EDITORIAL

WHY SHOULDN'T LAWYERS ADVERTISE?

Bar association rules restricting advertising by lawyers are under attack, and pressure is mounting for their reform. Lawsuits are pending in state and federal courts challenging the anti-advertising rules as unconstitutional, or in violation of federal antitrust laws. At its midyear meeting in February, the American Bar Association approved an amendment to its Code of Professional Responsibility which would slightly relax the strict prohibition on advertising by lawyers. The amendment, which must now be approved by state and local bar associations, would allow lawyers to advertise their consultation fees and other information in the Yellow Pages of telephone directories—although most telephone companies ban any mention of prices in Yellow Pages ads.

The legal advertising issue is controversial and emotional for many lawyers. The ABA has recognized that the attention devoted to the advertising issue and related questions involving the "etiquette of law practice" by the ABA Committee on Professional Ethics has led "many lawyers to assume that this is the exclusive field of interest of the Committee and that it is not concerned with the more serious questions of professional standards and obligations."

Underlying the significance of the anti-advertising rules is the coercive power of the state to regulate the legal profession and to prohibit the practice of law by individuals who are not licensed by the state. Nonlawyers may be prosecuted for offering services which constitute the practice of law—even if the services are competently performed—and lawyers who violate the restrictions against advertising may be suspended or disbarred.

A disciplinary proceeding now pending before the State Bar of California illustrates the far-reaching scope of the anti-advertising rules. A local State Bar committee has held that two young attorneys with a flourishing three-year-old practice, Leonard Jacoby and Stephen Meyers, have violated professional conduct rules by using the name "*Legal Clinic* of Jacoby & Meyers" and by giving interviews to newspaper reporters concerning the "legal clinic" approach to providing law services for low-and middle-income clients. In a 2-1 decision the State Bar committee found that the conduct of Jacoby and Meyers "was intended by them to publicize a belief they honestly hold that there is an unmet demand by low-and middle-income persons" for legal services at a reasonable cost, but recommended that the two lawyers be suspended from practice for 45 days because they also were motivated by an intention to generate business for their law firm, and it was "unethical" for them to discuss such details as price with the press. The decision is subject to review by the State Bar and, ultimately, by the courts.

There is a basic inconsistency in the anti-advertising rule and the recognition by the ABA's Code of Professional Responsibility of the legal profession's obligation "to educate laymen to recognise their legal problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available."

In an editorial in REASON's October 1974 issue, we argued against compulsory licensing requirements for lawyers and explained the desirability of a system of *certification,* which could be handled by private, voluntary associations, such as professional or consumer organizations. Anyone interested in minimizing the cost and increasing the availability of legal services ought to be familiar with the economic arguments against licensing, with its tendency to inhibit the development and use of new techniques and skills.

Although most lawyers actually believe that licensing is needed as a means to assure minimum standards, the anti-advertising rules, on their face, appear to be aimed against competition, rather than "maintaining the highest standards of ethical conduct" as called for by the ABA Code of Professional Responsibility. Indeed, it is instructive to explore the history of the anti-advertising rules inasmuch as they appear to be so blatantly unrelated to fundamental ethical principles.

The origin of the ban on advertising stems from the intimate fraternity of the early English barristers, a select group of well-to-do young men who lived together and met each other every day, on a friendly basis, both at dinner and in court. As observed by Harry Drinker in his leading book on *Legal Ethics*, not having to earn their keep, "they looked down on all forms of trade . . . and regarded the law . . . as primarily a form of public service in which the gaining of a livelihood was but an incident." In England today, the rules of ethics and etiquette maintain a rigid ban on advertising by the bar.

The first major work on the subject in the United States, Judge George Sharswood's *Professional Ethics*, published in 1854, made no mention of advertising, and for many years, it was customary for attorneys to advertise in local newspapers, on a limited basis. Early state codes of ethics considered certain newspaper advertisements to be proper, and even the ABA Canons of Professional Ethics, first adopted in 1908, recognized the propriety of the publication of business cards as "a matter of personal taste or local custom." However, because of opposition to "commercialization" of the profession, the 1908 ABA Canons did condemn solicitation of business by advertisements, and a 1937 amendment prohibited, for the first time, all types of newspaper advertising.

