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Comment: Lawyer Television Advertising What's the Big Deal?

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COMMENT: Lawyer Television Advertising—What's The Big Deal?

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In the history of television advertising, there probably never has been a product or service advertised which has caused so much furor as has lawyer advertising. This article, however, is not about the legal right of lawyers to advertise on TV. Rather, it is an evaluation of both the criticisms against TV advertising and the benefits of it. I believe I can be objective about my position regarding this topic as I had practiced law for twelve years prior to advertising. If lawyer advertising were gone tomorrow, I would still have a substantial practice.

In the controversy over lawyer advertising, the First Amendment to the United States Constitution must not be forgotten. Attorneys are afforded the right of free speech in the exercise of their profession as well as in their capacity as United States citizens. Lawyer TV advertising is legal, will remain legal and, in fact, is expanding. It is ironic that many lawyers want to take away a basic freedom from themselves which they fight so hard to preserve for others.

I recently participated in a forum-style debate on lawyer advertising at the University of Baltimore Law School. Even after the debate, I have yet to hear an articulable, valid point that shows any harm caused by lawyer advertising. As highlighted at the University of Baltimore debate, advertising by lawyers has been criticized primarily for the following reasons: (1) it gives an unprofessional image to the legal profession; (2) it creates litigation and, therefore, drives up insurance rates; (3) it is expensive and, therefore, the cost is transferred to the clients; (4) it creates a large caseload and, as a result, attorneys are too busy to properly supervise their cases; (5) it is misleading because the advertising lawyer does not accept all those cases generated by the advertising; and (6) the ads are distasteful and of poor quality.

The first criticism and, in my opinion, the only one with any validity, is the perceived unprofessional image. Who believes it is "unprofessional?" I suggest that many attorneys believe so and are joined by those potential clients who have access to high priced attorneys. It is not "unprofessional" to the thousands of people who use lawyers whom they have come to know through TV advertising. The average citizen deserves legal service as much as the upper class. If the image of lawyers who advertise is so bad, the public will stop using their services, thus curing any problem. It is not that the new image is bad; it is just not what the "old guard" of the legal profession believes lawyers should have.

The second criticism, one used often by insurance carriers, is that TV advertising creates litigation. This argument is completely without merit. Because of large overhead due to advertising expenses, advertising lawyers cannot afford to take non-meritorious cases. Television ads may create phone calls, but for every case accepted there are about twenty phone calls which are not.

Attorneys who advertise cannot afford to take a case which does not involve clear liability. Lawyer advertising does not create litigation. People who are injured find lawyers. The only thing lawyer advertising may do is direct more business to those who advertise.

The third criticism propounded at the University of Baltimore debate was that the public suffers because the expense of advertising is passed to the clients. This also is unfounded. Automobile torts, medical malpractice, workmen's compensation, etc. are all cases taken on a contingent fee basis. The fee remains the same for both advertising and non-advertising attorneys and is not raised by those who choose to market themselves through this medium. I am quite familiar with TV advertising, the lawyers who do it, and the fees charged. The fee for an automobile tort is one-third of the gross amount recovered. It may rise to forty percent if the case is litigated. Fees for workmen's compensation cases are no more than twenty percent and are fixed by the Workmen's Compensation Commission.

It is ironic that the criticism concerning increased cost to clients is leveled against the lawyers who advertise on television. The truth is that, regardless of their overhead and expense, their fees remain the same. In reality, those who pass increased cost to their clients are actually the large firms who pay new associates over $55,000.00 per year.

The fourth criticism asserted against attorneys who use television to advertise is

that they are too busy to provide quality legal service to their clients. Arguably, the logical extension of this assertion is that our largest and most prestigious law firms also provide poor quality representation because they also handle a huge number of cases. There are seven or so law firms in Baltimore employing over one hundred lawyers each. None of these firms advertise on television. Imagine the number of cases necessary to support all of those attorneys and support staff. These firms however, do provide excellent service to their clients and thus have excellent reputations for their work. In my practice, my large volume allows me to hire more of a complete staff than I was able to do before I advertised. The quality of representation in my firm has increased because I have more money to apply to hiring a larger support staff.

A fifth criticism of lawyer advertising was that the ads are misleading because not all cases were accepted. Opponents claim that all ads should carry a disclaimer stating that not all calls become accepted cases. As I mentioned above, for every twenty calls we receive, only one or two cases are accepted. The other eighteen callers receive free legal consultation.

I believe this criticism has several shortcomings. First, it is not unethical to refuse a non-meritorious claim. Second, it is very inconsistent and illogical to criticize advertising lawyers on the one hand for creating litigation, and on the other hand for not accepting all the cases. Third, opponents have yet to state what the disclaimer should say. I think it should be something to the effect of: "We only accept cases in one out of twenty phone calls. The rest of the time we provide free consultation that you cannot get from other lawyers in Baltimore. Two hours a day is spent giving *pro bono* legal advice." That is not a bad disclaimer. It is a shame that all lawyers cannot say that.

The final criticism raised at the University of Baltimore debate was that the lawyer ads were distasteful. One opponent even referred to the ads produced by the Baltimore lawyers as "pieces of trash" compared to other ads shown at the debate. I was rather astounded by that comment. All my ads are done within a law library and are very low key. I myself do not like lawyer ads that begin with a car crash. Beauty, however, is in the eye of the beholder. The consumers can react in the manner they see fit, and that will cause any needed changes in lawyer ads.

The above criticisms have been shown to be without merit. There are, however, many benefits to the public as a result of lawyer TV advertising. First, Bar Association studies have shown that lawyer advertising has lowered legal fees in areas such as wills, divorces, bankruptcies, etc. Second, these lawyers offer free consultation. The public is better off receiving this service free rather than paying $80.00 to $200.00 an hour for it. Many times a little advice solves the problem and may help avoid possible litigation. If the problem cannot be solved by our office, it may be referred to a state agency in appropriate situations. Third, lawyer advertising makes attorneys increasingly available to the common citizen. The "little person's" claim is considered important. Advertising informs the people about lawyers whom they otherwise may not know about. Fourth, advertising helps a lawyer increase his business. Other professions can advertise. Lawyers should be able to also.

I believe that the public benefits from lawyer advertising on television. No group of lawyers is as closely scrutinized as those who advertise, thereby offering protection from dishonest attorneys. The TV advertising lawyer must make sure he or she follows all the rules and dots every "i". The real problems of the legal profession (i.e., high fees, dishonesty, poor quality representation, etc.) all existed before lawyers advertised on television, and it is unfair to use this type of marketing as a scapegoat for these inadequacies. The poor image of the legal profession is caused by dishonest lawyers, not lawyers who advertise.

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