MR. FRANK: Mr. O'Steen, did you or your firm, (43) in fact, cause the advertisement to be published, which is Exhibit No. 6 in this case?

A. BY MR. O'STEEN: Yes, we did.

Q. And you personally were aware of the publication in advance?

A. BY MR. O'STEEN: Yes.

Q. And you approved it?

A. BY MR. O'STEEN: Yes.

Q. Mr. Bates, were you also personally aware of the publication, and did you approve it?

A. BY MR. BATES: Yes.

Q. Mr. O'Steen, would you tell us, please, something about the nature of the

practice of your office?

Describe for us what you do.

A. BY MR. O'STEEN: In a good many ways, our office is like a traditional law office, in that we provide a range of general services of a legal nature to clients who contact us.

We differ perhaps somewhat from some other law firms --

Q. Let me do this: I believe I interrupted you there, because I'd first like to get a description of what the services are, and go into the differences between your clinic, as you call it, and a normal law office.

What are the services?

(44) A. BY MR. O'STEEN: We take cases in the following areas: Divorce and other domestic relations matter; adoptions, which may or may not be included in that first category; individual bankruptcies, wills; probates; change of name matters; personal

injury cases.

I should have included along with probate, the areas of guardianship and conservatorship, which are closely related.

We do some work in the consumer contract area of the law, and a small amount of real estate practice.

THE CHAIRMAN: No criminal practice?

WITNESS O'STEEN: No criminal practice.

Q. BY MR. FRANK: Mr. Bates, is that essentially an accurate description, or do you have anything to add?

A. BY MR. BATES: I believe that covers it.

Q. All right.

Mr. O'Steen, if, hypothetically, a person comes to you for a divorce and would like the names of the children changed in connection with that divorce, do you then handle both of those functions?

A. BY MR. O'STEEN: The names of the

children changed?

Q. Yes. Suppose, hypothetically, somebody comes in for a divorce and is going to have her own maiden name returned; let us suppose she has been married previously (45) and she has a child that has some name other than that of her maiden name; do you then get those names untangled if she asks it, and get those children's names changed?

A. BY MR. O'STEEN: Well, we are fully capable of providing both services. They cannot be done in the same proceedings, but to my recollection, I have never had a request of multiple services of that nature.

Q. But you are perfectly prepared to do that; services of that nature?

A. BY MR. O'STEEN: Yes, assuming there is a legal basis for it.

Q. Let's take the same kind of a divorce; do you, as a matter of routine,

offer the service of a will to anybody who gets a divorce, a new will?

A. BY MR. O'STEEN: No, we do not.

Q. Do you commonly do wills for the people for whom you get divorces?

A. BY MR. O'STEEN: Certainly not commonly.

Q. Do you ever do new wills for the people for whom you get divorces?

A. BY MR. O'STEEN: I would suspect that we do, but it happens so infrequently that I can't recall specifically of specific examples.

Q. But you have no rule against it?

A. BY MR. O'STEEN: No.

(46) Q. If, hypothetically, somebody got a divorce on Monday and asked you for a new will on Tuesday, and alas died on Friday, are you capable of providing probate service in that situation?

A. BY MR. O'STEEN: Yes, we are.

Q. You have no rule against that?

A. BY MR. O'STEEN: None.

Q. What is a legal clinic, as you envision it?

What does that term mean in your title?

A. BY MR. O'STEEN: Well, as I think I started to explain, in response to another question a few moments ago, the term "legal clinic" was adopted by us when we opened our practice, because we believe that it best describes what we are doing. I think unlike some other law firms, we made a conscious effort from the very beginning to extend legal services, quality legal services at the most reasonable fees possible to persons of moderate and low income; people who were not capable of qualifying under the financial guidelines of the Legal Aid Society, and therefore had traditionally had difficulty finding lawyers.

We incorporate a number of cost-

saving features into the practice in order to reduce costs, and thereby, pass along savings in the way of reduced fees in certain types of cases.

(47) Very briefly, the features of the clinic are --

Q. I wish you would describe them.

A. BY MR. O'STEEN: Each of the attorneys in the clinic specialize, and this permits an attorney to bring expertise to the client's problem at a minimum of effort and a most efficient way.

The clinic also employs and makes extensive use of paralegal or legal assistant personnel, who perform many of the functions that attorneys have traditionally done, but have not needed to do; functions which can be performed of equal competence by a non-lawyer personnel. Of course, they don't give legal advice and they don't represent clients in court.

Those are the two most important restrictions on their ability to work, but they do many other chores that attorneys in some other offices do.