The 1908 Canons, as amended, were superseded by the ABA's adoption of the Code of Professional Responsibility in 1969. The Preamble to the new Code expressly recognizes the value of individual rights and the existence of a free society, "grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government." Unfortunately, despite this lofty rhetoric, the ABA missed its opportunity for reform of the advertising prohibition, which is grounded on vastly different premises. Based on the assertion that the ban on advertising by lawyers "is rooted in the public interest," since competitive advertising could be misleading and "would inevitably produce unrealistic expectations," the 1969 Code carried over the anti-advertising rules of the earlier Canons.

In his insightful recent book, *Lawyers' Ethics in an Adversary System,* Monroe Freedman concludes that "the principal purpose of the antisolicitation rules is to limit competition among lawyers." Although many lawyers oppose any relaxation of the ban on advertising, it is patently insufficient to attempt to justify these anticompetitive rules on vague notions of the "public interest" and unsubstantiated prejudices against advertising. Economists have shown that statutory constraints on the commercial flow of information to consumers decrease competition and tend to result in significantly higher prices and lower utilization. Even the Consumers Union, a group which commonly favors paternalistic regulation of the marketplace, has taken a strong role in the battle against the anti-advertising rules.

If they are to be meaningful, professional codes of ethics should focus on conduct which actually harms the client or the public, rather than benefiting existing practitioners. But the ban on advertising did not originate from such considerations.

Anticompetitive rules of ethics not only constitute bad policy but, in the light of First Amendment guarantees of free speech, should be stricken down as unconstitutional infringements of the basic right of the lawyer to provide information and the corresponding right of the consumer to receive information without government obstruction.

It is folly to expect that government-enforced restrictions on all types of advertising by lawyers can benefit the public generally—nor do such lawyer-supported rules commend the profession to the public. It seems clear that the more information that can be made available to the public about legal services, the better off the consumer will be.

—MANUEL S. KLAUSNER

How to self-publish your own book and make it a best seller

by Ted Nicholas

The self-published author of the best selling books HOW TO FORM YOUR OWN CORPORATION WITHOUT A LAWYER FOR UNDER $50 and WHERE THE MONEY IS AND HOW TO GET IT shows you how! Over 140,000 copies have been sold to date at $7.95 and $10.00. That represents sales of over $1,000,000!

