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Supreme Court Decisions: Bates: A Local Response

Carol A. Robertson

what services they do in fact need, price advertising can never give the public an accurate picture on which to base the selection of an attorney. Indeed, in the context of legal services, such incompleted information could be worse than no information at all. It could be a trap for the unwary." 97 S.Ct. at 2710.

Unquestionably, the Supreme Court's decision in *Bates* will have a far reaching effect on the professionals's relationship with those who need unique services. The consumer has now the opportunity to select an attorney based on the cost of the services provided. Now the question must be whether the legal profession will support or reject the Court's belief that dissemination of limited information, so long as it is accurate, is better than continued public ignorance and professional secrecy.

Bates: A Local Response

by Carol A. Robertson

On June 27, 1977 the Supreme Court of the United States decided the case of *Bates v. State Bar of Arizona*, 97 S.Ct. 2691 (1977), regarding legal advertising. Those who thought the controversy over advertising in the legal profession would be settled by this decision were very much mistaken.

On July 8, 1977 the Annapolis law firm of LEGUM, COCHRAN & CHARTRAND, P.A. ran ad "A" in *The Evening Capital*.

This so-called advertisement merely announced the addition of a new associate to the firm. Maryland is one of relatively few jurisdictions which still prohibits such announcements in newspapers. Despite Maryland's minority stance on announcement type ads the members of the firm felt confident that their ad would be above reproach. They regarded the ad as entirely within the *Bates* decision on the theory that permitting advertisement of prices of routine legal services presumes advertisement of existence. Confident in their position, the young associates innocently bantered among themselves of possible adverse Bar Association reaction. Imagine their consternation when they received a letter from the Attorney Grievance Commission of Maryland instructing them that they were believed to be in violation of the Code of Professional Responsibility and commanding them to cease and desist such action or suffer untold consequences. The Commission did not choose to enlighten the attorneys as to exactly how they were violating the Code. A formal grievance was not at that time filed.

Legum, Cochran & Chartrand responded that they would not discontinue publication of their announcement and

[A]

LEGUM, COCHRAN & CHARTRAND, P.A.

ANNOUNCE THAT

MARTHA WYATT

IS NOW ASSOCIATED WITH THE FIRM
IN THE PRACTICE OF LAW

ALAN HILLIARD LEGUM
GILL COCHRAN
GEORGE J. CHARTRAND

MARTHA WYATT

208 DUKE OF GLOUCESTER ST.
ANNAPOLIS, MD. 21401
301 263-3001

JULY 1, 1977

[B]

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Attorneys at Law

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Annapolis, Maryland 21401
263-3001

LEGAL SERVICES AT REASONABLE FEES

Simple Uncomplicated Will (No Trust Provisions)	$ 35.00
Uncontested Divorce (No Dispute Concerning Grounds for Divorce)	250.00
Simple Separation Agreement (Without Negotiation)	100.00
Simple Power of Attorney	25.00
Preparation of Real Estate Sales Contract	25.00
Preparation of Simple Deed	15.00
Brankruptcy Preceedings—Individual—Nonbusiness, Uncontested Proceedings	350.00
Change of Name (Uncontested)	75.00
Adoption (Uncontested)	250.00

The fee charges in other types of cases and in contested cases will depend on and vary according to the individual circumstances of that case. The above fees are in addition to court costs as assessed by the Clerk of Court.

Hours: Monday, Wednesday and Friday—9 a.m. to 5 p.m.
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Saturday—By appointment.

additionally that they anticipated future advertisements in compliance with the guidelines established by the Supreme Court. The announcement was published subsequent to the receipt of the Grievance Commission's letter.

The next move belongs to the Grievance Commission; but movement and comment have not been forthcoming.

Stagnation is obviously not tolerated at LEGUM, COCHRAN & CHARTRAND, P.A. any more than is intimidation. On July 28 ad "B" appeared in *The Evening Capital.*

The jury is still out on this noteworthy episode, but the verdict, no matter how slow in coming, seems certain; lawyer advertising has arrived.

