SOLICITORS' RIGHT TO ADVERTISE: A HISTORICAL AND COMPARATIVE ANALYSIS

I. INTRODUCTION

The English Law Society Council, which promulgates and enforces rules governing the conduct of solicitors, recently eased the


At approximately the time of Edward I's reign (1272-1303), the emerging legal profession in England divided into functionally separate branches. H. Drinker, Legal Ethics 13 (1953). The higher branch, "pleaders," acted as learned counselors to their clients. The lower branch, "attorneys," actually represented the client's person, or "stepped into the client's shoes." Id.

The client could renounce the pleader's mistakes but was bound by the attorney's actions since he represented the person of the client. The importance of the distinction stems from the public perception of attorneys as "mere men of business" while the public envisioned pleaders as professional legal specialists. Id. at 14.

The designation for legal specialists changed from pleaders to barristers in the late 1300's, after special courtrooms containing a bar to separate the disputing parties from the public became common. L. Curzon, English Legal History 203 (2d ed. 1979). Only barristers could practice before the bar. W. Richardson, A History of the Inns of Court 16, n.2 (1979). Attorneys generally handled details of law suits in preparation for trial and barristers argued cases in court. R. Walker, supra, at 210; B. Abel-Smith & R. Stevens, Lawyers and the Courts 15 (1967). The attorneys, and later solicitors, acted as business managers for their clients' affairs. B. Abel-Smith & R. Stevens, supra, at 19.

Solicitors first appeared in the mid-fifteenth century and practiced only in the Courts of Chancery. H. Drinker, supra, at 18. Solicitors were not recognized professionally until around 1500. Id. The class known as "solicitors" arose within the legal profession as a result of excessive, technical limitations placed on attorneys' activities, in addition to legal and social developments. W. Holdsworth, History of English Law, VI 450 (1937). One authority contemptuously described the solicitor as "[one] who conducts legal business on behalf of another, but who is neither an attorney nor a barrister." Id. at 454, n.2. An early pamphlet (circa 1680) described solicitors as "pettifogging sophisters." See H. Kirk, Portrait of a Profession 15 (1976).

A "pettifogger" is defined as a lawyer whose methods are petty, underhanded, or disreputable; one who is given to quibbling over insignificant detail; or who engages in legal chicanery. Webster's, Third New International Dictionary 1691 (P. Gove ed. 1968) [hereinafter cited as Webster's]. "Chicanery" is defined as deception by artful subterfuge, sophistry, misrepresentation, or similar artifice. Webster's, supra, at 387. "Sophistry" is defined as reasoning that is superficially plausible but actually fallacious. Webster's, supra, at 2174. See also infra note 20 regarding the Sophist movement in early Greece.

The positions of attorney and solicitor duplicated one another but they coexisted until the Judicature Act of 1873. This Act abolished any remaining functional distinctions between the two positions and sanctioned usage of either title. R. Walker, supra, at 210. By late in the century, however, society regarded solicitors as more prestigious. B. Abel-Smith & R. Stevens, supra, at 19; M. Birks, Gentlemen of the Law 144 (1960). The two positions eventually merged and the lower branch of the legal profession became known only as solici-
traditional ban on solicitor advertising.\(^2\) The Council, however, restricted the right to advertise by sanctioning only press or radio advertisements, mailings to professional connections,\(^3\) and notices posted at the solicitor’s place of business.\(^4\) The Council also enun-

The term “solicitor” evolved from the Norman-French “sollicitur,” which derived from the Latin “solicitaire,” meaning to agitate, urge, or solicit. H. Kirk, supra, at 14. In contrast, the term “barrister” denoted one allowed before the physical courtroom barrier known as the “bar” and admitted for the purpose of conducting public trials in English superior courts. Webster’s, supra, at 179.

The barrister’s position in the English legal system became highly specialized and barristers primarily acted as advocates. Barristers, learned legal counselors, practiced at the “bar.” The “bar” simply meant the railing in the courtroom separating members of the general public from those involved in a legal dispute. Webster’s, supra, at 174. The barrister conducted trials and argued legal matters before the “bench.” The term “bench” collectively referred to judges. Webster’s, supra, at 202. The bench, located in London at the Inns of Court, called barristers to the bar, thus giving them special rights of audience. Id. at 137. See also infra note 32 regarding barristers and the Inns of Court.


The Law Society Council promulgates rules by virtue of discretionary power conferred by section 1 of the Solicitor’s Act 1933 to “make rules . . . regulating . . . the professional practice, conduct and discipline of solicitors.” The Solicitor’s Practice Rules, 1936, 182 L. Times 266 (1936) [hereinafter cited as Rules].

Rule 8 of the International Bar Association Code of Ethics epitomizes the traditional ban against advertising by legal professionals. Rule 8 decrees that “[i]t is contrary to the dignity of a lawyer to resort to advertisement.” The Law Society, A Guide to the Professional Conduct of Solicitors 84 (1974) [hereinafter cited as SOLICITOR’S GUIDE].

\(^3\) “Professional connections” probably refers only to present or former clients of the solicitor obtained through the exercise of his professional services. SOLICITOR’S GUIDE, supra note 2, at 106; see also infra note 173 for further discussion of solicitor’s professional connections.

\(^4\) The Law Society announcement stated:

As from 1 October 1984, solicitors may advertise in England and Wales: (a) in the press or on radio; (b) by direct mailing to their professional connections; (c) on their premises. Solicitors may not advertise by any other means unless specifically so permitted by any Council ruling or direction. Advertising must be subject to the following:

1. The advertising must be in good taste and not of such a character as may reasonably be regarded as likely to bring the profession into disrepute.

2. The advertising must not contain any inaccurate or misleading statement and any factual information must be verifiable.

3. (a) The advertising may refer to the quality of service provided by solicitors in general but not to that provided by the firm and should not suggest that the firm is superior in its practice to other solicitors, nor directly or indirectly criticise or compare its services or charges with those of other solicitors.

(b) No statement may be made as to quantity of work, names of clients, names of staff other than partners, fee income, past cases or success rate.

4. Categories of work that may be advertised are limited to those of which the firm has experience. No special expertise or specialism may be claimed.
associated a variety of advertisement quality and content standards. The announcement relaxing the previously absolute prohibition on advertising expressly stated that rule 1 of the Solicitor's Practice Rules 1936, which disallowed touting, advertising, or unfairly attracting business, otherwise remained in force. The solicitor's right to advertise, although only a cautious step, represented a departure from long-standing English legal tradition eschewing any form of competition within the profession.

In direct contrast to the recent and restricted English right, the United States Supreme Court bestowed constitutional protection on attorney advertising in 1977. The Court classified legal advertisements as commercial speech, triggering first amendment pro-

5. (a) If charges are advertised, it must be stated what services will be provided for those charges and in what circumstance they may be increased.
(b) A fee stated to be from or upwards of a certain figure is prohibited, as is the advertising of a discount or reduction of a specified percentage or amount.
(c) A total fee for a specific service must state whether that includes disbursements and value added tax.
(d) If the basis of charges is advertised it must be clearly explained.
(e) If residential conveyancing is advertised but not a charge thereof, the advertisement must include a statement to the effect that if required a written estimate of costs in respect of such work will be given. This estimate must be comprehensive and accord with the Notes for Guidance for the time being in force, published with The Society's Domestic Conveyancing Charges Form.

Rule 1 states "[A] solicitor shall not directly or indirectly apply for or seek instructions for professional business or do or permit in the carrying on of his practice any act or thing which can reasonably be regarded as touting or advertising or as calculated to attract business unfairly." Official Papers: The Law Society-Solicitor's Practice Rules, 1936, 182 L. Times 200 (1936) [hereinafter cited as Official Papers]. The Solicitor's Practice Rules, 1936 constituted the initial rules governing the conduct of solicitors and were introduced pursuant to The Law Society Council's discretionary rule-making power. Rules, supra note 2.

"Touting" refers to solicitation of patronage, urging with annoying persistence, or Importunately peddling in an annoyingly persistent manner. WEBSTER'S, supra note 1, at 2417.

"Advertising" occurs when a merchant of goods or services calls something, such as a commodity or a service, to the attention of an individual or the general public, especially by means of paid print or broadcast announcement. Id. at 31.


See infra notes 20-63 and accompanying text for a discussion of English legal etiquette and the professional disdain for advertising.


Commercial speech serves a valuable function by informing the public of the availability,
Unlike the extensive protection afforded political speech under the Constitution, the protection extended commercial speech does not completely preclude regulation. The Court held as constitutionally permissible regulations barring false, deceptive, misleading, or unlawful commercial speech. The Court also approved reasonable time, place, and manner limitations. Legal advertising, as protected commercial speech, can be curtailed only by a showing of important countervailing governmental interests. By classifying United States lawyers' right to advertise as commercial speech, the Court granted broad discretionary power to individual lawyers. The wide latitude given United States lawyers provides a striking contrast to the relatively restrictive advertising conditions imposed upon English solicitors.

Commercial speech, in comparison, may be subject to some appropriate amount of state regulation due to its potentially misleading nature. Truthful and straightforward advertising, however, falls within the ambit of first amendment protection. See, e.g., Central Hudson Gas Co. v. Public Serv. Comm’n, 447 U.S. 557 (1980).

In these situations, the Court felt the potentially misleading character of the barred information justified imposition of regulations. The government's interest in protecting consumers from misinformation outweighed the usefulness of the information. Id.

For further discussion of the commercial speech doctrine, see infra notes 127-41 and accompanying text.


First amendment protection of commercial speech guaranteed judicial approval of truthful advertising information concerning lawful activities. See Va. State Bd., 425 U.S. at 773. See infra notes 129-57 and accompanying text for a discussion of a lawyer's advertising rights in the wake of Bates.

