



Ethical Representation of Clients in a Post Forest Park World

Dallas Bar Association

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Health Law and Healthcare Litigation



Martin Merritt is a founder and Executive Director of the Texas Health Lawyers Association where he has served from 2013 to the present. He has been repeatedly voted by D Magazine Best Lawyers in Dallas List. He has been elected by his peers to serve as Chairman of the Dallas Bar Association Health Law Section for 2021. He has served as special disciplinary counsel for the Texas Commission for Lawyer Discipline and serves outside litigation counsel and as outside general counsel to healthcare clients.

Course Outline

- Ethics Rules as they relate to attorney's duty when a client's conduct could be illegal or fraudulent. The word "fraud" appears in the Disciplinary Rules 66 times.
- How Did We Get Here: History of Government Activity when a Government Can't pay its Debts and how this relates to healthcare inflation.
- Forest Park will be the case study for illustration of a repeating ethical problem for health lawyers.
- Law Enforcement: "Witnesses," "Subjects" and "Targets"
- Discuss the Forest Park Attorney's Opinion and Representation
- Indictment: Travel Act and Commercial Bribery. Why did they charge under these laws?
- Treatment of Opinion: "Illegal on its face," vs. "Illegal as performed"
- What lawyers need to do to do to ensure compliance with the Disciplinary Rules of Professional Conduct as it relates to Fraud or illegal client activity.



TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT
(Including Amendments Effective May 1, 2018, June 1, 2018
and February 26, 2019)

The word “Fraud” appears 66 times.



1.02(c) Scope and Objectives of Representation

“A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent.”



1.02(c) Scope and Objectives of Representation

**“Assist” meaning you can’t
participate in the client’s fraud.**



1.02(c) Scope and Objectives of Representation

“A lawyer may discuss the legal consequences of any proposed course of conduct with a client . . .



1.02(c) Scope and Objectives of Representation

“...and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.”



1.02(c) Scope and Objectives of Representation

“The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action.”



1.02(c) Scope and Objectives of Representation

“There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity..” COMMENT 7



Fraud Defined as the “Big Kind” only. . .

““Fraud” or “Fraudulent” denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information (Omission).

To understand
Forest Park,
We need to
Go back in
time ...



Not Just 30 Years. . .





Although
Defendants
wish it was still
a drive in
theater . . .



We
need to
go back
2000
Years



FALL OF EMPIRES

ROME VS USA

(HIDDEN SECRETS OF MONEY EPISODE 9)

Fall Of Empires:
Rome vs USA
(Hidden Secrets Of
Money Ep 9)

YouTube Address:

<https://www.youtube.com/watch?v=OuOcnGAv4oo>

Rome kept getting
into wars they
couldn't pay for . . .



More specifically, the people with money didn't want to pay taxes to pay the debt





So, the government did what governments apparently repeatedly do. .

They
“Devalued”
the Currency



In this Case:
"Chiseling"



Or added
base metal. .
Like Copper.





 alamy stock photo

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www.alamy.com

Didn't take long for sellers of goods and services to figure this out. . .
They weren't getting paid full value. . .

So sellers of
goods and
services
simply raised
prices. . .
“Inflation”



 alamy stock photo

EPH210
www.alamy.com

So much so,
ordinary
people could
not afford
necessities
like food...





Fall Of Empires: Rome vs
USA (Hidden Secrets Of
Money Ep 9)

Medicare
Trust Fund
Insolvent
by 2025

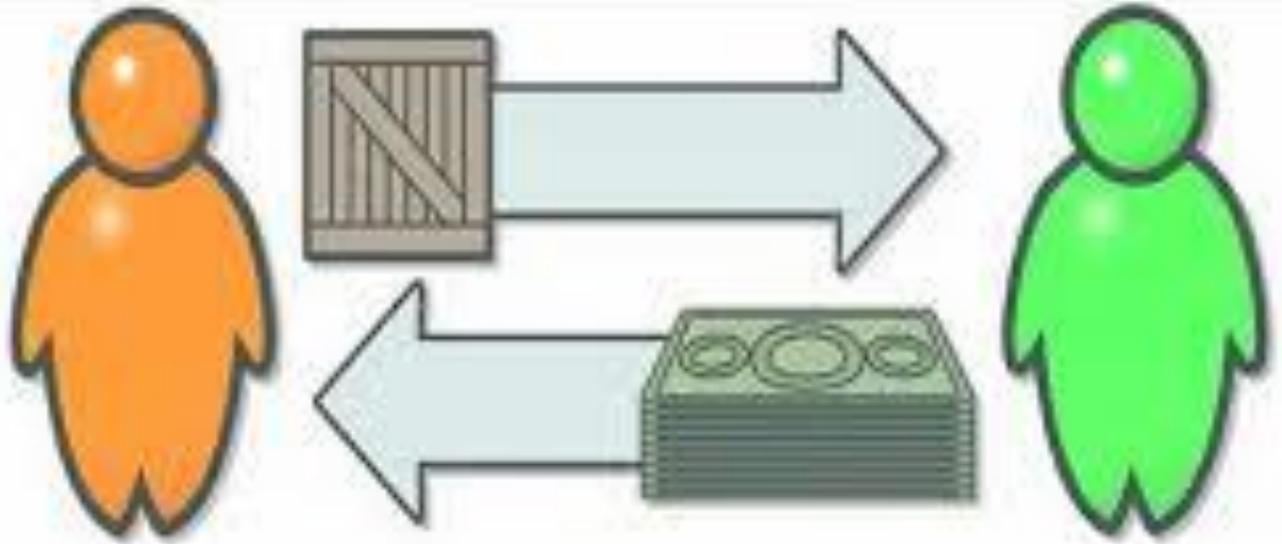


So, in Rome the government did what governments repeatedly do. .

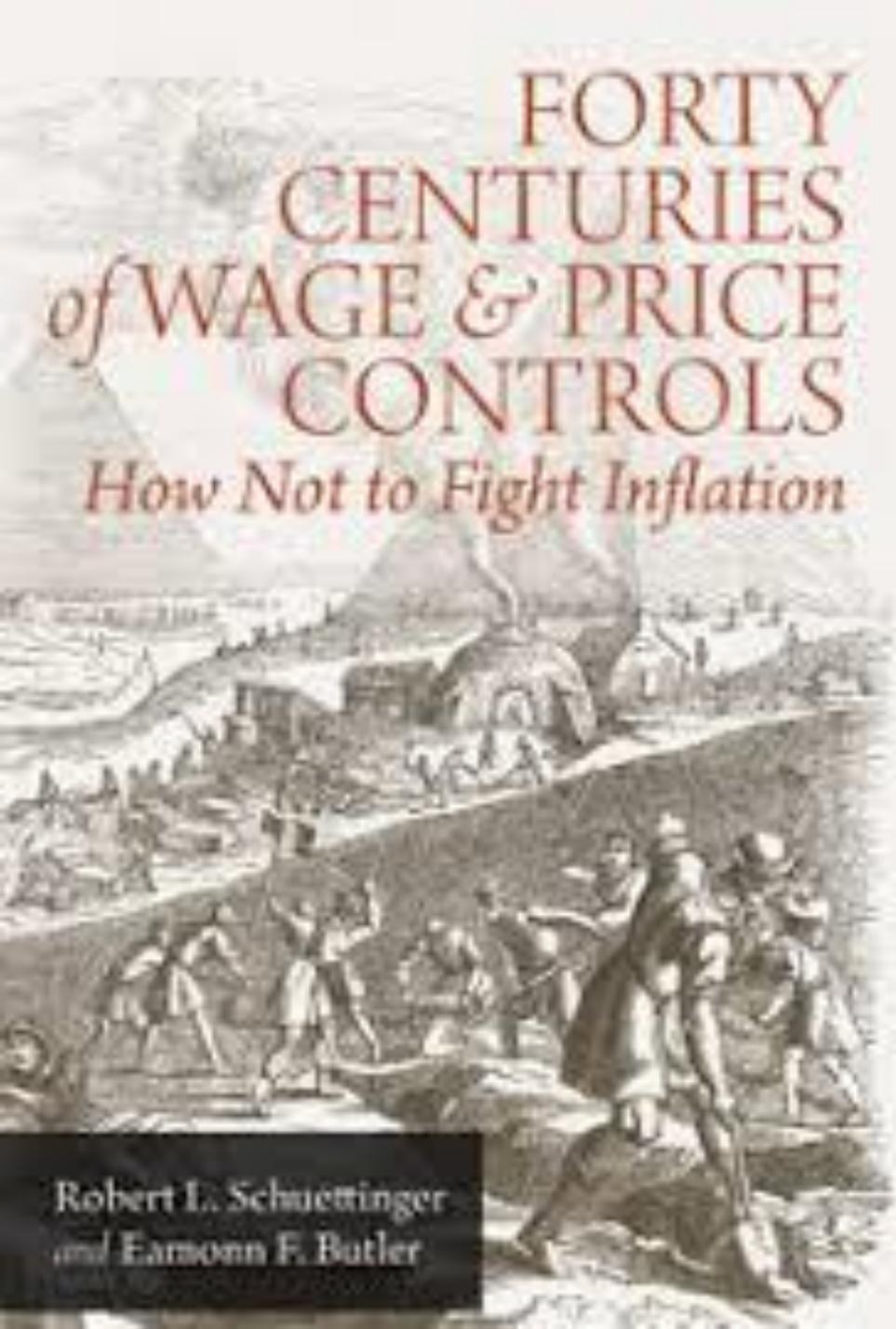
Government Imposed Wage and Price “Freezes”



Fair Market
Value Did Not
Matter ...



