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# Attorney Advertising and the Use of Dramatization in Television Advertisements

**Daniel Callender\***

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I. INTRODUCTION

One lazy summer day when I was about eleven years old, I turned on the television to watch the standard afternoon programming. After

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tuning into *Emergency!*, a show about paramedics that could stimulate any prepubescent boy with its countless depictions of flashing sirens and near fatal car accidents, I planted myself on the couch to enjoy an hour's worth of guaranteed entertainment. Part of the entertainment, whether I liked it or not, was the commercials. This was the era before remote controls, and I didn't channel surf because the distance between the couch and the television knobs was much too far to justify any movement on my part. Accordingly, I saw more than my fair share of commercials. Despite this blurring onslaught of images and phrases by the advertising broadcast media, one commercial burned an image into my mind that never will be erased: The Law Offices of Larry H. Parker.

The commercial for The Law Offices of Larry H. Parker was deceptively simple. Basically, Larry proclaimed that he would fight for his clients. Then, several of his former clients offered brief testimonials about Larry's success in obtaining generous compensation for their respective injuries. Finally, on the closing screen, a man's smiling face appeared above Larry's name and telephone number. In a smooth, melodic tone the man proclaimed, "Larry H. Parker got me. . .two point one million." For whatever reason, that simple phrase echoed in the hearts and minds of the audience (including me) in a way that television soft drink advertisers could only dream of. In fact, the phrase proved so successful that thirteen years later I saw another commercial by Larry H. Parker that closed with the same man's smiling face, but ended with, "Larry H. Parker got me. . .you know the rest." Yes indeed, those of us exposed to the Larry H. Parker advertising campaign know the rest.

The Larry H. Parker commercials are not a unique phenomenon. Lawyers have advertised legal services on television for nearly a quarter century.<sup>1</sup> Today, most people who watch television have been exposed to at least one commercial of an attorney selling legal services. Such a claim is not extraordinary when one considers that in terms of revenue generated for broadcasters in 1993, commercials for legal services ranked sixteenth in the largest seventy-five television markets.<sup>2</sup> In the same year, California attorneys spent over \$60 million on elec-

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<sup>1</sup> John J. Watkins, *Lawyer Advertising, the Electronic Media, and the First Amendment*, 49 ARK. L. REV. 739 n.1 (1997).

<sup>2</sup> *Id.* at n.3 (citing 1993 statistics from the Television Bureau of Advertising); See also Symposium, 1997 *W.M. Keck Foundation Forum on the Teaching of Legal Ethic: The Professionalism Problem*, 39 WM. AND MARY L. REV. 283 n.44 (1998) (noting that in 1996 lawyers spent over \$750 million on television commercials and advertising in the Yellow Pages).

tronic ads.<sup>3</sup> Accordingly, it is safe to assume that some attorneys take advertising legal services on television very seriously.

Additionally, several attorneys have developed ads that transcend the traditional paradigm of the Larry H. Parker commercials. Rather than speaking for themselves with the aid of client testimonials, these attorneys have utilized the dramatization format. Numerous forms of dramatization exist, from the recreation of an accident to a hypothetical conversation between two insurance agents seeking to deprive a person of a legal right. Regardless of the form, dramatizations are an effective tool to sell legal services. Specifically, dramatizations allow attorneys to indirectly sell their legal services by creating a world in which their legal services are deemed not just beneficial, but essential, for survival in modern society.

Despite the apparent proliferation of attorney advertisements, in particular those that employ dramatization, it is important to ask the following question: do the commercials help attorneys? Narrowly, the commercials must help those who continually invest capital into their television advertising campaigns. Otherwise, the attorneys would look to other forms of capital investment to generate income for their business. However, whether television advertising helps attorneys generally cannot be answered solely through the black and white perspective of a rational economist seeking to maximize individual monetary gain. Rather, the answer turns on how attorneys and the public view the content of the advertisements. Many people believe that attorney commercials bolster their ability to protect their legal rights by providing useful information about the cost and nature of legal services.<sup>4</sup> Others believe that the commercials are “unintelligent, inflammatory. . .outrageously mean-spirited” and contribute to the decline of the legal profession.<sup>5</sup> So far, the Supreme Court has yet to officially enter the specific debate on the propriety of attorney television advertisements.<sup>6</sup>

This paper attempts to give the reader a general understanding of the legal landscape surrounding an attorney’s right to advertise and discusses the legal and normative problems raised by the utilization of the dramatization format in attorney television ads. Section I will briefly

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<sup>3</sup> Brae Canlen, *Injured? Call Now!*, 15 CAL. LAW 48, 90 (1995).

<sup>4</sup> Ronald D. Rotunda, *Professionalism, Legal Advertising, and Free Speech in the Wake of Florida Bar v. Went For It, Inc.*, 49 ARK. L. REV. 703, 705, 736 (1997).

<sup>5</sup> Symposium, *Professionalism in the Practice of Law: A Symposium on Civility and Judicial Ethics in the 1990s: The Demise of Legal Professionalism: Accepting Responsibility and Implementing Change*, 28 VAL. U. L. REV. 563, 567 (1994).

<sup>6</sup> *Bates v. State Bar of Arizona*, 433 U.S. 350, 384 (1977).

outline the history of attorney advertising in the United States, namely, why attorney advertisements were regulated and why such regulations were challenged. Next, Section II will discuss the Supreme Court case that overruled blanket prohibitions placed on attorney advertisements, how federal and state courts, along with state bars, have attempted to define the permissible scope of an attorney's right to advertise, and the varied approach that New Jersey and California take on regulating the use of dramatization in attorney television ads. Finally, Section III analyzes a recent Jacoby and Myers television ad that employs the dramatization format and attempts to answer the question whether the use of dramatizations in attorney television ads should be prohibited or permitted. Ultimately, I hope the reader better understands the rationales driving the prohibition, regulation, and deregulation of attorney advertising and how such rationales apply to the utilization of the dramatization format in attorney television ads.

