

of them, generally the caller, and that we (62) sometimes ask a nonclient spouse to step outside of the office and wait in the reception room while we take the information down from the client spouse.

Q. But you sometimes do that. Do you always do that?

A. BY MR. O'STEEN: No.

Q. How do you decide when to do it and when not to?

A. BY MR. O'STEEN: I think it's just a gut feeling that I have after several years working with it. We always make it clear to them that we will be counsel for one spouse, and the other spouse will be the adverse party, and that if there are any doubts or hesitations at all on the terms of the divorce, then we encourage both of them to go out and seek independent counsel.

Q. Let me take, hypothetically, an instance in which you allow both of them to stay in the room, and let us suppose that

they have a modest bit of property. This happens sometimes, doesn't it?

I'll get specific in a second as to the types of property, but not all of them are penniless; are they?

A. BY MR. O'STEEN: No.

Q. So that let's suppose, hypothetically that they have a house in which they own a small equity; a thoroughly used car and a number of pieces of personal property and furniture in the house; a refrigerator; that kind of thing. Is that a fairly typical case?

(63) A. BY MR. O'STEEN: I would say that's typical.

Q. Does it ever happen that when they come in to see you they, in fact, thought that everything had been ironed out, but they are not used to thinking about these things, and, in fact, it wasn't ironed out, and they really hadn't thought about what to do with the car and what to do with the house

and who was to pay last year's taxes, and who was to pay the outstanding bills, and so on. Do these matters ever emerge in a conversation with the two people with you?

A. BY MR. O'STEEN: Yes.

Q. What happens in those circumstances?

A. BY MR. O'STEEN: We stop the interview; inform the parties that formerly we told them there were only two ways we could function, either, one, if they came to an agreement with us with all terms; we could incorporate them into the right pleadings and handle the case for them or we could represent the party, the client in the contested divorce, and the other would have to go elsewhere.

In the case where both of them are sitting in the office, that is impractical, and we simply tell them they will have to both seek independent counsel elsewhere, if they don't resolve the dispute.

Q. Do you help them resolve the dis-

pute?

(64) A. BY MR. O'STEEN: No.

Q. Do you discuss with them the fact of the car and the refrigerator are about a push away and maybe they could take, each, one of them; that kind of thing?

A. BY MR. O'STEEN: I don't think I have ever done that.

I do give certain types of information at times. Typically, one of the things that people do not consider when they think about the divorce is the question whether or not the life insurance ought to be maintained on the life of the noncustodial parent in the event to support the parent if something happens to the parent on the child support. That commonly is something that is not considered by the people involved in the divorce. We discuss that when they come in.

The response is, "Well, gosh, we haven't thought about that."

I will explain to them the reason they

might want to consider such protection, and tell them it's up to them to decide whether or not they want it. But we are fully capable of obtaining an order of court and incorporate it in a decree or Decree of Dissolution to obtain such protection.

Q. But you never advise them as to how they should distribute the property?

(65) A. BY MR. O'STEEN: No.

Q. No matter how slight, if there is no contest; they haven't thought about it?

A. BY MR. O'STEEN: That's one of the things--it's very rare that a couple would come in to the office to seek assistance in the uncontested divorce, and they haven't decided how the property is going to be divided. In most cases they come into the office, and it's two feet long. They include the doilies on the sofa -- that much detail. So, that specific problem doesn't come up very often.

Q. What do you do with those lists?

A. BY MR. O'STEEN: The very long lists?

Q. Yes.

A. BY MR. O'STEEN: We do one of two things. If they feel strongly about it, we incorporate all that into the pleadings. I will inform them that if they have an informal agreement as to the division of such property, and it has already been exchanged, then there is no reason to recite all of that.

Q. How about the taxes, does it commonly happen that they haven't thought about accrued income taxes, such like insurance?

A. BY MR. O'STEEN: Are you talking about tax liability or tax refunds that they have?

(66) Q. Either way, that they haven't thought about; principally, the liability.

Let's suppose money has been earned by the community during the year, and they

simply have not focused on the fact that there are taxes due.

A. BY MR. O'STEEN: We inquire about that. Most of them have payroll deductions in excess of their tax liability, and most everyone we deal with has a refund coming, and so that is, of course, an item of property in which there is a combined interest, and most of the cases it is to be considered in dividing.

Q. Now, on this galaxy of variations that we have been speaking about, do these take a small amount of time?

A. BY MR. O'STEEN: No.

Q. What is the range that is the quickest or longest?

A. BY MR. O'STEEN: Are you talking about the attorney's time or combined staff time?

Q. The attorney's time. What is the shortest or the longest?

A. BY MR. O'STEEN: Including the dis-

solution hearing; including the total matter?

Q. Yes, we'll take the totality of the matter, short to long; what can it be?

A. BY MR. O'STEEN: I would say the short probably (67) requires about an hour and a half of attorney time, and the longest, perhaps three hours of attorney time.

Q. And the fee of \$175.00 applies (sic) to the shortest and the longest, and all in between; is that correct?

A. BY MR. O'STEEN: Yes.

Q. Without regard to the amount of property which is involved; isn't that correct?

A. BY MR. O'STEEN: That's right.

Q. Now, we have spoken earlier about the fact that you are likely to do wills for the people, or at least recommend them to them upon the conclusion of a divorce, when they become single persons again.

Do you recall that part of our discussion?



A. BY MR. O'STEEN: Yes, I recall that, saying that we don't do that often.

Q. But you do it from time to time?

A. BY MR. O'STEEN: Rarely. Occasionally.

Q. All right. If you do that, what do you charge for the wills?

A. BY MR. O'STEEN: \$30 for a simple will for one spouse; 15 for the spouse reciprocal.

Q. But I'm speaking now of a recently divorced person?

A. BY MR. O'STEEN: You are talking about an individual?

(68) Q. Individual.

A. BY MR. O'STEEN: \$30.

Q. I notice in the ad that you deal with changes of names. For the \$95, what do you do for them?

A. BY MR. O'STEEN: Have their name legally changed.

Do you want to know the steps?

Q. Just a word, how do you do that?

A. BY MR. O'STEEN: Well, the client comes in for an interview; the pleadings are prepared. That is, a Petition for Change of Name. It's then filed with the court. If notice seems to be required in a case, then notice is given in the manner prescribed by law. A hearing date is set by a legal assistant; a letter goes out to the client and informing them of the hearing date and asking that they meet us a few minutes early at the court house.

The lawyer then meets the client at the court house; conducts the hearing; takes --

Q. Mr. O'Steen, I'll ask you to assume for this hypothetical that the cases (sic) is one of a person in which no notice would be appropriate. It's a person in the community who is alone and simply wishes, for whatever reason, to make a change of his name, but there is no person to whom any notice would pro-

bably be sent. Could we assume such a case? That's not abnormal?

A. BY MR. O'STEEN: No. That's most of the cases; (69) have no notice requirement.

Q. Now, in that case, would you tell us with some precision, how that persons (sic) gets to you? Calls in for an appointment?

A. BY MR. O'STEEN: Yes.

Q. And gets one of the clerks?

A. BY MR. O'STEEN: Well, in this case, the receptionist -- if a person calls in and says, "I want to see an attorney about a change of name", the appointment is simply made by the receptionist at that time. The legal assistant isn't used in the appointment-making process and in the name change cases.

Q. The receptionist makes an appointment, and this person comes in to see you, hypothetically?

A. BY MR. O'STEEN: Yes.

Q. Would you tell us, please, what do

you say and what does this person say in the interview? Give us an outline of it.

A. BY MR. O'STEEN: I have an information sheet, which I don't have in front of me, which has been carefully devised to see that we get all of the information we have to have in order to prepare the pleadings and conduct the hearing. I take the necessary information down on the information sheet; discuss the fee arrangements of it with the client; inform the client (70) that a pleadings (sic) will be ready for signature on a day generally two or three days thereafter, then we make an appointment for the client to come back and sign the pleadings.

Q. That is the totality of your conversation with the client at that time?

A. BY MR. O'STEEN: Well, yes. I gave you a very abbreviated indication of what happens.

Q. Well, I am winding up my examination now, and we'll tax the patience of the panel.

Just tell me everything that happens on that conference. I want to know about it.