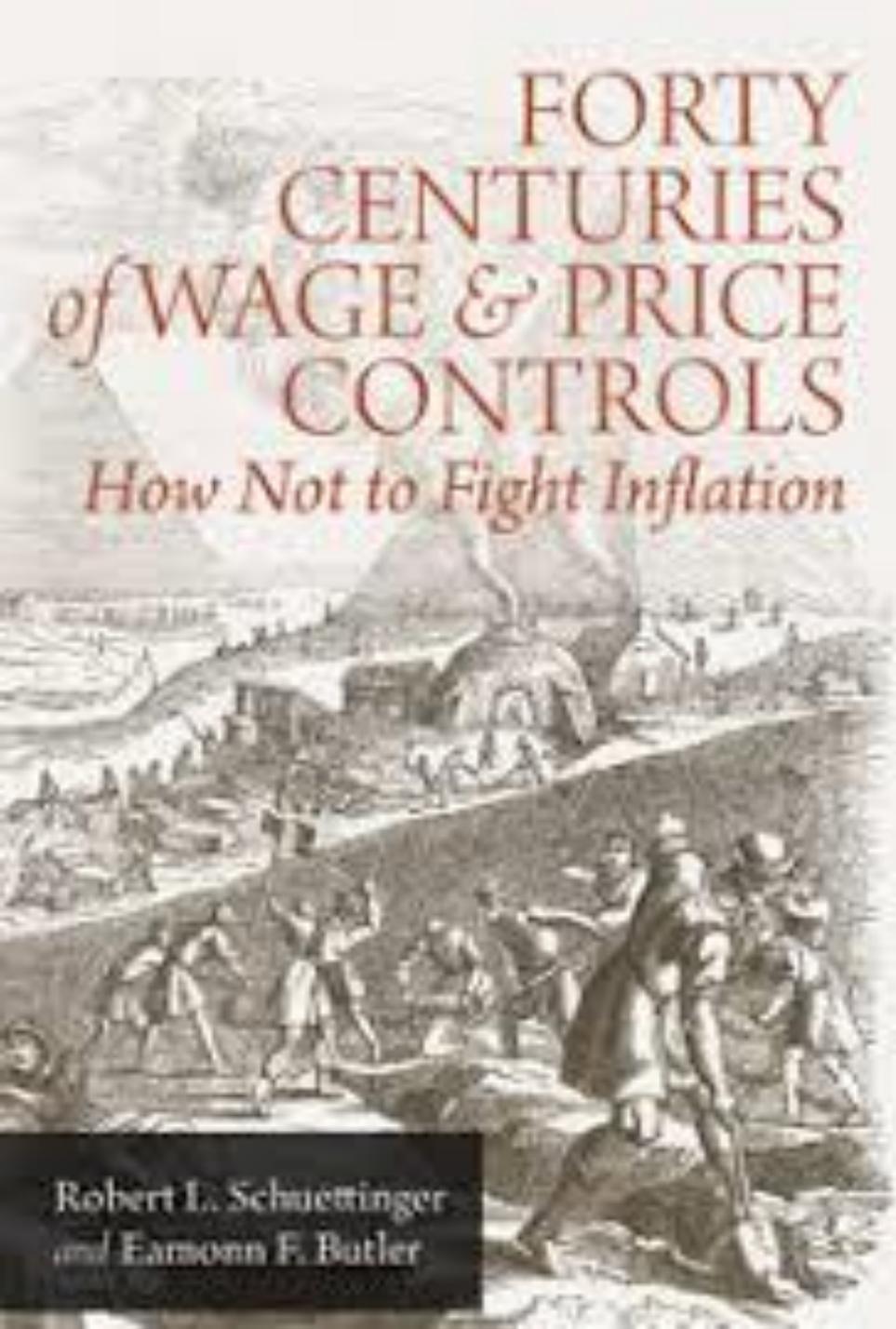
FAIR MARKET VALUE



FORTY
CENTURIES
of WAGE & PRICE
CONTROLS
How Not to Fight Inflation

Robert I. Schuettinger
and Eamonn F. Butler

When the Government
Can't Pay Its Debts, it
Historically Devalues its
Currency

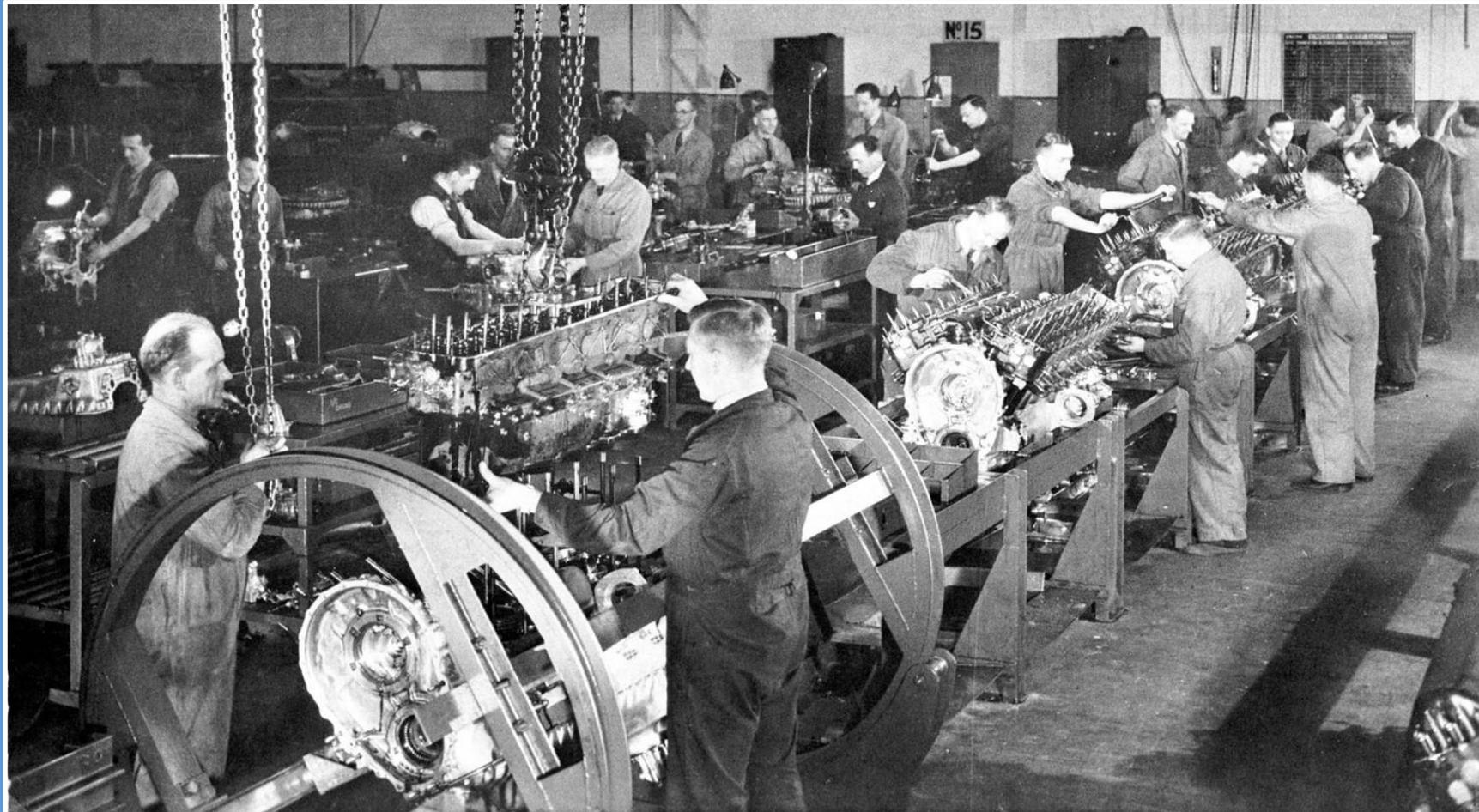