## II. ATTORNEY ADVERTISING UNDER THE REGIME OF PROHIBITION

### A. Toward Prohibition

Generally, lawyers who practiced law early in the history of the United States did not advertise. Early American lawyers inherited the belief from England that the practice of law was an elite profession geared primarily toward public service rather than individual profit. Consequently, rules against advertising, mainly unwritten, were not only deemed a way of maintaining professional dignity but also designed to protect the public from barratry, champerty and maintenance.<sup>7</sup>

Several decades into the nineteenth century the attitude of Americans began to change. Many people began to consider the inherently elite nature of professions undemocratic and therefore un-American.<sup>8</sup> Accordingly, the control of various groups aimed at maintaining the professionalism of the legal profession waned. As a result, the educational and ethical standards for admission to the practice of law decreased.<sup>9</sup> Part of the change in the legal profession included the acceptance of attorney advertising. Advertising not only helped attorneys expose more Americans to the benefits of legal services but also generated more business for those attorneys entering the profession for monetary gain. Whether to help more people, generate more business,

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<sup>7</sup> Henry S. Drinker, *LEGAL ETHICS* 210-212 (Columbia Univ. Press 1953).

<sup>8</sup> John Ratino, *In Re R.M.J.: Reassessing the Extension of First Amendment Protection to Attorney Advertising*, 32 *CATH. U. L. REV.* 729, 733 (1983).

<sup>9</sup> *Id.*

or a combination of the two, many lawyers advertised, including Abraham Lincoln.<sup>10</sup>

However, throughout the nineteenth century an alarming amount of corruption entered the legal profession. Part of the corruption was believed to originate from the decline of professional regulation that had occurred during the “democratic deregulation” of the legal profession. To address the corruption, a growing movement to reestablish firmer professional regulations in the legal community emerged during the later part of the nineteenth century. As a result, the American Bar Association established the Professional Canon of Ethics in 1908.<sup>11</sup> As part of the ABA regulations, Canon 27 prohibited attorneys from engaging in any form of advertisement except the distribution of business cards.<sup>12</sup> All state bars soon followed the lead of the ABA and banned attorney advertising. The generally accepted fear was that advertising lowered the dignity and standards of the legal profession.<sup>13</sup> Specifically, ads separated the legal profession from the administration of public justice by turning the practice of law into a commercialized trade geared toward individual financial gain.<sup>14</sup> As noted below, the ABA believed Canon 27 would help integrate professionalism back into the legal profession and restore the profession’s honor and dignity:

“the most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity trust. This cannot be forced, but must be the outcome of character and conduct.”<sup>15</sup>

## B. Under Prohibition

Over the next several decades, the ABA slightly limited the draconian ban on attorney advertising and allowed publication of the following information on approved lists: name, associate’s name, telephone numbers, areas of practice, age, school attended, honors, legal publications, membership in various organizations, and references.<sup>16</sup> How-

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<sup>10</sup> Geoffrey C. Hazard, *Why Lawyers Should be Allowed to Advertise: A Market Analysis of Legal Services*, 58 N.Y. U. L. REV. 1084, n.2 (1983).

<sup>11</sup> Ratino, *supra* note 8, at 733.

<sup>12</sup> *The Florida Bar v. Nichols*, 151 So. 2d 257, 257-258 (Fl. 1963).

<sup>13</sup> Drinker, *supra* note 7, at 211-212 (Drinker also notes other considerations for rules that proscribe advertising. Those considerations include (i.) the tendency to stir up litigation, (ii.) the possibility of misleading the public about an attorney’s ability (iii.) the creation of unrealistic expectations in particular cases and (iv.) the increase of rivalry amongst lawyers).

<sup>14</sup> *Id.* at 212.

<sup>15</sup> Hazard, *supra* note 10, at 1113 n.108 (citing ABA CANONS OF PROFESSIONAL ETHICS Canon 27 (1908)).

<sup>16</sup> Ratino, *supra* note 8, at 734 n.50.

ever, outside of approved lists, the ABA and state bars maintained the strict prohibition of attorney advertisements under the general guise of maintaining the honor and dignity of the legal profession.

For example, in *In re Connelly*, the New York state bar censured four attorneys pursuant to Canon 27 after the attorneys cooperated in the publication of a *Life* magazine article.<sup>17</sup> The article described the attorney's everyday activities so as to expose readers to the operations of a typical New York law firm.<sup>18</sup> The attorneys argued that the article represented a newsworthy presentation on a subject of public interest by a recognized publisher.<sup>19</sup> However, the court held that the article constituted an indirect advertisement. The court reasoned that the press and public did not have a legitimate interest in articles that transcended newsworthy incidents by magnifying the achievements of specific attorneys.<sup>20</sup> Specifically, the court stressed that attorneys had a duty to distinguish between legitimate publicity and self-aggrandizing reports and prevent the publication of the latter because it would be undignified and lower the tone of the legal profession.<sup>21</sup> Unfortunately, the court's conclusory holding made the distinction between newsworthy publicity and self-aggrandizing report extremely difficult to ascertain.

### C. Questioning Prohibition

Some commentators began to closely analyze the rationale and consequences of Canon 27's ban on attorney advertising. Because of decisions like *In re Connelly*, the threat of discipline from state bars deterred many lawyers from talking to journalist altogether. Some people believed this self-imposed shroud of silence around the legal profession "protected the bar from criticism of the kind that improves performance and stimulated criticism of the kind that shakes confidence."<sup>22</sup> Accordingly, many people remained ignorant about how the legal system worked, specifically, what lawyers did and how they did it.<sup>23</sup> Relatedly, many people who were not poor enough to have coun-

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<sup>17</sup> 18 A.D. 2d 466 (N.Y. 1963) *But see* The Florida Bar v. Nichols, 151 So. 2d. 257 (Fl. 1963) (no violation of Canon 27 despite lawyer praising expertise of his firm and associates in a newspaper article).

<sup>18</sup> *Id.* at 472.

<sup>19</sup> *Id.* at 477.

<sup>20</sup> *Id.* at 478.

<sup>21</sup> *Id.* at 478-479.

<sup>22</sup> *Jacoby v. The State Bar of California*, 19 Cal. 3d 359, 369 n.6 (1977) (citing Mayer, *The Lawyers*, p.xiii (1967)).

<sup>23</sup> *Bates*, 433 U.S. 350, n.23 (citing ABA study in which over 75% of people surveyed agreed with the statement that people do not go to lawyers because they have no way of knowing which lawyers are competent to handle their particular problem).

sel appointed but not rich enough to readily afford the perceived high costs of legal counsel were often shut out of the legal system.<sup>24</sup> Specifically, many people did not retain counsel, despite an apparent need, because they feared that the price of obtaining legal services would be too high.<sup>25</sup> Consequently, some people began to question whether Canon 27's prohibition of attorney advertising caused more damage to the legal profession than it prevented.

