1979

Attorney Solicitation of Clients: Proposed Solutions

Nomi N. Zomick
Seventy percent of the American people lack effective access to our legal system. In-person solicitation is one means of increasing the general public's access to legal services. In 1978 the Supreme Court decided two cases, *In re Primus* and *Ohrlik v. State Bar Association*, that address the extent to which in-person client solicitation by attorneys is protected by the first amendment. These decisions came after a decade of dramatic change in the Court's approach to the related issues of commercial speech, rights of association, and attorney solicitation for political class-action suits. *Primus* and *Ohrlik* were decided one year after the Supreme Court held in *Bates v. State Bar* that attorneys have a first amendment right to advertise their services and fees. While attorney advertising enhances the public's awareness of legal services, in-person solicitation remains vital: It may be the most effective, if not the only, mechanism for providing meaningful contact between an attorney and a prospective client.

Edna Smith Primus received a private reprimand from the Board of Commissioners on Grievances and Discipline of the Supreme Court of South Carolina and a subsequent public reprimand from the Supreme Court of South Carolina for advising a woman that the American Civil Liberties Union would provide her with free legal representation. The United States Supreme Court re-
versed, holding that the lawyer's conduct is protected by the first and fourteenth amendments to the United States Constitution.

The attorney in *Ohralik v. Ohio State Bar Association* was reprimanded, and subsequently suspended for an indefinite period of time, for personally soliciting employment from two young accident victims. The Supreme Court held that "the State—or the Bar acting with state authorization—constitutionally may discipline a lawyer for soliciting clients in person, for pecuniary gain, under circumstances likely to pose dangers that the State has a right to prevent."

This Note considers the degree to which the decisions in *Primus* and *Ohralik* determine when, if ever, personal solicitation of clients by lawyers is acceptable. This analysis demonstrates that, with certain limited exceptions, the Court is unwilling to permit attorney solicitation. The last section examines proposed methods of regulating, without prohibiting, attorney solicitation of fee-paying clients.

10. The first amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.
11. The fourteenth amendment provides, in pertinent part:
   
   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
   
   U.S. Const. amend. XIV, § 1.
12. 436 U.S. at 439.
13. The reprimand was recommended by the disciplinary board of the Ohio Supreme Court. See id. at 454.
15. Ohralik correctly advised the two victims of their legal rights under the driver's insurance policy. 436 U.S. at 450-51.
16. Id. at 449.
17. This Note does not consider solicitation by runners or agents. For a recent decision on this type of solicitation, see Goldman v. State Bar, 20 Cal. 3d 130, 570 P.2d 463, 141 Cal. Rptr. 447 (1977) (en banc). For an exhaustive discussion of solicitation by agents or runners, see Annot., 67 A.L.R.2d 859, 882-905 (1959).
HISTORICAL ANTecedENTS OF BATES, PRIMUS AND OHRALIK

Prohibitions on the solicitation of clients by lawyers are rooted in varied sources, including Greek law, Roman law, English common law, and the widespread belief in medieval society that law suits are inherently evil. Current restrictions do not rest solely on historical grounds. The legal community and society fear that permitting attorney solicitation will result in harassing innocent defendants, soliciting by an attorney with connections in the courts, bringing fraudulent claims, "pay[ing] doctors, hospital attendants and policemen for information about prospective clients," overcrowding courts, harming clients through "over-reaching, overcharging and underrepresentation," and damaging the reputation of the legal profession. These traditional fears, however, have abated in recent years.

In abandoning the traditional view that solicitation is evil per se, the Supreme Court required fresh justifications for the time-worn prohibitions on solicitation. The movement away from tradi-

19. Zimroth, Group Legal Services and the Constitution, 76 YALE L.J. 966, 969 (1967). Champerty, barratry, and maintenance were prohibited by Greek law, Roman law, and English common law. Champerty occurs when a person maintains a suit in exchange for a financial interest in the outcome; barratry refers to repeated acts of champerty. Id. Maintenance is "helping another prosecute a suit." Id. These prohibitions are briefly discussed by Justice Harlan in his dissenting opinion to NAACP v. Button, 371 U.S. 415, 456 (1963) (Harlan, J., dissenting).


21. See Zimroth, supra note 19, at 969.


23. Id. at 678.

24. Id. at 681.


27. Id. at 681.


29. See, e.g., NAACP v. Button, 371 U.S. 415 (1963). In 1967, one commentator wrote: "The old justifications for the rules of legal ethics will no longer suffice. The fact is that the Supreme Court has already shown its suspicion of the 'broad prophylactic rules' and has begun to require new justifications for . . . the rules against solicitation." Zimroth, supra note 19, at 992 (footnotes omitted).
tional apprehensions about solicitation and toward empirical examination began with four closely related cases. Each of these cases represents one facet of the Court’s growing recognition that solicitation of clients plays an important role in developing effective attorney-client contact.

The first decision, *NAACP v. Button*, arose during the NAACP’s efforts in the 1950’s to desegregate public schools. The NAACP sent staff lawyers to community meetings to discuss achieving desegregation through litigation. At the conclusion of each meeting, the lawyers encouraged parents with school age children to sign forms authorizing the NAACP to represent them and their children in desegregation suits. When the state of Virginia attempted to prohibit these activities, the NAACP sued, claiming that the antisolicitation regulations violated the NAACP’s constitutional rights.

A fragmented Supreme Court held that the NAACP’s solicitation activities are protected by the first and fourteenth amendments. In a plurality opinion joined by three other members of the Court, Justice Brennan wrote:

In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballots frequently turn to the courts. . . . And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.

