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Television Advertising: Professionalism's Dilemma.

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ARTICLES

TELEVISION ADVERTISING: PROFESSIONALISM'S DILEMMA

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I. INTRODUCTION

Picture the following three television advertisements. In the first, draped with jewelry, an outstretched hand rises slowly out of the ocean. The scene switches to a man wearing scuba gear who breathlessly yells, " 'If you're in over your head because of bad debts or inflation, call the legal clinic, and we'll take care of your problems. We'll put you through bankruptcy for $100.' "[1] In the second ad, two adults on tricycles pedal furiously. A screech and a crash are heard as the trikes collide and overturn. An attorney appears on the screen and says, " 'Accidents and injuries are no laughing matter. If you've been injured, you need legal protection. Call me for a free consultation.' "[2] In the final ad, a man is shown strapped to an electric chair.

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1. Marcotte, *'Have I Got a Deal For You'*, 72 A.B.A. J., Dec. 1986, at 24, 24.
2. *Id.*

Just as the switch is thrown, a neon sign lights up saying, "I should've called the law firm of . . ."[3]

Welcome to the world of television advertising, one of the most controversial issues of the decade for the legal profession.[4] With the liberalization of the advertising restrictions once placed on attorneys, the fad of television advertising has caught on like wild fire. Since 1977, when the United States Supreme Court opened Pandora's box to lawyer advertising,[5] the trend has grown dramatically.[6] The once traditional business card approach has been replaced with a variety of techniques. Lawyers advertise through direct mail, television, radio, telephone yellow pages, billboards, newspapers, and magazines.

The controversy today is not over whether lawyers can advertise, but how they advertise. With the question of legalization over,[7] the queries now address ethical considerations and the eyebrow raising question, "What is good taste?"[8]

While the legal profession is significantly concerned with the danger of advertisements misleading potential clients, lawyers are also concerned about the tactics and antics of the advertising attorney because of the possible harm to the reputation of the legal profession due to tasteless, crass ads circulated among the non-legal public.[9] From advertising, the public is more aware of the commercial quest for profits and revenues by attorneys than of the numerous pro bono and public service activities the legal profession provides. The average citizen uses the services of an attorney only once or twice during a lifetime.[10] Outside of that limited contact, the public, in part, forms its impression of the bar from the advertising it sees and hears. This limited contact serves as a basis for placing stringent regulations on

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3. *See* Bogutz, *ABA Advertising Commission: The Search For Guidelines*, THE COMPLEAT LAWYER, Fall 1987, at 23.

4. Comment, *The Status of Lawyer Advertising in Virginia: What is Good Taste?*, 19 U. RICH. L. REV. 629, 640 (1985).

5. *See* Bates v. State Bar of Arizona, 433 U.S. 350, 384 (1977) (outright prohibition of lawyer advertising unconstitutional). *See generally* Messing, *The Latest Word on Solicitation*, 60 FLA. B.J., May 1986, at 17.

6. *See* Bogutz, *ABA Advertising Commission: The Search For Guidelines*, THE COMPLEAT LAWYER, Fall 1987, at 23.

7. *See Bates*, 433 U.S. at 384.

8. *See* Reiter, *Advertising: You Have the Right—Don't Abuse It*, FLA. B.J., Apr. 1987, at 4, 4, 25.

9. *Id.* at 4. *See also* Vernon, *Commercialism Versus Professionalism*, 34 N.C. ST. B.Q. 12, 13-14 (1987).

10. *See id.*

advertising if the bar wants to prevent the deterioration of professionalism among lawyers.[11]

This controversial issue of what is good taste includes the question of just how far ads can go before crossing the line of prohibited solicitation. While lawyers may advertise, solicitation is still banned in some forms.[12] But the question, "When do some of the most creative and artful advertisements cross that line and take on a form of prohibited solicitation?" is difficult to answer and is just one of many currently surrounding the legal profession. This article traces the historical background of legal advertising, focusing on the particular issue of television ads. This aspect of legal communication with the public has been avoided purposely by some courts and addressed in but a handful,[13] with many questions left unanswered. Those lingering questions are discussed below in the context of how legal advertising on television can be regulated and what form the regulation should take. Finally, this article reviews and answers the rhetorical question it poses: Are we going to allow ourselves as a learned profession to be placed in the same public viewpoint as the used car salesman, or will we reclaim our reputation as a profession looked upon with admiration and respect?

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11. *See id.*

12. *See* Messing, *The Latest Word on Solicitation*, FLA. B.J., May 1986, at 17, 18-19. Until recently, the only sure limits on attorney commercial communication included: a prohibition of targeted direct mail; the absolute prohibition of in-person solicitation for profit and advertisement; and a few limitations on time, place and manner of advertising and solicitation. *Id.* However, in *Shapero v. Kentucky Bar Association* the United States Supreme Court struck down, on free speech grounds, a state rule that effectively prohibited lawyers from soliciting legal business by sending nondeceptive letters to a targeted group of potential clients, i.e., those known to be in need of the particular service being promoted by the letters. Shapero v. Kentucky Bar Association 486 U.S. 466, 479 (1988).

13. In *Bates v. State Bar of Arizona* the Court specifically avoided the question of electronic advertising when it stated "the special problems of advertising on the electronic broadcast media will warrant special consideration." *Bates*, 433 U.S. at 384. *Bates* dealt with printed (newspaper) advertisements and did not address the issue of television ads. *Id.*

Not until *Committee on Professional Ethics v. Humphrey*, 377 N.W.2d 643 (Iowa 1985), did a court specifically and exclusively address the issue of television advertising. The Iowa Supreme Court ruled that the restrictions on Iowa lawyer television advertising were only regulations and not blanket prohibitions. *Humphrey*, 377 N.W.2d at 647. The court allowed television ads but only if regulated. *See id.*; *see also* Matter of Zang, 741 P.2d 267, 279 (Ariz. 1987) (regulations may control false ads and ads should generally be informational only); Grievance Comm. v. Trantolo, 470 A.2d 228, 234 (Conn. 1984) (reasonable regulation permitted for prevention of false, misleading ads); Petition of Felmeister & Isaacs, 518 A.2d 188 (N.J. 1986) (cautiously regulating use of dramatization in TV ads).

II. HISTORICAL BACKGROUND

The ban on legal advertising in America was rooted deep in history. As early as 1784 the Suffolk County, Massachusetts Bar banned the solicitation of clients in order to prevent a colonial version of ambulance chasing.[14] However, even with prohibitions, many forms of advertising persisted. For example, Abraham Lincoln ran an advertisement for his legal services in the August 10, 1838 edition of the *Sangamon Journal*.[15] Regulation developed on a state by state basis. Alabama, the first state with a code of legal ethics, adopted in 1887, permitted newspaper advertising and prohibited only direct solicitation of individuals.[16]

In 1908, the American Bar Association (ABA), for the first time, recommended rules which banned lawyer advertising.[17] What began as a rule of etiquette, formulated under the theory that everyone knew the local practitioner, transformed into a rule of ethics. These ABA rules allowed only the use of ordinary business cards.[18] In 1937, the ABA lifted the ban on newspaper advertising, and, in 1938, it approved the publication of information about law firms in legal directories.[19] The 1970 ABA Code of Professional Responsibility initially prohibited lawyer advertising, but has since been revised and narrowed. This gradual relaxation of the ban has taken numerous forms and has resulted in an almost complete lifting of it.[20]

The United States Supreme Court finally took a position on legal advertising in 1977 when asked to determine the constitutionality of a blanket prohibition on lawyer advertising in *Bates v. State Bar of Arizona*.[21] In this case, two attorneys who operated a legal clinic servicing the needs of lower and middle income clients challenged Arizona's complete bar to lawyer advertising. Advertising in a local

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14. Attanasio, *Lawyer Advertising in England and the United States*, 32 AM. J. COMP. L. 493, 502 (1984).

15. *Id.* at 502-03.

16. *Id.* at 503.

17. *Id.*

18. Attanasio, *Lawyer Advertising in England and the United States*, 32 AM. J. COMP. L. 493, 503 (1984).

19. *Id.*

20. By 1951, attorneys could publish information regarding qualifications, degrees, honors, references, clients regularly represented, and areas of practice. The idea was to provide information in order to educate the public rather than to generate business. These institutional ads have since become promotional and have come full realm to include broadcast media. *Id.*

21. 433 U.S. 350 (1977).

newspaper, they offered legal services at "very reasonable fees" and listed their fees for certain routine matters. The Arizona bar suspended the attorneys for one week, concluding that they had violated state disciplinary rules which banned all legal advertising. The attorneys appealed the decision, arguing that the disciplinary rules were overly restrictive and violative of the First Amendment.[22]

In a five to four decision the Court found that the two attorneys presented no extravagant claims and, in fact, provided straight-forward valuable information to the public regarding legal services. The Court held that truthful advertising of the availability and terms of "routine" legal services such as the uncontested divorce, the simple adoption, the uncontested personal bankruptcy and the change of name was protected by the First and Fourteenth Amendments against blanket prohibition by the state.[23] It further concluded that constitutional protections for commercial speech guaranteed an attorney's right to provide information regarding his or her services to the public, even through paid advertisements.[24] However, the Court observed that commercial speech is not accorded the same level of First Amendment protection as are political speech and other forms of protected expression, and as a result, states need only establish that their regulations impose reasonable restrictions on the time, place and manner of advertising.[25]

The Court disagreed with the argument that advertising would have an adverse effect on professionalism. Instead, it found that legal advertising would aid the profession, assist the public in locating competent counsel, and generally make the public more aware of the availability of legal services.[26] Further, the Court expressly rejected the idea that legal advertising would be inherently misleading and undesirably stir up litigation.[27]It also deliberately avoided the issue of electronic broadcast media advertising,[28] leaving that question for a later date and a later court.