Most United States lawyers still refuse to advertise their professional services. The lawyers who choose to advertise, however, do so with imagination and enthusiasm. For example, Ken Hur, a trial lawyer practicing in Madison, Wisconsin, deems himself the "Advertising-
This Note examines solicitors' advertising rights. It defines the present parameters of those rights by looking to English legal tradition. It further offers a comparison of the English and United States legal advertising rules. The first section of the Note traces the formation of traditional attitudes disapproving legal advertising. The second section analyzes the solicitors' right to advertise as it has evolved from English legal traditions and compares it with United States attorneys' constitutional right to advertise.

Ken Hur's advertisements are aberrational. The great majority of advertising lawyers use only a basic "tombstone" advertisement in the classified section of newspapers. Id. at 12. Plain "tombstone" advertisements attract little criticism, unlike creatively flamboyant ones similar to those of Ken Hur. Examples of controversial ones included: a score-card advertisement run by a California attorney listing, by name, murder cases he has tried, their disposition, and his standard fee of $7,500.00 for such cases; the advertisement on the front page of the New York Times by F. Lee Bailey and his partner Aaron Broder noting their preference for wrongful death and personal injury cases arising from aircraft disasters; a photograph of the Statue of Liberty with the slogan "Yearning to Breathe Free" printed over it presented by a Seattle, Washington, immigration lawyer; a picture of a locked brief-case with a law firm's name emblazoned on it and a statement that the firm practices "aggressive marital law;" and, finally, a picture of a taxi meter with the slogan "few things are as frustrating as retaining an attorney, because the minute you walk into their office, the meter starts to run" and a statement of this particular law firm's fixed fee rates. Id. at 12.

Bar associations also occasionally exercise a little creativity in legal advertising. The Ohio State Bar Association engineered a television and print advertising campaign featuring the limerick:

A careless roadrunner named Fred
Slipped under a light that was red,
He thought he'd go free
With a 'No Contest' plea
But now he's a jailbird instead.

and the motto, "[w]hat you don't know about the law could cost you." Id. at 21. The Waterbury, Connecticut, Bar Association took a different approach and warned television viewers not to visit a lawyer just because they saw his advertisement during "All in the Family," explaining that "buying legal services is not like buying a roll of bathroom tissue. Because with legal services, if there is to be a squeeze, it comes after the purchase." Id. at 21-22. See generally Bergiel & Darling, Advertising of Legal Services and Fees: Comparative Issues and Perspectives, 45 Tex. B.J. 1228 (1982) (survey of United States attorneys' attitudes towards legal advertising); Law Poll, 69 A.B.A. J. 892 (1983) (study results showing increased incidence of legal advertising since 1978); Middleton, The Right Way to Advertise on TV, 69 A.B.A. J. 893 (1983) (examples of attorney advertisements).
II. FORMATION OF TRADITIONAL ATTITUDES DISAPPROVING LEGAL ADVERTISEMENTS

A. Early Attitudes Condemning Advertising

1. England

Greek and Roman legal tradition influenced early English legal history. Introduction of judicial procedures in the late twelfth century complicated the prior English court system and a need arose for representation by trained advocates. Clerics, the only educated men, formed the ranks of the first legal advocates. The Church, in 1207, however, forbid clergymen from any further involvement in legal disputes. As a result of the Church's pro-

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20 Administration of justice in early Greece and Rome involved only the two antagonists and an impartial arbitrator or judge. A strong feeling prevailed that only those necessary to the dispute properly belonged before the court. Anyone else who desired to be present presumably could only mean mischief.

Courts allowed an exception to this rule for relatives or kinsmen. Chivalry demanded kinsmen attend the trial of a relative to show loyalty and family support. The court tolerated the presence of relatives but refused to allow their active participation; they played a purely supportive role. Radin, Maintenance by Champerty, 24 Calif. L. Rev. 48 (1935).

The “Sophist” movement developed in fifth century Greece as a societal response to the kinsmen exception to the rule barring all but the two antagonists from courtrooms. Sophists, schooled in persuasive writing and argumentation, offered prepared written and oral arguments for legal antagonists and received payment for their efforts. Sophists presented an unorthodox philosophy of life and, although respected for their skillful writing and speaking abilities, earned the disdain of contemporary Greek society for their willingness to accept payment for preparation of legal arguments. Id. at 49; see also Webster's, supra note 1, at 2174 for the definition of “Sophist.”

Courts in ancient Greece and Rome occasionally allowed litigants without relatives the support of a personal friend. Around the sixth century, a practice began permitting “kindly men” to assist “poor wretches” who were without friends or relatives. Courts permitted intervention on behalf of another at trial only when one party appeared helpless or without support against a powerful or strongly supported antagonist. The judges allowed intervention because the intervenor provided a public service and received no personal gain. Radin, supra, at 49.

21 Court procedures first developed under the reign of Henry II in the twelfth century. Legal proceedings assumed a form resembling present procedures. Advocacy also became common at this time. G. Warvelle, supra note 21, at 27; L. Curzon, supra note 1, at 201.

22 See id. at 27, n.29. Few men outside the clergy received any educational training except in the military arts. Id.

23 See id. at 27. The church hierarchy deemed such activities improper for religious men.

Some historians believe the reason barristers today wear wigs stemmed from the church’s prohibition on representational advocacy by clergymen. Priests unwilling to relinquish the advocate’s role supposedly wore a “coliture, or close-fitting headdress,” the prevailing fashion for aristocratic men, to hide their tonsure. Id. at 28.
nouncement, a specially trained class of laymen emerged marking the beginning of a legal profession in England.26

The English legal profession initially developed as a public service, as in early Greece.27 First clergymen, and later specially trained laymen, entered English courtrooms only in support of litigants without kinsmen or friends. These representative advocates charged no fee nor claimed any stake in the outcome.28 Lay representatives, like their predecessors in the clergy, enjoyed an exalted position in English society as esteemed public servants. The public service tradition continued after the English legal profession separated into barristers and solicitors in 1340.29

The higher branch of the English legal profession, composed of barristers,30 assumed the advocate’s role in common law courts.31 Barristers studied and, once admitted to the bar, continued to live and dine at the Inns of Court32 in London. A barrister’s clientele consisted solely of solicitors.33 Solicitors and, prior to 1873, attor-

26 Id.
27 See supra note 20 for a discussion of the early Greek public service tradition.
29 G. Warvelle, supra note 21, at 28. See also supra note 1 and accompanying text offered in explanation of the divided English legal profession.
30 See supra note 1 for a discussion of the functionally divided English legal profession.
31 After the mid-sixteenth century, when the Inns of Court excluded attorneys from membership, the role of barristers grew in importance. L. Curzon, supra note 1, at 204-05. See generally R. Walker, supra note 1, at 210.
32 The Inns of Court, located in London, consist of a group of private unincorporated legal associations similar to dormitories or fraternity houses. Built in the early fourteenth century, the four primary Inns of Court are Inner Temple, Middle Temple, Lincoln’s Inn, and Gray’s Inn. Officers of the Inns of Court, designated “benches,” hold the exclusive privilege of conferring the rank of barrister on legal practitioners called to the bar. See generally W. Richardson, supra note 1.

One authority speculated that English legal traditions denouncing advertising originated at the Inns of Court as a natural result of the strict prohibition against competition among barristers. Agate, supra note 28, at 209. Another authority believed the advertising ban arose from the common law crimes of barratry, champerty, and maintenance and eventually turned into a rule of legal etiquette based on notions of professional dignity. Comment, In re R.M.J., 1983 Utah L. Rev. 99. See also infra note 46 discussing the early common law crimes of barratry, champerty, and maintenance.

The number of practicing barristers remained small due to the limited amount of space at the Inns of Court. Radin, supra note 20, at 68. Barristers received ample business because the Inns of Court restricted the number of these highly privileged practitioners. Competition, therefore, proved unnecessary and rarely resulted. Id.

neyes, served as Officers of the Court and attended to preparatory matters. Solicitors handled routine client matters and acted as business managers or advisors. Solicitors settled throughout England because the nature of their function in the English legal system demanded client accessibility. In contrast, barristers remained centrally located in London at the Inns of Court since their function demanded accessibility to the judicial bench.

Generally only wealthy men, often younger sons of aristocratic families, entered the early legal profession. These men, because of their wealth, did not depend upon their professional skills to earn a living. They prolonged the traditional public service orientation of the legal profession and introduced, moreover, the prevailing aristocratic disdain for "trade." The aristocracy regarded competitive practices as indistinguishable from "trade" and therefore unseemly for an honorable and dignified profession. The developing legal profession discouraged competition among advocates, deeming it unacceptable, unprofessional, and contrary to the public service goal. As a profession embodying ideals of honor

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84 R. Walker, supra note 1, at 210.
85 Id. at 211; B. Abel-Smith & R. Stevens, supra note 1, at 21.
86 The often prohibitive expense of obtaining a legal education effectively limited the field of potential practitioners to those who could afford its acquisition. H. Cohen, A History of the English Bar 500 (1929).
87 H. Drinker, supra note 1, at 17; R. Pound, The Lawyer from Antiquity to Modern Times 100 (1953).
88 English society believed only "commoners" engaged in "trade."

The profession of law today is what it always has been, a high and honorable calling, and no one invested with the prestige which it confers should be permitted to degrade it to the level of a mercenary trade. The huckster, or even the 'hustler,' has mistaken his vocation when he elects advocacy. His talents will show to much better advantage in some other line where his commercial instincts will not be shackled by ancient conventionalities.