A. BY MR. O'STEEN: The person says, "I want a name change.

I will ask them, "Why? What's the basis of your desire to have the name change?

Frequently, what has happened is a child may have been raised by a step-father and has now reached adulthood; over the past has used the surname of the step-father on many records and with many associates, and therefore, some confusion exists over the use of two surnames on various records, and that, of course, is a sound and justifiable basis for legal change in name.

So, I note the reason for the request in change in name on the form. I take down all the additional data. (71) I cannot remember all the data that's required in one of those cases. It's on the information sheet.

The other things are substantially as

I related them before. We discussed fee arrangements. Our usual requirement is that we require one-half of the fee prior to preparation of the pleadings, and the balance prior to the filing. That's discussed. If other arrangements have to be made, we discuss it; come to an agreement, and notation on the fee arrangement is made on the information sheet.

The client is then escorted out to the receptionist; an appointment is made for the client to return and sign papers.

Q. Mr. O'Steen, do you ever take up with a client whether he needs a lawyer at all for this purpose?

A. BY MR. O'STEEN: For a change of name?

Q. Yes.

A. BY MR. O'STEEN: No. Wait, excuse me, Mr. Frank. I'll have to change that answer. Yes, I do on occasion, because when I find that the name change is one which does

not require the involvement of the Superior Court and can be handled through the Department of Vital Statistics, through the correction of a record, something of that sort, I frequently will send the client on his way with how to deal with the Department of Vital Statistics.

(72) Q. But isn't it true that nothing in our law requires the person to have an attorney to get the name change?

In the Superior Court, I'm told by the clerk that something like three out of 10 of the name changes are handled pro se or pro per, rather. Are you acquainted with the fact that name changes can commonly be obtained by individuals without the intervention of counsel?

A. BY MR. O'STEEN: I'm aware of the fact that it's done. I don't know how competently it's handled, and furthermore, it's not my job to inform a prospective client that he needn't employ a lawyer to handle

his work. Furthermore, there are no readily available forms or instructions for people who wish to do that kind of work themselves.

MR. FRANK: May I consult my co-counsel?

THE CHAIRMAN: Yes, sir, you may.

(Discussion off the record between Mr. Frank and Mr. Lewis.)

MR. FRANK: I have no further questions of these two witnesses.

MR. CANBY: You have other witnesses to put on?

MR. FRANK: I have one, Mr. Arnold. I can put him on or you can call them, as you wish.

MR. CANBY: I have a few questions that I'd like to (73) ask now, then perhaps I can recall them as part of my case.

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EXAMINATION

BY MR. CANBY:

Q. Mr. O'Steen, what do you do if some



body comes to your office with a malpractice case, medical malpractice, blotched spinal operation?

A. BY MR. O'STEEN: We don't take them.

Q. Where do you send them?

A. BY MR. O'STEEN: Lawyers Referral Service of the County Bar Association.

Q. You mentioned another attorney had been in your office. Did that attorney depart before this advertisement that's the subject of this proceeding was placed?

A. BY MR. O'STEEN: Yes.

Q. And you had no other attorney working with you at that time, did you?

A. BY MR. O'STEEN: No.

Q. You said that each attorney specializes in your clinic. Are you speaking of the different specialties between you and Mr. Bates?

A. BY MR. O'STEEN: Yes.

Q. Are you also speaking of the fact that you confine your practice, as a partner-

ship?

(74) A. BY MR. O'STEEN: That, also, yes.

Q. You refer to the printed forms that you use. Are those purchased from a stationery store?

A. BY MR. O'STEEN: We purchase some printed forms from the commercial outlets that market them, but we found very early in the going that most of them were not very well done; very unprofessional, and for that reason we have devised a good many printed forms of our own, and we use them regularly in our practice.

Q. Did you ever keep track of how much time you put into creating your own forms, your own systems and things like that?

A. BY MR. O'STEEN: We haven't kept track of it, but it will never pay. It's incredible hours of time in devising these systems.

Q. To your knowledge, does the Legal

Aid Society now take all divorce cases requested by clients who meet their income restrictions, their income qualifications?

A. BY MR. O'STEEN: No. I understand they have narrowed their guidelines a great deal, in terms of categorical limitations on the types of cases they take. I don't fully understand what those are.

Q. I don't think you had time to explain what your personal reaction was to giving out cards in hospitals or at the scene of accidents to people who had been hit.

(75) What are your personal reactions to that?

A. BY MR. O'STEEN: Well, my personal feeling about that is I don't like it. That sort of thing is undignified and unprofessional and does not serve the public interest, in my opinion. Therefore, I'm not in favor of it, but I hasten to add that that's not a position on the law, it's simply a personal reaction to that type of practice.

Q. Does part of your reaction have anything to do with the fact that the victim at the accident is likely to be in some sort of emotional reaction or physical disarray?

A. BY MR. O'STEEN: That certainly adds good reason for forbidding that type of practice.

Q. Before you placed that advertisement, did you spend any time in discussion or study between the two of you regarding your right to place that ad under the First Amendment or the antitrust laws?

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

Q. Did you devote any discussion to the question of handbilling?

A. BY MR. O'STEEN: Leafleting of the type that Mr. Frank suggested?

Q. Yes, going door to door with leaflets.

A. BY MR. O'STEEN: No, we didn't discuss that.

(76) Q. You said that you always ask about life insurance in divorce proceedings, about the possibility of life insurance?

A. BY MR. O'STEEN: Yes.

Q. Is that required by any of your checklists?

A. BY MR. O'STEEN: Sure. We incorporated that on the standard divorce questionnaire, the information sheet, so that when an attorney obtains the information necessary to process a divorce, one of the questions which must be asked is: Do you have an agreement on that question, that issue?

Q. Divorces or dissolutions can be handled pro per, can't they?

A. BY MR. O'STEEN: They can, and many of them are.

Q. Do you have any idea how many are, percentage?

A. BY MR. O'STEEN: I could tell you what Commissioner Tom Novak has told me, if there is no objection.

THE COMMISSIONER: That's quite all right.

A. BY MR. O'STEEN: (Continuing) Something over 50 percent of the divorce filings in Maricopa County are pro per.

Q. BY MR. CANBY: Contested and uncontested?

A. BY MR. O'STEEN: That's my understanding, 50 percent of the total divorce filings.

(77) MR. CANBY: That's all of the questions I have that related to the subject of Mr. Frank's examination. There are a few unrelated subjects I'd like to reserve the right to take up with these witnesses.

MR. FRANK: So stipulated.

THE CHAIRMAN: Mr. Frank, any recross?

MR. FRANK: No.

THE CHAIRMAN: I have a question or two, if you don't mind, gentlemen?

\* \* \* \*

EXAMINATION

BY THE CHAIRMAN:

Q. First, do you, Mr. O'Steen, negotiate fees with clients if someone comes in and says, " A hundred and a quarter is too much for contested, will you take \$85?"

A. BY MR. O'STEEN: We don't often negotiate fees. On occasion, under special circumstances in an individual case, we might make a decision to reduce a fee or charge a fee slightly lower than our typical fee for that type of case. As a general rule, we don't negotiate on fees.

Q. Basically, you have what might be called a catalog price for service?

A. BY MR. O'STEEN: You might call it that.

Q. Would your answer be the same, Mr. Bates?

A. BY MR. BATES: Yes, it would.

(78) Q. The second one that I'd like to ask, and it might be difficult to answer, but I think is perhaps at the heart of

the whole inquiry: Mr. O'Steen, can you tell us, if you can articulate it, the motive or motives that you had for placing the advertisement, in any order of priority that you think is appropriate?

A. BY MR. O'STEEN: Well, the obvious one is to attract clients.

Q. And that is for the purpose of maximizing your income; is that true?

A. BY MR. O'STEEN: No, I think that's probably an unfair statement.

Q. I don't wish to suggest that there is anything immoral about maximizing your income, and it was not intended to be a biased question, or that it would be given anything other than the neutral consideration, and therefore, I do not regard it as unfair. My question, basically, is whether one of the motives that your clinic had in placing the advertisement was to maximize your income opportunity?

