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Professional Center For Law and Management

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The Wake Forest Jurist is published twice yearly by the Wake Forest University School of Law. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest in the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the Jurist seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine provides a forum for the creative talents of students, faculty and its alumni and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

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The Dean's Column

Robert K. Walsh

"Dear Old Wake Forest
Thine is a noble name
Thine is a glorious fame
Constant and true.
We give thee of our praise
Adore thine ancient days"
(From first stanza of the Wake Forest Alma Mater)

President Hearn recently was told at a national higher education meeting that Wake Forest University was doing so well that it could become like a famous northeastern school. Dr. Hearn replied that he did not want to become another [naming school], he aspired to be a better Wake Forest. As a new dean, I feel the same about our law school. We want to build on what is constant and true about our past and be an even better Wake Forest School of Law.

It was the traditions of the law school "constant and true" that drew me to come from Arkansas last July 1. In my discussions with all constituents of the law school during the dean search, I was overwhelmingly impressed with the sense of loyalty and support for the Wake Forest School of Law as an institution. For a number of years, the law school has led the nation in the percentage of alumni who participate in the annual giving campaign. The law students who interviewed me spoke of their school with respect and affection. It is clear that alumni and students were happy with their legal education at Wake Forest. The law school is on the right path. Our challenge for the future is to build on our heritage, while making even more glorious our law school's fame.

Perhaps the most important element of our heritage to preserve has been the great morale and sense of close community throughout the process of a legal education at Wake Forest. Certainly, this is fueled by our relatively small student body and tradition of faculty/student interaction outside the formal classroom setting.

A new student at our law school is brought quickly into this tradition at Wake Forest by having four sections of all first-year courses, yielding classes of no more than forty students. Moreover, legal research and writing is taught in seven sections of slightly over twenty students to each of which a faculty member and two teaching assistants are devoted. We give great instructional resources to the first year of law school believing it the foundation not only for the following two years of formal schooling, but for the process of legal education lasting a professional lifetime.

Within the framework of the school's heritage, two programs added to make a better Wake Forest in the 1980's are particularly worthy of mention.

First, our law school is a leader in the use of computers in legal education. The fall/winter, 1988 issue of this magazine was devoted to this subject. Both students and faculty are in the highest range in Westlaw and Lexis usage in the nation. Our computerized legal research and instruction center has twenty-eight computers to supplement classroom learning. Our faculty are drafting computerized legal instruction and interactive video programs. Recognizing that the word processor and fax machines are basic to the modern lawyer's daily practice, we have a course in the curriculum in Office Practice.

Also in the 1980's, we developed our practice skills and clinical programs. Many senior lawyers believe that legal education was frozen in time following their own graduation. In my case, that would mean that almost all classes throughout all three years are taught from reading and discussing appellate decisions. My Trial Advocacy course was a one-hour-a-week lecture.

"Perhaps the most important element of our heritage to preserve has been the great morale and sense of close community throughout the process of a legal education at Wake Forest.

Wake Forest recognizes that there is more to being a lawyer than the skill of reading and synthesizing appellate decisions. In the upper years, we have simulated practice skills courses in Business Drafting, Alternate Dispute Resolution, and Trial Practice. In the trial litigation area, we first have a Pre-trial Practice and Procedure course that takes a student from drafting and responding to a complaint through all aspects of typical discovery and motion practice. Then, our Trial Practice course involves the students in critiqued exercises in all aspects of trial from voir dire to closing arguments.

Our live client clinical program rotates students through both civil and criminal practicums. Like our other practice skills courses, it is based on learning systematically from experience under the tutorage of strong professional role models. The clinical program is taught by and under the supervision of two full-time members of our faculty, who hold a two-hour seminar meeting once a week throughout the semester. In the civil segment, students are placed in either a litigation or business practice. The supervising attorneys in the community work closely with our two full-time faculty members both in individual supervision of the student's work and in a constant restructuring and reevaluation of the program. I was impressed this summer with the attendance and thoughtful discussion at our annual clinical supervisors training session.

I recommend to our students that every one of them elect the clinical program before graduation, regardless of the type of practice in which they are interested. We are currently considering expanding our clinical education opportunities in cooperation with our medical school's Institute on Aging.