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32. *Id.* at 421.
33. See *id.* at 417-18.
34. Justice Brennan wrote the opinion of the Court, joined by Chief Justice Warren, Justice Black, and Justice Goldberg. Justice Douglas wrote a concurring opinion, *id.* at 445 (Douglas, J., concurring), and Justice White concurred in part and dissented in part, *id.* at 447 (White, J., concurring in part and dissenting in part). Justice Harlan wrote a dissenting opinion, joined by Justice Clark and Justice Stewart. *Id.* at 448 (Harlan, J., dissenting).
35. *Id.* at 428-29.
36. *Id.* at 429-30 (footnote omitted).
The Court was careful to limit its holding by distinguishing the NAACP's campaign from more common solicitation activities.\textsuperscript{37} The Court noted a number of differences: The NAACP engages in lobbying and public education activities as well as litigation;\textsuperscript{38} the fees paid to the staff lawyers for the desegregation litigation are less than fees paid for equivalent private work;\textsuperscript{39} all clients, including those solicited, are free to withdraw from the litigation at any time;\textsuperscript{40} the lawyers and the organization have no pecuniary interest in the solicited litigation;\textsuperscript{41} and the potential plaintiffs are free to decide whether they wish to sue.\textsuperscript{42}

Only one year after \textit{Button}, in \textit{Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar},\textsuperscript{43} the Court again faced the solicitation issue. The State Bar of Virginia filed suit against the trainmen's union charging that the union had solicited clients for various local lawyers and had engaged in the unauthorized practice of law. Union representatives would visit the homes of injured or killed union members and suggest that the member or his family consult a lawyer. The representative would recommend a lawyer screened by the union. The Supreme Court held that the union's right to recommend lawyers to its members is protected by the first and fourteenth amendments.\textsuperscript{44} This constitutional protection was also extended to lawyers obtaining employment through union recommendations. Citing the first amendment guarantees of free speech, petition, and assembly to support this holding, the Court noted that the union is afforded constitutional protection even if it gives advice about when to hire a lawyer and whom to hire.\textsuperscript{45}

\textsuperscript{37} The Court's opinion noted that, "[m]alicious intent was of the essence of the common-law offences of fomenting or stirring up litigation." \textit{Id.} at 439 (footnote omitted).
\textsuperscript{38} \textit{Id.} at 419-20.
\textsuperscript{39} \textit{Id.} at 420-21.
\textsuperscript{40} \textit{Id.} at 421. This may be said of any litigation, but it was especially true in this particular case, since the clients did not pay for the legal services regardless of their financial ability to do so. The lawyers were reimbursed by the organization rather than by the clients. \textit{Id.} at 420.
\textsuperscript{41} \textit{Id.} at 443.
\textsuperscript{42} \textit{Id.} at 422. Arguably, solicited clients always have this choice except in cases involving fraud or undue influence.
\textsuperscript{43} 377 U.S. 1 (1964). The Court wrote: "We granted certiorari to consider this constitutional question in the light of our recent decision in \textit{NAACP v. Button}, 371 U.S. 415." 377 U.S. at 2 (footnote omitted).
\textsuperscript{44} \textit{Id.} at 8.
\textsuperscript{45} \textit{Id.} The Court found that not only were the union activities "within the pro-
Trainmen extended the first amendment protection recognized in Button to nonpolitical organizations who gather together and advise their members about legal rights and competent attorneys. This holding gives substance to statutes protecting railroad workers which would otherwise remain a skeletal, theoretical framework. The Court, citing Button, held that the state must show a substantial regulatory interest closely tailored to combating the harmful consequences of the proscribed activity in order to justify prohibiting conduct within the ambit of first amendment protections.

Slightly different facts were presented in United Mine Workers v. Illinois State Bar Association. A union retained a lawyer to represent union members and their families in suits brought for personal injury or death under the Illinois Workmen's Compensation Act. The Supreme Court held that Button and Trainmen were dispositive of the issue in this case; Trainmen in particular was found indistinguishable. In reaching this conclusion, the Court held that "the First Amendment does not protect speech and assembly only to the extent it can be characterized as political."

In the fourth case in this series, United Transportation Union v. State Bar, the union and its members were charged with soliciting clients for various lawyers, limiting the fees of those lawyers, and receiving compensation for expenses incurred in the solicitation. Justice Black, who had written the majority opinions in protection of the First Amendment," but the State has not shown "any appreciable public interest in preventing the Brotherhood from carrying out its plan to recommend the lawyers it selects to represent injured workers." Id.

46. See id. at 5.
48. 377 U.S. at 5-6.
49. Id. at 8.
52. 389 U.S. at 219.
53. Id. at 224. In neither case was there any indication that the union's interests conflicted with those of its members. Id. The majority opinion further noted that "[a]s in the Trainmen case, we deal here with a program that has been in successful operation for the Union members for decades." Id. at 219.
54. Id. at 223.
56. Id. at 577.
57. Id. at 577, 584.
58. Id. at 582.
Trainmen and United Mine Workers, concluded in United Transportation that

[t]he common thread running through our decisions in NAACP v. Button, Trainmen, and United Mine Workers is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment. However, that right would be a hollow promise if courts could deny associations of workers or others the means of enabling their members to meet the costs of legal representation.59

The trend in Button, Trainmen, United Mine Workers, and United Transportation is clear. The Court has recognized that action taken by groups to enable their members to find and afford legal services is protected by the Constitution. The rules of the Code of Professional Responsibility must yield to constitutional values.60

In analyzing the scope of these decisions, Professor Monroe Freedman wrote:

It might be suggested that the three union cases involved group legal services, with the solicitation restricted to members of the union. Although there are references in these cases to rights of association, other language in the opinions is much broader. The Court noted in United Mine Workers that “the First Amendment does not protect speech and assembly only to the extent it can be characterized as political.” Similarly, the first amendment does not protect speech and assembly only in the context of unions or other membership associations. Further, the people who were solicited in the Button case were not limited to members of the NAACP.61