Although the Supreme Court held that the First Amendment's pro-

22. *Id.* at 357; *see also* Messing, *The Latest Word on Solicitation*, FLA. B.J., May 1986, at 17, 18.

23. *See Bates*, 433 U.S. at 372.

24. *Id.* at 363.

25. *Id.* at 384.

26. *Bates*, 433 U.S. at 372-78.

27. *Id.* at 372, 375-76.

28. *Id.* at 384.

tection of free speech included legal advertising, it did not hold that legal ads are free from all regulation stating, "Advertising that is false, deceptive or misleading of course is subject to restraint."[29] Because the involved speech was commercial speech, the Court manifested limited concern over the fact that it was permitting the regulation of free expression.[30]

After *Bates*, states could regulate lawyer advertising with less danger of violating the Constitution than would be encountered in regulating some other communications. This is due to the fact that commercial speech is not accorded the same level of protection as is given to other forms of expression, such as political speech. Therefore, advertising, being a form of commercial speech, is not subject to the strict First Amendment protections as are these other forms. Hence, states may regulate with relatively fewer constitutional fears.

Shortly after the *Bates* decision, the Supreme Court addressed the issue of in-person solicitation, in *Ohralik v. Ohio State Bar Association*.[31] The Ohio State Bar Association initiated proceedings against an Ohio attorney for his personal solicitation of accident victims. The attorney coercively solicited one automobile accident victim while she was recovering in the hospital, and he surreptitiously tape-recorded conversations with the victim's family members as well as with a friend of the victim who was also injured in the accident. Both victims accepted his offer of representation but later discharged him. He then attempted to bind them contractually through the taped conversations.[32] In affirming an order of indefinite suspension, the Supreme Court expressed strong disapproval of Ohralik's actions, recognizing his conduct as an example of the potential for overreaching that is inherent with in-person solicitation.[33]

The Supreme Court in *Ohralik* held that a state may discipline at-

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29. *Id.* at 383.

30. *See Bates*, 433 U.S. at 383. The Court stated,

> And any concern that strict requirements for truthfulness will undesirably inhibit spontaneity seems inapplicable because commercial speech generally is calculated. Indeed, the public and private benefits from commercial speech derive from confidence in its accuracy and reliability. Thus, the leeway for untruthful or misleading expression that has been allowed in other contexts has little force in the commercial arena.

Id.

31. 436 U.S. 447 (1978).

32. *Id.* at 448-49.

33. *Id.* at 468 (court saw inherent need for prophylactic regulation of in-person solicitation).

torneys for soliciting in person for pecuniary gain under circumstances likely to pose dangers—dangers that a state has a compelling interest in and a right to prevent.[34] The *Ohralik* Court declared that protection of the public from fraud, undue influence, intimidation, overreaching, and other forms of "vexatious conduct" was a legitimate and important state interest.[35]

The same day *Ohralik* was decided, the Supreme Court also handed down its decision in *In re Primus*.[36] This case involved an attorney who wrote to a prospective client advising her that free legal assistance was available from a non-profit organization, the American Civil Liberties Union (ACLU).[37] The woman eventually turned down the attorney's offer of representation,[38] but nonetheless, a formal complaint was filed with the Board of Commissioners on Grievances and Discipline of the Supreme Court of South Carolina charging that Primus had engaged in "solicitation in violation of the Canons of Ethics."[39] Justice Powell, writing for the majority in both *Ohralik* and *Primus*, noted that Primus had not solicited representation for mere financial gain but, rather, in an associational context and as an expression of Primus' political beliefs; motives that lie at the heart of the First Amendment's protections.[40] As a result, the state was held to a much stricter standard than would generally apply to questions concerning the regulation of commercial speech.[41] Additionally, the Court distinguished *Primus* from *Ohralik* by stating that in the former case the attorney's activities did not show the same potential for undue influence, overreaching, misrepresentation or invasion of privacy as did the attorney's activities in the latter case.[42] The Court noted

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34. *Id.* at 464.

35. *Ohralik*, 436 U.S. at 462 (court classfied state interest as legitmate and compelling).

36. 436 U.S. 412 (1978).

37. *Id.* at 414. Primus was a practicing attorney in South Carolina as well as a cooperating lawyer with the American Civil Liberties Union and had been invited by an officer of the ACLU to speak at a meeting about illegal government sterilization of pregnant women that was taking place in the area. At the officer's suggestion, Primus later wrote to a woman in the audience who had told the officer that she wanted to file suit against the physician who had sterilized her. *Id.* at 414-17.

38. *Id.* at 417.

39. *Id.*

40. *Primus*, 436 U.S. at 422; *see also* Attanasio, *Lawyer Advertising in England and the United States*, 32 AM. J. COMP. L. 493, 508 (1984).

41. *See Primus*, 436 U.S. at 437-39 (Justice Powell held state regulation in *Primus* to strict scrutiny, yet found no violation because of basis of communication in First Amendment).

42. *Id.* at 434-35.

that the letter sent by Primus imparted information that was material to the making of an informed decision by the potential client regarding legal representation.[43] Therefore, the Court placed this activity under a much lower degree of constitutional scrutiny, holding that a state could not constitutionally ban this form of communication.[44]

Just five years after *Bates* and four years after *Ohralik* and *Primus*, the Supreme Court, with Justice Powell again speaking for the majority, handed down the decision of *In re R.M.J.*.[45] The *R.M.J.* Court made clear that the states may regulate legal advertising as commercial speech but such regulation is subject to the First and Fourteenth Amendment requirements that they do so with care and in a manner no more extensive than reasonably necessary to further substantial state interests.[46]

R.M.J. mailed law office announcement cards advertising the opening of his office to a select list of addressees and placed ads in newspapers and the yellow pages identifying the jurisdictions where he was licensed to practice as well as his areas of expertise.[47] Following the mailings, the Advisory Committee[48] filed a complaint with the Missouri Supreme Court charging R.M.J. with unprofessional conduct in violation of the Missouri Rules of Professional Conduct, Disciplinary Rule 2-102(A)(2).[49] R.M.J., in direct conflict with the rule, mailed

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43. *Id.* at 435.

44. *Id.* at 439.

45. 455 U.S. 191 (1982).

46. *Id.* at 202-07 (even when not misleading, state has power to regulate only to extent which furthers state's own interests).

47. *Id.* at 196.

48. The advisory committee is a standing committee for the Supreme Court of Missouri and is in charge of prosecuting disciplinary proceedings and for giving formal and informal opinions on the Canons of Professional Responsibility. *See id.* at 194 n.5 (defining the Missouri Advisory Committee).

49. *See R.M.J.*, 455 U.S. at 197-98. DR 2-102 regulates the uses of professional announcement cards. It allows a lawyer or firm to mail a dignified "brief professional announcement card stating new or changed associates or addresses, change of firm name, or similar matters." The rule does not permit general mailings, however. The cards must be sent to "lawyers, clients, former clients, personal friends, and relatives." MO. ANN. STAT. Sup. Ct. R. 4, DR 2-102(A)(2) (Vernon 1981). DR 2-102(A)(2) of the ABA Model Code of Professional Responsibility reads substantially the same. Effective January 1, 1986, Missouri adopted the Rules of Professional Conduct, patterned after the ABA Model Rules. Rules 7.1 and 7.2 of the Missouri Rules of Professional Conduct merely prohibit "false and misleading" communications, or those that involve solicitation. MO. ANN. STAT. Sup. Ct. R. 4 (Missouri Rules of Professional Conduct) Rules 7.1-.2 (Vernon Supp. 1991). The ABA Model Rules are to the same effect. The solicitation ban is of dubious constitutional validity. *See* Messing, *The Latest Word on Solicitation*, FLA. B.J., May 1986, at 17, 18-19.

cards to persons other than fellow lawyers, clients, former clients, personal friends and relatives.[50] The Court held that where the cards and information contained therein were not inherently misleading, the dissemination of such information could not be restricted in the absence of a substantial state interest.[51] The Court acknowledged that states may place reasonable restrictions on advertising and on direct mail ads that are false, deceptive or misleading,[52] but held that an absolute ban on speech which is not "inherently" misleading violates the First Amendment guaranty of freedom of speech.[53] Missouri's ban was, therefore, found to be inappropriate, overbroad and unenforceable.[54]

The fact that Justice Powell, a former ABA President, was chosen to write the opinion of the Court in *R.M.J.* is significant, as is the unanimity of the Court in reaching its decision. Four years earlier in *Ohralik* and *Primus*, the Court was divided sharply on the issue of attorney advertising, with Justice Powell espousing the professionalism concerns of state and national bar associations. But with *R.M.J.* the message of the Court is clear: lawyer advertising is with us for the duration, but will be closely scrutinized in order to protect the public.[55]

The Court remained silent on the issue of advertising for the next three years, allowing states and lower courts time to adjust and to react to this new liberal position on advertising. In 1985, the Court spoke again in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*.[56] Philip T. Zauderer, an Ohio attorney, ran a newspaper ad directed at women injured by the Dalkon Shield Intrauterine Device (IUD).[57] The ad contained a line drawing of the device and asked, "DID YOU USE THIS IUD?"[58] The ad informed

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50. *See In re* R.M.J., 455 U.S. 190, 198 (1982).