THE CHAIRMAN: Could I ask for a clarification, Mr. O'Steen. Are there admitted lawyers in the clinic, other than yourself and Mr. Bates?

WITNESS O'STEEN: Until recently, we had the third lawyer, Mr. von Ammon. She has since left the clinic, and we are hopeful shortly to have another admitted lawyer to take her place, but at the present time there are only two of us.

THE CHAIRMAN: And you employ, as I understand it, (48) some nonprofessional people who provide certain kinds of supportive courses?

WITNESS O'STEEN: That's correct.

THE CHAIRMAN: How many are there of them?

WITNESS O'STEEN: Two and a half at



the present time.

THE CHAIRMAN: All right, thank you.

WITNESS O'STEEN: Now, those are people who function as -- or, a large part of their duties are what we would call paralegal duties. We also have other personnel, but they are not among that group we call legal assistants.

A. BY MR. O'STEEN: (Continuing) One of the most important features of our office, and it goes hand in hand with the use of legal assistants in this kind of practice is that we use -- our approach to the practice of law is one of a systems approach. Many tasks are standardized; techniques which are repetitive are put together in a carefully devised systems by the lawyers, and thereby, legal assistants can perform many of these functions that we have been talking about with good instructional material from lawyers and with periodic reviews by the lawyers,

in important steps along the way.

Various other methods of reducing overhead are used in the office. Clerical time is minimized, for example, by the use of printed legal forms, and by the use of automatic typewriter equipment.

(49) In addition, we don't maintain a large collection of law books. Attorneys do their research at institution of law libraries.

Probably what we consider perhaps the most important feature of the clinic is that a relatively low profit is made on each case.

Q. Mr. O'Steen, I'd like to take these in some detail, so that we really understand the distinction between a clinic, as you envision it, and simply a conventional law office.

Let me put, if I may, the illustration of this office, in which we are taking the testimony. The office has

attorneys who specialize almost entirely; uses paralegals to a great extent; uses, I believe, a systems approach, as you describe it, and uses automatic typewriters extensively; yet, I suppose no one would imagine that this was a legal clinic. You don't suppose that these ingredients make it one?

A. BY MR. O'STEEN: No, sir, I wouldn't say so.

Q. So that those are not essential elements of a legal clinic. At least, they don't define a legal clinic?

A. BY MR. O'STEEN: No, they in themselves don't define a legal clinic.

Q. What, then, are the precise factors which are peculiar to a quote: "legal clinic", which are not (50) common to countless other law offices in this state?

A. BY MR. O'STEEN: Well, first of all, I think your experience, Mr. Frank, insofar as the features you just mention-

ed to me that are used by this law firm are generally not employed by attorneys who handle the kind of cases that we handle; that is, a systems approach to practice; the use of legal assistants, and the like. Those are features that typically can only be used by large law firms who cater to an entirely different clientele.

Q. I want to be sure I understand it, and truly fairly, Mr. O'Steen. If I get what is the concept of the legal clinic, that is basically that you are appealing to low-income personnel, just above the Legal Aid level?

A. BY MR. O'STEEN: Well, low and middle income.

Q. What is the range of the incomes of the persons you serve?

A. BY MR. O'STEEN: Well, I can make an educated guess for you.

Q. Would you please?

A. BY MR. O'STEEN: From people on

welfare and other forms of public assistance, up to, I would say, very few of our clients probably have family incomes in excess of \$25,000.00 a year.

Q. So, it's from a low level to around \$25,000.00 is the (51) range; is that it?

A. BY MR. O'STEEN: Yes.

Q. If, hypothetically, someone in response to your advertisement felt that he would like those services, but he happened to have an income of \$50,000.00, would he be barred from availing himself of your services because of that fact?

A. BY MR. O'STEEN: Not if his legal problem was of the type we handle.

Q. Any member of the community could come to you; is that it?

A. BY MR. O'STEEN: Yes. We have no income restrictions.

Q. But, at least, you are agreed your goal is to service persons in the

income range you have described; is that it?

A. BY MR. O'STEEN: Yes, that's basically it.

Q. And the second element is that you seek to service them at the lowest feasible fee and small personal profit; is that correct?

A. BY MR. O'STEEN: Yes.

Q. Now, other than those things, is there really any significant difference between your office and really almost any other office?

A. BY MR. O'STEEN: Well, I think that's pretty (52) significant.

Q. It is. We respect it.

Is there anything else, or is that it?

A. BY MR. O'STEEN: Well, there are other smaller features, I think. The efforts to reduce overhead, which I mentioned, in our firm was accomplished by

those things; by minimizing clerical time and by minimizing the expense of a large library are significant, in the terms of the ability we have to reduce fees.