FORTY
CENTURIES
of WAGE & PRICE
CONTROLS
How Not to Fight Inflation

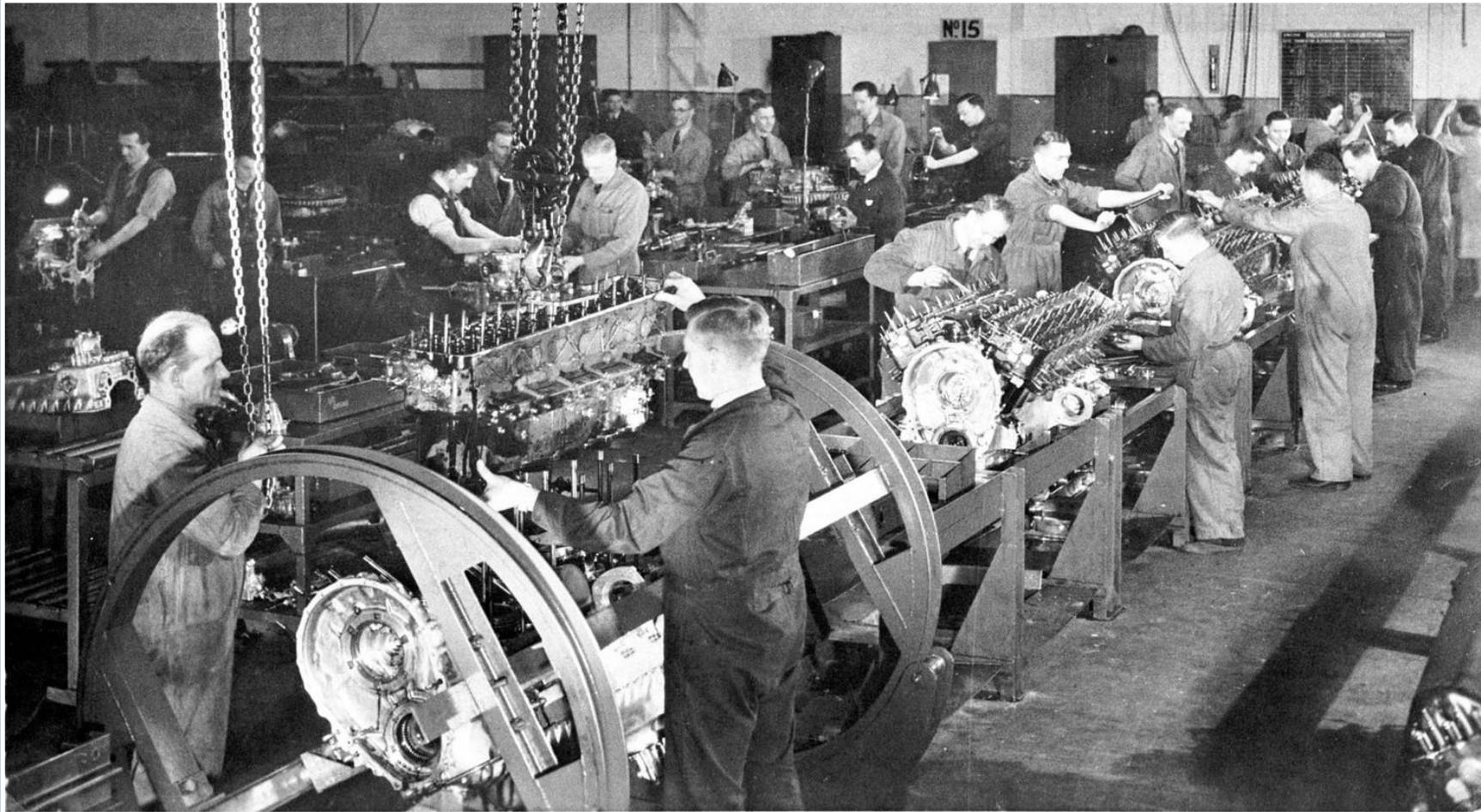
Robert I. Schuettinger
and Eamonn F. Butler

Causing Inflation of
Wages and Prices. . .

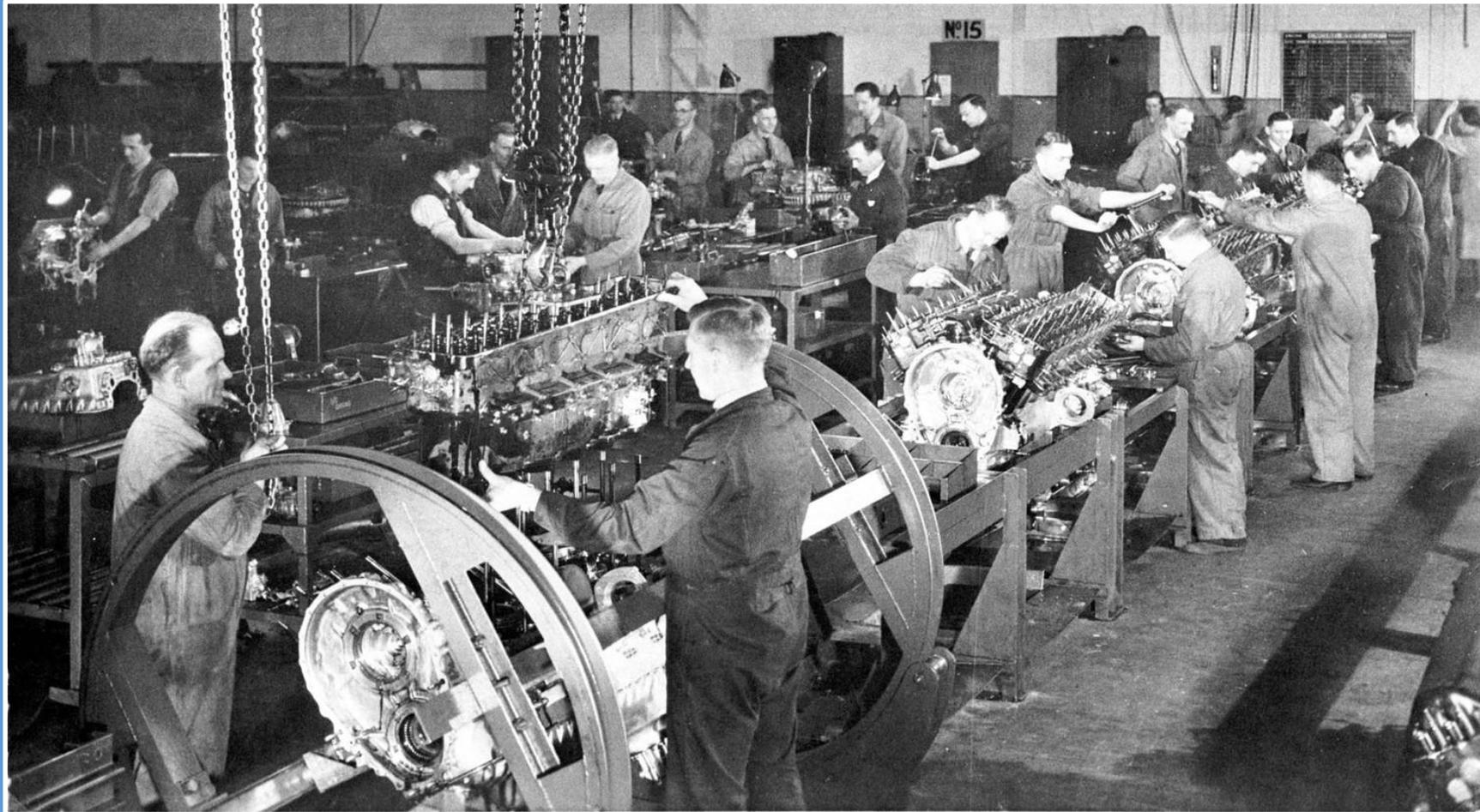
WWII the Government . . . Imposed Employee Wage Freezes