On a separate front, the legal landscape of advertisements changed in the 1970s. In *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, the Supreme Court held that pure commercial speech (speech that proposes a commercial transaction) was protected by the First Amendment so long as it was not false or misleading.<sup>26</sup> The Court recognized that aside from an advertiser's right to speak, consumers have a right to hear commercial information.<sup>27</sup> Specifically, consumers have a substantial interest in the free flow of commercial speech because it serves to inform them of the availability and nature of products and services. Moreover, truthful, non-deceptive commercial speech assures that the public can make informed and reliable decisions.<sup>28</sup> As a result, the court held that the benefits arising from commercial speech substantially outweigh any justifications that may be used to flatly prohibit such speech. However, the Court limited its decision to encompass only advertisements by the pharmaceutical profession because it believed that commercial speech in other professions could potentially raise different constitutional considerations.<sup>29</sup>

By the 1970s, those who believed that attorneys should be able to advertise had two critical arguments in their quiver. First, the public lacked important information concerning the cost and nature of legal services. Consequently, a large segment of the population, mainly those who were neither rich nor poor, failed to utilize the services offered by the legal community. Second, the Supreme Court recognized as a substantial interest under the First Amendment a consumer's right to obtain commercial information so as to make an informed decision when purchasing a product or service. Therefore, attorneys could ar-

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<sup>24</sup> Daniel J. Zelenko, *Do You Need a Lawyer? You May Have to Wait 30 Days: The Supreme Court Went Too Far in Florida Bar v. Went For It, Inc.*, 45 AM. U. L. REV. 1215, 1239 (1996).

<sup>25</sup> *Bates*, 433 U.S. 350, n.22 (citing study in which nearly 50% of respondents gave expected cost as a reason for not using a lawyer's service despite a perceived need).

<sup>26</sup> *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

<sup>27</sup> *Id.* at 763.

<sup>28</sup> *Id.* at 765.

<sup>29</sup> *Id.* at 766 n.25.



gue that attorney advertising deserved commercial speech protection because it would help alleviate some of the public's ignorance of the legal profession by exposing the public to the cost and nature of legal services. In the next section I will analyze the seminal Supreme Court case that overruled the prohibition of attorney advertising and discuss how the Supreme Court and state bars have loosely defined the permissible scope of an attorney's right to advertise his or her legal services.

### III. ATTORNEY ADVERTISING UNDER STATE REGULATION

#### A. *Bates v. State Bar of Arizona*

In *Bates*, the Supreme Court extended commercial speech protection to attorney advertising.<sup>30</sup> The Arizona Bar disciplined two attorneys for advertising their legal clinic in a local newspaper in violation of the Arizona Bar's blanket rule prohibiting attorney advertisements.<sup>31</sup> The Court addressed several arguments in reversing the Arizona Bar and striking down the blanket prohibition of attorney advertising. First, the majority believed that advertising would not adversely affect attorney professionalism because the legal profession is similar to any other commercial business.<sup>32</sup> Moreover, other dignified professions advertise and the public is served by knowing the nature and prices of legal services.<sup>33</sup> Second, the majority held that attorney ads are not inherently misleading.<sup>34</sup> Even though ads may not provide a complete foundation from which to select an attorney, the finite amount of information that can be conveyed is better than no information at all.<sup>35</sup> Third, the majority reasoned that attorney ads would not adversely affect the administration of justice.<sup>36</sup> Specifically, even if the ads result in an increase of fraudulent claims, the Court believed that it would be better to punish the wrongdoers rather than silence those who wish to engage in legitimate business activities.<sup>37</sup> Fourth, the majority held that advertising would likely decrease the cost of legal services due to an increase in competitive pricing.<sup>38</sup> Fifth, the majority said that a restraint on advertising is not a rational means to ensure quality legal service.<sup>39</sup> Finally, the regulation of advertising places no substantial

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<sup>30</sup> 433 U.S. 350.

<sup>31</sup> *Id.* at 354.

<sup>32</sup> *Id.* at 368.

<sup>33</sup> *Id.* at 370.

<sup>34</sup> *Id.* at 372.

<sup>35</sup> *Id.* at 374-375.

<sup>36</sup> *Id.* at 375.

<sup>37</sup> *Id.* at 375 n.31.

<sup>38</sup> *Id.* at 377.

<sup>39</sup> *Id.* at 378.

burden on either the state bar or courts.<sup>40</sup> As evidenced by the decision, the Court advanced the two main arguments that had been lodged against the prohibition of attorney advertising. The Court not only believed that it was in the public interest to increase the public's use of legal services but also considered attorney advertisements as a legitimate means of enabling people to gain valuable information about the nature and costs of legal services.

Despite the landmark holding in *Bates*, the Court restricted its opinion in several ways. First, although advertising could not be subject to blanket suppression, the state had broad power to regulate how an attorney may advertise.<sup>41</sup> Second, false or misleading ads remained subject to restraint.<sup>42</sup> However, the court failed to define either false or misleading in the context of attorney advertising. Third, although the Court opened the door to various forms of attorney advertisements, the holding was limited to advertising routine legal services in the print media.<sup>43</sup> Finally, the Court failed to extend the holding to television advertising. Specifically, the Court stated "the special problems of advertising on the electronic broadcast media will warrant special consideration."<sup>44</sup>

## B. The Scope of Permissible Ads After *Bates*

After *Bates*, it was apparent that attorneys had the right to advertise their legal services. Moreover, *Bates* made clear that states had the power to regulate attorney ads. However, the boundaries of a state bar's ability to regulate advertising without violating attorneys' First Amendment right to commercial speech remained unclear.

It was not until three years after *Bates* that the Court articulated a standard for commercial speech protection. In *Central Hudson* the Court established a four-part analysis to determine whether commercial speech restrictions violated the First Amendment.<sup>45</sup> First, the speech must concern lawful activity and may not be false or misleading.<sup>46</sup> Second, the government interest must be substantial.<sup>47</sup> Third, the regulation must directly advance the governmental interest.<sup>48</sup>

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<sup>40</sup> *Id.* at 379.

<sup>41</sup> *Id.* at 383.

<sup>42</sup> *Id.* at 383.

<sup>43</sup> *Id.* at 384.

<sup>44</sup> *Id.*

<sup>45</sup> *Cent. Hudson Gas & Elec. Corp. v. Pub. Service Comm'n of New York*, 447 U.S. 557 (1980).