G. Warvelle, supra note 21, at 51-52. Advertising, moreover, leads to degradation of law from a "learned and liberal profession" to a "mean, sordid, and grasping trade." Id. at 59.

The legal profession traditionally distinguished itself from trade on the basis of four primary characteristics. First, advocates owe a duty of public service, with compensation a by-product, and they may attain eminence without material prosperity. Second, as "Officers of the Court," practitioners administer justice with sincerity, integrity, and reliability. Third, legal practitioners act as fiduciaries in relations with clients. Finally, advocates treat their colleagues with candor and fairness and refrain from common business methods such as advertising, competition, or direct solicitation of clients. H. Drinker, supra note 1, at 5.

See H. Drinker, supra note 1, at 5. The public service tradition originated with the legal advocate's purely supportive role. The legal profession nurtured this perception in order to preserve dignity and maintain a safe distance from "ordinary business" or "trade." Id.

See id. A barrister's legal education required him to live and dine at the Inns of Court. Living in such close quarters fostered a sense of brotherhood and further discouraged com-
and dignity and cherishing public esteem, being "called to the law" necessitated stringently high standards of conduct.

The solicitor's primary duty to the legal profession obliged him zealously to uphold and maintain professional honor and dignity. This duty demanded that he refrain from actions which would "shame his conscience or bring discredit to his profession." The profession also required that solicitors treat one another with courtesy in furtherance of their primary duty. The legal profession's public service tradition maintained that "advertising, publicity, [or other] artifice" engendered competition among practitioners, thus violating the requirement of courteous treatment and infringing upon the honor and dignity of the profession as a whole. The honor and dignity of the legal profession rested upon these unwritten but commonly understood standards.

Barristers maintained the unwritten code of conduct by virtue of their centralized situation in London at the Inns of Court. The controlling members in the hierarchy of barristers, denoted

petition. Id. See also supra note 32 for a discussion of barristers and the Inns of Court.

*41* Englishmen believed a man "called to the law" followed a higher moral code and experienced feelings similar to those associated with a religious calling. One called to the law exhibited a morally upright character, superior intelligence, and gifted imagination. H. DRINKER, supra note 1, at 5.

Roscoe Pound described the legal profession as "a group of men pursuing a learned art as a common calling in the spirit of public service." R. POUND, supra note 37, at 5.

*45* H. DRINKER, supra note 1, at 6. Advertising, indicative of "trade," fell short of the high standard demanded of legal professionals. The legal profession considered advertising inappropriate and demeaning. Professional standards required that lawyers refrain from any action that could discredit the profession. Id. See also supra note 38 and accompanying text discussing prevailing attitudes about "trade."

*48* H. DRINKER, supra note 1, at 6.

*49* Id. In addition to the lawyer's primary duty, the profession insisted upon loyalty and strict adherence to tradition. Id. at 7. The advocate remained, moreover, accountable to the Court, to the profession as a whole, and to professional traditions. Id. at 6.

*50* See id. The profession exhorted practitioners to respect the opinions of their peers. Id.

*53* English law specifically forbid barratry, champerty, and maintenance practices tending to encourage competition. These unacceptable practices stimulated lawsuits and resulted from improper motivations, such as the desire to make money from lawsuits.

The Statute of Conspirators in 1305 prohibited acts of maintenance. Radin, supra note 20, at 63. Maintenance occurred by "an officious or unlawful intermeddling" in an action between others by providing money or other services. WEBSTER'S, supra note 1, at 1362.

The Statute of Westminster I in 1275 first mentioned champerty as an offense. Radin, supra note 20, at 62. Champerty consisted of maintenance, plus an agreement to share the proceeds upon resolution of the dispute. WEBSTER'S, supra note 1, at 372.

Barratry became a formal, statutory offense in the sixteenth century. Radin, supra note 20, at 64. Barratry involved exciting, encouraging, or maintaining quarrels. WEBSTER'S, supra note 1, at 178.

*57* H. DRINKER, supra note 1, at 6.
“benches,” enforced the strict professional rules of behavior. Solicitors, scattered throughout England, initially experienced enforcement problems due to the absence of central professional control. A number of London solicitors and attorneys joined together in 1739 to remedy this defect and formed the Society of Gentleman Practisers in the Courts of Law and Equity in an attempt to legitimize and guide the lower branch of the emerging profession. The Society established goals of professional honor and dignity but remained solely a London organization. A national Law Institution developed in 1825 and, over a period of years, eclipsed the London Society of Gentleman Practisers. The Law Institution initiated formal disciplinary procedures for solicitors who violated professional standards. A Supplemental Charter, introduced in 1903, changed the organization’s name for the final time to The Law Society.

The basic constitutional document of The Law Society, the 1845 Charter, defined the organization’s purpose as “promoting professional improvement and facilitating the acquisition of legal knowledge.” To further the stated purpose, rules governing the conduct of solicitors were advanced in a series of supplemental acts enacted.

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48 R. WALKER, supra note 1, at 210. The present-day Law Society developed from the Society of Gentleman Practisers. Id.

Solicitors also gradually obtained a monopoly over land transactions. The monopoly over land transactions boosted solicitors' respectability since land represented the only respected form of wealth in England until late in the nineteenth century. H. KIRK, supra note 1, at 14. Land ownership necessitated the services of a solicitor; landowners required solicitors' services for acquisitions, transfers, sales, bequests, or any other disposition of real property. B. ABEL-SMITH & R. STEVENS, supra note 1, at 14. The perceived connection between solicitors and land enhanced enormously solicitors' position in English society. See H. KIRK, supra note 1, at 16.

49 H. KIRK, supra note 1, at 23. The founding members sought to enunciate and improve professional standards. The founders also perceived a need on the part of the general public and individual solicitors for such a body to represent the entire profession. Id.

50 Id. at 28. The Law Institution formally incorporated in 1831 by Royal Charter. Id. at 33. The Royal Charter also changed the designated appellation of the Law Institution to the Society of Attorneys, Solicitors, Proctors and Others Not Being Barristers Practising in the Courts of Law and Equity in the United Kingdom. This cumbersome but descriptive title remained in force until 1903. Id.

51 Id. at 29. Professional standards, uncodified at this time, consisted of traditional mores of professional behavior. See generally E. CHRISTIAN, A SHORT HISTORY OF SOLICITORS 111 (1896).

52 H. KIRK, supra note 1, at 33.

53 The 1845 Charter replaced the Law Institution's original Royal Charter of 1831. Id. at 36.

54 R. WALKER, supra note 1, at 211.
after and annexed to the 1845 Charter. The Solicitors Act of 1974 consolidated all previous legislation and enumerated specific practice rules.

The Law Society exerted significant control over solicitors by virtue of the practice rules. The Law Society pursued four important functions, as initially identified in the 1845 Charter, consisting of education, regulation, discipline, and representation of the profession. Solicitor education occurred through information provided by the Society on relevant changes in the law, and through lectures, refresher courses, and annual legal seminars. The Law Society regulated solicitors by virtue of legislative enactment. Powers of investigation and, if necessary, instigation of proceedings for violations of professional standards served to meet the disciplinary function. Finally, The Law Society represented the legal profession in the public sector and sought to promote and maintain good public relations.

English legal professionals, as respected public servants, enjoyed a position of considerable esteem in the rigid English class structure. The English legal profession, seeking to maintain public esteem and profession dignity, demanded high standards of conduct from solicitors. The advertising ban arose in England as a result of traditional aristocratic attitudes condemning advertising as indicative of "trade." The legal profession endeavored to uphold strict

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56 H. Kirk, supra note 1, at 36.
57 R. Walker, supra note 1, at 211.
58 Solicitors voluntarily join The Law Society although The Society's power statutorily extends over all solicitors. Id. At present, over 85% of all practicing solicitors belong to The Law Society. Id.
59 See id. at 212.
60 The Law Society communicates with its members through the GAZETTE, a weekly publication containing news items, comments on recent legal and professional developments, and reports from local Law Societies and specialty groups. ORGANIZATION AND MANAGEMENT OF A SOLICITOR'S PRACTICE 12/8 (P. Purton, D. Andrews & L. Brindley eds. 1984) [hereinafter cited as SOLICITOR'S PRACTICE].
61 R. Walker, supra note 1, at 212.
62 Section 31 of the Solicitor's Act, 1974 empowered The Law Society Council to make rules regulating professional practice, conduct, and discipline. Id.
63 The Law Society, solicitors, or members of the public may institute disciplinary proceedings. The Solicitors' Disciplinary Tribunal, a statutorily independent body, handles disciplinary actions. Id.
64 If a solicitor fails to observe the proper standards, The Law Society has power to investigate and if necessary take action; for example, his practising certificate can be restricted or refused, which is a disciplinary matter, or his books of account can be inspected, which is an administrative procedure." SOLICITOR'S PRACTICE, supra note 59, at 12.3.8.
65 See R. Walker, supra note 1, at 212.
standards of conduct so as not to offend traditional notions of professional dignity.

2. United States

When the English settled the American colonies, they transplanted formal English legal institutions, procedures, and traditions. The distinctive functional bifurcation of the legal profession survived, however, in only a few colonies, and the American legal profession merged into a single category known as attorneys or lawyers. English legal attitudes also travelled to America, including the traditional ban on attorney advertising.

Prior to the American Revolution, colonial young men interested in law obtained their legal education at the Inns of Court in London. A legal education at the Inns of Court involved constant contact with English barristers and solicitors, formal legal procedures, and long-standing professional traditions, including the prohibition on legal advertisements. The close living and study arrangements at the Inns of Court instilled traditional English legal values in the young colonial men. On their return, these young men became leaders in the emerging American bar where they perpetuated the ethical standards and legal traditions imposed upon English legal practitioners.

