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The Professional Obligation to Chase Ambulances

Monroe H. Freedman

Maurice A. Deane School of Law at Hofstra University

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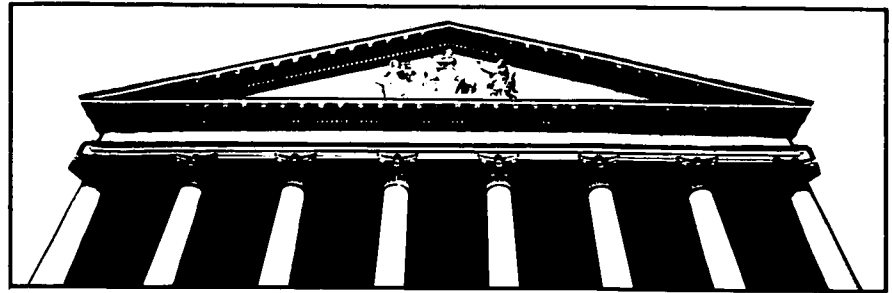
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Litigation Ethics

The Professional Obligation to Chase Ambulances

by Monroe H. Freedman



Ernest Gene Gunn, a five-year-old boy, was seriously injured as a result of negligent driving attributed to John J. Washek. Shortly after the accident, the boy's mother was visited at home by an adjuster from Mr. Washek's insurance company. The adjuster told her that there was no need to retain an attorney, because the company would make a settlement as soon as the boy was out of his doctor's care; if Ms. Gunn were not satisfied at that time, she could retain an attorney and file suit.

The boy's injuries were sufficiently severe to require a doctor's care for 23 months. At the end of that time Ms. Gunn made repeated efforts to reach the insurance company adjuster, but without success. She then retained a lawyer, who promptly filed suit for her. Ms. Gunn's boy never did have his day in court, however, because the attorneys for the insurance company successfully pleaded a two-year statute of limitations. *Gunn v. Washek*, 405 Pa. 521, 176 A.2d 635 (1961).

The *Gunn* case illustrates two important issues of professional responsibility which, unfortunately, have never been adequately dealt with by the organized bar. What if counsel was, in advance, aware of (or prompted) the adjuster's actions? For a lawyer to participate in a scheme to trick a lay person out of effective representation of counsel would constitute counseling or assisting the client in fraudulent conduct in violation of the ABA Code of Professional Responsibility. There is reason to believe, however, that it is not uncommon for some lawyers, acting

The author is Dean and Professor of Law of Hofstra University and a frequent contributor to Litigation. He is also Chairman of the Legal Ethics Committee of the District of Columbia Bar. This article was adapted from Dean Freedman's recent book, Lawyer's Ethics in an Adversary System (Bobbs-Merrill 1975).

alone or in connivance with insurance adjusters, to take advantage of claimants' ignorance and to mislead them into foregoing legal rights. Nevertheless, it is rare, if ever, that a lawyer has been disciplined for such perversion of professional knowledge and skills.

On the contrary, the thrust of bar discipline has been directed toward restricting lay persons' knowledge of their rights and their access to legal redress. For example, not long after Ms. Gunn had lost her fight to overcome the effects of the insurance adjuster's deceitful actions, the Committee of Censors of the Philadelphia Bar Association undertook a \$125,000 investigation—not of insurance adjusters, but of "unethical" solicitation of clients by plaintiffs' lawyers. The resulting report recognized the need on behalf of plaintiffs "to counter the activity of [insurance] carriers' adjusters," but casually suggested that that problem could be dealt with "by the exercise of restraint on the part of carriers." The report also acknowledged the propriety and "social value" of automobile wrecking companies listening to police calls to be the first to arrive at accident scenes to carry off the damaged vehicles, but it found no justification at all in a similar effort directed toward protecting the legal rights of the injured people.