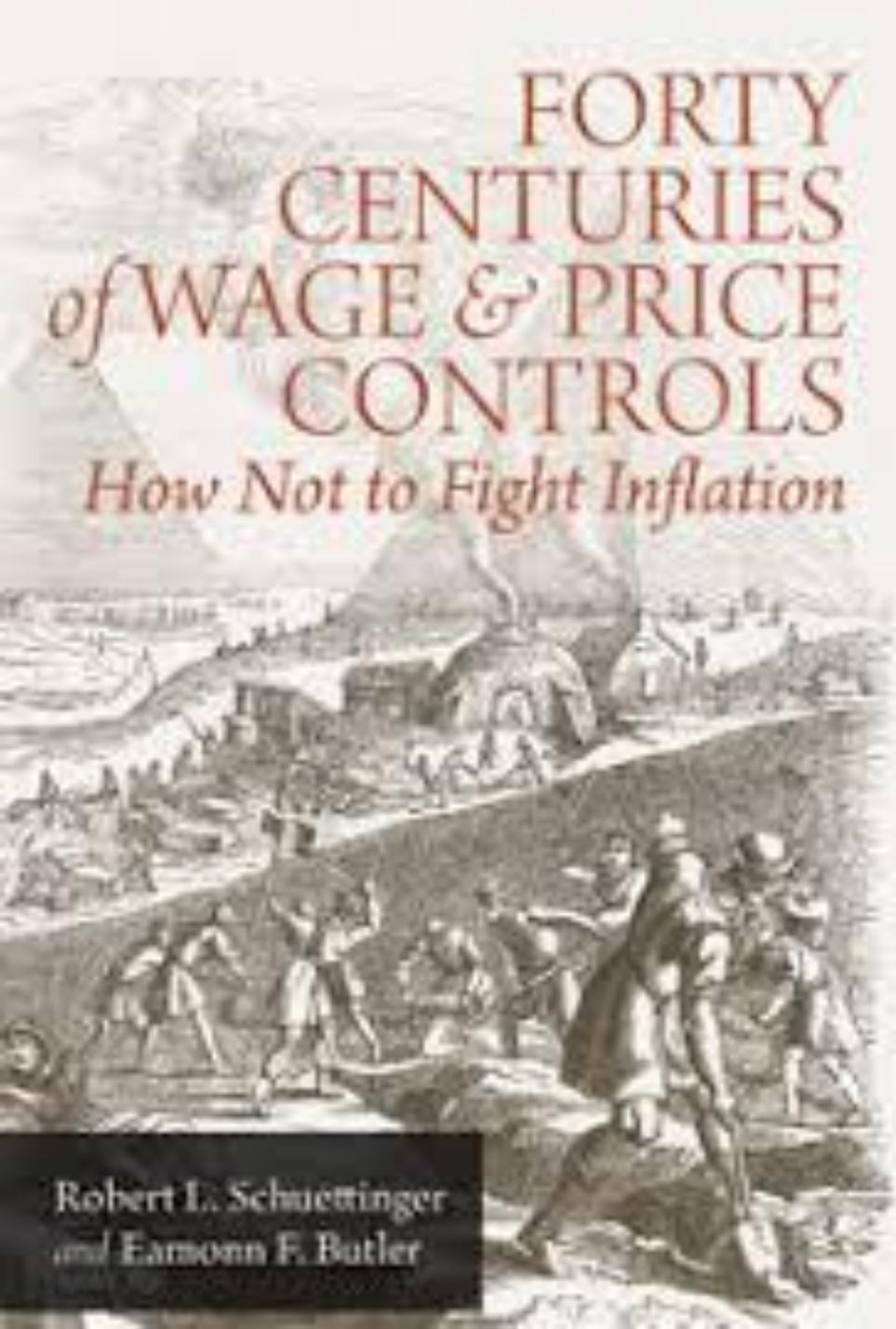


Fringe Benefits Were Exempt From Wage and Price Freezes

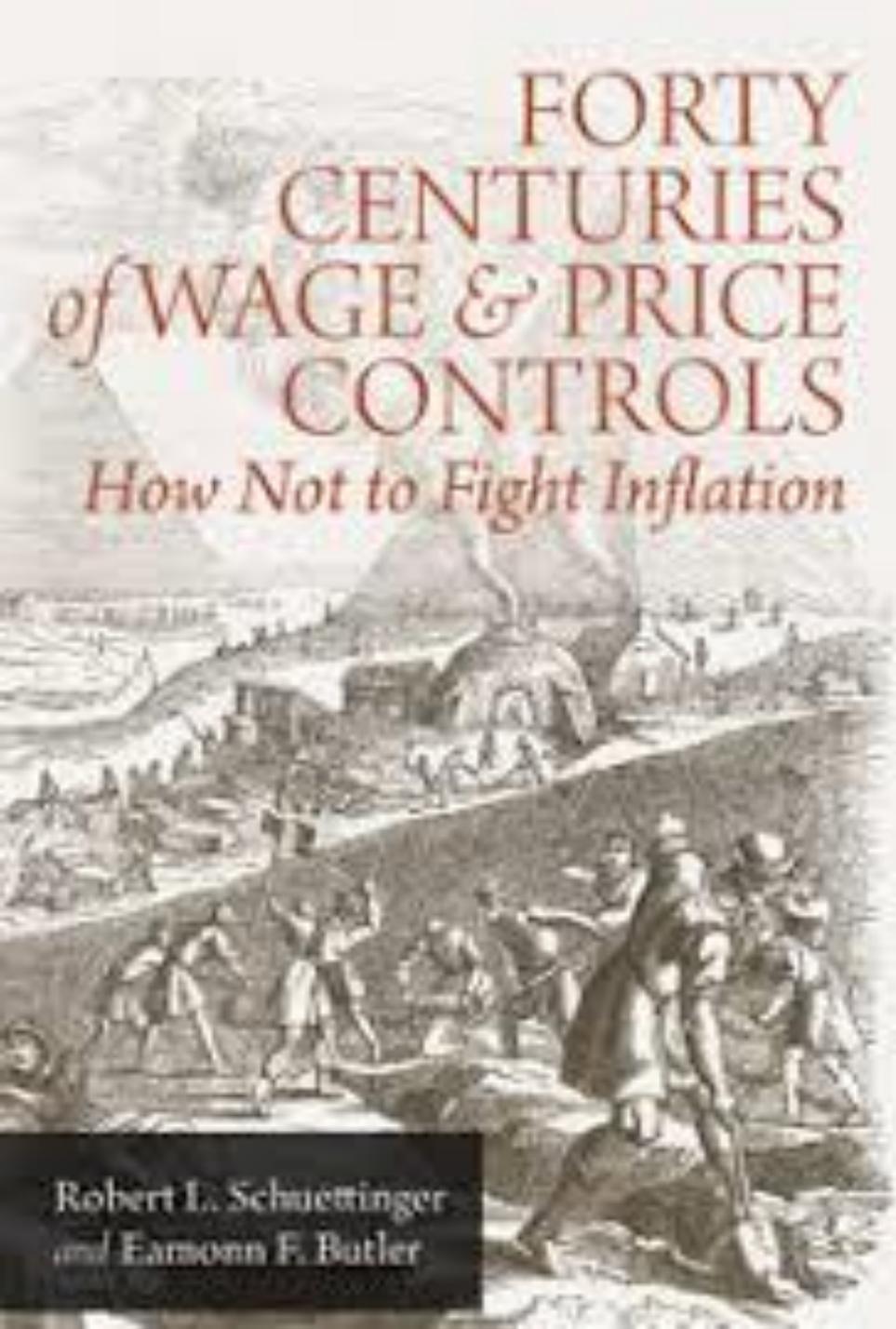


And that's How Employers Got Into the Health Insurance Plan





The point is not simply
Governments historically
impose Wage and Price
Controls. . . It's What
Happens Next!



FORTY
CENTURIES
of WAGE & PRICE
CONTROLS

How Not to Fight Inflation

Robert I. Schuettinger
and Eamonn F. Butler

And here is the
interesting part. . . .

When
Providers of
Goods and
Services
Attempt to
Resist Wage
and Price
Freezes . .





The government outlaws it. Creating a "Black Market"



Which Leads
to Inflation

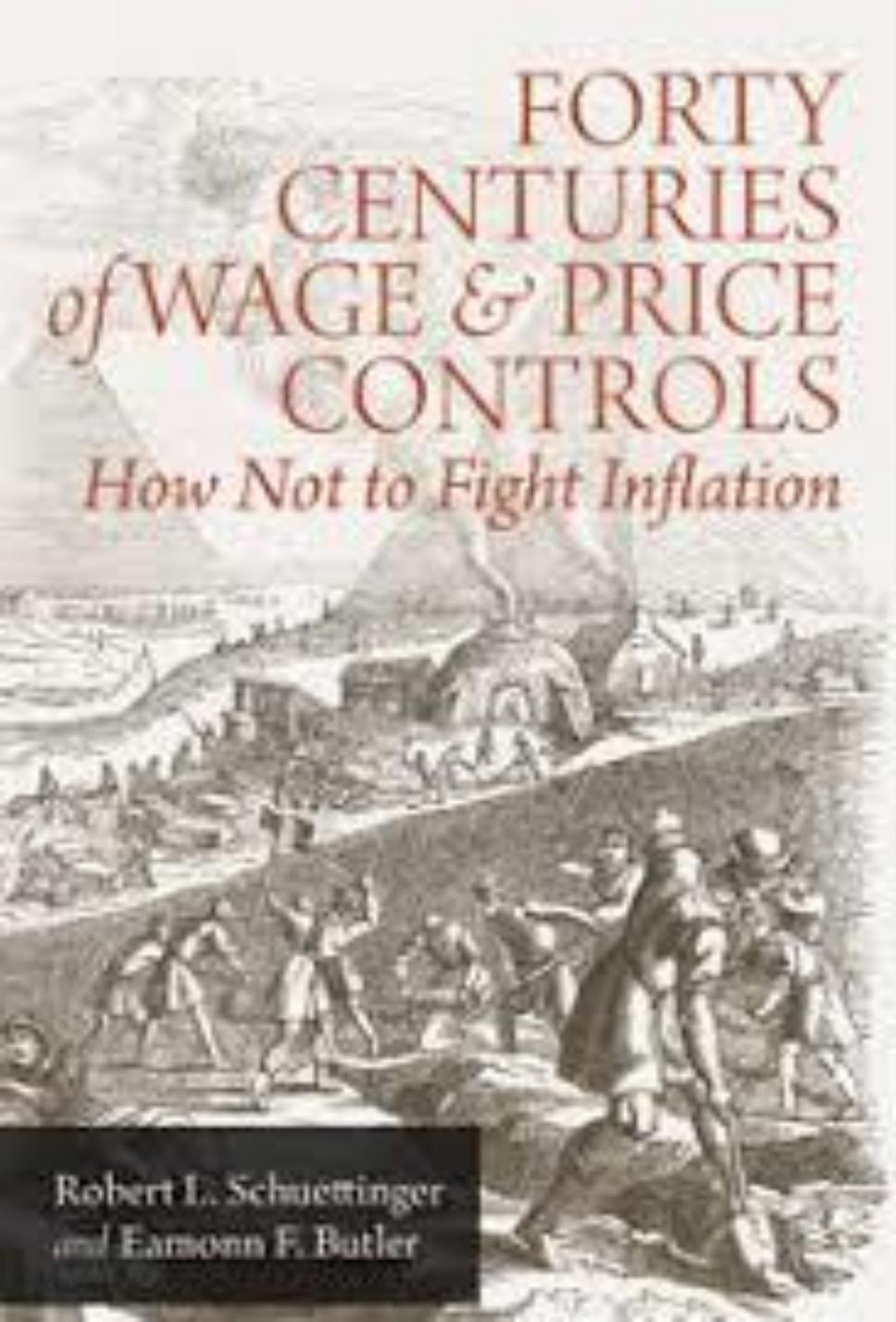
**The Government Makes More Laws:
“Non-compliant” Providers are now “Outlaws”**





Fall Of Empires: Rome vs USA
(Hidden Secrets Of Money Ep
9)

There are
Documentaries
On it. . .



FORTY
CENTURIES
of WAGE & PRICE
CONTROLS
How Not to Fight Inflation

Robert I. Schuettinger
and Eamonn F. Butler

And, Hundreds of
Books Just like it. . .

Recap: The Historically Repeating Pattern. . .

- Government Obligates Itself to Pay for More Goods and Services than Taxpayers are willing to Pay. . .
- Government devalues its currency to pay debts. . .
- Leading to soaring inflation . . .
- Resulting in Government Imposed Wage and Price Freezes . . .
- Sellers must agree to the Government Dictated Price Freezes . . .
- Non-Compliance is “vilified” and Criminalized . . .
- Government Blames Sellers and Providers for the Problems it Caused.
..

But today. .
Government
Doesn't Just
"Print"
Money



We Do Something Far More Absurd. . .





How to Create Money

Out of Thin Air
(STEP BY STEP)

How it Works. . .

