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COUNTERPOINT

ATTORNEY TELEVISION ADVERTISING: A NEW APPROACH

Donn Weinberg* & Howard Fine**

As this issue of the *Forum* is dedicated to the topic of professional responsibility and legal ethics, it is our purpose to recommend a new approach to attorney advertising on television.¹ We are of the view that this new approach—educational/informational advertising—achieves two goals of the legal profession in that it maintains the dignity of the practice of law and educates the public about their legal rights. We also are of the view that this new approach succeeds in generating business, a primary and legitimate goal of all commercial advertising.

There is no longer any doubt that attorney advertising is a form of commercial speech protected by the Constitution of the United States. Attorneys have the right to advertise their services. In *Bates v. State Bar of Arizona*,² the Supreme Court of the United States recognized that attorney advertising may be beneficial to the public. The Court commented that "[t]he listener's interest is substantial: the consumer's concern for the free flow of commercial speech often may be far keener than his concern for urgent political dialogue."³ According to Professor Lynch, in his article *Lawyer Advertising: We Will Hand You No Line Before Its Time*, the *Bates* court "hinted that the failure to advertise has hurt the image of the bar."⁴ Professor Lynch commented that:

[R]eading *Bates*, one might get the impression that lawyer advertising is somehow in the public interest because it provides consumers with valuable information and takes the mystique out of choosing a lawyer.⁵

Professor Lynch expresses the view that attorney television advertising has not achieved the great potential of attorney advertising envisioned by the Supreme Court in *Bates*. He bemoans that "the protection of the dignity of the practice of law has been placed into the hands of individual lawyers,"⁶ namely those lawyers who advertise. Lynch further argues that the economic interest of individual attorneys in generating business predominates over the bar's interest in maintaining the dignity of the profession and the public's interest in gaining valuable information about their legal rights.

Generating business is the primary goal of attorney advertising, and it is a legitimate goal. Moreover, it appears, from the proliferation of attorney commercials on television, that advertising generates business.

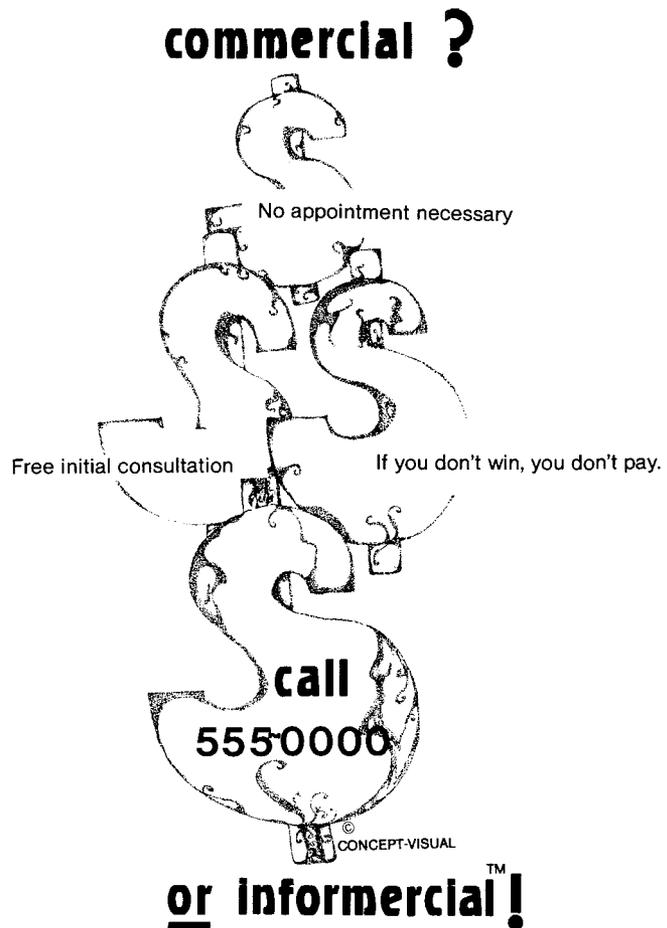
The central issues in the minds of many thoughtful attorneys and laypersons, however, pertain to taste and image. It is agreed that attorneys have the *right* to advertise; however, attorneys also have a *responsibility* to advertise in good taste and to maintain and strengthen the image of the legal profession.

The reaction generated by most attorney television advertisements aired since the mid-1970's ranges from outrage to amusement. Many attorneys and laypersons express concern that these commercials damage the public image of the

legal profession. Viewers point to various slogans, statements, and visual scenes which they consider to be in bad taste and which they fear project the image of the attorney as an ambulance chaser. Although many other attorneys and laypersons are less convinced that damage is done, the criticisms are numerous enough to be taken seriously as a sign that something is wrong.

We have found after making some informal inquiries that most of the commercials aired since the mid-1970's in Maryland were written and directed by advertising agencies and public relations firms, whose "creative" departments modeled attorney television spots after "hard-sell," "tell-you-what-I'm-going-to-do-for-you" commercials. Undoubtedly, before writing the commercials, the writers became acquainted with their clients' practices (mostly personal injury). For reasons unknown, however, these writers are insensitive to the manner in which their commercials reflect the public image of the attorney individually and the legal profession as a whole.

Unquestionably, the subject of "taste" is one about which opinions vary widely. Ask yourself if the following real-life commercial is acceptable to you. A Wisconsin bankruptcy lawyer aired a television com-



mercial in which he "emerged from water wearing scuba gear and urged each potential bankruptcy client to call him if he or she was 'in over your head.'"⁷ Most Maryland attorneys, we believe, would find such a commercial objectionable.