The bases for disciplinary action that interfere with lawyers' efforts to advise people of their rights are, of course, the ABA Code strictures against advertising and solicitation. Those provisions continue longstanding rules against maintenance, champerty and barratry—commonly referred to as ambulance chasing or stirring up litigation. The principal purpose of the anti-solicitation rules is to limit competition among lawyers. Illustrative is a case permitting a bar association to advertise its law-

yer referral service in a newspaper. The court expressly justified its decision on the ground that the real evil in advertising is competition among lawyers, which is not present when the bar advertises as a whole. *Jacksonville Bar Ass'n v. Wilson*, 102 So. 2d 292 (Fla. 1958).

A number of leading authorities have criticized the anti-solicitation rules, therefore, as unrelated to professional ethics, as distinguished from what Harvard Law Professor Andrew Kaufman calls "the rules of a guild." That is, they are directed against competition rather than for the maintenance of moral standards in the public interest. Other authorities have also emphasized the effect of those rules in protecting established lawyers and large firms from undesired competition from young lawyers and small firms.

Objections

Nevertheless, there are those who object that advertising for clients would "degrade the profession," and the ABA Code informs us that: "History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising." Ethical Consideration 2-9. No historical reference is provided, however, to support that assertion. Similarly, the Philadelphia report, referred to above, suggests that solicitation of clients in violation of the rules has led to intense public dissatisfaction with the bar. In fact, the opposite may be true—that is, that dissatisfaction with the bar stems in major part from lawyers' aloofness and from their failure to reach out to those whom they purport to serve.

For example, in a survey conducted by two law professors at the University of Edinburgh for the Law Society of Scotland in 1973, people were asked whether they would resent or welcome an attorney who approached them to offer legal services in six situations (if you were in an accident; if you were considering buying a house; if you were going into a new business venture; etc.). The survey revealed that less than two percent of the people in the survey would resent an attorney's contact, while about half would welcome the

unrequested proffer of services by an attorney in all six cases. Generally, about 70 percent fell in the "welcome" category. Moreover, the least well-educated people were those who, most of all, would welcome being solicited by attorneys. The study concludes: "The extraordinarily high proportions of people who would welcome the solicitor's initiating contact in the different situations we have posed must seriously question many commonly held assumptions about the correct stance for members of the profession. Taken with the data noted which showed that few members of the public have adequate knowledge of the services solicitors could provide, and would like to know about these (*i.e.*, want more advertisement), there is a coherent and very emphatic call for a more active and positive legal profession."

A similar conclusion was reached in 1973 by the Special Committee on Legal Ethics of the Canadian Bar Association. The committee found that the increasing complexity and specialization in law make it more and more difficult for a potential client to have confidence in the selection of a lawyer. Accordingly, the committee recommended that the permitted forms of advertising by attorneys "should be enlarged and extended" to include "publication of professional cards, in an institutional form in newspapers, shopping center guides, and other like publications."

Those who object to solicitation of clients are typically ignorant of the fact that the strictures against it are themselves only minor exceptions to the more fundamental rule of professional responsibility expressed in Canon Two of the Code of Professional Responsibility: "A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available." The Code thus recognizes an affirmative obligation of the profession to provide access to the legal system—and that access, presumably, is for the benefit of all people, not just a select few.

Oddly enough, however, the solicitation limitation appears in the Disciplinary Rules under that same Canon Two. Disciplinary Rule 2-104 reads, in part: "A lawyer who has

given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice. . . ." Disciplinary Rule 2-103 says: "A lawyer shall not recommend employment as a private practitioner of himself, his partner, or associate to a nonlawyer who has not sought his advice."

Those rules appear on first reading to be broad and absolute. But they are practically meaningless—at least for a particular class of lawyers and clients—because of certain exceptions to the anti-solicitation rules. For example, DR 2-104 provides further that: "A lawyer [who has volunteered advice] may accept employment by a close friend, relative, [or a] former client . . ." That refinement means that those who are accustomed to retaining lawyers, say, for their tax or estate work, and those who have attorneys as relatives and friends, are the kind of people who can be solicited despite the rule. As to that socioeconomic class of people, there is no impropriety in solicitation. In addition, consistent with DR 2-104, lawyers have been known to take tax deductions for membership fees in country clubs on the ground that such fees are an ordinary and necessary business expense—that is, a means for discreetly soliciting business. One prominent federal judge resigned from several exclusive clubs upon going on the bench, explaining to friends that he no longer needed to attract clients.