<sup>46</sup> *Id.* at 566.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

Fourth, the regulation cannot be more extensive than necessary to serve that interest.<sup>49</sup> With this generalized four-part analysis as a guide for state regulations of commercial speech, states bars began to regulate attorney advertisements to varying degrees. Unsurprisingly, some attorneys began to challenge such regulations. As a result, the Court reviewed numerous state bar regulations under *Central Hudson*. However, the *Central Hudson* standard is extremely vague and fact-sensitive. Therefore, rather than analyzing the manner in which the Court has reviewed regulations under *Central Hudson*, I will demonstrate that the Court has established two general categories that attempt to define the permissible scope of speech regulation for attorney advertisements.

The Court has analyzed attorney advertisements along two separate lines: (1) ads for specific legal services motivated by pecuniary gain and conveyed in person, and (2) ads for general or specific legal services motivated by pecuniary gain and conveyed by print. I will call the first category of ads “in-person solicitations” and the second category of ads “general ads.” The distinction between the two is decisive because the Court prohibits in-person solicitations but permits general ads.

Two cases following *Bates* highlight the dichotomy between in-person solicitations and general ads nicely. In *Ohralik v. Ohio State Bar Association*, the Court held that the First Amendment does not cover an attorney’s speech when the attorney, motivated by pecuniary gain, is engaged in an in-person solicitation of a client.<sup>50</sup> The case arose after a lawyer directly solicited two injured people in a hospital following an automobile accident.<sup>51</sup> The lawyer’s action violated the Ohio Bar’s disciplinary rules prohibiting all in-person solicitations for pecuniary gain. In upholding the state bar’s prophylactic ban, the Court reasoned that such conduct is inherently conducive to overreaching by an attorney “trained in the art of persuasion.”<sup>52</sup> Relatedly, “unlike a public advertisement, which simply provides information and leaves the recipient free to act upon it or not, an in-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection.”<sup>53</sup> As evidenced by the opinion, the Court made a clear distinction between the unique harms of in-person solicitations and the relatively harmless nature of general ads.

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<sup>49</sup> *Id.*

<sup>50</sup> 436 U.S. 447 (1978). *But see* NAACP v. Button, 371 U.S. 415 (1963) (upheld the rights of legal assistance groups to solicit clients because the solicitation was not for pecuniary gain).

<sup>51</sup> *Id.* at 449-450.

<sup>52</sup> *Id.* at 465.

<sup>53</sup> *Id.* at 457.

By way of comparison, in *Shapero v. Kentucky Bar Association* an attorney sent letters to potential clients whom he knew foreclosure suits were filed against.<sup>54</sup> The state bar viewed this activity as an impermissible solicitation that was simply an “*Ohralik* in writing.”<sup>55</sup> However, the Court disagreed. Specifically, the Court held that the First Amendment protects speech by lawyers who solicit legal business for pecuniary gain by sending truthful and non-deceptive letters to potential clients known to face particular legal problems. The Court reasoned that print advertising, whether through a newspaper advertisement or a targeted mail campaign, poses much less risk of overreaching or undue influence than does in-person solicitation.<sup>56</sup> The reader does not face the immediate pressure of the lawyer in his or her face and can simply avoid the solicitous nature of the ad by throwing it away.<sup>57</sup> Essentially, the printed word allows for greater reflection and exercise of choice by the consumer than does the in-person solicitation of an attorney.<sup>58</sup>

As of today, the Court has drawn a distinct line in the sandy grounds of attorney advertising. On one side, general ads are protected by the First Amendment so long as they are not false or misleading.<sup>59</sup> On the other side, in-person solicitations receive no constitutional protection due to the concern of overreaching and undue influence by an attorney. However, it is unclear where attorney television advertisements fit into this two-tiered paradigm.

### C. The Scope of Permissible Ads on Television

On two separate occasions the Supreme Court explicitly refused to decide the scope of permissible attorney ads on television.<sup>60</sup> As a result, state bars have been free to develop a wide array of regulations defining how an attorney may advertise on television. Some state bars view advertisements in both the print and broadcast media as similar modes of communication. Consequently, these state bars’ regulations of television ads more or less reflect the regulations governing print

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<sup>54</sup> 486 U.S. 466 (1988). *See also* *Zauderer v. Supreme Court of Ohio*, 471 U.S. 626 (1985).

<sup>55</sup> *Id.* at 475.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 476.

<sup>59</sup> *But see* *Florida Bar Association v. Went for It*, 515 U.S. 618 (1995).

<sup>60</sup> *Bates*, *supra* note 5. *See also* *Zauderer* 471 U.S. 626, 673 n.1 (O’Connor, J., concurring, in a decision that overturned a regulation that prevented an attorney from advertising in the newspaper to a targeted group, added, “like the majority, I express no view as to whether this is also the case for broadcast media”).

ads.<sup>61</sup> However, other state bars believe that ads in the broadcast media raise unique problems that are not present in the print media. As a result, these state bars have wielded a heavy hand in the regulation of attorney television ads. As a means to demonstrate the varied approach state bars take in regulating television ads, I will discuss the disparate regulations governing the use of dramatizations in attorney television advertisements in New Jersey and California.

#### D. The Use of Dramatizations in Television Ads

Television dramatizations present a form of communication that hovers between objective and subjective reality. Although dramatizations exaggerate reality, its perceived "live" content creates an objective experience for the viewer. Essentially, dramatizations often appear unwritten, unauthored, and outside the subjective construction of a biased third party. Moreover, dramatizations can be perceived as a communication reflecting objective reality because it often depict a set of events, in a realistic style and tone, that is distinct from those individually perceived or experienced by the viewers. However, dramatizations are usually nothing more than a cleverly disguised subjective communication by a biased third party conveying a particular message. Accordingly, some state bars fear that the attorneys' use of dramatization in a television ad creates an excessively potent emotional message that prevents the viewer from making a rational decision when purchasing legal services.<sup>62</sup>

For example, New Jersey regulators expressly prohibit the use of dramatizations in attorney television ads. Rule 7.2 of the New Jersey Rules of Professional Conduct states in relevant part [DC], "no drawings, animations, dramatizations, music, or lyrics shall be used in connection with televised advertising."<sup>63</sup> Evidently, New Jersey regulators believe that a blanket prohibition is the only way to prevent the unique harms that may flow from the use of dramatizations in television ads.

In sharp contrast, California regulators permit attorneys to use dramatizations in their television advertisements.<sup>64</sup> Attorney advertise-

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<sup>61</sup> Or, state bars have used print media regulations as a default rule for the regulations governing the broadcast media because of an inability to reach a consensus on how to regulate television and radio advertisements. See generally Canlen, *supra* note 3 (discussing the failed attempt in 1994 to create and pass legislation in California that would have placed severe restrictions on television and radio attorney advertisements).