Three cases decided by the Supreme Court after United Mine Workers furthered the developing trend toward permitting attorney advertising and solicitation. In Goldfarb v. Virginia State Bar,62 the Court departed from traditional views of the legal profession in finding that the exchange of legal services for money “is ‘commerce’ in the most common usage of that word.”63 While the

59. Id. at 585-86.
61. Id. at 191 (footnote omitted).
63. Id. at 786-88.
Court acknowledged the state’s interest in regulating lawyers, it held that a county bar association violated the Sherman Act by promulgating a minimum fee schedule.64

Bigelow v. Virginia65 was decided the same day as Goldfarb. In Bigelow, the Court recognized the first amendment right66 of a newspaper editor to print an advertisement for out-of-state abortions.67 The Court held that advertising is only subject to regulation serving a “legitimate public interest,” which must be weighed against first amendment rights.68 This decision, in conjunction with the holding in Goldfarb that providing legal services for a fee is commerce, foreshadowed a change in attitude toward advertising by professionals.

Soon after Goldfarb and Bigelow, the Court in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.69 applied the test developed in prior decisions: It balanced first amendment interests against state interests served by a regulation prohibiting the advertisement of prescription drugs in Virginia. The Court distinguished Virginia Pharmacy from Bigelow: An advertisement for abortion, such as the one published in Bigelow, contains “material of clear ‘public interest,’”70 while the advertisement of drug prices in Virginia Pharmacy does “not . . . editorialize on any subject, cultural, philosophical, or political.”71 However, the Court held, for the first time, that purely commercial speech, without political significance, is within the scope of the first amendment.72

The Goldfarb, Bigelow, and Virginia Pharmacy decisions, in conjunction with the Button line of cases, laid the foundation for the Court’s decision in Bates v. State Bar73 which extends constitu-

64. Id. at 792-93. Section 1 of the Sherman Act provides, in part: “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” 15 U.S.C. § 1 (1976).
66. Id. at 818. Cf. Valentine v. Chrestensen, 316 U.S. 52 (1942) (ordinance banning distribution of advertisement handbills upheld as reasonable regulation of distribution of commercial advertising). The validity of this decision has since been questioned. See Bigelow v. Virginia, 421 U.S. at 820 n.6.
67. 421 U.S. at 829.
68. Id. at 826.
70. Id. at 760.
71. Id. at 761.
72. Id. at 770.
tional protection to advertising by attorneys. In *United Transportation Union* the Court noted that the *Button* line of cases stands for the proposition that the first amendment protects the right to engage in "collective activity . . . to obtain meaningful access to the courts." In *Goldfarb*, the Court identified the practice of law as commerce, altering the way lawyers are viewed by courts. Simultaneously, Justice Blackmun's majority opinion in *Bigelow* established that "[r]egardless of the particular label asserted by the State—whether it calls speech 'commercial' or 'commercial advertising' or 'solicitation'—a court may not escape the task of assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the regulation." With the subsequent decision in *Virginia Pharmacy*, a clear trend emerged. Yet until *Bates*, it remained unclear how these cases would affect the constitutional status of long-standing prohibitions against advertising professional services.

**Bates v. State Bar**

Only one year after the decision in *Virginia Pharmacy*, the Court in *Bates v. State Bar* extended the right to advertise, including fee advertising, to the legal profession. *Bates* involved two lawyers who advertised their services and fees in a daily newspaper in knowing violation of an Arizona disciplinary rule prohibiting advertising by lawyers. Both lawyers were briefly suspended from practice; the Supreme Court of Arizona reduced the trial court's sanction to a censure. The appellants in *Bates* argued before the United States Supreme Court that the Arizona disciplinary

75. 421 U.S. at 787-88.
76. 421 U.S. at 826.
78. ARIZ. CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101(B). The rule provides in pertinent part:
A lawyer shall not publicize himself, or his partner, or associate, or any other lawyer affiliated with him or his firm, as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in the city or telephone directories or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf.
*Id.*
80. *Id.*
rule violates their first amendment rights. The Court, citing its decision in Virginia Pharmacy, noted that commercial advertisements are entitled to constitutional protection. The Court evaluated the state's justifications for the ban on lawyer advertising. These include the alleged negative effects on professionalism, the misleading nature of advertisements for legal services, the possibility that litigation will be stirred up, a possible increase in legal fees to cover the costs of advertising, the alleged adverse effects on the quality of legal services, and the difficulty of enforcing professional standards in advertising. The majority found these justifications insufficient to support an absolute ban on lawyer advertising.

Although Bates established that lawyers have a right to convey information about legal services, and the public has a right to receive that information, the Court noted that certain restrictions on advertising are constitutionally permissible. Restrictions are necessary to prevent deceptive advertising, particularly about the quality of legal services. In apparent anticipation of the issues later presented in Ohralik, the Court indicated that restrictions on

83. 433 U.S. at 368-72. This argument is based on the view that commercialization will demean the legal profession and erode the public's trust and respect of lawyers. Id.
84. Id. at 372-75. The belief is that legal services are too individualized for general advertising. Id.
85. Id. at 375-77. The Court recognized that advertising might lead to more suits, but denied that this is necessarily undesirable. Id. at 376.
86. Id. at 377-78.
87. Id. at 378-79. The majority rejected the view that advertising would reduce the quality of legal services by lawyers who would otherwise not advertise. Id.
88. Id. at 379. This argument was acknowledged by the Court. "[B]ecause of the numerous purveyors of services, the overseeing of advertising will be burdensome." Id.
89. The Court stated: "In sum, we are not persuaded that any of the proffered justifications rise to the level of an acceptable reason for the suppression of all advertising by attorneys." Id.
90. Id. at 383.
91. "Advertising that is false, deceptive, or misleading of course is subject to restraint." Id.
92. Id. at 383-84. The Court also noted that "because the public lacks sophistication concerning legal services, misstatements that might be overlooked or deemed unimportant in other advertising may be found quite inappropriate in legal advertising." Id. at 383 (footnote omitted).
in-person solicitation may be justified on similar grounds.

