

Q. Now let us turn to the matter of the eyeglass (134) study. You had some talk about the relation of the examination and the eyeglasses. The fact is that this is a study of effective advertising on the prices of eyeglasses only and not of the examinations; isn't it?

A. Yes.

Q. The discretionary element of examination is totally irrelevant to what this article purports to cover?

A. Some other member -- if Benham had been doing the survey, all he would have asked for was the price of the eyeglasses, because that's what he was interested in. Now, because he hadn't done the survey; it had been done by somebody else at some other time, some of the consumers responding had given only the price for both examinations and eyeglasses, but in that case he basically just assumed that the price for the examinations was the same

across these states. All right. The variance was to the price of eyeglasses.

Q. I'd like to ask if we can agree that what you have just said is said explicitly in the article at page 341, the systematic variation and total cost examined here is assumed to reflect variation in the cost of the eyeglasses, excluding the examinations; isn't that so?

A. That's right.

Q. What, then, they are talking about is the business of going to the person who manufacturers the (135) glasses after there has been a prescription and who sells, first of all, the frames; isn't that so.

A. Yes.

Q. And said that those frames, all of them, came from two or three manufacturers in the United States?

A. Not the frames, the glass itself.

Q. Where did the frames come from?

A. I don't know.

Q. But, at least, they are nationally produced; they are items simply on the shelf in the eyeglass seller's store, aren't they?

A. Well, two parts to that question. I don't know whether the frames are nationally produced.

You are correct, yes, the frames are there at the local retail establishment.

Q. Right. And the lenses, you say, are all produced by three national concerns; is that correct?

A. Well, I think the figure in there is about 70 percent, the vast majority.

Q. And what the fellow does who is being studied here, he takes the prescription; takes the standard lens appropriate for the purpose, produced by a national manufacturer; he fits the lens into the frames and glues it into place; isn't that so?

A. Yes. I don't know if he glues it.

(136) Q. Attaches it.

A. Yes.

Q. That's his function. He then -- you had some talk about fitting. The fitting consists of having a fellow in a white coat, usually, sit down across from the customer and hands them the glasses, and kinds of fiddles with them a little to see if they hurt his ears; isn't that so?

A. Yes. That's basically been my experience, as well.

Q. And the sole professional judgment that is performed by the vendor of that item is to wiggle the frame on the glass a little bit, where there is a wire in the middle of it, in a gentle way, to make it fit over the ear, isn't that so?

A. Let's not be totally unfair to the person selling you the eyeglasses. He does have to do what?

Make sure the glass piece he is giving you --

Q. Is the one you asked for?

A. -- fits the prescription that the doctor has written out.

Q. Right. I agree.

A. So the guy is not totally devoid here, or the person is not totally devoid here of judgment.

Q. But it's close.

(137) Should we add that the druggist, also, has to be sure that he is giving you Darvon and not Ovulen?

A. Yes.

Q. He has to be able to read, and he has to be able to count?

A. Yes. He especially has to be able to read the doctor's writing.

Q. Now, in short, in these two studies we are dealing with about the most standardized items that could be conceivably found; aren't they?

A. As far as the retail establishment is concerned, yes.

Q. Yes. All right, now, you have said that if advertising were -- if the advertising ban were eliminated for lawyers, you would then like to do a similar study as it relates to legal services, and I'd like to ask you a couple questions about the study that you contemplate in that prospective day. I'll ask about, if your don't mind, my own areas of specialization, which is the field of appeals to various courts.

Assuming that all bans on advertising were lifted for lawyers; what kind of a study would you anticipate doing concerning appeals?

A. Well, it would be more than these, because notice this can be done at a moment in time. All right. If the (138) ban is lifted, then you have got to compare a cross-time. More ideal, would be for some states to lift the ban then at a moment in time, namely say 1977; look at the states that lifted the ban and those states that

still have that.

Q. We'll give you that. Let's say most of the states, adjacent states, one retails and one doesn't. You are going to do this study, and you are going to do it on the matter of appeals, if you don't mind.

What is it that you are going to be looking for?

A. You'll look for -- you'll try to standardize on two dimensions.

Q. What would that be?

A. One, on the service being rendered.

Q. Right.

A. Okay. So, in your case, appeals on say a murder conviction, or appeal on some antitrust violation --

Q. All right. Let's take an appeal on a murder conviction. I have just been through one of those.

A. Well, that's it, basically. You'd want to make sure that you are comparing, what? Like cases.

An appeal, the price charged for an appeal on a murder conviction in one state, where there is a ban on advertising and an appeal on a murder conviction in a state where there is no such ban.

Then, the second --

(139) Q. So now, we have got all murder cases in banning states, and all murder cases in nonbanning states; is that right? We are going to compare those?

A. The prices charged for appealing of such a case.

Q. Right.

A. The second dimension on which you'd want to standardize is basically the lawyer doing the appeal. Is the lawyer in each case as comparable as you can make it?

Obviously, there is not going to be perfect comparability. You can statistically account for some degrees of incomparability.

So, remember in the eyeglasses, remember



they tried to explain the price differences based on what?

Not just the ban on advertising but on the characteristics of the person buying.

Now, this is a little bit different. Namely, you try to be standardizing on lawyers.

Do you want me to anticipate another question?

Q. No, I'd rather you didn't, if you don't mind. It would be easier if I asked them and you answer them.

Isn't it true, unless we can standardize the murders and the lawyers, we can't make that study? Isn't that true? Yes or no?

A. No.

Q. Then, explain.

(140) A. My answer is no, if you are going to make me say "Yes" or "No".

Q. Then, explain. Make your comment.

A. I'll make an analogy. Just as I

responded earlier to the fact that there is no such thing as perfect competition; on the other hand, you can use a little judgment in terms of whether claiming something is basically workably competitive and something is not.

The same thing is true here. You are never going to get two perfectly comparable lawyers. In fact, by definition, they'd have to be one in the same person divided up into two people in carna to have that. But you can try to get two degrees of lawyers as comparable as possible, the same number of years, the same number of cases handled on appeal, the same number of cases won; so on and so forth.

Q. Let's pause for a moment to be sure I understand. We have to be able to standardize the murders and the lawyers both, murder cases and the lawyers somehow, in order to be able to make this kind of study; isn't that true?

A. You have to make some attempt at standardization, that is correct.

Q. I'll ask you to assume for a moment, hypothetically, that that can't be done, you can't (141) standardize the murders and you can't standardize the lawyers. If that hypotheses is true, you can't have that kind of study.

A. That is correct.

Q. If that is so, it would be impossible to demonstrate by any means known to you that advertising had an effect by way of lowering prices; isn't that so?

A. With certainty, that's correct.

Q. Now, if I advise you that to take, first of all, murders, that is a matter in which I can't suppose that you would have expertise, reasonably; so just let me honestly advise you they range terribly from matters that are so open and shut that a couple of hours will dispose of it, what we call Anders cases, to matters which may

take many people months of hard work.

Are you aware of the extreme range of difficulty that there may be in murder cases?

A. Certainly. I can imagine that, sure.

Q. Can you accept the assumption comfortably that they are about as far away from standard items poured out of a bottle as you can get, in terms of the degree of nonstandardization which they have?

Can you accept that?

A. Yes. I make the analogy of students, they are about as wide a range of skill and interest as you can get.

(142) Q. A pretty diverse lot?

A. Yes.

Q. Now, are there any empirical studies which have been made of the effect of advertising on the price of wholly nonstandard items?

A. No, and it would be inappropriate to

do so.

Q. You testified that if there were advertising, it would lead to price competition for lawyers. Was that your opinion?

A. That's my opinion, yes.

Q. Did you also, I think, testify that it was your opinion that such competition would increase the quality of legal services?

A. It certainly wouldn't, in my opinion, decrease it, and it might very well increase it, yes.

Q. But that is based wholly upon the studies, so far as there is any factual basis for that in the sale of standard items; isn't that true?

A. No, not entirely true.

Q. Name any other study on which you base that opinion?

A. It's not a study, it's basically sort of logical set of reasoning. Namely, that since I conclude that it will have an

effect on competition -- all right --  
namely, increased competition, and on the  
assumption that a (143) seller always wants  
to do what? Sell his product or service.  
In this case, service.