<sup>62</sup> In re Felmeister and Isaacs, 104 N.J. 515, 539 (N.J. 1986).

<sup>63</sup> NJ RULES OF PROFESSIONAL CONDUCT.

<sup>64</sup> Additionally, Rule 7.2 of the ABA MODEL RULES OF PROFESSIONAL CONDUCT implicitly permits the use of dramatization in television ads. In fact, the ABA takes a liberal stance on issues relating to television ads by stating, "Television is now one of the most powerful

ments in California are regulated by two state instruments: (1) Rules of Professional Conduct of the State Bar of California and (2) The California Business and Professions Code.<sup>65</sup> Both instruments provide guidelines concerning the scope of permissible attorney advertisements. Generally, the basic rule is that an ad may not be false, misleading or deceptive.<sup>66</sup> Specifically, California regulators have promulgated several restrictions on how an attorney may advertise his or her legal services to ensure that the ad is not false, misleading or deceptive. Of particular relevance is the limited restriction placed on the use of dramatizations in advertisements. Quite simply, California regulators permit the use of dramatization in advertisements in any media, including television, so long as the ad includes a disclaimer that states something to the effect that, "this is a dramatization."<sup>67</sup>

As evidence above, California regulators do not seem particularly concerned about the possible harms that may arise from the use of dramatizations in attorney advertisements. The restriction does not prohibit attorneys from utilizing dramatization as a means of communication. Rather, the restriction merely commands attorneys to disclose a relatively limited statement in the dramatization itself. Implicitly, California regulators believe that dramatizations in advertisements are not false, misleading or deceptive so long as a disclaimer is included. Consequently, the California rules give attorneys great leeway to use dramatizations in their television advertising campaigns.

In order to better understand the disparate rationales behind the New Jersey and California rules, I will analyze a current television ad by a California law firm that utilizes the dramatization format.<sup>68</sup> First, I will discuss the ad's content. Second, I will analyze the ad to determine what messages are being conveyed. Finally, I will use the previously discussed arguments both for and against attorney advertising to deter-

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media for getting information to the public. . .prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public."

<sup>65</sup> RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF CAL. (1996); CAL. BUS. & PROF. (2001).

<sup>66</sup> RULES OF PROFESSIONAL CONDUCT, *supra* note 67, Rule 1-400 (1996); *See also* CAL. CODE, *supra* note 67, §6158 (2001).

<sup>67</sup> RULES OF PROFESSIONAL CONDUCT, *supra* note 67, Rule 1-400 Standards (13).

<sup>68</sup> I randomly chose a Jacoby and Myers television ad by taping three hours of afternoon programming on UPN. Rather than analyze all the different types of dramatization formats in attorney ads, I have chosen only one ad because I believe it functions nicely as a springboard to apply arguments raised earlier in the paper both for and against attorney advertising. Also, the channel and time of day that the ad was broadcasted may raise interesting issues not only as to whether time restrictions should be placed on attorney television ads but also as to what segment of the public the ads are directed. However, those issues are outside the scope of this paper.

mine whether attorneys should be allowed to use the dramatization format in their television advertisements.

#### IV. QUESTIONING THE USE OF DRAMATIZATIONS IN TV ADS

##### A. The Ad

The Law Offices of Jacoby and Myers is currently running a television advertisement that dramatizes a nameless insurance company's response to a personal injury claim.<sup>69</sup> The commercial opens with a wide shot of a man sharply dressed in a suit and tie walking out of an impressive multi-floored modernist building. Next, the audience gets a closer look at the man as he walks away from the building toward the camera. The man is a white male in his forties, cleanly shaven with a well-manicured hairstyle. In the bottom left corner of the screen clearly appears the words "the insurance company."

From behind the man, a younger man frantically hurries to catch up with what appears to be his boss. The younger man shouts, "Mr. Morgan, Mr. Morgan." At this time, the words "the insurance company" fades from the screen and is followed by the word "dramatization" written in roughly one-tenth the font. The word soon fades from the screen. Mr. Morgan turns toward the approaching younger man and responds impatiently, "What do you need Mark? I have a two o'clock tee time." As Mr. Morgan speaks, the audience sees behind Mr. Morgan a well-groomed lawn, several trees and the shore of a beautiful lake.

Then, Mark encounters his boss face to face and says, "You know the Thompson auto accident, that big medical claim?" As the young man speaks, the camera focuses on a small, relatively empty file in Mark's hand that reads, "Thompson, A." The camera pans out to show Mr. Morgan respond to Mark, "What about it? Didn't you offer him the quickie cut-rate settlement?" Mark replies in a slightly disheartened and embarrassed tone, "He didn't take the bait, he got a lawyer." The camera quickly flashes on Mr. Morgan, whose demeanor suddenly turns serious. Mr. Morgan hisses "Who?" Again, Mark replies, in a deflated manner, "a lawyer on the Jacoby and Myers team." Without hesitation, Mr. Morgan grimaces, "oh man. . .we can't beat them. . .we are going to end up paying Thompson a lot of money." After Mr. Morgan's comment, both men walk out of the screen back toward the building. Finally, a screen appears with the name Jacoby and Myers and a telephone number.

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<sup>69</sup> March, 2001.

## B. What Message Does the Ad Convey?

Jacoby and Myers' ad utilizes several attributes of dramatization to convey a clear anti-insurance company / pro Jacoby and Myers message. First, the ad transmits its message through dialogue. From the dialogue, the viewer quickly learns some distinguishing characteristics of the insurance industry. Most importantly, Mr. Morgan's immediate inquiry into the "quickie, cut-rate settlement" shows that the insurance company is primarily concerned about offering the least amount of money to settle a claim. Additionally, Mr. Morgan's perturbed response to Mark's disclosure about Thompson's enlistment of Jacoby and Myers demonstrates that the insurance company is financially motivated to keep people in the dark about their legal rights. Relatedly, Mr. Morgan's response clearly conveys the message of Jacoby and Myers' innate ability to get a lot of money from the insurance company for their injured clients. Moreover, Mr. Morgan's reference to a "two o'clock tee time" not only suggests that the insurance company is wealthy enough to afford to pay its employees to leave half-way through the work day to enjoy a round of golf, but also implies that the insurance company's priorities are something other than fully investigating an insured's claim. Finally, Mr. Morgan and Mark never seem concerned about Thompson's injuries. Rather, the two dehumanize Thompson by discussing only the financial impact that his insurance claim will have on the insurance company.

