TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Page

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-316

JOHN R. BATES and VAN O'STEEN,

Appellants,

v.

STATE BAR OF ARIZONA,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF ARIZONA

BRIEF AMICI CURIAE ON BEHALF OF MARYLAND STATE BAR ASSOCIATION, INC., ALASKA STATE BAR ASSOCIATION, DELAWARE STATE BAR ASSOCIATION, BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA, IDAHO STATE BAR, IOWA STATE BAR ASSOCIATION, NEW YORK STATE BAR ASSOCIATION, STATE BAR OF TEXAS AND WEST VIRGINIA BAR ASSOCIATION

INTERESTS OF THE AMICI CURIAE

These *amici curiae* are state bar associations whose members, for the most part, are practicing lawyers in the several states of Maryland, Alaska, Delaware,

Idaho, Iowa, New York, Texas, West Virginia and the District of Columbia. Each of the *amici*, with the exception of the Bar Association of the District of Columbia, is the largest association of lawyers in those states. Each of the *amici* are devoted to the improvement of the administration of justice, the providing of effective and economical legal services, the protection of the public and the progress and improvement of the legal profession. All of the *amici* are obviously interested in the proper resolution of the very important issues presented to the Court in this case. For these reasons, they have submitted this brief, after having obtained the written consents of the parties thereto which have been filed with the Clerk as required by Rule 42-2.

INTRODUCTION

A. *Amici's Assumptions Concerning the Nature Of The Legal Profession.* "The attacks . . . are merely an expression of the unrest that seems to wonder vaguely whether law and order pay. When the ignorant are taught to doubt, they do not know what they safely may believe. And it seems to me that at this time we need education in the obvious more than investigation of the obscure." Holmes, *Law and the Court,* in Collected Legal Papers (1920), at 291, 292-93. The present brief is tendered in this faith, expressed by a man who, although recognizing "the greedy watch for clients and practice of shopkeepers' arts", still believed that "the law is the calling of thinkers." Holmes, *The Profession of the Law,* in Collected Legal Papers (1920), at 29-30. In the same vein, Justice Holmes observed that "one of the good things about the law is that it does not pursue money directly. When you sell goods the price which you get and your interests are

what you think about in the affair. When you try a case you think about the ways to win it and the interests of your client. In the long run this affects one's whole habit of mind, as anyone will notice if he talks much with men." Holmes, *The Bar as a Profession*, in Collected Legal Papers (1920), at 153.

The present firestrom of public discussion of lawer advertising also would have been well understood by Judge Learned Hand:

> "The shores are no longer studded with rows of solid columns to break the waves of propoganda; they are not studded with anything whatever, and the waves sweep over them without obstacle and run far up into the land. . .In recent times we have deliberately systematized the production of epidemics in ideas, such as a pathologist experiments with a colony of white mice, who are scarcely less protected. The science of propoganda by no means had its origin in the Great War, but that gave it a greater impetus than ever before. To the advertiser we should look for our best technique. I am told that if I see McCracken's Toothpaste often enough in streetcars, on billboards and in shop windows, it makes no difference how determined I may be not to become one of McCracken's customers, I shall buy McCracken's Toothpaste sooner or later, whether I will or no; it is as inevitable as that I shut my eyes when you strike at my face. In much the same way political ideas are spread, and moral too, or for that matter religious. . .I submit that a community used to be played on in this way, especially one so large and so homogeneous as we have become, is not a favorable soil for liberty. That plant cannot thrive in such a forcing bed; it is slow growing and needs a more equitable climate. It is the product, not of institutions but of a temper, of an attitude towards life; of that mood that looks before and after and pines for

> what is not. It is idle to look to laws, or courts, or principalities, or powers to secure it. You may write into your constitutions not 10 but 50 amendments and it shall not help a farthering, for casuistry will undermine it as casuistry should, if it has no stay but law." Learned Hand, *Sources of Tolerance,* in **The Spirit of Liberty** (1960), at 73-75-76.

The instant assault on the traditional restrictions upon lawyer advertising has two branches, that allegedly founded upon the First Amendment, and that founded upon a new interpretation of the antitrust laws. To each of these extravagant claims Judge Hand's description seems fitting:

> "In their day they rack the world they infest; men mill about them like a frantic herd: not understanding what their doctrines imply, or whither they lead. To them attach the noblest, and the meanest, motives, indifferent to all but that there is a cause to die for, or to profit by. Such habits are not conducive to the life of reason; that kind of devotion is not the method by which man has raised himself from a savage. Rather by quite another way, by doubt, by trial, by tentative conclusion." *Id.* at 74-5.

If the bar in fact exercises in our society the function of subjecting new suggestions to critical scrutiny in light of past history which De Tocqueville ascribed to it, then it is entirely appropriate that a case involving its practices should provide the occasion for a clear definition of the limits upon the doctrinal developments upon which the appellants here rely. Morality of the mind requires, as Professor Freund has pointed out, recognition of the limitations as well as the potentialities of case authority. Freund, The Supreme Court of the United States (Meridian ed.), p. 144 (1961). And it is altogether appropriate that the

organized bar should stand against the tendency described by Justice Schaefer:

> "Much more than in the past the lawyer's quest has become a search for quotable words which regardless of their initial context can be read in the abstract to bear upon the situation at hand. The pressure is thus toward a jurisprudence of words or phrases divorced from fact and capable of generating new words and phrases with independent lives." Schaefer, *Book Review*, 84 Harv. L. Rev. 1558 at 1559 (1971).

B. *The Mixed Motives Which Propel Appellants And Their Amici.* The present assault on traditional advertising restrictions appears to proceed from a variety of motives. First, there are the motives of the profiteers alluded to by Judge Hand - those who cluster on any mass movement. The Maryland Bar as well as that of Arizona already offers the courts illuminating examples of these. Those claiming a right to advertise in the Arizona case now before the Court seek the right to advertise their fees for services, such as change of name, which do not require the assistance of a lawyer. Those asserting similar claims in Maryland (the plaintiffs in action styled *Cawley, Schmidt and Sharrow, et al.* v. *Maryland State Bar Association, Inc., et al.* Civil No. 76-1748, in the United States District Court for the District of Maryland) placed advertisements for business masquerading as advertisements for personnel (Appendix A to this brief). Additionally, by offering their services in workmen's compensation, unemployment and social security matters on a contingent fee basis (Appendix B hereto) the Maryland complainants display the pathology alluded to 40 years ago by the late Karl Llewellyn:

> "Solicitation is frequently itself a semi-fraud, as when routine payments already in process for some government office are made to appear needful of expert advice - on contracts for half of the payment as a fee." Llewellyn, Jurisprudence (1962), p. 252.

This conduct is indeed, to quote a dictum of Justice Holmes "fraudulent in itself, and has no merits of its own to commend it to the court."

Second, are the motives of those who desire to substitute more stringent forms of public regulation for what is perceived as the lax discipline imposed by courts and expert professional bodies. Under this category fall Amici, the Consumers Union, and others who, while seeking the right to engage in certain types of publication of self-serving declarations by members of the bar also seek the continuing prohibition of forms of advertising deemed fraudulent, misleading or even unfastidious, and who concurrently demand more stringent regulation of the legal profession by bodies under lay control or with lay representation or by the Federal Trade Commission.

Third, there are the motives of those riding the hobby horses of economic theory, exemplified in this case by the brief of Amici Curiae, The Mountain Plains Congress of Senior Organizations, et al. These groups seek to liberate from present restrictions only those forms of advertising which they deem of economic value, endeavoring to distinguish "informational" from "taste changing" advertising (Brief, pp. 15-16). These groups would support disciplinary rules aimed at "extravagant, artful, self-laudatory brashness. . .puffery, brashness and artfulness" (*ibid*). Presumably they also support the continued regulation of the content of such objectionable advertising by economic expert bodies, such as the Federal Trade Commission and the antitrust

division, whose officials, unlike those of the courts and bar disciplinary organizations, may possess the desired qualities of economic tunnel vision. Those who support the present assault because of desired economic gains to the groups they represent generally postulate and seek to advance a model of legal services and ethics presupposing that legal tasks are fungible and "uncomplicated" (*id.* at 18).

Finally, there are the motives of those who welcome the lifting of restrictions because of concern with jobs for the practitioners – with multiplying the total demand for legal services, no mind the cost in deteriorating professional conduct, increased social conflict, economic cost to society as a whole, or imposition upon users of such services. This strain likewise is not absent from the published literature. See *e.g.*, Freedman, Lawyer Ethics and An Adversary System (1975), p. 115. Wilson, *Madison Avenue, Meet the Bar,* 61 A.B.A. J. 586 (1975).

C. *Consequences For The Public, The Bar and The Court.* Obviously, the aspirations of the various groups contending for change in existing restrictions are inconsistent with, and, to a substantial extent, antagonistic to each other. The Consumer's Union demands a individualized weighing process in which the merits of its proposed legal directories are weighed against the merits of enforcement by the bar of advertising restrictions. This demand rests on the faith that such a process of legislative second guessing by the judiciary will permit Consumer Union legal directories, including self-serving statements by lawyers, to be vindicated while most if not all forms of direct private advertising by legal practitioners continue to be suppressed. It is difficult to believe, given the demands for fastidiousness in advertising put forth by Consumers Union in other contexts, that a collision will not ultimately result

between its preferences and those of groups such as the Messrs. Bates and O'Steen, Cawley, Schmidt and Sharrow and other "legal clinics". The latter groups, with their heavy emphasis on the First Amendment claims, seek a virtually absolute protection for advertising by professionals inconsistent with the preferences of consumer organizations who do not favor interpretations which would virtually repeal not merely existing restrictions on advertising by professionals, but most of the Federal Trade Commission Act as well.

