

of general circulation; things like that.

You said the 60-man law firm pays the same for an ad, but gets more mileage out of it. I didn't (17) understand that.

What do you mean?

A. Well, I guess the simplest example is that it seems to me that in the commercial word (sic) the advertisers that are the most successful are the ones that have the most money to spend on advertising. Most of the products that we buy are nationally advertised products. The heavily-media infested civilization that we live in has led to bigness, corporate bigness, to the point where there are only three manufacturers of automobiles, and a handful of manufacturers of cigarettes, and so forth in the United States.

I think the same could be foreseeable in the professions, if we went to large-scale multi-media commercial advertising in the professions.

Lewis & Roca, by way of an example, a big law firm in this community, could, I'm sure, along with other large law firms in the community, get pretty much a corner on all of the billboards and a pretty good upper hand on most of the effective media space. They have the resources to do it. It's expensive.

Q. That would be sort of a monopolization of media, you mean?

A. They could certainly do that.

That portion of the media that would be devoted to this kind of advertising.

(18) Q. Then, getting a corner on the media would be competitively harmful to the younger lawyer and the small one?

A. Yes. I'm not suggesting that it's restricted to think that any of those firms would, nor am I suggesting that all of the firms have the resources to buy up all of the time. What I am saying, they have the resources to compete more effectively than

the young lawyers starting out, and probably to his disadvantage. That's what I mean.

Q. It depends on what kind of clientele they are seeking to attract.

A. I don't know what kind of clientele you are seeking to attract when you put an ad in the "Arizona Republic". You are seeking to attract the 100,000 readers of the "Arizona Republic", I suppose.

Q. One of the things that appeared in the ad that's involved in this case was that the respondent firm would do a name change for a particularly set price that was advertised. Do you think there are such tremendous variations in the product of a name change, it's impossible to advertise a price and stick to it?

A. I would suspect that the answer to that is that there are so few variations, that someone seeking a name change really doesn't need a lawyer.

Q. Has anyone publicized that?

(19) A. I would hope that the State Bar in its public information program would publicize that. I would certainly urge them to.

Q. So would I.

We started this direct examination, or early in it somewhere, with something about the contingent fee. Contingent fees have been under considerable criticism in the individual case, because they seem high, at least when the recovery is substantial.

What is the justification for the percentage of the fee charged?

A. Well, I don't accept your premise.

Q. I didn't say that they were too high, I say that they have been criticized.

Do you accept that?

A. I accept that they have been criticized by certain segments of society.

Q. Right. You consider that criticism unfounded?

A. Yes, I do.

(Recess taken.)

A. (Continuing) You want my ideas of what I think whether contingent fees are bad things and/or good things?

Q. Yes, one of them.

A. Principally, the one area of the practice where there is a minimum of problem of delivery of legal (20) service is the contingent fee case. The poorest man in the community can get the best lawyer in the United States to represent him, and without the contingent fee, he can't. There is no way that he can find his way into a court. It's that simple.

To what extent in this deposition do you want to go, to turn it into a philosophical debate as to the contingent fee?

Q. Not too much. One reason the poor man can afford this, partly if it turns out he loses, at least it's not that much of a legal fee?

A. That's correct. It's more than that.

He can't afford a lawyer on the noncontingent basis, even on the minimum rates that are sometimes advertised in newspapers.

Q. Right.

A. He couldn't even afford a name change.

Q. Okay. That means, then, that a firm like yours necessarily figures that they will sometimes do a great deal of work and get no fee, in the rare occasions when you might wind up with no recovery at all?

A. Thank you.

Q. Is that correct?

A. Those rare occasions are sometimes rather crippling, and even firms that consider themselves fairly competent and experienced in this field, as I do consider (21) our firm, I can state you some pretty good examples to us: 1,200 hours spent in Ft. Smith, Arkansas, with a medical malpractice, with a big fat zero.

Q. But the fact that turns out there is no fee in the end does not affect the quality

of service that's given to the client, I assume?

A. No. Interestingly enough, the cases that result in zero fees result in the ones that the quality of service to the client was the greatest; the result wasn't so good.

Q. Mr. Begam, are you also a member of the ABA yourself?

A. Yes, I am.

Q. Have you been an officer in that?

A. No.

Q. There was some reference in your testimony to the reaction of the ATLA committee and leadership to the ABA proposal on recent advertising.

It's my understanding there were two proposals. One was the original proposal by the ABA committee. The ABA committee's proposal would have authorized general advertising in media of publications, is my understanding, and the ABA's superior body came out with a much less radical, shall

we say, proposal. Which one are you referring to when you talk about the reaction?

(22) A. I was referring to a reaction to the original committee proposal. As I understand it, it wasn't that they would authorize it directly; it is that they would authorize it if it was adopted by the various states. I think.

Q. Right.

A. In terms of our reaction -- we reacted first to the committee proposal, announcing our opposition to multi-media advertising; general circulation advertising under any circumstances at any time.

Then, the reaction to the more recent proposal related primarily to the specialization aspect of it and the designation of specialty groups and the need for designating and certifying trial specialists, and our willingness to work with them on that.

Q. You mentioned that one of the possible places in which the bar in general

could be criticized is in delivery of legal services to certain segments of the public. You didn't identify those segments. Did you have in mind a particular segment?

A. Middle class people and lower class people, in particular, and poor people; I would say now to a lesser extent than before. We are doing a better job on that than we did in the past, but not a particularly good job.

Q. Do you do any significant amount of noncontingent (23) fee practice?

A. We all do -- I would say the answer (sic) to that is yes, but do not do -- and maybe this is the thrust of your question -- a great deal of per diem or per hour work. I would say maybe 10 or 15 percent of our practice is, of our remunerative practice is that. We all do a great deal of promono (sic) work.

Q. At what point is the amount of fee made known to a client who comes into your office?

A. Well, in the first conference with the client we advise the client the basis for charging. If it's a contingent fee, the client is actually given a written contract, which we use in all of our cases.

If it's an hourly or per diem rate, we tell them what our hourly or per diem rate is and how it's counted.

They don't know what the ultimate fee is going to be, because we don't know how long it's going to take. To my knowledge, we don't do any flat fee work.

MR. CANBY: Thank you, Mr. Begam.

MR. FRANK: I have no redirect.

* * * *

DEPOSITION OF WILLIAM HELME, M.D.
(Title omitted in printing)

* * * *

WILLIAM HELME, M.D., being first duly sworn by the Notary, was examined and testifies as follows:

MR. FRANK: Mr. Canby, I note for the record that my name is John P. Frank, and I

make an appearance in behalf of the Complainant. Would you note your appearance.

MR. CANBY: William C. Canby, Jr., and I am entering an appearance for the Respondents.

* * * * *

EXAMINATION

BY MR. FRANK

Q. Doctor Helme, would you please state your name for the record?

A. William Helme.

Q. What medical degrees or specialties are you associated with?

A. Well, I'm a neurosurgeon. I'm board-certified in that specialty.

I have an M.D. Degree, and I also have a Master of Science Degree in neurosurgery, from the University of Minnesota.

(5) I had my specialty training at the Mayo Clinic in Rochester, Minnesota.

I have been in private practice of neurosurgery in this community for 18 years.

Q. Doctor Helme, are you, in the first place, associated with any branches of the Medical Association which have to do with the administration of its ethical standards?

A. This year, I'm Chairman of the Professional Committee of the County Medical Society.

Q. What is that committee?

A. It is concerned with dealing with any problems that arise with respect to medical ethics or disputes or differences between physicians.

Q. Doctor Helme, in the period of your professional training and your work up to the present time, have you had occasion to become intimately acquainted with the traditions and practices of the medical profession in respect to advertising?