He is going to do what?

He is going to attempt to sell the  
very best service at the lowest probable  
price, in order to do what?

To attract the business.

Q. Do you have an opinion as to wheth-  
er competition exists at the present time  
amongst lawyers?

A. Yes, I do have an opinion?

Q. What is that opinion?

A. It doesn't exist.

Q. There is no competition among  
lawyers; is that your opinion?

A. There is no workable degree of com-  
petition among lawyers, that is correct.  
That is my opinion.

Q. Do you base that on readings of any

particular sort?

A. No, I base it on one very simple fact, and that is, entry to the legal profession is not relatively free, and without such entry there cannot be a high degree of workable competition.

Q. What to you mean when you say entry is not free?

A. You, one, have to first go to law school -- you can better inform me here -- you have to pass a bar exam, right? And I guess, in most states, to even be accepted (144) for a bar exam you have to go to law school.

Namely, you cannot set up the practice of law in many states simply because you know the state of law. You have to have done what?

You have to have gone to law school and passed the bar exam, and law school admissions; they are not open; they are limited.

Q. I advise you that there are approximately 4,000 attorneys admitted to the Bar in this state, all of whom have gone to law school; taken the bar examination and been admitted -- substantially all; any exceptions are too minor to matter, and it is, I believe, the opinion that you were expressing that there is no competition among those 4,000 lawyers?

A. No workable degree of competition. That is correct.

MR. FRANK: I have no further questions.

EXAMINATION

BY MR. CANBY:

Q. By "workable degree of competition", you were referring to the definitions you gave at the beginning of your testimony?

A. Yes.

Q. Is that right?

(145) A. Yes, plus the common misconception among noneconomists that the number of sellers in competition are synonymous



and that just is not the case.

Q. But, in other words, you are giving an economic definition of workable competition?

A. That's right.

Q. You were asked a hypothetical on whether you could make a study when legal services could not be standardized. Your answer as I understand it, was "No".

You were asked to accept it as a hypothetical. Do you accept the proposition that legal services cannot be standardized?

A. No, I don't.

Q. Do you think it would depend at all on the legal service in question?

A. Yes. Some services will be able to be made more comparable than others, certainly.

Writing a simple will, seems to me, to be a service that might lend itself to greater comparability across people than say handling a first degree murder case.

Q. Would you say that the more routin-

ization -- if that's a word -- that there is, the easier it would be to establish comparability?

A. Yes, certainly.

(146) Q. Even though there is no workable competition among lawyers, because of restricted entry, would price competition bring the existing system closer to workable competition?

A. Certainly, because one aspect of workable competition is the price charged, and I have no doubt that for same quality service the price would fall.

Q. One further question: If you would assume that it is the practice of many attorneys for many services to quote a flat fee or a flat hourly rate before they embark on the work, when they are first talking with the client; assume that practice for the question; then, assume that lawyers advertise that information in media of public distribution, like newspapers; would

that have any effect on the economics of the practice?

A. Yes, indeed. In fact, there is a very comparable type situation to what you are getting at in defense contracts. It's known as cost plus fixed fee. Okay.

That is, we'll sort of add up the cost; you pay whatever they turn out to be, plus a certain profit that we stipulate or that we stipulate or that we agree versus what is called a firm fixed fee contract. Namely, to the government you bid so much money to produce whatever stated amount of tanks or ships or whatever. Okay.

Then, obviously, you base your fee on what you (147) project costs to be. Okay.

If you actually end up doing, what? Not incurring that many costs, your profits go up. If your costs are higher than what you anticipated the fee charged the government, is still fixed, and so your profits do what? Go down. All right.

That, obviously, from the seller's point of view -- and I can't even imagine any seller in the private market that wouldn't always like to operate on what? A cost plus fixed fee basis, but competition prevents that. Competition doesn't allow it. The same thing here you are talking about in terms of law.

Q. Well, I think that's one of the things my question involves.

The other is, let's say as a lawyer, a particular lawyer is willing to tell an individual client whenever one comes to his office that he will do an uncontested divorce for \$250, and that is his means of informing his potential client. Isn't that just as competitive as advertising in the newspaper?

A. Charging it without advertising is what you are saying? I didn't understand.

Q. I'm saying is there a difference between stating your fee when the client comes to you -- is there a difference be-

tween competitive effect between stating (148) when the client comes to you and stating your fee in the "Phoenix Republic"?

A. Slightly, and it's the cost to the consumer of acquiring such information. Namely, if it's allowed in the newspaper -- all right -- a person can obtain such price information by simply doing what? Picking up the newspaper and maybe flipping from page 2 to page 3 to page 4 -- okay -- and finding out, comparing between Lawyer 1, Lawyer 2 and Lawyer 3.

If that is not stated in the newspaper, but only stated in the office, upon walking in, how, then, does one acquire how much Lawyer 1, 2 and 3 charges?

He has to go to Lawyer 1's firm; go to Lawyer 2's firm, and use up what scarce time and resources he has in gathering that information; information that most likely, under those circumstances, won't be obtained, as is clearly the case in retail drugs.

Right now, even though retail drugs in many states can't be advertised, you can acquire the price information -- not over the phone -- I tried that in Washington, D.C.; they wouldn't give me the information over the phone. I had to appear in person.

Why does a producer require you to do this? Because he knows by requiring you to come in person raises the price of information thus reducing the probability (149) you are gathering the information, thus reducing your market, to have to appear to acquire the information, thus increasing the price to the consumer.

MR. CANBY: No further questions.

MR. FRANK: No questions.

THE CHAIRMAN: Does any member of the Committee have a question of the witness?

Mr. Canby, will you call your next witness or take whatever action is appropriate.

Thank you, Mr. Cox. Nice to see you.

(Witness excused.)

MR. CANBY: I will now recall Mr. Bates and Mr. O'Steen; if we can do it the same way this time.

THE CHAIRMAN: The witnesses O'Steen and Bates may resume the stand.

\* \* \* \*

BERNARD VAN O'STEEN, a Respondent, resumes the stand and testifies further as follows:

JOHN R. BATES, a Respondent, resumes the stand and testifies further as follows:

THE CHAIRMAN: You gentlemen are reminded you are (150) still under oath in these proceedings.

EXAMINATION

BY MR. CANBY:

Q. One or two preliminary questions. You both stated that you graduated from Arizona State University.

You were cum laude, weren't you, Mr. O'Steen?

A. BY MR. O'STEEN: Yes.

Q. Mr. Bates, I recall you won some sort of an award at graduation. What was that?

A. BY MR. BATES: I was chosen by the faculty as being the top student in my class.

Q. You went to work for Legal Aid for approximately two years, thereafter?

A. BY MR. BATES: Close to it.

Q. A year and a half.

In your present practice, have you taken any cases for no fee at all? Mr. O'Steen, perhaps can answer it.

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

Q. Have you done many cases for no fee at all?

THE CHAIRMAN: How many is "many"?

Q. BY MR. CANBY: How many cases have you done?

A. BY MR. O'STEEN: Gosh, I'm not really equipped to answer that question.



We have done a fair number of cases (151) at no fee at all, under varying circumstances.

THE CHAIRMAN: More than 25?

WITNESS O'STEEN: I would say more than 25.

THE CHAIRMAN: More than 50?

WITNESS O'STEEN: I imagine that's getting pretty close.

THE CHAIRMAN: All right, that's close enough.

Q. BY MR. CANBY: Under what circumstances did you do these cases?

Why, in other words, did you take it for no fee at all?

A. BY MR. O'STEEN: Various circumstances. We are members of the Legal Aid Society Referral Panel and are called upon periodically to take cases for no fee from the Legal Aid Society. We cooperate.

Q. Is that something for which you volunteer?

A. BY MR. O'STEEN: Yes. In addition, we are on the Maricopa County Bar Association Lawyer Referral Panel, and I think it's no secret that many of the people who are seeking attorneys through that organization are not equipped to pay much of a fee, and the panel handles cases that have come through that source.