We believe that the many critics of current attorney television advertising would not object to commercials that achieve the potential of attorney advertising envisioned by the Supreme Court in *Bates*. It is time for a new approach. A reasonable standard by which to evaluate attorney television commercials is implicit in *Bates*.

Attorney advertisements should (1) provide the public with valuable information, (2) enhance the image of the legal profession, and (3) generate business. We sincerely believe that all of the attorneys who advertise on television would agree with these goals. The question is whether those who write and direct the advertisements do so in a way that substantially satisfies *all* of these goals, not only the third one. Just as "the unexamined life is not worth living,"⁸ so too, the unexamined commercial is not worth airing.

Most laypersons are woefully uninformed about the practice of law and have a burning desire to understand the law applicable to situations they face day after day. It is this desire to know the law that is the wellspring of advertising potential. Yet, this potential remains essentially untapped.

Who can doubt that one of the most effective commercials on television is that of H&R Block? Henry Block exudes professionalism and expertise as he informs viewers about particular rights under the federal tax laws. His commercials achieve the three goals enumerated above. His commercials provide the viewer with valuable information, enhance the image of tax specialists, and generate business for his firm. Most significantly, the information provided in the commercial is valuable not only because it informs the viewer of the availability of a service, but also because it educates him as to particular rights.

This same technique can serve as a model for attorney television advertising. The Committee on Public Awareness of the Maryland State Bar Association recently informed lawyers that they may purchase and distribute to their clients brochures on various topics, such as "What To Do In Case Of An Auto Accident," "Lawyers and Legal Fees," and "When You Need A Lawyer." In addition, the committee schedules public speaking engagements at which interested attorneys can speak to the public about various aspects of the law. The Maryland

State Bar Association, then, has joined the effort to educate the public through advertising.

A Milwaukee, Wisconsin attorney, Robert Habush, has shown that educational television commercials can generate business. He and his firm of twenty-four attorneys produced a series of "informercials"⁹ entitled "Knowing The Law."¹⁰

Habush, a plaintiffs' personal injury lawyer of solid reputation in Wisconsin, spent \$25,000 on marketing research, which revealed that the public was "abysmally ignorant"¹¹ about the area of personal injury law. "Many people believed you could only get out-of-pocket expenses [and] [t]hey didn't know that you could collect for the intangibles."¹²

His research led him to conclude that both the public and legal profession were opposed to the "hot dog, hard-sell, 'tell-you-what-I'm-going-to-do-for-you,' used-car salesman-type of commercial [and that] [p]eople wanted to know what their rights were."¹³ Consequently, the "informercial"¹⁴ was conceived. Habush aired his sixty-second "informercials" on television and radio on specific topics, such as "What is a Contingent Fee Contract?" and even "What are Your Legal Rights when Skiing." He reported "universally complimentary" feedback from the public. Habush also reported a thirty percent increase in the number of calls his firm received from potential clients, an increase which permitted him the "luxury of being selective in the cases he handles."¹⁴ This last comment is an interesting one, for it disproves the unfounded assertion made by some attorneys that advertising causes an increase in the filing of non-meritorious claims. It is, after all, the attorney who decides what potential claims he will file on behalf of clients.

Here, then, is a model of attorney television advertising; a model which we believe will be the standard of the future. Its potential is as unlimited as the number of legal subjects. There is great room for creativity within the bounds of good taste. Moreover, this new approach "works" better than the old one because it serves the three goals of attorney advertising: (1) communication of valuable information to the public, (2) enhancement of the image of the legal profession, and (3) generation of business. It is hoped that all lawyers who advertise and who consider advertising keep these goals in mind when producing their commercials.

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Heart Answers



WHAT IS CONGENITAL HEART DISEASE?

Congenital heart disease is the abnormal development of the heart before a child is born. A congenital heart defect may be diagnosed at birth or it may be discovered at some time during childhood in a routine physical examination. Some defects may be caused by drugs taken during pregnancy or exposure to German measles (rubella) during pregnancy. They may be inherited, or the cause may be unknown. Congenital heart defects may require only minimal medical supervision or they may require corrective surgery to avoid complications later in life. Some congenital heart defects can be prevented by vaccination of the mother against rubella prior to pregnancy and by following a doctor's advice while taking medications during pregnancy. Contact your local American Heart Association for more information.



American Heart Association

WE'RE FIGHTING FOR YOUR LIFE

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Footnotes

- ¹ See generally *The Right Way to Advertise on TV*, 69 A.B.A.J. 893 (1983).
- ² 433 U.S. 350 (1977).
- ³ 433 U.S. at 364.
- ⁴ Lynch, *Lawyer Advertising: We Will Hand You No Line Before Its Time*, U. BALT. L. F., Fall 1983, at 10.
- ⁵ *Id.*
- ⁶ *Id.* at 13.
- ⁷ 69 A.B.A.J. 893 (1983).
- ⁸ Plato, *Socrates' Defense (Apology)* 38.
- ⁹ 69 A.B.A.J. 893, 895 (1983).
- ¹⁰ *Id.* at 893.
- ¹¹ *Id.* at 894.
- ¹² *Id.*
- ¹³ *Id.* at 895.
- ¹⁴ *Id.* at 893, 894.