Law Lists

Another device approved by the ABA for soliciting clients is the law list, such as in the impressive volumes of *Martindale-Hubbell*. This is purely and simply a self-laudatory advertisement, euphemistically called a "card," and directed to potential clients. Yet not every attorney is permitted to advertise his or her professional autobiography, prestigious associations and important clients in *Martindale-Hubbell*. One must await an invitation from the publisher to apply for an "a" rating, which can be achieved only upon submission of favorable references from 16 judges and attorneys who have themselves already received an "a" rating. For all other members of the

profession, *Martindale-Hubbell* is a closed book.

A similar service is *The Attorneys' Register*. The brochure for that publication boasts that the register holds a certificate of compliance from the American Bar Association, and explains that: "The primary purpose of *The Attorneys' Register* is to continue to be a valuable forwarding medium aimed at securing SUBSTANTIAL legal business for our listees . . ." (The word SUBSTANTIAL is written in capital letters throughout the brochure.) Further, it offers the attorney "an opportunity to be recognized in association with other reputable members of the Bar," and the publishers promise that they will do "everything they properly can to encourage active forwardings to our listees." The brochure also provides a partial list of "important corporations which . . . have requested, and will receive, a copy of our current edition . . . for use when seeking qualified . . . counsel." The list contains about 100 corporations, including Abbott Laboratories, American Sugar, Continental Can, DuPont, General Electric, and U.S. Plywood—corporations that will look for the attorney's name and qualifications in the paid advertisement in the register. In addition, the register is distributed free to "a careful selection of banks and trust companies, important industrial corporations, insurance companies, financing institutions, and the like, who are believed to be prolific forwarders of SUBSTANTIAL legal matters."

How to Solicit

That is the way solicitation is carried on with impunity by lawyers seeking to represent those of wealth and privilege, such as John J. Washek's insurance company. The problem of impropriety arises, of course, only for those who seek to represent that other socioeconomic group typified by the mother of Ernest Gene Gunn or, say, by tenants as distinguished from landlords, or by consumers as distinguished from manufacturers. For such unsophisticates—that is for those who are most in need of that access to the legal system which is promised by Canon Two—the organized bar, through its disciplinary rules and actions,

discourages any realistic opportunity to take controversies "out of the streets and into the courtrooms."

Imagine, for example, the following situation. A woman arrives at a metropolitan courthouse holding a small boy by the hand. She speaks almost no English at all. She is intimidated by the imposing surroundings, and she is frightened and confused. All that she knows is that she is required to be some place in that building because her son has been arrested or her landlord is attempting to evict her family. People brush by her, concerned with their own problems. Then a man appears, smiles at her, and asks her in her own language whether he can help her. Through him, she meets and retains the man's employer, a lawyer who guides her to the proper place and who competently represents her interests for a reasonable fee. In my view, that lawyer should have been given a citation as Attorney of the Year. Instead, he was prosecuted as a criminal, convicted of a misdemeanor of soliciting business on behalf of an attorney, subjected to disciplinary proceedings, and publicly censured by the court. *In re Solomon Cohn*, reported in the *New York Law Journal*, Feb. 19, 1974, p. 1, cols. 6-7.

If the profession has an obligation to "[Fulfill] Its Duty to Make Legal Counsel Available," strictures against advertising and soliciting are precisely the wrong way to go about it. Instead, attorneys have a professional duty to stir up litigation when they are acting to advise people, who may be ignorant of their rights, to seek justice in the courts. As expressed by one authority:

We must . . . discard . . . the assumption of Medieval Society, that a law suit is an evil in itself. It is hard to see how either the legal profession or our court machinery can justify its existence, if we go on the assumption that it is always better to suffer a wrong than to redress it by litigation. . . . If we have so little confidence in the process of law as to think otherwise, we shall do well to consider a fundamental overhauling of our system. M. Radin, *Maintenance by Champerty*, 24 CALIF. L. REV. 48, 72 (1935).