We have just occasionally made the judgment, based upon our contact with a client at the office; that client was unable to pay and in need of service, and we (152) have occasionally done work at no fee that way.

The fourth category is, unhappily, the business of not getting your money in advance all the time.

Q. That's not really promono (sic) work on purpose?

A. BY MR. O'STEEN: No.

Q. You are also, aren't you, Mr. O'Steen on the Board of Public Interest Law

Firm here in Phoenix?

A. BY MR. O'STEEN: Yes the board of directors.

\* \* \* \*

Q. BY MR. CANBY: Mr. O'Steen, do you have any idea what the effect of the advertisement in the "Arizona Republic" was in bringing clients to your office?

A. BY MR. O'STEEN: Yes, I have a very good idea.

Q. Have you made some sort of compilation of that, at my request?

A. BY MR. O'STEEN: Yes, I have.

Q. Do you have that with you?

A. BY MR. O'STEEN: Yes, I do. I'm sorry, this was put together hastily, and we really didn't get as many copies as we should have, together.

THE CHAIRMAN: There is only one necessary for the (162) record.

WITNESS O'STEEN: I should add a date on that, if you don't mind.

MR. CANBY: Well, I'll ask you that.

May we mark Respondents' Exhibit 17?

THE CHAIRMAN: Yes.

(Document marked Respondents' Exhibit No. 17 for identification by the Notary.)

THE CHAIRMAN: Can you give a title for this list?

MR. CANBY: Compilation of Cases Open Due to Advertising. That's a cumbersome title.

THE CHAIRMAN: Okay.

Q. BY MR. CANBY: You have numbers of cases listed in this document, which is now Respondents' Exhibit 17. There is a list of cases saying, "Cases Opened After Advertising". This is occupying the top half of the page. This is total cases your office has opened after date of publishing ads?

A. BY MR. O'STEEN: Yes.

Q. You have a column at the lower part of the page saying, "Cases Opened Due to Advertising". Now, several cases are listed

there. Why do you list cases being "Opened Due to Advertising"? How do you know?

A. BY MR. O'STEEN: We have an intake, brief intake sheet that each prospective client completes upon (163) entering the office, before that person sees an attorney. One of the questions on that intake sheet is: "How did you find out about us?" and we have reviewed those intake sheets to arrive at those figures.

Now, the only exception to that is that we have a special intake sheet for prospective divorce clients. That intake does not include the question about the source of information about the firm. Therefore, we don't have such information on divorce clients, but we do have it on all others. As you can see, there is a correction for that.

Q. So you have opened a total of 75 cases since the ad was published; five of those cases, if I read this correctly, were

domestic relations cases?

A. BY MR. O'STEEN: I believe that's correct, yes.

Q. And you have no way of knowing why they came to you?

A. BY MR. O'STEEN: No.

Q. That leaves 40 cases?

A. BY MR. O'STEEN: Yes.

Q. Other types?

A. BY MR. O'STEEN: Yes.

Q. Of those, you have listed by category cases that came to you, and you list 24 out of 40 as having come to you, at least of having answered the question on (164) the intake sheet of coming to you because of advertising; is that correct?

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

Q. And the figures here were compiled from your own intake sheets by you or persons under your direction?

A. BY MR. O'STEEN: Yes.

MR. CANBY: I'll offer Respondents'

Exhibit 17.

MR. FRANK: May I ask a question or two on voir dire?

THE CHAIRMAN: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. FRANK:

Q. MR. O'Steen, this ad is approximately eight inches by two inches; is that the description?

A. BY MR. O'STEEN: Eight by two column inches, I believe.

Q. Suppose, hypothetically, someone put a two column-eight inch ad in the back of the paper, or the same page you did, saying, "Striped elephant on display", and gave a place, and suppose further that the newspaper carried on page 1 a story on the wonders of the striped elephant; if that afternoon quite a lot of people went to see the elephant, would you be able to tell whether it was the ad or the news story?

A. BY MR. O'STEEN: I wouldn't be able

to tell.

(165) Q. In your case, you had a two column-eight inch ad in the paper; isn't that so?

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

Q. And there were other news stories about your ads, about the Bar and discipline and so on, and this very matter. So, therefore, the very existence of the ad has been an item of rather substantial news; isn't that true?

A. BY MR. O'STEEN: Yes. I think that's a fair statement.

Q. Do you really think that you are able, in this case, to attribute cases to the ad any better than you could attribute views of the striped elephant and the hypothetical I gave you in the first place?

You don't need to answer that, I will not object.

THE CHAIRMAN: Well, Exhibit 17 may be received in evidence, by Mr. Canby, for



whatever it may be worth in these proceedings.

(Respondents' Exhibit 17 received in evidence.)

EXAMINATION

BY MR. CANBY:

Q. What does your intake sheet actually say, the (166) question that the people are answering which led to this compilation?

A. BY MR. BATES: I think it says --

THE CHAIRMAN: This is Mr. Bates responding.

A. BY MR. BATES: -- it says, "Who referred you to us?" or "How did you hear about it?" That's very close.

Q. What kind of answers did you have put, "Due to advertising" on this sheet?

A. BY MR. BATES: Most of the people would say, "We saw your ad," or some people just said, "Newspaper."

Q. So, in saying "Newspaper", they can be referring to the front page story or

they could be referring to the ad, or a combination?

A. BY MR. BATES: However, it's possible many people already knew what we charge, and they could only find out after seeing our ad.

WITNESS O'STEEN: That's significant.

Q. Which they might have seen because they read the front page story?

A. BY MR. O'STEEN: Yes.

MR. CANBY: I have no other questions.

THE CHAIRMAN: I think we can take judicial notice of the fact that every paper had a front page story referring to the ad.

(167)

EXAMINATION

BY THE CHAIRMAN:

Q. I want to ask this question of either of you who is more knowledgeable concerning the nature of the responses which are found on the information sheet, which you have been addressing your testi-

mony. Would that be you, Mr. Bates?

A. BY MR. BATES: Fine. I didn't understand the question.

MR. CANBY: I didn't understand your question.

THE CHAIRMAN: I haven't asked it yet.

Q. BY THE CHAIRMAN: Prior to the time you placed your advertisement, what kind of responses were you finding on the information sheet that told you how the prospective clients had heard of you?

A. BY MR. BATES: Frequently, it was just another friend, an acquaintance; they would mention the name.

Q. Probably a prior client of yours, a recommendation?

A. BY MR. BATES: Frequently, or a friend of a prior client. They sometimes would mention various agencies. LEAP is an example, I suppose, of somebody who would know of our existence and would mention us,

among other attorneys who would be available.

As you know, Legal Assistance Agency here has several panels, and that's another way that people would (168) find out about us and write that down.

Q. Certain social service type agencies in the community would be aware of your existence, and perhaps suggest to an individual that you might be available?

A. BY MR. BATES: Right, but not as often as you might think. By far, the most common was simply from somebody who knew about us.

Q. Do you know what the cost to you of placing the advertisement was?

A. BY MR. BATES: Not precisely.

Do you remember?

WITNESS O'STEEN: I know roughly.

Q. Let me have it roughly.

A. BY MR. O'STEEN: About \$260.

Q. \$260.

If you were permitted to repeat the advertisement as frequently as you opted to do, do you have any notion as to how often you would run it?

A. BY MR. O'STEEN: Is that addressed to me, Mr. von Ammon?

Q. If you can answer it, Mr. O'Steen.

A. BY MR. O'STEEN: No, I don't think we do. We have not reached the point where we felt comfortable to think about that.

Q. What I am concerned about is, if you can speak to (169) this issue, is the extent to which that added cost of operation would result in increasing charges to clients because of additional overhead. Do you regard it as nominal or substantial?

A. BY MR. O'STEEN: Well, the net effect of it, I think, is that prices will go down, because of increased volume. We'll be able to charge lower fees, in spite of the additional cost of advertising. That's my feeling.

There is no question that will be an advertising input into the budget, or drain on the budget for advertising, but it would be more than compensated for by the additional business.

Q. Offset by the volume, assuming you are able to arrive at any estimates of the potential increase in the volume, which would be generated by advertising, on the basis of the experience you have had thus far?