A. Not especially. I think I'm reasonably well-informed in that area.

My present job, as Chairman of the Professional Committee, requires that I be

well-informed.

I was President of the County Medical Society in 1970, and I suppose became involved in ethical matters (6) from time to time in that capacity.

Q. In that connection, are you yourself acquainted with the practices of the medical profession in regard to professional advertising?

A. I believe so. Yes.

Q. Would you tell us, please, what are those practices?

A. The ethical practices of the medical profession?

Q. Well, if the question is confusing, let me put it over again.

A. It is.

Q. Do you have a Canon of Ethics similar to the lawyers (sic) Canon of Ethics, with respect to the matter of advertising?

A. That narrows it down a bit.

Yes, I think.

Q. Would you tell us, please, the general substance of the ethical rules of your profession in that respect?

A. I think the most important point that should be made in that regard is that that should be made in that regard is that medical ethics are designed for the protection of the patient, rather than the physicians.

Q. I'm sorry, sir, but I want more basically that: What is the rule of the medical association in respect to advertising?

(7) A. There shouldn't be any.

Q. And this covers newspaper advertising; radio advertising; any kind of media; is that correct?

A. Yes. Now, there are exceptions. For example, a physician is permitted to announce the opening of his practice in a prescribed manner, rather simply. The announcement shouldn't go beyond stating

his name, the address of his office, his hours, and a brief curriculum vitae.

Q. We are taking this deposition in your office; isn't that correct?

A. Yes.

Q. Would you name, please, three types of service that are performed by you or other doctors in this office? Any three.

A. Three types of services?

Q. Yes. Of medical service.

For example, you are a neurosurgeon?

A. Yes, all five of us. There are our names on the door. All five of us are neurosurgeons, and we do all neurosurgical procedures, with respect to the nervous system.

If you wish me to name three --

Q. Name any three, so I can question on any.

A. We do craniotomies, which means any surgery (8) involving the opening of the head.

We also do surgical procedures on the spinal canal.

Q. Let's stop with those two.

A. All right.

Q. Let us suppose, hypothetically, that a person who is a neurosurgeon put an announcement in the paper in the form of an advertisement, simply bought the space, and said, I will perform a craniotomy for you for so and so many dollars, or I will perform a spinal tap and a spinal opening for so and so many dollars. I'll ask you to assume that happens. Would that be a violation to the Medical Canon of Ethics to which you refer?

A. Yes, sir.

Q. Would you explain, sir, whether this has been the practice for a long time in medicine, or is this some recent innovation, this kind of restriction?

A. This has been true as long as I have had any familiarity with the practice of

medicine. It's never been otherwise.

Q. So, as far as you know, this is a rule which has existed so long as doctors have practiced in this country?

A. Yes.

Q. Now, would you tell us, sir, what is the function of such a rule?

(9) Why does the profession have this rule, if you know?

A. Well, this brings me back to the answer I started to make; That our ethics are designed to protect the patient, not the doctor.

I think that there is somewhat a common misconception that these restraints are designed to protect ourselves, and that just isn't true; they are designed to protect the patient.

And you ask me about a doctor advertising his fee for a craniotomy. I smiled when you asked that question. It's ludicrous to even imagine such a thing, because

there must be more than a hundred different types of craniotomies. Each of them is a major surgical procedure, involving an almost infinite complexity of detail that couldn't possibly be specified in any such advertising, and it would appear to me that the few charlatans amongst us would be most likely to seize upon that opportunity to seduce patients and to misrepresent what they would provide, and the opportunities for doing this are just infinite.

A. Doctor, are there some procedures that are so extremely simple that there would be no real possibility of misleading? As, hypothetically, sore throats treated, \$26.50?

(10) A. No.

Q. Why not?

A. The variety is so infinite, even in that simple example that you specified, that to presume to specify in advance the fee that one would charge for this, I think,

would be a distinct disservice to the patient.

We don't treat sore throats, but there is just a vast multitude of types of sore throats of varying degrees of severity and complexity.

Q. Doctor Helme, let me go to the nature of the medical --

A. May I add, I think, one important point?

Q. I wish you would.

A. None of which is apparent to the patient. The complexities; the varieties of these conditions are completely unknown and obscure to the patient.

Q. Doctor, how does a young doctor get started in this community, in his profession?

A. By making such announcement as I described earlier; sending it to all of the other physicians in the community; by having his name listed in the Yellow Pages, and

any other directory.

There are announcements made by all the hospitals of new physicians when they are appointed to the staff. A physician attends the staff meeting and is (11) introduced.

Invariably, a hospital has a newsletter that is circulated to all physicians, and the addition of that individual is proclaimed therein.

Q. Within your observation in this community, have those devices been sufficient so that capable young doctors develop practices within two, three, four, five years here?

MR. CANBY: I don't know whether this is an objection to the form or not, but --

MR. FRANK: Make it, please, and I'll just restate it. How would you like it to be, Mr. Canby?

MR. CANBY: I don't know whether it's objection to form. It's an objection of

whether or not he has any way of determining.

MR. FRANK: Let's go to foundation. That's a good objection.

Q. BY MR. FRANK: In connection with your function as President of the Medical Association, and in other works in the association, have you had occasion to become broadly acquainted with the physicians of this community?

A. Yes.

Q. As a result of your acquaintance with those physicians, have you become enabled to form an opinion to whether young doctors manage to busy themselves at their (12) practices fairly rapidly, early?

A. Yes.

Q. What is that opinion?

A. There is never a problem.

Q. That is to say, that insofar as communication of the community is concerned, the devices you described are sufficient so

that their practices rapidly grow; is that it?

A. Yes, that's correct.

Q. Now, I'm aware that the term "rapidly" is imprecise, but do you have a round number figure for capable young doctors; how many years does it take?

A. I think it's not a matter of years; I would estimate that in a few months doctors are busy almost without exception.

Q. Doctor Helme, when a patient comes to your office, what inquiry do you make of him concerning his ability to pay for the services which he seeks here?

A. None.

Q. Isn't there someone at the desk who checks his insurance, of a sort?

A. Yes, there is, I believe. I never look at it, honestly. I have no knowledge of whether a patient is going to be able to pay his bill or not.

Q. Well, is there somebody in this

office who has (13) that knowledge?

A. I believe we have a form that we fill out that does contain that, but it has nothing to do with their subsequent care.

Q. In short, you accept the patient, if you accept him, without regard to his ability to pay; is that correct?

A. Invariably.

Q. Have you any notion of what proportion of your patients are, in fact, unable to pay the full fees which you would normally charge?

A. I really don't, but it's not very high. I would estimate that our bills are 95 percent collected, or better than 90 percent, I believe. But, on the other hand, there are often, or from time to time there are patients whose bills will be very substantial, more than 500, and nothing is collected.

Q. Doctor, do you devote any of your

time to matters related to the improvement of your profession?

A. Yes.

Q. Would you describe, please, what you do, either in regard to the substance of medicine or in regard simply to improvement of the profession, as you can conceive it?

For example, do you publish papers; do you do (14) researches?

A. More in the line of teaching.

Q. What do you do?

A. Most of our work is done at the Barrow Neurologic Institute, part of St. Joseph's Hospital, and we had 10 residents, 10 young men in training to be neurosurgeons. They spend five years as residents, and a substantial part of my time is devoted to providing that education to those young men.

Q. Are you compensated therefor?

A. No, except that you might -- no, we are not compensated, as such. They do

indeed work patients up and assist in their care.

Q. Do you regard it as part of your professional duty, as you conceive of the function of the medical profession, to engage in that kind of educational work?