The Bates decision, and its predecessors, should be considered in the context of a growing awareness of consumer issues that affect the public's view of professionals. Yet the parameters of the rights of those needing legal services are uncertain. The Button line of cases permits organized groups to solicit, recommend, and exchange information about lawyers. Outside a group context, the cases permit solicitation of cases for political ends. In Bates the Court went even further, holding that a lawyer has a first amendment right to provide information about legal fees to potential clients through honest advertisements. The Court, however, limited this holding by recognizing a need for some reasonable restrictions on lawyer advertising, and by expressly foregoing the opportunity to comment on the constitutional status of in-person solicitation.

**IN RE PRIMUS**

The scope of the first amendment protection extended in But- ton to the solicitation of public-interest litigation was tested in In re Primus. Edna Smith Primus, an attorney in private practice, had a noncompensatory affiliation with the ACLU. She addressed a meeting of indigent women who allegedly were pressured to undergo sterilization to ensure retention of their Medicaid benefits. After the meeting, Primus was advised by a friend that Mrs.

93. See id. at 383-84. The Court stated: "[A]dvertising claims as to the quality of services—a matter we do not address today—are not susceptible of measurement or verification; accordingly, such claims may be so likely to be misleading as to warrant restriction. Similar objections might justify restraints on in-person solicitation." Id. (emphasis added).


97. 433 U.S. at 383-84.

98. Id. at 384 (citing Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976)). "As with other varieties of speech, it follows as well that there may be reasonable restrictions on the time, place, and manner of advertising." Id.

99. Id. at 366.


101. Id. at 415. The medicaid benefits referred to in text are grants to states for medical assistance programs and are governed by the provisions of 42 U.S.C. §§ 1396-1397f (1976).
Williams, a woman present at the meeting, was interested in filing suit against the doctor who sterilized her. Primus wrote a letter to Mrs. Williams informing her that the ACLU provides free legal representation for such a suit.\textsuperscript{102} The Board of Commissioners on Grievances and Discipline of the Supreme Court of South Carolina held that this letter constitutes prohibited solicitation and privately reprimanded Primus.\textsuperscript{103} The South Carolina Supreme Court affirmed, finding Primus in violation of South Carolina Disciplinary Rule 2-103(D)(5)(a) and (c) because she solicited a client for an organization whose primary function is providing legal services.\textsuperscript{104} In

\begin{itemize}
\item \textsuperscript{102} 436 U.S. at 416. At the time of the meeting Primus did not know if the ACLU was prepared to provide representation. \textit{Id.}
\item \textsuperscript{103} \textit{See} \textit{id.} at 421.
\item \textsuperscript{104} \textit{In re Smith}, 268 S.C. 259, 269, 233 S.E.2d 301, 306 (1977), rev'd sub nom. \textit{In re Primus}, 436 U.S. 412 (1978). South Carolina's Disciplinary Rule DR 2-103(D) provides:
\begin{enumerate}
\item A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:
\begin{enumerate}
\item A legal aid office or public defender office:
\begin{enumerate}
\item Operated or sponsored by a duly accredited law school.
\item Operated or sponsored by a bona fide non-profit community organization.
\item Operated or sponsored by a governmental agency.
\item Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.
\item A military legal assistance office.
\item A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.
\item A bar association representative of the general bar of the geographical area in which the association exists.
\item Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met:
\begin{enumerate}
\item The primary purposes of such organization do not include the rendition of legal services.
\item The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.
\item Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.
\end{enumerate}
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\end{enumerate}
addition, she was held in violation of DR 2-104(A)(5) for actively seeking employment from a person contacted for the purpose of joining a class action. The court increased the sanction, sua sponte, to a public reprimand.105

On appeal before the Supreme Court, Primus argued that her conduct is within the ambit of first amendment protections delineated by Button and its progeny.106 The issue before the Court was whether the letter written to Mrs. Williams involves "constitutionally protected expression and association."107 The South Carolina Supreme Court had determined that Primus’ conduct distinguishes her case from Button on two grounds: The ACLU is an organiza-

(d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter.

S.C. Code of Professional Responsibility DR 2-103(D).


(A) 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, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D)(1) through (5), to the extent and under the conditions prescribed therein.

(3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2-103(D)(1), (2), or (5) may represent a member or beneficiary thereof to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.


106. 436 U.S. at 421. The South Carolina Supreme Court distinguished these cases by asserting: “None of the four non-profit organizations involved in the above cases, has as one of its primary purposes, the rendition of legal services.” In re Smith, 268 S.C. 259, 269-69, 233 S.E.2d 301, 306 (1977), rev’d sub nom. In re Primus, 436 U.S. 412 (1978).

107. 436 U.S. at 421.
tion whose primary activity is providing legal services, whereas litigation is only one of many tools employed by the NAACP to achieve its goals, and, unlike the NAACP in *Button*, the ACLU might have received monetary benefits if Mrs. Williams had accepted the offer of free representation. The Supreme Court rejected the former ground, stating, "[f]or the ACLU, as for the NAACP, 'litigation is not a technique of resolving private differences'; it is 'a form of political expression' and 'political association.'" The Court disposed of the second distinction observing that there was no claim of benefit to Primus, nor any claim that the ACLU would have received a part of any recovery; the remote possibility that the ACLU would receive counsel fees or indirect benefits was found insufficient to distinguish the case from *Button*. In determining whether the state can restrict Primus' conduct, the Court quoted *Button*: "Because First Amendment freedoms need breathing space to survive, government may regulate in [this] area only with narrow specificity." Justice Powell, writing for the majority, concluded that the disciplinary rules Primus allegedly violated are overly broad. There was no evidence that any of the evils sought to be prevented by these rules were present. The Court did not preclude state regulation of solicitation by organizations like the ACLU, but implied that such regulation must be reasonable, narrow, and not intrusive on first amendment freedoms without good cause.