A. BY MR. O'STEEN: I'm bothered a



little by the term "maximize income opportunity". It was really a question of survival of this clinic and this type of operation. Had I been primarily motivated by maximizing my income, I would have applied for a job with your firm (79) or Mr. Frank's firm, although I probably would not have been offered a job. I would have done something like that.

I don't mind confessing to you that this has not been a terribly profitable operation up to this point, but we think it can be made profitable, profitable that attorneys can earn reasonable incomes doing this type of work, and if that doesn't happen this clinic concept will not survive. We have to be committed to the idea that lawyers can make reasonable incomes from that type of work, but basically, it was a question of income at that point.

Q. What you are saying, the systems approach, as you have described, is not economi-

cally viable unless it can rely upon substantial volume; is that true?

A. BY MR. O'STEEN: Precisely.

Q. Now, among your motives, would you say that at least in part you were moved by a desire to have a better system of delivery of legal services to persons who were in need of legal services, who otherwise might not avail themselves of legal services:

A. BY MR. O'STEEN: If I understand the question, you are asking me if that was one of our motives in doing this.

Q. In placing the advertisement.

A. BY MR. O'STEEN: Yes, it was.

Q. It was.

Do you think that you could accomplish the same (80) objective without quoting prices for services in the advertisement?

A. BY MR. O'STEEN: No, because I think price information is absolutely essential to an intelligent decision by a person on the selection of a lawyer.

Q. Is it your judgment that it would generate healthy and constructive competition to the benefit of the consuming public if multiple competitive advertisements were placed in the media; each one attempting to offer a comparable service at a lower price?

A. BY MR. O'STEEN: Yes.

Q. And you would not think that that kind of competitive advertising might motivate the individual clinic or practitioner to cut the quality of service in order to be able to reduce the price?

A. BY MR. O'STEEN: Well, I should hope not. That has not happened in our practice, and at the risk of sounding boastful, I think, if anything, the careful development of the systems approach that we have has caused the quality of the work done in our office to be second to none anywhere in the state.

I think if lawyers began to cut the quality of their service, that's another problem, and the Bar Associations are perfectly free to do,

and capable of dealing with that problem. That sort of thing happens (81) today. All lawyers are not equally competent, and the Bar Association will have to learn to grapple with that, I think, but, to me, is absolutely clear that high-quality service can be done and can be rendered at a rate below the prevailing rates if price advertising is permitted.

THE CHAIRMAN: Does anyone have any further questions?

MR. FRANK: One.

\* \* \* \*

EXAMINATION

BY MR. FRANK:

Q. One thing, Mr. O'Steen, that I should have taken up earlier; I think it should be on the record. I think it's fair to say that in putting in this ad, you and your partner have not proceeded defiantly or either contemptuously by the action on your part towards the Bar or the Supreme Court, and by stipulation of your clients it has been agreed that you

would not advertise further pending reasonably rapid disposition of this matter; essentially what you have done is create a test case to determine whether you can do this or not? Isn't that about right?

A. BY MR. O'STEEN: That's right. We don't want to be accused of causing frivolous litigation, and that's not (82) what we are doing.

We did think that what we did was essential to the survival of this concept, but it is true that it in no way was done with any disrespect or contempt for the State Bar or the Supreme Court. We are delighted the issue being so well aired.

MR. FRANK: I will now come back to this when you consider this, or if you should at some later time, when the Supreme Court, the problem of penalties. So I do know this has been a one shot, and it has been agreed that there will not be further advertising pending a reasonably speedy disposition of

the matter.

Mr. Canby, is that right?

MR. CANBY: Yes, that's our intention.

I don't recall stipulating.

THE CHAIRMAN: It is clearly understood, however, that the Respondents acknowledge and admit, for the purpose of this proceeding, that the placing of the advertisement constituted a violation of a rule of professional conduct promulgated by the Supreme Court of this state. Is that not true?

MR. CANBY: That's not only true, and is admitted in our Answer, with the reservation that we attack the validity of the rule. What you say is true.

(83) THE CHAIRMAN: Do you agree with that, Mr. O'Steen?

WITNESS O'STEEN: Yes, sir.

THE CHAIRMAN: Mr. Bates?

WITNESS BATES: Yes, sir.

MR. FRANK: Nothing further.

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EXAMINATION

BY MR. CANBY:

Q. One question: The Chairman asked you, Mr. O'Steen, one question, something like that: You advertised, then, because your clinic was not economically viable without it?

A. BY MR. O'STEEN: I think that was my response.

THE CHAIRMAN: The question was "not economically viable without a substantial volume of business to treat with the systems concept."

Q. BY MR. CANBY: I would add, at those prices, or at low prices; is that correct?

A. BY MR. O'STEEN: That's correct. I was reading that into the question.

Q. I was trying to see what was incorporated in your answer. Yes.

A. BY MR. O'STEEN: Yes. The fees we charge cause us to know that perhaps --

perhaps I should start over and try to rephrase this.

(84) Yes, it is true that it was not economically viable for the clinic to operate at the fees charged for various services without communication of price information in the form we chose to do it.

Q. To increase volume?

A. BY MR. O'STEEN: In order to increase volume.

MR. CANBY: I have no further questions.

\* \* \* \*

EXAMINATION

BY THE CHAIRMAN:

Q. Have you ever made an estimate as to the number of pieces of business that you have to do in a day, week or month in order to be able to break even?

A. BY MR. O'STEEN: We know what dollar volume we have to gross in order to break even.

Q. Do you know what your gross dollar



volume is that is necessary to break even?  
Can you state it?

A. BY MR. O'STEEN: I think Mr. Bates has that.

Q. Mr. Bates, can you answer that question?

A. BY MR. BATES: The last time we looked into it was several months ago, and there have been several changes in the firm in the use of personnel and in the use of automatic typewriting equipment.

Do you want a figure? Is that what you are asking?

(85) Q. I am interested in a figure, yes.

A. BY MR. BATES: I would estimate between \$250 and \$300 a day.

Q. Between \$250 and \$300 a day gross fees received?

A. BY MR. BATES: Yes.

Q. Do you maintain any time records for your time?

A. BY MR. BATES: In cases where we normally keep time records, yes.

Q. But there are certain cases in which you do not keep time records?

A. BY MR. BATES: We did initially, to find out how much time was being typically invested in standard cases, and we took an average but we do not keep time records of every case that we handle.

Q. Do your paralegals keep time records?

A. BY MR. BATES: In our hourly rate cases, yes.

Q. Do you have hourly rate cases?

A. BY MR. BATES: Yes.

Q. Do you have some matters that you do not charge for a flat fee?

A. BY MR. BATES: Yes, that's correct.

Q. Would you be willing to tell the Committee what your hourly rates are?

A. BY MR. BATES: Yes. It's \$40 an hour.

Q. For the lawyers?

(86) A. BY MR. BATES: For the lawyers.

Q. Do you charge on an hourly basis for your legal assistants?

A. BY MR. BATES: That's \$20.

Q. Is the \$40 rate the same for both you and Mr. O'Steen?

A. BY MR. BATES: Yes.

THE CHAIRMAN: That's all I have.

MR. FRANK: Nothing further.

MR. CANBY: Nothing further. I only have a short few questions left, but I don't think they'd logically come now.

(Discussion off the record.)

(Recess taken.)

\* \* \* \*

JAMES L. JONES, being sworn as a witness by the Chairman, was examined and testifies as follows:

MR. CANBY: This is a defense witness being called out of turn.

EXAMINATION

BY MR. CANBY:

Q. Mr. Jones, would you please state your

full (87) name and address?

A. My name is James L. Jones. I live at 6821 North 8th Avenue, Phoenix.

Q. You have some connection, haven't you, with the American Association of Retired Persons?

A. I do.

Q. What is that position?

A. I am associated with the Phoenix Chapter No. 41, and act on the Board of Directors, and as a Legislative Chairman of this Committee.