A. Yes.

MR. FRANK: I have no further questions at this time.

EXAMINATION

BY MR. CANBY:

Q. When you described that a doctor when he opens his practice is able to briefly state his CV, and send out announcements --

(15) A. Excuse me. I didn't hear the first part.

Q. That he can give his curriculum --

A. Oh, CV.

Q. -- and announcement that he is opening his practice. To whom is that announcement made?

A. To other doctors. I probably should add to that, I believe it is proper for a physician to put such a brief notice in the newspaper.

Q. I see. The purpose of that, then, is to notify prospective patients that he is in business at that location -- in practice? I'm sorry.

A. Correct.

Q. The other announcements that you mentioned, the hospital, when an associate physician makes an announcement, is that announcement made to the public or is that made to the physicians?

A. I believe just to physicians.

Q. And other notices might be sent out within the profession; is that right?

A. Beyond the one you have described?

Q. Yes.

A. By the physician?

Q. Right.

A. No, I think that's it.

Q. Okay. I see. You mentioned that two months is (16) usually enough for a doctor to get viably established in practice, perhaps, here. Do you know any doctors, medical doctors, who have set up practice here in the last couple of years who have been unable to establish a practice?

A. No.

Q. That suggests, then, that there is so much work to be done that it's occupying basically every doctor available; is that right?

A. Yes, that suggests that, I guess.

Q. You mentioned that it would be impossible to set a fixed fee for something like a sore throat, in an advertisement, with proper regard to ethical considerations. Would it be ethical to state a fixed fee in advance for a vasectomy?

A. Would it be possible --

MR. FRANK: Pardon me. Objection,

one, foundation. I don't believe that the witness stated there could not be a fixed fee in advance in a particular case, but merely you couldn't advertise in general.

Is that a fair point, Mr. Canby?

MR. CANBY: I didn't mean to misstate your testimony. I think the question which you previously asked, and answered, was would it be proper for a medical doctor to advertise that sore throats would be treated for \$26.50.

(17) And your answer to that, I believe, was "No".

Q. BY MR. CANBY: Do I correctly state that your answer was "no", because there are different kinds of treatments which might be required for a sore throat?

A. And there is such an endless variety of sore throats.

Q. Would it be possible for a medical doctor to establish in advance and publicize the fact that he will do vasesc-

tomies for a fixed fee?

A. I think that's possible. I certainly wouldn't go beyond that verb, though, that it is possible -- adjective.

Q. Are there in medical practice forms of practice in which a doctor knows in advance the particular kind of work are going to pay a flat fee, group practice arrangements, or anything like that?

A. Yes, there are some categories of services, I presume, where one could anticipate a fee that would probably cover it.

Q. If in the occasional case that fee did not cover it, couldn't the doctor simply go ahead and do the work at a loss, as it were?

A. Yes, he could.

Q. In your practice, that occasionally happens, not because you have stated a fixed fee; but because a (18) patient can't pay?

A. Yes.

Q. You mentioned that were advertising permitted, charlatans would seduce and misrepresent, I think were the terms you used?

A. Yes.

Q. In what sense, if a medical doctor were prepared to perform vasectomies for \$125, and advertised that, would that lead to seducing and misrepresenting, seducing the public and misrepresenting to them?

A. First of all, he might be incompetent relative -- I think a point that I didn't make and needs emphasis in that regard, and that is the public is totally incapable of evaluating a physician's competence. I say that without reservation.

A few years ago one of the most attractive, articulate, confident-inspiring gentleman I have ever met had his license revoked, and that's a rare occurrence in this state. He had a solid corps of patients who were willing to testify that he was the finest physician and surgeon

in the business.

Patients are totally incapable of evaluating the competence of a physician.

Q. You would say, then, that licensure is not a guarantee of competence, much as we'd like it to be?

(19) A. I would say it is not a continuing guarantee. At the time of issuance, it is a reasonable guarantee.

Q. Now, if that doctor does not advertise -- we have already established that all of the doctors are adequately busy within a couple months after being in practice -- if he does not advertise, and is busy anyway, how does his patient know that he is incompetent?

MR. FRANK: Professor Canby, I think you mispoke. Would you like your question read back?

MR. CANBY: Yes.

(Question read by reporter.)

MR. CANBY: I'll rephrase the ques-

tion. Perhaps it's not clear what I was asking.

Q. BY MR. CANBY: You said that the doctor might be incompetent, and therefore, the advertising of vasectomies at \$125 each would be dangerous to the public. If he does not advertise, and is incompetent and still gets patients, as you have said doctors here do, isn't the public equally in danger?

A. No.

Q. Why?

A. Fewer of them are in danger if he doesn't advertise.

If you don't mind, to use an example within my field of craniotomy, presumably, he who is least busy (20) will resort to the unconventional technique of advertising to enlarge his practice, and the patients will never know the physician is competent or not. He has no way to evaluate that.

Q. That is true, is it not, whether the

physician advertises or not?

A. Except that that exposure will be to fewer patients if he doesn't advertise. The inability to evaluate his competence will be a burden upon fewer people. Presumably, invariably advertising works.

Q. Advertising does increase business?

A. Yes, it does. So that the deficiency that you postulate will be imposed on fewer people if he doesn't advertise.

Q. I see. When a doctor advertises and increases the number of his patients, does that patient come from other doctors?

A. It depends --

MR. FRANK: Pardon me. Objection, for one, of foundations, since I believe the testimony would indicate that substantially no doctors advertise. In other words, the question assumes that the doctors are advertising, and therefore, that certain things happen, and I object on the grounds that that's speculative.

MR. CANBY: Do you just want me to preserve that (21) objection?

MR. FRANK: Yes. He may answer if he wishes. I'll merely preserve the objection.

If you restate the question, I will have preserved it.

Q. BY MR. CANBY: You said the advertising would be effective in the sense that it would draw patients into the advertising doctor?

A. I believe so.

Q. Are those patients who would otherwise be going to other doctors?

A. Not necessarily. It might be that the thrust of the advertising would be to persuade the patient that he needs services that he actually doesn't need. So, it might create new patients that wouldn't have otherwise existed, as such.

Q. Might it also persuade a patient that he did need services that he, in fact, needed?

A. It's possible.

Q. If a doctor performs treatment incompetently, and I would include in incompetence the performing of unnecessary treatment, are there other Canons of Ethics or ethical requirements that are violated?

A. Yes.

Q. The doctor then could be disciplined for (22) incompetent performance and/or fraudulent performance, aside from the restrictions on advertising?

A. Yes. The advertising restrictions wouldn't have anything to do with discipline for incompetent performance. That would be mainly in the area of the hospital.

Q. A couple of rather simple questions, but I think we should get it in the record: I assume that you would agree that not all doctors are of equal skill and competence.

A. I would agree with that.

Q. We can also establish probably that doctors would charge different fees for per-

forming the same medical treatment? Different doctors would?

A. Yes.

Q. How do patients generally come to realize that they need the services of a medical doctor?

A. They get sick?

Q. The start to hurt?

A. Or some other disaster befalls them.

In our specialty, the signs of difficulty are usually pretty profound and obvious.

Q. When that patient becomes aware of his need for medical services, how does he find a doctor?

A. Well, again, concerning my specialty, no patient comes to us direct. They are referred by other physicians.

(23) Q. How do they get to that physician?

Most of the people have a physician. If they don't, when they come to this community, many of them will have asked where they

were who would be recommended here; who is known.

When they arrive in a community, the method of getting in touch with a primary care physician is through the Medical Society. Calls are made there frequently.

Q. Do they have a referral service of some sort?

A. Yes.

Q. When the patient is referred by that service to a particular doctor, at what point is he made aware of the fees which may be involved?