- Bank takes in \$100 Million in Deposits
- Bank is required to keep \$10 million in Reserves
- Bank can loan someone else \$90 million which created out of “thin air”
- Together, both bank customers think they have a total of \$190 million to spend (and they do!)





If there is a
healthcare
provider. .
.Banks will
throw
money at
them. .



Go to rural
Texas and
look around.

There is this.



...and then,
there's this.



These
people are in
debt up to
their
eyeballs.

So are these people...



And the
people who
work for
them
As well.





As if a Portal
In Space
Where
Money
Magically
Appears

When you
Flood a
System
With
Dollars . . .





Patients
Demand
New
Equipment,
even though
the old one
works just
fine?

Or a big
new
hospital?

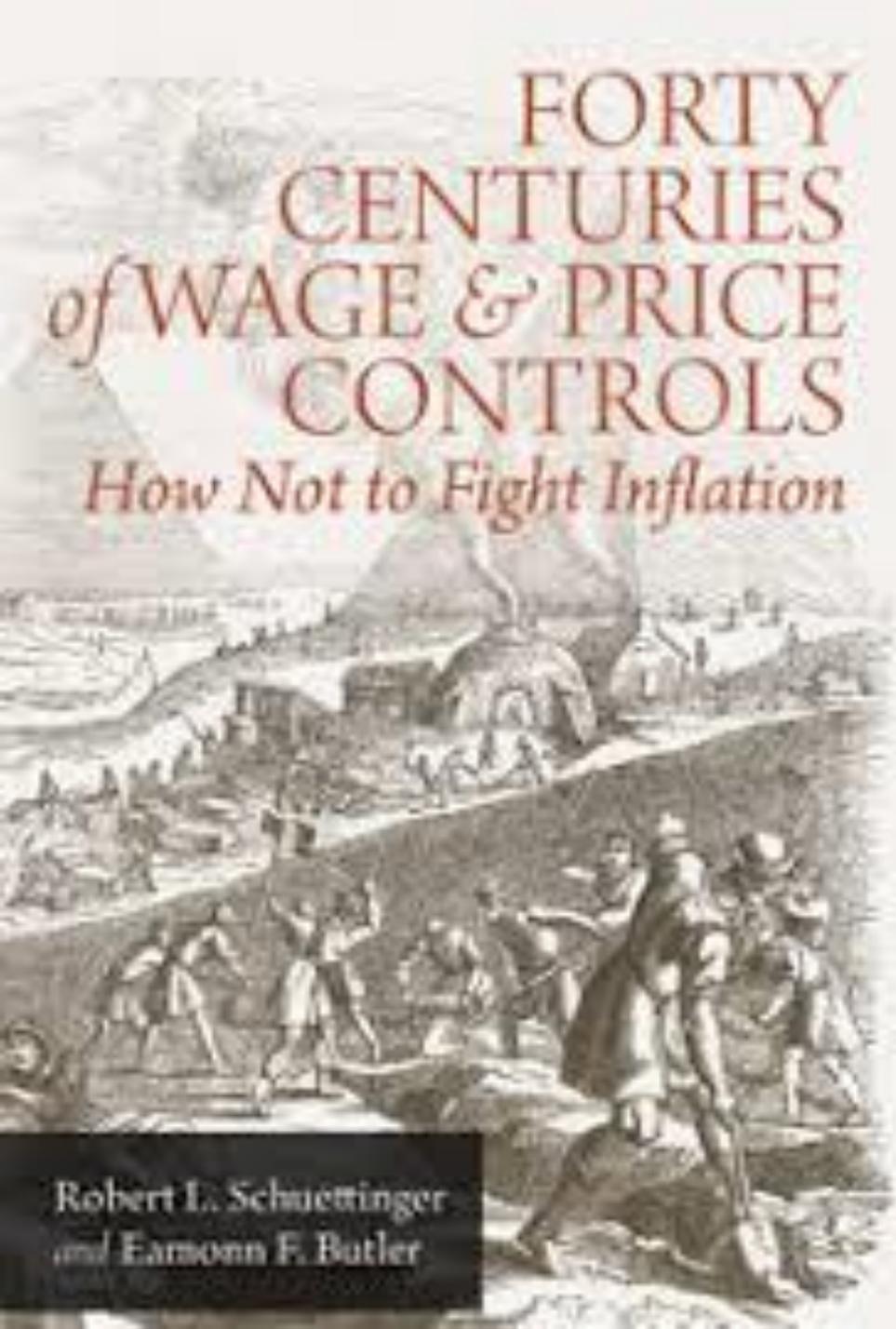




That's why costs keep going up.

Providers are up to their eyeballs in debt.





Meanwhile. .. Nobody is paying attention to What Always happens next:

Wage and Price Freezes in Healthcare.

Healthcare Wage Freezes can take many forms. .

- DRG Prospective Payment System
- CPT Coding Requirements
- Global Payments to providers
- PPO Contracted Rates
- Manual Restrictions on “medical necessity”
- EMTALA

The logo for the Centers for Medicare & Medicaid Services (CMS) features the letters 'CMS' in a bold, blue, sans-serif font. A thick yellow diagonal line crosses the right side of the letters from the top right to the bottom left.

CENTERS for MEDICARE & MEDICAID SERVICES

MEDICARE FEE SCHEDULE

CMS FEE
Schedule is a
Government
Imposed
“Wage
Freeze”

HEALTH INSURANCE CLAIM FORM
APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

HCF A 1500

PATIENT'S NAME (Last Name, First Name, Middle Initial)
PATIENT'S ADDRESS (No., Street)
CITY STATE ZIP CODE TELEPHONE (Include Area Code)

10. IS PATIENT'S CONDITION RELATED TO:
a. EMPLOYMENT? (Current or Previous) YES NO
b. AUTO ACCIDENT? PLACE (State) YES NO
c. OTHER ACCIDENT? YES NO

11. INSURED'S POLICY GROUP OR FECA NUMBER
a. INSURED'S DATE OF BIRTH MM DD YY SEX M F
b. OTHER CLAIM ID (Designated by NUCC)
c. INSURANCE PLAN NAME OR PROGRAM NAME

13. INSURED'S SIGNATURE I authorize the payment of medical benefits to the undersigned physician or supplier services described below.

15. OTHER DATE MM DD YY

17. NPI

18. HOSPITALIZATION DATES RELATED TO PRESENT SERVICES FROM MM DD YY TO MM DD YY \$ CHARGES YES NO

19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)

20. OUTSIDE LAB? YES NO

21. DATE(S) OF SERVICE FROM MM DD YY TO MM DD YY PLACE OF SERVICE EMG CPCS

22. PROCESSES, SERVICES, OR SUPPLIES (Specify Unusual Circumstances)

23. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) ICD 10th CODE ORIGINAL REF. NO.

24. FEDERAL TAX I.D. NUMBER SSN EIN

25. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on this form apply to this bill and are most correct.)

26. PATIENT'S ACCOUNT NO.

27. ACCEPTANCE OF ASSIGNMENT? YES NO

28. TOTAL CHARGE \$

29. AMOUNT PAID \$

30. REFERENCE

31. SERVICE CLERK LOCATION INFORMATION

32. BILLING PROVIDER INFORMATION

SIGNED DATE

NUCC Instruction Manual available at: www.nucc.org PLEASE PRINT OR TYPE CR061553 APPROVED OMB-0938-1197 FORM 1501

23.F

FMV

It doesn't matter what the FMV of services might be...

IRRELEVANT!

The logo for the Centers for Medicare & Medicaid Services (CMS). It features the letters 'CMS' in a bold, blue, sans-serif font. The letters are slightly italicized and have a slight shadow effect. The logo is set against a white background with a yellow diagonal line running from the top right towards the bottom left, passing behind the letters.

CENTERS for MEDICARE & MEDICAID SERVICES

MEDICARE FEE SCHEDULE

Wages are frozen at the Government Imposed Fee Schedule . . .



After All. .
It's their
sandbox. . .

Their rules. .

.

Commercial Health Plans Can't Print Money

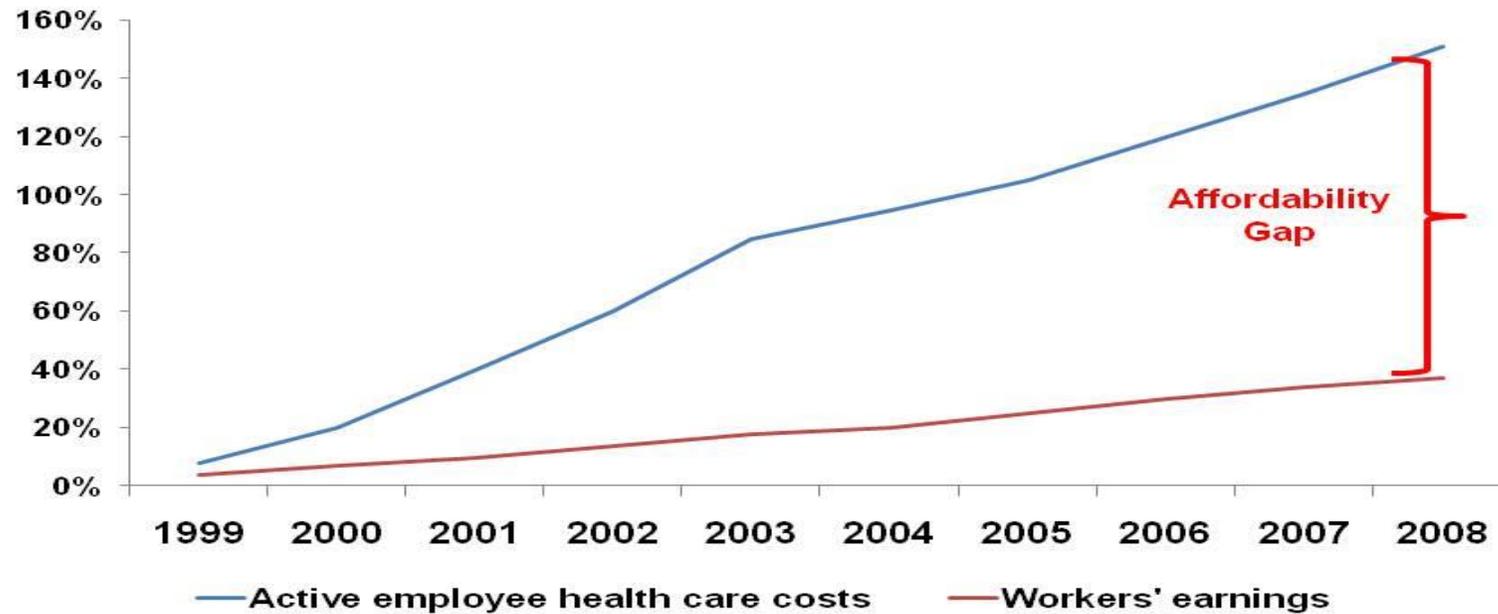
Inflation Shows up in :