Q. How many members has your Chapter?

A. The Chapter 41 has about 700 members.

Q. I see. Statewide, there are how many in the Association?

A. Statewide, there are approximately 118,000 members of AARP at the present time.

Q. In your capacity as a director and legislative liaison and as any other capacity you have, do you have considerable contact with the membership of your organization?

A. I do.

Q. Are they all retired persons?

A. No, they are not all retired persons.

The membership is open to those fifty-five years of age and older.

(88) Q. Do you have any general estimate of what percentage? Is the majority of them retired?

A. Oh, yes. I'd say at least 80 percent are retired.

Q. In your contact with these members, do you have any general knowledge of the economic condition of the members, generally or of specific members?

A. I would say, generally, they are in the lower economic spector of our population.

Q. Do the retired members of your organization tend to be on fixed incomes?

A. Yes, they do.

Q. Are you aware whether or not the members of your organization, with whom you are acquainted, have need or have had occasion to

need legal services?

A. Yes, they do. They do have need of legal services.

Q. How do they find that out?

A. Well, we have a Consumer Affairs Committee, and we make studies of this sort of thing; consultation with various members, and offer services, such as income tax preparation services and so forth to our membership.

Q. Have you ever had occasion to advise members of your organization who had questions about obtaining legal services?

A. Yes, I have.

(89) Q. What is the nature of that advice?

MR. FRANK: Could I have foundation? What kind of legal services are we talking about?

MR. CANBY: Let's ask that.

Q. BY MR. CANBY: What kind of legal services?

A. I think the legal services are the same as any group of citizens, they would have. I don't think they are peculiar at all, that this is a group mainly of retired persons.

Most of us, or many of us are still active in businesses and in social affairs, so I don't think the legal services would be any different than you'd find in the cross section of the public at large.

Q. Have you discussed the obtaining of legal service with people, for instance, who wanted to get a divorce, or a will?

A. A will, yes. Divorce, no.

Q. Possibly probate proceedings; someone had died?

A. We took a very active interest in the probate bill that was before the legislature in the session a couple of years ago.

Q. What advice do you give your members if they ask you how to obtain legal services?

A. Well, we don't recommend any individual attorney or send them to any firm of attorneys,

but we do suggest (90) when they do contact an attorney that they seek to the best of their ability to get an estimate of charges and be sure that they understand what the expense is going to involve.

Q. Showing you Bar Exhibit No. 6, this is an advertisement that appeared in the "Arizona Republic". In your opinion, would that advertisement be of assistance to your members in obtaining legal services?

MR. FRANK: Objection.

May I ask a question on voir dire?

THE CHAIRMAN: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. FRANK:

Q. Mr. Jones -- it's Jones, is it?

A. Correct.

Q. Mr. Jones, you have testified a moment ago that you have not had occasion to counsel with your members concerning divorces and legal services. Is that what you just told us?



A. I said that I personally have never been called upon to discuss that type.

Q. Right. Secondly, have you ever been called upon to discuss bankruptcy with the members of your organization, individually?

(91) A. I have not.

Q. Have you ever been called upon by any of them to advise them concerning changes of their names?

A. No, I have not.

MR. FRANK: I will not object, Mr. Chairman, because we have agreed we will make no objections, but I want the voir dire to stand as going to the weight of this evidence.

THE CHAIRMAN: Yes, it may.

I'd like to have the question reread to Mr. Jones, and I'd like to have him think about it and give an answer.

(Question read by reporter.)

A. I think it would be.

EXAMINATION (CONTINUED)

BY MR. CANBY:

Q. Why?

A. For the simple reason that it places some basis of legal cost on the specially mentioned matters, and it also has a statement here, "Information regarding other types of cases..." would be "...furnished on request", and I think the big difficulty in the minds of most people seeking legal services is what is the basis of cost, and if you can find a clear cut statement in this, it seems (92) to me it would be helpful.

MR. CANBY: I have no further questions.

\* \* \* \*

EXAMINATION

BY MR. FRANK:

Q. Mr. Jones, who was the last member of your association who consulted you on a need for legal services?

A. Are you expecting me to give you a name?

THE CHAIRMAN: The question calls for a

name. You may say that you don't know, if you don't know.

A. (Continuing) I'm not sure that I could recall the name of the individual.

Q. BY MR. FRANK: When did that happen?

A. I'd say about two weeks ago.

Q. What was the last one prior to that?

A. Oh, maybe a week before that.

Q. What was the nature of those services in those two instances?

A. These were problems involving traffic cases and income tax matters.

Q. Are most of the inquiries that come to you things which would involve either petty criminal offenses, such as traffic or income tax? Is that the weight of them?

A. No, I don't think that would be the case.

(93) Q. Would you give us a description of what the others are?

A. Well, I would have to take some

time to prepare a list like that.

As I said, I think the range would be the same range of legal problems that confront any of society.

Q. But you have nothing specific at this minute?

A. I didn't come prepared to recite a list of items of that character.

MR. ROBINETTE: Could I have one question?

THE CHAIRMAN: Of course, Mr. Robinette.

Mr. Robinette is one of the members of the Committee who is hearing the testimony.

EXAMINATION

BY MR. ROBINETTE:

Q. Mr. Jones, you said you advised your friends and association, very properly so, that if they see a lawyer they should make inquiry as to what the nature of the fees would be and what it's going to cost them. I believe that's your testimony?

A. That's right.

Q. Have any of them ever told you that

when they consulted the lawyer, the lawyer refused to discuss fees with them?

(94) A. No, they had not said that to be the case, but it has been my experience that some of these same people have been unhappy with the results of being told that the cost would be one thing, and finding out that they were substantially more than they had been told they would be.

Q. Of course, you don't know of your own knowledge whether these prices listed in the Exhibit that's been displayed to you are higher or lower than the going rates?

A. I do not.

Q. Among lawyers, generally?

A. I do not.

MR. ROBINETTE: That's all.

EXAMINATION

BY THE CHAIRMAN:

Q. Could I inquire, Mr. Jones, are you aware of a service which is implemented by the Maricopa County Bar Association called

the Lawyer Referral Service?

A. I am. We have availed ourselves of an expert from your Lawyers Referral group that appeared on a program before our monthly meeting about two years ago.

Q. When members of your association inquire of you from time to time concerning how they would go about getting the services of an attorney, do you recommend (95) that they get in touch with the Maricopa County Lawyers Referral Service?

A. We do not?

Q. Can you tell us why you do not?

A. The experience that we have had with that has not been very good.

Q. In respect to the quality of legal services or what?

A. I think the results that I have known about have indicated a rather lack of substantial interest on the part of the attorney or attorneys to whom they were sent to; and after all, for a \$10 fee you couldn't

expect to get too much, probably.

Q. This kind of an experience has been reported back to you from people who have gone to the Lawyers Referral Service?

A. Right.

THE CHAIRMAN: All right. Thank you.

MR. FRANK: No questions.

MR. CANBY: No questions. Thank you very much, Mr. Jones.

THE WITNESS: Thank you very much.

THE CHAIRMAN: Mr. Jones, we appreciate very much your taking your time to be of help to us, and you may be excused.

(96) THE WITNESS: Thank you.

(Witness excused.)

MR. FRANK: Mr. Chairman, I present Mr. Arnold. Could he be sworn, please.

\* \* \* \*

RICHARD M. ARNOLD being sworn as a witness by the Chairman, was examined and testifies as follows:

EXAMINATION

BY MR. FRANK

Q. Would you state your name for the record?

A. Richard M. Arnold.

Q. Mr. Arnold, you are a member of a firm of architects. Have you given the name of that firm to the reporter during the recess?

A. No.

THE CHAIRMAN: Would you like to do it now?

MR. FRANK: I'm going to hand it to her, because of the spelling.

THE WITNESS: It's Guiry, Srnka, Arnold & Sprinkle.

Q. BY MR. FRANK: Mr. Arnold, how long have you been an architect?

A. Since 1956.

Q. Is there a national association of architects?

(97) A. The American Institute of Architects.



Q. Are you a member of that?

A. I am.

Q. Is there a state association of architects?

A. Yes.

Q. What is that?

A. Arizona Society of Architects.

Q. In addition to that state society, are there local Chapters?

A. There is a Central Arizona Chapter and a Southern Arizona Chapter.

Q. Mr. Arnold, the national organization has, I believe, a post of high professional honor for some limited number of architects known as Fellows. Do I have the word correct?