51. *Id.* at 203.

52. *Id.* at 200; *see also* Bates v. State Bar of Arizona, 433 U.S. 350, 383-84 (1977) (upholding states' regulation of inherently deceptive advertisement).

53. *R.M.J.*, 455 U.S. at 207 (upholding that state cannot ban speech entirely without also showing misleading elements).

54. *Id.* at 204-07.

55. *See* Maute, *Scrutinizing Lawyer Advertising and Solicitation Rules Under Commercial Speech and Antitrust Doctrine*, 13 HASTINGS CONST. L.Q. 487, 487-503 (1986) (analyzing doctrines of antitrust and commercial speech with lawyer advertising).

56. 471 U.S. 626 (1984).

57. Zauderer had also run an advertisement regarding persons charged with drunk driving for which disciplinary rule violations were alleged, but the Court was concerned primarily with the Dalkon Shield advertisement. *Id.* at 629-30.

58. *Id.* at 630-31.

women of the harmful effects of the IUD and advised potential clients to "not assume it is too late to take legal action against the Shield's manufacturer."[59] Zauderer received over two hundred responses to the ad and initiated suits on behalf of one hundred and six of the women who contacted him.[60] The Office of the Disciplinary Counsel charged Zauderer with violating Ohio's rules limiting permissible illustrations, rules regarding contingent fee disclosures, and rules pertaining to soliciting legal business through advertisements containing legal advice.[61]

The Court, restating its now well established position on legal advertising, held that since the information contained in the advertisement was neither false nor misleading, Ohio had the burden of showing a substantial state interest in order to prohibit this form of legal promotion.[62] The Court held that the concerns present in *Ohralik*, also an Ohio case, were not present in *Zauderer* due to the fact that *Ohralik* involved in-person solicitation and *Zauderer* involved print advertisement.[63] The interests sufficient to ban the in-person solicitation in *Ohralik* did not serve the same purpose in *Zauderer*. The dangers of overreaching, invasion of privacy, undue influence and outright fraud inherent in Ohralik's face-to-face solicitation, which justified a prophylactic rule prohibiting attorneys from soliciting business for pecuniary gain, were not present in *Zauderer*.[64]

The Court noted the differentiation between potentially overreaching in-person solicitation and truthful print advertising about the availability and terms of general legal services.[65] In-person solicitation presents a different regulatory problem in that it is "not visible or otherwise open to public scrutiny."[66] Printed ads, on the other hand, may convey information a little less effectively, but lack the coercive force that is inherent with the presence of a trained advocate.[67] Printed communication gives the potential client more time to reflect on his or her needs for legal representation or advice and more discre-

59. *Id.* at 631.
60. *Zauderer*, 471 U.S. at 632-33.
61. *Id.*
62. *Id.* at 641.
63. *Id.* (*Ohralik* decision based on difference between in-person and print solicitation).
64. *Zauderer*, 471 U.S. at 641.
65. *Id.*
66. *Id.* (citing and quoting Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 466 (1977)).
67. *Id.* at 642.

tion in making a choice without being subjected to undue pressures by the attorney to make a quick "yes or no" decision.[68] Thus, the Court found advertising through print permissible.

In *Zauderer*, the Court held that the use of illustrations in legal advertisements served an important communicative function protected by the First Amendment.[69] As long as the illustration is accurately rendered and is not misleading or deceptive, the picture should be accorded the same First Amendment protections as other forms of commercial speech.[70] The burden is on the state to justify the restriction by proving a substantial state interest which the restriction vindicates through the least restrictive available means.[71] Therefore, the printed advertisement was permitted and Ohio's disciplinary action against Zauderer for the ad was found to be unreasonable.

On the other hand, the Court did hold that some disciplinary action against Zauderer was reasonable because he provided partially misleading information regarding contingent fees.[72] The Court observed that the information he published failed to make clear that the client would have to pay the out of pocket expenses of the litigation if the suit was lost.[73] Therefore, Ohio's discipline for the omission of this fact was upheld.[74]

The bottom line of *Zauderer* is that an attorney cannot be disciplined for soliciting legal business through printed advertisements

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68. *Zauderer*, 471 U.S. at 642.

69. *Id.* at 647. The State had argued that the use of illustrations in attorney advertisements created unacceptable risks that the public would be "misled, manipulated, or confused." The argument continued that the nature of visual advertising makes it difficult to police due to, *inter alia*, its effect on the subconscious. *See id.* at 648.

70. *Id.*

71. *Id.* at 647. The Court here was referring to a test formulated in *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York*, 447 U.S. 557 (1980). That case involved the regulation of promotional advertising by an electrical utility, but it has been relied on by numerous courts for the application of a four-part commercial speech test used when addressing the issue of legal advertising. In order to pass constitutional muster, a state's regulation of the content of advertising must meet the following criteria: (1) the state must assert a substantial interest in regulation; (2) the interference with speech must be in proportion to the interest served; (3) the restrictions must be narrowly drawn; and (4) the state may apply the regulation only to the extent that the regulation furthers the state's substantial interest. *See Central Hudson*, 447 U.S. at 564-66.

72. *See Zauderer*, 471 U.S. at 650. The advertisement read, in part, "If there is no recovery, no legal fees are owed by our clients." The Court recognized that a layman might not distinguish between fees and costs. *Id.* at 652.

73. *Id.*

74. *Id.* at 653.

when the ads contain truthful and nondeceptive information and legal advice because the state lacks a substantial interest in prohibiting the ads.

Subsequent cases in other jurisdictions addressed the issue of direct mail solicitation. Three decisions in particular, *In re Von Wiegen*,[75] *Adams v. Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois*,[76] and *Leoni v. The State Bar of California*,[77] dealt with state prohibitions against targeted direct mail advertisements soliciting legal business. Following the rules established from *Bates* to *Zauderer*, the courts held that an absolute ban on direct mail solicitation violated a lawyer's right of commercial expression under the First and Fourteenth Amendments.[78] The threats inherent in *Ohralik*, such as undue influence and overreaching, did not justify an absolute ban on direct mail advertising.[79] The state courts saw no difference in the distribution of mail to the public-at-large or to a targeted audience.[80] The individual's freedom of choice and opportunity for reflection were preserved intact.[81] However, the courts reaffirmed their prohibitions against advertisements that were false, misleading and/or deceptive, but held a total ban on direct mail ads unconstitutional.[82] The *Leoni* court, in a prophetic statement, held that "lawyers cannot be 'totally prohibit[ed]' from 'all future mass advertising' to a targeted audience."[83]

Leoni's prophecy was borne out in 1988 with the decision of *Shapero v. Kentucky Bar Association*,[84] where the United States Supreme Court stated the issue as being, "Whether a State may, consistent with the First and Fourteenth Amendments, categorically prohibit lawyers from soliciting legal business for pecuniary gain by sending truthful and nondeceptive letters to potential clients known to face particular

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75. 470 N.E.2d 838 (N.Y. 1984).

76. 617 F. Supp. 449 (N.D. Ill. 1985).

77. 704 P.2d 183 (Cal. 1985).

78. *See* Messing, *The Latest Word on Solicitation*, FLA. B.J., May 1986, at 17, 20-22 (although targeted mail is step higher than newspaper advertising, it doesn't violate personal privacy like in-person solicitation).

79. *Id.*

80. *Id.*

81. *Id.* (risk of overreaching not present as much in printed materials as in in-person).

82. Messing, *The Latest Word on Solicitation*, FLA. B.J., May 1986, at 17, 20-22 (quoting Leoni v. State Bar of California, 704 P.2d 183, 195 (Cal. 1985)).