**OHRALIK V. OHIO STATE BAR ASSOCIATION**

The questions left unanswered by the decisions in *Button*, *Bates*, and *Primus* were raised in *Ohralik v. Ohio State Bar Association*. This case involved a young motorist, Carol McClintock, whose car collided with a vehicle driven by an uninsured driver.

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109. Id. at 267, 233 S.E.2d at 305.
111. Id. at 429. The court has discretion to award counsel fees under certain circumstances. Id. at 429-30.
113. 436 U.S. at 433.
114. Id. at 434-36.
115. Id. at 438-39.
Although McClintock and the passenger in her car required hospitalization and extensive medical treatment, both accident victims incorrectly assumed that recovery of damages was precluded because the other driver was uninsured. Ohralik, a casual acquaintance of McClintock, visited her in the hospital after obtaining her family’s consent. Ohralik also visited McClintock’s passenger, Wanda Lou Holbert, at home on the day she was released from the hospital; he secretly recorded his conversation with her on a tape recorder hidden under his raincoat.

After reading McClintock’s insurance policy, Ohralik correctly concluded that both injured driver and passenger were entitled to recovery for their injuries. He offered to represent the two women for contingent fees; each retained Ohralik as her attorney. However, when the two clients subsequently attempted to dismiss Ohralik, he refused to cooperate: He ignored Holbert’s request that he inform her insurance company that he was no longer her attorney, and he sued the driver, McClintock, for a percentage of her recovery.

After complaints were brought by the two women, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio found Ohralik guilty of violating Disciplinary Rules 2-103(A) and 2-104(A) of the Ohio Code of Professional Responsibility. DR 2-103(A) prohibits a lawyer from recommending his or

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117. Even if McClintock’s state (Ohio) had permitted advertisements of standardized legal services, such ads would not have alerted McClintock to the fact that she and the passenger in her car were eligible to recover more than $12,000 under McClintock’s insurance policy. The facts indicate that Ohralik informed McClintock of the uninsured motorist clause in her policy. See id. at 450. Examples noted in Bates of standardized legal services that are suitable for advertising are “the uncontested divorce, the simple adoption, the uncontested personal bankruptcy, [and] the change of name.” Bates v. State Bar, 433 U.S. 350, 372 (1977).

118. See 436 U.S. at 449-51.

119. Id. at 450-51. The lower court decision, Ohio State Bar Ass’n v. Ohralik, can be found at 48 Ohio St. 2d 217, 357 N.E.2d 1097 (1976).

120. McClintock agreed in writing, Holbert agreed orally. 436 U.S. at 450-51.

121. Id. at 451-52.

122. Id. at 453. These sections of the Ohio Disciplinary Rules are based on the numerically corresponding rules in the American Bar Association Code of Professional Responsibility (ABA Code), since amended to conform to Bates. DR 2-103(A) of the Ohio Code of Professional Responsibility provides: “A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.” OHIO CODE OF PROFESSIONAL RESPONSIBILITY DR 2-103(A). DR 2-104(A) of the Ohio Code provides in relevant part:

A lawyer who has given unsolicited advice to a layman that he should
her own services. DR 2-104(A) forbids a lawyer from accepting employment resulting from unsolicited advice, unless the potential client is a former client, relative, or friend.123

The Supreme Court of Ohio affirmed the Board's findings.124 On appeal, the United States Supreme Court held that the disciplinary rules in question are constitutional as applied to Ohralik's conduct.125 The Court stated, "The entitlement of in-person solicitation of clients to the protection of the First Amendment differs from that of the kind of advertising approved in Bates, as does the strength of the State's countervailing interest in prohibition."126 The Court further asserted:

In-person solicitation by a lawyer of remunerative employment is a business transaction in which speech is an essential but subordinate component. While this does not remove the speech from the protection of the First Amendment, as was held in Bates and Virginia Pharmacy, it lowers the level of appropriate judicial scrutiny.127

Initially, Ohralik received a public reprimand for violating the Ohio Code of Professional Responsibility.128 The Ohio Supreme Court affirmed, and suspended Ohralik from practicing in Ohio.129 He was subsequently suspended from practicing before the United States Supreme Court.130

**Primus and Ohralik Distinguished**

The heading of Canon 2 of the ABA Professional Code of Responsibility states: "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available."131 This is fol-

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123. See note 122 supra.
125. 436 U.S. at 467.
126. Id. at 455.
127. Id. at 457.
128. See id. at 454.
131. ABA CODE OF PROFESSIONAL RESPONSIBILITY Canon 2 (1976).
lowed by a discussion of the ethical considerations involved and the related disciplinary rules, sections of which are similar to those underlying the charges brought against Ohralik and Primus. Prior to Bates, lawyers looked to the Button line of cases to determine the Supreme Court's interpretation of the disciplinary rules contained under Canon 2. These cases sanction only certain types of solicitation. Solicitation for free legal representation by organizations such as the NAACP, whose primary purpose is not litigation but the furtherance of civil rights, is constitutionally protected. In addition, unions may "solicit," either by recommending lawyers to their members or by hiring a lawyer to represent workers in suits against employers. Language in these decisions, however, indicates that solicitation by lawyers of individuals not connected with a group is an impermissible means of making legal counsel available.