Second, the ad transmits its message through written words. The use of written words in the ad serves as a catalyst for the ad's anti-insurance company message. The audience first sees the words "the insurance company" clearly written in the bottom left corner of the screen. The use of a definite article in front of "insurance company" implies that only one monolithic insurance company exists in the world. By using a definite article, the ad subtly tries to homogenize the heterogeneous insurance industry that the audience is familiar with in their reality.<sup>70</sup> Through homogenization, the ad attempts to deconstruct the audience's reality and reconstruct a new one in which only one insurance company exists, and that insurance company has all the negative characteristics of the one portrayed in the ad.

After the words "the insurance company" fades from the screen, the word "dramatization" appears at one-tenth the size. The apparent meaning of the word is obvious: the ad is a dramatization and is not a recording of a live event. However, the word is not included in the ad

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<sup>70</sup> Most people are familiar with the existence of several insurance companies, such as AAA, State Farm, and Allstate.



to create meaning. Rather, the word is included because California law requires the use of a disclaimer when utilizing the dramatization format. The diminutive nature of the word clearly suggests that the ad's creator wants to minimize, if not utterly preempt, any meaning created by the word. Essentially, Jacoby and Myers do not want the ad to be viewed as a dramatization. Rather, the goal of the ad is to convince the viewers that the content contained in the ad is an accurate portrayal of reality.

Lastly, the final screen that exhibits the name Jacoby and Myers and their telephone number serves two purposes. One, the screen contains valuable information regarding who is responsible for the ad and how to contact them. Two, and more subtly, the screen functions as a conclusion to the ad. In concluding the ad, the screen presents a solution to the problem presented in the ad, namely, how should a person deal with an insurance company when injured? The answer is quite simple: call Jacoby and Myers.

Third, the ad transmits its message through imagery. Throughout the ad, numerous images are used to portray the insurance company's excessive wealth. Both Mr. Morgan and Mark are well dressed. In particular, Mr. Morgan's well-manicured hairstyle reflects the type of grooming that only the wealthy have the time and money to maintain. Moreover, the garden surroundings and lakefront property of the insurance company's office seems more appropriate for a millionaire's estate than for a business. Relatedly, the multi-floored modernist office building highlights the insurance company's ability not only to afford the use such a nice building but also the financial capacity to fill the building with employees. Also, the ad utilizes the specific image of the Thompson file to demonstrate the insurance company's materialistic priorities. Specifically, the Thompson file in Mark's hands is very thin. The lack of papers in the file suggests that the insurance company did not fully investigate the claim because the file of an investigated claim most likely would be filled with the work product of the investigation. Rather than investigating Thompson's claim, the insurance company wants to permanently close the Thompson file by offering him the "quickie, cut rate settlement." Finally, once Mr. Morgan learns that Thompson has hired Jacoby and Myers, he cancels his "tee time" and heads back to the office with Mark. It seems that only when a claimant hires an attorney, specifically Jacoby and Myers, will an insurance company take seriously an injured person's claim. By portraying the insurance company as both wealthy and miserly, Jacoby and Myers attempt to persuade the audience that they should aggressively go after the insurance company when injured. Specifically, the public should attempt

to receive the largest settlement possible with the assistance of attorneys because the insurance company can afford it and will not pay the money unless pressured by attorneys.

Through the potent combination of dialogue, written words, and imagery, Jacoby and Myers effectively use the dramatization format in their advertisement to clearly convey a two-tiered message. One, the insurance company is an uncaring, excessively wealthy entity focused solely on providing a claimant the smallest settlement possible. Two, the legal services of Jacoby and Myers is an essential tool to ensure that the insurance company gives a claimant what he or she is legally entitled to. However, is the use of dramatization in the Jacoby and Myers ad an acceptable way to sell legal services?

### C. Should Attorneys Use Dramatizations in TV Ads?

An attorney's right to advertise mainly rests on the rationale that advertisements help the public gain knowledge of, and access to, legal services. However, an attorney's right to advertise is not absolute. Specifically, federal and state courts, along with state bars, have the power to regulate how an attorney may advertise his or her legal services. As discussed throughout this paper, there are three main interests that courts and state bars have utilized to regulate attorney advertising. One, advertising may damage the honor and dignity of the legal profession.<sup>71</sup> Two, advertising may be overreaching and unduly influence consumers of legal services. Three, advertising that is false or misleading is outside the scope of constitutional protection.<sup>72</sup> Based on

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<sup>71</sup> In *Bates*, the Supreme Court rejected the argument that attorney advertising adversely affects the dignity of the legal profession. However, the holding was limited to advertising routine legal services in the print media. Moreover, in *Zauderer*, the Court signaled in dicta that they were "unsure that the State's desire that attorneys maintain their dignity in their communications with the public is an interest substantial enough to justify the abridgement of their First Amendment rights." 471 U.S. 626, 648 (1985). Despite the Court's dicta, several state courts have continued to base some of their decisions on the traditional rationale that maintaining the honor and dignity of the legal profession is a substantial interest and certain types of advertising negatively affect that interest. See *In re Felmeister and Isaacs*, 104 N.J. 515, 543 (N.J. 1986); *Iowa State Bar Association v. Humphrey*, 377 N. W. 2d 643, 648 (IA 1985); *The Florida Bar: Petition to Amend the Rules Regulating the Florida Bar*, 571 So. 2d 451, 463 (Fl. 1990). Additionally, the Court recently has seemed to backtrack on its previous dicta and has held on one occasion that maintaining the professionalism of the bar is a substantial interest. *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995) (the interest was substantial enough to justify a state regulation that prevented attorneys from soliciting employment by sending targeted direct mail to accident victims and their relatives until 30 days following the accident or disaster).

<sup>72</sup> California also says that deceptive speech should be proscribed. However, there does not appear to be any substantive difference between ads that are misleading and those that are deceptive. Therefore, I will use the term "misleading" to encompass both misleading and deceptive ads.

the above justifications to limit speech, I will discuss whether attorneys should be allowed to utilize the dramatization format in their television advertising campaigns within the context of the Jacoby and Myers ad.

### 1. Honor and Dignity

The use of dramatization arguably harms the honor and dignity of the legal profession. However, honor and dignity are not easy terms to define. Accordingly, it is necessary to understand the context in which lawyers operate in the legal system in order to determine what could damage the honor and dignity of the legal profession. Essentially, lawyers are necessary tools in the administration of justice. They are not only individuals working to earn a livelihood but also advocates with a duty to zealously defend their clients' legal rights. Because attorneys are so intricately bound to the administration of justice, whether their intentions are solely for individual gain or not, any action by an attorney that negatively affects the legal system damages the honor and dignity of the legal profession.