I am convinced that we continue on the right path in educating practicing lawyers. However, I told our first-year students at orientation that if all we do in three years is to teach them to be the most skillful and technically competent law graduates, we have failed. We need to continue to build upon Wake Forest's focus on ethics and professionalism. In addition to the required course in Professional Responsibility, this year the faculty is studying whether there is a better way to insure that ethical issues are pervasively raised throughout the three-year curriculum. I have met with leaders of both the North Carolina State Bar and the North Carolina Bar Association on ways that the law school and the practicing profession can help in fostering a sense of professionalism. I believe some good new programs will come from these discussions. One early such program involves the State Bar which has agreed to appoint a member of our law faculty teaching Professional Responsibility to its Ethics Committee, which renders opinions on current issues in the practice.

Finally, a great development toward a better Wake Forest School of Law is the building of the Professional Center for Law and Management. Our present building is simply inadequate. Our new building will not only cure our space needs, but will provide our law school with an opportunity unique in American legal education. Since I was interviewed for a later article in this issue on the subject of the Professional Center project, I will go no further in this column than to say that while we intend to focus on training practicing lawyers and not entrepreneurs, we hope to add factual understanding and context to the education of our graduates interested in a business practice, as well as expand our JD/MBA joint-degree program.

I would like to close this first dean's column on a personal note. Kathie and I have greatly enjoyed meeting many of you in our first four months here. We are excited to be part of the Wake Forest School of Law family and look forward to a great future with you.

"[A] great development toward a better Wake Forest School of Law is the building of the Professional Center for Law and Management. Our present building is simply inadequate. Our new building will not only cure our space needs, but will provide our law school with an opportunity unique in American legal education."

The Editor's Page

A dramatic change will occur to the Wake Forest Law School in 1992 — at least to the eye. In the fall of that year, a new Professional Center for Law and Management is scheduled to open where pine trees and the University's water tower now stand. The Center will house a unique combination of academic disciplines — the law school and the Babcock Graduate School of Management. It will be the first such joint facility in the nation.

Reasons for creating the Professional Center are varied. They range from the growing interaction of law and business in society to simple administrative efficiency. But at the heart of each reason is an awareness that law and business have much in common, and much to learn from each other. Yet it is precisely those areas of commonality and shared learning that raise concern. For at least in graduate studies, how much *should* they have in common, and how much learning *should* be shared?

This issue of the *Jurist* examines the Professional Center from two perspectives: by administrators responsible for developing the Center and through the expected impact upon the current JD/MBA joint-degree program. According to administrators, the Professional Center will offer new opportunities for developing the interaction between law and business, while maintaining the independence and academic integrity of each. For those interested in the joint-degree program, the Center will provide numerous benefits of convenience and future possibilities. Weaving through the articles is an inference that students who do not want to combine law with business will be free to pursue either in the traditional manner that has made Wake Forest a leader in both fields.

It is the *Jurist's* opinion that the Professional Center is a positive development for Wake Forest University. But in this endorsement lies a call for caution. The inference of independence that each article provides should be as honored as any plan for a sharing of ideas or facilities. Law has a unique perspective that must be nurtured in a legal environment. The same can be said for business. The simple fact that, in practice, the distinction between law and business often becomes blurred is no excuse to forsake the need for the framework that must first exist before any "blurring" occurs. That framework lies in the independent integrity of each discipline.

With the Professional Center still two years away, administrators say this integrity will be honored. But after 1992, when proximity and cooperation become necessary through a shared facility, it will be interesting to see if this commitment remains strong. Students and alumni of both schools should keep careful watch that what meets the eye in the future will also meet the promises of today.

Kenneth Carlson
Executive Editor

Together Yet Apart — The Wake Forest Professional Center and the Schools of Law and Management

Two separate schools with a few common elements — that's how Deans Robert K. Walsh, James Taylor and John McKinnon see the future Professional Center that will house the Wake Forest Law School and the Babcock Graduate School of Management. And with those common elements will come new opportunities for students interested in business law.

"We'll always remain a law school interested in training lawyers — not entrepreneurs," Walsh said. "We've had a traditional strength in our law school in litigation. We think on the business side there will be added opportunity for those students who want to be in the business area of law."