Q. Mr. O'Steen, is the term "legal clinic" a term of art in the legal community?

Is it commonly used in the literature?

A. BY MR. O'STEEN: It's beginning to be.

Q. Is there some publication to which we would go that we would find a regularly established definition?

A. BY MR. O'STEEN: I don't think so. I could give you a bibliography of articles that are published.

Q. Where did you get -- I'm sorry, I was interrupting. Please finish your answer.

A. BY MR. O'STEEN: I was going to say that the term is used widely now by members of the organized Bar in (53) many

areas, where legal clinics are being established by the members of the Bar.

You may know the ABA has a standing now on legal clinics, and will be instituting a pilot project on legal clinics in the very near future. So, the term has fairly wide acceptance, I think, in the legal community.

Q. But there is no particular reference to which you can send us for a definition; is that right?

A. BY MR. O'STEEN: No.

(Mr. Lewis enters the hearing room.)

Q. Mr. O'Steen, how long have you been in business?

A. BY MR. O'STEEN: As a legal clinic?

Q. At the practice as a legal clinic?

A. BY MR. O'STEEN: Two years, in March.

Q. Who would handle this business which you are doing in the community if you didn't handle it?



Do you have any opinion as to that?

A. BY MR. O'STEEN: Sure. I assume that other private lawyers would handle some of it. I suppose that the Legal Aid Society attorneys would handle some of it, and I suppose a good deal of it would be undone.

Q. Let's take, then, those things separately. Some of it, you say, is eligible for Legal Aid treatment?

A. BY MR. O'STEEN: Some of the clients who see us are eligible for Legal Aid.

(54) Q. If they went to Legal Aid, they'd be served for nothing; wouldn't they?

A. BY MR. O'STEEN: Yes.

Q. Nonetheless, you service them and take their money; don't you?

A. BY MR. O'STEEN: Not without informing them that Legal Aid is available to them.

In most cases, they already know us. I am thinking of the area of divorce, which is really the only other area that I know of, other than just purely consultation, which we serve people who are available for Legal Aid. They are informed when they contact Legal Aid there is a six-month waiting period to see a lawyer; some horrendous period.

Most of them are not willing to wait that period of time, and they seek out an attorney who will do the work at a low fee.

Q. But you, in every case where someone is eligible for Legal Aid advise them of that fact?

A. BY MR. O'STEEN: We don't make an inquiry to determine that, but if we sense that a person who comes to the office might be eligible for Legal Aid, I know that I explore that and I'm sure John does too. We call that to their

attention.

As you may know, both of our backgrounds is from (55) the Legal Aid Society.

Q. But this is when you sense; you don't ask if they could get Legal Aid Society somewhere else?

A. BY MR. O'STEEN: No, and I don't know where any other lawyer does that.

Q. And you are saying that the other category would be in other law offices, and you are undoubtedly competing for that work?

A. BY MR. O'STEEN: Exactly.

Q. And the other area are disputes which would never be litigated at all if it were not for you; is that correct?

A. BY MR. O'STEEN: Well, I'm not sure it's fair to categorize it as disputes, as the question categorizes them. I think they are legal matters that would be unresolved and unattended to.

Q. Let's take the matters in your ad. Take the matter of divorces. Do you believe that you are getting divorces for people who would otherwise not be getting divorces if your services were not available?

A. BY MR. O'STEEN: In some cases.

Q. Do you believe that you are getting bankruptcy discharges for people who would not otherwise get bankruptcy discharges were it not for your services?

A. BY MR. O'STEEN: Yes, in some cases.

(56) Q. Are you handling any personal injury matters for persons who would otherwise not be bringing personal injury claims were it not for your services?

A. BY MR. O'STEEN: Very few.

Q. Are there any?

A. BY MR. O'STEEN: Personal injury claims?

Q. Yes. That would not otherwise be litigated.

A. BY MR. O'STEEN: Yes, we have taken clients who have personal injury matters who have been turned away by three or four lawyers before they reached us, because the matter didn't seem to be profitable.

Q. Have you ever taken any personal injury matters which have not been turned away by anybody before it came to you?

A. BY MR. O'STEEN: Yes.

Q. In connection with your personal injury practice, you have noted that in your ad that information regarding other types of cases would be furnished on request.

Would you furnish them information about your personal injury services if the request were made?

A. BY MR. O'STEEN: Yes.

Q. Do you distribute cards for your

firm to people in hospitals who have had the misfortune to be in a personal injury?

