



## The Sinking of the Profession

Lawyers spend a lot of time wondering how our profession has sunk so low in the minds of so many. What happened to the image of the honorable profession that we grew up with and thought we were joining? Why do people so often immediately categorize lawyers with used-car salesmen and hucksters? We are honorable people who do good work, so what in the world happened?

If you want the main answer, turn on your television during any weekday. You will find lawyer ad after lawyer ad, without shame or dignity, imploring people to hire them to sue for even the slightest perceived wrong. If you've got money problems, they encourage you to file for bankruptcy. If you've been arrested, then you need them to get aggressive for you and try to get you off. In the world of lawyer television advertising, everyone is a victim, nobody stands accountable for their own actions, and the lawyers not only don't care but in fact encourage and hope to profit by such behavior.

It comes down to character, and the public sees little of it in the lawyers appearing in these ads and even less in the actions they recommend. It's not about doing the right thing; it's about avoiding responsibility and making every nickel you can off of your case. The lawyers brag about how tough

they are or how cheap they are; rarely is anything said about questions that should matter when choosing a lawyer: Do you have time to work on the case? Will you keep me informed and return my calls? Are you respected by your peers and the courts? This case is important to me, but will it be important to you? The public recognizes character fairly easily and sees little of it in most of these lawyer ads.

It was, of course, one of our cases that opened the door to all of this in 1977. In *Bates v. State Bar of Arizona*, Justice Blackmun found lawyer advertising protected under the First Amendment as commercial speech. He viewed things rather simply: Lawyers will simply provide information to the public that potential clients need to know.

Justice Sandra O'Connor, however, in her dissent in 1988's *Shapiro v. Kentucky Bar Association*, saw clearly the danger for the profession and its image. She wrote, "One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper conduct that could not be enforced either by legal fiat or thru the disci-

pline of the market."

In other words, it is up to us to create the professional image we desire. But we do very little to censure or regulate lawyer advertising in Arizona. The ethical rules prohibit trade names, but law firms are allowed to call themselves "Arizona's law firm" or "the Eagle" or "the Wolf." Supposed actual clients are used in ads, clearly implying that similar results can be achieved for prospective clients. One ad touts bankruptcy services that will be needed when the "new" bankruptcy law soon goes into effect, even though it has been in effect for a long time already.

Are all advertising lawyers bad? No, some are very good and are similarly disgusted with the bad ones. Van O'Steen, who brought the *Bates* case originally, has always been one of our finest lawyers, as are many others. But all of us are tainted by the low-rent ads that clog the airwaves. Most people, especially in a transient state like Arizona, don't personally know any attorneys. Their image of our profession comes mostly from the sleazebags they see in films and television series, and the real-life lawyers who pitch for their business like they were selling a used Nova.

The question isn't how our image has sunk so low. Turn on the television this afternoon and you will wonder why it isn't lower. There are so many great lawyers and unbelievable people in our profession, but nobody wants to talk about the bottom feeders who demean us all.

OK. Now I've said it. What are we going to do about it?

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