83. *Id.*

84. 486 U.S. 466 (1988).

legal problems."[85] Shapero, a member of the Kentucky Bar, had applied to the commission charged with regulating attorney advertising in that state seeking "approval of a letter he proposed to send 'to potential clients who have had a foreclosure suit filed against them.' "[86] While the letter was not found to be false or misleading, approval was denied on the ground that a Kentucky Supreme Court rule prohibited the mailing of written advertisements to targeted audiences, as distinguished from the public in general.[87]

The Court observed that efficiency was the reason for sending advertisements to those known to be in need of the service, and that the First Amendment does not permit a ban on particular speech merely because it is more efficient.[88] The Kentucky Bar Association argued that solicitation was barred by *Ohralik* and that this case was merely "Ohralik in writing."[89] However, the Court saw a significant difference in face-to-face solicitation and solicitation by mail, in that the latter poses much less risk of overreaching or undue influence than does the former, and in that a letter may be readily discarded by the recipient.[90] The Court did not completely rule out the regulation of direct mail solicitation of targeted groups, but noted that it could be done "through far less restrictive and more precise means."[91]

The direct mail solicitation of business directed to a targeted group is not without its risks, however. Some lawyers in Memphis, Tennessee regularly check the dockets of the criminal courts seeking names, addresses and charges as they relate to potential clients. They then write these individuals, noting the pending criminal actions and offering their services in the matter. In one situation, according to an article in a Memphis newspaper,[92] two "well-to-do" businessmen were arrested for soliciting prostitutes and were sent the usual letters of solicitation. The wife of one of the businessmen apparently opened a letter from one of these attorneys, an event that resulted in severe discomfort for the prospective client. The other businessman, having

85. *Id.* at 468.
86. *Id.* at 469.
87. *Id.* at 469-70.
88. *Shapero*, 486 U.S. at 473.
89. *Id.* at 475.
90. *Id.* at 475-76 (recipient of advertisement may simply look away).
91. *Id.* at 476 (court offers solution of having attorneys filing mailing with state agency, allowing ample opportunity for review).
92. Buser, *Lawyers Clash Over Sales Pitches*, COMMERCIAL APPEAL, June 10, 1990, at B1-2.

some idea of what these attorneys were doing and knowing his mailman, arranged to have the letters pulled until he could get them himself. For this type of solicitation, a lawyer might be in danger of a lawsuit, or worse!

Shapero, *Zauderer*, *Von Wiegen*, *Adams*, and *Leoni* all contributed to the shrinking list of limitations on lawyer advertising. The only definite limitations enunciated by the Court on the promotion of legal services include: an absolute prohibition on in-person solicitation for pecuniary gain; the requirement of complete truthfulness in solicitation and ads; and some limits on time, place, and manner of ads and solicitation.[93]

As a prelude to a discussion of television advertising, consideration must be given to the ABA and its stated position on lawyer advertising in general. In 1983, the ABA adopted the most recent provisions of the Model Rules of Professional Conduct (Rules), which supercede the Model Code of Professional Responsibility (Code), adopted in 1969.[94] The relevant provisions of the former, Rules 7.1, 7.2, and 7.3, address lawyer advertising and solicitation by regulating the dissemination of information about legal services and what a lawyer may and may not do in communicating information to the public.[95] The regulations enumerate standards for the attorney regarding services, ad-

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93. *See* Messing, *The Latest Word on Solicitation*, FLA. B.J., May 1986, at 17, 22.

94. *See generally* MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1980); MODEL RULES OF PROFESSIONAL CONDUCT (1989). It must be noted that neither the ABA Model Code nor the ABA Model Rules are binding on the individual states. Each state is free to adopt whatever disciplinary rules it chooses to follow, and is not limited to those proposed by the American Bar Association.

95. MODEL RULES OF PROFESSIONAL CONDUCT Rules 7.1-.3 (1989). Model Rule 7.1 states:

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:
>
> (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
>
> (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
>
> (c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Id. Rule 7.1. Model Rule 7.2 states:

> (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other

vertising, and making direct contact with prospective clients.[96] Other important provisions, Rules 7.4 and 7.5, answer the question of whether a lawyer may communicate information to the public regarding particular fields of law in which he or she practices.[97] The rules also regulate the use of firm names and letterheads.

The rules reiterate the holdings of *Bates* and the cases that fol-

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periodical, outdoor advertising, radio or television, or through written or recorded communication.

(b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertisements or communications permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(d) Any communication made pursuant to this Rule shall include the name of at least one lawyer responsible for its content.

Id. Rule 7.2. Model Rule 7.3 states:

(a) A lawyer shall not by in-person or live telephone contact solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written or recorded communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship, shall include the words "Advertising Material" on the outside envelope and at the beginning and ending of any recorded communication.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Id. Rule 7.3.

96. *Id.*

97. MODEL RULES OF PROFESSIONAL CONDUCT Rules 7.4-.5 (1989). Rule 7.4 restricts a lawyer's ability to "state or imply" that he is a specialist except in the fields of patent and admiralty law. *Id.*; *see also*, MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-105(A) (1980). These rules will undoubtedly be amended somewhat in light of the Supreme Court's decision in *Peel v. Attorney Registration and Disciplinary Comm'n of Illinois*, __ U.S. __, 110 S. Ct. 2281, 2292-93, 110 L. Ed. 2d 83, 100 (1990), which held that a lawyer could not be prohibited from putting on his letterhead that he was a "Certified Trial Specialist By the National Board of Trial Advocacy." The Court found that this was neither actually nor inherently misleading. *Id.* at __, 110 S. Ct. at 2293, 110 L. Ed. 2d at 101.

lowed, which prohibit false or misleading communications concerning legal services.[98] The Disciplinary Rules (DRs), a part of the code, provide more detailed regulations on advertising than do the rules.[99] The DRs specify twenty-five categories of information that may be disseminated and require, additionally, that information be presented in a dignified manner.[100] Both the code and rules provide a list of permissible modes of communication that lawyers may use to advertise their services.[101] At the same time, both prohibit the lawyer giving anything of value to a person recommending his or her services.[102]

Rule 7.3 prohibits the direct solicitation of clients for profit.[103] The

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98. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.1 (1989) (prohibiting false and misleading statements in advertisements).

99. *See, e.g.*, MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101(A)-(B), 2-103, 2-104 (1980). DR 2-101(A) states, "A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim." *Id.* DR 2-101(A).

DR 2-101(B) states:

> In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish or broadcast, subject to DR 2-103, the following information in print media distributed or over television or radio broadcast in the geographic area or areas in which the lawyer resides or maintains offices or in which a significant part of the lawyer's clientele resides, provided that the information disclosed by the lawyer in such publication or broadcast complies with DR 2-101(A), and is presented in a dignified manner: . . .

Id. DR 2 -101(B) (omitting extensive list of advertisement content requirements).

DR 2-103 regulates the recommendation of professional employment by attorneys. *See id.* DR 2 -103. This section forbids an attorney from recommending employment as an attorney for himself or another or from compensating one for recommending his services or from requesting one to recommend him as an attorney. *Id.*

DR 2-104 regulates direct contact with prospective clients. *See id.* DR 2-104. Subject to certain exceptions, DR 2-104 prohibits a lawyer from accepting employment from a layperson to whom he has given in-person unsolicited advice that the layperson should obtain legal counsel. *Id.* The exceptions in DR 2-104(A) permit an attorney to accept employment: (1) from a close friend, relative, former client, or "one whom the lawyer reasonably believes to be a client;" (2) resulting from public educational programs; (3) recommended by a legal assistance organization; (4) to speak or write publicly; (5) and to represent members of a class action litigation. *Id.* DR 2-104 (a) (1)-(5).

100. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101(B).

101. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.2 (1989); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101(B) (1980).

102. *See* MODEL RULES OF PROFESSIONAL CONDUCT 7.2 (1989); MODEL RULES OF PROFESSIONAL RESPONSIBILITY DR 2-103 (1980).

103. *Compare* MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.3 (1989) (forbidding any in-person solicitation) *with* MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-103(A) (1980) (allowing direct solicitation only as governed by advertising boundaries).

abuses present in *Ohralik* provide the basis of this rule,[104] which is designed to prevent undue influence, intimidation and overreaching—all dangers inherent in direct contact or face-to-face solicitation.[105] It must be noted that the one-on-one situation does not afford the protections and relief opportunities available with media advertisements. The danger, therefore, of direct communications crossing into the zone of prohibited solicitation is much greater. DR 2-104(A) and Rule 7.3 were promulgated for the purpose of providing guidelines for the soliciting attorney in order to prevent his or her crossing over into that prohibited zone.

In 1984, Massachusetts elected to adjust its disciplinary rules in response to recent United States Supreme Court decisions. The Massachusetts Supreme Judicial Court appointed a special committee to consider modifying DR 2-103 and DR 2-104. In *The Matter of Amendment to Rule 3:07, DR 2-103, and DR 2-104*,[106] the court heeded the committee's recommendations and expanded the scope of permissible lawyer advertising and written solicitation under the Code.[107] However, the court flatly rejected the recommendation that in-person solicitation for a fee be allowed in certain situations, holding that "Direct solicitation of employment for a fee is prohibited. There are no exceptions."[108]

More recently, the ABA dropped a bid to draft guidelines regulating the "dignity" of lawyer advertising due to pressure from the Federal Trade Commission (FTC) and several bar groups.[109] The ABA refused to promulgate any rules, concluding that defining and regulating "dignity" is too subjective and more of a personal opinion.[110] Even though DR 2-101(B) mandates that communication about legal services be dignified, Rule 7.1 has no parallel requirement.[111] Such a

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104. *See generally* ABA COMMISSION ON ADVERTISING, PROVISIONS OF STATE CODES OF PROFESSIONAL RESPONSIBILITY GOVERNING LAWYER ADVERTISING AND SOLICITATION, Recent Developments 2 (1987).