A. BY MR. O'STEEN: Do you mean do we walk through (57) hospitals and knocking on stranger's doors?

Q. Precisely.

A. BY MR. O'STEEN: Absolutely not.

Q. Do you go to accidents, and at the scene of accidents give cards to the people who have had the misfortune of being in the accident?

A. BY MR. O'STEEN: No.

Q. Do you believe that you have the same First Amendment right, if you wish to do so, to go through the hospital or to give your card at the scene of accidents as you do to publish the ad which is Exhibit 6?

A. BY MR. O'STEEN: My answer to the question has to be that I really haven't formulated my own ideas about that type

of solicitation, that problem. I think that it may well be true that if tested that a lawyer had a constitutional right to engage in such solicitation.

I can tell you my personal feelings about it.

Q. I won't bring you into that. Mr. Canby can if he wishes. I simply want to understand what your opinion is about the proper function of solicitation of a legal clinic. It is my understanding that fundamentally it is the position of your office that you are free, under the anti-trust laws and under the First Amendment to publish Exhibit No. 6; is that correct?

A. BY MR. O'STEEN: Yes.

(58) Q. I wish to know whether it is also your view that you would be privileged to distribute cards in hospitals or go door to door, or to take fliers. I haven't asked you about that. Would you be free to have fliers distributed door

to door, announcing your service?

THE CHAIRMAN: Are you talking about handbills?

MR. FRANK: Handbills.

Q. BY MR. FRANK: Are you free to do that?

A. BY MR. O'STEEN: I'm sorry, I take no position to that.

THE CHAIRMAN: The witness has answered the question, Mr. Frank. Go to something else.

Q. BY MR. FRANK: You don't know.

Let me turn to Mr. Bates. Let me find out if you have a view on this subject.

Is it your understanding that you have a privilege under the antitrust laws and under the First Amendment, or either of them, regardless of the rules, to publish the ad which is Exhibit 6?

A. BY MR. BATES: Yes.

Q. Do you have an opinion as to



whether you are also privileged to distribute leaflets door to door, offering your services?

A. BY MR. BATES: I think I would answer it in the same fashion that my partner has on that. In other words, (59) I don't have an opinion which I feel confident in expressing at this moment.

Q. The same would be true of cards in hospitals or calling on the accident victims at the scene; is that correct?

A. BY MR. BATES: Yes.

Q. Mr. O'Steen, I notice that one of the services you offer is "Divorce or legal separation--uncontested (both spouses sign papers)".

My question is, what is an uncontested divorce?

A. BY MR. O'STEEN: A divorce in which both parties have fully settled the terms of their divorce, and -- well, I think that completes my answer.

Q. Well, let's take this up for a minute. When someone comes to your office and says, "I want a divorce", how do you find out from that person whether it is uncontested or not?

A. BY MR. O'STEEN: Well, typically, the inquiry is first made over the telephone, and one of our legal assistants handles those incoming calls, in order to determine whether the divorce is contested or uncontested.

Q. Explain that with some precision, would you please?

A. BY MR. O'STEEN: Yes. In inquiries made by the legal assistant, whether or not the terms have been (60) discussed with the adverse spouse, and whether or not complete agreement has been achieved on the important matters. If the person --

\* \* \* \*

THE CHAIRMAN: Mr. Bates, I'd like to

to clarify something. You referred to Mr. O'Steen as your partner. Is it, in fact, a partnership or a professional corporation?

WITNESS BATES: It's a partnership.

Q. BY MR. FRANK: The question which is before you, Mr. O'Steen, was: Just what is it that the person on the phone says to inquiring party about coming in, and so on?

A. BY MR. O'STEEN: Just a brief inquiry is made to determine whether or not the spouses have discussed the important terms of their divorce, and come to an (61) agreement on those terms.

If the caller answers in the affirmative, then an appointment is made, at which time the client sees an attorney.

Q. Let us suppose that -- we will make the caller she -- let us suppose she says, "No." Then, what does your telephone clerk say?

A. BY MR. O'STEEN: "No, we have not

come to an agreement on the terms of the divorce"?

Q. That's right.

A. BY MR. O'STEEN: They are referred to the Maricopa County Lawyer Referral Service.

Q. In short, you do not accept any contested divorces; is that right?

A. BY MR. O'STEEN: Not any longer. We did at one time. We don't do it now.

Q. What happens when the parties -- well, correction -- then, who comes in to see you?

You say the next step is an appointment with the attorney. Who comes in?

A. BY MR. O'STEEN: The spouse who called us.

Q. And the other spouse does not come in?

A. BY MR. O'STEEN: Sometimes both spouses come in. We make it clear from the beginning that we will represent one