Nor can it be believed that the preferences of the lawyer-appellants will not ultimately collide with those of groups such as the Mountain Plains Congress of Senior Organizations who, mindful of the nation's rich traditions of fraudulent advertising and the teachings of many prominent economists with respect to the contribution of advertising to the suppression rather than promition of competition, seek the continued vigorous suppression of non-informational advertising, including not merely fraudulent advertising but that deemed 'extravagant, artful, self-laudatory, brash or puffing.' Nor will the preferences of the economists of the Chamberlin-Robinson school and their acolytes remain out of collission with those of the devotees of complete laissez-faire, such as Professor Posner and his disciples, who would liberate all advertising from restriction. Similarly, the groups putting forth claims that lawyers enjoy a virtually absolute First Amendment right to engage in such public verbal communications as they may desire will scarcely enjoy favor either with consumer organizations seeking more stringent regulation of advertising content or with groups relying upon economic theories of imperfect competition with their stress on the goal of separating desirable from undesirable advertising by a process of rigid public control.

Thus, if the present claims of appellants and their supporters in Maryland and other jurisdictions are vindicated, a tower of babel will ensue and a second, third, fourth and fifth generation of cases involving the permissibility of restrictions upon legal advertising will be deposited upon this Court's doorstep. A common attribute of these ensuring generations of cases will be demands that this Court distinguish between advertisements whose content is permissible and advertisements whose content is not permissible, either because they puff, are fraudulent, self-laudatory, tend to the stirring up of litigation, are indecorously expressed or otherwise objectionable.

It is difficult to believe that the end result of recognition of the appellants' claims will not be (1) increased involvement by this Court (as, in effect, a Final Grievance Commission of the American Bar) in the making of distinctions between permissible and impermissible content similar to the detailed involvement which already exists (or until recently existed) in the area of obscenity; (2) a state of continuing confusion in lower courts, among bar disciplinary groups, and in the profession at large; (3) increased vulnerability of lawyers to disciplinary complaints, whether well or ill-founded, in consequence of uncertainty in the rules not now existing; and (4) concomitantly with the first three consequences, a state of almost complete practical laissez-faire in which such restrictions as are permitted to survive in theory will be vitiated in practice, since vague and shifting restrictions will be imposed on an occupational group peculiarly well equipped to perceive and exploit any areas of uncertainty and ambiguity.

These undesirable consequences are neither consistent with nor demanded by either the principles of the First Amendment or those of the antitrust laws.

SUMMARY OF ARGUMENT

I. Appellants and their supporting *amici* argue that the constitutional test to be applied to restrictions on lawyer advertising is that which is traditionally applied to political speech. This Court, however, has imposed a number of qualifications on the notion that verbal communications must be subject to a "compelling interest" and "overbreath" analysis. One of the most significant of these qualifications was made in *New York Times* v. *Sullivan,* 376 U.S. 254 (1964). There, the Court appeared to abandon the "two-level" or "non-speech" theories in distinguishing between constitutionally protected verbal communications and those which are not so protected. Consistent recent decisions of the Court have emphasized the proximity of particular forms of speech to the "central meaning" of the First Amendment, *i.e.*, political discourse.

Applying the "central meaning" approach, it is clear that the commercial transactions proposed in appellants' advertisement do not involve participation by individuals in the political process determining the governance of society. There is no support in the case law for appellants' contention that the First Amendment requires that a "strict scrutiny" test be applied to efforts by the state to regulate advertising by lawyers or any other verbal communications by persons with a direct economic interest in the communication.

II. The regulations of Arizona, and of Maryland and of other States, relating to lawyer advertising are not the effusion of private bar associations; they are laws embodied in codes adopted by the highest court of each state in pursuance of its regulatory authority over the legal profession. Such regulations (which, in Maryland, are enforced by a purely public body, The Attorney Grievance Commission), fall clearly within the

state action exemption from the coverage of the Sherman Act. *Parker* v. *Brown*, 317 U.S. 341, 350 (1943).

Although the United States, speaking through the Solicitor General, has conceded the inapplicability of the antitrust laws to the Arizona disciplinary canon against lawyer advertising, appellants nevertheless confidently assert that not only are the antitrust laws applicable, but also that the prohibitions against commercial advertising by lawyers represent a *per se* violation of the Sherman Act. That proposition is erroneous. *State of Arizona* v. *Cook Paint & Varnish Co.*, 391 F. Supp. 962 (D.Ariz. 1975). The origins of the prohibitions against lawyer advertising show convincingly that their purpose was not to enhance the cost of legal service. Rather, these rules arose out of a necessity to protect the public against the solicitation of litigation, extravagant and misleading claims of legal ability and success in representing clients, and abuse and misconduct by some lawyers. The rules against lawyer advertising thus are not based on a particular prejudice against private advertising; they are founded upon a central ethical insight, *i.e.*, that the maintenance of a sound professional relationship demands that the representation should be one initiated by the client and not by the lawyer.

This traditional model of the professional relationship which the Code of Professional Responsibility attempts to enforce is totally at variance with the view of that relationship which is implied by the actions of the appellants and several of their supporting *amici*. That view holds that professional services may be equated (or nearly so) with fungible goods. Only a model of the lawyer's function which conceives of him not as a professional but as a scribe can justify the practices of the appellants proclaimed in their advertisement and condemned by the Supreme Court of Arizona.

Although the appellants may be able to cite some experts who hold that the elimination of all advertising restrictions will serve consumer interests, Posner, Economic Analysis of Law (1974), this insight is challenged by many others in the field. The expensive, anti-competitive effects of advertising are reasonably well known, as the Federal Trade Commission can attest, both in deed and word. Before this Court as exhibits in the record of the Arizona case and as appendices to this brief, are fragmentary harbingers of the future of lawyer advertising, if it is to be permitted. These documents, written while their authors have every reason to be on their best behavior, amply suggest the undermining of ethical percepts which will ensue if legal advertising is permitted.

III. The First Amendment claims asserted by the appellants and their supporting *amici* are founded on no tenable political theory and would have disastrous consequences for virtually all forms of public regulation if taken seriously. The antitrust claims can be sustained only by embracing interpretations of law equally antagonistic to federalism, to First Amendment rights, and to sound economic judgment.

The organized bar does not contend that the existing disciplinary rules are immutable. However, to the extent that they operate to discourage resort to law except by those determined to invoke its processes, their postulate is rational and compelling. Meanwhile, change in those rules should best await their consideration by the legislatures and the state courts with authority over them after full and free discussion.

ARGUMENT

I.

THE FIRST AMENDMENT DOES NOT DEMAND THE INVALIDATION OF RESTRICTIONS ON ADVERTISING BY LAWYERS

A. The Constitutional Theories Of The Appellants And Their Amici.

The test that the appellants urge upon the Court for the validity of lawyer-advertising restrictions is that conventionally applicable to political speech, *i.e.*, "the constraint must be necessary to the furtherance of a compelling state interest . . . in addition the state must show that the restriction of speech is drawn as narrowly as possible and that no less restrictive means of regulation will suffice" (Brief of Appellants, p. 40). With respect to fraudulent and misleading advertising, appellants' brief suggests that the only prior restraints that may be suitable are restrictions upon time, place and manner "to prevent hand billing to persons under unusual physical or mental stress, as at the scene of accidents or in hospital emergency rooms" (*id.* at 53). Misleading advertising outside this narrow category is, say the appellants, "best handled by a requirement of additional disclosure," and the Court is urged to prevent states from following "the contrary path of shutting off the flow of information" (*id.* at 54), even in the case of fraudulent and misleading advertising. This position is pressed, even though the appellants also urge the Court to strike existing state court enforced restrictions on the basis that false advertising by lawyers will continue to be prohibited by state consumer

protection agencies and by the Federal Trade Commission Act (*id.* at 46). Nevertheless, under the view elsewhere urged in their brief, appellants contend that the Federal Trade Commission will presumably be disentitled to seek, outside the "emergency room" context, injunctions which would "shut off the flow of information" as distinct from imposing requirements of additional disclosure (*id.* at 54).

The constitutional claims asserted by the appellants are also urged, albeit in somewhat less sweeping form, by the Brief Amici Curiae of the Chicago Council of Lawyers. On the one hand, that particular group urges that the 'compelling state interest' test as well as restrictions on 'overbroad legislation' ought to be applicable to limitations on lawyer advertising (Amici Brief, pp. 7-8). On the other hand, the Council claims that its own proposed rule can withstand the constitutional scrutiny which it urges, notwithstanding that the proposal set out at page A-2 of its brief would preclude lawyers from making truthful statements "containing any statement of the results of any prior or pending legal proceeding or proceedings."

The Brief Amici Curiae of Consumer's Union et al while embracing the same 'compelling interest' rhetoric as the Brief of Appellants and that of the Chicago Council of Lawyers, lays more stress on a rhetoric of "balancing", presumably with an eye to the future, in which consumer groups may be expected to demand restrictions on abuses in advertising carried on by persons other than themselves (p. 7).

The Brief Amici Curiae filed on behalf of the Mountain Plains Congress of Senior Organizations and other "consumer groups" totally avoids any discussion of the First Amendment issue, probably because of justifiable terror at its implications for consumer protection. Instead, that brief urges the Court to

manipulate the antitrust laws so as to strike only restrictions upon that advertising which certain favored economists certify as being desirable.