A. Correct.

Q. Are you a Fellow of the American Institute of Architects?

A. Yes, I am.

Q. How many of those are there in the State of Arizona?

A. I believe there are 15.

Q. What is the general qualification of a Fellow? How does one become a Fellow?

A. Through service to the profession and to the (98) community.

Q. In?

A. Advancing architecture.

Q. Of service to the profession, have you held any offices in more than the Arizona Chapter?

A. All of them.

Q. Have you held any offices in the state association?

A. I was president several years ago.

Q. Mr. Arnold, in the course of your work--

MR. FRANK: May we stipulate that Mr. Arnold is a fully-informed expert on advertising and its practice in the state, or do you want more foundation?

MR. CANBY: No, I waive the foundation.

Q. BY MR. FRANK: Mr. Arnold, what is the practice of the architectural profession in respect to newspaper advertising?

A. It has been prohibited.

Q. For how long?

A. I think since the founding of the Institute which was, I believe, in the late 1880's.

MR. FRANK: Mr. Chairman, Mr. Canby, I ask leave to lead, because this is obvious stuff.

Q. BY MR. FRANK: Isn't it true, Mr. Arnold, that in connection with your profession, unlike law or (99) accounting, the discipline is left to your association and is not enforced by the state in any way; is that correct?

A. That is correct.

Q. So far as advertising is concerned?

A. Right.

Q. But if, in fact, an architect were responsible for advertising, are there disciplinary procedures within the architectural organizations to examine in to such matters?

A. Yes. There are committees on ethics in each Chapter, as well as at the national level.

Q. What sanction would be imposed, if it should appear that someone were guilty of either advertising or repeatedly advertising, perhaps?

A. If it went as far as the national level, it would probably be a censure, which would be published in the Institute's material.

Q. Suppose it happened again, what discipline would be imposed?

Can somebody be dropped from the association?

A. Conceivably, they could be dropped from the membership.

Q. In your profession, however, unlike the others, I think you permit person-to-person solicitation; don't you?

(100) A. Yes.

Q. Would you describe the kind of solici-

tation that architects do regard as proper?

A. Well, traditionally, they hoped they would get known by their works, and people would come to them or clients would come to them. As it happens, we will make person-to-person contact with potential clients, and making it known what services we offer.

Q. And by the traditions of your profession, it's perfectly proper to call on someone -- correction -- call on someone whom you believe to be about to do some building, to interest him in engaging your firm for that purpose, is that right?

A. That is correct.

Q. But you bar advertising to the general public, as a whole?

A. Right.

Q. As distinguished from person-to-person?

A. Right.

Q. Now, what is the record in this

community for young architects?

Do competent architects find that they can develop careers, normally, within a few years here?

A. It would seem so, with the number of architects that we have in the community.

(101) Q. Well, you know the profession thoroughly, as president and having moved through all of the chairs all over the state; isn't that true?

A. Yes.

Q. Is it true that quite universally competent architects, at least from two to five years up, are able to find a reasonable amount of work to keep busy and make reasonable incomes?

A. Yes.

Q. And they do that without any public advertising?

A. That's correct.

Q. Well, Mr. Arnold, what are the evils of advertising, as the architectural

profession sees it?

How would the public interest be dis-  
served?

A. It's considered to be self-lauda-  
tory as through the Code of Ethics.

Q. But I want to get to the reason for  
the rule. What is the loss to the commun-  
ity, if any?

A. I think by the possibility of mis-  
leading the public, in general.

Q. What do you regard is the capacity  
of architectural advertising to mislead?

A. They could very readily oversimpli-  
fy the concept of problems that the owner  
would face in going about a building pro-  
ject.

(102) Q. Can we be concrete about  
this? Isn't it perfectly true that, for  
example, you have done, I think, as I re-  
call it, I think it's the library in Flag-  
staff--is my memory correct--some building  
in Flagstaff--that won a prize? Straighten

me out, because I'm speaking from memory.

A. We have done various buildings on the campus in Flagstaff.

Q. There was one --

A. There was a NASA project at the Lowell Observatory.

Q. If you simply put a picture of that building in the newspaper and put below it as an advertisement Richard Arnold as the architect of this building, would that mislead anybody?

A. Just the picture itself?

Q. Just the picture and your name.

A. I don't see that it would.

Q. What, then, would be the kind of advertising which you think might mislead?

Will price advertising mislead?

A. Suppose it said that "Richard Arnold designed this building on budget for this client", that's implying that I would always do that.

Q. Do you miss occasionally?



(103) A. I'm afraid so.

Q. Mr. Arnold, I want to get to the question of price advertising. Do you regard price advertising of architectural services as somehow inherently misleading?

A. Well, yes.

Q. Why?

A. Because the pricing of services will vary all over the place as to the nature of services and the scope of the project, the scope of the problems that the owner is encountering.

Q. Mr. Arnold, isn't it true that frequently architects utilize a percentage of the cost of the building as a base portion of the fee?

A. That is one of the measures, right.

Q. But is it not also true that there are in the standard agreements used by architects paragraph after paragraph, running to pages for varying items which may affect the price before the job is done?

A. Yes.

Q. And there are fixed price items within the percentage, and then there are a lot of other items which are additional items which can unexpectedly crop up; isn't that so?

A. That is right.

Q. And that is universal architectural practice (104) under forms of the contract that are substantially always used by architects; isn't that so?

A. Quite right.

Q. Do you regard it as misleading, then, to say, "We will build your home for six percent of the cost"?

A. I would say it was misleading, of course, besides being poor business.

Q. And misleading in the sense that if you use the standard contract, it simply won't be true, because of the miscellaneous unanticipatable items; isn't that right?

A. Yes.

MR. FRANK: Your witness.

\* \* \* \* \*

EXAMINATION

BY MR. CANBY:

Q. Is it misleading if you advertise that you will build a home for six percent of cost, and then you go ahead and do it? I mean, that you will do the architecture.

A. After the fact, it was not misleading beforehand, right.

Q. Right. In other words, it was performed according to the advertisement, then that would not be misleading; is that correct?

A. It wouldn't be misleading. It would probably be misleading in the first place, from a practical matter, (105) that you are guaranteeing a price to begin with, when you don't know what the circumstances are.

Q. Of course, it doesn't mislead if you adhere to that price?

A. True.

Q. It may be bad business, and you may find it economically unfeasible to adhere to that price?

A. If it was accomplished, and the owner was not mislead (sic).

Q. Mr. Frank asked you whether it would mislead the public to put a picture and the name of yourself, an architect, let's say, in the newspaper. Is that forbidden by the professional code of architects, now?

A. If it appears as advertising, yes.

Q. If you simply put in a box?

A. A paid advertising?

Q. Paid. Okay, you paid to have a picture put in and your name, that would be not permitted?

A. No, that's right.

Q. Are you allowed to put a sign up at the building site with your name as architect?

A. Yes.

Q. The several pages of variances that may occur in a building, is that a generally standard form used by architects?

(106) A. Yes, it is.

Q. Do all architects use the same percentage figure information in those instances when they will perform the architectural services for a percentage of the cost, along with those qualifications which are standard?

Do all architects charge the same percentage?

A. No, nor for the same type project, either.

Q. It would violate your code, would, it, to publish a statement saying, our base percentage for a particular type of job described is seven percent, subject to qualifications used in the standard architect form?

A. If it's plain advertising, it would

violate.

Q. It would violate.

You testified that competent architects are able to achieve a viable practice within somewhere two to five years. Do any incompetent architects manage also to achieve viable practice?

A. You are asking me to make a judgment?

Q. Yes, I do, because it seems to me the question you answered previously calls for a judgment of whether competent architects are able to succeed.

MR. FRANK: You won't have to name them, Dick.

Q. BY MR. CANBY: No, I won't ask you to name them.

A. The answer is, of course.

Q. Are there architects who fail to establish a (107) practice?

A. Yes.

Q. There are.

What are the consequences of being drop-

ped from membership in the association that you mentioned?

