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## Ethics - Members of New York Law Firm Found Guilty of Professional Misconduct as a Result of their Role in the Publishing of a Self-Laudatory Article in LIFE Magazine (In re Connelly, N.Y. 1963)

Robin Goodenough

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With a broad test for collateral estoppel, the court was able to satisfy the demands of public policy without resort to the words. Such a public policy question would not be presented were *Case I* a civil action.

The *Teitelbaum* decision, therefore, should be limited to its facts. California used the broad wording of the collateral estoppel test to encompass a factual situation where public policy dictated the outcome. In so doing, the court may have further muddied the not too clear waters of collateral estoppel.

James W. Brannigan, Jr.

ETHICS — MEMBERS OF NEW YORK LAW FIRM FOUND GUILTY OF PROFESSIONAL MISCONDUCT AS A RESULT OF THEIR ROLE IN THE PUBLISHING OF A SELF-LAUDATORY ARTICLE IN LIFE MAGAZINE. *In re Connelly* (N.Y. 1963).

Four members of a New York law firm were censured by the New York Supreme Court for professional misconduct due to violation of Canon 27 of Professional Ethics, New York State Bar Association. The court held that they knowingly and deliberately contributed to an article appearing in LIFE Magazine advertising their law firm. *In Re Connelly*, 240 App. Div. 466, 240 N.Y.S. 2d 126 (1963).

The offending article,<sup>1</sup> written in a flamboyant and exaggerated style, gave a boost to this firm in an attempt to give the public a "bird's eye view" of how a typical corporate law firm operates. The firm's attorneys did little to discourage LIFE's praise.

LIFE bounced back from the court's holding with a critical editorial lampooning the decision.<sup>2</sup> LIFE stated that ". . . the judges were wrong."; that Canon 27 ". . . curtains off the public right to know what goes on in an important area of American society";<sup>3</sup> that it was important for the public to know that lawyers spend most of their time keeping people out of court; and, that it was valuable for the public to see what makes a law firm tick.

The American Bar Journal<sup>4</sup> gives a brief summary of this interesting case. It evaluates the court decision, criticizes LIFE's editorial, and proceeds to rationalize the court's conclusions.

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<sup>1</sup> Edx, *Behind the Scenes Tour of Today's Legal Labyrinths: Lawyers who Try Not to Try Cases*, LIFE, Mar.9, 1962, p. 80.

<sup>2</sup> *The Lawyer's Unneeded Veil*, LIFE, May 31, 1963, p. 4.

<sup>3</sup> *Ibid.*

<sup>4</sup> 49 A.B.A.J., 786 (Aug. 1963).

The *Canons of Professional Ethics* were adopted by the American Bar Association in 1908. "These Canons, in whole or in substantial part, have been adopted in the various states by rule of court, by act of legislature, or by bar association action."<sup>5</sup> *Canon 27* (adopted in similar form by New York and California) states:

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.<sup>6</sup>

Although the canons do not have the force of statutes,<sup>7</sup> any substantial violation subjects one to disciplinary action in accordance with the New York Judiciary Law.<sup>8</sup> California has a similar prohibition against direct or indirect advertising.<sup>9</sup>

In reviewing the limited number of cases in this field one notes the confusion as to the meaning of advertising. Most of the cases deal with heir hunters, divorce dealers, ambulance chasers, published materials, paid advertisements, mail-outs to prospective clients, etc.<sup>10</sup> Particular revulsion is shown by the courts to the advertising of divorce services.<sup>11</sup> One also wonders, as did the dissent in the *Connelly* case,<sup>12</sup> whether the "punishment fits the crime." Prior dissents of such eminent jurists as Dean Pound and Mr. Justice Cardozo showed similar misgivings in this area of harsh discipline.<sup>13</sup>

The *Connelly* case deals with a well-respected firm with no prior censure or reputation for unethical practices. Selected by LIFE for this interview, the firm was eager to put its best foot forward and open its doors as wide as possible. It would seem normal for members of such a firm to pose for pictures, mention their important clients (with the clients' permission), speak of their accomplishments and perhaps indulge in some of that vanity which motivates

<sup>5</sup> See, comment, *The Canons of Professional Ethics of the American Bar Association*, PAMPHLET, 1 (Nov. 1961), American Bar Center, Chicago, 37, Illinois.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *In re Cohen*, 261 Mass. 484, 159 N.E. 495 (1928); *People ex rel. Chicago Bar Association v. Berezniak*, 292 Ill. 305, 127 N.E. 36 (1920).

