

VINDICATION

Or, An Obvious Prediction Come True

The New Jersey Supreme Court has just struck down an earlier ruling that banned lawyers from advertising their inclusion on lists such as *Super Lawyers* or *Best Lawyers in America*. It noted that lawyer advertising is a form of commercial speech protected by the First Amendment. The decision is not only rational, but it's in keeping with the realities of contemporary legal practice. It is also a vindication for those of us who have long protested anti-advertising rulings promulgated by several state Bar Associations. Many of us bloggers, both lawyers and non-lawyers, have long protested that such anti-advertising rulings were not only unconstitutional, but were also in conflict with *Bates v. State Bar of Arizona* (1977), which struck down the Canons of Ethics that prohibited what we now call frank marketing.

The Court noted that the earlier restrictions on advertising, such as the prohibition on advertising these listings, could not, then, be subject to a blanket and overbroad ban. Appropriately, the court suggested that different approaches, such as disclaimer language that would strike a balance between lawyers' speech rights and the interest in protecting consumers, be considered.

There is no question that a balance must be struck between the needs for some forms of promotion by lawyers in what has now become a highly competitive marketplace for the profession, and the genuine need to protect the public and to maintain the necessary integrity, independence, and probity that's at the heart of the legal profession.

Although *Bates*, which was a kind of a Declaration of Independence for lawyers and accountants, was more than three decades ago, lawyers and other professionals continue to grope for a proper relationship between the practice and its promotion. Those of us who were practicing marketers for professionals back then tried to adapt traditional marketing practices to the unique needs and strictures of lawyers and accountants. We have sought, since then, new kinds of marketing techniques that were consistent with the professional tenets of lawyers and accountants, without sacrificing the public protections necessary to the practices of the professionals. That struggle is not yet won, nor are the best techniques yet consistently practiced. Witness, for example, the inconsistent quality of law firm advertising. Witness, as well, the inconsistent rulings, state bar association by state bar association, on marketing practices. These rulings are at least anachronistic, at best non-competitive in a highly competitive environment.

While the New Jersey ruling may seem limited to advertising *best lawyer* listings, count on it to have repercussions well beyond that. *Bates*, after all, was just such a narrow ruling, yet it opened to both lawyers and accountants a whole new world of competitiveness, and changed the face of the professions profoundly.

We may not know now how this narrow ruling will affect the future of the professions, but change that future it will. Count on it.

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