The extent of collaboration between the two schools will be the focus of a joint committee on programs. Courses such as Business Planning or Antitrust could be ripe for such collaboration. "Although formal team teaching of an entire course may not occur, there may be key classes taught through a team approach," he said.

Walsh said that understanding the factual background of how business decisions are made is vital to a lawyer's grasp of any case involving business. In turn, business people have much to learn from a lawyer's perspective. Such cooperation between the two disciplines is already part of most major corporations, and Walsh said McKinnon's experience at Sara Lee Corporation is an excellent example. "John has a very good view of lawyers and he would always call his lawyers in as part of the executive decision-making process at Sara Lee. He's always felt that lawyers bring a broader discussion to business decisions."

With the Center's common elements, the increasing number of students who come to law school with an interest in business law can get ample exposure. Moreover, the Center should attract specialists who can reach the students through symposia and special programs.

Although some alumni have been wary that a Professional Center might compromise traditional legal education, Walsh said the response is now "very, very favorable." Alumni now see the Center as a "signature building" which will be "unique in legal education." And, Walsh hopes, the overall concept will help strengthen upper level courses in business law and make Wake Forest Law School graduates even more attractive in the highly competitive legal field.

According to Associate Dean James Taylor, the key to the legal profession is understanding that "the times, they are a' changing." The Professional Center, he said, is a recognition of this maxim.

But Taylor also cautioned that things are not changing as much as some in the law school community believe. "The Professional Center is the name of a building —not a hybrid kind of education," he said. Law students will not graduate from a professional center; rather they will remain part of a "discreet professional school."

Various reasons called for a combined facility of law and management schools, Taylor said. First, there are "considerable savings" for Wake Forest in operating a joint facility. Second, there is a "community benefit" reflecting the "association with other graduate students in the same building who will be clients of some lawyer one day." Finally, the law school's strong litigation tradition will be complemented and strengthened by the Professional Center. As Taylor remarked, "it takes nothing away" and only adds to the litigation tradition at Wake Forest.

Taylor also said the Professional Center will strengthen the "440 Plan" by providing needed space to keep classrooms small and "guarantee improved technology with computer resources provided for in the physical plant." Most important to students, it will offer better opportunities for law firm placement due to the higher demand for students of business and commercial law.

To any skeptical alumni, Taylor offered reassurance. He said that Wake Forest will "preserve the things that are good." While ascertaining the needs of the marketplace, Wake Forest will ensure

Dean Robert K. Walsh, Law School

that "client needs are translated into law firm needs, and law firm needs are translated to educational needs," he said.

Is there a minus? "I didn't think so," Taylor replied. "It's what's going on now [in the legal profession and law school] independent of the shelter we're in that will determine the future of the profession. There will [always] be a tangible separateness to emphasize...our ideals and mission."

John McKinnon, Dean of the Babcock Graduate School of Management, has a close personal relationship with the legal profession. His two brothers attended law school — one is a retired judge, the other is the chief executive officer of a railroad company. Because of his knowledge of the legal profession McKinnon is very interested in MBA students interacting with lawyers and law students.

One limitation is that business people and lawyers "don't always see each other's needs," he said. Traditionally, business people view lawyers as telling them "what they can't do" and not knowing the objectives of their operations. "Yet, in most corporate transfers, lawyers and business people end up negotiating together."

What business people must learn is how the legal process fits into their risk analysis — the bottom line. McKinnon said that lawyers can help managers evaluate risks by telling them the risk involved in decisions or in a certain lawsuit.

According to McKinnon, there should be specific transfers of knowledge between law and business students. In courses such as Corporate Law and Corporate Finance, for example, there could be joint research and teaching. In specific areas, such as the emerging discipline of international joint ventures, business people need help to "reduce [the] complexity" of regulations involved.

McKinnon said the new Professional Center concept is already helping to attract faculty recruits to the School of Management. He also said that numerous practicing corporate attorneys he has met have great interest in the Center.

But the schools will remain separate, with separate curricula and policies, McKinnon added. The main concern to the business school is to continue teaching the "basic mission of managers." In addition, he is hopeful that the unique interaction will lead to more preventive law being practiced, especially in in-house legal departments.