After the American Revolution, a spirit of “independence” per-

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64 See 1 A. Chroust, THE RISE OF THE LEGAL PROFESSION IN AMERICA 6 (1965) [hereinafter cited as 1 A. Chroust].
65 The division disappeared in even these few aberrational colonies by the end of the Revolution. See id. at xvii for the colonies that abolished and those that attempted to maintain the division.
66 Each colony existed as a distinctly separate entity with its own government, body of laws, and judiciary. Id. at 4. Thus the United States, unlike England, developed a decentralized judiciary system. The colonies failed to sustain the professional dichotomy due to the decentralized legal system, sparse number of practitioners, and correspondingly small amount of legal business during the early colonial period. Id. at xvii-xviii. The English maintained the professional split because the bar remained centrally located at the Inns of Court in London.
67 H. Drinker, supra note 1, at 19.
68 Id.; 1 A. Chroust, supra note 64, at 36. As a result of the high standards, the legal profession enjoyed a respected position in early colonial society. Alexis de Toqueville observed, after his well-known tour of America, that American lawyers “form the highest political class and the most cultivated circle of society. If I were asked where I place the American aristocracy, I should reply without hesitation . . . that it occupies the judicial bench and bar.” A. de Toqueville, THE REPUBLIC OF THE UNITED STATES OF AMERICA AND ITS POLITICAL INSTITUTIONS, REVIEWED AND EXAMINED 304 (1851).
69 The American Revolution ended on October 19, 1781, when the British signed the Articles of Capitulation at Yorktown. 21 J. OF CONTINENTAL CONG. 1071 (1912).
meated the American bar and prompted a drive toward disassociation from English legal formalities. Colonists, moreover, perceived lawyers as an unnecessary English formality and attempted, for a time, to administer justice without their aid. Public hostility toward an established legal profession grew during the period of Jacksonian democracy and several states passed laws recognizing the "natural right" of every "morally upstanding" person to practice law. These laws discouraged the acquisition of traditional legal values. The organized prejudice against professionally trained legal practitioners led to the emergence of a corrupt and often incompetent group of men offering their services as attorneys.

While the quality of the American legal practitioner declined, the quality of the judiciary improved. Independent state courts operated on a regular basis and followed rigid procedural rules. A strong court system, to administer justice effectively, depended upon an educated and disciplined bar. The degeneration in the standard of legal practitioners and the corresponding resurgence of the judiciary prompted a movement in the late nineteenth century to reestablish professional education, training, and character requirements. State bar associations, organized by attorneys, led

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70 See H. Drinker, supra note 1, at 19; 2 A. Chroust, The Rise of the Legal Profession in America 5 (1965) [hereinafter cited as 2 A. Chroust]. A side effect of the Revolution, unfortunately, developed as an unreasonable dislike of all things British, including the English method of administering justice. Id. at 5.

71 Popular colonial opinion viewed the legal profession as an institutional embodiment of the English class system. H. Drinker, supra note 1, at 19.

72 Massachusetts and Pennsylvania, in particular, sought to eradicate the entire legal profession. 2 A. Chroust, supra note 70, at 28-29.

73 Id. at 331. Jacksonian principles focused on individualism and egalitarianism. Jacksonians opposed formation of an elite, privileged legal profession as contrary to true democratic principles. Agate, supra note 28, at 210.

74 Indiana (1850); Michigan (1850); New Hampshire (1842); Maine (1843); Wisconsin (1849). H. Drinker, supra note 1, at 19. Other states insisted upon only minimal educational requirements before allowing qualification as a lawyer. Id.

75 2 A. Chroust, supra note 70, at 331.

76 Id. Deterioration of the entire legal system resulted from the relaxed standards. Corruption ran rampant throughout the legal profession after the Civil War. Agate, supra note 28, at 210.

77 2 A. Chroust, supra note 70, at 286.

78 H. Drinker, supra note 1, at 20. A number of formally trained attorneys gathered together in 1878 and formed the American Bar Association (ABA). The ABA failed to assert any real influence on the profession, however, until the twentieth century. Agate, supra note 28, at 210.

79 2 A. Chroust, supra note 70, at 286. Local "bar meetings," involving all practicing lawyers within a given area, first became common in the mid-1700's. The bar meetings dis-
the movement to revitalize professional standards.80

The state bar associations recognized that protection of the public necessitated careful examination and evaluation of lawyers. Each state responded by initiating education, training, and character examinations to assess the worthiness of candidates aspiring to the legal profession.81 To maintain standards of professional quality, the bar associations initiated written regulations governing the conduct of lawyers.82

B. **Introduction of a Formal Ban on Legal Advertisements**

The advertising prohibition remained merely an unwritten professional tradition83 in England until codification of the Solicitor's Practice Rules in 1936.84 The Law Society introduced the Practice
Rules to curb abuses occurring within the profession and to provide solicitors with specific guidelines for conducting legal business. The rules purportedly enhanced public esteem for the legal profession. Rule 1 addressed the issue of solicitor advertising and imposed a comprehensive ban.

Rule 1 prohibited three types of behavior: touting, advertising, and unfairly attracting business. Touting involved oral or written promotion by a solicitor, a member of his staff, or someone acting on his behalf. Advertising encompassed a much wider range of actions. Actual interpretation and enforcement of the advertising prohibition, however, contemplated a less restrictive standard than indicated by the rule's precise wording. The rule, as applied, disallowed most personal announcements in the nonle-

and competency" would reasonably regard the conduct as "disgraceful and dishonourable." In re a Solicitor [1912] 1 K.B. at 312. Judge Hamilton wrote "[i]t is obvious that the conduct of a solicitor in his profession must be judged by the rules of his profession and by the standard which its members set up not only for their brethren, but for themselves." Id. at 314.

85 Rules, supra note 2, at 266.
86 Id.
87 See Official Papers, supra note 5, at 200 for the text of rule 1 (1936) (version).
88 The Law Society deemed rule 1 a "general prohibition" with "wide terms." The Law Society noted that rule 1 did not bar insertion by a solicitor of his name, address, and description of practice in a legal directory. Rules, supra note 2, at 266.
89 See supra note 5 for the text of rule 1 (1936 version).
90 See supra note 6 for the definition of "touting."
91 See supra note 7 for the definition of "advertising."
92 "Unfairly attracting business" pertained to relations between solicitors. The legal profession, as a public service, traditionally focused attention on maintaining its aggregate professional reputation and discouraged competition among individual solicitors. Any action by an individual solicitor which gave him an advantage over other solicitors, the profession deemed "unfair." Solicitor's Guide, supra note 2, at 67. See also T. LUND, A GUIDE TO THE PROFESSIONAL CONDUCT AND ETIQUETTE OF SOLICITORS 7 (1960).
93 Unfair attraction of business occurred, according to Lund, when a solicitor indicated his availability and willingness to accept client instructions on a legal matter on a paying basis. A presumption of unfair attraction of business arose due to circumstances indicating the solicitor's preferred position. T. LUND, supra, at 22.
94 Lund, commonly recognized as the authority on the subject, elaborated on permissible and objectionable conduct under the rules until The Law Society issued its GUIDE TO PROFESSIONAL CONDUCT OF SOLICITORS in 1974. See SOLICITOR'S PRACTICE, supra note 59, at 12/8. See also infra note 98 for the text of rule 1 (1974 version).
95 T. LUND, supra note 91, at 7.
96 Lund indicated that an exact line of demarcation between acceptable and objectionable advertising conduct appeared impossible under the rule as presently worded and applied. T. LUND, supra note 91, at 8.
97 Id. For example, nameplates and window lettering at the solicitor's place of business, solicitor's listings in legal directories, and advertising brochures in solicitor's offices qualified as acceptable advertising formats, subject to certain restrictions. Id. at 9-13.
gal press but allowed publication of similar information in legal periodicals or directories.95 Rule 1 also prohibited identification of a solicitor in his professional capacity on radio or television.96 The third category, unfairly attracting business, acted as a general prohibition and incorporated the first two categories within its broad sweep.97 The Law Society amended the Solicitor's Practice Rules in 1974, but rule 1 remained substantially the same.98

America adopted the English attitude denouncing legal advertising, along with other English legal traditions, during the early colonization period.99 Early American lawyers, trained at the Inns of Court, formalized the advertising ban in certain colonies.100 Judge

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95 Id. at 16. Only bare announcements containing information such as change of address, telephone number, office hours, retirement of a partner, or dissolution of a partnership proved acceptable for nonlegal periodicals. Id. at 15-16.

96 Id. at 19. The prohibition against solicitor radio or television announcements first appeared in Lund's 1960 interpretation of the Practice Rules.

The Law Society occasionally allowed solicitors to broadcast talks on legal subjects, but always required The Law Society's prior approval of content and format. The rationale behind this policy, as explained by The Law Society, was to maintain and to enhance professional reputation by exercising strict control over broadcast material. Id. at 19-20.

97 T. LUND, supra note 91, at 7.


A solicitor shall not obtain or attempt to obtain professional business by (a) directly or indirectly without reasonable justification invite instructions for such business, or (b) doing or permitting to be done without reasonable justification anything which by its manner, frequency, or otherwise advertises his practice as a solicitor, or (c) doing or permitting to be done anything which may reasonably be regarded as touting.

Id. at 157. See also supra note 5 for the wording of rule 1 prior to 1974.

The 1974 Act also established the Professional Purposes Committee as the body responsible for overseeing standards of professional conduct. The Act advised solicitors to contact the Committee with any questions regarding advertising. SOLICITOR'S PRACTICE, supra note 59, at 12/12.