A. For the most part, when he arrives at that physician's office, or after the service has been provided.

Q. Does he have any way of knowing what other doctors, or is he told what other doctors would be charging for the same services?

A. That is a minor consideration at this time, I believe, because the majority of

the patients have some type of insurance coverage, and there is a pretty considerable amount of uniformity among fees.

We have, for example, a fee schedule that takes up some 90 pages, and there are a great many variables (24) within that fee schedule, but there is set out therein the broad categories of fees, and a patient has access to that. The most commonly known is the "California Relative Value Schedule" that was first devised in 1954, and that's widely disseminated; is available to patients, and that is a very good indication of what fees will be.

Q. Would it be a violation of the medical profession's ethics to publish that schedule in the "Arizona Republic"

A. I don't think so. We have an organization that was formed by the Medical Society in 1970, called the Maricopa Foundation for Medical Care. About 90 percent of the physicians belong to that, and the

members agree in advance to accept that fee for the various services, as total payment. And those fees are published, I believe. At least, we would have no objection to them being published.

Q. Would it violate the Canon of Ethics of the medical profession for an individual medical doctor to publish in the "Arizona Republic" the fact that he agrees to that schedule of fees you just mentioned in your last answer?

A. I think so. The fact is broadly known, because there is published a document that lists all of the physicians who are members of this foundation, and (25) therein it is stated that they accept the fee allowed by the foundation, as total payment.

Now, if they, in addition to that, were to publish their name, it would be evidence that they were seeking additional notoriety.

You know, we have confined our remarks

pretty much to advertising and not just publicity, which is really a very similar problem, and --

Q. We are dealing here with advertising.

A. So we don't get into the matter of publicity in this discussion, this deposition?

Q. We don't yet.

MR. FRANK: I will take it up with you on the redirect, a little later.

THE WITNESS: I don't wish to volunteer anything, but I wanted to be sure about that.

Q. BY MR. CANBY: You said that the great number of patients are covered by insurance. You don't have any rough estimate, do you? Did that come out already?

A. I haven't said so. I should know that; I don't, but it's more than half the patients have some type of insurance coverage; substantially more.

Q. In the Yellow Pages, Doctor, there is a notation after your name that your

practice is confined to neurological surgery. What purpose does that serve?

A. I don't know. I suppose -- and I have wondered about that, frankly. It might just as well have said "Neurological Surgery". "Confined to" is hardly necessary.

Q. I didn't mean to be concentrating on those particular words, but the indication that you are a neurological surgeon is inserted for what purpose?

A. I suppose so that I will not get improper calls from other physicians or from patients who are seeking a pediatrician, for example.

There is a general practitioner in Scottsdale, whose name is William Helms, and we do have cross calls from time to time, and I'm sure it would occur much more frequently if I didn't have it indicated there that I am a neurosurgeon.

Q. In other words, it's a way of ad-

vising the public that you do not take certain kinds of cases?

A. Yes, and also other physicians.

Q. And with other physicians, I suppose that it advises them that you do take certain kinds, too?

A. Yes.

Q. Is it common practice for a physician in this county to establish within his own office a fee schedule with his own bookkeeper, and then simply to check the services performed, so that the bookkeeper knows, or some (27) other service person knows how to make up the bill, and in what amounts?

A. Yes.

Q. So that he could check two or three or four different medical treatments or services that he performed, and the bookkeeper would know what to charge from that fact; is that right; because there is a preexisting schedule?

A. Yes. That isn't true of all services, but it is true of some.

Q. What kind of services?

A. Well, here in this office, for example, when a patient is first seen, and it is called a neurosurgical consultation, and there's pretty much a standard fee for that. If the problem is simple, we reduce it below the usual fee, and we will specify to the bookkeeper that that is being done. In a child, it might be less. I don't know what it is. I really don't, what we charge for consultation. I can find out very quickly.

Yes, there is a slip that accompanies the patient, and we do indicate on there the type of service that is provided.

The same is true of follow-up visits, a patient who has had surgery, and comes in for a period of time to be sure that all is well, yes, there is a standard fee for that service.

Q. You don't even have to know what that is, except when you review the schedule?

A. I don't know, so that is true.

MR. CANBY: I don't have any further questions.

EXAMINATION

BY MR. FRANK:

Q. Doctor Helme, I advise you as simply foundation for my question that in the legal profession there is a general prohibition on advertising, which, in turn, is part of a larger prohibition on something called solicitation. So that any ways of reaching out to get business, for example, by going house to house and asking for it and calling up strangers and saying, "Would you bring your law business to me", it would be regarded a piece of the law business for this purpose. I would be regarded as solicitation.

My question of you is: As a matter of medical ethics, are there prohibitions

upon the solicitation in the large, as distinguished from simply newspaper advertising?

A. Yes, there are.

Q. Would you explain, please, what that prohibition is?

(29) A. Such solicitation is prohibited.

Q. What is regarded as solicitation for medical purposes?

A. The things you have just described for attorneys would apply, also, to physicians.

Q. Well now, do you place any limitations upon the seeking of self-laudatory publicity?

A. Yes, indeed.

Q. Is that part of solicitation?

A. Yes, it is.

Q. What are your rules in that regard?

A. That's prohibited.

There is an example in the current

issue of "People" magazine. There is an article in there about a neurosurgeon, and there are some statements like -- it's written, obviously, by a non-medical person, by a reporter -- it includes that "75 percent of all patients with tremor and movement disorders have had their symptoms cured without complication."

There is another statement this neurosurgeon is better than the rest of us, attributed to some unknown surgery.

The cousin of one of our nurses was taken to New York twice by his family, in the last few months, and had a rather exotic unestablished surgical procedure done (30) because he has -- he is spastic, in the common terminology, from a birth injury -- even having access to reliable information with respect to neurosurgery, this cousin of our nurse went to New York twice, at great expense; had the surgical procedure which is described in "People" magazine.

He is no better, and his family are many thousands of dollars poorer. This is what concerns us.

Earlier I said to Professor Canby, and I said it twice, because I thought it was so important, that patients cannot evaluate the competence of physicians, and this type of non-scientific emotional reporting is so disillusioning. People mortgage the farm and --

MR. CANBY: Excuse me. Could I have you restate the question, again?

MR. FRANK Yes.

Q. BY MR. FRANK: My question is: How does -- in your opinion, from your experience and from your observation, how does the practice of solicitation in the medical profession affect the health and welfare of the general public?

MR. CANBY: That's a new question; is that right?

MR. FRANK: Well, it is a question

meant to get behind the answer he is just giving, so that the answer may continue.

(31) MR. CANBY: All right.

Q. BY MR. FRANK: Would you continue, sir?

A. The average person, being able to evaluate the material in that article is seduced to obtain funds by whatever means to go there to be relieved of this intolerable problem that he has.

A few years ago a Canadian surgeon a man of some prominence, said that he could sew the spinal cord back together. An absolute ludicrous statement; totally impossible.

This information was circulated throughout the world, and because it appeals to people and to newspaper reporters, who are equally ignorant in medical manners -- and I say that without criticism -- patients who are desperate for help go to this man to have this done.

He can't do it. It's a totally impossible procedure. And this is why we undertake to control such irresponsible statements.

Q. Now, let me ask you several concluding questions.

Do you have an opinion as to whether solicitation, in general, or advertising, in particular, would serve the public interest in your profession?

Do you have an opinion?

A. Yes, I do.

Q. What is your opinion?

(32) A. I believe that it would serve the public most adversely.

Q. Do you have an opinion as to whether to allow advertising and solicitation would lead to what are commonly called rip-offs, fraud and taking advantage? Would it, in your opinion?