A. BY MR. O'STEEN: Yes, sir.

THE CHAIRMAN: That's all I have.

MR. CANBY: I did have a question or two left.

#### EXAMINATION

BY MR. CANBY:

Q. One is: Mr. O'Steen, how many cases did you open in the 44 days before you advertised, picking a number out of the air?

(170) A. BY MR. O'STEEN: I have that

information available. Within the 44 days immediately preceding the ad we opened 37 cases.

Q. How many did you open in the 44 days after?

A. BY MR. O'STEEN: 74.

Q. That happens to be exactly double; is that right?

A. BY MR. O'STEEN: That's right. Coincidentally, it is.

Q. Why did you pick the number 44, or why did I ask you 44?

MR. FRANK: What did he have in mind?

Q. BY MR. CANBY: What's the 44? Why did you pick 44 days to compile this information?

A. BY MR. O'STEEN: Because it's exactly 44 days from the day the ad ran until today, so we got the most complete data available, and went 44 days in the other direction.

Q. Those figures were just gross

figures. You won't know why the increase came; it's just broken down by time; is that correct?

A. BY MR. O'STEEN: We know to some extent why some of them came, and because of the other data.

Q. That's in response to the other questions I asked you. That gross figure is just that; correct?

A. BY MR. O'STEEN: Right.

(171) Q. One final question: Do you have any knowledge of the practice among attorneys generally here, or substantial numbers of attorneys regarding if they will quote a flat fee in advance for any legal services by telephone or directly?

A. BY MR. O'STEEN: Yes, I do have knowledge of that practice.

Q. Why do you have knowledge of that? Have you looked into it or have you talked to people?

A. BY MR. O'STEEN: There are two



reasons why I am acquainted with that practice. First, it's because of information of that type, that is, information about fees is a commonly shared thing among attorneys who engage in the same type of practice, at least among the attorneys who do the type of work we do. Attorneys are often comparing the fees with each other, and fee-setting practices.

Q. You have compared with others?

A. BY MR. O'STEEN: Yes, I have discussions with other attorneys all the time about that, and naturally, because of what we are doing we are a source of curiosity, and that topic comes up more often in conversations with other lawyers when we are involved than would ordinarily.

The other reason I know about those practice, that our fees are important to us, that is, the level (172) of the fee which we are charging, and a short time back, approximately six weeks ago, at my

direction, one of our legal assistants conducted probably a pretty unscientific random survey of fees charged by lawyers for typical cases in this area, and the format essentially was that she was instructed to call the attorney's office to inquire as to the fee.

She made these calls to separate offices. First, she made a series of about 10 calls to law offices to inquire for a simple, uncontested dissolution of marriage; then made 10 calls to 10 other firms to determine what their fees for an individual, uncontested bankruptcy, non-business bankruptcy was.

Now, the results of that survey are input into my knowledge of the practice of the fee quoting.

Q. Was it common to have a flat fee quoted?

A. BY MR. O'STEEN: Yes, it was, in both cases. The practice is widespread,

and for certain types of cases, typically nonbusiness bankruptcies, uncontested dissolutions of marriage, name changes, uncontested severance proceedings, the kinds of things that are advertised in the newspaper article, which is an Exhibit here, attorneys commonly charge fixed fees and quote them by telephone upon request, and that was the result of our poll.

(173) Q. Mr. O'Steen, are you a participating attorney to the Arizona Legal Service?

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

Q. Under that practice, which is best explained in document Respondents' Exhibit 12, there is a schedule of fees for certain services set forth; is there not?

A. BY MR. O'STEEN: Yes, there is.

Q. And attorneys agree to abide by those fees for that kind of a service; do they not?

A. BY MR. O'STEEN: It's my under-

standing that membership in ALS mandates agreement on the part of the attorney not to charge in excess of the fee quoted in that book, and that is the fee which will be paid by ALS to a member attorney for handling the type of case described.

MR. CANBY: I have no further questions.

THE CHAIRMAN: Mr. Frank.

EXAMINATION

BY MR. FRANK:

Q. Mr. O'Steen, in regard to your telephone poll, I believe that you testified that you instructed your staff person to call a number of law offices and ask concerning fees for particular types of work; is that correct?

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

(174) Q. That she was to simulate being a prospective client and get the information that way?

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

Q. Are you personally familiar with that one of the Canon of Ethics which says that one should deal with candor with fellow members of the Bar?

Seriously, are you?

A. BY MR. O'STEEN: Well, I can't say that I'm aware of that particular provision, but I can say that I abide by it and I don't believe what we did would be a violation of of that general point, whether or not it's a disciplinary rule.

Q. Mr. O'Steen, how many different law offices were called by your secretary, and from how many did she get quotations?

A. BY MR. O'STEEN: Altogether, approximately 20.

Q. Who made up the list?

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

Q. Was this office on the list, my own?

A. BY MR. O'STEEN: No.

Q. What were the criteria by which

you selected the firms that would be on the list?

A. BY MR. O'STEEN: That's why I prefaced my remarks before, by saying that it was a rather unscientific poll, and I sat down with the Bar Directory, (175) and went through it and picked law firms which were of small and medium size, and firms which I knew to be engaged in the general day-to-day practice of law; handling the types of cases we do, divorces and individual bankruptcies, and that sort of thing. I didn't call any large law firms.

Q. Isn't it true that you selected your sample with an eye to getting those that would give you quotations over the phone?

A. BY MR. O'STEEN: No.

Q. But simply took into account whether they do the kind of work which is involved?

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

That was really the only criteria, and the size of the firm, as an element of that.

Q. Why did you exclude large firms?

A. BY MR. O'STEEN: Well, it's my experience that large firms don't handle this type of case.

Q. It's your understanding that, for example, this office wouldn't handle a divorce or wouldn't handle a bankruptcy, a personal bankruptcy?

A. BY MR. O'STEEN: It's my understanding that this office doesn't welcome that kind of work.

MR. FRANK: Nothing further.

THE CHAIRMAN: Anything further, Mr. Canby.

(176) MR. CANBY: No.

THE CHAIRMAN: Do you have anything further to present, in any case at all?

MR. CANBY: I have nothing further, and I rest.

THE CHAIRMAN: Why don't you sit here

until the members of the committee vacate.

(The Chairman and Members of the Committee left the hearing room, and shortly thereafter returned.)

THE CHAIRMAN: May we reconvene.

The Committee is of the opinion that its responsibility and duty is limited to a determination as to whether or not the charge that has been brought against the Respondents has been proven. We, therefore, think we have no choice except to make a finding that the charge is proven, because it really is not even disputed; that the advertisement was placed in the "Arizona Republic", in violation of the applicable rule to be found in the Code of Professional Responsibility. We, therefore, will make such a finding.

\* \* \* \*

STIPULATED EXHIBIT

(Dated April 7, 1976)

\* \* \* \*



The following exhibit has been compiled from information supplied by the law firms listed on Schedule A attached. These firms were asked to respond to certain questions. The questions and each firm's response are given. The responses are identified by number only.

It is stipulated that the names of the firms need not be identified with their answers in this exhibit; further, it is stipulated that if the persons responding on behalf of these firms were to appear at the hearing in this matter their testimony would be as set out in this exhibit. It is also stipulated that cross examination is waived and that this exhibit may be admitted.

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

By: John P. Frank  
Attorney for the State  
Bar of Arizona

Dated: April 7, 1976

\* \* \* \*

SCHEDULE A

Rawlins, Ellis, Burrus & Kiewit

Jennings, Strouss & Salmon

Moore & Romley

Lewis and Roca

Snell & Wilmer

Langerman, Begam, Lewis, Leonard and Marks

Streich, Lang, Weeks, Cardon & French

O'Connor, Cavanagh, Anderson, Westover,

Killingsworth & Beshears

Shimmel, Hill, Bishop & Gruender

Flynn, Kimerer, Thinnes & Derrick

Mariscal, Weeks, Lehman & McIntyre

Carson, Messinger, Elliott, Laughlin &

Ragan

Gust, Rosenfeld, Divelbess & Henderson

Ryley, Carlock & Ralston

\* \* \* \*

(1) QUESTION NO. 1. The growth of your firm in number of lawyers and volume of work by way of round numbers and for any period

you wish.