Dean John McKinnon, School of Management

In conclusion, deans at the law and management schools consider the new Professional Center to be a sharing of facilities and ideas rather than a sharing of disciplines. While there will be some interaction, business students will remain committed to business studies, and law students will not vary from the intensive legal training that has given the Wake Forest Law School its fine reputation.

By Henry Mitchell, a second-year student from Raleigh, NC

The Layout

The Professional Center for Law and Management will contain 175,000 square feet. It will be the largest building on campus, housing both the Wake Forest School of Law and the Babcock Graduate School of Management. Ground-breaking will occur in mid-1990, with completion scheduled for spring, 1992. The Center will be located on the northeast side of campus near the water tower at the east entrance off University Parkway.

Each school in the Center will have distinct wings for classroom and office space. Shared space will include a library covering four levels, student and faculty lounges, a technology center, teaching and executive classroom facilities, placement interview rooms, administrative offices and a landscaped inner courtyard.

The Center will be the first of its kind in the nation. It is being designed by Cesar Pelli and Associates, winners of the American Institute of Architect's 1989 Architectural Firm Award.

JD/MBA — A Bridge Between Law and Business?

Introduction to a JD/MBA Degree

As the law profession becomes increasingly specialized, progressive law schools are offering many new opportunities to accommodate these specialties. One such opportunity is the JD/MBA joint-degree program offered at Wake Forest University. Since 1984, Wake Forest has provided a four-year joint degree involving both the business and the law graduate programs.

Previously, students who pursued both a law and business degree at Wake Forest spent five years to complete their studies. The present JD/MBA program eliminates one year in the process and enables the individual to study both business and law simultaneously and receive two degrees. This article addresses both the strengths and weaknesses of a JD/MBA degree, and the relationship of the JD/MBA program to the new Professional Center for Law and Management that will house both graduate schools in 1992.

Administrative Perspective

According to John McKinnon, Dean of the Babcock Graduate School of Management, the JD/MBA degree was originally initiated and fostered by each individual student. In other words, the student's success in obtaining an MBA and JD degree depended upon how much effort he or she was willing to give in dealing with the administrations of each school. Currently, those administrations want to encourage growth in the joint program and are continuing to develop avenues that will facilitate the process. Arthur Gaudio, Associate Dean at the law school, projects that the number of persons participating in the program will increase because the new Professional Center will operate as an influential factor in recruiting. However, he and McKinnon stressed that neither the new Professional Center nor the developing JD/MBA program will infringe upon the autonomy of either school. The program is still intended to primarily exist as an opportunity for those students who wish to embellish their legal careers with a solid business education.

For those law and business students who do not want a joint degree, the Professional Center will offer an opportunity for more informal exposure to each discipline. On a very limited basis there is opportunity for law students to take a business school class. However, the student has to meet the entrance requirements of the other school.

Currently there are similar courses offered at each school. For example, Dispute Resolution offered at the law school and Negotiations at the business school are very similar and have even worked together in some activities. Gaudio suggested that there is a potential for these courses to be taught together on a limited basis as the interest develops.

Students' Perspective of the Program

The students enrolled in the joint program are generally pleased with their choice. Mark Conger, a third-year JD/MBA student, believes that his degree will benefit his practice of business law. "You can't give legal advice in a vacuum. A complete understanding of the black letter law is a good starting point. However, developing business analytical skills will enable you to fully comprehend the business ramifications of certain legal decisions."

Williford McCauley, another third-year JD/MBA student, selected Wake Forest because of the availability of the joint-degree program. "I was initially interested in Wake Forest because of the strength of the law school. However, the joint-degree program was an influential factor in my final decision to attend Wake Forest Law School." The biggest problem that McCauley has encountered is coordinating his schedule with the administrations of each school. He anticipates improvement with the cooperation that will come when the two schools formally reside in the same building. As Winston Churchill was so fond of saying, "Men may make buildings then the buildings make the men."

Joint-degree students have several obstacles to contend with in the program. For example, classes offered at each school run different lengths of time. As a result, it is sometimes difficult to reconcile the different time schedules in order to get the necessary classes. Additionally, because the business school runs on a quarterly plan, while the law school has two semesters, joint-degree students often must forfeit their fall and spring breaks in order to accommodate their agendas. McKinnon suggested that more staff may be needed to facilitate the students' transition and interaction with each school.