105. *See id.* at 4.

106. 495 N.E.2d 282 (Mass. 1986).

107. *Id.* at 284.

108. *Id.* at 290. *See generally New Ethics Rules Governing Attorney Advertising and Solicitation*, 31 BOSTON B.J. 28 (1987).

109. *See* Pendlebury, *ABA Drops Bid to Draft Lawyer Advertising Standards*, LEGAL TIMES, Jan. 5, 1987, at 4, col. 1.

110. *Id.*

111. *Compare* MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101(B) (1980) *with* MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.1 (1989).

requirement serves no interest recognized by the Supreme Court as a legitimate basis for the regulation of advertising.[112]

Putting dignity aside, and possibly we must,[113] it would seem that after *Shapero*,[114] the ABA Committee on Attorney Advertising would feel constrained to relax the rules governing direct mail communication to targeted audiences. It is important to note that the word is "relax," not "remove." Even post *Shapero* rules may, and should, protect against overreaching, regardless of whether it is the result of false or misleading statements, or arises otherwise.[115]

III. TELEVISION ADVERTISING

Strangely enough, the issue of television advertising is one that courts in the past have been reluctant to address. This is possibly due to the difficulty in regulating broadcast advertising when compared to other forms of communication. Some states, such as Iowa,[116] have placed strict regulations on television advertising by limiting what may be contained in the commercial itself.[117] At present, Iowa is one of the few states with rigid guidelines.[118] In the rules and the code, the ABA has established that advertising through the broadcast media is permissible, as long as the ad is not false or misleading, fraudu-

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112. *See* Bates v. State Bar of Arizona, 433 U.S. 350, 369-70, 383-84 (1977).

113. *See In re* Felmeister & Isaacs, 518 A.2d 188, 205 (N.J. 1986). The New Jersey Court noted arguments for and against the validity of the "dignity" standard, but opted to base its decision on another foundation. It noted the difficulty of applying such a standard, but expressly did not rule out its adoption at some point in the future. *Id. See generally* G. HAZARD & W. HODES, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT 512-14 (1985) (cited in *Felmeister* as stating that the "dignified" requirement is not part of Rule 7.1).

114. Shapero v. Kentucky Bar Ass'n, 486 U.S. 466 (1988).

115. *See In re* Primus, 436 U.S. 412, 434-35 (1978) (stating that targeted mailing still does not pose as great a risk of overreaching as in-person solicitation).

116. *See* Committee on Professional Ethics v. Humphrey, 377 N.W.2d 643, 647 (Iowa 1985). *Humphrey*, as one of the first cases to litigate the issue of television advertising, placed strict limitations on these types of ads under the Iowa Code of Professional Responsibility for Lawyers (1971) which contains detailed guidelines that advertising attorneys must follow or be subject to discipline. *Id.*

117. For example, the Iowa ethics rules prohibit TV ads which contain background sound, visual displays, more than a single, nondramatic voice or self-laudatory statements. *See* MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101(B)(5) (1980) (Iowa provision modeled on ABA).

118. *See* Messing, *The Latest Word on Solicitation*, FLA. B.J., May 1986, at 17, 17-20. Florida has considered imposing regulations on television advertising specifically; *see also* NAT'L L. J., June 19, 1989, at 3. As of the summer of 1991, the Florida Supreme Court had taken no action on the matter.

lent, deceptive, self-laudatory, or an unfair statement or claim, and provided that the disseminated information stays within the confines of specified permissible categories.[119] While these provisions appear very structured and regulatory, realistically, many ads subject to these restraints can remain within the confines of the regulations while often offending many persons' sense of good taste and dignity.[120]

Very few cases have dealt with television ads. The most noteworthy decision is *Committee on Professional Ethics v. Humphrey*.[121] Before discussing *Humphrey* and its impact on the world of television advertising, certain other cases must be reviewed with an eye toward how disciplinary rules can be shaped to effectively regulate lawyer television advertising.

The Connecticut Supreme Court, in *Grievance Committee v. Trantolo*,[122] held that a blanket ban on television advertising is unconstitutional and that the omission of TV ads in a disciplinary rule as a permissible means of advertising does not implicitly ban that form of advertising.[123] The Trantolo law firm ran four different television ads promoting the services of their firm in varying situations.[124] The Connecticut Grievance Committee filed a complaint alleging that the four ads violated DR 2-101 of the Connecticut Code of Professional Responsibility, which did not explicitly forbid television ads but, instead, was limited to printed materials,[125] thus implicitly banning TV ads. The Supreme Court of Connecticut reversed the trial court's finding that the ads violated DR 2-101 and held that the ambiguity caused by the omission in the disciplinary rule did not dictate a blanket ban on television advertising.[126] The court held that such a ban would be repugnant to the freedom of speech guarantees embraced by the

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119. *See* Messing, *The Latest Word on Solicitation*, FLA. B.J., May 1986, at 17, 17-20; MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.2 (1989).

120. For example, see the ads referred to in the opening paragraph of this article.

121. 377 N.W.2d 643 (Iowa 1985).

122. 470 A.2d 228 (Conn. 1984); *see also* Grievance Comm. v. Trantolo, 470 A.2d 235 (second bar discipline case involving Trantolo, but not including television advertising).

123. *Trantolo*, 470 A.2d at 232-34.

124. *Id.* at 229 n.1. These advertisements were identified by the trial court as "Divorce Case," "Accident Case," "Mumbo Jumbo," and "Bankruptcy Case." *Id.*

125. *Id.* at 230-31. The Connecticut version of DR 2-101 stated "A lawyer may publish . . . information in newspapers, periodicals and other printed publications." *Id.*

126. *Id.* at 232-34 (court stated that blanket ban on television advertising was repugnant to commercial speech doctrine).

United States and Connecticut Constitutions.[127] Following the principles in *Bates*, the court held that the televised advertisements did not constitute a *per se* violation of DR 2-101, and that any reprimand would have to be based on some other form of violation, such as ads that were false or misleading.[128] The court recognized Connecticut's interest in the regulation of advertising for legal services, but found a blanket ban did not promote those interests.[129] The court further recognized that for many individuals, especially the functionally illiterate, TV and radio are the only means by which they may be informed about the availability of legal services.[130] The court also stated the easiest and most obvious sanction against television ads: If the viewing audience finds the ad distasteful or offensive, then it can shun the services or turn off the TV.[131]

The New Jersey Supreme Court also addressed the issue of television advertising in *Petition of Felmeister & Isaacs*,[132] a decision which firmly supports restricting television ads. The court ruled that the New Jersey version of DR 2-102(A) unconstitutionally hindered free speech.[133] The regulation prohibited the use of any drawings, animations, dramatizations, music or lyrics in any form of advertisement.[134] The supreme court, on constitutional and public policy grounds, found that the New Jersey version of the disciplinary rule was too broad, although it expressed a continuing concern for the potential impact of television advertising.[135] Therefore, the court revised the regulation requiring now that all ads should be predominantly informational and limited restrictions of "no drawings, animations, drama-

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127. *Trantolo*, 470 A.2d at 232 (citing Bates v. State Bar of Arizona, 433 U.S. 350 (1977)).

128. *Id.* at 234.

129. *Id.* at 233 (state has interest in regulation, but blanket restriction too narrow).

130. *Id.* at 234 (group without access to printed media is larger than illiterates).

131. *Trantolo*, 470 A.2d at 234.

132. 518 A.2d 188 (N.J. 1986).

133. *Felmeister*, 518 A.2d at 189. The New Jersey regulation, Rule of Professional Conduct (RPC) 7.2(a), stated:

> Subject to the requirements of RPC 7.1 [prohibiting false or misleading advertising], a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, or through mailed written communication. All advertisements shall be presented in a dignified manner without the use of drawings, animations, dramatization, music or lyrics.

Id. at 188 (quoting the NEW JERSEY RULES OF PROFESSIONAL CONDUCT as of 1984).

134. *Felmeister*, 518 A.2d at 188.

135. *Id.* at 189.

tizations, music, or lyrics" only to television.[136] The court also did away with an explicit dignity requirement, explaining that a dignity standard was too difficult to apply.[137] The court reasoned that a dignity standard could be served through other standards adopted within the rules with less difficulty in application, such as Rule of Professional Conduct (RPC) 7.2.[138]

The court recognized the dangers inherent in unrestricted advertising but found that the benefits outweighed the dangers.[139] The court felt that the twin goals of providing consumers with information about the legal system, and doing so at a lower price, outweighed the reasoning behind a severe restriction on printed communication.[140] Additionally, the court realized that with printed ads, the consumer is at minimal risk, able to throw the ad away or ignore it. The court noted that direct solicitation, as in *Ohralik*, was prohibited for the same overreaching and influential reasons for which the Ohio court had imposed sanctions.[141] For the above reasons, the New Jersey Supreme Court eased the restrictions on all media except television.