A. I believe it would lead to such events as that.

Q. What, in your opinion, would it do to the standing of the profession, in the sense of the respect which it has held?

A. It would destroy us.

MR. FRANK: That's all I have.

EXAMINATION

BY MR. CANBY:

Q. Doctor, you mentioned that this well-known practitioner said that he could sew up the spinal cord. In plain commercial terms, that's false advertising; isn't it, as you described it?

A. He didn't advertise this. Newspaper people picked it up and amplified it and disseminated it. I think he did say that. Maybe he had become senile. I don't know.

I'm sure you would wonder why wouldn't he be (33) contained by his local profession. I can't answer that. He was, in due course, but by then it was too late.

Q. For some patients?

A. Yes.

Q. If he had advertised this, it would be false advertising? It's an impossible operation; isn't that correct?

A. I'm sure the advertising would be so worded and distorted it might not be technically false.

He could sew it. It might not do any good. It wouldn't do any good, but he could sew it together .

Q. You did say he was finally expelled for incompetence, or like this?

A. I don't have the details on this, but he was dealt with appropriately, I'm sure.

* * * *

DEPOSITION OF MARK I. HARRISON, 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, Co-Respondent.

The following proceedings were had:

EXAMINATION

BY MR. CANBY:

Q. Why don't you just give your name and your office at the Bar?

A. My name is Mark Harrison. I am currently president of the State Bar of Arizona.

Q. How long have you been in practice here, Mark?

A. Since I was admitted, in May of 1961.

Q. As president of the State Bar you have some role in the initiation of their disciplinary proceedings; don't you?

A. Not really in the initiation of it.

The Board of Governors has the power under Supreme Court rules to initiate dis-

cipline by filing a Complaint with the Local Administrative Committee, and as (5) any member of the Board can bring a prospective complaint to the attention of the Board, and refer it for discipline.

Q. What was the route of bringing in this case? Was it your --

A. It was initiated at my instance.

Q. The State Bar of Arizona is an integrated bar, of course, and you have to be a member to practice; right?

A. Correct.

Q. As a member of the State Bar, have you become familiar with many of the practices, in very general terms, of many of the lawyers in Arizona?

A. I think I have a general familiarity with that.

Q. You are, of course, in active practice yourself; is that right?

A. Yes.

Q. To the extent that your Bar duties

permit?

A. Correct.

* * * *

(9) Q. BY MR. CANBY: Mr. Harrison, do you know the source, the drafting source of the present rule against advertising with which the Respondents are charged in this case?

A. Yes.

Q. What is that?

A. The Supreme Court of Arizona.

Q. Does it bear any similarity to the Code of Professional Responsibilities proposed by the American Bar Association?

A. I believe it does.

Q. Would you say that the similarity is exact?

A. I believe it is.

MR. FRANK: Objection. I ask leave to advise my client that it isn't exact.

MR. CANBY: That it is?

MR. FRANK: No, it is not. I believe

the language is different.

THE WITNESS: Excuse me. You are talking about the (10) discrepancies between the rule, as amended in Philadelphia?

MR. FRANK: No.

Could we go off the record?

(Discussion off the record.)

Q. BY MR. CANBY: Mr. Harrison, with the exception of minor changes in wording, the substance, at least, of the present Supreme Court rule and the American Bar Association Code of Professional Responsibility provision regarding advertising is the same; is that correct?

A. I have recently come to understand that there is a slight discrepancy between the wording of the Code provision, as drafted by the House of Delegates of the ABA and as governed by the Supreme Court which does not change the substance of the rule.

Q. Do you know which draft arose first?

A. Well, I assume -- I don't know for

certain -- I can only assume that in the normal course of events, changes in the rules are initially proposed by the House of Delegates.

They have no effect on attorneys until and unless they are thereafter adopted by the disciplinary authority in each state. So I assume it was proposed initially by the House of Delegates, then if there is a discrepancy, it was adopted in its changed form by the Supreme Court of (11) the state

Q. You are a member of the House of Delegates now; is that correct?

A. No.

Q. You are not.

What is the system of representation of the State Bar in the American Bar Association?

A. For the most part, it is based upon the number of lawyers in the state who are members of the American Bar Association. I think that for each 1,000 members, you are

-- I'm not exactly sure of the number for qualification, but I think that's the basic formula. You have to have a certain number of members in the ABA in the state to qualify for a delegate.

In addition to that, you are entitled -- I can tell you who our representatives are. We have what is called a state bar delegate. We have a state delegate who is elected by ballot among all of the ABA members of the state; the state bar delegate being appointed by the Board of Governors, then there is a delegate representing the Arizona Bar Association.

Q. As far as you know, the State Bar of Arizona has always been represented in the American Bar Association since its inception; since you have been familiar with it?

A. Since I have been familiar with it, yes.

(12) And that's since you came to

enter practice in Arizona?

A. Yes.

Q. Do you have any knowledge whether the State Bar of Arizona or the Maricopa County Bar Association ever had a suggested schedule of minimum fees?

A. I know that the Maricopa County Bar Association had such a schedule.

To my knowledge, the State Bar has never had such a schedule.

Q. Does the Maricopa County Bar Association presently have such a schedule?

A. No.

Q. Do you know approximately when it was abandoned or rescinded?

A. Within the past two or three years.

Q. The State Bar has an Ethics Committee; is that correct?

A. Yes.

Q. What's the role of the Ethics Committee?

A. In general terms, the Ethics Com-

mittee receives inquiries from members of the Bar as to whether certain hypothetical prospective conduct, if carried out, would be in violation of the Code of Professional Responsibility. The committee receives such inquiries and distributes or (13) promulgates opinions concerning the hypothetical prospective conduct.

Q. And that body is not itself a disciplinary body, in terms of initiating or hearing disciplinary cases; is that correct?

A. Yes.

Q. What force and effect, if any, do its opinions have in disciplinary proceedings?

A. I think they are generally regarded as advisory.

Q. The enforcement, then, of the Canons of Ethics, which preceded the Code of Professional Responsibility, and the Code of Professional Responsibility lies, in the first instance, with the Adminis-

trative Committee; is that correct?

A. Yes.

Q. The Administrative Committee, to which the Respondents' case has been referred has as its chairman, Phil von Ammon, and as its members, Ivan Robinette and Carl Divelbiss. Do you know these gentlemen?

A. Yes.

Q. Are they in private practice in the City of Phoenix?

A. Yes.

Q. To your knowledge, has the Supreme Court itself, on its own motion, initiated disciplinary proceedings (14) without going through -- in other words, you described the normal method as someone calling it to the attention of the Board of Governors. Has the court, without going through the State Bar machinery, ever disciplined an attorney for an ethical violation?

A. Before I answer that question, let

me correct what I think may be a misconception. The normal method is not having someone referred to the Board of Governors. The normal method is by having someone referred to the staff people in the State Bar office, who under the present rules then review, then therein refer to a Local Administrative Committee for investigation.

The rule also permits either the Court or the Board of Governors or a Local Administrative Committee to initiate complaints on their motion.

In the case you inquired about, in the earlier part of the deposition, that case was initiated on motion to the Board of Governors.

Q. Which case are you referring to?

A. The case in which you are involved.

Q. The case involving the Respondents?

A. The case of Bates and O'Steen.

Now, as far as the question you originally addressed to me about the court, I

feel confident, on certain rare occasions.

(15) Q. The question was, if you will excuse me, was: Whether you knew of any instance where the court had?

A. I only have a vague recollection of one instance that comes to mind, and it arose in the context of a litigated case came to the court, in which the court then, in its opinion, suggested that the matter be pursued by a Local Administrative Committee.