A. Simply that you are no longer a member or enjoy any of the privileges of membership, or that you can use the initials AIA in conjunction with your firm name or your own name.

Q. If an architect advertises through paid advertising in newspapers, is it possible that he will lose his license to practice, to practice architecture?

A. No, that's not covered by the statute.

MR. CANBY: I have no further questions.

MR. FRANK: Nothing further.

THE CHAIRMAN: I'd like to ask a couple questions of Mr. Arnold.

EXAMINATION

BY THE CHAIRMAN:

Q. Does the AIA permit its members to bid competitively for public jobs?

A. To my knowledge, there is no stipulation in the ethics with regard to that subject.

Q. Do I understand, then, if the Scottsdale School (108) District was contemplating building a new high school, that architects would be free to come in; be interviewed by the Board and quote a basis for their compensation in competition with other persons?

A. I take back my first comment. There is a prohibition as to competing on the basis of fee.

Q. So, if Architect A appeared before the Scottsdale Board and said, "I'll build your school for four percent for plans and two percent for supervision", and another fellow came in and said, "I can beat that, I'll do it for three and a half and two", that would be a violation of the standard of ethics in your profession?

A. That's right.

Q. We have been advised that the



Attorney General of Arizona issued an opinion in which he held that it was unlawful for the accounting profession to compete on that basis. Are you aware of whether or not the architecture society has been a subject of a comparable opinion?

A. No. I have not, of an opinion being issued.

MR. FRANK: May I make a notation for the record, Mr. Chairman?

THE CHAIRMAN: Yes. Do you have some knowledge about that?

MR. FRANK: I think so. The statute which deals with competitive bidding in the state does not apply to (109) architects, and does apply to a number of other professions. So that there is an expressed difference there.

Now, the opinion of the Attorney General deals with certain general anti-trust matters and bypasses the state statute in a burst of enthusiasm of his own.

Mr. Arnold, it is true that that matter has not been taken up, of the architects, by the Attorney General; whether because of statutory difference or otherwise, we don't know. Isn't that true?

THE CHAIRMAN: He has testified that he is not aware that there is any such opinion.

MR. FRANK: I thought you would like to know the state statute is different.

THE CHAIRMAN: I understand. I also said I understand that the opinion of the Attorney General did not rely upon the statutory difference; it was based upon the antitrust law.

Q. BY THE CHAIRMAN: You testified that the base charge made by architects, in general, are based on a percentage of the total amount of the contract?

A. That has been traditional.

Q. It's usually divided between a percentage per plans and percentage for

supervision; is it not?

A. Yes.

(110) Q. Has your association, either statewide or nationally, ever circulated or published recommended minimum percentages for various kinds of construction?

A. Yes, several years ago, but they have been withdrawn.

Q. You have discontinued doing that; isn't that true?

A. Right.

Q. At the present time individual architects are free to negotiate their percentages with individual clients?

A. Or any other basis of compensation.

Q. Or any other basis.

Do you feel that there is a need in the State of Arizona for wider delivery of architectural services to persons who are not now receiving needed services?

A. Yes.

Q. In general, is there much demand

for architectural services among the indigent?

A. No, not directly.

Q. For the most part, the needs for architectural services is a direct function of the availability of money or sources of money for persons to build things; isn't that right?

A. That's right.

(111) Q. Is there such a thing as a Legal Aid for Architectural Services for somebody who is desperately in need of an individual to provide him a design for improving what might be an unsafe or uninhabitable structure, but he can't afford to pay for the services?

A. Yes, the Chapter provides for that service.

Q. This case that we are considering involves an advertisement which places job fees on relatively standardized services, such as an uncontested divorce; what is

known, in quotes, "Simple will". Does your profession have that kind of standardized product, or is it pretty much custom, based on a structure-by-structure difference?

A. No, it would not be standardized, it would become very custom.

Q. So that even if you wanted to, I gather, it probably would be impractical for your profession to quote flat fees for architectural services, in connection with the design of a building, unless you were talking about a very standardized structure?

A. That's right.

THE CHAIRMAN: That's all I have.

MR. FRANK: Nothing further.

MR. CANBY: No questions.

MR. FRANK: May the witness be excused?

(112) MR. CANBY: No objection.

THE CHAIRMAN: Mr. Arnold, you may be excused, and thank you very much for helping.

(Witness excused.)

MR. FRANK: We rest.

THE CHAIRMAN: Would you like to call your next witness, Mr. Canby?

MR. FRANK: Do you want to put in your Exhibits, or did you do that before?

MR. CANBY: No.

THE CHAIRMAN: The only Exhibit we have for the Respondents is a No. 11. If you have others, would you like to have them marked now?

MR. CANBY: My witness has a couple of them. Let me mark this. This would be Respondents' Exhibit 12.

In Mr. Harrison's deposition, he refers to a brochure of the "Arizona Legal Services". This, I believe, is the brochure, the "Bylaws and Participating Attorney Rules" of "Arizona Legal Services".

MR. FRANK: No objection.

THE CHAIRMAN: It's called the "Bylaws"?

MR. CANBY: The title seems to be either "Arizona Legal Services" or "Answers About ALS", then there is a statement, "Bylaws and

Participating Attorney Rules".

THE CHAIRMAN: All right, there being no objection, (113) Respondents' Exhibit No. 12 may be received.

(Booklet marked Respondents' Exhibit No. 12 for identification by the Notary, and received in evidence.)

THE CHAIRMAN: Would you stand and raise your right hand, please.

\* \* \* \*

STEVEN RICHARD COX, being sworn as a witness by the Chairman, was examined and testifies as follows:

MR. CANBY: Well, before I begin the examination, I do have now the additional material, Respondents' Exhibit 13 will be a study entitled, "Restricted Advertising and Competition, The Case of Retail Drugs", and Respondents' Exhibit 14 will be a study from the "Journal of Law & Economics", titled, "The Effect of Advertising On The Price of Eyeglasses".

For No. 15, I think I'll introduce Mr. Cox' vita, the present witness' resume.

THE CHAIRMAN: Any objection to 13, 14 and 15?

MR. FRANK: None.

THE CHAIRMAN: Okay, they may be received.

(Booklet marked Respondents' Exhibit No. 13; copy of article from "Journal of Law & Economics" marked Respondents' Exhibit 14, and Vita of Steven R. Cox marked (114) Respondents' Exhibit 15 for identification by the Notary and received in evidence.)

\* \* \* \* \*

EXAMINATION

BY MR. CANBY:

Q. Mr. Cox, could we have your full name?

A. Yes. Steven Richard Cox.

Q. Your address?

A. 3324 South Terrace Road, Tempe, Arizona.

Q. What is your employment?



A. I'm Associate Professor of Economics at Arizona State University.

Q. We have your vita sheet. Let me just ask one or two questions. You are in economics. How long have you been teaching?

A. Since 1970, the fall of 1970.

Q. You received your Doctors at Michigan?

A. University of Michigan, in January, 1971.

Q. Do you have a specialized area within economics?

A. Yes. It's the field known as industrial organization and public policy. The study of American industry and the impact of antitrust laws on competition in industry.

Q. In your list of publications you have recently published, is my understanding, in the field of defective (115) advertising?

A. Yes. There are many interests, subfields or topics in the field of the

industry, competitive advertising.

My most recent interest has been the role of information in making the market more competitive, and the effect of advertising on the amount of information that consumers have. Basically, three out of the last four articles that I have written and had accepted for publication have dealt with that either theoretically or practically.

The practical use has been the study of household detergent industry and information in the household detergent industry.

MR. FRANK: Mr. Canby, may I ask a question?

I'm holding your vita. Which of the last three or four articles do you refer to?

THE WITNESS: They are under the "Articles Published" on page 2. They are 10, 11, 12, and 13. I don't remember which of the ones is not, of 10 to 13 is not dealing with advertising.

MR. FRANK: Thank you. That helps me.

MR. CANBY: I'm assuming that there is no further need to go into basic qualifications; is that correct?

(Discussion off the record.)