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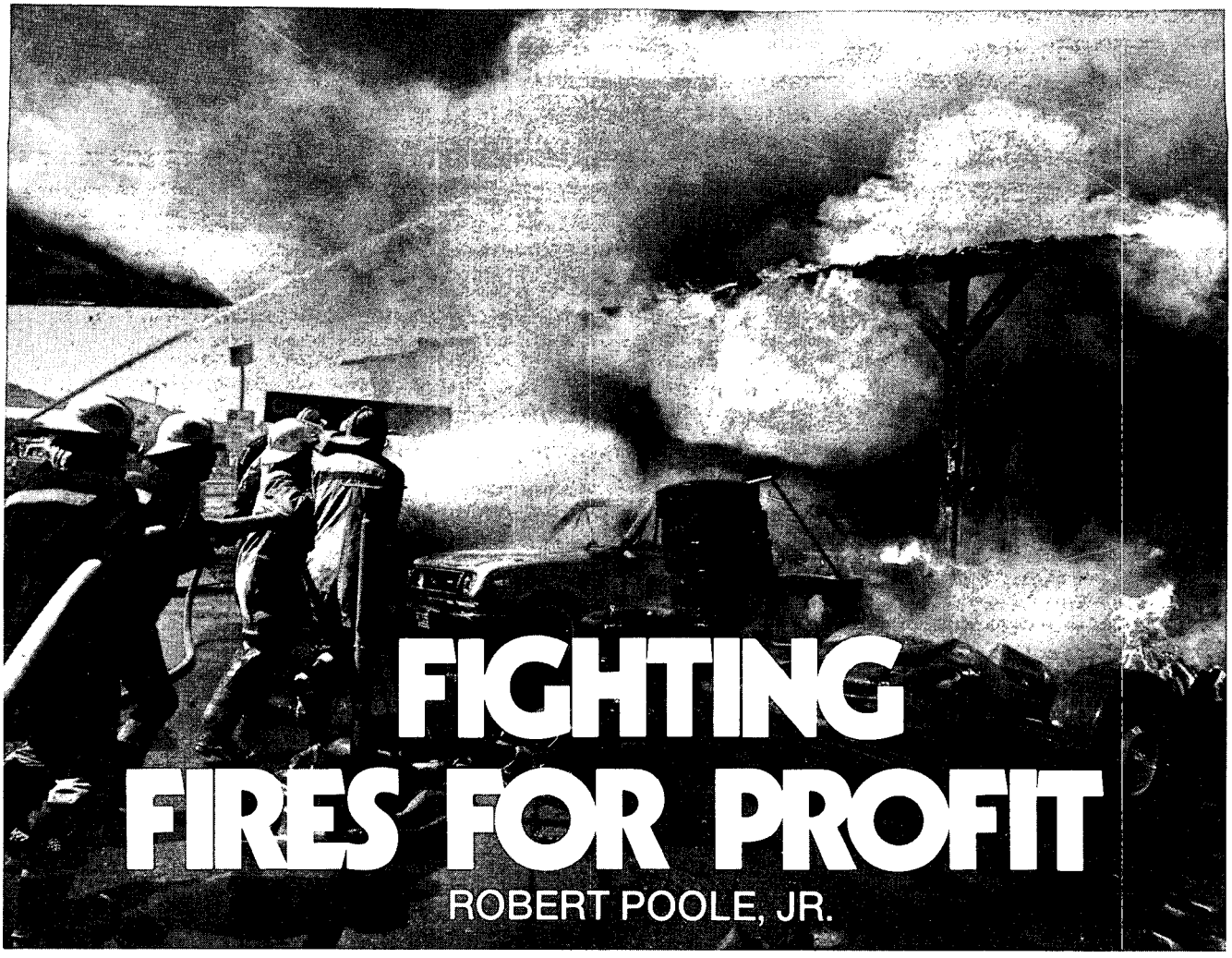

FIGHTING FIRES FOR PROFIT

ROBERT POOLE, JR.

It was 2:57 P.M. in Scottsdale, Arizona last June 26, outside temperature 102°, when Chief Witzeman stuck his head in the door and said, "I think we've got a big one, if you'd like to go along!" In seconds we were on our way from Fire Station No. 1 to the scene of Scottsdale's first major fire of 1975—a Shell gas station on the corner of Camelback and Scottsdale Roads. Gasoline from a leaking Ford gas tank had been ignited by a mechanic's trouble light and exploded, resulting in a roaring blaze that was already shooting flames out the roof and sending forth a plume of black smoke that could be seen for miles. By the time we arrived in the chief's car, we could feel the intense heat out on the street through the car's closed windows.

Already on the scene and in action were three of the Department's big lime-yellow pumpers. Engine #21 had dropped off its portable 750-gallons-per-minute pump at one hydrant, then moved around the corner and down the block laying its massive four-inch hose line to a second hydrant where it hooked up the hose to its powerful 1250 gpm midship pump. The hose lines were connected, via quarter-turn quick-disconnect couplings, to a portable hydrant set down on the asphalt in front of the gas station, and several powerful streams of water were trained on the fire in short order. Within minutes several truckloads of Scottsdale Fire Wranglers arrived from their city public works jobs, pulling on their protective gear as they ran to help man the hose lines.

Forty-five minutes later the last of the flames was extinguished, and although the largely-wood station would have to be completely rebuilt, the fire had been prevented from reaching the gas pumps or the thousands of gallons of gasoline stored below ground, and had been confined solely to the premises of the gas station.

Just a routine operation by the Scottsdale Fire Department. Only in conventional fire fighting terms, the operation was anything but routine. Who ever heard of lime-yellow fire trucks, portable pumps, four-inch hose, quarter-turn quick-disconnect couplings, portable hydrants, or part-time Fire Wran-

Editor Robert Poole does consulting work in the area of public safety services and recently conducted a feasibility study of contract fire service for a California fire district. He holds two engineering degrees from M.I.T.