By protecting the rights of attorneys to advertise honestly, the Court in Bates v. State Bar helped ensure that individuals unaffiliated with a group would have access to information about the availability and cost of legal services. Typically this information is of limited value because advertisements by lawyers are general and focus on standard legal services. Thus, they are directed toward people who are aware that they have legal problems. There are, however, many individuals unaware that their problems can be resolved in court. Legal counsel can be made available to individuals whose problems are unique, or not easily recognized as legal, only if they are contacted by lawyers. The Court in Bates left unresolved the issue of in-person solicitation. The Court's subse-

132. Compare ABA Code of Professional Responsibility DR 2-103(A), (D) and DR 2-104(A) with Ohio Code of Professional Responsibility DR 2-103(A) and DR 2-104(A); S.C. Code of Professional Responsibility DR 2-103(D) and DR 2-104(A).
138. The Court in Bates briefly discussed the types of legal services that are suitable for advertising. Id. at 372. See note 117 supra.
139. 436 U.S. at 366.
quent decisions,140 particularly Ohralik, indicate that although Bates altered the status of attorney advertising, in-person solicitation for a fee was not affected.141 The Ohralik Court took pains to distinguish that case from the Button line of cases.142

The Court extended to Primus the same protection it provided the NAACP’s activities in NAACP v. Button143 because Primus’ conduct on behalf of the ACLU constituted “political expression” as defined in Button.144 This protection, provided for conduct within the “zone of First Amendment protection reserved for associational freedoms,”145 ensures that state regulation is narrow and promotes a compelling interest; such regulation is subject to strict scrutiny by the courts.146 The Court acknowledges that the state has valid reasons for regulating lawyers, but disciplinary actions affecting protected political expression must be based on actual, rather than potential, harms.147

141. Ohralik v. Ohio State Bar Ass’n, 436 U.S. at 454-55. Before Bates, the final word on solicitation was expressed in the holding of United Transp. Union v. State Bar, 401 U.S. 576 (1971), which allows unions to solicit clients for lawyers selected by the unions as part of the right to take collective action to achieve access to the courts. No mention was made of the right of unaffiliated individuals to gain access to the courts through solicitation by lawyers. Id. at 585.
142. The Court in Ohralik distinguished Ohralik’s conduct from that in the union cases by asserting: “Nor can [Ohralik] compare his solicitation to the mutual assistance in asserting legal rights that was at issue in United Transportation . . . ., Mine Workers . . . . and Railroad Trainmen . . . .” 436 U.S. at 458-59 (citations omitted) (footnote omitted).
143. Id. at 431.
144. See id.
145. Id.
146. Id. at 432. See also United States v. O’Brien, 391 U.S. 367 (1968), where Chief Justice Warren wrote:

This Court has held that when “speech” and “nonspeech” elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. To characterize the quality of the governmental interest which must appear, the Court has employed a variety of descriptive terms: compelling; substantial; subordinating; paramount; cogent; strong. Whatever imprecision inheres in these terms, we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Id. at 376-77 (footnotes omitted).
Ohralik was distinguished from Primus on the ground that Ohralik's conduct involved commercial speech, whereas Primus engaged in political expression. On the basis of this distinction, the Court determined that Ohralik's activities deserved less protection than those of Primus. Therefore, potential dangers may be sufficient to justify disciplinary proceedings for in-person solicitation involving a fee.

Justice Marshall, in his concurring opinion to Primus and Ohralik, recognizes that these cases present two extreme examples of the problems raised by solicitation of legal clients. Most solicitations fall in the middle range not directly addressed by the Court. An example is nonmisleading solicitation of a potential client who is able to decide rationally whether to retain the services of the soliciting attorney. Justice Marshall believes that solicitation in such a case may serve a purpose similar to advertising by increasing consumer knowledge about legal services. This led Justice Marshall to conclude: "The First Amendment informational interests served by solicitation, whether or not it occurs in a purely commercial context, are substantial, and they are entitled to as much protection as the interests we found to be protected in Bates."

While Justice Marshall agrees with the assertion in Ohralik that the state's interest in regulating in-person solicitation may be

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148. Id.
149. Id.
150. Ohralik v. Ohio State Bar Ass'n, 436 U.S. at 467. However, "[i]n the context of political expression and association . . . a State must regulate with significantly greater precision." In re Primus, 436 U.S. at 437-38 (footnote omitted).
151. Ohralik v. Ohio State Bar Ass'n, 436 U.S. at 471 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to Primus).
152. Id. at 472 n.3 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to Primus). Justice Marshall noted further that an "attorney may personally solicit business 'where he does not take advantage of the ignorance, or weakness, or suffering, or human frailties of the expected clients, and where no inducements are offered them.'" Id. (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to Primus) (quoting Louisville Bar Ass'n v. Hubbard, 282 Ky. 734, 739, 139 S.W.2d 773, 775 (1940)).
153. "Like rules against advertising, rules against solicitation substantially impede the flow of important information to consumers from those most likely to provide it—the practicing members of the Bar." Id. at 473 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to Primus). One commentator advances a similar argument: "[S]olicitation will increase the flow of information to those who would not otherwise have had the knowledge or opportunity to redress their grievances." Schoor, supra note 25, at 243.
154. 436 U.S. at 474 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to Primus).
greater than its interest in regulating advertising, he maintained that a blanket proscription against solicitation for a fee is not appropriate.\textsuperscript{155} Such a ban, Justice Marshall argued, discriminates against poor consumers and against lawyers practicing alone or in small firms.\textsuperscript{156} Justice Marshall concurred in the judgment in \textit{Ohralik} because he found sufficient dangers presented by the facts of the case to justify disciplinary action.\textsuperscript{157}

After \textit{Ohralik}, a lawyer might be overly cautious in considering whether to solicit clients for monetary gain, even when that decision results in the forfeiture of an opportunity to correct a legal wrong. While the decision in \textit{Bates}, and Justice Marshall’s concurring opinion in \textit{Ohralik}, indicate a trend towards careful scrutiny of the current validity of certain sections of professional codes of conduct, the Supreme Court has not yet extended constitutional protection to in-person solicitation for a fee outside a union context. Indeed, language in \textit{Ohralik} suggests that the Supreme Court will permit states to regulate or prohibit commercial solicitation on the basis of potential, rather than actual, dangers.\textsuperscript{158}