Rule 1, as amended, continued the prohibition on newspaper, radio, or television advertisements by individual solicitors and imposed numerous restraints on permissible quasi-advertising formats such as nameplates, window lettering, signs inside solicitor's offices, telephone directories, and law lists. SOLICITOR'S GUIDE, supra note 2, at 93-107. The amended rule relaxed the prior absolute prohibition on advertising and allowed corporate legal advertisements. Id. at 101.

99 See supra notes 64-68 and accompanying text for a discussion of the colonization period and resultant establishment of English legal traditions.

100 The young American men studying law at the Inns of Court came from Boston, New York, Philadelphia, and throughout the South. H. DRINKER, supra note 1, at 210. At the Inns of Court, these young men learned the traditional English aversion to anything approaching advertising. See generally T. LEAMING, A PHILADELPHIA LAWYER IN THE LONDON COURTS 71 (2d ed. 1912).

Lawyers in Suffolk County (now in the Boston, Massachusetts, area) agreed in 1784 to ban solicitation of clients to prevent "ambulance chasing." 2 A. CHROUST, supra note 70, at 135. Advertising divorce services met with hostility throughout the colonies as encouraging
George Sharswood,\textsuperscript{101} in his lectures on the legal profession in the late 1800's,\textsuperscript{102} advocated regulation but not complete prohibition of attorney advertisements.\textsuperscript{103} The first Code of Legal Ethics, prompted by Judge Sharswood's lectures and introduced in 1887 by the Alabama State Bar Association, only denied direct, in-person solicitation of legal business.\textsuperscript{104} The 1908 American Bar Association (ABA) Canons of Professional Ethics,\textsuperscript{105} modeled after the Alabama Code, barred attorney advertising in general terms and instead expressly encouraged word-of-mouth advertising of professional reputation.\textsuperscript{106}

the dissolution of marriages and the breakdown of the family. Divorce service advertisements violated public policies seeking to preserve the sanctity of the family. \textit{Id.}


\textsuperscript{101} George Sharswood studied law under one of the most distinguished advocates at the bar in the early 1800's. Once admitted to practice, Sharswood remained interested in philosophy and active in politics. In 1845, the Philadelphia bench appointed Sharswood, 34 years old at the time, to his first judgeship position. He served as a judge in a number and variety of courts, including Chief Justice of the Supreme Court from 1879 until his death in 1883.


\textsuperscript{103} See Attanasio, \textit{supra} note 83, at 503. Another work on legal ethics allowed business information printed in newspapers and magazines of good repute. \textit{Id. See also} G. Warvelle, \textit{Essays in Legal Ethics} 60 (1902).

The Alabama Code of Ethics provided: "[n]ewspaper advertisements . . . tendering professional services to the public, are proper; but special solicitation of particular individuals to become clients ought to be avoided." H. Drinker, \textit{supra} note 1, at 356.


\textsuperscript{105} A formal, written ban on attorney advertising did not exist until 1908. The legal profession generally frowned on attorney advertising prior to 1908 although a strict ban was not in existence. Most American lawyers pursued a general practice in small communities and conducted legal business on a personal basis with familiar neighbors, friends, and relatives. Advertisements, under these circumstances, proved unnecessary. L. Andrews, \textit{supra} note 19, at 1.

The turn of the century brought changes in society and the legal profession. Communities
The ABA amended the Canons several times\(^{107}\) and, in 1969, adopted the Code of Professional Responsibility.\(^{108}\) Canon 2\(^{109}\) of


Canon 27 of the 1908 Canons dealt with legal advertising. \textit{Recent Decision}, \textit{supra} note 82, at 682. Canon 27, unlike the 1887 Alabama Code that allowed newspaper advertising, deemed newspaper advertisements, circulars, and direct communications intolerable and in defiance of professional tradition. H. Drinker, \textit{supra} note 1, at 215; \textit{compare id.} at 356. In 1937, the ABA amended the Canons to allow advertising in law lists. \textit{Id.} at 216. Other advertising formats eventually found approval with the ABA. For example, in 1938, the ABA exempted attorney listings in legal directories and advertisements by organized bar groups from the advertising ban so long as the advertisement contained educational information and appeared dignified. \textit{Id.} at 216.

Canon 27, applicable to direct or indirect lawyer advertising, stated:

It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.

Publication in reputable law lists in a manner consistent with the standards of conduct imposed by these canons of brief biographical and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended; with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorships; legal teaching positions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; foreign language ability; the fact of listings in other reputable law lists; the names and addresses of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance with the Rules and Standards issued by the Standing Committee of Law Lists may be treated as evidence that such list is reputable.

It is not improper for a lawyer who is admitted to practice as a proctor in admiralty to use that designation on his letterhead or shingle or for a lawyer who has complied with the statutory requirements of admission to practice before the patent office, to so use the designation "patent attorney" or "patent lawyer" or "trademark attorney" or "trademark lawyer" or any combination of those terms.

\textbf{Canons of Professional Ethics} at 346 (1908) \textit{[hereinafter cited as Canons]}.

\(^{107}\)The ABA amended Canon 27 in 1937, 1940, 1942, 1943, and 1951; Canon 43, in 1928, 1933, 1937, and 1943; Canon 46 in 1933; and Canon 40 in 1928. H. Drinker, \textit{supra} note 1, at 215-18.

\(^{108}\) \textit{See} \textit{Recent Decision}, \textit{supra} note 82, at 682. Canon 2 and the accompanying Ethical
the 1969 Code addressed the advertising issue. It imposed a blanket prohibition on individual advertising, solicitation, champerty, barratry, and maintenance, while it supported general promotional advertisements by the organized bar. Until recent Supreme Court decisions rendered such prohibitions unconstitutional, the Code perpetuated the traditional advertising ban. The ABA identified four reasons for prolonging the prohibition: fear of fraudulent client relations, increase in unnecessary litigation, potential damage to professional honor and dignity, and an apprehension that advertisements rather than legal ability would guide members of the public in their representational decisions.

III. COMPARISON OF SOLICITOR AND LAWYER ADVERTISING RIGHTS

A. Evolution of the Right to Advertise

1. United States

The relaxation of the advertising ban in the United States
started in the middle of the twentieth century. \(^\text{122}\) Rapid population growth, industrialization of the economy, and large-scale modernization of society led to increased legal complexity which, in turn, demanded increased specialization of legal services. \(^\text{123}\) Economic and societal growth and complexity produced consumer need for adequate and reliable information about legal problems and services. \(^\text{124}\) During the 1950's, in response to this perceived need, national legal service organizations formed to provide inexpensive and routine legal services. \(^\text{125}\) The bar associations reacted predictably and refused to allow the spread of information about these services through advertisements. This refusal diluted the usefulness of the national legal service organizations.

The Supreme Court, when presented with the bar associations' rigid prohibition on attorney advertising, struck down a blanket ban on legal advertisements. \(^\text{126}\) The Court extended the commercial speech doctrine, \(^\text{127}\) announced in Virginia State Board of Pharmacy v. Virginia Citizens Council, Inc. (Virginia State Board), \(^\text{128}\) to cover legal advertising in Bates v. Arizona. \(^\text{129}\) The commercial speech doctrine covers advertisements offering products or services for profit or other business purposes. Such com-

\(^{122}\) Attanasio, supra note 83, at 503. Each amendment to the advertising prohibitions listed in the 1908 Canons introduced a new exception to the advertising rules. See also supra note 107 for the dates of subsequent amendments. See generally H. DRINKER, supra note 1, at 215-18 for the exceptions introduced by each amendment.

\(^{123}\) See supra note 106 and accompanying text. See generally Circus, Advertising: The Profession and the Public Interest, 133 New L.J. 1119, 1120 (1983).

\(^{124}\) See Francis & Johnston, supra note 103, at 229. The complexities of modernization prompted an ABA study to analyze the public's level of knowledge about lawyers, the law, and the legal process. The study, reported in The Legal Needs of the Public: The Final Report of a National Survey, determined that the public lacked awareness of when they needed legal services, how to find lawyers to provide these services, and what lawyers' services cost. L. ANDREWS, supra note 19, at 1.

\(^{125}\) Francis & Johnston, supra note 103, at 229.

\(^{126}\) Bates, 433 U.S. at 383.

\(^{127}\) See supra notes 11-17 and accompanying text for a cursory introduction to and survey of the commercial speech doctrine.