Fortunately, there is authority, as well as notions of humanity, equal protection, freedom of speech, and the right to petition, in support of the view that the legal system exists to be used by people and that people who need legal advice are entitled to have it. Indeed, the new ABA Code at one point makes such advice a matter of professional duty: "The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed." Ethical Consideration 2-2. Advice regarding legal rights is therefore held proper when it is "motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations." Ethical Consideration 2-3.

Mixed Motives

The Code does suggest that an attorney should not solicit a client solely for the purpose of obtaining a fee. However, when the lawyer's motives are mixed—that is, when the attorney acts with both a proper motive (to provide needed advice) and an "improper" motive (to earn a fee)—it is the proper motive that is determinative. For example, during the New Deal period, an organization was formed called the Liberty League, which was a group of lawyers opposed to such New Deal innovations as the National Labor Relations Act. The League published advertisements expressing its view that the Act was unconstitutional and offering to represent anyone who wanted to litigate against it. In Formal Opinion No. 148, the Committee on Professional Ethics of the American Bar Association held that the lawyers' activities were not only professionally proper but "wholesome and beneficial." Moreover, the committee made it clear that the propriety of the advertisement would not be affected by a motive on the part of the lawyers to serve the interests of fee-paying clients:

We need not assume that these lawyers were actuated solely by altruistic motives. It would be extraordinary indeed if some of the lawyers in the list do not have some clients whose rights may be adversely affected by the legisla-

tion which the lawyers condemn, but their right to organize and declare their views cannot for that reason be denied, and no ethical principle is thereby violated.

It is clear, therefore, that even though an attorney may receive compensation, the solicitation of a client is not unethical if the client might otherwise have lost the opportunity to vindicate legal rights through ignorance of the law or of the availability of effective legal services.

Constitutional Issue

In addition, the Supreme Court has held in a series of cases of major importance that rules of professional ethics must give way to constitutional rights. For example, the case of *NAACP v. Button*, 371 U.S. 415 (1963), considered solicitation of clients in the context of efforts of the NAACP to recruit plaintiffs for school desegregation cases. The NAACP called a series of meetings, inviting not only its members and not only poor people, but all members of the community. At those meetings, the organization's paid staff attorneys took the platform to urge those present to authorize the lawyers to sue in their behalf. The NAACP maintained the ensuing litigation by defraying all expenses, regardless of the financial means of a particular plaintiff.

Virginia contended that the NAACP's activities constituted improper solicitation under a state statute and fell within the traditional state power to regulate professional conduct. The Supreme Court held, however, that "the State's attempt to equate the activities of the NAACP and its lawyers with common-law barratry, maintenance and champerty, and to outlaw them accordingly, cannot obscure the serious encroachment . . . upon protected freedoms of expression." 371 U.S. at 438. The Court concluded: "Thus it is no answer to the constitutional claims asserted by petitioner to say, as the Virginia Supreme Court of Appeals has said, that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression. For a State may not, under the guise of prohibit-

ing professional misconduct, ignore constitutional rights." 371 U.S. at 438-39.

Subsequently, in *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964), the Supreme Court considered the question of solicitation in a case in which a union's legal services plan resulted in channeling all or substantially all of the railroad workers' personal injury claims, on a private fee basis, to lawyers selected by the union and touted in its literature and at meetings. The Court again upheld the solicitation on constitutional grounds, despite the objection of the two dissenting justices that by giving constitutional protection to the solicitation of personal injury claims, the Court "relegates the practice of law to the level of a commercial enterprise," "degrades the profession," and "contravenes both the accepted ethics of the profession and the statutory and judicial rules of acceptable conduct." 377 U.S. at 9 (Clark, J., *dissenting*).