<sup>8</sup> 240 N.Y.S. 2d at 129.

<sup>9</sup> CAL. BUS. & PROF. CODE § 6076, Rule 2(2).

<sup>10</sup> Annot., 39 A.L.R. 2d 1055 (1955).

<sup>11</sup> *Id.* at 1062.

<sup>12</sup> 240 N.Y.S. 2d at 140 (McNalley, J., *dissenting*).

<sup>13</sup> Annot., 39 A.L.R. 2d at 1061.

people and law firms to greater goals. Surely success begets success and recognition revitalizes all professions.

The American Bar Journal editorial recognizes that undoubtedly the Bar is to blame in part for not clarifying the meaning of Canon 27 to the public. But the public will never understand Canon 27 until lawyers and courts clearly agree as to what constitutes "advertising" and until there is more consistency in the type of discipline meted out for infractions of the advertising prohibition. Just what advertising consists of appears to be unresolved. Until it is, diversity in discipline and confusion in the mind of the public and the profession will tend to continue.

The line separating good taste and manners from subtle advertising is exceedingly thin. The boundary between discretion and a small plug for the firm can be indiscernible. The division between being discreet and being boastful can be nebulous, and even non-existent. In short, advertising is a matter of personal opinion—a matter of degree—and a matter of personal taste. For example, one firm of fine reputation got in "legal hot water" because it sent out Christmas cards to prior contacts with simply the firm name on the card.<sup>14</sup> Another lawyer was reprimanded for reproducing his calling card in a newspaper.<sup>15</sup> Courts across the nation have split hairs as to just what should be allowed on the simple calling card.<sup>16</sup>

<sup>14</sup> Hartford County Grievance Committee v. Cole, 22 Conn. Supp. 86, 161 A. 2d 590 (Super. Ct. 1960).

<sup>15</sup> *In re Mitgang*, 385 Ill. 311, 52 N.E. 2d 807 (1944).

<sup>16</sup> *Censured*:

Use of fancy letterheads and card advertising offices of the attorney in six cities, in three of which he was not entitled to practice. *In re Schwarz*, 195 App. Div. 194, *aff'd*, 231 N.Y. 642, 132 N.E. 921 (1921).

An advertisement in local papers reading "Leon A. Berezniak, Lawyer to the Profession, . . . (address) . . ., The Man Who Solves Your Troubles and Keeps your Mind Easy," *People ex rel. Chicago Bar Association v. Berezniak*, 292 Ill. 305, 127 N.E. 36 (1920).

Informational card given to editor of Slavic newspaper from which to insert newspaper article intended to inform clients of change of address. Attorney contended he couldn't read Slavic and wasn't aware card contained more than a simple statement. The advertisement ran for a period of between six months and two years. *In re Treadwell*, 175 App. Div. 833, 162 N.Y.S. 554 (1916).

Letterheads and business cards reading in part, "Investors Protective Bureau—Special Financial Reports on Unlisted Securities," such bureau being mythical and solely for the purpose of soliciting the claims of stockholders in a particular corporation. *People ex rel. Chicago Bar Association v. Ashton*, 347 Ill. 570, 180 N.E. 440 (1932).

*Not censured*:

Card duplicated in two newspapers for one week reading, "Henry Mitgang, Attorney at Law, Specializing in Personal Injury Claims, . . . (address) . . ." *In re Mitgang*, 385 Ill. 311, 52 N.E. 2d 807 (1944).

Statement on the official letterhead of the County Sheriff that he was also an attorney. *In re Williams*, 113 S.W. 2d 353 (Mo. App. 1938).

Simple business cards printed and left in lobby of local hotel. Holding was based partly upon that the complained of act occurred before rule was adopted and it could not have a retroactive effect. *In re Ames*, 59 Nev. 110, 85 P. 2d 1014 (1938).