\(^{128}\) 425 U.S. 748 (1976). The Supreme Court labeled pharmaceutical product advertising as commercial speech deserving first amendment protection under the Constitution. Commercial speech, however, required less than the absolute protection afforded political speech. Instead, commercial speech warranted only limited protection. The decision approved advertising regulations prohibiting untruthful commercial speech. The Court also approved reasonable frequency, placement, and manner restrictions on advertising if they furthered an identified and significant governmental interest. Id. at 759-71.

commercial speech receives limited first amendment free speech protection under the Constitution.\textsuperscript{130} Free speech protection precludes absolute restraints on commercial speech. State regulation of commercial speech, however, remains viable provided valid governmental interests exist to justify the regulations.\textsuperscript{131}

The Supreme Court, in \textit{Virginia State Board}, advanced three reasons for its holding. First, price advertising aided consumer decision-making.\textsuperscript{132} Second, assisting consumer decision-making facilitated allocation of resources in a free market economy.\textsuperscript{133} Third, advertisements conveying information useful for public decision-making increased free market system efficiency and decreased the need for regulation.\textsuperscript{134} These same three economic arguments formed the basis for the Court's holding in \textit{Bates}.\textsuperscript{135}

The \textit{Bates} Court held that the consumer's need for useful market information outweighed the bar's interest in suppressing legal advertisements.\textsuperscript{136} Traditional arguments supporting an advertising ban were specifically rejected. Advertising, they found, did not erode professional honor and dignity.\textsuperscript{137} Arguments failed to persuade the Court that legal advertisements inherently misled consumers\textsuperscript{138} or increased litigation.\textsuperscript{139} The Court refused to view legal advertisements as an additional financial burden forced upon consumers or as an impediment to new attorneys.\textsuperscript{140} The Court also denied that advertising created unreasonable disciplinary or enforcement problems for the bar.\textsuperscript{141}

The \textit{Bates} decision sanctioned attorney advertising, but failed to enunciate clear guidelines for acceptable state regulation of legal advertisements. States revised their rules in accordance with the decision and permitted varying degrees of legal advertising. The newly enacted state rules covered all aspects of advertising, from

\textsuperscript{130} Commercial speech advertises products or services for profit or other business purposes. Bates, 433 U.S. at 364.
\textsuperscript{131} \textit{Id.} at 383.
\textsuperscript{132} \textit{Va. State Bd.}, 425 U.S. at 763.
\textsuperscript{133} \textit{Id.} at 765.
\textsuperscript{134} \textit{Id.}
\textsuperscript{135} \textit{See generally Bates, 433 U.S. at 368-75.}
\textsuperscript{136} \textit{Id.} at 368.
\textsuperscript{137} \textit{Id.} at 368-69.
\textsuperscript{138} \textit{Id.} at 372-73.
\textsuperscript{139} \textit{Id.} at 375-77.
\textsuperscript{140} The Court determined that advertisements potentially lowered legal costs and helped steer consumers to new lawyers. \textit{Id.} at 377-78.
\textsuperscript{141} \textit{Id.} at 379.
content and format restrictions to limitations as to appropriate media.\textsuperscript{142} State regulations generally followed one of two alternative advertising regulation schemes proposed by the ABA after Bates.\textsuperscript{143} The first method consisted of a restrictive "laundry list" of permissible advertisement information.\textsuperscript{144} The second, more


\textsuperscript{143} Report 177B to the Board of Governors, reprinted in L. Andrews, supra note 19, at 91-133. "Proposal A" regulated advertising and authorized certain specific forms of advertising. In contrast, "Proposal B" directed lawyers and allowed publication of virtually any information except that which was false or misleading. \textit{Id.} at 92-93. See also \textit{infra} note 144 for the text of \textit{Model Code DR 2-101}.


DR 2-101:

\begin{itemize}
\item[(A)] A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim.
\item[(B)] In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish or broadcast, subject to DR 2-103 [dealing with solicitation], the following information in print media distributed or over television or radio broadcast in the geographic area or areas in which the lawyer resides or maintains offices or in which a significant part of the lawyer's clientele resides, provided that the information disclosed by the lawyer in such publication or broadcast complies with DR 2-101(A) and is presented in a dignified manner:
\begin{itemize}
\item[(1)] Name, including name of law firm and names of professional associates, addresses and telephone numbers;
\item[(2)] One or more fields of law in which the lawyer or law firm practices, a statement that practice is limited to one or more fields of law, or a statement that the lawyer or law firm specializes in a particular field of law practice, to the extent authorized under DR 2-105 ["Limitation of Practice"];
\item[(3)] Date and place of birth;
\item[(4)] Date and place of admission to the bar of state and federal courts;
\item[(5)] Schools attended, with dates of graduation, degrees and other scholastic distinctions;
\item[(6)] Public or quasi-public offices;
\item[(7)] Military service;
\item[(8)] Legal authorships;
\item[(9)] Legal teaching positions;
\item[(10)] Memberships, offices, and committee assignments in bar associations;
\item[(11)] Membership and offices in legal fraternities and legal societies;
\item[(12)] Technical and professional licenses;
\item[(13)] Memberships in scientific, technical and professional associations and societies;
\item[(14)] Foreign language ability;
\item[(15)] Names and addresses of bank references;
\item[(16)] With their written consent, names of clients regularly represented;
\item[(17)] Whether credit cards or other credit arrangements are accepted;
\item[(18)] Whether credit cards or other credit arrangements are accepted;
\item[(19)] Office and telephone answering service hours;
\item[(20)] Fee for an initial consultation;
\item[(21)] Availability upon request of a written schedule of fees and/or an estimate of the fee to be charged for specific services;
\item[(22)] Contingent fee rates subject to DR 2-106(C) [No contingent fees in criminal cases], provided that the statement discloses whether percentages are computed before or after deduction of costs;
\item[(23)] Range of fees for services, provided that the statement discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged, in print size equivalent to the largest print used in setting forth the fee information;
\end{itemize}
\end{itemize}
flexible, method specified only prohibited types of attorney advertising.\textsuperscript{146}

The Supreme Court again considered attorney advertising in \textit{In re R.M.J.}\textsuperscript{146} After \textit{In re R.M.J.}, absent specific findings that listed items misled consumers, a “laundry list” approach violated the constitutional guarantee of free commercial speech.\textsuperscript{147} The \textit{In re R.M.J.} Court divided advertising into three categories deserving different degrees of protection. First, truthful advertising deserved full first amendment protection.\textsuperscript{148} Second, inherently misleading commercial speech deserved no protection at all and could be completely suppressed.\textsuperscript{149} Finally, potentially misleading speech could not be completely suppressed, but remained subject only to reasonable state regulation.\textsuperscript{150} The Court also indicated the appropriate standard for state regulation of legal advertising.\textsuperscript{151} Appropriate state regulations directly advanced an asserted and substantial

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Hourly rates, provided that the statement discloses that the total fee charged will depend upon the number of hours which must be devoted to the particular matter to be handled for each client and the client is entitled to without obligation an estimate of the fee likely to be charged, in print size at least equivalent to the largest print used in setting forth the fee information.

\textit{Model Code, supra} note 108, at 15-17.

\textsuperscript{146} L. ANDREWS, supra note 19, at 123-25.

\textsuperscript{147} 455 U.S. 191 (1982).

\textsuperscript{148} Id. at 207.

\textsuperscript{149} “Truthful advertising related to lawful activities is entitled to the protections of the first amendment.” \textit{In re R.M.J.}, 455 U.S. 203. See also Comment, \textit{supra} note 32, at 108.

\textsuperscript{149} “[W]hen the particular content or method of the advertising suggests that it is inherently misleading or when experience has proved that in fact such advertising is subject to abuse, the states may impose appropriate restrictions. Misleading advertising may be prohibited entirely.” \textit{In re R.M.J.}, 455 U.S. at 203.

\textsuperscript{150} “[T]he states may not place an absolute prohibition on . . . potentially misleading information . . . if the information also may be presented in a way that is not deceptive.” \textit{Id.} at 203. See also Comment, \textit{Lawyer Advertising: Permissibility of Indicating the Nature of Legal Practice in Advertisements}, 17 U. RICH. L. REV. 171, 172 (1982).

\textsuperscript{151} The test advanced in \textit{In re R.M.J.} first appeared in the commercial speech context in \textit{Central Hudson Gas & Elec. Corp. v. Public Serv. Comm’n. of N.Y.}, 447 U.S. 557, 566 (1980): In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the first amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

\textit{Id.} See also \textit{In re R.M.J.}, 455 U.S. at 203, n.15. See generally Casenote, \textit{supra} note 106, at 459.
governmental interest. The *In re R.M.J.* decision thus reaffirmed and extended the attorney's right to advertise as initially expressed in *Bates*.

The *In re R.M.J.* decision prompted a revision of the ABA legal advertising regulations. Rules 7.1 and 7.2 of the new Model Rules for Professional Conduct, introduced in 1983, conform to the *In re R.M.J.* holding. These rules permit a wider range of advertisements than previously contemplated. The new rules basically allow all legal advertisements unless false, deceptive, unlawful, or misleading.

2. England

English attitudes disfavoring attorney advertising prevailed throughout the legal profession until 1970. In that year, The Law Society's Monopolies and Mergers Commission issued an opinion favoring the removal of advertising restrictions. The opinion

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152 *In re R.M.J.*, 455 U.S. at 203.
153 The *Bates* Court merely found a blanket ban on legal advertising violated the Constitution. The *In re R.M.J.* decision struck rules allowing attorney advertising but imposing a "laundry list" of specific form and content restrictions. *In re R.M.J.*, 455 U.S. at 203. See generally Comment, *supra* note 32, at 106 for a discussion of the problematic restrictions at issue in *In re R.M.J.*

154 Rule 7.1:

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

*Model Rules, supra* note 82, at 153-54.

155 Rule 7.2:

(a) subject to the requirements of rule 7.1 [see *supra* note 154], a lawyer may advertise services through public media, such as telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or through written communication not involving solicitation as defined in rule 7.3 [see *infra* note 181];

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

*Model Rules, supra* note 82, at 154-55.

156 The Model Rules were adopted by the ABA on August 2, 1983. *Model Rules, supra* note 82, at 67.

157 See *Model Rules, supra* note 82, specifically the Comment to Rule 7.1 and Comment [2] accompanying Rule 7.2. See also *Attanasio, supra* note 83, at 510.

158 Report by the Monopolies and Mergers Commission, Cmnd. No. 4463 (1970) [hereinaf-
stated that the previous comprehensive restriction prevented efficient dissemination of information by individuals and inhibited public awareness of available legal services. The Commission noted as relevant that other professionals, such as bankers, estate agents, and accountants, who compete with solicitors for business advertise their professional services.