Despite the court's analysis and holding in regard to print media, it felt that TV ads were still too volatile and unpredictable to be totally without limits.[142] The court felt that many individuals with minimal access to informed sources on legal services rely heavily on television

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136. *Id.* at 189. The revised RPC 7.2 reads:

> Subject to the requirements of RPC 7.1 a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio, or television, or through mailed written communication. All advertisements shall be predominantly informational. No drawings, animations, dramatizations, music, or lyrics shall be used in connection with televised advertisements. No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.

Id. at 208.

137. Petition of Felmeister & Isaacs, 518 A.2d 188, 205 (N.J. 1986) (court stated the standard was difficult to apply and that the results could be achieved by other methods).

138. *Id.* In the same breath, the court acknowledged that even though an explicit dignity standard was unnecessary, it did not violate First Amendment protections nor fall before void-for-vagueness challenges. The court felt such a standard would be too difficult to apply in every case, but did leave open the possibility of the same standard being adopted in the future. *Id.*

139. *Id.* at 188-95.

140. *Id.* at 192.

141. *See* Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 468 (1978) (court found that in-person solicitation had great risk of overreaching.)

142. Petition of Felmeister & Isaacs, 518 A.2d 188, 195, 201 (N.J. 1986) (court found

for information, and that this generally less affluent and less well educated group should, therefore, be protected against the dangers inherent with television ads.[143] Such individuals are the most vulnerable to the kind of advertisement whose attention-getting technique depends upon shock value, where the more absurd the ad, the more attention it gets.[144] The court realized that this form of ad is structured to demonstrate that the particular attorney is willing to take on the case rather than emphasize the attorney's skill and competence.[145] Shock and absurdity are effective and unfortunately grab the attention of the viewing audience, especially an audience with limited access to information about legal services. Due to this potential danger, the court felt that restrictions on TV ads are necessary in order to protect the vulnerable public.[146]

An additional revision to New Jersey's Rule on lawyer advertising stated:

> No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.[147]

This revision, the court concluded, while more narrow than the dignity standard, serves the same purpose and is easier to apply.[148] Finally, the court ruled that *all* ads must be predominantly informational so "in both quantity and quality, the communication of factual information rationally related to the need for and selection of an attorney predominates."[149] This provision requires advertising attorneys to emphasize their competence and skill, rather than just rely on the shock value of the ads.[150]

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that nature of electronic broadcast media was more capable of misleading because of audience at which it is aimed).

143. *Id.* at 195.

144. *Id.* at 196 (court noted that "shock" ad would not appeal to serious viewer).

145. *Id.*

146. *Petition of Felmeister*, 518 A.2d at 195, 201.

147. *Id.* at 208 (revised RPC 7.2).

148. *Id.* at 205.

149. *Id.* at 194.

150. Undaunted, the attorneys then challenged the revised rules in federal court on constitutional grounds. The court dismissed on grounds of ripeness, or, more accurately, the lack thereof. Felmeister v. Office of Attorney Ethics, 856 F.2d 529, 530 (3rd Cir. 1988).

The New Jersey Supreme Court's holding is well-founded. As the court implies, television advertising by attorneys is relatively new to society and any changes in restrictions should be approached conservatively. However, a sweeping ban is too hasty. Time, the court recognized, is the only way to tell what restrictions should be lifted with regard to the world of television advertising.[151]

In *Matter of Zang*,[152] which involved an unusual fact situation, the Arizona Supreme Court examined television advertisements in the narrow context of whether they were false and misleading[153]—a topic thus far rarely addressed by courts in the context of television. The attorneys involved ran four print and nine video ads which appeared in the Phoenix, Arizona viewing area between 1982 and 1983.[154] In particular, the TV ads (1) were overly dramatic, (2) featured an authoritative-sounding narrator, and (3) contained either frenetic or peaceful music as background for the drama.[155] Each ad ended with a climactic scene showing one of the attorneys arguing in court before a jury. The viewer generally was situated behind the jury box.[156]

The Arizona Supreme Court, citing *Zauderer* and *Felmeister*, held that the TV ads were inherently misleading and potentially dangerous.[157] The court found that the ads portrayed the law firm as ready and willing to take a case to trial, when in actuality, the law firm, founded in 1979, had never had an attorney try a personal injury case to its conclusion[158] and, instead, consciously followed a policy of avoiding trials in favor of settlement.[159] As a result, the court found that the attorneys had no intention of taking a case to trial as portrayed and, consequently, that their representations as to their courtroom abilities were false, misleading and untruthful.[160]

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151. *Petition of Felmeister*, 518 A.2d at 195.

152. 741 P.2d 267 (Ariz. 1987).

153. *Zang*, 741 P.2d at 273-76.

154. *Id.* at 273.

155. *Id.* at 274. The scenes displayed on the advertisements were, for example, pictures of an automobile accident, a worried couple in a hospital waiting room, or a father kissing his daughter good-bye for, what appears to be, the last time. *Id.*

156. *Zang*, 741 P.2d at 274.

157. *Id.* at 277 (citing Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626, 652-53 and Petition of Felmeister & Isaacs, 518 A.2d 188, 195, 201) (N.J. 1986).

158. *Id.* at 275.

159. *Id.*

160. *Zang*, 741 P.2d at 276 (referring to the court record at 22-23).

The attorneys argued that the ads did not harm anyone, but the court rejected this argument as unpersuasive.[161] It found that even if no client was harmed, discipline was necessary to protect consumers from misleading advertising.[162] The court cited *Felmeister*, recognizing that many of the previously discussed concerns addressed by that court were present in *Zang*.[163] The two attorneys involved in the ads were suspended, one for one year and the other for thirty days.[164]

The most crucial decision thus far on television advertising is *Committee on Professional Ethics v. Humphrey*.[165] In 1985, the Iowa Supreme Court addressed the question of whether a state, in light of the recent United States Supreme Court holding in *Zauderer*, was constitutionally permitted to restrain attorneys from advertising on television.[166] It answered the question affirmatively and issued a writ restraining the attorneys involved.[167]

There were actually two *Humphrey* decisions with the first opinion rendered in September of 1984.[168] The unsuccessful defendants appealed the decision to the United States Supreme Court, where certiorari was pending when the Court filed its decision in *Zauderer*.[169] Then the United States Supreme Court vacated the Iowa Supreme Court's judgment and remanded the matter back to that court for further consideration in light of *Zauderer*.[170]

The Iowa court felt that the decision in *Zauderer* was limited to print advertisements and could not fairly be extended to the electronic media.[171] The court stated that the "strongest basis for concluding the *Zauderer* rationale has no impact on electronic media advertise-

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161. *Id.* at 277.

162. *Id.*

163. *Id.* at 279; *see* Petition of Felmeister & Isaacs, 518 A.2d 188, 199 (N.J. 1986).

164. *Zang*, 741 P.2d at 288.

165. 377 N.W.2d 643 (Iowa 1985).

166. *See Humphrey*, 377 N.W.2d at 644.

167. *Id.* at 647.

168. *See* Committee on Professional Ethics v. Humphrey, 355 N.W.2d 565, 571 (Iowa 1984) (the first Iowa Supreme Court decision in this matter).

169. *See Humphrey*, 377 N.W.2d at 644.

170. Humphrey v. Committee on Professional Ethics, 472 U.S. 1004, 1004 (1984). Justices Rehnquist and O'Connor would have noted probable jurisdiction. *Id.* at 1004.

171. *See* Humphrey v. Committee on Professional Ethics, 377 N.W.2d 643, 644-47 (Iowa 1985). The *Zauderer* Court, in a nutshell, held that *printed* advertisements, which are not false and misleading, or overreaching, cannot be proscribed through state regulations. Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 647-649 (1985).

ments is that we have the Supreme Court's word for it,"[172] referring to the United States Supreme Court's holding in *Bates*[173] which acknowledged the "special problems" inherent in the world of electronic advertising.[174] These "special problems" afforded the United States Supreme Court the escape it needed in order to avoid discussing or considering television advertising.[175] The Iowa Court relied on the decision in *Zauderer*, coupled with the United States Supreme Court's express abstention from considering electronic media in *Bates*, to conclude that a strict regulation of TV advertising does not violate constitutional freedoms.[176]

In discussing the rationale behind such a ban, the court stated, first, that Iowa had a substantial governmental interest in regulating perceived potential abuses.[177] The court analogized TV advertising and its dangers of overreaching and abuse to the reasons for the prohibition of face-to-face solicitation.[178] Second, the court stated that electronic ads involve much less deliberation and consideration by those to whom they are targeted than do printed ads.[179] With printed ads, the consumer may read, reread, think, consider and then either make inquiry or toss away the ad. With TV ads, the consumer is suddenly exposed to a legal situation flashed on the screen which provides a phone number and the name of a firm or particular attorney to call in the event the person is involved in a similar legal situation. The Iowa Court considered these factors in determining that TV advertising should be subject to strict regulation, because it leaves little time for thought or consideration of the attorney's available services, skills, or competence.[180] The court also relied on earlier United States Supreme Court observations that the broadcast media is highly perva-

172. *Humphrey*, 377 N.W.2d at 645.