Q. By a Local Administrative Committee?

A. I don't know whether they actually used that term, but they made some reference in the opinion which raised the question as to whether the Bar should take action.

I'm kind of vague about that, really.

Q. Why was the schedule of minimum fees of the Maricopa County Bar Association abandoned? Do you know?

A. Not of my own personal knowledge. I wasn't on the Board at the time.

Q. You were a member of the County Bar Association?

A. Yes.

Q. Are you familiar, in a general way, with the traditional ethical position of the Bar in regard to advertising?

THE WITNESS: I'm sorry. Would you read the question?

(Question read by reporter.)

(16) A. I think so.

Q. What is their tradition regarding general public advertising?

A. I think the rationale underlying the so-called traditional position --

Q. Just, first, what is the traditional position?

A. It's opposed to advertising?

Q. Now, why?

A. Well, I think the principal reason for the opposition is that advertising implies solicitation, and solicitation is contrary to the normal way in which profes-

sional people, as opposed to business people secure clients, as opposed to customers.

Q. And the reason for this, then, is that the professions themselves traditionally do not solicit?

A. I think that's true.

Q. Do you wish to offer any other reasons for the tradition than the fact that it has always been that way with the professions?

A. I think that I can offer a few. At least, I can elaborate a little bit about it.

I think, historically, most people believe that the, quote: "learned professions", unquote, had an obligation or tradition of public service, and depended for their livelihood on their qualifications; on their (17) record of public service, and their ability to do high-quality work, and that these characteristics were what developed or enabled the professional to

develop a clientele or a following, and that advertising is inconsistent with those characteristics as the qualities which attract a clientele.

Advertising would enable a professional to attract a clientele without regard to his qualifications; without regard to his sense of professional responsibility, and in a general way would commercialize and change the whole focus from one who has certain strong ties with professional traditions to one who simply is marketing widgets or any other commercial (sic) commodity.

Q. And it's your feeling, then, that advertising would draw in clients just by reason of the advertisement; is that correct?

A. I don't know whether it would or it wouldn't, but I think that's obviously the rationale which those who want to advertise rely on. I think people who

want to advertise believe that advertising would attract people.

Q. And it has to attract people for it to be any danger to the people; doesn't it, the danger that you just described, that people would come in, not being attracted by the particular qualifications of the attorney.

(18) That danger is only realized if the advertising does, in fact, attract clients; is that correct?

MR. FRANK: Objection.

A. In part. In part. I mean, if people are attracted to people who aren't qualified that render service, that certainly is part of the danger for those who are attracted.

Q. BY MR. CANBY: What means now is there for a person who lives here in Phoenix, let's say, and decides he wants a lawyer, to find one?

A. Well, I suppose there are several.

He can contact the County Bar Association, which has operated a Lawyer Referral Service for many, many years, and will be advised that there are two plans within the Referral Service: Those for people who are able to afford a lawyer at whatever the competitive rate is, and those people who are of limited means. There is a panel of lawyers within the Referral Service program who have agreed to serve people of limited means.

There is a Legal Aid Society, which is available, and which is listed in the phone book.

There are all of the historic bases for referral that any professional has, a banker, a grocer, a tradesman; anybody who the average citizen might have contact with who might have had contact with a lawyer, as (19) a potential advisor, as to whether is a lawyer around to serve the potential client's needs.

Q. Let's take the Lawyer Referral Service. What happens when a person calls the Lawyer Referral Service at the County Bar? What is the next step, assuming it's someone who does not qualify for legal aid? In other words, someone who doesn't fall into the poverty category.

A. I believe the staff person makes an inquiry about the nature of the prospective client's problem. The staff person has a list of all of the lawyers who have agreed to participate in the Referral Service, with an indication to what areas of the law those lawyers are interested in serving clients.

The staff person then makes an appointment for the prospective client with a lawyer on the list. The purpose of that appointment is an initial consultation, which is then arranged.

The client sees the lawyer. If the lawyer feels that the client has a prob-

lem which the lawyer can help solve, they make whatever arrangements they are going to make, and that's how the relationship is established.

That's my understanding.

Q. Would you agree that not all lawyers are equally competent?

A. Yes.

(20) Q. And that not all lawyers charge the same fee for the same service?

A. Yes.

Q. When the person is referred by the Lawyer Referral Service to a particular attorney, what way does he have of judging either the competence of that attorney, compared to others who might have been available, or the fees of that attorney, compared to the fees of others who would have been available?

Is he told anything in that regard?

A. By the staff person?

Q. Yes.

A. I don't know.

Q. Is the staff person authorized to decide which attorneys are the most competent on the Lawyer Referral List?

A. I doubt the staff person has any way of knowing that.

Q. The staff person is not a lawyer; is that probable; or do you know?

A. That's probable.

Q. Do you feel that non-lawyers are in a difficult position to evaluate the competence of lawyers?

A. I think the question is too broad. I think some laymen are probably well-qualified to judge the competence (21) of lawyers, and some laymen are not.

Q. Are you familiar with the operation of any prepaid legal services schemes existing in Arizona?

A. Generally, yes.

Q. Is the client able to obtain legal services there for a fixed cost to the

client?

A. Well --

Q. Maybe you can elaborate and describe it.

A. To my knowledge, there are several prepaid legal services plans. There is one Bar-sponsored prepaid legal services plan commonly referred to as an Open Panel Plan. There are several Closed Panel Plans.

With regard to the Bar-sponsored Open Panel Plan, the client can obtain the services which are included in the schedule of services at a predetermined fee.

Q. That schedule of services lists various kinds of services, not necessarily by any means all, but certain kinds of services for which a certain fee will be charged; is that right?

A. That is correct.

Q. And that's made known to the potential client in advance; is that correct?

A. Yes. I think the document which

describes the plan is probably the best evidence of the plan, and I may not be entirely accurate in my statement, but if you (22) wanted to be certain you could simply secure it.

MR. FRANK: I have interposed no objection, because Mr. Canby and I have agreed that we are going to essentially allow each other that he can put in whatever evidence he wishes, but I would stipulate that if he wants to add to your deposition the documents he referred to, there will be no objection to him.

MR. CANBY: All right, I have no further questions.

EXAMINATION

BY MR. FRANK:

Q. Mr. Harrison, you made some references to recommended minimum fee schedules of the County Bar, which have been abandoned in recent years. Do you recall that part of your interrogation?

A. Yes.

Q. So far as you know, have there ever been any mandatory fee schedules of the County Bar?

A. To my knowledge, there has never been a mandatory fee schedule.

Q. As far as you know, have there been any disciplinary proceedings in the past, involving the question of the price of which someone puts on legal services?

A. It is my understanding that there has never been (23) a disciplinary action taken because of a fee charged by a lawyer in the State of Arizona.

Q. You have been referring to the County Bar, which maintained that schedule. Is the County Bar a part of the State Bar, or is it a separate organization?

A. Wholly separate. It's a voluntary Bar association.

Q. Your State Bar, as you have described it, is mandatory, and the County is

wholly voluntary?

A. Yes.

Q. And there is no automatic membership of one in the other?

A. Correct.

Q. Mr. Harrison, you referred to solicitation, and alluded to advertising as a portion of solicitation, I believe. Is that correct?

A. Yes.

Q. Speaking broadly, what is solicitation, as lawyers speak of it in connection with legal ethical concessions?

A. As I understand it, it's the overt, unrestrained public effort to acquire clientele.

Q. You said "overt, unrestrained". Is the "unrestrained" a necessary portion of that definition?

A. Not really.

(24) Q. What is the Bar's view on solicitation?