(116) THE CHAIRMAN: Mr. Canby, the Committee will take into consideration not only the testimony of Doctor Cox but also the resume, which is Exhibit No. 15, in reaching the conclusion that he is qualified to express opinions in the field of his expertise.

MR. CANBY: Thank you, Mr. Chairman.

Q. BY MR. CANBY: Mr. Cox, have you had any occasion recently to examine any studies relating to the effect, the economic effects on prohibitions on advertising?

A. Yes. In my research on advertising and its impact on marketplaces I have come across two major studies; the only two, really, that I know of, and they are the ones that you introduced in evidence as

Exhibits.

Q. Respondents' Exhibits 13 and 14, I think we are referring to.

A. 13 and 14.

Q. To back up for a minute, you said one of your areas of special interest was the effect of information on the competitive system. Would you elaborate a little on it?

A. Well, economists have a model known as perfect competition. This model is based on a number of assumptions. One of the assumptions of the model is that consumers have perfect information. Okay.

(117) So, whenever, of course, that assumption breaks down and consumers don't have perfect information, the conclusion of the model, namely, the perfect competition that exists breaks down.

Now, maybe without trying to be too pedantic here and too much like a professor, let me emphasize here that competition has a particular meaning for economists that

lay people usually don't think about. Namely, it's a situation in which neither buyers or sellers interacting on a market have control over prices that they charge. So that, obviously, buyers are what?

They are out to get the product or the service for the lowest possible price, but as long as none of them have control they can't sort of get it at too low a price, a price that wouldn't enable a seller to operate.

Similarly, a seller wants to get it at the highest possible price, but as long as there is competition between sellers, they can't charge what?

A very high price and earn what we call monopoly profits, as a consequence.

I want to explain that, because laymen will talk about, and businessmen will talk about how they are subject to a great deal of competition.

This is true, for example, in the auto industry. They always talk about the compe-

tition in the auto (118) industry, but notice from an economist's definition of competition, namely, that no one buyer or seller has control over price; that doesn't pertain to the auto industry because General Motors pretty much sets the price in the industry and others follow suit.

Q. Does pure competition exist anywhere?

A. Perfect competition does not. One of the reasons it doesn't exist anywhere is that consumers don't have perfect information.

Q. That's one of the reasons, only?

A. Yes, one of the reasons.

On the other hand, there may be what economists always like to refer to as workable competition. Namely, given sort of the uncertainties and the imperfections that exist in the world, you could think of a situation--what?

In which consumers are relatively informed and in which marketplaces are

relatively competitive.

So, you could go from a situation, basically, as exists in agriculture and farming --another industry that is probably pretty workably competitive is textile manufacturing--all the way to situations which very few economists, if any, indeed would claim are very workably competitive, such as the auto industry, to pick out a good industry, and then a great deal of service industries, including doctors and lawyers.

(119) Q. All right. Back to the studies you mentioned. The Respondents' Exhibit 13, which I believe you have-- Mr. Chairman has--has to do with drug advertising. Who wrote that study?

A. Professor Cady. He is a professor of marketing at the Univeristy of Arizona. He wrote the study, or did the study for an institute called the American Enterprise Institute, in Washington.

Q. Do you have an opinion well, before I ask that question, I should say: Could you give us a brief statement of what the study says?

A. Yes. Here was a perfect opportunity for Professor Cady to examine what impact advertising has on the prices of prescription drugs. The reason, it's as close to a laboratory perfect situation as you can get in economics is that in some states there are bans on advertising, all the way from say an absolute ban to say bans on price advertising, to states where there are no bans whatsoever on advertising.

A medical survey, or a survey had been done by an outside marketing firm on what people were spending on their medical expenditures. People are making one of which was what? What are you spending on drugs? What drugs are you buying and what prices are you paying for drugs?

(120) So, here is a perfect setting



for Professor Cady. Namely, he was able to take this proce statement and look at the prices that people were paying for 10 commonly prescribed drugs across states, and was able to look at basically the mean prices that people were paying for these drugs in states where there was a ban on advertising, and the mean price they were paying for these drugs in states where there was no such ban, and basically found in the states where there was no ban on advertising the mean price was about five percent, is statistically significantly lower where there was a ban on advertising on prescription drug products.

Q. Do you have an opinion in regard to the reliability of the underlying survey regarding medical expenditures?

A. Well, the survey was --

MR. FRANK: You have lost me. What is that underlying survey?

Q. BY MR. CANBY: You said that --

A. It was done by a marketing firm here.

Q. It seems to me there are two things.

If I may explain, one is there was a pre-existing survey dealing with how much was being spent on drugs in various places?

A. By the R.A. Gosselin Company, marketing research outfit.

(121) Q. Then this study which takes the data, and --

A. -- basically analyzes.

Q. Compares it with the effect of various relative bans on advertising.

MR. FRANK: Thank you. I must have missed that.

THE CHAIRMAN: Are you asking the witness to vouch for the reliability of the data upon which the conclusions were drawn?

MR. CANBY: I'm asking for reliability, the methods basically. In other words, what does he think of this study.

A. I don't have any information on the survey, the actual collection of the

price data. I trust that since Professor Cady and the American Enterprise Institute, which is a very reputable institute, used the study, I trust that the survey were very reliable and quite valid.

The study here, the things that Professor Cady did with the price data were indeed quite valid and quite reliable. Namely, he not only looked at the price differences between states with the ban and without, but went beyond and said: Are there other factors which could explain this differential?

Basically, did we see this lower price in states where there was no ban on advertising, but that consumers for that low price suffered some other disutility?

(122) Namely, although, you couldn't claim here an inferior product, because basically the retail establishments have nothing to do with that; that's the drug company, but could the customer for this

lower price suffer any kind of service differential?

Did they not receive -- and he looked at four or five different services.

For example, in the states where advertising was allowed, did firms grow to very large sizes, and those large firms not give any kind or sort of personal type services that a small establishment might give?

And he looked at delivery; service; credit; emergency service; the keeping of records, and then amenities in terms of waiting area where you could sort of go in and sit down and wait for your drugs, or whatever, and found that there was no statistically significant difference in service, where the consumer in these states where there was a ban on advertising and thus where consumers were paying a lower price, there was no -- in the state where the consumers were paying a lower

price for the drug, they were not getting any less service; they were getting just as good service.

Q. Those were the states that tended to be, on the average, where advertising of prices was permitted?

A. That's right. They got it for a lower price, and (123) no less service.

Q. Let's examine the other Exhibit, Respondents' Exhibit 14. This has to do with comparative price of eyeglasses. Who was the author of this study?

A. Professor Benham. He is the professor of economics. At the time he was at the University of Chicago; now he is at the University of Washington in St. Louis.

Q. Do you have an opinion about the methods of this study?

A. It's really the same kind of thing that Professor Cady did. He had sort of a golden laboratory experiment. Namely, there are some states where there is a ban

on the advertising of eyeglasses; other states where there is not.

He had the advantage of having, from an independent survey, data on the prices people were paying for eyeglasses across states, and again found that difference.

Now, he did something slightly different. He looked at -- like Cady, he lumped sort of all the states that had any kind of a ban, partial, absolute; any kind of a ban, and those states that did not; found about a five or six dollar differential on a 30 to \$40 pair of eyeglasses.

(124) Then, he said, "What might be the outside figure that people will be paying due to bans on advertising?"

So, he took a state, North Carolina, which had an absolute ban. You couldn't advertise anything anywhere and took states where there were no bans, Texas and the District of Columbia, and the differential jumped to \$19. Admittedly, this is the

largest kind of an increase in price that could be expected in the ban; in this case, an absolute ban.

Q. Did this study include fitting glasses?

A. Yes. In fact, for some of the sample consumers, they did not separate the price of eyeglasses from the combined price of the eye examination and eyeglasses. So, here, was also involved the examination, as well as the fitting and the prescription of the eyeglasses.

Q. Was there any way of telling whether the level of services was being differentiated?

A. Well, not really in terms of eye examinations. He looked at information the consumers that reported the prices of eyeglasses only, and would be corrected for the types of people buying eyeglasses.

So, somebody might claim, for example, in states where there was a ban on advert-

ising, people may have had higher income and thus wouldn't have been, say, as responsive to prices, and so that's why the prices are (125) higher or they might have been older; there might have been a greater demand for eyeglasses in those states.