B. Qualifications On The Sweep Of The First Amendment Imposed By This Court.

Other than incantation of catch words about compelling interest and over-breadth, appellants offer the Court no theory of the First Amendment which would bring within its terms the result which they seek. The beginnings of wisdom in this sphere are found, amici believe, in a recognition of the fact that all human conduct and all social organizations involve, in one way or another, verbal communication. It does not follow from this fact that all limitations upon human conduct or social organization are appropriately measured by a compelling interest-overbreadth test. Were this the case the function of legislatures or bodies exercising authority delegated by legislatures would disappear. All effective political power would be reposed in courts of last resort which would be engaged in this and all other social and economic contexts in carrying on the sort of peculiarly legislative inquiry urged upon this Court in the Brief Amici Curiae of Consumers Union, et al:

> "Consideration of the numerous 'factors' bearing on whether Arizona's ban on the advertisement published by appellants can meet the rigorous constitutional tests. . .inter alia, the following factors: what public interest if any are the disciplinary rules in fact designed to serve; whether that rule achieves or facilitates those purposes; the extent of consumer ignorance about the cost and availability of such services; whether potential consumers of legal services have a greater need for

information about such services than they do for other kind of services and products; the effect of the rule upon the cost and availability of legal services and upon consumer ignorance about same; the effect of the rule upon competition among lawyers; the extent to which the cost and availability of legal services can be advertised in a manner that is neither false nor misleading; whether those particular legal services advertised by appellants are relatively standardized; the extent to which the rule itself facilitates deception of and confusion among potential consumers of legal services; whether a less restrictive limitation on advertising of the cost and availability of legal services could achieve the purposes which the rule purports to serve; whether the rule is necessary to prevent false or misleading advertising of legal services and deceptive practices by lawyers; whether the enforceability of other prohibitions against false or misleading advertising or other deceptive practices by lawers would in fact be increased by the publication of some of the terms on which certain legal services are offered; whether advertising of the cost and availability of certain legal services are misleading simply because it contains some but not all of the information that a potential consumer of such services might wish to have; the extent to which other sources of information about the cost of availability of legal services are available to ordinary consumers and the cost of utilizing such sources; the extent to which efforts by the organized bar to dispel consumer ignorance about the cost of availability of legal services have been unsuccessful; and the extent to which the legal profession itself believes that the advertising ban is excessively successively broad." (Amici Brief of Consumer's Union, pp. 15-16).

Too plainly for fair argument, such an exhaustive and complex constitutional test cannot be applied to every public regulation that implicates verbal conduct. As this Court recognized in *Semler* v. *Oregon State Board of Dental Examiners,* 294 U.S. 608 (1935), effectuation of any policy generally demands, in its administration, the adoption of certain *per se* rules whose application is in no way dependent upon the carrying out of a quasi-legislative balancing process in each case. The formulation of such rules is of the essence of legislation, whether the legislative process is carried out by an elected body, or by a court in construing legislation, as by devising *per se* rules in the context of the antitrust laws. Any verbal understanding, including any horizontal price fixing agreement condemned by the Sherman Act, involves verbal communication. Nevertheless, few would contend that the Supreme Court's rejection of the "rule of reason" in the context of horizontal price fixing and other condemned practices alluded to in the brief of Amici Curiae Mountain Plains Congress of Senior Organizations, et al, is on that account unconstitutional.

Clearly, for such rules to exist, in antitrust or in any other area of the law, the notion that all verbal communication is subject to a "compelling interest" and overbreadth task must be qualified. It is not necessary to rehearse the history of First Amendment theory in this Court to indicate that this Court has in fact made such qualifications. Some of the qualifications have been achieved by characterizing various verbal activities as "conduct" rather than speech, or as "speech plus". Other qualifications arise by efforts to segregate regulations of time, place and manner, such as those at issue here, from regulations of the substance of communications. Still other qualifications arise from

efforts on the part of this Court to identify the central meaning and purpose of the First Amendment. Certainly, the last of these strains provides the unifying principle with respect to most of this Court's recent decisions involving the scope of the First Amendment. Its decision in *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), appeared to many commentators to constitute a partial abandonment of efforts to segregate protected from non-protected verbal communication on the basis that non-protected communication was "not speech", and to replace that essentially fictitious formulation with new doctrine, founded upon the proximity of particular forms of speech to the central purpose of the First Amendment. This abandonment of the earlier "two level" or "non-speech" theory of course explains the recent repudiation of this Court's old decision in *Valentine* v. *Christiansen*, 316 U.S. 52 (1942), holding commercial advertising totally unprotected, which was worked by its opinions in *Bigelow* v. *Virginia*, 421 U.S. 809 (1975), and *Virginia State Board of Pharmacy* v. *Virginia Citizens' Consumers Council*, – U.S. –, 96 S. Ct. 1817 (1976).

In *New York Times* v. *Sullivan*, in invalidating restrictions on libel of public officials previously not regarded as involving "speech" enjoying constitutional protection, the Court stressed the relation of such political speech pertaining to the conduct of public officials to "the central meaning of the First Amendment", 376 U.S., at 273 (1964). The late Professor Harry Kalven, Jr. wrote of this opinion:

> "What criterion, we may ask, tells the Court that the Alabama libel law is unconstitutional under the first amendment? In many ways, the most unusual thing about the majority opinion of Justice Brennan is that it reads as though we are starting all over again to build a free speech doctrine

afresh. There is not a word of clear and present danger or of balancing. The key source of insight for the court, following closely the very able brief for the defendants on which Professor Wechsler participated, comes from seditious libel – or rather from what one might better call the negative radiations from seditious libel. Neither factual error nor defamatory contents serve, we are told, 'to remove the constitutional shield from criticism of official conduct.' Then follows a profound and welcome sentence, lifted literally from the Wechsler brief: 'this is the lesson to be drawn from the great controversy over the sedition act of 1798, which first crystallized the national awareness of the central meaning of the first amendment.' . . .One is tempted to observe that the very curious facts of the *Times* case forced the court back to the discovery of a basic truth about the First Amendment, namely that the core of its constitutional protection must be to guard against treating seditious libel as an offense and that we are now to work out toward a more complete theory from there. While the opinion is devoted primarily to the problem before it – that of criticism of public official – there are strong suggestions in it of an extremely broad and generous view which is highly reminiscent of the position of Alexander Meikeljohn." Kalven, The Negro and the First Amendment (1963), at 57, 59).

Mr. Justice Brennan, the author of the opinion of the Supreme Court in *New York Times* v. *Sullivan,* himself has acknowledged indebtedness to Professor Meikeljohn's formulation, see Brennan, *The Supreme Court and the Meikeljohn Interpretation of the First Amendment,* 75 Harv. L. Rev. 1 (1965). It is true that there are recent indications that even in areas touching at the core of the First Amendment, as defined by the

Meikeljohn theory, the Court will employ a "balancing" approach, albeit one weighted with a presumption, rather than one of "strict scrutiny". *Nebraska Press Association* v. *Stuart*, – U.S. –, 96 S. Ct. at 2801-04, 2807-08 (1976) (per Burger, CJ and White, Blackmun, Powell and Rehnquist, JJ). Nevertheless, all of this Court's recent opinions, including that one, have stressed the relevance of the Meikeljohn conception to the extent of the Court's scrutiny of the challenged regulation of verbal conduct. Thus, in *Buckley* v. *Valeo*, 424 U.S. 1, 14-15 (1976) the Court stressed the special function of the First Amendment in promoting democracy by protecting political discourse. This reference in *Buckley* v. *Valeo* came in the context of a holding invalidating certain restrictions upon political discourse. Cases upholding challenged restrictions upon verbal communications imply a similar test. Thus, in *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 (1974), the more limited relevance of the First Amendment to libel of private individuals was emphasized. In *Ginsberg* v. *New York*, 390 U.S. 699 (1969), the First Amendment was held to afford more limited protection to restrictions on the distribution of speech to minors, who are not participants in the political process. In *Lehman* v. *Shaker Heights*, 418 U.S. 298 (1974), it was pointed out that speech directed at unwilling listeners who were assumed not to be likely to be influenced by it in their political choices enjoys less First Amendment protection. In *Brigham Young* v. *American Mini Theatres, Inc.*, ___ U.S. ___ 96 S. Ct. 40 (1976), four members of the Court, Chief Justice Burger and Justices Stevens, Rehnquist and White, held that sexually explicit speech, even that non-obscene under conventional tests, enjoys less protection against regulation than political speech. In *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*,

supra, this Court was explicit in its recognition that commercial speech did not enjoy the intense First Amendment protection accorded political speech. *Garrison* v. *Louisiana,* 379 U.S. 694, 74-5 (1964), in which this Court declined to give First Amendment protection to knowingly false speech because of its lack of relation to the democratic political process, and *Miller* v. *California,* 413 U.S. 15 (1973), in which this Court upheld local variations in the rules governing obscenity in part on the basis that such rules were not central to preservation of the political process, also provide illustrations of the same approach. Other references to political expression as lying at the core of the First Amendment are found in *Monitor Patriot Company* v. *Roy,* 401 U.S. 265, 271-72 (1971), *Stromberg* v. *California,* 283 U.S. 359, 369-70 (1931) and *Mills* v. *Alabama,* 384 U.S. 214, 218-19 (1966). The traditional exclusion of the military from active participation in the political process in a democratic state was advanced as a justification for the result reached by the Court in *Greer* v. *Spock,* ___ U.S. ___, 96 S. Ct. 1211 (1976). Similar reasoning relating to the participation of government employees in the political process was advanced in *United States Civil Service Commission* v. *National Association of Letter Carriers,* 413 U.S. 548 (1973). On similar grounds, the Court has held that illegal speech does not enjoy constitutional protection against prior restraints. *Pittsburgh Press Company* v. *Pittsburgh Commission on Human Relations,* 413 U.S. 376 (1963). In light of this line of cases, it is worth noting exactly what Professor Meikeljohn said concerning the appropriate contours of constitutional protection of free speech:

> "The preceding section may be summed up thus: the First Amendment does not protect a 'freedom to speak.' It protects the freedom of those

> activities of thought and communication by which we 'govern.' It is concerned, not with a private right, but with a public power, a governmental responsibility . . ." (Meikeljohn, *The First Amendment is an Absolute,* 1961 Supreme Court Review at 255).
>
> "We recognize that there are many forms of communication which, since they are not being used as activities of governing, are wholly outside the scope of the First Amendment. Mr. Justice Holmes has told us about these, giving such vivid illustrations as "persuasion to murder' and 'falsely shouting fire in a theatre and causing a panic.' And Mr. Justice Harlan, referring to Holmes and following his lead, gave a more extensive list: (366 U.S. at 49 n.10) 'libel, slander, misrepresentation, obsenity, perjury, false advertising, solicitation of crime, complicity by encouragement, conspiracy . . ." (at 258).