The Law Society hesitantly adopted some of the Commission’s proposals and initiated a profession-wide general advertising campaign on television and in the press. In 1978, a report by the Royal Commission on Legal Services strongly advocated allowing individual solicitor advertising, subject to reasonable restrictions. This report persuaded The Law Society to form an Advertising Working Party in 1979 to study and evaluate the various recommendations. The Working Party announced, in a 1983 proposal, its position favoring individual solicitor advertising. The proposal included size, format, and frequency restrictions. The Law Society Council considered the Working Party’s proposal in late 1983 and tentatively announced that the total prohibition would be lifted in 1984. Furthermore, regulations similar to those advanced by the Working Party would apply. On June 27, 1984, The Law Society Council proclaimed a solicitor’s right to advertise subject to strict media, quality, and content limitations.

\[\text{Cited as Cmnd. 4463].}\]

\[\text{Id.}\]

\[\text{Id. The Commission also issued a clarifying opinion in 1976 concluding that advertising restrictions impinged on the public interest because they stifled the flow of valuable information to consumers, frustrated competition, and detracted from public confidence in the legal profession. Circus, supra note 123, at 1119.}\]


\[\text{The Royal Commission found persuasive the argument that a solicitor who competes directly with non-solicitors such as bankers, who may advertise, should be able to compete on equal terms. See Circus, supra note 123, at 1121.}\]

\[\text{Report of the Royal Commission on Legal Services, Cmnd. No. 7648 (1978) [hereinafter cited as Cmnd. 7648].}\]

\[\text{See Merricks, Individual Advertising-At Last, 133 New L.J. 1028 (1983).}\]

\[\text{Id.}\]

\[\text{Council Statement (1984), supra note 2, at 2962.}\]

\[\text{Id.}\]

\[\text{Id. at 1802.}\]
B. Right to Advertise Regulations

Both England and the United States circumscribe legal advertising rights. The regulations governing English and United States advertisements provide a useful basis for a comparison of the right to advertise legal services in the two countries. Restrictions on legal advertising may be subdivided into three distinct categories: format rules, quality standards, and content controls.

1. Format Rules

Format rules generally consist of frequency, placement, and manner of advertisement limitations. Frequency limitations restrict the timing of advertisements. Placement limitations concern types of acceptable advertising media. Manner limitations indicate size or method of acceptable advertisements. Format rules impose external restraints in the sense that they place objective physical limitations on advertisements.

The Law Society announcement contained only a placement limitation." The Working Party initially recommended additional format rules concerning both size, a manner limitation, and timing, a frequency limitation, for acceptable legal advertisements. The Working Party suggested total advertisement size no larger than six inches square, uniform type size, and a frequency limitation of only one advertisement per week. The Council announcement, however, failed to include these specific restrictions.

The Law Society Council announced that solicitors could advertise only in certain approved media formats. The Council announcement imposed a placement limitation confining solicitors' advertisements to press, radio, and business premises, and limited direct mailings to the solicitor's professional connections. This exclusion presumably encompasses advertisements in general mailings such as an estate agent brochure or other types of client leaflets for distribution. Limiting mail advertisements to solicitor's "professional connections" effectively limits mailings to only clients or former clients.

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169 See supra note 4 for text of The Law Society Council's announcement.
170 See Merricks, supra note 164, at 1028. See supra note 164 and accompanying text concerning the Advertising Working Party recommendations.
171 See supra note 4 for the text of The Law Society Council announcement. The Law Society may have intended to incorporate these restrictions within the broad, ambiguous wording of the quality restriction. See also infra notes 186-92 and accompanying text for a full discussion of the Council announcement's quality restrictions.
172 Council Statement (1984), supra note 2, at 1802.
173 This exclusion presumably encompasses advertisements in general mailings such as an estate agent brochure or other types of client leaflets for distribution. Limiting mail advertisements to solicitor's "professional connections" effectively limits mailings to only clients or former clients.
non-traditional media formats. Unless qualified, the term “press” includes legal and nonlegal publications, local or national newspapers, as well as limited and general circulation periodicals. The Council apparently rejected the Working Party’s proposal confining solicitors’ advertisements to local weekly or evening newspapers.

The ABA Model Rules, containing the lawyer’s right to advertise in the United States, eliminates format restrictions. Rule 7.2 of the Model Rules allows lawyer advertising in all “public media.” “Public media” include traditional advertising formats such as newspapers, periodicals, television, radio, and signs and, additionally, presumably encompass non-traditional media such as videos, billboards, banners, and handbills. Furthermore, rule 7.2 allows lawyer advertising through written communications not involving solicitation, as described in rule 7.3. Rules 7.2 and 7.3, read in conjunction, anticipate and approve not only direct mailings to clients or former clients, but also random general mailings to members of the public. The solicitation ban contained in rule 7.3 precludes only targeted written communications. Rule 7.2 be-

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174 Other forms of “non-traditional” media include billboards or other signs erected off solicitors’ business premises, airplane banners, signs attached to trucks or cars, T-shirts, and handbills. L. ANDREWS, supra note 19, at 11-12.

175 This conclusion results from the fact that the announcement failed to limit solicitor advertisements to only local weekly or evening papers. See supra note 4 for text of The Council announcement.

176 See supra note 155 for the text of rule 7.2.

177 A lawyer may not, however, solicit legal business according to the prohibition in rule 7.3. See infra note 181 for the text of rule 7.3.

178 Rule 7.2 volunteers the following as “public media”: telephone and legal directories, newspapers and other periodicals, outdoors advertisements, radio, television, or written communications not involving solicitation. See also supra note 155 for the text of rule 7.2.

179 Id.

180 See supra note 111 for the definition of “solicitation.”

181 Rule 7.3:

A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in-person or otherwise, when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. The term “solicit” includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful.

MODEL RULES, supra note 82, at 156-57.

182 For example, rule 7.3 prohibits letters to airplane crash victims stating that the firm specializes in aviation cases, or letters to defective Ford Pinto owners claiming firm expertise in products liability litigation. Letters containing essentially the same information but
stows broad discretion on lawyers in terms of advertisement frequency, placement, and manner.\textsuperscript{183}

Timing, placement, and manner advertising restraints undeniably contravene the spirit and probably also the letter of the \textit{In re R.M.J.} holding. \textit{In re R.M.J.} circumscribed state bar associations' legal advertising regulatory powers by delineating permissible boundaries for restraints. The holding invalidated many states' advertising rules and cast a legal shadow over the ABA advertising regulations found in Canon 2 and the accompanying Ethical Considerations (EC's) and Disciplinary Rules (DR's). Only a prior finding that a regulated advertising practice misled or potentially misled consumers justified imposition of the regulation.\textsuperscript{184} Under this exacting standard, format restrictions proved untenable and the newly promulgated ABA Model Rules relaxed or eliminated the previous restrictive provisions contained in the Code.\textsuperscript{185}

Format rules such as frequency, placement, or manner of advertisement limitations impose external, physical restraints on advertisements. The English solicitors' right to advertise specifies only a placement limitation restricting solicitors' advertisements to certain approved media. The \textit{In re R.M.J.} decision invalidated format rules delimiting United States lawyers' advertisements.

2. \textit{Quality Standards}

Quality standards act as internal restraints on advertisements. They set aspirational goals, usually in the form of general and ambiguous objectives. Such standards necessitate subjective interpretation. Terms such as "professional," "reputable," "honorable," "dignified," "tasteful," and "truthful" exemplify advertising quality standards.

The English solicitors' right to advertise allows only tasteful, reputable,\textsuperscript{186} and truthful\textsuperscript{187} advertisements. The tasteful and rep-

\textsuperscript{183} Neither frequency nor size limitations restrict lawyer advertisements. See supra note 155 for the text of rule 7.2.

\textsuperscript{184} \textit{In re R.M.J.}, 455 U.S. at 207. See also \textit{supra} notes 146-57 and accompanying text discussing the impact of the \textit{In re R.M.J.} decision on legal advertising regulations.

\textsuperscript{185} See \textit{supra} notes 154 (text of rule 7.1), 155 (text of rule 7.2), and 181 (text of rule 7.3).

\textsuperscript{186} "The advertising must be in good taste and not of such a character as may reasonably be regarded as likely to bring the profession into disrepute." \textit{Council Statement} (1984), \textit{supra} note 2, at 1802. See also \textit{supra} note 4 for the complete text of the 1984 Council Statement approving solicitor's advertisements.
utable elements of the English quality standards stem from traditional notions of professional honor and dignity. Both terms, "tasteful" and "reputable," evade precise definition and provide little direct guidance for advertising solicitors. The truthfulness standard, on the other hand, sets slightly clearer parameters. A truthful advertisement does not mislead and contains only factually verifiable information.

The "good taste" requirement sets a flexible, but ambiguous and subjective quality standard. An appeal to "good taste" reminds solicitors of the high level of conduct expected of them. Professional traditions define the general outer boundaries of "good taste." Time and future disciplinary actions will resolve some of the ambiguities inherent in the nebulous requirement of "good taste" as advertising solicitors seek to find the precise limits of the requirement.

"Reputable," like "good taste," fails to elucidate an unequivocal advertising guideline. The "reputable" standard, like the "good taste" requirement, seeks to protect the professional interest in maintaining honor, dignity, and public esteem. The standard states that a solicitor's advertisement may not be "of such a character as... likely to bring the profession into disrepute." "Reputable" again presents a nebulous standard and fails to provide an unambiguous guideline for a solicitor's advertisements.

The truthfulness requirement contains a more helpful standard for solicitor advertisements. A truthful advertisement excludes any inaccurate statement, unverifiable assertion, or other factually misleading information. Truthful advertisements contain only accu-

187 "The advertising must not contain any inaccurate or misleading statement and any factual information must be verifiable." Council Statement, (1984), supra note 2, at 1802. See also supra note 4 for the complete text of The Law Society Council announcement.