- Increased Insurance Premiums for Employers
- Increased Premiums for Workers and Consumers
- Higher Deductibles and Co-insurance

Employees Pay: Healthcare and Wages

The Growing Affordability Gap

Cumulative active employee health care costs vs. wage increases



Source: 2009 Health Care Cost Survey - The Health Dividend: Capturing the Value of Employee Health 20th Annual U.S. Results Report, Towers Perrin, January 2009



Banks are still throwing money at healthcare providers.

And that is how this. . .



became
This...



Doctors Who Formed Forest Park Had a Plan: Out-of-Network Reimbursement . . .



That's
how they
were to
pay for this
thing...



Same with Clinics Everywhere Struggle to pay their bills . . .



And that opens the door ...

malum in se

malum prohibitum

Malum in Se. . .(Bad in itself)

- “Phantom” Billing
- Billing while the doctor is “out of the country”
- Billing While the doctor is “under anesthesia and being operated upon”

Note: Healthcare Clients Never Seek A Legal Opinion Re: *Malum In Se*”

Malum Prohibitum . . . (Bad Because there is a Rule Against it!)

- Stark Law Physician Self-Referral
- Anti-Kickback Statue-Illegal Remunerations
- Ethics Violation
- Tex. Occ. 102.001 “Patient Solicitation Statute”
- Travel Act, Using Roads to Commit a Crime
- Commercial Bribery Statute, Similar to Foreign Corrupt Practices Act



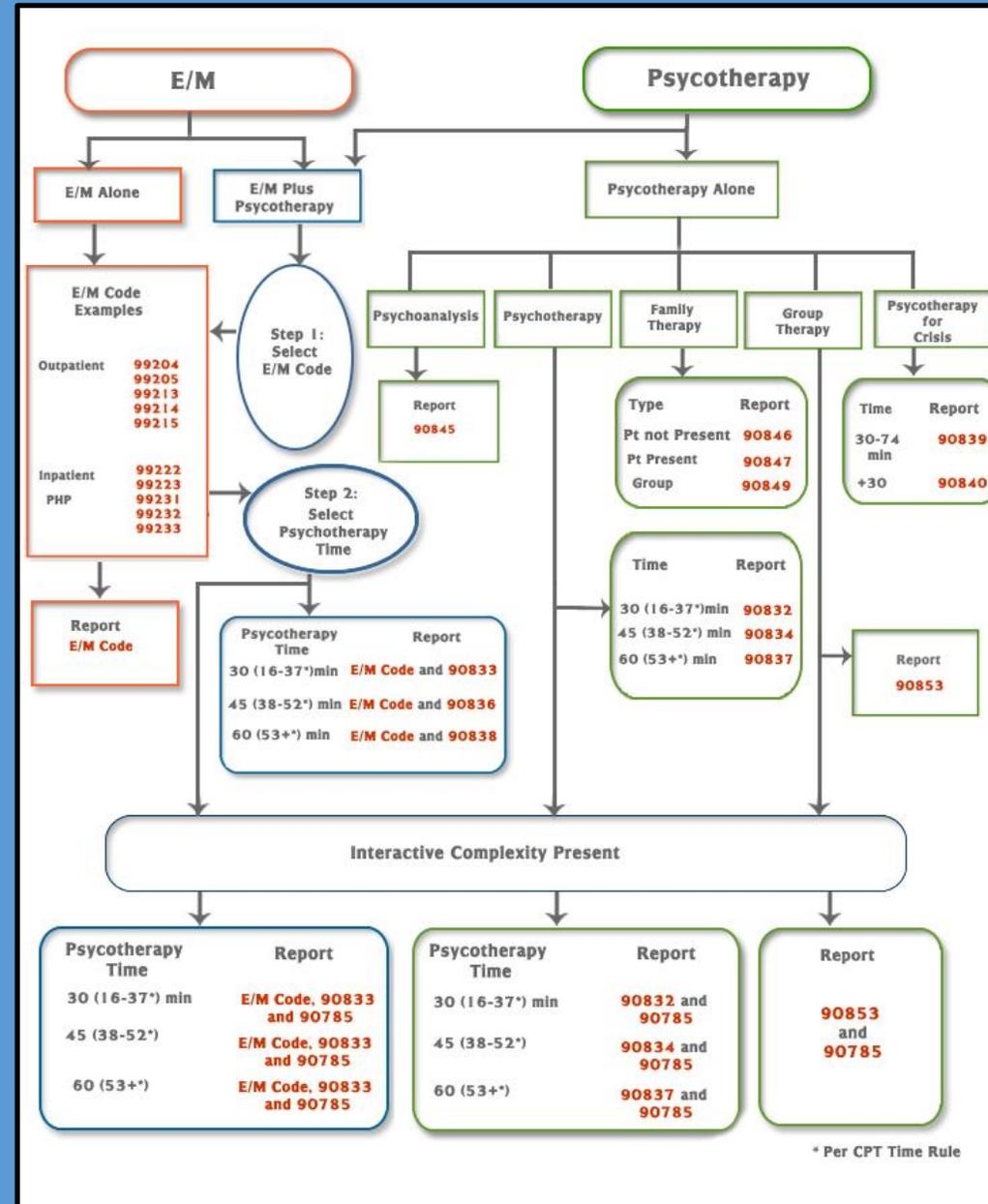
In healthcare, all sorts
of things are possibly
Fraudulent or Criminal

UPCODING



© 2001 LARRY JOST

Improper Coding



Billing with Improper Documentation



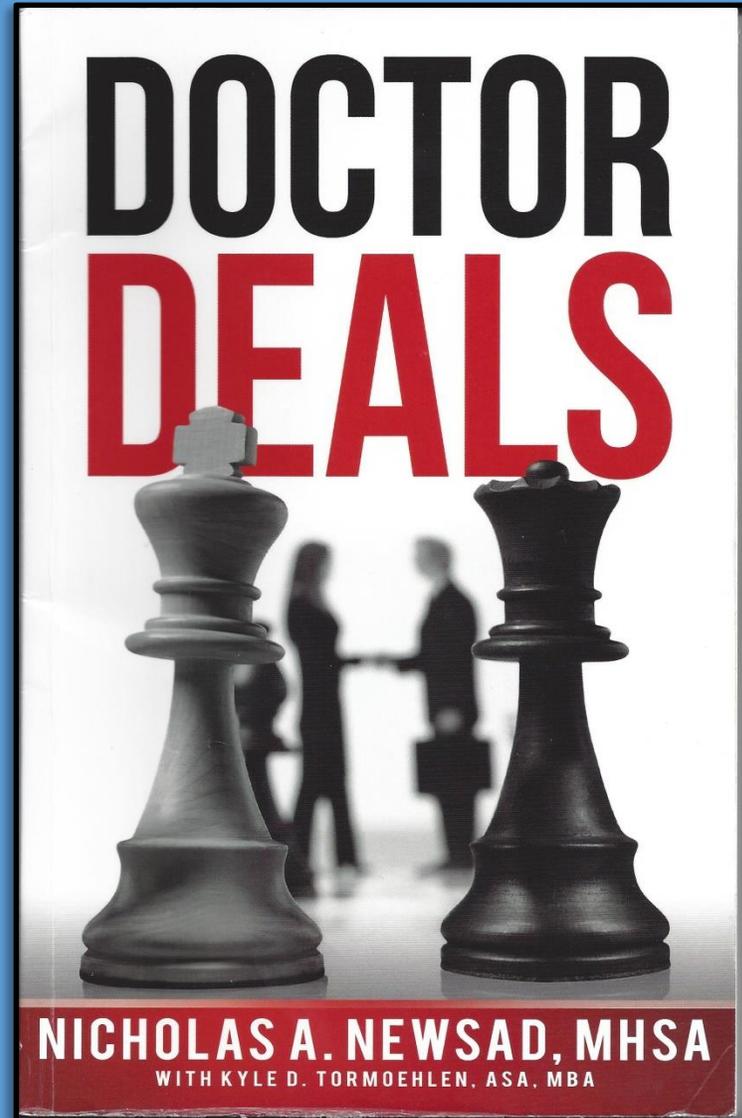
Medically Unnecessary

Government Fraud and Abuse Laws

- False Claims Act
- Anti-Kickback Statute
- Physician Self-Referral Statute
- Exclusion Statute
- Civil Monetary Penalties Law