Further, students such as Mike Cruz feel that even though a joint degree helps differentiate them when job searching, the benefit cannot be fully realized until the two administrations cooperate more regarding placement. They hope that by the time the law and business schools move to their new home, their respective placements offices will create an interviewing pool of jobs for which a JD/MBA candidate is particularly qualified.

Job Market for a JD/MBA Graduate

Fred Wood, like most students involved in the joint program, is predominantly interested in incorporating his business education into his practice of law. However, there are some students that focus on how a legal education will benefit them in business. McCauley said that the joint degree would be helpful in any area of law because of the growing amount of interaction between business and law in society.

As stated earlier, a major concern for JD/MBA students is the lack of any placement program tailored for the specialized JD/MBA degree. The law school and the business school address this point differently. Gaudio suggested that all law students go into interviews with different specialties, degrees and interests. "Typically, it is the obligation of the students to seek out those firms that offer the type of practice that suits their needs," he said.

If a placement program is developed to accommodate JD/MBA students, the school might need to provide similar specialized programs for those students who hold distinctive degrees. For example, a law student with a technical engineering degree would essentially be entitled to an interviewing pool involving those job

opportunities combining his specialty and law. According to Gaudio, the law school placement office adequately provides the necessary resources for all students with varied backgrounds.

McKinnon, however, said that a specialized placement program for JD/MBA students would be very helpful. He said that there are many job opportunities that favor applicants with a joint law and business degree. For instance, in-house legal counsel for many large businesses, by definition, provides exceptional job opportunities for JD/MBA graduates. Since the University has provided the JD/MBA program, it should arguably promote the program through placement. He expects such accommodations to be considered by a current task force which is addressing concerns for the new building.

Community Response

The business and legal communities have eagerly responded to the new influx of graduates with a dual education. Charles Lackey of the Sara Lee Corporation in Winston-Salem, explained that it is both beneficial and efficient for attorneys in the company's legal department to have solid business backgrounds. In-house legal counsel must know the language of the business world, he said.

The main concern for business is looking for solutions. There are two types of advice that a business will need from its legal counsel: first and foremost, preventive advice; second, advice on ways to structure a decision to meet any legal requirements. Preventive law is emphasized because most businesses are interested in pursuing the path of least resistance. Therefore, solutions that pose the fewest potential legal obstacles presumably will be the most favorable.

The business school educates students to look at the risks of a business decision and assess its probability of success. In general, lawyers are diametrically opposed to guessing or approximating success due to the ethical considerations of their profession. However, it is anticipated that an attorney with a joint degree will have a greater appreciation and capacity for accommodating the concerns of business probabilities.

In federal administrative law, prospects for JD/MBA graduates have increased considerably. The Director of the Bureau of Competition at the Federal Trade Commission, Kevin Arquit, said that a joint degree often proves very helpful. A JD/MBA enables an attorney to understand the business community and also appreciate the ramifications of legal advice. "It is always beneficial when attorneys presenting a case are able to comprehensively explain how business will be affected," Arquit said. "Overall, the time and money cost of the additional year in school is far outweighed by the potential benefits for one with a joint degree."

This is not to say that an individual with a single degree cannot achieve the same understanding or performance as one with a JD/MBA. Certainly, an attorney with just a Juris Doctor has the same capacity to develop a business sense. However, time is important, and firms and corporations often do not have time to educate new attorneys about business considerations and concerns. In the interests of efficiency, a JD/MBA is suitable to fill such specialized positions.

"There are two types of advice that a business will need from its legal counsel: first and foremost, preventive advice; second, advice on ways to structure a decision to meet any legal requirement."

A Joint School for a Joint Program?

The Professional Center for Law and Management will be completed before the fall of 1992. It will be the first professional center of its kind in the country and it will essentially double the space for the law school. As there are overlapping needs for both the business and law schools, they will share certain portions of the building. Although the exact footage and design of the new building will not be available until this spring, certain areas have already been allocated for combined use. The large courtroom will serve as an auditorium for both schools, and there will be shared small classrooms and job interview rooms. Although the business and law libraries will be connected, certain sections will be reserved for each school. It is important to note that since the law school is accredited by the American Bar Association, it will be required to meet ABA library standards. In addition, students will share two lounges, an "active lounge" and a "quiet lounge".