173. *See* Bates v. State Bar of Arizona, 433 U.S. 350, 384 (1977).

174. *Cf.* Marlane, *Respicis, Aspicis, Prospicis: Lawyer Advertising on Television*, 12 TRIAL DIPL. J. 151, 154 (1989). In explaining why he did not advertise on television, Aaron J. Broder, who does utilize print advertisements, said, "It's a bit too glitzy for my blood. . . . Television has a quality of fiction, a quality of nonreality. There is the TV lawyer, the Perry Mason syndrome." *Id.*

175. *See Humphrey*, 377 N.W.2d at 645-46.

176. *See id.* The Iowa court emphasized the "special problems" inherent with television advertisements recognized by the United State Supreme Court. *Id.* at 646.

177. *Id.* at 646.

178. *Id. See also* Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 449 (1978). *Ohralik* held that face-to-face solicitation was prohibited. *Id.*

179. *See Humphrey*, 377 N.W.2d at 646.

180. *Id.* at 646-47.

sive and intrusive.[181] *Humphrey* did not result in a blanket ban, as it only prohibited television advertising which contains background sound, visual displays, more than a single nondramatic voice, or self-laudatory statements.[182] With this decision, television ads are still permitted in Iowa but are subject to these requirements. The holding provided regulation of a form of advertising regarded as potentially ripe for abuse.[183]

The *Humphrey* case is important because it is currently the most authoritative case dealing with television advertising. The other cases discussed have dealt with this legal dilemma in some aspect but have not addressed the nuts and bolts of why TV advertising should or should not be regulated extensively. *Humphrey* is the first case to address this issue thoroughly and decide definitively that television advertising by attorneys should be strictly regulated.

IV. DISCUSSION

One estimate is that one-fourth of law firms advertise today and, among younger lawyers, the percentage is higher.[184] In a poll taken on November 1, 1987, approximately one-third (thirty-two percent) of the lawyers queried said that they had advertised their services at some point in time.[185] This result was up eight percent over those responding in 1985.[186] The one in four that were estimated as advertising in 1987 was up from seventeen percent advertising in 1985.[187] Strangely enough, those lawyers advertising on television dropped from seven percent in 1985 to three percent at the time of the poll.[188] This suggests that lawyers are being overcome by morality and dignity, that TV advertising is not as effective as once thought, or that it is too expensive. Also, one cannot overlook the reality that the time span between the two reports is so short that one should not read too much into these changes. It is also possible that the poll was flawed. A report compiled by the Television Bureau of Advertising, Inc.

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181. *Id.* at 647 (citing FCC v. Pacifica Foundation, 438 U.S. 726, 748 (1978)).

182. *Humphrey*, 377 N.W.2d at 643.

183. *Id.* at 647.

184. *See* Bogutz, *ABA Advertising Commission: The Search For Guidelines*, THE COMPLEAT LAWYER, Fall 1987, at 23.

185. *See* Reidinger, *Lawpoll*, A.B.A. J., Nov. 1987, at 25.

186. *Id.*

187. *Id.*

188. *Id.*

showed television advertising by lawyers in 1988 to be up by eight percent over 1987.[189] Of course, pressure within the ABA from attorneys who want tasteless and undignified TV ads regulated could have caused attorneys who advertise to either change their commercials or find other ways to solicit business. The consensus appears to be that a majority of lawyers do not necessarily mind TV advertising as long as the ads are not so crass as to give the profession an overall bad image. The goal of these attorneys is to maintain dignity and professionalism within the realm of advertising.[190] Therefore, their concern is not whether attorneys can advertise, but *how* they do it.

The individual states are left to regulate attorneys within their jurisdiction.[191] In every state the legislatures or courts have adopted either the ABA's rules regulating advertising or their own variation of the rules.[192] According to a recent survey, forty-four states allow commercials to include dramatizations and graphics and forty-three permit the use of actors.[193] This is not due to these states promulgating particular rules, but due to the fact that they have not expressly prohibited these forms of television advertisements. Twenty-one states have only the restriction that the advertising not be false, fraudulent, misleading, or deceptive.[194] Approximately fourteen states specifically regulate TV in some manner, requiring either that the ads conform to certain standards or that the lawyer approve the commercial and maintain copies of it for a specified period of time.[195] It appears that, since the United States Supreme Court has yet to address the issue of broadcast advertising, the states are reluctant as well. Although all states allow television advertising, few have strict guidelines regulating it.[196] Apparently, the states prefer to leave regulation up to the courts on a case-by-case basis, at least until the Supreme Court rules on the matter or until the ABA promulgates guidelines,

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189. *See* NAT'L L.J., March 27, 1989, at 6.

190. *See* Bogutz, *ABA Advertising Commission: The Search for Guidelines*, THE COMPLEAT LAWYER, Fall 1987, at 23.

191. *See generally* ABA COMMISSION ON ADVERTISING, PROVISIONS OF STATE CODES OF PROFESSIONAL RESPONSIBILITY GOVERNING LAWYER ADVERTISING AND SOLICITATION, Recent Developments 2 (1987).

192. *See* Reidinger, *Trends in the Law: Lawyer Ads*, A.B.A. J., Sept. 1986, at 78, 78.

193. *Id.*

194. *Id.*

195. *Id.*

196. *See* Reidinger, *Trends in the Law: Lawyers Ads*, A.B.A. J., Sept. 1986, at 78, 78.

neither of which appears likely to happen anytime soon.[197]

Since there is no state or federal decision similar to *Bates* or *Zauderer* addressing television advertising, it seems that the profession itself must decide how far these ads may go. The profession as a whole must discourage offensive and undignified advertising on television through whatever permissible means that are effective. While legal advertising as commercial speech is entitled to First Amendment protection,[198] that area of freedom of speech must have reasonable limitations. Of course, no speech that is materially false, deceptive or misleading is constitutionally protected,[199] but it is not so clear that this is true of speech that strives only to get the viewer's attention in order to say, "Yes, I am an attorney and I want your business." This speech is potentially misleading because it does not relay any information to the viewing public regarding that attorney's availability, skills, or competence.

The entire argument behind allowing unrestricted television advertising revolves around the notion that television ads foster competition[200] and benefit the public by disseminating information about attorneys, particularly to people who otherwise would have no access to it.[201] The Federal Trade Commission (FTC), in strident opposition to any regulation or restriction of television advertising, urges a competitive and economic argument that advertising lowers the prices of attorneys' services within areas where attorneys run ads.[202] These arguments have never been hotly disputed, but the FTC's position that dignity should not be included as an advertising guideline has been the subject of controversy.[203] Commentators supporting the FTC position argue that dignity is self-regulating because consumers will de-

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197. *See* Pendlebury, *ABA Drops Bid to Draft Lawyer Advertising Standards*, LEGAL TIMES, Jan. 5, 1987, at 4, col. 1.

198. *Bates*, 433 U.S. at 384.

199. *Id.*; *see also Report of the Commission on Professionalism to the Board of Governors and the House of Delegates of the American Bar Association*, 112 F.R.D. 243, 276 (1986).

200. *See* Moss, *Law Firms' TV Ad $$ Hiked*, A.B.A. J., Nov. 1986, at 19.

201. *See* Miskiewicz, *Ad Debate Lingers, But Its Focus Shifts*, NAT'L L.J., Dec. 15, 1986, at 1, 50.

202. *See* Moss, *Law Firms' TV Ad $$ Hiked*, A.B.A. J., Nov. 1986, at 19; Pendlebury, *ABA Drops Bid to Draft Lawyer Advertising Standards*, LEGAL TIMES, Jan. 5, 1987, at 4, col. 1.

203. *See* Pendlebury, *ABA Drops Bid to Draft Lawyer Advertising Standards*, LEGAL TIMES, Jan. 5, 1987, at 4, col. 1 (discussing FTC guidelines). *See generally At Issue: Is Dignity Important in Legal Advertising?*, A.B.A. J., Aug. 1987, at 52 (debate on issue of dignity in legal advertisements).

termine what are undignified ads and consequently not use that attorney's services.[204]

On the other side of the coin are the promoters of restrictions on television advertisements. The main argument in favor of a dignity standard is generally espoused by lawyers rather than the public.[205] Proponents of restricting TV advertising argue that: (1) unrestricted advertising will commercialize the profession and undermine the attorneys' sense of dignity and self-worth, (2) legal services and capabilities are so individualized regarding content and quality that advertising is inherently misleading as TV ads rarely focus on these attributes, (3) advertising will stir up litigation, and (4) the quality of services offered will be inferior, such as that common to attorneys resorting to "ambulance chasing."[206]

The drawback to banning television advertising is that individuals who do need legal advice and who do not know how to obtain it will be unable to receive information about attorneys' services. Typically, these individuals are of low income and are less educated, not as able to avail themselves of the print media, such as newspapers and magazines. Additionally, these individuals usually perceive lawyers as rich, powerful people who only represent other rich, powerful people or large corporations. They also believe they cannot afford an attorney; a belief that is not totally without merit. Unfortunately, these individuals are completely unaware of the fact that there are attorneys who will provide affordable services. A restraint on the free flow of information may hurt not only the attorney in a business sense but, more importantly, may hurt people with legitimate legal claims.