\textbf{PROPOSED SOLUTIONS}

Justice Marshall’s position that solicitation is often in the public interest\textsuperscript{159} may gain judicial support. The bar and courts can create guidelines and regulations that permit solicitation while preventing potential abuse. This section discusses proposed methods for achieving this result.\textsuperscript{160} These proposals are not mutually exclu-

\begin{itemize}
  \item \textsuperscript{155} Id. at 476 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to \textit{Primus}).
  \item \textsuperscript{156} Id. at 475 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to \textit{Primus}). See B. CRISTENSEN, LAWYERS FOR PEOPLE OF MODERATE MEANS 136 (1970).
  \item \textsuperscript{157} 436 U.S. at 470 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to \textit{Primus}). "What is objectionable about Ohralik’s behavior here is not so much that he solicited business for himself, but rather the circumstances in which he performed that solicitation and the means by which he accomplished it." Id. (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to \textit{Primus}).
  \item \textsuperscript{158} See id. at 467.
  \item \textsuperscript{159} See id. at 468 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to \textit{Primus}).
  \item \textsuperscript{160} A number of commentators have examined these and other proposed amendments to Canon 2. See, e.g., Freedman, supra note 60; Smith, \textit{Making the Availability of Legal Services Better Known}, 62 A.B.A.J. 855, 861 (1976); Zimroth, supra note 19; Comment, \textit{Solicitation by the Second Oldest Profession: Attorneys and Advertising}, 8 HARV. C.R.-C.L. L. REV. 77, 101-03 (1973) [hereinafter cited as \textit{Attorneys and Advertising}]; Comment, supra note 25, at 435-38; Comment, \textit{Advertising-
sive; in combination they could protect the public from potential evils of in-person solicitation by lawyers without a total ban.

A potential abuse that can result from permitting solicitation is that a lawyer, trained in the art of persuasion, would have too great an influence on a potential client who has not yet decided to bring suit. This problem could be mitigated by providing a cooling-off period for solicited clients who have signed contracts. This could follow the pattern of state regulations that allow purchasers of goods from door-to-door salespeople to cancel their contracts within three days of the sale. Such a regulation would restore the power balance between a convincing attorney and a potential client who needs time to think about a decision as important as selecting a lawyer.

An additional problem posed by permitting attorney solicitation is the invasion of privacy caused by the possible multitude of lawyers contacting potential clients. This potential problem could be avoided by only permitting lawyers to solicit clients by sending one letter in the mail; personal or telephone contact would be prohibited until the client contacts the lawyer. The minimal invasion of privacy that might occur is outweighed by the importance of informing individuals of possible legal solutions to their problems. Potential abuses can be controlled in two ways: Judges could dismiss frivolous cases and hold the lawyers who solicited the cases liable for the costs incurred by both parties, and there could

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ing, Solicitation and the Profession's Duty to Make Legal Counsel Available, 81 YALE L.J. 1181, 1192-1201 (1972) [hereinafter cited as Duty to Make Legal Counsel Available].

161. See Duty to Make Legal Counsel Available, supra note 160, at 1200.


163. Support for distinguishing in-person solicitation from solicitation by mail is found in the Court's recent decisions in Primus and Ohr alik. In Ohr alik, the majority opinion noted that "[t]he solicitation of business by a lawyer through direct, in-person communication with the prospective client has long been viewed as ... posing a significant potential for harm to the prospective client." 436 U.S. at 454. However, in the case of Primus, whose alleged violation of the state's disciplinary rules involved writing a letter to a potential client, the Court concluded that "South Carolina's application of its Disciplinary Rules ... to appellant's solicitation by letter on behalf of the ACLU violates the First and Fourteenth Amendments." 436 U.S. at 439. There are other crucial factors distinguishing the two cases, such as solicitation for a fee in contrast to solicitation by a non-profit organization; but it is apparent that the Court has recognized a distinction between in-person solicitation and written solicitation.

164. For example, the possibility remains that dozens of letters will be sent to the victim of a much publicized crime or accident.
be a requirement that lawyers state the sources of their information when soliciting clients. The latter would give potential clients a basis for determining whether they wish to contact the lawyer who has written to them.165

If in-person solicitation is permitted, it will be necessary to address ethical problems raised by solicitation of clients at funeral parlors, cemeteries, hospitals, and other places where people are generally distraught.166 It is in the public interest to prohibit solicitation in any circumstance that would constitute a gross and offensive invasion of privacy or result in potential undue influence. Solicitation of accident victims or their families at hospital emergency rooms or funerals should be proscribed. One commentator has proposed prohibiting solicitation of hospitalized potential litigants unless the lawyer obtains permission from the patient's family, friends, or doctor.167 This proposal, standing alone, does not offer adequate protection of hospital patients, who alone should determine which attorneys may visit them. Patients incapable of making that initial decision are probably incapable of selecting an attorney.168

Guidelines regulating solicitation by attorneys must address the unwillingness of a lawyer who has solicited a client to subsequently increase the legal services provided and consequently raising the cost.169 This reluctance is based on a "fear of being accused of employing bait and switch tactics."170 This potential problem may be partially abated by requiring attorneys initially to give a written estimate of the costs that may be incurred. A lawyer should further indicate whether the amount and cost of required services are predictable in a particular case.