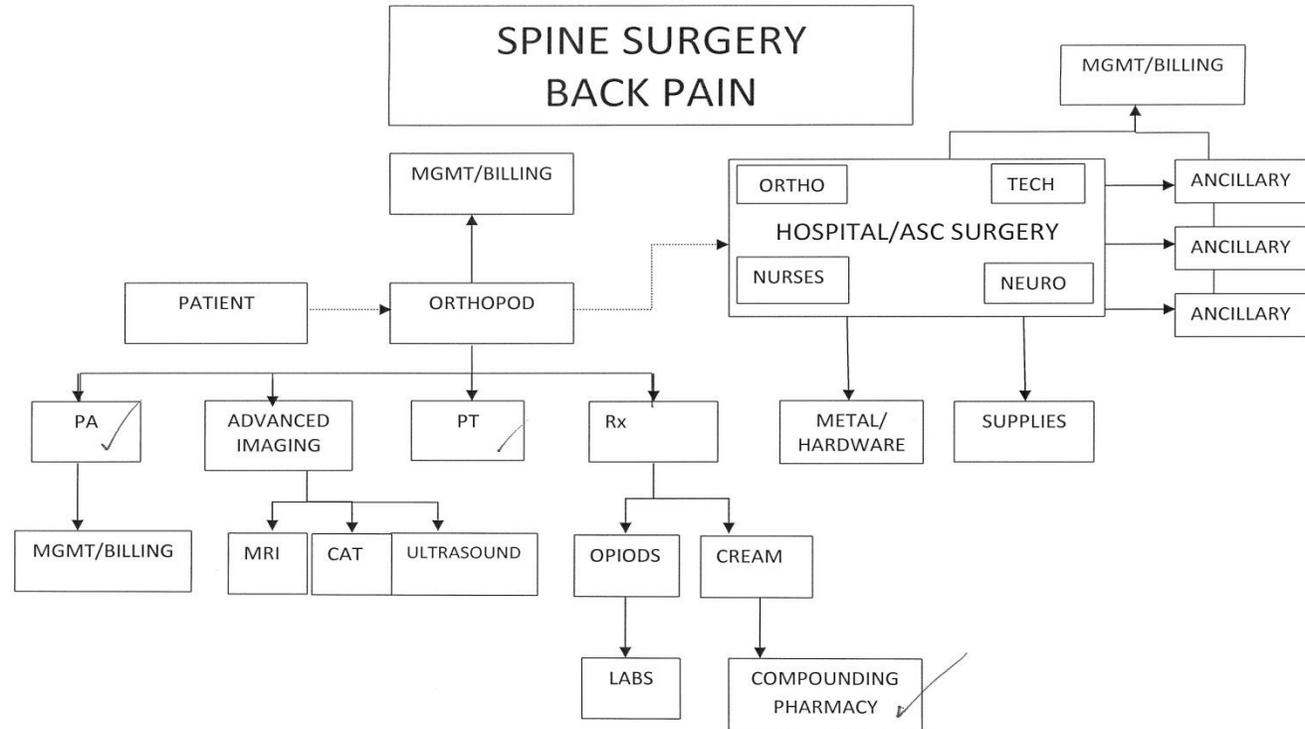
Then there are . . .



Debt-Ridden Providers are easily persuaded . . .



Somebody has an Idea! (It's a little complicated . . .)



But the Client is SOLD ...



And the Client tells you all about it.



Maybe the client has told
some friends about it. (They're excited)





As if they
Have Found
Another
Portal
Through
Which
Money
Magically
Appears

Everyone is happy. ..



All they need is you . . .



To Bless the Arrangement . . .



Advice of Counsel Defense:

Is the “Defense” a “Silver Bullet”?

- “Round 2 for Quattrone, in Post-Tyco World” *The Wall Street Journal*, April 8, 2004

“Many executives accused of improper accounting argue that they had no criminal intent by insisting that they relied on advice or approval from lawyers, boards of directors or auditors. ‘In dealing with arcane areas,’ an advice-of-counsel defense can be ‘a silver bullet,’ says George Canellos, a former federal prosecutor. Prosecutors often counter that the defendant didn’t give the lawyer complete information.”

When the Client tells you all about it.



Client's Don't Tell Lawyers Everything



Like Being Bottom of a Well...



Client's Only Pass The Facts Over the Opening That Will Get to a "Yes"!



Which Leads us to Forest Park's Lawyer's Opinion



The Government Tried To Keep the Forest
Park Lawyer Off the Stand,

By Agreeing that What the Lawyer Reviewed
was “Legal On It’s Face”

Plano Surgery Associates: Legal “On Its Face” vs. Illegal “As Performed”

12/6/2016

PLANO SURGERY v. NEW YOU WEIGHT MANAGEMENT, 265 SW 3d 496 - Tex: Court of Appeals, 5th Dist. 2008 - Google Scholar

265 S.W.3d 496 (2008)

**PLANO SURGERY CENTER, Appellant,
v.
NEW YOU WEIGHT MANAGEMENT CENTER, Appellee.**

No. 05-07-00018-CV.

Court of Appeals of Texas, Dallas.

June 25, 2008.

Rehearing Overruled October 28, 2008.

498 *498 P. Michael Jung, Strasburger & Price, L.L.P., Charles Sartain, Andrew K. York, Looper, Reed & McGraw, P.C., Dallas, TX, for Appellant.

Geoffrey S. Harper, Fish & Richardson, P.C., Dallas, TX, for Appellee.

Before Justices FITZGERALD, LANGMIERS, and MAZZANT.

OPINION

Opinion By Justice AMOS L. MAZZANT.

Plano Surgery Associates: Legal “On Its Face” vs. Illegal “As Performed”

Section 102.001(a) of the Texas Occupations Code provides,

“A person commits an offense if the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage. . .

Plano Surgery Associates: Legal “On Its Face” vs. Illegal “As Performed”

- When the illegality does not appear on the face of the contract, it will not be held illegal and thus void unless the facts showing its illegality are before the court.
- The agreement could be performed lawfully by PSC paying New You 66.66 percent of "net cash" for "marketing services" not involving the securing or soliciting of patients.

In Forest Park,
The
Government
Conceded the
Lawyer Was
Right ...



Because they
had a two-
part Back Up
Plan...



As We have Discussed, First
“The lawyer wasn’t given all the facts”
Negates “Advice of Counsel”...



**Gov't tried to keep the lawyer off the stand . . .
Because his Opinion Was Irrelevant.. .**



But he did take the stand.. .



CRIME

MAR 27

Lawyer tells jury in Forest Park bribery trial that surgeons who took money followed his advice



Kevin Krause, Federal Courts Reporter



Notice the words “Bribery” Trial..



CRIME MAR 27

Lawyer tells jury in Forest Park bribery trial that surgeons who took money followed his advice

 *Kevin Krause, Federal Courts Reporter*  

The Fed Gov't Found a way to Criminalize Commercial Only: Travel Act and Commercial Bribery.

- **Travel Act 18 U.S.C § 1952**, Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—**(1)** distribute the proceeds of any unlawful activity; or **(2)** commit any crime of violence to further any unlawful activity
- **Commercial Bribery**, Texas Penal Code § 32.43 as the state crime

Forest Park Defendants Were Charged with Bribery. .

Commercial Bribery, Texas Penal Code § 32.43 as the state crime

(C) [Fiduciary]: a lawyer, physician, accountant, appraiser, or other professional advisor;

(b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.



The Ethical Concept of the
“Commercial Bribery” Law
Is well known and appears many
places. . .

Where the Idea can also be found. . .

- **Tex. Occ. Code 102.006 “Failure to Disclose”**
- **AMA Code of Medical Ethics’ Opinion 8.0321**
- **The Foreign Corrupt Practices Act of 1977 (FCPA) (15 U.S.C. § 78dd-1, et seq (This Month’s Topic at the DBA Health Law Section CLE May 15th)**
- **Stark Law Disclosures:** 2008, the Centers for Medicare and Medicaid Services issued a new rule requiring physicians to disclose to patients the physician’s ownership of or investment in hospitals

Prior To Forest
Park Indictment,
No one in Texas
had ever been
charged under
the Texas
Commercial
Bribery Statute.



So why was
Commercial
Bribery the
Charge if No
Health Lawyer
Had Ever Heard
of Such a Claim?



To ask the
Question is to
Answer it. ..



Because the Government Knew the Analysis Wasn't in the Lawyer's Opinion



CRIME MAR 27

Lawyer tells jury in Forest Park bribery trial that surgeons who took money followed his advice

 *Kevin Krause, Federal Courts Reporter*  

They were trying to keep
the lawyer from testifying:

(1) “The lawyer wasn’t given all the facts”
Negates “Advice of Counsel” . . .



(2) Might be “Relevant” , but not “Material”

CRIME MAR 27

Lawyer tells jury in Forest Park bribery trial that surgeons who took money followed his advice

 *Kevin Krause, Federal Courts Reporter*  

Which Leads to a Practice Pointer





Rule 1.03 Communication

“A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation..”

What kinds of disclosure is Required Under Tex. Occ. Code 102.006?



Forest Park
Teaches, Not only
is “Commercial
Bribery” and
non-disclosure a
big issue...



But Also “What
Kind of
Disclosure” might
be Necessary. ..



Remember: Forest Park Defendants Were Charged with Bribery. . As Fiduciaries. . .

Commercial Bribery, Texas Penal Code § 32.43 as the state crime

(C) [Fiduciary]: a lawyer, physician, accountant, appraiser, or other professional advisor;

(b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.

Fiduciary Duty In Texas . . .