To *tout* by tooting your own horn can mean the abrupt end of a legal career. The lawyer with a warm smile, clean shirt, pressed suit, shined shoes, and hearty handshake, is a lawyer who is selling himself. His motives may be to impress people and rustle up a little business—but as a result he is a better lawyer and the law profession is the better for his self-advertising.

But if a lawyer hands a prospective client two cards in the hope that one will be passed on—does this constitute a violation? Must the lawyer be asked for a card—or can he volunteer one? May he use fancy stationery, send a birthday card, give a pen to a client, or pick up a luncheon check? These acts are more effective than a little card; are they distasteful and the giving of advertising?

How does a lawyer avoid the public eye without irreparable harm to himself and to the legal profession? Taken literally, Canon 27 makes any venture into the public light a hazardous journey. Does a lawyer advertise when he aids in civic projects, charity drives, serves on public commissions, school boards, etc.? In these capacities he must make public statements, take part in public controversy, stand up for his principles, even furnish his photograph.

*Letters to the Editor* is a clear example of volunteering matter for public print. If this is done by a lawyer on matters of public importance, does it not constitute “furnishing and inspiring newspaper comment” which is specifically prohibited by Canon 27?

Lawyers in a red-hot political campaign often abandon discretion. How does one reconcile this with prohibition of advertising? Canon 27 would forbid the lawyer from puffing his product—holding that all printed public words of praise must be suitably protested. This would be suicide for one entering the political arena. In campaigning, can the lawyer-candidate disseminate printed brochures showing pictures of himself in his office, with books, American flag, family and dog? Is it a violation to distribute pamphlets, matches, circulars, and throw-aways—containing assertions as to his keen judgment, acute mental powers, administrative abilities, honesty, integrity, ability, and wisdom? Today these are being distributed by the hundreds of thousands.

Books written by lawyers or about lawyers have not been considered advertising. They enjoy wide circulation and indelibly impress the image of that particular lawyer on the public mind. These books have strong public acceptance and “plug” law as a profession as well as the specific individuals in the book. Recent examples of paperback editions meeting with great success are *My Life in Court*

by Nizer,<sup>17</sup> *Never Plead Guilty*, about California's Jake Ehrlich,<sup>18</sup> and *The Family Legal Adviser* by Kupferman.<sup>19</sup> Most of the authors cite the best cases, special techniques and skills, and outstanding victories of the attorneys described.

The overall effect of such publications on the legal profession appears to be beneficial. More sophisticated exposure is given to lawyers who write legal articles for periodicals. Even newsprint contributions are gathered by outlets such as *Parade*. In one of their recent editions it told the nation about one lawyer who enjoys great success by specializing in the defense of hoodlums.<sup>20</sup>

LIFE strikes hard at this veil of secrecy which hangs over much of the legal profession, arguing that a narrow prohibition against advertising short-circuits the communication line between the layman and the lawyer. Certainly, the lawyer's activities are an open book (except for privileged communication). Lawyers who take public stands on important issues, or who are civic leaders, support and strengthen the profession.

Maybe it is time for the legal profession to re-evaluate Canon 27. The American Bar Association has indicated recently that the canon is too restrictive in certain areas.<sup>21</sup> To a certain extent the *Connelly* case reflects against both the free press and the legal profession. This may foster misunderstanding.

These misunderstandings and seemingly harsh results might be clarified by a critical analysis of Canon 27 considering today the contemporary demands of lawyers, press and the public.

Robin Goodenough

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<sup>17</sup> NIZER, *My Life in Court*. (Pyramid Books, 1963).

<sup>18</sup> NOBLE & AUERBUCH, *Never Plead Guilty, The Story of Jake Ehrlich—America's Most Famous Criminal Lawyer* (Bantam Books 1963).

<sup>19</sup> KUPFERMAN, *The Family Legal Adviser* (All Books Inc., 1957). See also KLING, *The Legal Encyclopedia* (Perma Books, 1960).

<sup>20</sup> *The Lawyer Who Protects Hoodlums from Deportation*, PARADE MAGAZINE (San Diego Union, Oct. 13, 1963).

<sup>21</sup> The House of Delegates of the American Bar Association approved a recommendation to amend Canon 27 to permit listing of foreign language ability in publication of information in reputable law lists. *American Bar News*, p. 4, Sept. 15, 1963.