There is some concern that the Professional Center will convey the wrong impression to potential applicants of Wake Forest's graduate programs. Professor Alan Palmiter, a corporate and securities law professor at Wake Forest, feels that it is very important that the school doesn't become know as a "JD/MBA school." The law school needs to remain uniquely a law school, while similarly the business school needs to remain strictly a business school, he said. The JD/MBA program exists exclusively as an opportunity that the two separate schools provide for those students interested in pursuing education in both fields.

A Solid Reputation for Wake Forest

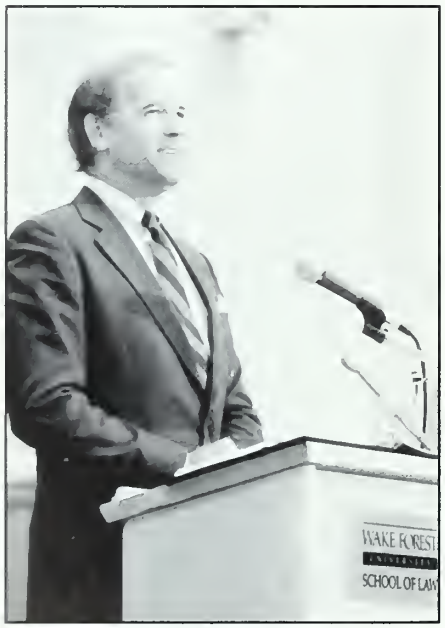
Wake Forest is developing a solid reputation for its JD/MBA program. Presently there are twenty-seven candidates working toward a joint degree. In the past five years, Wake Forest has graduated twenty-three JD/MBA students. They have accepted jobs ranging from associates in law firms to in-house legal counsel for large corporations. It is evident that growth in the JD/MBA program will be a natural consequence of the proximity of the two schools in the new Professional Center. As the respective administrations attempt to define their symbiotic relationship in providing for the specialized JD/MBA program, it is appreciated and emphasized by both that there is neither need nor intent to integrate the two schools. It is obvious, however, that Wake Forest should take advantage of the combined facilities in order to nurture a very specialized and cutting edge program.

By Peggy Holthusen, a third-year student from Winston-Salem, NC

Senator Biden Brings the Constitution to Wake Forest

Law students packed the Carswell Hall courtroom on September 11, trading their studies on a warm afternoon for a chance to hear Senator Joseph R. Biden (D. Del.) speak.

The courtroom filled quickly and students overflowed into the aisles and stairwells. Biden and Dean Robert Walsh went almost unnoticed as they worked their way through the students to the podium. Biden noticed the students in the aisles and invited them to take seats at the bench behind the podium.



Senator Joseph R. Biden speaks at the Law School. (photo by Gardner)

Biden, the first speaker in the Wake Forest Constitutional Law Lecture Series, visited the Law School to speak about filling the spaces behind a more famous, and more troublesome, bench — the United States Supreme Court. His speech, "The Constitution, the Senate and the Court," dealt with the Senate's role in placing qualified candidates as justices of the Supreme Court. As chairman of the Senate Judiciary Committee, Biden was uniquely qualified to speak on the subject.

Biden is one of the new generation of Senate leaders. Although only 46 years old, he is 20th in seniority. The Senator has been active on the Judiciary Committee in developing legislation to fight the nation's crime problems, particularly illegal drug trafficking. He was a chief architect of the major crime bill enacted in 1986 and 1988.

Biden also helped lead the defeat of Robert Bork's nomination to the Supreme Court in 1987. Judge Bork, known for his conservative views and textual interpretations of the Constitution, was thrust into the public eye as the Senate hotly debated his nomination. Biden was drawn into the spotlight as well, in the middle of an eventually unsuccessful Presidential campaign. When the Senate rejected Bork, many conservatives criticized its members as interfering in the President's privilege to name candidates of his choice to the Court.