In *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217 (1967), the Supreme Court dealt with the argument that *Button* should be limited to litigation involving major political issues and not be extended to personal injury cases. The Court held that: "The litigation in question is, of course, not bound up with political matters of acute social moment, as in *Button*, but the First Amendment does not protect speech and assembly only to the extent it can be characterized as political. 'Great secular causes, with small ones, are guarded . . .'" 389 U.S. at 223. Finally, in *United Transportation Union v. State Bar*, 401 U.S. 576 (1971), the Court reversed a state injunction designed, in Justice Harlan's words, "to fend against 'ambulance chasing'." 401 U.S. at 597 (Harlan, J., *dissenting*). In that case, a union paid investigators to keep track of accidents, to visit injured members, taking contingent fee contracts with them, and to urge the members to engage named private attorneys who were selected by the union and who had agreed to charge a fee set by prior agreement with the union. The investigators were also paid by the union for any

time and expenses incurred in transporting potential clients to the designated lawyers' offices to enter retainer agreements.

In approving that arrangement, the Court reiterated that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." 401 U.S. at 585. What is important to bear in mind, however, is that: (1) the attorneys in question were not in-house counsel for the union, but were private practitioners; (2) the attorneys earned substantial fees; (3) the cases were not "public interest" cases in the restricted sense, but were ordinary personal injury cases; and (4) the attorneys were retained as a result of the activities of "investigators," paid by the union, whose job it was to find out where accidents had occurred, to visit the victims as promptly as possible, to "tout" the particular lawyers and, if necessary, to take the victim to the lawyers' office to get a contingent fee contract signed.

Undecided Questions

The only question not decided by the Court was whether the investigators could properly have been paid directly by the lawyers. The dissenting justices would have disapproved it, while the majority simply did not reach that issue, on the ground that it was not in the record before them. It is difficult, however, to see why a significant distinction should turn upon who pays the investigator. An unsophisticated person like Ms. Gunn needs information about the availability of legal services, regardless of whether she is a member of a union and regardless of who pays her informant. Furthermore, although the Court happened to be dealing in the union cases with group legal services, the people solicited in *Button* were not limited to members of NAACP.

Not long ago, the Supreme Court decided in *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), that the publication and enforcement by bar associations of minimum fee schedules violate the Sherman Act. The principal issue in *Goldfarb* was

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introduce yourself and your client. The customary way to begin an opening statement, if you have not already been introduced to the jury satisfactorily during voir dire, is to introduce yourself, your client, and, depending on the sense of etiquette in the community, your opposing counsel as well. But there is an argument that the custom ought to be altered slightly. Although it is not the sort of practice that will suit everyone, opening statements with delayed introductions can be very effective. If the opening begins with the theme and is followed by a short chronology which leads up to how you were contacted by your client, stating your name to the jury can come slightly after the theme quite comfortably. Whether you introduce yourself at the very first or wait a minute or two, the theme should be one of the first things the jury hears.

'Lawyer's Talk'

Another custom in making opening statements is even more deserving of re-examination: the remark that the opening statement is "only lawyer's talk." The practice which has developed among many lawyers is to discount the opening statement while making it, saying something like this:

"Nothing I tell you now or what Mr. Randolph is going to say is evidence in this case. Instead, what you must pay attention to and the only thing you are justified in basing your verdict on is testimony you hear from that witness stand."

James Jeans argues that this practice is an example of "mimicking mediocrity," and that no one who wants to tell a convincing story should start out by asking his audience to disregard what he is saying. Jeans, *TRIAL ADVOCACY* 205-06 (1975).

The most that can be said for this "lawyer's talk" routine is that it is an anticipatory defense to the opposition saying much the same thing and carrying the suggestion that you were somehow trying to convince the jury that what you were saying was evidence. But self-protection does not need to be so negative. Instead, as you progress into the body of your opening statement, you can refer to the testimony and other evidence which is to come. You can make the

point affirmatively that the evidence will justify the verdict without running down what you are doing.