The changes of names, declarations of personal bankruptcy, and divorces that are the subject of the instant case involve, by no stretch of the imagination, "activities of governing." Cf. *California Motor Transport Co.* v. *Trucking Unlimited,* 404 U.S. 509, 513-514 (1972). They do not involve entry into the public forum to debate the wise governance of society. They involve private interests – indeed frequently the most imaginably selfish private interests. The cases, such as *NAACP* v. *Button,* 371 U.S. 415 (1963), and the labor union cases involving the rights of persons who have voluntarily associated for political purposes[1], are of no help to appellants here. The commercial transactions proposed by the advertisement condemned by the Arizona State Bar in its enforcement of the Arizona

[1] *Brotherhood of Railroad Trainmen* v. *Virginia State Bar,* 377 U.S. 1 (1964); *United Mine Workers* v. *Illinois State Bar,* 389 U.S. 217 (1967).

Supreme Court rules in no sense involve participation by individuals in the political process determining the governance of society.

No tenable theory of free speech consistent with what the Court has recently said can so stretch the protection of the First Amendment as to impose upon state restrictions of advertising by lawyers the "strict scrutiny" or "over-breadth" tests urged by appellants here. The lame effort of appellants, in §1A3 of their brief (pp. 37-40), to urge that some sort of special First Amendment interest attaches to the advertising of legal services because the recipients of advertising have a constitutional right to use such services is of a piece with the efforts made in *San Antonio Independent School District* v. *Rodriguez,* 411 U.S. 1 (1973), and *Dandridge* v. *Williams,* 397 U.S. 471 (1970), to bring other economic interests under the rubric of "strict scrutiny" First Amendment protection. In *Rodriguez,* it was earnestly urged that the undoubted First Amendment protection enjoyed by education required that measures relating to its finance meet a strict scrutiny test. In *Dandrige,* this Court was told that the ability of welfare recipients to exercise First Amendment rights would be gravely impaired if minimum subsistence was not assured them. In each instance, this Court held that the connection with First Amendment rights of political speech was too remote to justify removing from state courts and legislatures large portions of their responsibilities for regulation of economic and social conduct. The present claim of special First Amendment protection is no less strained.

First Amendment claims might indeed protect economically disinterested private organization, such as Consumers Union in their publication of information derived from clients about charges of particular lawyers in their vicinity or their performance, as distinct from

the self-serving declarations of economically interested lawyers. The case law, however, offers no support for the notion that the First Amendment demands that the 'strict scrutiny' test be applied to efforts by the state to regulate advertising or other verbal communications by persons with a direct economic interest. This insight is not peculiar to Professor Meiklejohn and those influenced by his formulations. Professor Emerson, in his effort to define a general theory of the First Amendment, has defined "the purpose of a system of freedom of expression – to allow individuals to realize their potentialities and to facilitate social change through reason and agreement rather than force and violence." Emerson, The System of Freedom of Expression (1970), p. 432. His definition excludes from 'strict scrutiny' regulation of activities which "fall within the system of commercial enterprise and are outside the system of freedom of expression" (*id.* at 311). These include advertising and other communications "carried on by a business enterprise and directed against another business enterprice" (*id.* at 447), a category which would seem to include lawyer advertising of fees and qualifications of the type engaged in by the Messrs. Bates and O'Steen and at issue in this case. Professor Emerson's treatise also points out wide areas of the law in which restrictions on verbal communication would be difficult to explain but for the existence of attenuated standards of First Amendment protection relating to commercial speech. These include the prohibitions of corporate political contributions in 18 U.S.C. §160 (*id.* at 640); the recognition of a right of privacy against commercial appropriation of one's name or likeness adverted to and approved in *Time Inc.* v. *Hill,* 385 U.S. 374, 381 (1967) (*id.* at 548-49, 561); the prohibition of promises of benefit in labor representation elections imposed by

29 U.S.C. §158(c) (*id.* at 424 n. 17) and, of course, the Federal Trade Commission's powers to restrain false advertising upon a showing of probable violation; see *E.F. Drew* v. *Federal Trade Commission,* 235 F.2d 735, 739 (2d Cir. 1956), *cert. den.,* 352 U.S. 969; *National Commission on Egg Nutrition* v. *F.T.C.,* 517 F.2d 485 (7th Cir. 1975), *cert. den.,* ___ U.S. ___ (1976). (*Id.* at 417 n. 6). See also the prohibitions sustained in *Capital Broadcasting Co.* v. *Mitchell,* 333 F. Supp. 582, 584 (D. D.C. 1971), *affd.,* 405 U.S. 1600 (1972) ("product advertising is less vigorously protected than other forms of speech"); in *Rowan* v. *United States Post Office,* 300 F. Supp. 1036 C.D. Cal. 1969), *affd.,* 397 U.S. 728 (1970) ("The commercial element does not altogether destroy its quality as protected speech, but it does substantially reduce the weight of the expression on constitutional scales"); and in *Barrick Realty Inc.* v. *City of Gary,* 491 F.2d 161 (7th Cir. 1974) ("the posting of 'For Sale' signs by private homeowners is commercial in character and therefore subject to regulation").

The appropriateness of a concept of the First Amendment focusing upon the relation of speech claimed to be protected to the maintenance of the political process is manifest. Such an emphasis preserves the central concept of free political speech and freedom of political revision, at the same time preserving in some measure the insulation of this Court and of the National Government from moral and social controversies of the sort that have traditionally been fought out at the State level. Such a division of responsibility provides for many observers the explanation for the stability of American government:

> "Other[s] . . . advocated the so-called 'presidential system' on the American pattern . . . Executive and legislative would thus go through the whole

duration of their respective mandates without either of them ever being able to coerce the other . . . [The United States] is a federation of states each of which, with its governor, its representatives, its judges, and its officials – all elected – takes upon itself responsibility for a large part of the immediate business of politics, administration, justice, public order, economy, health, education, etc. while the central government and Congress normally confine themselves to larger matters: foreign policy, civic rights and duties, defense, currency, overall taxes and tariffs. For these reasons the system has succeeded in functioning up to now in the north of the New World. But where would it lead France . . . a country the demands of whose unity coupled with the perpetual threats from outside have induced to centralize its administration to the utmost, thus making it *ipso facto* the target of every grievance? . . . The inevitable result would be either the submission of the President to the demands of the deputies or else a pronunciamento." DeGaulle, Memoirs of Hope, Renewal and Endeavor (1971), pp. 323-324.

II.

THE CHALLENGED REGULATIONS DO NOT CONTRAVENE THE ANTITRUST LAWS.

A. The Challenged Rule Is State Action.

The regulations of Arizona, Maryland and other States relating to lawyer advertising are not the effusions of private bar associations but are laws embodied in codes adopted by the highest court of each state in pursuant of its regulatory authority over

the legal profession. *Parker* v. *Brown,* 317 U.S. 341, 350 (1943) is controlling here. The action of state supreme courts in adopting the Code of Professional Responsibility is not a perfunctory action. The Supreme Court of California, for example, has declined to adopt the ABA sponsored code; the Arizona court modified it; the Maryland court has not yet adopted the most recent amendments to it. The Maryland Court of Appeals, which adopted the Code by adoption of Maryland Rule 1230 did so by the process of static rather than dynamic conformity. Thus, subsequent amendments to the Code will require amendment by that Court to the original text of the code which is set out as Appendix F to the Maryland Rules and Procedure. Enforcement of the Code in Maryland is reposed in the hands of the Attorney Grievance Commission, a purely public body, the prior role of bar associations in enforcement having been eliminated in 1975. See Comment, *Discipline Of Attorneys In Maryland,* 35 Md. L. Rev. 236 (1975).

The appellants and their friends are not of one mind with respect to the proposition that the antitrust laws preclude state enforcement of restrictions on attorney advertising. The United States, through the Solicitor General, has conceded the non-applicablility of the antitrust laws to the Arizona rule against lawyer advertising (Brief, pp. 19-21). Next, the Amici brief of Consumers Union, et al., betraying as it does a purpose of preserve at least some of the existing state restrictions against the crasser forms of private advertising while freeing from such restrictions the publications of Consumers Unions, Public Citizen, and other 'right minded' persons, carefully refrains from tendering the antitrust-preemption argument. The brief Amici Curiae of the Chicago Council of Lawyers, desiring as it does to substitute for the existing restrictions promulgated by the Illinois Supreme Court a new set of detailed restrictions promulgated by the

Chicago Council of Lawyers set out at pages A1 and A2 of its brief, likewise shies away from the antitrust-preemption arguments:

> "The Council takes no position on the question of whether a voluntary agreement by lawyers to restrict their own advertising (whether embodied in the ethical canons of a Bar Association or otherwise) is in violation of federal antitrust laws" (Brief, p. 1).

The Brief of the Appellants, economically interested lawyers, by contrast would invalidate virtually all state economic regulations not only of the bar but of all businesses and professions. Two tests are urged. First, it is said that state regulations of communication are stripped of their exemption where they are lobbied for by private interests:

> "It is not unfair to hold private parties responsible under the antitrust laws, when as here, they have exercised a considerable degree of freedom of choice in initiating the restraint." (Appellant's Brief, p. 64).