The negative portrayal of the insurance industry in the dramatization negatively affects the legal system. Dramatization on television combines multiple techniques of communication, namely dialogue and imagery, to distort, enhance, or create a new reality for the audience. Through dramatization, Jacoby and Myers' vicious portrayal of the insurance industry creates hate for, and fear of, the insurance industry.

Some may argue that people already dislike insurance companies and Jacoby and Myers are only using an existing belief to sell their services. Admittedly, most people realize that insurance companies are a profit making enterprise that have an economic incentive to pay a claimant a lower, rather than a higher, amount of money to settle a claim. However, the dramatization combines dialogue, written word, and imagery to distort the audience's reality and turn the insurance company into nothing more than an excessively wealthy entity that wants to cheat its claimants out of settlement money. Consequently, the potent techniques used to negatively portray the insurance industry forces the audience into a reality where legal services are necessary. As a result, the rational that ads should inform the public about the cost and nature of legal services is distorted. Rather than informing the public about the nature of legal services, Jacoby and Myers' ad employs dramatization on television through a slick, streamlined message of hate and fear to pigeonhole the public into a choice between obtaining legal services or being swindled by insurance companies. Therefore, even if the public already dislikes insurance companies, the use of the dramatization format on television to monger hate and fear in order to

force legal services on the public negatively affects the legal system and thereby damages the honor and dignity of the legal profession.

However, a dramatization should not be banned because it damages the honor and dignity of the legal profession. Specifically, the standard for honor and dignity is too subjective to serve as a basis to regulate attorney advertising. In fact, the reader may disagree with my belief that anything that negatively affects the legal community damages the honor and dignity of the legal profession. Arguably, most legal rules are arbitrarily lines drawn in the sand. However, the standard of honor and dignity leaves too much discretion to whoever reviews the ad. Under such an extremely subjective standard, many attorneys would hesitate to advertise for fear of punishment by the state bar or courts. Because fewer attorneys would advertise, less people would gain knowledge of, and access to, legal services. As a result, the rationale that justifies attorney advertising would be corrupted.

Moreover, some people could rationally argue that the dramatization does not damage the honor and dignity of the legal profession. Rather, it effectively communicates the message to the viewers that it is beneficial to have the aid of legal counsel after suffering a personal injury. Additionally, it may be overly paternalistic to base rules regulating attorney conduct on the premise that the audience is too ignorant to understand that a dramatization originates from a biased, subjective viewpoint. The public may indeed understand that the dramatization is nothing more than an advertisement for a particular legal service. Relatedly, if the ad truly damages the image of the legal profession, then a logical conclusion would be that the ad damages the image of the ad's sponsor. Accordingly, if the public did not like the ad, they would be less inclined to purchase Jacoby and Myers' legal services. As a result, the market would serve as an efficient and effective means to control negative advertising and maintain the honor and dignity of the legal profession.

Finally, the dramatization in the Jacoby and Myers ad is only one type of dramatization. Other dramatization formats could uphold the honor and dignity of the legal profession. For example, a dramatization could portray a lawyer as a noble public servant without casting any negative images on the legal profession or other segments of the population. Therefore, the decision to regulate attorney advertising by prohibiting all dramatizations is grossly overinclusive. In sum, upholding the honor and dignity of the legal profession is an unreasonable and insufficient rationale to be used as a means to prohibit the use of dramatizations in attorney television ads.

## 2. Undue Influence and Overreaching

The Supreme Court prohibits advertising by in-person solicitation because it is presumptively overreaching and unduly influential. In contrast, the Court permits advertising through general ads because the ads allows the reader greater reflection on the contents of the ad and the ability to simply avoid the ad by throwing it away. Under what paradigm should the use of dramatization in television ads fall? Specifically, is the use of dramatization in television ads more like in-person solicitations or general ads?

Dramatization in television ads employ dialogue, written words, and imagery to effectively communicate a message. Through these techniques, the message momentarily subsumes the viewer into an artificial reality in a manner that words and images in a written advertisement cannot achieve. Moreover, the constant bombardment of communicative techniques inherent in dramatization exerts a type of subliminal influence on the viewer that vastly differs from written advertisements. Finally, unlike print ads, a television dramatization appears on the screen for a brief period of time and suddenly disappears without giving the viewer much time to reflect on the ad's message.

However distinct dramatizations in television ads are from print ads, they do not pose the same problems as in-person solicitations. Most notably, contact with a person on television is a one-way communication between the viewer and speaker that is separated by time and distance. In contrast, an in-person solicitation is a real time two-way communication that allows the attorney "trained in the art of persuasion" to greatly influence the listener based on the listener's verbal and non-verbal responses. Moreover, a message conveyed through dramatization on television does not require an immediate response. Rather, the viewer of the message must take several affirmative steps (writing down the telephone number and calling the attorney) before communicating with the attorney. Additionally, a television dramatization may disappear from the screen and not allow for the type of reflection inherent in a written advertisement, but it at least allows the viewer time to reflect on the message through memory before giving any response to the speaker. In contrast, an in-person solicitation pressures the listener to give an immediate yes-or-no answer to the offer of representation without much reflection once the attorney has completed his or her sales pitch. Finally, dismissing an in-person solicitor requires the socially awkward act of telling a person to his or her face, "please leave me alone." However, the viewer of a television dramatization can sim-

ply disregard the message by changing the channel just as would a reader of an unwanted ad throw the ad away.<sup>73</sup>

Dramatizations in television ads allow the speaker to present a much more textured and persuasive message than the limited techniques available for ads in the print media. However, the distinct attributes of dramatizations in television ads do not raise the unique concerns associated with in-person solicitations. As a result, dramatizations in television ads are neither unduly influential nor overreaching.

### 3. False or Misleading Speech

In *Bates*, the Supreme Court held that First Amendment commercial speech protection does not extend to false or misleading speech. However, the Court never defined what constitutes false or misleading speech. Consequently, two questions must be answered regarding the use of dramatization in attorney television ads to better understand the contours of commercial speech protection. One, are dramatizations inherently false or misleading? Two, are the messages conveyed in the Jacoby and Myers dramatization false or misleading?