It also has been argued that solicitation will stir up litigation.171 However, solicitation might be restricted in cases where it

165. If a mutual friend were the source of the information, the client would then know someone with whom he or she could verify the lawyer's honesty and reputation.
166. See Brief For the American Bar Association as Amicus Curiae at 8 n.2, Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978).
167. See Zimroth, supra note 19, at 982-83.
168. Other potential problems connected with this proposal include difficulties in determining who may give visiting rights in each case and attempted pay-offs of doctors.
170. Id.
would not be in the public interest to permit active solicitation.\textsuperscript{172} For example, it is arguably not in the public interest to permit lawyers to solicit divorce suits. More importantly, solicitation serves no purpose when a legal solution, such as divorce, is already well known to the public.

Protection of laymen from the pressure tactics of attorneys seeking to represent them must be afforded consideration in any professional code or judicial decision permitting solicitation. Substantial protection would be achieved by permitting solicited legal contracts to be voided at any time by the client or at the discretion of the court. To prevent client abuse of this privilege, lawyers could be permitted to recover in quantum meruit for services rendered if they could prove they acted in good faith. This regulation could be combined with the proposed rule permitting solicitation by letter only. Although these regulations may discourage some lawyers from soliciting clients, they offer effective protection to consumers while permitting the dissemination of information regarding legal services.

Any regulatory scheme is more difficult to enforce than the present total prohibition of in-person solicitation for a fee. Furthermore, even if a regulatory scheme is instituted, it is possible that the regulations would be difficult to administer and that courts, to expedite cases through already crowded calendars, would strictly interpret the regulations against lawyers who solicit clients. This result is tantamount to a total prohibition and would effectively subvert any attempt to permit in-person solicitation. However, as one commentator noted, “the rewards of success seem great enough at least for us to make an effort.”\textsuperscript{173}

**CONCLUSION**

In deciding *Primus* and *Ohralik* consistently with the *Button* line of cases, the Supreme Court has indicated that, for the present time at least, it will not pioneer any changes in the regulation of in-person solicitation for a fee. This may change, particularly if a lawyer who commits no other violations of the Code of Professional Conduct\textsuperscript{174} and is unaffiliated with a political group or union tests

\textsuperscript{172} See *Zimroth*, *supra* note 19, at 982-83. It should be noted that the determination of which suits are in the public interest and which are not would be an exceedingly difficult task, possibly leading to further litigation.

\textsuperscript{173} *Id.* at 983.

\textsuperscript{174} *Ohralik* committed ethical breaches other than solicitation, including making secret recordings of conversations with potential clients and holding Holbert to
the constitutional validity of the disciplinary rules of Canon 2 by soliciting a client.

Canon 2 does not prevent a lawyer from advising someone to seek legal services. It only prohibits accepting paid employment stemming from unsolicited advice.175 This prohibition may discourage all but the most public-interest oriented lawyers from offering advice to laymen. In seeking to encourage lawyers to “assist the legal profession in fulfilling its duty to make legal counsel available,”176 even if subsequent employment is impossible, the Bar and the courts must remember that most attorneys practice to earn fees.177 Ohralik’s disbarment178 indicates a persistent unwillingness to recognize this.

A study conducted by the American Bar Association found that the legal system is generally inaccessible to seventy percent of the American public.179 Permitting solicitation could reduce this figure. Courts must recognize that there is a public interest in ensuring that everyone has meaningful access to the courts, including a person whose case is not based on constitutional rights or who is not a member of an organized group.180 The guarantee of due process has no meaning without such access.181 There must be recognition that in-person solicitation by lawyers is a valid method for reaching individuals who lack information about legal remedies. State Bars should consider responsible proposals that provide methods—short of a total ban on solicitation—for protecting the public against potential evils of solicitation.182

their oral agreement, even though she made it clear the next day that she did not want to use Ohralik’s services. See Motion to Dismiss at 8-9, Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447 (1978). See also 436 U.S. at 469-70 (Marshall, J., concurring in part and concurring in judgment) (opinion applies also to Primus).

175. ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 2-103(A), (D); id. DR 2-104(A).

176. Id. Canon 2.

177. The Court has acknowledged this to some extent in the Bates decision. However, this should be a consideration in areas other than advertising.


179. ABA SPECIAL COMM. ON PREPAID LEGAL SERVICES, supra note 1, at 7.

180. Limited recognition of the right to gain access to the courts was demonstrated in Boddie v. Connecticut, 401 U.S. 371 (1971), in which the Court held that access to courts for a divorce cannot be denied on the basis of inability to pay court fees. Id. at 383. But see United States v. Kras, 409 U.S. 434 (1973) (denying indigent’s claim to discharge in bankruptcy without paying court fees).

181. See Attorneys and Advertising, supra note 160, at 93.

182. Advertising as permitted in Bates is a first step in preventing some of these potential dangers. Advertisements will lead to greater consumer awareness of
As long as litigation remains a primary method of resolving disputes, courts must recognize that all citizens, including the uneducated and the poor, have a right to know about legal solutions to their problems. As long as there are people ignorant of the law or lacking access to lawyers, courts must be flexible in weighing and testing proposals. Regulated solicitation by lawyers is necessary for furthering the public's education and awareness if the public is to have effective access to the legal system.

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the availability of legal services, which should decrease the possibility that unscrupulous lawyers will successfully solicit cases not in the clients' interest.

183. See Attorneys and Advertising, supra note 160, at 91. See B. Cristensen, supra note 156; [T]he conditions of increasingly complex urban life cause the individual to encounter more and more situations calling for the kind of help lawyers are equipped to give. With ever-larger numbers of people living close to one another, the fundamental business of getting along together becomes more difficult; as a result, interpersonal problems and disputes tend to increase in frequency and consequence. In addition, the growing involvement of the individual with large nongovernmental institutions—employers, labor unions, insurance companies, credit agencies, and the like—further expands the potential for conflict and increases the need for professional guidance in the systematic adjustment of differences. A third factor is the continuing expansion of governmental regulation of individual activities.

Id. at 132.