Only those state economic policies which originate in the bosom of the state bureaucracy are, under this view, entitled to immunity.

However, a second even more sweeping proposition is urged at page 70 of the Appellant's Brief. It is said that the "strong national policy of the antitrust laws" ought not to be automatically frustrated by the "simple election of a state to dictate the operation of an industry along non-competitive lines contrary to the free enterprise model protected by the Federal statute." Under this view, even state regulations that are, in the appellants' eyes, brought by the stork, (that is, originated by the state bureaucracy and not urged by private persons or interests) would be subject to Sherman Act condemnation. This view of the Sherman

Act would compel the states to structure their apparatus of economic regulation in accordance with the views of the Manchester school unless Congress has expressly authorized them to do otherwise: "Congress, after all, is entitled to repeal the Sherman Act and the States are not." (*Id.* at 71).

The difficulties with the first proposition are obvious. It is flatly inconsistent with the First Amendment rights which appellants elsewhere in their brief profess to espouse, and not merely the periphery of First Amendment rights but with their central core, as defined by the Supreme Court in *New York Times* and other cases and by Professor Meiklejohn, Emerson, and others in their writings. Mr. Justice Black speaking for this Court recognized this in the *Noerr* case.[2] Legislation is not to be condemned because interests to be benefitted by it and not the bureaucracy have urged it. Nor is the price for successful advocacy of legislation to be criminal punishment, treble damage penalties, or disentitlement to the benefits conferred by it. The view espoused by appellants would strip constitutional guarantees of free expression on political and economic issues of meaning. Labor unions, association of agricultural workers, farmers and professionals urging regulatory schemes deviating in any way from a presupposed national economic policy would, if their legislative efforts at the state level were crowned with success, be met with the argument that the resulting state legislation either was preempted by the Sherman Act or is a detriment to them, since "it is not unfair to hold private parties responsible under the antitrust laws when . . . they have exercised a considerable degree of freedom of choice in initiating the [state government] restraint." (Appellants' Brief, p. 64).

---

[2] *Eastern Railroad Presidents Conference, et al.* v. *Noerr Motor Freight, et al.*, 365 U.S. 127 (1961).

The difficulty with the second even more sweeping proposition urged by the appellants is that there is no evidence that the Sherman Act was intended as a declaration of a "strong national policy" which would preempt state regulations not constructed in accordance with its economic premises. Available evidence concerning the intended scope of the Sherman Act contains no indication that it was designed to preempt state administered regulatory schemes. On the contrary, the available evidence indicates otherwise. It suggests, as this Court's recent opinions on the related issue of primary jurisdiction have recognized,[3] that the Sherman Act was intended to have a residual function and to operate where more direct systems of state or federal regulation have not been erected.

> "From the retrospect of the 1950's, the Sherman Act of 1890 looks as if it must have been a turning point of great moment in nineteenth century policy. But there was a curiously tepid quality to this declaration, as it occurred; the Sherman Act has more importance to us than it seems to have had to its contemporaries. It was only in our century that executive initiative and judicial inventiveness gave body and thrust to the federal government's responsibility for maintaining the market as an institution. The presidential messages warned that the 'trusts' were a threat, but no real presidential pressure lay back of the Sherman Act. There is no evidence that antitrust planks in the major party platforms of the time responded to ardent opinion; there was no contemporary flood of petitions, no popular lobby

[3] Considerations of Federalism make a finding that antitrust laws control less appropriate where a state regulatory scheme is at issue. See The Supreme Court, 1975 Term, 90 Harv. L. Rev. 56, 234 n.37 (1975), and the works there cited.

> for a federal antitrust statute, and the current newspapers paid little attention to the congressional maneuvers and debates out of which the act emerged. Most of the congressional discussion dealt with other and more specific bills than that which passed; indeed, apart from providing a useful token of concern for the farmers, lest industry abuse the price relief which the protective tariff gave it, the practical occasion for the Sherman Act may have been largely that its generalities relieved congressmen of the embarrassments of more specific proposals pressed on them." Hurst, Law and the Conditions of Freedom in the Nineteenth Century United States (1964), pp. 91-92.

Legislative intention is relevant to determining the intended sweep of the Sherman Act, which is not a part of the Constitution. As Professor Frankfurter (as he then was) pointed out many years ago, the framers of the Constitution expressly declined to insert in it an antimonopoly clause which would have interdicted state regulations in conflict with a particular economic theory. See F. Frankfurter, **The Commerce Clause Under Marshall, Taney, and Waite**, 12-13 (1937); *American Federation of Labor* v. *American Sash and Door Co.*, 335 U.S. 538, 543 n.1 (1949) (Frankfurter, J., concurring), and the works there cited. This is not the first time that an effort has been made to invoke clauses of the Federal Constitution or legislation passed under them against state regulation departing from a particular approved set of economic teachings. However, history has vindicated those justices who announced the hitherto prevailing rule rejecting such attempts to deprive the states of authority to enact social and economic legislation in disputed areas of public policy. See the *Slaughter House Cases,* 83 U.S. 36 (1873); *Butchers Union Company* v. *Crescent City Co.*, 111 U.S. 746 (1884); Fairman, **Mr. Justice Miller and the Supreme Court**, Chapter 8 (1939).

B. No Unreasonable Restraint Of Trade Is Present.

Appellants and some of their *amici* have confidently asserted that a *per se* rule exists under the Sherman Act against combinations or agreements to suppress advertising. In fact, however, no such rule exists. The careful discussion by Judge Renfrew in *State of Arizona* v. *Cook Paint & Varnish Co.*, 391 F. Supp. 963 (D. Ariz. 1975) demonstrates the fallacy of such a proposition. Judge Renfrew there observed:

> "Although Plaintiffs have cited several cases which they believe support their constructive price fixing theory, an analysis of the facts in those cases reveals that they are inapposite to the situation presented here. In each case an actual, as opposed to constructive purpose of the conspiracy was to affect prices, though the means used to accomplish this objective were varied, and in some cases, indirect. The five price fixing cases cited by plaintiffs are *United States* v. *Socony Vacuum Oil Co.*, 310 U.S. 150 (1939); *National Macaroni Manufacturers Association* v. *FTC*, 345 F.2d 421 (7th Cir. 1965); *United States* v. *FTC*, 345 F.2d 421 (7th Cir. 1965); *United States* v. *Gasoline Retailers Association Inc.*, 285 F.2d 688 (7th Cir. 1961); and *Plymouth Dealers Association of Northern California* v. *United States*, 279 F.2d 128 (9th Cir. 1960). [In] *United States* v. *Socony Vacuum Oil Co.*. . . The Court found that the buying programs 'had as their direct purpose an aim the raising and maintenance of spot market prices and of prices to jobbers and consumers in the mid-western area.' 310 U.S. at 216 . . . In *National Macaroni Manufacturers Association* v. *FTC* . . . the Federal Trade Commission found that 'the agreement was intended to ward off price competition for durham wheat in short supply by

lowering total industry demand to the level of the available supply.' 345 F.2d at 246 . . .In *United States* v. *Gasoline Retailers Association, Inc.*, the alleged violation of §1 of the Sherman Act was a continuing agreement among defendants to refrain from price advertising . . . The Court found that 'the basic object of defendants' conspiracy was the stabilization of retail gasoline prices,' 285 F.2d at 691, and affirmed the defendants' conviction. *Plymouth Dealers Association of Northern California* v. *United States* involved the preparation and distribution of a fixed uniform list price by dealers marketing a particular brand of automobile for use in making pricing decisions. . . Each of these cases contains a common element: In sustaining a finding of price fixing conspiracy, the Court found that an actual, conscious purpose of the conspiracy was to affect price in some manner. As such, they simply do not furnish support for plaintiffs' constructive purpose theory . . .The range of collaborative conduct, the natural and probable consequence of which might be said to be an effect of some type on the price at which goods are sold, and thus the range of conduct embraced by such a doctrine, is almost limitless. Following the logic of Plaintiffs' theory to its inexorable conclusion, all such conduct would be *per se* violative of §1 of the Sherman Act. Such a result manifestly would be inconsistent with the justification for *per se* rules under §1. The Supreme Court has explained it thusly: 'there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use.'*Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 5. With respect to the application of this

standard the Supreme Court has noted that 'it is only after considerable experience with certain business relationships that the courts classify them as *per se* violations of the Sherman Act,' *United States* v. *Topco Associates,* 405 U.S. 596, 607-608 (1972)... By contrast, Courts do not have similar experience in dealing with the myriad types of relationships, business and otherwise, the natural and probable consequence of which may be to affect prices in some manner. Indeed many such relationships could not be deemed restraints of trade, let alone unreasonable restraints of trade, within the purview of the Sherman Act. *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469 (1940) provides an excellent example of this point... the Court need not belabor this point further. It does not require a particularly fertile imagination to realize the potentially limitless scope, and therefore inappropriateness, of a constructive price fixing doctrine... Finally, strong policy considerations militate in favor of this result... A large area of state law would be subsumed under the Federal Antitrust Laws. The Supreme Court has indicated that this is an important consideration in determining the coverage of the Sherman Act: 'the maintenance in our federal system of a proper distribution between state and national governments of police authority and of remedies private and public for public wrongs is of far reaching importance. An intention to disturb the balance is not lightly to be imputed to congress.' *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469 (1940)."