There is a "general prohibition against the fiduciary's using the relationship to benefit his personal interest, except with the FULL KNOWLEDGE and consent of the principal."

Hawthorne v. Guenther, 917 S.W.2d 924, 934 (Tex. App.--Beaumont 1996, writ denied)

The Prosecution
Spent much of
the Case, arguing
the EFFECT of the
Financial
Arrangement.
Increased Cost.



The Disclosure
was inadequate:

The patient was not
told and did not
consent to the
increased cost due
to the Out of
Network
Arrangement



The Gov't Lost
on the Travel Act.
No One Was
Convicted.



When the Client Asks “what kind of disclosure is Required Under Tex. Occ. Code 102.006?”



Burying in the “Fine Print” That a Relationship “Exists” ..



Is not an effective disclosure



Returning to the Lawyer's Duty. .





1.02(c) Scope and Objectives of Representation

“A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent.”

In Forest Park, Everyone Agreed the Lawyer Didn't Do Anything Wrong...



CRIME MAR 27

Lawyer tells jury in Forest Park bribery trial that surgeons who took money followed his advice

 *Kevin Krause, Federal Courts Reporter*  

In Fact, The Government Didn't Even Want the Lawyer on the Stand...



CRIME MAR 27

Lawyer tells jury in Forest Park bribery trial that surgeons who took money followed his advice

 *Kevin Krause, Federal Courts Reporter*  

In Law Enforcement,
there are three kinds of people. . .

1) “Witnesses”- Example: A person who
Merely witnesses a bank robbery. . .

In Law Enforcement,
there are three kinds of people. . .

(2) “Subjects” – People who might be charged
with aiding and abetting:

(a) Whoever commits an offense against the United States or aids, abets,
counsels, commands, induces or procures its commission, is punishable as a
principal.

In Law Enforcement,
there are three kinds of people. . .

(3) “Targets” – People whom the Government is
investigating with the intent of charging with a crime



How Do You
Go From
Someone
The Gov't
doesn't want
as a witness.

.



To a
“subject” or
“Target”

Remember *Plano Surgery Associates*: Legal “On Its Face” vs. Illegal “As Performed”

12/6/2016

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Plano Surgery Associates: Legal “On Its Face” vs. Illegal “As Performed”

“When the illegality does not appear on the face of the contract, it will not be held illegal and thus void unless the facts showing its illegality are before the court.”

There is one case, in which all parties agreed the entire subject-matter of the arrangement was illegal. . . .

Flynn Brothers. . .

715 S.W.2d 782 (1986)

**FLYNN BROTHERS, INC., et al., Appellants,
v.
FIRST MEDICAL ASSOCIATES, et al., Appellees.**

No. 05-85-00586-CV.

Court of Appeals of Texas, Dallas.

July 31, 1986.

Rehearing Denied September 10, 1986.

783*783 Larry D. Flynn, Dallas, for appellants.

Robert E. Wilbur, William V. Counts, Jr., Dallas, for appellees.

Before AKIN, HOWELL and HOLLINGSWORTH, JJ.

HOLLINGSWORTH, Justice.

Appellants, Flynn Brothers, Inc., David Flynn, and Bennie Flynn (collectively referred to as FBI)

Flynn Brothers. . .

In the summer of 1981, the Flynn brothers became aware that St. Paul Hospital of Dallas was interested in contracting with an outside party to staff its emergency department. Upon learning this, David Flynn contacted his friend, Dr. Adcock, who at this time was an emergency physician in Tennessee.

Flynn Brothers. . .

He proposed that they form a company to bid on and, if acquired, operate the St. Paul contract. The Flynnns proposed forming a partnership with Dr. Adcock in which profits and losses would be split 80% to the Flynnns and 20% percent to Dr. Adcock.

Flynn Brothers. . .

In the fall of 1981, the St. Paul contract was awarded to the Flynnns and Dr. Adcock. After this contract was obtained, the parties became aware that it was invalid under article 4495b[1] ("Texas Medical Practices Act") because the Flynn brothers were not licensed to practice medicine. In an effort to meet the strictures of the Texas Medical Practices Act, Dr. Adcock formed a professional corporation, FMA, which became the contracting party with St. Paul

Flynn Brothers. . .

In exchange for management services, FBI was to receive 66.67% of FMA's net profits. In addition to the St. Paul contract, FBI also solicited a contract on behalf of FMA to staff the emergency department of Hopkins County Memorial Hospital.

Flynn Brothers. . .

The parties admit that the whole contractual scheme was developed to do indirectly that which they freely concede they could not do directly under the Medical Practices Act. The design, effect, and purpose of the management agreement contravenes the Medical Practices Act

Question?

Why did the parties admit the whole scheme was illegal?

Answer?

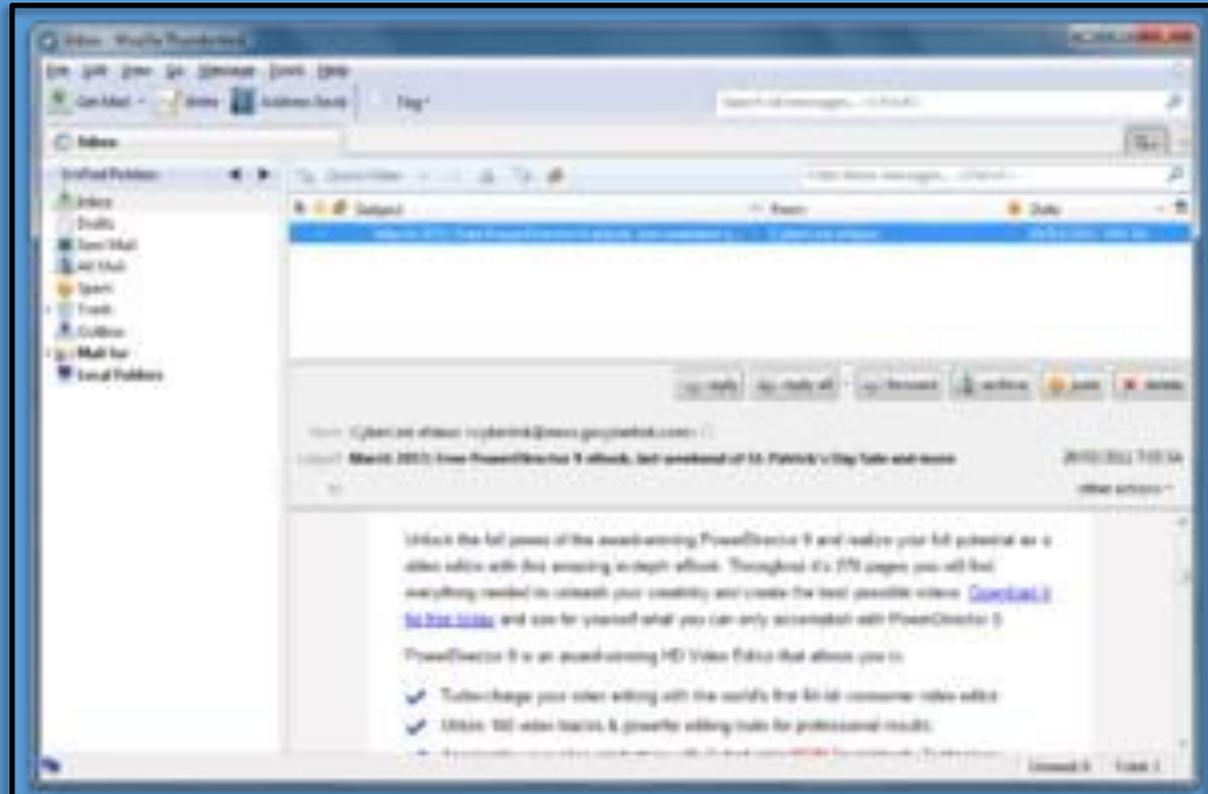
Two Words. . .



Paper Trail

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THE HISTORY OF AMERICAN POLITICS

If you do not want to be a “subject” or “Target”



You have to make sure. . .

- Every Email. . .
- Every Memorandum . .
- Every Correspondence of any type. .
- Every Phone Message . . .
- Every Conversation that could be recorded . . .

Proves that you did not cross this bright line . . .



1.02(c) Scope and Objectives of Representation

“A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent.”



1.02(c) Scope and Objectives of Representation

“A lawyer may discuss the legal consequences of any proposed course of conduct with a client . . .



1.02(c) Scope and Objectives of Representation

“...and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.”



1.02(c) Scope and Objectives of Representation

“The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action.”



1.02(c) Scope and Objectives of Representation

“There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity..” COMMENT 7

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Martin serves as the Executive Director of the Texas Health Lawyers Association and is the Founder and Principal of the Dallas Health Law Firm Martin Merritt, PLLC and has been selected as D Magazine "Best Lawyers in Dallas for 2018. In the past few years, Martin has published several hundred articles in journals such as The Federal Lawyer, The Texas Bar Journal, Physicians Practice Magazine, Becker's Hospital Review, Diagnostic Imaging Magazine, Psychiatric Times and D Magazine Healthcare Daily. In 2014, Martin co-authored his second book, "The ABC's of ACOs," a book published by the Health Law Section of the American Bar Association. Martin is both a litigator and provides health law opinions and transactional services for physicians, pharmacies, laboratories, ASCs, entrepreneurs and other healthcare clients on the applicability of HIPAA, Stark Law, Anti-kickback Statute, False Claims Act, corporate practice of medicine, and Texas laws such as Occ. Code 102.001 to proposed business transactions, investments, formation of entities or practices, co-management arrangements, employment contracts, leases, equipment contracts, joint ventures, partnerships, LLCs, PAs, ACOs, ASCs, IPAs.