A. It is quite opposed to solicitation.

Q. If the Bar opposes solicitation, and if, in fact, solicitation is not carried on -- and I take it it is not in this community, generally speaking; is that right?

A. Generally speaking, it is not. I'm sure there are abuses.

Q. But, in that case, how do law offices generally grow and develop in the community.

A. I think that law offices generally grow and develop on the basis of their performance; on the basis of the circle of acquaintances, friends; business associations developed by lawyers in the normal course of their dealing in the community; by their public service activities; by their social activities.

I think that's the way most firms grow and develop.

Q. Do, in fact, law offices in the State of Arizona grow and develop?

A. Yes.

Q. Are you generally acquainted with the lawyers of all ages throughout the state?

A. I think fairly well so.

Q. In this connection, have you formed an opinion as to whether lawyers, generally speaking, who seem to you to (25) be of any real competence, in fact, are successfully developing practices within a few years of their entry into the profession here?

A. It's my impression that any lawyer of average or better than average competence, who is willing to make an effort, is developing a sustaining, successful practice.

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

A. The active membership at the present time is just under 4,000. The total membership is about 4,650 members.

Q. Do you happen to know what the growth figures are in recent years?

Is there any comparison that you are able to make?

A. Well, I think since I arrived here in 1960, the Bar has more than doubled.

Q. I believe you have just told us that this 4,000 or so persons are, in fact, engaged in the practice of law, with reasonable success, if they are of any competence, without having used devices of solicitation or advertising; is that correct?

A. That's my impression.

Q. Well, now, is there, in fact, an unmet need in the community for legal services, on the part of the public?

(26) A. I think there is.

Q. What is that unmet need?

Would you describe it?

A. I think there are probably a fair number of people who have legal problems who are not having them attended to.

Q. What has your administration done, if anything, while you have been in the

leadership of the State Bar to deal with that problem?

A. We are in the process of implementing the Group Prepaid Legal Service Plan, which I was asked about on cross-examination. We have attempted to promote the concept of public interest law.

There is a committee right now which is exploring the ways in which the legal clinic concept can be properly developed.

I think those are the areas in which the State Bar has functioned primarily to meet the unmet needs of potential clients.

Q. You also mentioned earlier there is also a Legal Aid program in the state. Is that a program to be encouraged by the County Bar?

A. Yes, the Legal Aid and prepaid plan services are primarily sponsored by the County Bar Association.

Q. You were asked questions earlier about the Bar's (27) view on advertising.

What, in your opinion, is the evil of advertising of professional services, in this profession?

A. Well, there's already been a fair amount of discussion about solicitation as an evil generated by advertising. I think the advertising of legal services can be inherently misleading to an uninformed potential client.

Q. How is that so?

How is advertising likely to be misleading in this field -- correction -- I want to put this question with great care, because I suspect this part of the record will be used elsewhere.

You said advertising can be misleading; that is, advertising of legal services.

Do you regard it as likely to be misleading?

A. Yes, I do.

Q. Why?

A. Well, while I am certain that

there are certain tasks undertaken by lawyers which turn out to be essentially repetitive, it is difficult, if not impossible in advance to know whether a prospective client's problem is going to be like the last client's problem. I think if you advertise your ability to serve a prospective clientele by the rendition of services to solve certain kind of (28) categorical problems for a certain price, the advertisement in and of itself assumes that the problems are going to be the same, and that you will be able to render a quality service at a predetermined price.

Now, all I can say is that that assumption is contrary to my experience, because while as I say there are obviously cases which bear striking similarities, and services which bear certain similarities, that's something you can't know in advance, and each case -- almost every case presents distinct and major wrinkles -- they may be

major or minor wrinkles -- and to the extent they may be major wrinkles, they may affect whatever you may charge to the client.

Q. Let me ask, have you done any services in the field of domestic relations?

A. Yes, I have.

Q. Can someone advertise consent divorces, so and so much, without misleading anyone?

A. I think it's thwart with problems.

Q. Why?

A. I suppose you can get lucky and have three clients come in in response to such an ad who have no children; no real property; no real disagreement, and you can handle such an uncontested divorce, and do a proper job for a predetermined, (sic) prestatd price.

(29) On the other hand, I think the odds are just as great that the prospective client comes in, and even though there is no real disagreement with the prospective

client, suppose you find that the prospective client was married before; that there are children of two marriages, and that there is real property in three jurisdictions, and even though there is no disagreement on how this property and custody should be dealt with, this requires greater effort to solve properly and competently.

I don't think the lawyer who says, I will do this for the predetermined price, is going to be able to deliver the same quality service, and if he is trying to do this, and competently handle all of the unforeseen special problems attendant to that particular client's situation.

In short, what I'm saying is that it seems to me that the inherent vices that you can't know in advance, what special problems the client who sees the advertisement will present, and if you are bound to a predetermined price, it seems to me that sooner or later you are going to have

to inevitably sacrifice the quality of service you are able to render.

Q. Can't you, instead, snake them in your announced price, then put in some add-ons, like the auto dealers?

A. That's obviously the logical consequence, and (30) what probably might make it inherently difficult. Either the client is mislead, (sic) that he is going to get a quality service and ultimately doesn't get that because of the lawyer's inability to deliver it, or he gets in and thinks it was an uncontested divorce, and finds there are problems, which in the lawyer's definition of an uncontested divorce. Then he is going to charge more.

It's like the telephone company. It's going to sell you a telephone; it's the Princess phone, and by the time you are through it's three or four different things.

I think those add-ons are what

the average lawyer deals with after he hears all of the facts, and then he can quote a fee that's going to fit for the particular problem he is going to handle, to deal with those situations.

Q. Do you believe that legal advertising would serve the public interest?

A. I certainly don't believe at this point in time that price advertising would serve the public interest.

Q. Do you think it would disserve the public interest?

A. I think it would.

Q. Why? Anything to add to what you have already said?

A. Only kind of a generalized observation. I think (31) that to the extent that if we assume hypothetically that price advertising is going to generate a lot of business for those offices which engage in it, to the

extent that my assumptions are correct, mainly, that the lawyer who engages in set price advertising is unable to deliver a quality service, or has to revise the pre stated price because of facts presented by the client's particular problem. Either of these things, it seems to me, are going to lead to further disenchantment on the part of the public, and further disillusionment with lawyers in general.

Now, that's the disservice to the public from the public's point of view. There is a whole other dimension from the Bar's point of view, which also has some impact on the public.

Q. What is that?

A. One of my deep concerns about this problem relates to the ability of the Bar to deal with whatever deception arises, intentional or otherwise, in the area of advertising.

Q. Let me take you into that subject, please. How does the Bar handle disciplinary matters?

You opened that topic a little with Mr. Canby. Would you enlarge on it now, and describe it?

A. Well, the routine complaint is brought to the (32) attention of the staff people in the Bar offices, by a disgruntled client; by a lawyer or a judge; by the Board of Governors, upon reading of something in the newspaper or hearing in some other way, by the Local Administrative Committee.

It is then, in almost every case referred to the Local Administrative Committee for attention. The Local Administrative Committee appoints someone who is called Bar counsel, to actually handle the investigation and serve as counsel for the Bar in the proceedings. The function to is com-

parable to that of a state attorney,
or whatever.

The Bar counsel investigates;
reports to the Local Administrative
Committee, and, in effect, the Commit-
tee then makes a determination as to
whether or not there is probable cause
to believe that a violation of the Code
of Professional Responsibility has been
committed. If the Committee makes such
a determination, then the Committee
directs Bar counsel to prepare what is
called a Formal Complaint, a written
document which is then served upon the
Respondent's attorney, and at that point
in time all of the procedural safeguards,
rights to due process and so forth are
invokable by the Respondent's attorney.