391 F. Supp. at 966 n.2, 967 n.3 and 970.

It cannot be successfully maintained that the purpose of the restriction on all advertising, and not specifically price advertising, imposed by the Code of Professional Responsibility, or the Canons of Ethics before, was the enhancement of the cost of legal services. There is no

mystery about the origins of the restrictions or advertising. They are recounted at length in Drinker **Legal Ethics** (1953), pp. 210-215, and in Ethical Consideration 2-9 of the Code of Professional Responsibility, at footnote 24:

"The prohibition of advertising by lawyers deserves some examination. All agree that advertising by an individual lawyer will detract from the dignity of the profession, but the matter goes deeper than this. Perhaps the most understandable and acceptable additional reasons we have found are stated by one commentator as follows:

1. That advertisements, unless kept within narrow limits, like any other form of solicitation, tend to stir up litigation, and such tendency is against the public interest.

2. That if there were no restrictions on advertisements the least capable and least honorable lawyers would be apt to publish the most extravagant and alluring material about themselves, and that the harm which would result would in large measure fall on the ignorant and on those least able to afford it.

3. That the temptation would be strong to hold out as inducements for employment assurances of success or of satisfaction to the client, which assurances could not be realized, and that the giving of such assurances would materially increase the temptation to use ill means to secure the end desired by the client. In other words, the reasons for the rule, and for the conclusion that it is desirable to prohibit advertising entirely or to limit it within such narrow bounds that it will not admit of abuse, are based upon the possibility and probability that this means of publicity, if permitted, will be abused."

To this, Drinker adds the observation, of unique pertinence to the legal profession: "lawyers . . . differ radically from the milk man, the liquor dealer or the manufacturer of cigarettes in being yesterday an antagonist and today a colleague on the same side of the counsel table." (p. 211). A profession, many of whose functions involve disputation and whose ethical code is necessarily importantly devoted to avoidance of friction among counsel resulting therefrom, necessarily must hesitate before adding to the opportunities for friction the additional tensions which attend direct commercial promotion. Society, which relies on lawyers for the peaceful settlement of disputes and not the multiplication of social conflict, has a similar interest. Clearly, none of the purposes of the rule against lawyer advertising as expressed in a voluminous literature is in any way directed toward enhancing the cost of legal services or otherwise affecting their price. Thus, as Judge Renfrew convincingly demonstrated in a similar context, existing advertising restrictions cannot be deemed *per se* violations of the antitrust laws.

It is worth noting that the state courts need not repair to the bar's own literature to describe or to justify the origin or purpose of their restrictions on lawyer advertising. Students of jurisprudence of unimpeachable disinterestedness have similarly described the function of these rules. The late Julius Henry Cohen, for example, in a passage quoted at page 212 note 10 of Drinker on **Legal Ethics** has noted, as the justification for the advertising restriciton:

> "The basis of the relationship between lawyer and client is one of unselfish devotion, of disinterested loyalty to the client's interest, above and beyond his own. Let the lawyer seek you for his own profit and you despise him" Cohen, The Law, A Business or Profession (1916), p. 197.

The late Professor Karl Llewellyn similarly observed in justification of the rules against solicitation: "that fraud in essence goes far beyond perjured claims or mishandling of funds. It hooks up intimately with solicitation. And solicitation indeed engenders fraud in the claim, as when real injuries, though little, are made huge in court. And solicitation is frequently itself a semi-fraud, as when routine payments already in process from some government office are made to appear needful of expert advice – on contracts for half of the payment as a fee" Llewellyn, Jurisprudence (1962), p. 252.

The rules against advertising are not founded on a particular prejudice against price advertising. They are founded upon a central ethical insight: that maintenance of a sound professional relationship demands that the relationship should be one initiated by the client and not by the lawyer. The acceptability of a lawyer's advice in a society which relies on voluntary compliance induced by the legal profession for the effectiveness of its laws, likewise depends on that advice being sought by, and not thrust upon, the client. Society has an enormous interest in avoiding any alteration of the lawyer-client relationship which would deviate or render suspect the professional advice of lawyers. "The most effective realization of the law's aims often takes place in the attorney's office, where litigation is forestalled by anticipating its outcome, where the lawyer's quiet counsel takes the place of public force." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1149, 1161 (1959) quoted in Code of Professional Responsibility. Canon 7 n.17. This insight is not limited in its relevance to the ideals of a past time. On the contrary, a sensitive and perceptive discussion of contemporary legal ethics concludes:

"I argue in this essay that is not only legally but also morally right that a lawyer adopt as his dominant purpose the furthering of the client's interest – that it is right that a professional put the interests of his client above some idea, however valid, of the collective interest, I maintain that the traditional conception of the professional role expresses a morally valid conception of human conduct and human relationships, that one who acts according to that conception is to that extent a good person. Indeed it is my view that far from being a mere creature of positive law, the traditional conception is so far mandated by moral right that any advanced legal system which did not sanction this conception would be unjust . . . How does a professional fit into the concept of personal relations at all? He is, I have suggested, a limited purpose friend. A lawyer is a friend in regard to the legal system. He is someone who enters into a personal relation with you – not an abstract relation as under the concept of justice. That means that like a friend he acts in your interests not his own or rather he adopts your interests as his own. I would call that the classic definition of friendship. To be sure the lawyer's range of concern is sharply limited. But within that limited domain the intensity of identification with the client's interest is the same . . . The lawyer does work for pay. Is there not something odd about analogizing the lawyer's role to friendship when in fact his so-called friendship must usually be bought? If the lawyer is a public purveyor of goods, is not the lawyer-client relationship like that underlying any commercial transaction: My answer is 'no.' The lawyer and doctor have obligations to the client or patient beyond those of other economic agents. A grocer may refuse to give food to a customer when it becomes apparent that the customer does not have the money to pay

> for it. But the lawyer and doctor may not refuse to give additional care to an individual who cannot pay for it if withdrawal of their services would prejudice that individual. (See ABA Committee on Professional Responsibility E.C. 2-31, 2-32. Compare id. DR. 2-110 C(1)(F) with id. DR. 2110 (A)(2)). Their duty to the client or patient to whom they have made an initial commitment transcends the conventional quid pro quo of the marketplace. It is undeniable that money is usually what cements the lawyer-client relationship. But the content of the relationship is determined by the client's needs. It is not determined as a simple economic relationship, by the mere coincidence of a willingness to sell and a willingness to buy." Fried, *The Lawyer as Friend; The Moral Foundations of the Lawyer Client Relation,* 85 Harv. 1066, 1075 (1976).

This model of the professional relationship sought to be enforced by the Code of Professional Responsibility is totally at variance with the view of professional services as fungible goods implied in the activities of appellants with their demands for price advertising. Certainly it is possible, as appellants' practice illustrates, to perform personal bankruptcy filings for an advertised minimum rate of $250.00. If the lawyer's function is conceived to be confined to providing his client with the official forms and schedules, checking them over for sufficiency, typing them up, filing the, and presenting the necessary orders, this is quite feasible. If, on the other hand, it includes also explaining to the client the consequences of such a legal process for his future employability and exploration of avoidance of its use by negotiations with creditors and efforts toward compositions and delayed payment schedules as contemplated by Ethical Consideration 7-8 of the Code of Professional Responsibility, one may doubt that use of

a uniform, tangible, advertisable rate is possible. If a lawyer's approach to the personal and family crises inherent in divorce is that contemplated by pertinent ethical standards, use of a uniform, advertisable tangible rate also becomes difficult if not impossible. "A truly great lawyer is a wise counselor to all manner of men in the varied crises of their lives when they most need disinterested advice." Vanderbilt, *The Five Functions of the Lawyer.* 40 A.B.A.J. 31 (1954), quoted in Code of Professional Responsibility, Canon 7 n.16. Only a model of the lawyer's function which conceives of him not as a professional but as a scribe can justify the practices of appellants or action of the state in permitting them. The states are not compelled to adopt such a model. Rather, they have imposed more far-reaching responsibilities on lawyers, and the prohibition of advertising of the type engaged in by appellants is plainly "necessary in order to make the regulatory act work" *Cantor* v. *Detroit Edison Co.,* 96 S. Ct. at 3120 (1976), if the state's efforts by a pervasive scheme of ethical regulations to impose the ethical obligations on lawyers described by Professor Fried is not to be rendered ineffective.

If this Court is to proclaim that lawyers and judges are engaged, not in providing professional services essential, as Professor Fried points out, to the preservation of individual personality, but rather in providing a tangible and standardized commodity, the bell will toll not merely for many values hitherto deemed important in our society, and for the independence of the bar, but in the end for that of the bench also, for control over the ethical standards and practices of the persons appearing before it is an essential to the maintenance of independent judicial processes.

The foundation of the rules against advertising and solicitation is plainly ethical, not economic. The

restrictions are thus not *per se* interdicted by an act in enforcement of which, as a myriad of cases recite, "motive and intent play leading roles" *Poller* v. *Columbia Broadcasting System*, 368 U.S. 464, 473 (1962).