Medicaid Funds Aborted

by Janis A. Riker

As a result of two decisions by the Supreme Court permitting States to refuse to pay for nontherapeutic abortions with Medicaid funds, A Brooklyn Federal District Court judge opened the doors for Congressional action to prohibit Medicaid payments for all abortions except those cases where the life of the mother would be in danger if the pregnancy were carried to term.

In *Beal v. Doe,* 97 S.Ct. 236, (June 20, 1977), and *Maher v. Roe,* 97 S.Ct. 2366, (June 20, 1977), the Supreme Court held that neither Title XIX of the Social Security Act nor the Equal Protection Clause of the Fourteenth Amendment requires states participating in the Medicaid program to spend Medicaid funds for nontherapeutic abortions.

Following these decisions regarding state action, the Supreme Court ordered the District Court judge to reconsider his previous injunction prohibiting enforcement of the Hyde Amendment, which limits federal Medicaid funds for abortions to those in which the life of the mother is in danger (Department of Labor and Health, Education and Welfare Appropriation Act, 1977, sec. 209, Pub. L. No. 94-439 (1976)). As a result the injunction was withdrawn. The Hyde Amendment remained in effect only until September 30, 1977, but Congress is deadlocked in considering a continuation of its restrictions on abortion funding.

Further Congressional action to limit federal payments for abortions would be necessary if Congress wants to prohibit states from using Medicaid funds. The Court held in *Beal* that Pennsylvania's refusal to provide Medicaid coverage for nontherapeutic abortions is not inconsistent with Title XIX of the Social Security Act, but that the statute does permit a state to provide such coverage if it so desires. The Hyde Amendment prohibited such coverage, however, for the current fiscal year.

The 6-3 *Beal* decision (Justices Brennan, Marshall and Blackmun dissenting) is based on the Court's interpretation of the language of the statute itself, the intent of Congress and the federal agency interpretation of the statute.

Quoting the statute's specific language, the Court concludes that the act confers broad discretion upon states to adopt standards for determining the extent of medical assistance provided.

Noting that nontherapeutic abortions were unlawful in most states when Congress passed Title XIX in 1965, Justice Powell said in the opinion that it was not likely that it was the intent of Congress to require states to fund nontherapeutic abortions.

Furthermore, unless there are compelling indications that the agency interpretation of the statute is erroneous, the Court will follow its construction, and the Department of Health, Education and Welfare concluded that Title XIX permits, but does not require, funding of nontherapeutic abortions.

photo by Andrew S. Katz

In its companion *Maher* decision, the Court held that the Equal Protection Clause of the Constitution does not require a state participating in Medicaid to pay for nontherapeutic abortions even though it pays for childbirth. It is this holding which provides the basis for federal legislation restricting abortion coverage by Medicaid funds.

A regulation of the Connecticut Welfare Department limiting state Medicaid benefits for first trimester abortions to those that are "medically necessary" (a term defined to include psychiatric necessity) was challenged by two indigent women who were unable to obtain physicians' certificates of medical necessity.

A three-judge District Court panel enjoined the state from requiring a certificate of medical necessity for Medicaid-funded abortions, holding that the Equal Protection Clause requires a state to fund nontherapeutic abortions if it generally provides for funds for medical expenses related to pregnancy and childbirth.

The Supreme Court disagreed, finding neither discrimination against a suspect class nor interference with a fundamental right protected by the Constitution.

In its "strict scrutiny" analysis, the Court said that it has never held that financial need alone creates a suspect class for equal protection purposes.

Most importantly, the Court stated that the fundamental Constitutional right protected in *Roe v. Wade,* 410 U.S. 113 (1973) was a woman's *freedom to decide* to terminate her pregnancy, not an unqualified right to the abortion itself. *Roe* prohibits undue state interference with a woman's decision to have an abortion, but it does not impose an affirmative obligation on states to make abortions available.

Justice Brennan in his *Maher* dissent argues that the Connecticut statute infringes on the woman's constitutionally protected right of privacy by placing financial presssures on indigent women to carry their pregnancies to term. However, the six-justice majority concluded that *Roe* did not limit a state's authority to use