Firm No. 1. 1939-1976--three lawyers to 57.

Firm No. 2. From two lawyers in 1948 to 17 lawyers today.

Firm No. 3. Established in 1957. At that time it consisted of two lawyers and one secretary. At the present time, it consists of eleven lawyers, plus twenty-one non-lawyer employees. The gross dollar volume of professional services has increased by a factor of more than 30.

Firm No. 4. Began in 1969 with four attorneys, and presently has seven.

Firm No. 5. Regarding growth, in the early 1940's it was three lawyers. We are now 36 partners and 13 associates.

Firm No. 6. The firm was originally organized in 1949 and consisted of three lawyers. At the present time, our firm consists of twenty-four attorneys, four law clerks and two paralegals. The staff

size will be increased to twenty-six on June 1 of this year. The gross dollar volume of professional services has increased by a factor in excess of 30.

Firm No. 7. During the past twenty five years of the existence of our firm and its predecessors, we have grown from approximately five lawyers to approximately thirty-six lawyers, and the gross dollar volume of professional services has increased by a factor of more than 20.

Firm No. 8. In the twenty-two years of the writer's association with this firm it has grown from a single office with five lawyers to two offices with approximately twenty-three lawyers. The gross dollar volume for professional services has increased by a factor in excess of twenty.

Firm No. 9. The law firm has grown from two lawyers to our present six lawyers since 1970 and at the same time the gross dollar volume in this firm has increased

by a factor of more than 4.7.

Firm No. 10. The firm had its origin January 1, 1959. Since that time it has grown from three (3) attorneys to its present size of forty-three (43). Our gross dollar volume of professional services has increased by a factor of approximately 60.

(1a) Firm No. 11. The firm was organized in 1937 with only two lawyers, later expanded to 19 and currently consists of 9 lawyers. The dollar amounts, in light of the changes in the firm, are not readily available and probably would not be meaningful in any event.

Firm No. 12. In answer to question No. 1, in 26 years this firm has grown from three to 50 lawyers. The gross dollar volume has increased by a factor of 70 in that time.

Firm No. 13. In the past 10 years, the number of lawyers in this firm has approximately doubled to the present strength

of 23. The gross dollar volume of professional services has approximately quadrupled.

Firm No. 14. In 1946 there were two lawyers in this firm. In 1953 there were four, after one death in 1952. In 1956 there were six. Now, twenty years later, there are sixteen active lawyers and a retired lawyer in "of counsel" category who is essentially inactive. During those years we have lost one member by death and three by withdrawal. Two in the latter category are members of the judiciary.

In the twenty years of 1956 through 1975 the firm's annual gross receipts increased by over 800%, and the annual gross receipts per lawyer by over 300%.

(2) QUESTION NO. 2. Has your firm ever advertised or solicited business in any ways precluded by the Canons?

Firm No. 1. No.

Firm No. 2. No.

Firm No. 3. No.

Firm No. 4. Our firm has never advertised nor solicited business in any way precluded by the Canons, and we have no future plans to advertise or solicit.

Firm No. 5. Our firm has never advertised or solicited business in any way precluded by the Canons.

Firm No. 6. Obviously the firm has never advertised or solicited business in any ways precluded by the Code of Professional Responsibility.

Firm No. 7. The firm has never advertised or solicited business in any way precluded by the Code of Professional Responsibility.

Firm No. 8. Absolutely not.

Firm No. 9. This firm has never advertised or solicited business in any way precluded by the Canons of Judicial Ethics.

Firm No. 10. The firm has never advertised nor solicited business in any ways

precluded by the Canons.

Firm No. 11. The firm has never advertised or solicited business in any ways precluded by the Canons.

Firm No. 12. The firm has never advertised or solicited business in any way precluded by the Canons.

Firm No. 13. No.

Firm No. 14. We have never advertised or solicited clients or legal work in any way precluded by the Canons of Professional Ethics or the Code of Professional Conduct.

(3) QUESTION NO. 3. What are a few concrete illustrations of uncompensated effort by you or other members of your firm for improvement of the law?

Firm No. 1. Speaking at seminars - State Board of Bar Governors - Legal Aid - Maricopa County Bar - Supreme Court Committees.

Firm No. 2. A member has been Chairman of the Mineral Section (now the Natu-



ral Resources Section) of the American Bar Association; has served on the Board of Visitors of the College of Law of Arizona State University; and has served on the Supreme Court's Committee on Examinations and Admissions.

A member has been President of both the Maricopa County Bar Association and State Bar of Arizona and has been active in the organization of continuing legal education programs on behalf of the State Bar and the Arizona Law Institute.

A member has served on the Board of Directors of the Maricopa County Legal Aid Society.

A member has served on the Board of Directors of the Maricopa County Bar Association; has served nine years on the Supreme Court's Committee on Examinations and Admissions; has been a Lawyer Delegate to the Ninth Circuit Judicial Conference (serving on the Trial Practice Committee

and presenting papers to the Conference on several occasions); has been a member of the Board of Visitors of the law colleges of the University of Arizona and of Brigham Young Univeristy; has written articles published in the California Bar Journal and in the Arizona Law Review; and has presented instruction in continuing legal education programs on the Uniform Commercial Code, the use and effect of mineral reservations in patents and deeds, and other subjects.

Other members of the firm have supervised and participated in the Maricopa County Bar Association program of presenting instruction to high school students regarding legal concepts; participated in programs to explain legal concepts to grade school students; sponsored an Explorer Post of the Boy Scouts of America to encourage boys to consider legal careers; participated in the Maricopa County Bar Associ-

ation's "Bridge the Gap" programs for recent law school graduates; and participated in other State Bar and County Bar Association activities.

(3a) Firm No. 3. Every lawyer in our office spends a considerable percentage of his time in uncompensated effort for the improvement of the law. You asked for a few concrete illustrations. A member served from 1967 to 1968 as President of The American Trial Lawyers Association. This involved close to 100% of his time for that full year and literally thousands of hours of uncompensated effort for many years prior to his taking office in many other positions which he held going back to 1957. He has also chaired and/or served on many committees of the State Bar of Arizona, the Maricopa County Bar Association, the American Bar Association, etc. Another member's service has paralleled his and, as you know, this member is currently

serving as President-Elect of The Association of Trial Lawyers of America and will spend close to 100% of his time discharging the duties of that office for the ensuing year. A member is currently serving as Chairman of one of the major committees of ATLA and has also devoted hundreds of hours to state and county bar association committee work. A member is the Immediate Past President of The Arizona Trial Lawyers Association. In short, every lawyer in our office has performed a substantial number of services to the bar, without personal compensation, and is encouraged by the firm to do so.

Firm No. 4. The writer spent approximately two years on the Criminal Justice Committee, drafting the Arizona Rules of Criminal Procedure which became effective September 1, 1973. Additionally, he worked on the following committees: Judicial Evaluation Committee; Subcommittee of the Uniform

Rules of Criminal Practice, United States District Courts, Ninth Judicial Circuit; City Rules Committee; Midas Program; and the Arizona Criminal Jury Instructions Committee.

Firm No. 5. Lawyer A: Chairman, Rules of Professional Conduct, State Bar, 20 years; Chairman for many years, Standing Committee to draft original rules and later amendments to the Rules of Disciplinary Procedure; Member, Committee on Judicial Qualifications (reviews and takes action against judges for infractions or incompetence); Board of Visitors, ASU Law Society; Board of Directors, ASU Law Society; Membership on Board of Governors and Vice President of State Bar.

Lawyer B: President and one of founders of ASU Law Society.

(3b) Lawyers C & D: Committee on Examinations and Admissions, State Bar.

Lawyer E: Local Administrative Com-

mittee; Board of Visitors, U of A; Board of Directors, U of A Law College Association; Committee on Uniform Jury Instructions; Committee for State Bar Compulsory Insurance; Maricopa County Bar Long-Range Planning Committee.