These ethical and legal reasons why the existing advertising restrictions may not be deemed *per se* illegal, or otherwise illegal under the Sherman Act even if the state action exemption is inapplicable are reinforced by the insights of economic theory, some of which are sensitively discussed in the brief Amici Curiae of the Mountain Plains Congress of Senior Organizations at 15-16. True, there are some advocates of the views of the Chicago or Manchester School who rather sweepingly and simplistically assert that the elimination of all advertising restrictions even in the area of advertising for services will serve consumer interests; see, *e.g.*, Posner, Economic Analysis of Law (1974). This insight, however, is not universally shared even by representatives of the so-called Chicago school. Thus, the late Professor Henry Simons, in his famous, and in many respects prophetic, essay entitled "A Positive Program for Laissez-Faire," far from celebrating the contribution of advertising to competition instead argued that "the strongest case can be made for heavy taxation of advertising, provided rates can be made much higher than revenue considerations would dictate." Indeed, he urged:

> "It is commonplace that our vaunted efficiency in production is dissipated extravagantly in the waste of merchandising. This economic system is one which offers rewards both to those who direct resources into industries where the indirect pecuinary demand is greatest and to those who divert pecuniary demand to commodities which they happen to be producing. Profits may be obtained either by producing what consumers want or by

making consumers want what one is actually producing. The possibility of profitably utilizing resources to manipulate demand is, perhaps, the greatest source of diseconomy under the existing system. If present tendencies continue we may soon reach a situation where most of our resources are utilized in persuading people to buy one thing rather than another, and only a minor fraction is actually employed in creating things to be bought. Firms must spend enormous sums on advertising if only to counteract the expenditures of competitors; and finally all of them may end up with about the same volume of business as if none had advertised at all. Moreover every producer must bribe merchants into pushing his product, by providing fantastic mark-ups, merely because other producers are doing the same thing . . . In these practices of merchandising moreover one finds an outstanding incentive to combination and producer organization. Firms acting cooperatively may spare themselves the expense of competitive selling activity; and organization permits of profitable joint enterprise and building up demand for their common product, at the expense of other industry. Thus organization of competing firms tends to change the form of advertising rather than necessarily to reduce the total of such outlays; selling activities become competitive among industries instead of merely within industries; the battle of advertising becomes a battle between organized groups instead of between competing producers of similar commodities. *** While organization has little or nothing to offer by way of merchandising economies for the community, it has much to offer to the individual participants. Besides, advertising entrenches monopoly by setting up a financial barrier to the competition of new and small firms. Consequently, an appropriate remodeling of the system with respect to merchandising would do more than free wasted resources

> for useful employment; it might remove one of the main factors working to destroy real competition in industry." Simons, *A Positive Program for Laissez-faire* in Economic Policy for a Free Society (1948), pp. 71-72, 73.[4]

The earliest law review comment in the strikingly contemporary bibliography contained in appellants' brief, Comment, 81 Yale L.J. 1181 (1972), while professing the currently fashionable enthusiasm for removal of advertising restrictions, candidly concedes:

> "Study of the economic implications of advertising is still in its infancy. Only a few statistical studies have been made of the existing data on advertising and they have not all yielded the same result. See *e.g.* Mann, Henning and Mehan, Advertising and Concentration: A Preliminary Investigation, 16 J. Industrial Economics 34 (1967) (Advertising expenditures positively correlated with seller's concentration); Telser, *supra,* note 84 (Advertising expenditures do not correlate with industry's concentration) . . . The books on the economics of advertising are primarily the summaries of the opinions of others . . . A further word of caution is in order. The economic studies which have been done by Telser and others deal mainly with industries which make physical products rather than with service industries such as law. Although advertising and solicitation are engaged in by some other professions . . . no empirical studies have been done on the impact of advertising on the professions." Comment, 81 Yale L.J., at 1207 n.161 (1972).

---

[4] Certainly, there is force in the observation that the economic productivity of society as a whole may not be enhanced by the diversion of resources to legal services that may result from unrestrained advertising.

The note also quotes J. Bakman, Advertising and Competition (1967) as follows:

> "Claimed anti-competitive effects of advertising may be summarized as follows: (1) a large company has the power of a large purse, which enables it to spend substantial sums on advertising, particularly to implement varying degrees of product differentiation which enables a company to preempt part of a market; (2) advertising may create a barrier to new firms entering an industry or a product market; (3) the result is high economic concentration; (4) because of their protected position and because of product differentiation these firms can charge monopolistic prices which are too high. Moreover, they must recover the cost of the advertising by charging higher prices; (5) high prices in turn result in excessively large profits."

Other economic writers have engaged in similar observations. Passionate enthusiasm for the blessings of advertising is not reflected in the following passage in an introductory economic text by two writers whose devotion to free market principles is unquestioned:

> "Sales promotion implies increased expenditures on such items as advertising, salesmen, free samples and prizes. It may either increase the demand for a general product or attract existing demand to a given variety of this product. Once one seller has embarked on promotion, rivals must presently follow suit. For the long run, it seems fair to assume that the firms that stay in business hit on about equally effective and costly methods of promotion. A large class of sales promoters is built up. Their stipends, as well as other outlays for promotion, go into the costs of products and are paid by purchasers. The main question is whether the buyers get their money's worth. Some of the

> cost goes for education. Consumers cannot satisfy existing wants sufficiently unless they can compare different means of satisfaction. They are also handicapped in developing better wants if they have no convenient way of learning about new products. On the other hand, sales promotion devotes no small amount of our limited resources to fostering misinformation. From the point of view of the sellers, the results are uncertain. Rival efforst may nullify each other. Buyers may become too sophisticated to be deceived. Buyers may be led to shift patronage to one variety from an equally good one. The effects of 'high powered promotion' are more clear from the public point of view. In part the resources are merely wasted in vain appeals. In part they are worse than wasted. Many people are induced to buy what they do not really want or to want what they cannot buy. And all must endure incessant exhibitions of bad taste." Knight and Hines, Economics: Introductory Analysis of the Level, Composition and Distribution of Economic Income (1954), p. 452.

Notwithstanding the agnosticism as to the economic effects of their desired reform professed by the authors of the Yale note, a large and influential economic school led by Professors Edward Chamberlin and Joan Robinson has advanced over the course of the last 50 years theories of imperfect competition stressing the barriers to entry imposed by the availability of expenditures for advertising. The work of the Trade Practice Conferences organized by the Federal Trade Commission in developing voluntary industry agreements to avoid forms of advertising, many not in themselves fraudulent, was founded for many years on acceptance of the premises of this influential school of economic thought, which finds its reflection, as previously noted, in the Brief of Amici Curiae The

Mountain Plains Congress, et al. This school tends to sharply differentiate between informational price advertising which it deems desirable and product differentiation advertising which it deems economically questionable. But certainly neither the Constitution nor the Sherman Act can be manipulated to invalidate state regulations interdicting the first while permitting them to continue to prohibit the second. Particularly is this so since product differentiation advertising, if anything, partakes of a more significant ideological content than price advertising. A rule which would prohibit it while permitting price advertising would require extraordinary controtion of the First Amendment. If the state action limitation on Sherman Act liability were disregarded, the consequences for virtually all forms of state economic regulation would reverse the upshot of 100 years of constitutional history. *Nebbia* v. *New York*, 291 U.S. 502 (1934), has long since doomed the notion that state governments are not entitled to regulate matters of price. The revival of the old economic activism under a new guise would not be an attractive phenomenon.

The blurry nature of the desired distinction between "good" and "bad" advertising is manifest. Any attempt at such a distinction would result in the erosion of all controls and any effort to completely free advertising from restrictions will result in conduct manifestly inconsistent with important ethical purposes which the states have a right to nurture. Indeed, the fragmentary harbingers of such a future before the Court as exhibits in the Arizona case and appendices to this brief (Apps. A and B) – written while their authors have every reason to be on their best behavior – amply suggest the undermining of ethical precepts which would ensue if legal advertising is permitted. What becomes of traditional notions of lawyer responsibility to the client when lawyers, such as those in the Arizona case, are

permitted to proclaim that their representation in divorces is confined to uncontested cases (T. 61), and that they rid themselves of cases if any difficulty crops up (T. 63)? What of the advertising of "name changing" services involving uncontested proceedings which could as well be carried out by a layman with the advice of a court clerk? What of the advertising by their Maryland counterparts of contingent fee services in social security and unemployment insurance cases, notwithstanding the protective provisions of the Maryland unemployment insurance law, Article 95A §15B that "no . . . counsel shall either charge or receive for . . . services more than an amount approved by the Board of Appeals. No person, firm or corporation shall solicit the business of appearing on behalf of persons claiming benefits or shall make it a business to solicit employment for another in connection with claims for benefits under this article." What becomes of the requirement of 42 U.S.C. §406 that attorneys' fees in social security cases be individually determined by courts and administrators with a ceiling of 25% of the total recovery? If a flood of advertising of the type present in the Arizona and Maryland instances is unleashed by a decision of this Court, is it possible to seriously believe that the policies of such statutes can long be maintained or fulfilled given the fact that there would be several hundred thousand separate entities which would possess the right to advertise in what is now a conspicuously decentralized profession.

Of course, it is urged and recognized that one effect of unlimited advertising will be an enhanced degree of concentration in the profession, since new individual practitioners will find it difficult to engage in advertising. If one believes in the premise of the *Associated Press* case that truth comes from a multitude of tongues, it is difficult to consider that this

consequence of the extravagant antitrust claims put forward would be consistent with the policies of the First Amendment which appellants also claim to embrace. The economic rationalization of industries producing and distributing goods has, as Justice Brandeis reminded us, its own social cost. However, these are nothing compared to those that would follow if a legal profession becomes highly concentrated and if its neophytes are denied the option of starting their own practices in favor of alliance with the local equivalent of H & R Block or of "Painless Parker," the celebrated grantor of California dental franchises.

CONCLUSION

The First Amendment claims here asserted are founded on no tenable political theory and would have disastrous consequences for virtually all forms of public regulation if taken seriously. The antitrust claims can be sustained only by embracing interpretations of law equally antagonistic to federalism, to First Amendment rights and to sound economic judgment. The organized bar does not contend that existing rules are immutable. But to the extent that they may operate to discourage resort to law save by those determined to invoke its processes, their postulate is rational and compelling. Ours is a loose grained legal system which teaches by example, not by minute regulation. Not every wrong must be righted nor every potential client represented for it to fulfill its central purpose of ordering a free society. Individuals may pay taxes without legal advice and without a decision of the United States Court of Appeals affirming a judgment of the Tax Court in favor of the government. Individuals may comply with contracts bearing their signature, even contracts of adhesion, in advance of a mandate of the highest court

of a state enforcing them in the individual case as in conformity with the Trust in Lending Act. Individuals may refrain from suing for injuries sustained in falls in the street either because they do not know of the liability of municipalities or are insufficiently agitated about their injuries to seek the advice of counsel.