Biden attacked this notion in his speech, pointing out that the Constitutional Convention "originally intended to give Congress exclusive control over judicial appointments. They totally rejected the President playing any part in the selection of the Supreme Court." Eventually, Biden argued, a compromise was reached allowing the President to nominate, and Congress to confirm, appointments to the Court. "But it is inconceivable that the Constitutional Convention intended the Senate to be a rubber stamp," he said.

Biden stressed the Senate's privilege of advice and consent in selecting the Court, and said that two essential qualities were needed in Supreme Court justices. "First, they must possess an honest, moral and public excellence, and a genuine reverence for the institutions for which they must care. Further, they must have a freedom of mind to place the Constitution above ideology as the law."

Biden presented the Senate as a guardian against a Court packed with biased, unqualified justices. "The Senate," he said, "is where, the old saying goes, the buck stops." Biden warned that "the President may have the opportunity to appoint three to five judges in the next one to four years. It is constitutionally bankrupt to conclude that the Senate does not have an equally legitimate right to accept or reject a person the President has chosen to rule the country."

Biden cited many sources in the Constitution and elsewhere that support his assertion that the Senate has a coequal role with the Executive in selecting the Supreme Court. "But, in recent years, there has been an attempt to change the ground rules," he cautioned. "The Senate is a point of stress in the decision-making process. When the President attempts to alter the Court's course, when the President attempts to remake the Court in his own image, then the President and the Senate are deeply divided."

After the speech, Biden fielded questions from the audience. One question concerned the debate over Bork. Biden said the debate was over basic philosophical differences. "From whence do my rights flow?" he asked. "Do they exist because I exist? Or do I have certain rights only because a constitutional document says I have those rights? That's what the debate was all about."

Biden claimed that Bork ignored Brandeis' famous "right to be let alone" and regarded "the ninth amendment merely as a waterblot on the Constitution." Biden concluded that "the political impact of how the Supreme Court looks in the next ten years will affect how you live well into the next century."

Biden then answered a number of wide-ranging questions. On legalizing mind-altering drugs, Biden recognized the rationale that it would reduce drug-related crime. "But can the government take an action that will definitely harm the health of the people?" he asked. Biden pointed to the high level of addiction these drugs cause and the attendant human misery they bring.

Concerning a constitutional amendment to prohibit flag-burning, Biden expressed support for a carefully-worded law to prohibit desecrating the American flag, but warned against trivializing the Constitution with frivolous amendments.

Biden was introduced and welcomed to Wake Forest by the new Dean of the Law School, Robert Walsh. Walsh observed that Biden and Arthur Gaudio, the Associate Dean for Academic Affairs, had graduated from the Syracuse University

School of Law. "Gaudio told me that it was a time at Syracuse when giants trod the earth," Walsh cracked.

"[T]he political impact of how the Supreme Court looks in the next ten years will affect how you live well into the next century."
— Sen. Biden

After the speech, third-year student Amy Jackson presented the Senator with tokens of the Law School's esteem, including a tee shirt that Biden promised to wear on television while chairing the Judiciary Committee.

Biden prefaced his speech with references to his 1987 Presidential campaign, in which he ran for the Democratic nomination. "I have wanted to speak at Wake Forest for a long time," he admitted. "I kind of had in mind about a year ago, but in a different building." Biden was referring to the Presidential Debate held in Wait Chapel in September, 1988, between Michael Dukakis and George Bush.

Biden dropped out of the campaign after a Dukakis campaign aide circulated a videotape comparing passages in Biden's campaign speeches to those of British Labour Party leader Neil Kinnock. The passages were nearly identical, and Biden soon yielded to media pressure to drop out of the race. Biden joked about this before his speech, saying the speech topic "is one of the few topics to which Neil Kinnock has not spoken." He expressed relief that "fewer and fewer people laugh at that joke."

Since running for President, Biden has remained a focus of national attention in his fight against the drug trade. His anti-drug bill created the office of William Bennett, the "Drug Czar," a national drug coordinator in the cabinet. Biden said that Bennett is "a man in whom I place a great amount of faith." In addition to chairing the Judiciary Committee, Biden is the second most senior Democrat on the Senate Foreign Relations Committee, where he chairs the Subcommittee on European Affairs.