188 See supra notes 41-47 and accompanying text regarding English legal traditions demanding professional honor and dignity.

189 The scope of the "good taste" requirement lacks precise boundaries. For example, does the "good taste" standard encompass size or frequency of advertisements? If so, it imposes additional time, placement, and manner restrictions. Does "good taste" preclude advertising in certain types of media? If so, it imposes an additional format rule. See supra notes 169-75 and accompanying text for a discussion of these restrictions. Does the "good taste" element include restraints on advertisement content? If so, it involves additional content controls. See infra notes 198-200 and accompanying text for a discussion of content controls. The inherent ambiguities in the "good taste" standard produce a myriad of interpretive difficulties for solicitors wishing to advertise.

190 See supra note 4 for full text of the requirement of reputable advertising character.

191 See supra note 4 for the full text of the requirement for truthful advertising.

A minor point for clarification arises from the verification requirement. Must solicitors
rate, verifiable information. Inaccurate, misleading, or unverifiable ones perpetrate a fraud on consumers and therefore contradict public policy. Verifiability checks solicitors by putting them on notice that any advertised assertions must be factually supportable and worthy of consumer reliance.

The ABA Model Rules governing legal advertisements in the United States, in contrast to the English Law Society rules, do not urge nebulous quality standards. The Model Rules instead require only truthfulness in lawyer advertising.

Rule 7.1 acts as the sole quality restraint on attorney advertising in the United States. Rule 7.1 disallows any false or misleading statements. The rule defines a false or misleading statement as a material misrepresentation or omission, a statement leading to an unjustified expectation, or a comparison of legal services lacking factual substantiation. Rule 7.2(b) adds a verification element and demands that lawyers retain copies of their advertisements for a period of two years.

Rule 7.1, disallowing false or misleading statements in lawyer advertisements, resembles but improves upon the truthfulness standard imposed upon English solicitors. The Law Society announcement contains a bald prohibition on inaccurate or misleading information, but rule 7.1 goes beyond a mere prohibition and defines the terms “false” or “misleading.”

The definition of false and misleading contained in rule 7.1 includes outright falsehoods, materially misleading statements, or...
materially misleading omissions. Not only does a positive assertion qualify under this definition, but a failure to convey all necessary information also constitutes false or misleading advertising. The definition further adds statements creating false hopes to the list of improper advertising information. This element of the definition protects the consumer reliance interest by barring statements warranting, without justification, a certain result. Finally, the definition lists legal service comparisons as a false or misleading advertising technique, unless factual substantiation exists supporting the contention. Quality of service comparisons, long recognized as unacceptable,\(^{197}\) pose obvious dangers due to the difficulty, if not impossibility, of evaluation or verification of such claims.

Rule 7.2 checks advertising lawyers and requires precise record-keeping for two years after dissemination of an advertisement. Requiring explicit records eases verification of advertised information and enforcement of the advertising rules. In addition, it puts advertising lawyers on notice of the seriousness of the advertising restrictions.

English and United States legal advertising rules differ substantially in terms of quality standards. English solicitors' advertisements must measure up under indefinite and subjectively determined quality standards such as good taste and reputable advertising character. Standards of truthfulness and verifiability also constrain advertising solicitors. In contrast, only standards of veracity and verifiability delimit United States attorneys' advertisements. United States legal advertising rules, moreover, attempt to spell out clearly the boundaries of "truthfulness" in legal advertising by defining false or misleading information. Lawyers who advertise must also retain copies of advertisements and meticulous records for verification purposes.

3. Content Restrictions

Content controls explicitly restrict the array of permissible advertisement information. Like quality standards, content controls act as internal restraints on advertisement messages. Content controls generally resemble either a catalogue of advertising "thou shalt nots" or a "laundry list" of permissible information.\(^{198}\)

The English right to advertise announcement lists advertising


\(^{198}\) Andrews, supra note 142, at 809.
"thou shalt nots." For example, improper solicitor advertisement information includes specific references to quality of work, quantity of work, clients represented, staff members other than partners, fee income, past cases, success rate, or claims of specialization or expertise. The announcement permits advertisement of solicitors' fees, but imposes a number of qualifications.

Each prohibited advertisement content category addresses a topical area potentially misleading for consumers. The rationale behind exclusion of these contextual areas looks to the function of legal advertising: presentation of pertinent and reliable information useful for consumer decision-making. The rationale for exclusion stems from the affirmative determination that these content areas fail to further the intended purpose of legal advertising. Assertions on the forbidden topics, moreover, not only fail to further the purpose, but also raise the danger of consumer misinformation. The list of "thou shalt nots" therefore seeks to protect impressionable and naive consumers.

Price advertising, although permitted by The Law Society announcement, remains subject to a variety of restrictions. Price advertising restraints purport to protect consumer expectations. Qualifications on fee advertising preemptively anticipate and prevent dissemination of potentially misleading fee information. Fee advertising requires disclosure of information such as the precise legal services covered by the fee, the circumstances under which an advertised fee increases, a clear explanation or "break-down" of the fee, and whether the advertised fee includes disbursements and applicable taxes. A bald statement of a charge for a specific service, such as "DIVORCES . . . ONLY £150!!," obviously violates the fee advertising rules. The rules generally attempt to protect

198 See supra note 4 for the text of the English legal advertising right.
200 An advertisement may include information regarding the quality of a solicitor's services in general terms provided the advertisement includes no claims of superiority, nor any specific criticisms, nor comparisons with regard to other solicitors. See supra note 4 for the text of the English right to advertise (section 3(a) in particular). Advertisements may contain categories of preferred work provided the firm has experience in the advertised areas. The categories of information excluded by the right to advertise announcement presumably represent areas which The Law Society Council perceived as inherently misleading for the general public or as irrelevant for the informed selection of a solicitor. See supra note 4 for the text of the English right to advertise (sections 3(b) and 4 in particular).
201 See supra note 4 for the text of the English right to advertise (sections 5(a) through 5(c) in particular).
202 See supra note 4 for the text of the English right to advertise (sections 5(a) through 5(c) in particular).
unsophisticated consumers by preventing the advertisement of confusing or incomplete price information.

The restrictive Law Society list of "thou shalt nots," including the qualifications on solicitor price advertising, resembles the old rule governing lawyer advertisements found in DR 2-101. The In re R.M.J. decision, however, cast the constitutional validity of content regulations such as DR 2-101 into question. The In re R.M.J. Court struck down a similar "laundry list" of approved content information for legal advertisements. According to the Court, free commercial speech under the Constitution precludes content restrictions, unless promulgated pursuant to specific findings that the information banned by the regulation misleads or potentially misleads consumers.

Under the reasoning advanced in In re R.M.J., content restrictions similar to those imposed on English solicitors violate constitutional principles of free commercial speech. Content restrictions, unless preceded by a specific finding of potential consumer confusion, improperly infringe upon lawyers' rights to advertise and consumers' right to legal information.

The new Model Rules, promulgated antecedent to In re R.M.J., eliminate all content controls save one. Rule 7.2(d) requires that legal advertisements contain the name of a lawyer taking responsibility for the advertised information. This requirement serves as a warning to advertising lawyers that they will be held accountable for advertised information. It also eases verification of advertised assertions and overall enforcement of legal advertising rules. The Model Rules contain no other content control.

Content controls focus on the advertisement message. They prohibit advertisement of certain specified types of information or demand inclusion of qualifying information. Content controls on English solicitors' advertisements resemble a list of "thou shalt nots." In re R.M.J., in contrast, freed United States attorneys' advertisements from most content controls. Content controls generally contradict the spirit of free commercial speech, guaranteed by the Constitution, and, as such, meet with judicial disfavor.

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303 See supra note 144 for text of DR 2-101.
304 In re R.M.J., 455 U.S. at 207. See generally Andrews, supra note 142, at 809; L. Andrews, supra note 19, at 57-59. See also supra note 13 and accompanying text with regard to the differing constitutional standards imposed on political versus commercial speech.
305 In re R.M.J., 455 U.S. at 207.
306 See supra note 155 for the full text of rule 7.2.
IV. Conclusion

The Law Society Council announcement proclaimed a limited right to advertise for solicitors. Solicitors' advertisements, however, must strictly adhere to numerous format, quality, and content regulations. The restrictive English position provides a direct contrast to the relatively permissive attitude taken toward legal advertising in the United States. The English right-to-advertise regulations, moreover, contain several ambiguities.

The restrictive stance taken by The Law Society Council developed as a result of long-standing English legal tradition. Tradition played an important role in English legal system formation. The legal profession considered tradition at least as important, if not more important, than formal written rules governing professional conduct. The traditional attitude opposing legal advertising exerted a strong influence on The Council and the announcement allowing solicitors' advertisements accurately reflected the profession's reluctance in this area.

The permissive American attitude toward legal advertising developed over time. Colonial America initially followed English tradition and banned attorney advertisements. Tradition, however, failed to present a formidable obstacle when directly confronted with the constitutional guarantee of free commercial speech. Constitutional protection assured the eventual relaxation if not actual demise of advertising restrictions and inevitably led to the current permissive position.

Legal advertising, although sanctioned in England by The Law Society, has not received wide acceptance within the profession. Traditional notions of honor and dignity still prevail and most solicitors feel advertising offends tradition and erodes professional honor and dignity. Solicitors cherish public esteem. Thus, public opposition to legal advertising acts as a very persuasive disincentive for solicitor advertising. Until tradition or public perceptions change, legal advertisements are destined to relative obscurity in England.

M. Catherine Harris