All civilized societies regulate the use of legal process. All regard it as a necessary means of allowing a society to function while preventing it from becoming totalitarian. As Chief Justice Burger observed in his opening remarks to the American Law Institute in 1970:

> "Our legal structure is perhaps somewhat more relaxed than the legal systems in many other countries. If this has its negative aspects, it also affords us a resiliency to tide us over and to enable us to meet any crisis as it arises. We respond slowly, but that is the nature of a democratic society."

To the extent that the issues raised in these cases involve legitimate criticisms of the status quo, they will evoke a response. But that response must be determined by the assessment of the claims and demands on their merits by the legislatures and state courts with authority over them after full and free discussion. Thus, we believe the appropriate attitude of the organized bar to the transgressors of established rules who appear before this Court to be that expressed by Judge Learned Hand in an address to the American Law Institute of 1929:

> "To substitute the right of each one to make his own estimate is to invite chaos to preside. City and country, ward and parish, block and village, house and house will give different returns til the speech of the men of Babel would seem unanimous. In this as in so much else we must be

content to accept some convention and hope that it will not bear too heavily to provoke rigid analysis. It is besides the point to argue that in the past there have been laws which fell into the scrap basket. In large part this is not more than an index to the immaturity of the society in which they prevail, of its incapacity to adapt itself to civilized life. To raise it into a part of the theory of government indicates our own incapacity to understand the conditions of social existence.

"Mind, I am not speaking of how far an individual owes allegiance to every part of existing law. Tyranny is tyranny no matter what its form; the free man will resist it if his courage serves. But let him beware that in his rebellion he lay hold of some fundamental affirmation of his spirit. There may be a heavy price for him and there will certainly be for the community in which he lives if he succeeds in drawing along others with him. Of the contrivances which mankind has devised to lift itself from savagery, there are few to compare with the habit of assent, not to a factitious common will, but to the law as it is. We need not go so far as Hobbes though we would do well to remember the bitter experience which made him so docile. Yet we can say with him that the state of nature is 'short, brutish and nasty' and that it chiefly differs from civilized society in that the will of each is by havit and training attuned to accept some public fixed and ascertainable standard of reference by which conduct can be judged and to which the main it will conform . . . We welcome any changes, in proper season and in proper place we shall urge and demand them. But we will not forget that we have a duty perhaps even greater than that, a duty to preserve." Hand, *Is There a Common Will?* in The Spirit of Liberty (1952), pp. 47, 54-55, 56.

The judgment of the Supreme Court of Arizona should be affirmed.

Respectfully submitted,

ALFRED L. SCANLAN
734 Fifteenth Street, N.W.
Washington, D.C. 20005
(737-1255)

GEORGE W. LIEBMANN
1300 Mercantile Bank &
Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(301/547-0500)

Attorneys for Amici Maryland State Bar Association, Inc., et al.

Of Counsel:

SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D. C. 20005

FRANK, BERNSTEIN, CONAWAY
& GOLDMAN
1300 Mercantile Bank &
Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

December 30, 1976

APPENDIX A

C16 • • THE SUN, Thursday, September 9, 1976

THE LEGAL CLINIC
of Cawley-Schmidt & Sharrow, P.A.

Because of the need of the community for a new approach to the availability of legal services at low affordable fees, the first LEGAL CLINIC on the East Coast has received an overwhelming acceptance by the Baltimore community.

The next office will open on or about October 1st at

724 DULANEY VALLEY RD.
In the DULANEY VALLEY
SHOP. CTR., TOWSON.

Applications are being accepted from qualified, experienced lawyers, paralogsis and legal secretaries to staff this and other offices, soon to be opened in other communities of the greater Balto. area.

If you are sincerely interested in providing quality legal services, and applying your skills and knowledge to the practice of law as a community service, apply by sending a resume to the

LEGAL CLINIC OF CAWLEY-
SCHMIDT & SHARROW, P.A.
2117 Eastern Ave.
Balto., Md. 21231
or call
342-3000

APPENDIX B

A MESSAGE TO OUR CLIENTS

THE LEGAL CLINIC
of
Cawley, Schmidt,
& Sharrow, P.A.

2117 EASTERN AVENUE
BALTIMORE MARYLAND 21231
(301) - 342-3000

ADMINISTRATIVE OFFICES
303 E. FAYETTE STREET
BALTIMORE, MARYLAND 21202
(303) - 685-7744

WE ARE HAPPY to welcome you to the LEGAL CLINIC of Cawley, Schmidt & Sharrow, P.A. Since the CLINIC is a new concept in the extension of legal services, we hope you will take the time to read this pamphlet and acquaint yourself with us.

If you have any questions, please ask. We are at your service.

WHAT THE LEGAL CLINIC IS

The LEGAL CLINIC of Cawley, Schmidt & Sharrow, P.A. is the first of its kind in the Eastern United States. In our society of high priced law firms and no-cost legal aid programs, only the rich and the poor have ready access to lawyers. People in the largest sector of our

society – the middle income – must either do without lawyers and give up their rights or, when lawyers cannot be avoided, pay much more than they can afford. The LEGAL CLINIC has, for the first time, adopted a common sense approach to providing high quality, low-cost legal services.

HOW THE LEGAL CLINIC WORKS

The LEGAL CLINIC has copied much from medical clinics. It is a system of combining the efforts of staff and non-resident attorneys, and paralegal counselors.

Attorneys whose private practices are devoted primarily to a particular area of the law, such as criminal, bankruptcy or administrative matters will devote a portion of their time to handling cases for the LEGAL CLINIC in their area of expertise.

In addition, in much the same way as medical clinics use nurses, the LEGAL CLINIC makes extensive use of paralegal counselors, specially trained to assist the attorneys on a case by case basis. They are able to perform many of the tasks which in most law firms are reserved for the attorneys. However, they do not give legal advice and every client of the LEGAL CLINIC will be individually counseled by an attorney.

Carefully planned and detailed systems have been devised so that with the combined efforts of attorneys and paralegal counselors, the LEGAL CLINIC can operate with the utmost efficiency and give the highest quality services at substantially reduced prices.

COUNSELING

A special feature of the CLINIC, especially helpful in consumer matters, is its low cost counseling service. Many problems can be resolved by an explanation of your rights, or by advice as to where to go and what to say to enforce your rights yourself.

SOME SPECIAL SERVICES

SMALL CLAIMS: Many people are quite capable of handling their own cases once they are aware of the procedures and their rights. The CLINIC will give personalized instruction on how to pursue, and how to defend, a small claim in District Court.

TRAFFIC TICKETS: The cost of a traffic ticket can sometimes be very high in terms of insurance or loss of a driver's license, but many people don't know how to go about defending themselves. The LEGAL CLINIC offers counseling on the preparation and defense of Traffic Court cases.

SOCIAL SECURITY CLAIMS: People who are disabled and think they are entitled to Social Security often give up after an initial rejection because they don't know what to do next or don't realize they may still be entitled to benefits. The LEGAL CLINIC will take such cases on a contingent fee basis.

UNEMPLOYMENT INSURANCE CLAIMS: "When a person quits a job for a "good cause" he is entitled to unemployment insurance if he is unable to find another job. Yet sometimes his claim is erroneously turned down. The LEGAL CLINIC will represent him/her in an appeal on a contingent fee bases.

PURCHASE OF HOME: For most people their home is the most important purchase they will ever make. The LEGAL CLINIC will review complicated escrow and purchase papers.

THE LEGAL CLINIC FEES

The LEGAL CLINIC, of Cawley, Schmidt & Sharrow, P.A. charges no fee for an initial conference. Thereafter the fee, if any, depends upon a number of factors. The fee structure has been kept as simple as possible. The following are some examples of fees (not including court costs).

1. *Dissolution of marriage in which there is no support, children or property involved and which is not contested.*

   $150.

2. *Uncontested dissolution of marriage with property settlement agreement.*

   (Minimum) $250.

3. *Bankruptcy – individual, no assets.*

   $225.

4. *Personal Injury – 25% if settled prior to suit. 33 1/3% thereafter.*

5. *District Court hearings. (Criminal & Civil)*

   $125.

6. *Simple Wills*

   $35.

7. *Counseling (per consultation)*

   $20.

8. *Incorporations*

   $175.

THE LEGAL CLINIC WILL PROVIDE
MORE DETAILED FEES FOR PARTICU-
LAR SERVICES UPON REQUEST.

* * *

Fees may be paid by cash, check
MASTERCHARGE
or
BANKAMERICARD

THE LEGAL CLINIC'S CASES

The LEGAL CLINIC of Cawley, Schmidt & Sharrow, P.A. will handle most legal problems such as the following:

- DOMESTIC RELATIONS
- CUSTODY
- CRIMINAL
- CONSUMER
- PERSONAL INJURY
- BANKRUPTCY
- LANDLORD - TENANT
- JUVENILE
- ADOPTION & GUARDIANSHIP
- DISTRICT COURT
- TRAFFIC TICKET
- SOCIAL SECURITY CLAIMS
- UNEMPLOYMENT INSURANCE CLAIMS
- DISABILITY CLAIMS
  (WORKMEN'S COMPENSATION)
- NAME CHANGE

- DRIVER'S LICENSE
  (DMV HEARINGS)
- PURCHASE OF HOME
  (REVIEWING OF PAPERS)
- SIMPLE WILLS

If you want to know whether we handle your type of case, please ask.

Please call for an appointment. We are open some evenings and Saturdays.