Lawyer F: Board of Visitors, Rueben Clark Law School, BYU; Ninth Circuit Judicial Council to Study Improvement in Administration of Justice.

Lawyer G: Member, Tax Advisory Council to Improve Internal Revenue Act.

Lawyer H: Co-Chairman, Fee Arbitration Committee.

Lawyer I: Years of service to the bench in devising court and judicial procedures.

Lawyer J: Committee to Study Reorganization of Justice of the Peace Courts.

Various firm members: Local Administrative Committee for processing ethical violations; Examiners to Local Administra-

tive Committees; Counsel to the State Bar on three formal appeals to the Supreme Court in admissions cases.

Firm No. 6. Concrete illustrations of uncompensated effort for improvement of the law are as follows:

(a) Active participation in the programs of the Maricopa County, State of Arizona and American Bar Associations;

(b) Representation of low-income minority people at no charge for services;

(c) Active participation in State Bar Continuing Legal Education programs;

(d) Services as Bar counsel and Chairman of State Bar Administrative Local Committees;

(e) Participation as counsel and active membership in Valley Big Brothers, maintenance of active membership in State and local Chamber of Commerce and numerous civic-oriented activities.

(3c) Firm No. 7. A few illustrations

of uncompensated effort on the part of members of our law firm for the improvement of law are as follows:

Service on numerous committees of the American Bar Association; Service on numerous committees of the State Bar of Arizona; Service on the Board of Directors and numerous committees of the Maricopa County Bar Association; Numerous articles written for legal publications; Participation in seminars conducted locally and throughout the United States; Teaching in law schools; and Testifying before numerous committees of the State Legislature on pending legislation.

Firm No. 8. One of the principal recent services performed by this firm involved our participation in that certain action entitled Ethics Opinion No. 74-28, wherein the Arizona Supreme Court did on April 9, 1975 render its decision which effectively permitted attorneys in firms



and private practice to continue to sit upon public boards and governments. A substantial number of hours was devoted to this task. Historically, all of us have served upon one or more State Bar committees and we number at least one former president of the State Bar of Arizona among our partners. Currently no less than two of our members serve upon administrative committees and give freely of their time to the furtherance of the law and the profession. Any number of other instances could be cited but they would be repetitious.

Firm No. 9. Personnel of this law firm have participated or are members of the following groups and committees:

State Bar; Maricopa County Bar;  
Public Interest Law Firm; Ethics Committee;  
Continuing Legal Education Services;  
American Judicature Society; Board of Visitors of College of Law; Committee on Admissions and Legal Education; Chairman

of Environmental Law Section of State Bar;  
Chairman of Section on Real Estate Law;  
Chairman of Medical-Legal Malpractice Panel;  
Prosecution of Ethics Violation Disciplinary  
Committee; and Committee to Evaluate Bar  
Examination.

Firm No. 10. This firm like most  
other major Phoenix law firms, has contribu-  
ted toward improvement of the law by par-  
ticipation in the Bar activities at the  
County, State and National levels, including  
invaluable committee work. We have also  
contributed to legal publications, in-  
cluding law journals.

(3d) Our members have voluntarily par-  
ticipated in numerous legal education pro-  
jects serving as panel members. The firm  
feels a strong sense of obligation to  
participate in professional societies with-  
in the various specialities of the firm mem-  
bers. All of such specialty groups put on  
continuing educational programs in which

we have participated.

The expenses of all such participation has been borne by the firm. It would be impossible for me to recount all of such professional activities, but they would number in the dozens each year. Given sufficient time to research the question, I could of course itemize them in greater detail.

Firm No. 11. The following are a few concrete illustrations of uncompensated efforts by me and other members of the firm: membership on the Civil Practice Committee of the State bar, on the Administrative Committee, on the Uniform Jury Instruction Committee, officers of the Maricopa County Bar Association, bar counsel for the Administrative Committee, etc.

Firm No. 12. Four members of this firm are active in the work of the American Law Institute. Members of the firm have been involved in the drafting and en-

actment of the recent federal disqualification of judges act, 28 U.S.C. § 455; the revisions of the Uniform Commercial Code in Arizona; the preparation of a new corporate code; and the preparation of the Uniform Landlord and Tenant Act. One member of the firm was chairman of the committee which prepared the rules of evidence now pending in the Supreme Court. Other examples are legion. Matters of this kind are recorded by the office under a general heading of public service on a computer system. The calculation for public service at our average hourly rate for our year to date (10 months) is \$234,146.

Firm No. 13. We hesitate to single anyone out because many of us are involved in these activities. Lawyers A and B have both served as president of the Maricopa County Bar and the State Bar of Arizona. Lawyer B has devoted substantial time to the work of the Supreme Court Committee on

Uniform Jury Instructions. Lawyer C has been active in work on Rules of Procedure and the Law of Defamation. Lawyer D has devoted considerable time to the enlightenment of practitioners in the tax field. Lawyer A was one of the initial trustees of the State Bar of Arizona Client Security Fund.

(3e) Firm No. 14. Our firm has provided three members of the Board of Governors of the State Bar, two of whom served as President. We have supplied two members of the Board of Directors of the County Bar, including one President. One of our members has been a member of the American Bar Association House of Delegates since 1960, has served a term on the Board of Governors and is currently the Chairman of one of its important Standing Committees and a member of the Board of Directors of the National College of the State Judiciary. Two of our members have been Chairmen of

Local Administrative Committees of the State Bar. We have had many members serving on other American, State and County Bar committees. One of our members chaired the 1967 Citizens Conference on Arizona Courts and was actively involved in the 1972 amendment to the Arizona Constitution providing for nonpartisan merit selection-retention of all state appellate court judges and of all Superior Court judges in the two most populous counties. Members of the firm have acted as speakers or panel members at continuing legal education programs for lawyers and judges.

All of the foregoing has been uncompensated.

(4) QUESTION NO. 4: What are some illustrations of charity or deliberately discounted professional services performed in your office for those unable to pay?

Firm No. 1. Prefer not to state.

Firm No. 2. We regularly advise and

represent, at reduced charges or at no charge, individuals or organizations who appear to be in need of legal services and whose situations or purposes appear to us to warrant reduction or elimination of the normal charges.

Firm No. 3. Our firm serves as Arizona counsel for the United Farm Workers on a completely pro bono basis. We also provide free legal service to many charitable and fraternal organizations in town, such as the Arizona Heart Association, the American Civil Liberties Union, the American Arbitration Association, the Phoenix Jewish Community Center, the Fraternal Order of Police, Southwest Ensemble Theatre, etc., etc. We perform deliberately discounted professional services routinely in cases in which the injuries are very serious and the collectibility limited, e.g. the very badly injured person with no funds to proceed against other than a limited

policy of liability insurance owned by the adverse party.

Firm No. 4. The writer is a member of the Lawyer's Referral Program, and to date, although he has interviewed approximately twenty people, he has never charged any of these people for consultation. Additionally, he is a member of the Court Appointed List for Indigent Defendants, which represents indigent defendants where a conflict exists with the public defender and services are performed at a drastically reduced rate.

Firm No. 5. Examples: Three to five cases at all times involving unemployed Mexican immigrants; three recent juvenile cases involving sex molestation of young girls. During the founding of a certain hospital and for twenty years thereafter we represented the hospital without charge. Arthritis Foundation, American Cancer Society and many others represented



without charge.

Ten percent of the recorded hours of all lawyers in the firm is "no charge time" and a substantial portion of this is for pro bono or charitable cases.

(4a) Firm No. 6. Illustrations of charitable or deliberately discounted professional services:

(a) Representation of low-income minority group home buyer entangled in complications of failing escrow establishment and arranging for transfer of title to homes with Receiver;

(b) Counseling of many low-income persons re workmen's compensation claims, without compensation to the firm, leading to the payment of benefits;

(c) Attending to handling of tax protest and relief from tax assessments for low-income minority home owners and attending to low-income home owner transfer between deceased person and survivor, with-

out charge.