Unless the price is lower, higher, so he corrected for what he called social and economic conditions for the individual purchasers, family, and age, and so on, and still found, what?

This price difference.

Second, where he tried to find where maybe there is indeed a ban on advertising and where these prices are higher, the eyeglasses are somehow superior. Superior in terms of glass and cut and fitting and so on.

He did two things. One: He tried to find out where the eyeglasses were made. Was it made by some character who sort of just grinded the glass, or is it some reput-



able firm across these states; and found, basically, whether you are talking about states where there is a ban or states without a ban, the retail establishments were basically getting their eyeglasses from three major firms, Bausch and Laumb.

Then, he did a personal, I guess, survey of New Mexico and Texas, two contiguous states; Texas being nonban; having some ban, and really inquiring of optometrists and so on, whether indeed the quality of eyeglasses differ between those two states, and found that there was none.

(126) MR. DIVELBISS: What was that last answer?

THE WITNESS: There was none.

A. (Continuing) So, the price differentials couldn't be explained by individual buyer characteristics, and that is the demand in the state where there was a ban on advertising was greater, claiming a higher price, and there also was no quality

differential explaining the lower price.

Q. BY MR. CANBY: Is it fair to conclude from your examination of these studies and from any other experiments that you have done that a ban on price advertising in general marketing tends to drive up prices?

A. You are being very cautious. I can be even stronger. The answer definitely is yes.

In fact, as you know, economists have a reputation for not agreeing on too many things. Here is one area, namely, price advertising, where I think you'd find it very difficult, if not impossible, to get any economist in this country to come and sit in this chair and claim otherwise. Namely, you get any economist you want to go out and pick up -- all right -- and they are going to sit in this chair and they are going to respond, what?

Yes, price advertising is pro-com-

petitive and will decrease prices, and conversely, a ban on price (127) advertising will be anti-competitive and will increase prices.

There are very few areas where they are going to get that kind of an agreement among economists, but here's one of them.

Q. Let me inform you that the legal profession, generally, and the legal profession in Arizona, specifically, has a ban on advertising to the public, which includes a ban on the advertising of prices.

Are you familiar with that fact?

A. Yes.

Q. Do you know of any studies that have been done on the effect of the ban on advertising in the professions?

A. No. As far as I know, there are none. One of the primary reasons I think there are none is that we don't have a laboratory situation to work with; namely, I don't know of any states where there is

no such ban.

If there are any, please tell me and I can do a study.

Q. Are there any kind of studies that could be done on the effect of a total ban, when the ban is total?

In other words, could any studies be done in the legal profession, and the effect of the advertising ban, economically?

A. Well, if you had a situation where, say, there (128) were some states with a total ban on advertising and other states where the ban were not so total, they would allow some kind of advertising, or they would allow advertising, say, in some media, you might be able to do the experiment, the kind of experiment that was done here, but you have to be fairly careful, because if, let's say, the partial bans are such that -- well, the kind of thing that I know, the American Bar Association, I believe, just recently passed, stating that lawyers, as

far as they were concerned now, I guess, could advertise in professionally accepted places or something like that.

Q. May I interrupt you. There have been certain law lists that have always been able to advertise, to put their names in. They are of limited circulation.

My understanding of the ABA change, which is now in evidence, is that it would be permissible for lawyers to advertise a certified specialty in the Yellow Pages, and a price for consultation in the Yellow Pages.

A. That would be a little different from the limited sources.

MR. FRANK: Pardon me. What question is pending before the witness? I have lost track.

Would you mind restating it.

MR. CANBY: I have to restate it.

The question is: Is there anything, really, that (129) could be studied?

I interrupted his answer.

I think his answer so far: The differences in permissibility of advertising are marginal.

A. (Continuing) Could anything be done--

MR. FRANK: Please, Mr. Chairman, I would like, please, before the witness answers further to have something that ends with a question mark.

MR. CANBY: All right. I think that's been answered adequately.

Q. BY MR. CANBY: Is one of these studies quite a considerable undertaking?

Let's take the drug price study.

A. The major undertaking is the gathering of price data. From there, it's really not too major an undertaking, other than sort of a library reserach (sic) as to what prohibitions and what laws exist in each state.

Q. Do you know of any body of under-

lying data available in the legal profession regarding legal services which would permit such a study?

A. No.

Q. That is not something, I presume, that can be gathered by one or two people in a few weeks.

A. No, certainly not.

Q. Mr. Cox, let me show you Bar Exhibit No. 6. That (130) is an advertisement placed in the "Arizona Republic" by the Respondents in this case.

Do you have an opinion on the competitive effect of that kind of advertisement, or, in fact, that advertisement?

A. Yes, indeed, I do have an opinion.

Here is a classic illustration of what economists would call price advertising, namely, the reporting of the goods or service -- in this case a service being rendered and the price that's going to be charged for such a service.

As I previously stated, I can't think of an economist who wouldn't claim that price advertisements do not have a competitive effect.

MR. FRANK: Pardon me. What we are now hearing is kind of removed, I think, from the question. I don't want to make an objection, but I wonder if we could have --

THE CHAIRMAN: Break it down.

MR. CANBY: The question and answer a little bit more?

THE CHAIRMAN: I may say I read the answer as being responsive to the question, but you may proceed.

MR. CANBY: Very well.

Q. BY MR. CANBY: What is your opinion concerning the competitive effect of a change in the rule which would (131) permit any attorney to advertise prices?

A. My opinion is the effect will be one of increase in competition and a lowering of prices for consumers.



Q. Won't that lower the quality?

A. Not if these studies hold up.

That's a much harder question to answer.

All right. But the two studies that have been done, now, admittedly are on products rather than services, retail drugs and eyeglasses, although the drugs might be a little better example for this case at hand, because there specifically they looked at: Did less services accompany the lower prices? And the answer was no.

So, I have to say it's my opinion that the quality of services would not necessarily decrease as a result of the lower price, due to the advertising.

Q. Are there service industries in the United States that are workably competitive?

Is there any service industry?

A. Oh, sure. Any one into which basically there is not a substantial barrier to entry of labor. The service industries are highly labor intensive. All right.

The things that makes a service industry tend to be anticompetitive or uncompetitive, not workably competitive would be if, what?

If a laborer couldn't get into the area. Okay.

(132) Now, I remind you of there is no perfectly competitive situation. There is no situation in which you can wave your magic wand and be a barber or a beautician or whatever. All right. But anything like that, you know, lawn services, barbers, beauticians, there is relatively free entry. As a consequence, the service industries are workably competitive and the prices are about as low as the source could say will allow them to go.

Q. Is there any reason to believe that competition affects quality in the workably competitive services?

A. Yes. It increases it, which is probably an answer you didn't suspect.

Namely, when indeed there is genuine competition between sellers -- all right -- not only do they want to, in order to attract customers, offer the service at the lowest possible price, but the very best service that can be offered at that price.

MR. CANBY: I have no further questions.

THE CHAIRMAN: Mr. Frank.

EXAMINATION

BY MR. FRANK:

Q. Mr. Cox, with reference to the study of drug prices in article 13, I believe the drugs are listed at (133) page 8 in the article; isn't that correct?

THE CHAIRMAN: You meant Exhibit 13.

MR. FRANK: Thank you. Did I mis-speak? Exhibit 13.

Q. BY MR. FRANK: Now, those are all standard items produced by national manufacturers, and then distributed in local drug stores; aren't they?

A. Yes, as far as I know.

Q. So that these are items in which when the druggist gets the prescription, he simply goes to the shelf; gets a large bottle; pours out some standard items and puts them in a smaller bottle and hands them over and charges some money; isn't that true?

A. Okay. Basically.

Q. Isn't that true?

A. Basically.

Q. They are totally standard; interchangeable?

A. The drugs aren't interchangeable.

Q. No, but all Darvon Compound 65 is simply the same, and the drug company turns it out by a machine, and it goes on, doesn't it?

A. Yes.

Q. And this is what the article is about, the effect of pricing on standardized items?

A. The effect of retail price.