The use of dramatization in a television advertisement is not per se false speech. It is true that dramatizations convey a subjective message through a fictitious sequence of events or events only loosely based on reality. However, it would be absurd to argue that the use of such unreal events to communicate a message on television results in a false statement. For example, all advertisements on television employ images, dialogue, or both to communicate a message through a series of events. Most, if not all, of the events are based on images and dialogue originating in part from the creator's imagination. If such an expansive reading of false statements were to cover the techniques used to communicate commercial speech, then nearly all speech in television advertisements would not receive First Amendment protection. Not surprisingly, no court has ever limited commercial speech protection in television advertisements to cover only speech based on real life experiences. Specifically, courts have reviewed the content of the message, rather than the method of transmission, to determine whether the communication is false. Therefore, dramatizations are not inherently false speech.

Additionally, there are no false statements in the Jacoby and Myers ad. Because the ad is a dramatization of a fictitious insurance company, the dialogue in the ad does not have to be direct quotations from

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<sup>73</sup> This argument is even more effective today given the pervasive presence of remote controls in American households.

any particular person at a specific insurance company. Therefore, no one at any insurance company could argue that the statements are false. Moreover, the imagery used in the ad does not constitute false statements. The ad portrays the insurance company as a wealthy company that has an economic incentive to offer low settlements. Such imagery is not false. In fact, the insurance industry is filled with extremely profitable multi-million dollar companies that are financially motivated to pay lower, rather than higher, settlements. Most people who have filled claims with insurance companies for personal injuries could attest to such a statement. Essentially, the imagery functions as a means to exaggerate these factual observations. Moreover, the imagery in a dramatization should never be considered a factual construction of reality. Rather, the imagery is a subjective construction of reality contextually situated within the dramatization format. Therefore, the contents in the Jacoby and Myers dramatization are not false statements.

Some people have argued that dramatizations are inherently misleading. The powerful use of dialogue, imagery, and written words in television dramatizations cleverly disguises its subjective communications. The disguised nature of the communication could preempt viewers from making rational decisions when purchasing legal services. Therefore, the rationale behind allowing attorneys to advertise, namely, conveying valuable information concerning the cost and nature of legal services, is fatally corrupted. As a result, some state bars, like New Jersey, claim that dramatizations in attorney advertisements should not receive First Amendment protection and thereby be subject to outright prohibition.

However, this is a heavily paternalistic view of consumers. We live in a society that is constantly confronted by advertisements. Most Americans have been bombarded by commercial messages throughout their entire lives. Therefore, it is irrational to assume that American consumers are completely ignorant of the subjective messages in advertisements that employ dramatizations. Most consumers can siphon out the relevant information in an ad and make a rational decision to purchase goods or services based on the ad. Therefore, protecting consumers through the prohibition of speech prevents, rather than helps, consumers make rational decisions in the marketplace. Moreover, less intrusive means exist to advise consumers of the potentially manipulative characteristic of dramatizations than its outright prohibition. Namely, dramatizations can use disclaimers, as in California, that warn consumers of the advertisement's particular sales technique.

Additionally, some dramatizations may be a true interpretation of a real life event. The real life event may be so moving that a subjective interpretation of the event is unnecessary. Therefore, the remaking of the real life event through dramatization may involve non-misleading speech. As a result, a blanket prohibition of dramatizations may suppress protected speech and be more extensive than necessary to carry out the government's interest in protecting consumers of legal services. It is true that "determining [misleading from non-misleading] advertising. . .requires resolution of exceedingly complex and technical factual issues and the consideration of nice questions of semantics."<sup>74</sup> However, the Supreme Court has concluded that this process is neither impractical nor unduly burdensome.<sup>75</sup> Therefore, any prohibition on dramatizations in attorney television ads based on the rationale that dramatizations are inherently misleading should be flatly rejected.

Finally, the dramatization in the Jacoby and Myers television ad does not have any misleading speech. First, the ad contains a "dramatization" disclaimer. Granted, the disclaimer is laughably diminutive compared to other writings in the ad. However, if the size of the disclaimer serves as a point of contention, then California need only mandate a larger font for disclaimers. Second, the dramatization does not mislead the consumer into believing something that is not true. All the messages in the ad have some basis in reality.<sup>76</sup> Notably, the insurance industry is a wealthy business that seeks to maximize profits and Jacoby and Myers can help people protect their legal rights and receive a larger settlement for personal injury claims. Though the use of fear and hate mongering may be uncouth, it does not necessarily result in a misleading message. Rather, that technique serves as a means to convey a particular message. Therefore, the contents of the dramatization in the Jacoby and Myers ad do not mislead the public.

## V. CONCLUSION

As evidenced by our own history, the scope of an attorney's right to advertise is never set in stone. The United States continually attempts to find a delicate balance between an attorney's right to earn a livelihood in the legal profession through advertising and the desire to maintain the public's perception of a steadfast and honorable legal profession untarnished by the grittiness of trade. The balance is always in

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<sup>74</sup> Zauderer, 471 U.S. at 645.

<sup>75</sup> *Id.* at 645, n.13.

<sup>76</sup> For example, regarding insurance company's dehumanization of Thompson, I recently handled the settlement of my girlfriend's automobile accident and not once did the insurance agent inquire into her well-being.



flux and somewhere in the middle falls the use of the dramatization format in attorney television advertisements.

Some people will forever bemoan the fact that attorneys have the right to advertise. These people will always point to an absurd attorney television ad and relentlessly argue that it somehow degrades the amorphous honor and dignity of the legal profession. Or, they will place a red cap on their backs with a large "S" and proclaim to be the defenders of the easily manipulated public and attempt to prohibit attorney ads because it allegedly mislead consumers. However, these people fail to recognize that attorney television advertisements provide a tremendous benefit to both attorneys and the public at large.

Essentially, all attorney advertisements, in whatever media, expose the public to the legal profession. Because of attorney advertisements, people now know more about the cost and nature of legal services. As a result, people are more willing to utilize the services of an attorney. Consequently, advertisements have increased the public's opportunity and ability to exercise their legal rights.

Additionally, the legal profession has emerged from the shadows of silence under the regime of advertisement prohibition. Now, attorneys possess a virile means to increase the public's knowledge about what they do and how they do it. However, attorneys should not be limited by unnecessary constraints on how they communicate with the public. Specifically, attorneys should be allowed to utilize the dramatization format in television advertisement. The television audience is a fickle entity that does not tolerate boring commercials. As a result, an attorney must advertise in a manner that both educates and captivates the audience. Dramatizations accomplish both those goals. As discussed above, there is nothing inherently false or misleading about a commercial that employs dramatization. Therefore, any prohibition on the use of dramatizations in attorney advertisements would only foreclose on an attorney's ability to effectively communicate a valuable message to the public.