Firm No. 7. Work performed on numerous matters referred by Legal Aid;

Work performed for underprivileged persons referred to our offices from a variety of sources;

Legal services rendered to:

Arizona Foundation for the Handicapped; St. Francis Xavier School Board; Cancer Crusade; Phoenix O.I.C.; City of Phoenix Municipal Housing Corp.; Northside Mental Health Project; Montessori School; Phoenix Symphony; Seventh Step Foundation; Inner City Food Co-op; L.D.S. Church; and Children's Theatre.

Firm No. 8. As a matter of long standing firm policy, our fee structure has been in part predicated upon the ability of a client to pay for the services rendered. Within the past year the writer has on at least two occasions performed a necessary legal service for no

charge because the client was indigent or unable to bear even a nominal fee. One of these involved the title to a modest home, the other a question of family visitation rights.

We have made no effort to detail the voluminous services of a charitable nature which have been performed for the betterment of the community by members of this firm, which range from presidency of hospital trustees to presidency of the Maricopa Chapter of the March of Dimes, and many, many others. It has been our policy and philosophy that services of such a nature are an integral part of the responsibility which our profession owes to the community.

Firm No. 9. Members of this law firm have provided the following services free of charge to those unable to pay:

Provided legal services to minorities;  
Made office space available for xeroxing  
and use of office facilities to a public

interest law firm; and renders services to Legal Aid.

Firm No. 10. From the time of its formation, it has been the policy of this firm to do pro bono work for deserving clients. We willingly participated in Legal Aid activities for many years without compensation. To my knowledge, we were never asked to provide legal services to an indigent person when we refused to do so. In recent years we have continued this policy on a less formal basis as a matter of internal decision within the firm.

I personally have been called upon within the last couple of years to provide legal services to indigent minors who have been charged as juvenile offenders. Indeed, even within the past few months I have appeared in Phoenix Traffic Court on behalf of indigent clients who could not afford to pay even the modest traffic fines

which would have been imposed had they been found guilty. I recite these two specific personal areas of pro bono work by way of example only.

I would estimate that within the last year there have been no fewer than 150 occasions when our firm has provided legal services completely free of charge and many more occasions when we have charged a reduced fee because of financial inability of the client to pay our normal fee.

Firm No. 11. The following are some illustrations of professional services performed in our office for charities: churches and church related societies.

Firm No. 12. This office for a period of years regularly manned the legal aid office on a weekly basis. Even though such intense activity has ceased, the dollar calculation of the time put into legal aid the last 10 months is \$21,736.

The office has the general run of

cases from anonymous poor persons. Illustrations in a group of spectacular cases are the service of representing Ernesto Miranda to the Supreme Court which involved a dollar outlay too great to face; and by court appointment, the representation of all prisoners at the State penitentiary at Florence in the disciplinary litigation in the Federal District Court. Our records show a total hourly loss to us of \$19,300 in this matter.

Firm No. 13. One member has served many years without compensation as Chairman of the Board of Good Samaritan Hospital, now Samaritan Health Service. Another has served as the national president of Florence Crittendon Homes. In connection with various charitable organizations which several of us have served as officers and board members, we have provided a variety of legal services without charge. We frequently provide services to

individuals without charge or at a reduced rate when they cannot make payment; frequently these individuals are employees of clients, but that is not always the case. These include services in the area of domestic relations, real property, and minor criminal matters.

Firm No. 14. We have actively participated in local legal aid efforts since 1947, including the providing of free legal services in pre-federal funding times. In addition we at all times have provided and now provide free or deliberately discounted services for persons unable to pay any fee or a regular fee.

Members of the firm also serve and over the years have served on governing boards of local tax-exempt organizations.

\* \* \* \*

DEPOSITION OF ROBERT G. BEGAM, ESQUIRE  
(Title omitted in printing)

\* \* \* \*

The Complainant was represented by its attorney John P. Frank, Esquire.

The Respondents were represented by their attorney William C. Canby, Jr., Esquire.

Also present: Van O'Steen, Esquire.

The following proceedings were had:

ROBERT G. BEGAM, ESQUIRE, being first duly sworn by the Notary, was examined and testifies as follows:

EXAMINATION

BY MR. FRANK:

Q. Would you state your name for the record?

A. Robert G. Begam.

Q. Are you engaged in the practice of law in (3) Phoenix, Arizona?

A. Yes.

Q. What is the name of your firm?

A. Langerman, Begam, Lewis, Leonard & Marks.

Q. How many attorneys do you have



in that firm?

A. Eleven.

Q. How long have you been engaged in the practice of law in that firm or some antecedent?

A. I was first admitted to practice in New York in 1952; admitted to practice in Arizona in 1956.

Mr. Langerman and I established our predecessor firm under the name of Langerman & Begam in 1957.

Q. Between 1957 and the present time, has the practice of your firm been heavily in the field of various torts?

A. Yes.

Q. If you have some way of calculating a percentage, in a rough, round number sense of the amount of the work in the office which is tort work, however you measure, by number of people working, by dollar volume or anything else, what is the percentage?

A. I would say by most any measure would be between 80 and 90 percent of our practice.

Q. And the torts with which you deal are negligence and products liability, I know. What else?

(4) A. The full range of civil trial practice, with a heavy concentration on automobile law; medical malpractice; products liability; railroad; air crash.

Q. Mr. Begam, are you associated with some national association of lawyers?

A. Several.

Q. Several, I assume.

If I may go straight to the point, you are associated with the American Trial Lawyers Association, I believe.

A. Yes.

Q. What are the general interests of the members of that association?

A. It's the Association of Trial Lawyers of America, and the general interests

are parallel to the interests of my firm; a heavy interest in the full range of civil tort litigation; consumer litigation; labor litigation; class action litigation; workers' compensation litigation.

Q. But basically, it's tort practice, for the most part?

A. In the broad sense of that word, yes.

Q. Approximately how many members are there of that association?

A. 25,000.

Q. Do you hold any office in the association at the (5) present time?

A. Yes. I'm currently president-elect.

Q. Nationally?

A. Yes.

Q. In connection with your affiliation with that association, have you traveled widely throughout the United States?

A. 49 of the 50 states.

Q. Which one did you miss?

A. Alaska.

Q. When are you going?

A. Next year.

Q. Have you talked to tort lawyers in all of those states at one time or another?

A. Yes.

Q. Does the association have any recommended minimum fees for its members?

A. No.

Q. Has it ever had such recommended minimum fees?

A. No.

Q. Is there any disciplinary or ethical system within your association dealing in any way whatsoever with the matter of fees, or is that left up to the individual lawyers and the practices in his own state?

A. For the most part, it would be left up to the (6) ethics administration in the individual states.

We do have an ethical standards for membership in the association, and it's

perfectly possible for one to be expelled from the association without disciplinary action being taken within the state. It would be unusual.

Disciplinary action, such as disbarment or suspension within the state would automatically result in similar action in the association.

Q. What are the ethical standards to which you have just referred for membership in the association? Is that a published document of some sort?

A. I'm not sure. I don't think so. I don't think so.

We do have a mechanism that's comparable to the sort of thing that most of the state bar associations or state bar ethics committees have, that can be triggered by a report of one member on unethical conduct of another.

With respect to fees, it would more likely be abuse of Canons of Ethics with

respect to referral fees.

Q. Mr. Begam, what is the practice of the members of your association in respect to advertising?

First, I will break that down into subunits. What is the practice of your own office in respect to advertising?

A. We don't have it.

(7) Q. Secondly, what is the practice of ATLA members in the state, so far as you know in respect to advertising?

A. So far as I know, they would adhere to whatever the standards are in their state.

It's my understanding that in some states recently there have been very limited relaxations in the prohibition of advertising in Yellow Pages and law lists, and so forth, with respect to certain specialty ratings.

New Mexico is an example, and I would assume that our New Mexico members

follow the limited standards in those states, and where there are limited standards on advertising, as they exist.

Q. That is to say by law lists and in the Yellow Pages, wherever permitted?

A. Yes.

Q. But that would be in common with all lawyers in the state; is that correct?

A. Yes.

Q. What phenomena known as ~~as~~ and I quote the phrase "ambulance chasing" ~~as~~ what does that phrase connote to you?