Just how detailed you should be in discussing what testimony the jury will hear is another problem. The danger is that of overstatement. If you make specific promises to the jury, you may be embarrassed to hear them thrown back at you at the end of the case if you do not produce the evidence as promised. This can raise the possibility of the jurors concluding that you were careless about your case, that you tried to mislead them, or that you have failed to prove an essential element of your case, even though that is not at all true. If you promise to prove something, the jury may think you have to prove it to win. The problem of how detailed an opening statement should be is discussed further in Keeton, *TRIAL TACTICS AND METHODS* 270-72 (2d ed. 1973).

On the other hand, one of the most important functions of an opening statement is to let the jurors know what is coming, and alert them to what they should look for as the trial unfolds. Because you cannot always call witnesses in the order you would like and the flow of direct examination will be broken up by objections and cross-examination, it is generally a good idea to tell the jury what witnesses you are going to call and give an understandable picture of what you expect the evidence to show. Moreover, it can be crucial not to be too cautious in what you say so that you do not tell the jury enough. If it is evident from your opening statement that you do not have a case, many jurisdictions permit the trial court to grant a directed verdict after the opening statement. The lesson is straightforward enough: be certain to state a prima facie case in your opening.

While the opening statement is a good point for the plaintiff to start establishing liability, it is usually not a good place to discuss the amount of damages sought, particularly in personal injury cases where you are seeking large awards. Convincing a jury that the plaintiff should receive, for example, two or three hundred thousand dollars takes time, and even talking about that amount of money with them before they have seen the

justification for it is dangerous.

Finally, you should use the opening statement to start a process that will continue through the entire trial: making your client a real person rather than a procedural entity like a client, plaintiff or defendant. Those are terms you reserve for the other side. Referring to an individual litigant by name is easy, natural and too often neglected. Making a corporation come alive is harder, but worth the effort. The words you choose, the person you select to sit at counsel table with you, as well as your other actions, should all add up to making the jury think of the corporation as the very real person sitting next to you.

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whether the practice of law, as a "learned profession," is outside the scope of the Sherman Act, which is concerned with "trade or commerce." The Supreme Court held that the sale of a service for money is "commerce," and went on to observe that, "[i]t is no disparagement of the practice of law as a profession to acknowledge that it has this business aspect" 421 U.S. at 787. The Court also noted that, "[i]n the modern world it cannot be denied that the activities of lawyers play an important part in commercial intercourse, and that anticompetitive activities by lawyers may exert a restraint on commerce." 421 U.S. at 788.

No Dissent

The *Goldfarb* opinion was written by Chief Justice Burger and there was, remarkably, not a single dissent. In addition, the Antitrust Division of the Department of Justice has adopted the position that a proscription of advertising and solicitation by lawyers also violates the Sherman Act.

On the same day that *Goldfarb* was decided, the Supreme Court handed down an opinion in *Bigelow v.*

Virginia, 421 U.S. 809 (1975), a case which has not attracted as much attention as *Goldfarb* in connection with advertising and solicitation by lawyers, but which is of far more significance. In *Bigelow*, the defendant was convicted of violating a provision of the Virginia anti-abortion statute by publishing an advertisement offering to make low-cost arrangements for legal abortions in New York. The importance of the *Bigelow* case to the issue of advertising by lawyers is emphasized by the similarity between arguments typically made in support of the anti-advertising provisions of the ABA Code and the arguments made by the Virginia Supreme Court in affirming *Bigelow's* conviction. That court held that the advertisement "'clearly exceeded an informational status' and 'constituted an active offer to perform a service, rather than a passive statement of fact.'" 421 U.S. at 814. In rejecting *Bigelow's* First Amendment claim, the Virginia court said that a "'commercial advertisement . . . may be constitutionally prohibited by the state,'" particularly "'where, as here, the advertising relates to the medical-health field,'" *i.e.*, a professional area in which the state's regulatory power presumably would be at its maximum. *Id.* In addition, the court noted that the purpose of the statute was to insure that pregnant women in Virginia, making decisions with respect to abortions, did so "'without the commercial advertising pressure usually incidental to the sale of a box of soap powder.'" *Id.* Those, of course, are precisely the kinds of arguments that are made in support of regulations against advertising by lawyers.