However, one must balance this interest of publicizing legal services to the under-privileged against the interest of the profession in keeping the law a profession and not a commercial enterprise. Some argue that the line drawn between a legal profession and a business is just a distinction without a difference, contending that a law practice is basically a commercial activity engaged in for pecuniary gain and, thus, a

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204. *See At Issue: Is Dignity Important in Legal Advertising?*, A.B.A. J., Aug. 1987, at 52; Miskiewicz, *Ad Debate Lingers, But Its Focus Shifts*, NAT'L L.J., Dec. 15, 1986, at 1, 50.

205. *See* Miskiewicz, *Ad Debate Lingers, But Its Focus Shifts*, NAT'L L.J., Dec. 15, 1986, at 1, 50.

206. *See* Comment, *The Status of Lawyer Advertising in Virginia: What is Good Taste?*, 19 U. RICH. L. REV. 629, 640 (1985); *see also* Comment, *Out of the Shadows and Into the Light: Alabama Adopts New Rules on Attorney Advertising*, 37 ALA. L. REV. 787, 802 (1986).

business. A profession, however, is much, much more. As Webster's puts it, a profession is:

> a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods . . . maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which has for its prime purpose the rendering of a public service.[207]

Underlying this definition is a standard of dignity based on public expectations as well as tradition and image. The legal profession has traditionally been looked upon with respect because of the specialized knowledge and skill required to be a lawyer. This respect has been supported through the profession's own high standards of achievement and *dignified* conduct among its members. This traditional image and internal standard of dignity distinguishes the legal profession from a mere business. As one commentator stated, "Many . . . attorneys look down upon advertising on the theory that 'if it's dignified, it's a profession; if it's undignified, it's a business.' "[208]

However, the discussion about dignity, even though well-founded, does not solve the problem. The soap box dictum concerned with maintaining dignity within the profession by regulating television advertisements can be observed as a means to an end, but is the end in sight? Probably not. Until the proper state authorities or the United States Supreme Court make a decision to regulate television advertisements, the hucksterism will continue and the "shock" advertisements that are not false, fraudulent, or misleading will pass muster.

Guidelines that will pass constitutional muster must be designed to keep offensive ads[209] off TV. Admittedly, most individuals can distinguish between dignified and undignified commercials,[210] but for those who cannot, protective measures should be taken. If information regarding legal services is to be disseminated, it should be done in a way

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207. *See* WEBSTER'S 3D NEW INTERNATIONAL DICTIONARY 1811 (3d ed. 1981).

208. *See* Miskiewicz, *Ad Debate Lingers, But Its Focus Shifts*, NAT'L. L.J., Dec. 15, 1986, at 1, 50 (quoting Norton Frickey, president of Denver's Norton Frickey & Assocs., the sixth-largest legal television advertiser).

209. For example, the ads referred to in the first paragraph of this article.

210. *See* BREAD 'N BUTTER: A LEGAL ECONOMICS PUBLICATION OF THE STATE OF GEORGIA (Jan. 1990). One poll showed that seventy-two percent of the respondents believed lawyers were competent until they viewed their television commercials. After that only twenty-two percent thought so. *Id.*

that avoids the "shock" factor and tells the public what they need to know: the attorney's skill or experience in varying areas of law; proof of the attorney's competence; evidence of his or her commitment to the law; fee information; and how the attorney can be contacted. A thirty second commercial can do this without drama and hype. The profession wants a prospective client to choose an attorney based on an attorney's professional ability and not based on who has the better, more attractive advertising program.

Unfortunately, the courts' hands are tied unless an ad is false or misleading. The ABA is pinned into a corner as well, because of the varying views on TV ads and because the states are not required to adopt the ABA's code or rules. Furthermore, defining dignity is not an easy task. It is a subjective opinion left up to the individual. As the chairman of the ABA's Commission on Advertising stated, "Dignity, like pornography, is in the eyes of the beholder."[211]

Therefore, in the absence of judicial guidance, the profession itself must control television advertising through self-administered means. This is the key to preserving the profession's image. But just what are these means? How should they operate? These are obviously difficult questions to answer. The efforts to control television advertising and to maintain the profession's image must come from members of the organized state bar associations. Efforts to enlighten rulemakers and practitioners on the evils inherent in unrestrained television advertising are needed to curb the tide of irresponsibility.

Institutionally, the bar associations must provide better information to the consuming public about what it should look for when selecting an attorney. A concerted effort is needed to inform the public about the attributes it should require in an attorney. More than likely, the average consumer will be able to distinguish between the dignified and undignified advertisements, but this does not mean that he or she will have the sophistication to realize that the catchy commercial did not communicate anything useful. Some guidance is needed.

Additionally, within the profession itself, bar leaders should inform, represent, lead, and guide their members. Recommendations as to permissible ads and reprimands for tasteless, undignified ads are necessary in order to guide advertising attorneys. Information can be

211. *See* Miskiewicz, *Ad Debate Lingers, But Its Focus Shifts*, NAT'L L.J., Dec. 15, 1986, at 50.

disseminated through bar newsletters, formal opinion letters and other similar publications.

The means are available, but without a legislative stamp or court approval, these means are nothing more than unenforceable guidelines. Nonetheless, they can be beneficial to the efforts to maintain dignity within the profession. Obviously, the lawyers who choose to advertise in an undignified manner will be unaffected by these unenforceable guidelines. But it is to be hoped that the lawyers who have not yet resorted to advertisements, but who are contemplating doing so, will either elect not to use them, or will do so in a dignified manner, taking the mainstream views and recommendations into consideration. If the members of the profession join forces to regulate advertisements broadcast statewide, or even nationwide, then the peddlers and hucksters will not be able to destroy the more than two-hundred years of respect afforded the legal profession.

V. CONCLUSION

Former Chief Justice Warren Burger stated, "just because the Constitution permits an act, that does not make it ethically acceptable for the privileged profession of the law."[212] As Mr. Chief Justice Burger's statement intimates, some advertising attorneys have lost sight of the traditional values of our once highly respected profession. Admittedly, the former Chief Justice does take the issue of advertising to an extreme by advising the public to *never* hire an attorney who advertises,[213] but his opinion is not totally unwarranted. Members of the legal community should respect the profession enough to keep the used car salesman image away from the law. Regulation in the most pervasive form of media, television advertisements, is essential to protect the profession's image.

Television advertising by lawyers must be regulated by the states unless some federal agency, such as the F.T.C., provides guidance in this area.[214] Unfortunately, not many states have chosen to act in this

212. Chief Justice Burger made this comment in his final State of the Judiciary Speech to the opening assembly of the ABA Annual Meeting. *See* Marcotte, *State of the Judiciary: Burger Hits Ads, Fees, Solicitation*, A.B.A. J., Oct. 1986, at 22.

213. *See* Reiter, *President's Page: Advertising: You Have the Right—Don't Abuse It*, FLA. B.J., Apr. 1987, at 4.

214. Pendlebury, *ABA Drops Bid to Draft Lawyer Advertising Standards*, LEGAL TIMES, Jan. 5, 1987, at 4, col. 7 (ABA refusing because to define dignity would be too subjective). At the moment the F.T.C. does not seem a likely candidate to take the lead in this effort.

regard. Therefore, the profession itself must act and encourage self-regulation among its members. With the professions's image at stake, some form of guidance is undeniably needed.

The future of television advertising is somewhat unpredictable. Until the United States Supreme Court takes a position on the subject, the states are left to regulate this form of media advertising as they think best. The tasteless, undignified ads will continue in some jurisdictions while in others, like Iowa, the ads will be strictly regulated and monitored to keep the legal profession's image respectable.

The fact that fewer attorneys may be advertising on television suggests that self-regulation is already working.[215] Regardless of whether it can be demonstrated that the current level of self-regulation is effective, more is needed and should be administered in a highly visible fashion. Attorneys will continue to advertise on TV as long as it exists. It is to be hoped that the dignity of and respect for the legal profession can be maintained even in the absence of federal regulation. Attorneys have the right to advertise. Let's just hope that they do not abuse that right.

215. *See* Reidinger, *Lawpoll*, A.B.A. J., Nov. 1987, at 25 (polls show a drop of four percent in just a few years. The numbers were up a total of seventeen percent, however, from 1985 to 1987). *Id.*