A. Soliciting cases. Direct, overt solicitation of legal business.

Q. What is the attitude of your association, either in the state or nationally, as you are able to tell me, (8) towards such practices?

A. I would say representative of the general attitude of the Bar, that is opposed to it.

Q. Have there been proposals seriously

considered in your association to recommend abandonment or major modification of advertising principals of the Canon of Ethics of the American Bar Association in most of the states?

A. If you are talking about the recent action taken by the ABA, there was an analysis of that action by the Professional Responsibility Committee of the ATLA, and that committee is in communication with the corresponding committee in the ABA on two matters.

One, we felt that the ABA pronouncements on permission of advertising were too broad, and we urged restriction of those, in the sense that it was implied, as we read it, that under certain circumstances, multi-media advertising would be endorsed, and we were opposed to that.

Secondly, with respect to the specialty lists contemplated, it was our position that to the extent there are



specialties in law lists or in Yellow Pages. One of the logical specialties would be trial practice, and we urged that they and we get together to develop a professional standard with respect to that specialty.

(9) Q. Mr. Begam --

A. I might add that most of the trial lawyers in the ABA are also our members, and what we were, in effect, saying, "Why don't you work with us on developing those standards?" And the preliminary response has been quite affirmative from the ABA.

Q. But at no time has your organization proposed that there be general abandonment of the standards of solicitation or the standard of advertising which have long existed; is that right?

A. Quite to the contrary. Our reaction to the ABA announcement was that we thought it might be drifting too far in

that direction.

Q. Now would you tell us, sir, why do you have this attitude, that the traditional standards should be firmly maintained, which I take it is your attitude?

A. My personal attitude.

Q. We can't separate your personal attitude from the attitude of the president-elect of the ATLA; can we?

A. Obviously. But I hasten to say that I am not speaking for 25,000 members or the board. I can tell my own reasoning.

Q. Would you be so good?

A. Yes. First, a matter, I guess, of dignity, not in any great abstract sense, but I have the feeling that (10) the dignity of a learned profession is seriously compromised by shopkeeper advertising. We have traditionally obtained clients through executing well our professional duties on behalf of our clients,

through development of reputation among our peers and in our community, not only through service to our clients, but through service to the public and to the community and to our country. That complex of traditions leads to our right to call ourselves a learned, independent and dignified profession. Dignified in that sense.

I have a feeling that those values are compromised by commercial advertising.

Q. From that standpoint of public interest, and not of the profession or of the professionals, but of the general public which needs legal services, do you have an opinion as to whether advertising might be of service in bringing to their attention who can offer services, prices and so on?

A. Yes, I do have an opinion.

Q. What is that opinion?

A. I think another aspect of our pro-

fessional duty is accessibility or availability of our service. I think if there is any one area in which we are susceptible to criticism, it's been our failure to deliver legal services as well as we might, particularly to certain segments of (11) the public.

I think we are in the process of trying to correct that through specialization programs, mandatory continuing legal programs, certification programs that most of the national bar associations and many of the state bar associations are examining now. If and when we ever develop those programs, then I would think it would make sense to promulgate those lists of specializations to the public. Again, in keeping with the dignified and learned profession.

I would hope, at the most, in the Yellow Pages, the way the medical profession does. At the least, in law lists

that would be circulated among other professionals. I don't think we are ready for that yet, because unlike the doctors, we have not developed widespread objective criteria for certifying specialists.

Q. From the standpoint of the public interest, Mr. Begam, take the matter of contingent fees; Would it be of advantage to the public, in your opinion, to carry newspaper advertisements to the effect that "This firm specializes in tort law; we handled 217 auto cases last year; our average recovery" was so and so much; "our percentage fees" are thus and such, and so permit some other firm, then, to put in an ad offering a slightly lesser fee, and so on; would that be a desirable thing for (12) the purpose of bringing knowledge to the public of available services, in your opinion?

A. I don't think so, no.

Q. Why not.

A. I think that to the extent that lawyers get involved in commercial advertising, what the public is most likely to learn is who is the best advertiser; not who is the best lawyer.

Q. You find something inherently misleading in the process, I take it?

A. Precisely.

Q. What?

A. Just that. I think that the advertising industry has developed to a sufficient extent so that the best ad sells the product, rather than the best product being sold.

I think there is an inherent misleading aspect to advertising professional services, particularly, when we are not selling toothpaste, which is a sort of objective product. We are selling a subjective service, that is, in a sense peculiar to our own profession. The lawyer-client relationship is a peculiar relation-

ship. You don't sell that relationship; you don't promote that relationship; you don't puff in order to obtain that relationship. That relationship develops and matures as a result of the client (13) seeking service, and, in my opinion, making the best effort he can to obtain the best lawyer for that particular job.

Q. On the basis of your travels throughout the United States; your discussions with lawyers from around America, or members of your association, have you formed an opinion as to whether substantial numbers of your organization have views substantially similar to yours on this subject?

A. I really can't say substantial, when we are talking about a 25,000 member association, Mr. Frank, because that would probably imply many, many thousands, and that would not be true.

Certainly, I think I have expressed

the views of the leadership of the association.

Q. Let me pause for a moment with the practice of tort lawyers in the State of Arizona. If young lawyers going into the practice don't advertise, how do they develop tort practices in this community?

A. I'll answer that question in a second, but let me first say that I would think the young lawyers coming into practice would be particularly disadvantaged by general commercial advertising campaigns. I would think the large firms would be substantially advantaged. A 60-man law firm would pay no more, presumably for a full (14) page ad in the "Republic" or a bulletin board on the corner of Central and Van Buren than would a sole practitioner. Obviously, the 60-man law firm could get a lot more mileage out of it, and presumably would have a greater resource to conduct heavy campaigns. I



think the young lawyers would be particularly disadvantaged.

Q. How does the young lawyer get involved going into practice in this community? What's involved?

A. I think he gets involved in community service; I think he gets involved socially. Many have gotten involved politically in the community, and he does a good job on handling the business that he gets.

Q. Have young people regularly been able to make successful starts, so that within a few years they are making reasonable livings in this branch of the work?

A. It's been my observation that there has been almost direct relationship between the competence and energy of a young man and his success. At least in this community.

Q. And are youngish lawyers of real competence successfully developing prac-

tices within a few years of their entry into the profession here in the tort field?

A. I believe so, yes.

MR. FRANK: Your witness.

(15)

EXAMINATION

BY MR. CANBY:

Q. Mr. Begam, you said that the position of the ATLA was opposed to direct, overt solicitation.

What kind of indirect, nonovert solicitation -- maybe you wouldn't like to call it solicitation -- but could you elaborate a little bit of why you put the qualifiers in?

What kind of things would be permissible?

A. Well, I suppose if a lawyer joins a country club and lets it be known to the other members of that country club that he is a lawyer and will handle respectable

law business, that's a form of solicitation.

I think that would be about as extreme an example that I can give of what I would mean by solicitation that's not direct or overt.

Direct or overt solicitation, I would think an extreme form of that would be the ad in the newspaper that led to this particular proceedings.

Q. Now that, I assume is partly what you meant when you were describing how young lawyers start their business, they get active socially; maybe politically.

It is a problem, I suppose, of getting known, apparently; isn't it?

A. That's certainly a part of it.

(16) Q. You would accept, wouldn't you, the proposition that not all lawyers are equally competent, even though they are licensed?

A. Yes, I would.

Q. What is it about being a member of

a country club that would inform a potential client about the lawyer's competence?

A. Well, presumably the mere putting an ad in the "Arizona Republic", saying "I am a member of Phoenix --"

Q. That isn't the question. I see. I misunderstood.

A. Putting an ad in the newspaper, saying, "I'm a member of the Phoenix Country Club", would not inform the public at all of the lawyer's competence, but belonging to a club where you mix with and talk to and get to know other people; giving them an opportunity to size you up and see what kind of a guy you are; how bright you are; how articulate you are, and various other tools that a lawyer has to sell.

Q. You mentioned, also, that you felt young lawyers would be disadvantaged more than most by unrestricted, direct public advertising -- or perhaps "unrestricted" is too strong, but advertising in newspapers