Significantly, in striking down the Virginia statute on First Amendment grounds, the Supreme Court relied on *Button* for the proposition that a state cannot foreclose the exercise of constitutional rights simply by labeling the speech "solicitation" or "commercial advertising." In the course of reaching that conclusion, the Court severely restricted, if it did not overrule, *Valentine v. Chrestensen*, 316 U.S. 52 (1942), which had suggested that commercial advertising was not fully protected by the First Amendment.

Finally, the Court made a strong bridge between the protected advertising in *Bigelow* and advertising by lawyers, by stressing the fact that the *Bigelow* advertisement contained information about legal issues:

Viewed in its entirety, the advertisement conveyed information of potential interest and value to a diverse audience—not only to readers possibly in need of the services offered, but also to those with a general curiosity about, or genuine interest in, the subject matter or the law of another State and its development, and to readers seeking reform in Virginia. . . . Also, the activity advertised pertained to constitutional interests. [Citations omitted.] Thus, in this case, appellant's First Amendment interests coincided with the constitutional interests of the general public. 421 U.S. at 822.

Thus, the *Bigelow* advertisement was given First Amendment Protection expressly because it was directed to a "diverse audience" (not just the membership of an association), conveying information to those with a "general curiosity about, or genuine interest in . . . the law . . . and its development. . . ." Presumably, that same language would be descriptive of any advertisements offering legal services. Moreover, the reference in the *Bigelow* advertisement to the fact that abortions are legal in New York was made only in passing. Certainly the communication of legal information ("Abortions are legal in New York") was quite limited, and there was no explicit suggestion of the desirability of law reform. In the same sense, therefore, any advertisement relating to the availability of legal services would convey information of "potential interest and value" to people having a "general curiosity" about the law, its development, or law reform.

It seems abundantly clear, therefore, that the present provisions of the Code of Professional Responsibility, forbidding advertising and solicitation by lawyers, are constitutionally invalid.

We began with *Gunn v. Washek*, and it is an appropriate case with which to close. If lawyers are to take

seriously the overriding rule expressed in Canon Two, the bar must reverse the pattern illustrated by *Gunn*. First, we must vigorously discipline attorneys who abuse their training, skills, and status by misleading, overbearing, or overreaching unrepresented lay people. Second, we must encourage, rather than forbid, lawyers to seek out people like Ms. Gunn who have legal rights and who may, by ignorance, be deprived of access to the legal system.

In short, we should recognize that when Ernest Gene Gunn was injured by John J. Washek, the legal profession failed doubly in its duties when an insurance adjuster rather than a plaintiff's attorney was the first to call on Ms. Gunn.

Trial Balloon

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choosing. And the court's reliance upon the appearance of impropriety seems a weak reed indeed. If a criminal lawyer were to govern his conduct upon what appearances were in the eye of the public, he would be hard pressed ever to represent any unpopular client or cause.

The Source of the Fee. Few attorneys would doubt the impropriety of a fee arrangement whereby a lawyer, to defend an accused kidnapper, took the marked ransom money. That example might cause one to formulate a rule that a lawyer may not ethically accept, as a fee, money which he knows, or should know, constitutes the proceeds of a crime. Would such a rule be reasonable or proper?

'Dirty Money'

I suppose that the public might say that a lawyer should never accept "dirty money." But once again, a number of distinctions must be made. Suppose, for example, a man charged with a bank robbery netting \$10,000 offers to pay his attorney a fee of that very amount. Must the attorney first investigate how the defendant came by that sum before he agrees to accept it? Suppose he