The hearing is held. The Respon-
dent is entitled to cross-examine wit-
nesses; present evidence; have (33)
transcript of the proceedings; confront

-- in cases where the charge is based upon someone's allegation, confront his accuser, and so forth.

The Committee then considers the evidence and makes a determination as to whether or not the charges alleged in the Formal Complaint have been established. If they so find, they then make Findings and a Recommendation of Discipline to the Board of Governors.

If they find that it has not been sustained, they recommend dismissal.

In either event, the matter can be considered by the Board of Governors. The Board of Governors, at that level -- the Respondent and his counsel and Bar counsel appear before the Board of Governors. It's not really a de novo proceedings, because at that level the Board is going on the record established at the Local Administrative Committee, but the Board will hear any-

thing that the Respondent cares to say at that point, either in litigation or in other way bearing upon the record established at the Local Administrative Committee.

The Board can then simply affirm the Findings and Recommendations of the Local Administrative Committee; modify them; reverse with directions or further investigation, or whatever.

If the Board of Governors affirms it, then it (34) makes a Recommendations and Findings to the Supreme Court, and at that level the Respondent and his counsel have opportunity to object to the Findings; appear before the court and make argument, and so forth.

The court, of course, is the final repository of discipline authority in the state.

Q. And the court is the only one which can actually impose a discipline;

is that correct?

A. That's correct.

Q. Now, the activities which you are describing only rarely happen in matters of advertising, I assume. Is that correct?

A. Very rarely.

Q. As a matter of fact, this episode is the first case of outright advertising you have ever seen?

A. That is true.

Q. Let's go to what those other cases are. A number of those cases involve, I believe, outright charges of crime, fraud or very serious injury to persons; isn't that so?

A. True.

Q. Stealing their money?

A. True.

Q. Or in otherwise taking advantage of them, which may overlap with actual criminal offenses?

(35) A. True.

Q. Now, quantitatively, how many of the cases are there, all told?

A. Well --

Q. I asked you to be prepared on this, and you probably have some facts but to facilitate the matter, will you tell, if you have them, what the volume of these matters is, and what the time factors are that go into their handling?

A. I'll do my best.

In 1975, there were 330 Complaints docketed. As of January 6, 1976, 215 were still pending.

There are 40 Local Administrative Committees in the state, plus four special committees assigned for one Complaint only.

A review of the reports show that hearings on approximately 30 matters were held during 1975, and that an additional five matters were resolved

by stipulation. This means that that's the approximate number of matters which went to the Supreme Court, although, there were some additional matters sent early in 1976. A fair percentage was dismissed after investigation.

I should have added in explaining the disciplinary process, that all of the members of the Local Administrative Committee are lawyers who are volunteering (36) their time.

Q. On that score, the whole thing is voluntary; isn't it?

A. Right.

Q. The Board of Governors is uncompensated?

A. That is true.

Q. And the local operations is an operation carried on by busy people; is that right?

A. With minor exceptions. After January 1, 1975, we added a full-time

staff Bar counsel, whose primary responsibility is to oversee the disciplinary process, and to make sure the volunteers are doing their job. He also has actively served as Bar counsel in a limited number of matters. I think seven or eight matters last year.

We have an investigator on the staff, who investigates a limited number of Complaints which are filed.

Of course, there are some secretarial and clerical personnel in the Bar office, whose sole responsibility is in the disciplinary area, but beyond those exceptions the entire process is voluntary.

Q. Mr. Harrison, how long does it take to move these cases, generally speaking?

A. The best answer I can give you, I looked at what we call the Disciplinary Coordinator's Report, and it was (37)

produced in February, and although the report itself is confidential, on February 2, 1976, there were Complaints pending for six months or longer, 87.

Q. Is it true, Mr. Harrison, that a fairly sluggish nature of the whole process is a matter of great concern to the Bar and the public?

A. It is. I think, as far as I'm concerned, that is the most serious facing the Bar. One of the most serious.

Q. Now, this is in real part, I assume, a factor of the work volume that has to be handled; is that right or wrong?

A. That's right.

Q. Now, we come to the matter of advertising. Let us suppose that the Bar undertakes, by the use of these procedures, to review widespread advertisements in the newspapers as to whether they are misleading or not. Can we handle that, under the existing system

and with the existing machinery, at all?

A. I think not.

Q. Is the practice effectively to be that we will, in truth, have no control whatsoever?

A. I think, quite frankly, the system is -- I won't say on the verge of breaking down right now, but it is certainly strained beyond its reasonable capacity, and if (38) we try to superimpose on the existing system either a review by the bar in some way of advertising, or a response by the Bar to the unrealized expectations of those clients who relied on advertising to advertising, the system as it is presently constituted couldn't handle it.

Q. Isn't it true that the greatest single deception that could arise in the whole business would be to hold out to the public whether, in fact, we had

any control over whether an ad was misleading or not?

A. That would certainly be one of the greater deceptions.

Q. Mr. Harrison, I'd like to go to one of the other subjects, and that is concept of the profession as a public calling to which you made a reference, and here I'll narrow it down to this office and you, and the people you know best, your own partners.

What does this office, in fact, do either to improve the corpus of law or to improve the profession, as you envision either of those things?

A. Well, in terms of improving the corpus of the law, as you put it, all of my partners and I have served on various sections and committees which deal with substantive -- which deal with improvement in the substantive areas of the law.

(39) My partner, Buzz Singer, has been chairman of the taxation section; my partner Bob Myers was for many years the chairman of the uniform juries. I have been for many years on the Appellate Rules Committee. We encourage our associates to get involved in that sort of thing.

Q. Are those substantially time-consuming?

A. Quite.

Q. How about the matter of the profession itself? Take, for example, your work earlier as County Bar President -- if that's the proper title for the county -- and now State Bar President, what fraction of your time do you give to these activities?

A. Well, there's no comparison between the two, but this year I would say I am spending about two-thirds to three-quarters of my normal time on

Bar-related matters.

Q. So that, in fact, as a matter of income, you are sustained by the efforts of your partners of this year? It's become a leave of absence, as a practical fact?

A. I hope I'm sustained by my partners.

Q. Now, let me go to the matter of free work or discounted work, which may be undertaken by this office, not as a matter of simply the accident of somebody not paying, but by design and policy. What do you do?

A. Well, for two years I served as uncompensated (40) counsel for the state Democratic party. I have been cooperating counsel for the ACLU for many years, and although I haven't handled any cases for the last two years, because of my increasing activities with the Bar, I have handled

cases for the ACLU.

This office undertook to serve as counsel for the Metropolitan Resource Business Center, which is an ongoing institution in Phoenix designed to help low-income people who are starting in businesses, and that center developed a panel of lawyers and accountants who serve without fees and counsel those prospective businesses in the development of their business enterprises. We have done that for a couple of years.

We have devoted a fair amount of time to the work of public interest law firm. Although we haven't actually undertaken any litigation in the public interest law firm, we have, as a matter of fact, put in a lot of its activities.

Q. And done a good deal of fund raising for it, as a matter of fact?

A. Yes.

Q. Do you regard advertising as compatible with the professional

traditions and ideals of lawyers?

A. I certainly don't regard price advertising or advertising in any generalized sense as compatible with (41) the concept of a profession.

Q. Well, you have from time to time referred to price advertising, which obviously implies you have in mind something else. To shortcut, I'll go to it, since we have talked about it.

You do believe that listing of specialization is proper; is that correct?

A. I am -- as you know, my thinking about this is somewhat in a state of flux, but I have less concern about the dissemination in some restrained way of data bearing upon the lawyers' qualifications than I do about price advertising, about which I have already commented at length.