External Affairs of the Law School was instrumental in bringing Biden to Wake Forest and was pleased with the Senator's performance. Professor Michael Gerhardt, a constitutional law teacher, said "We want to provide a more formal forum for experts in the field of Constitutional Law." Gerhardt did not reveal who is next in the lecture series, but hopes to attract other "big names" in constitutional law.

By Brian Flately, a second-year student from Boston, MA

National Trial Team Places Second in "Tournament of Champions"

The Wake Forest National Trial Team recently won second place in the National Trial Competition's First "Tournament of Champions" in Akron, Ohio, November 15-18, 1989.

Len Cohen and Rod Pettey, both third-year students, won the prestigious award by arguing a civil action that focused on an execution-style killing of a corporate president. The decedent's widow filed suit to prevent the decedent's brother from benefitting from the decedent's demise. The brother allegedly hired a contract killer to knock-off the decedent so that the brother could take over the corporation. Cohen and Pettey prepared and argued the case for both the plaintiff and the defense.

A second team also competed, with third-year students Niles Gerber and David Hall arguing the case in a separate bracket. Supporting the two teams in practice and research were second-year trial team members Denise Hartsfield and Lee Nelson. The entire trial team prepared the case over a rigorous schedule of practice rounds from mid-October until the competition. Some of the area's best trial lawyers judged and critiqued each practice round.

Coach and Professor Carol Anderson said, "Everyone on the team worked hard and did extremely well against some tough competition. I'm awfully proud of them."

Schools invited to participate in the Tournament of Champions represented the top twelve Trial Advocacy programs in the country. Invitations were extended to one school in each Circuit based on each school's record in actual competitions over the past three years.

By Brian Davis, a second-year student from Candler, NC

Wake Forest National Trial Team (photo by Gardner)

1L's Gain Courtroom Experience in First-Year Trial Bar Competition

On Friday, October 6, 1989, first-year students Chris Fox and David Pokella had a chance to display their courtroom talents before a judge and jury in the final round of the First-Year Trial Bar Competition. In the case of *Morgan v. Audi Corp.*, Fox, representing the plaintiff, and Pokella, representing the defendant, argued before Judge William B. Reingold of the Forsyth County District Court. At the conclusion of closing arguments, Judge Reingold, who stated that he was impressed with the abilities of both finalists, declared Pokella the winner.

David Pokella

The case concerned the tragic death of Joe Morgan who died when his Audi went over a cliff. The issue to be determined was whether Morgan committed suicide or whether the Audi, due to a manufacturing defect, shifted itself from park to drive and rolled over the cliff. Judge Reingold noted that the styles of the finalists were very different but fitted their respective sides. Fox used an aggressive, emotional approach in an attempt to stir passions in favor of the individual against the corporate giant. Pokella on the other hand, used a calm, reassuring manner to persuade the jurors that although the death was tragic, it was the result of a successful suicide attempt and not an Audi defect.

The final round between Fox and Pokella marked the end of three weeks of competition for a record turnout for Trial Bar with 112 students participating in the event. In the competition, participants gave a brief voir dire, opening statement and closing argument. In the preliminary rounds, which were judged by second- and third-year Trial Bar members, competitors were required to present both sides of the case. Based on the combined scores of two arguments, the top sixteen competitors were selected to proceed into a single elimination tournament, which was judged by local attorneys.

In addition to the thrill of competition and satisfaction of performance, the first-year competitors hoped to gain membership on the Student Trial Bar. Trial Bar is a service organization for students interested in trial advocacy.

Neil Kodsi, a second-year student and Vice President of Trial Bar, conducted this year's competition and wrote the problem. In writing the problem, he provided numerous facts on which competitors could base their arguments. Kodsi commented that well-balanced sides and a variety of facts required participants to employ more strategy in constructing their arguments. Kodsi hoped that this aspect of the problem would resemble an actual trial in which the ability to organize an argument is just as important as its presentation. In conclusion, Kodsi stated, "This year's competition went well, and I was very pleased with the results. What matters overall is that the competitors gained a valuable experience."

By Sara Beth Fulford, a second-year student from Farmville, NC, and Phillip R. Batten, a second-year student from Greensboro, NC

The 1989 Stanley Moot Court Competition

Each year during the fall semester, the best appellate advocates at the Wake Forest School of Law participate in the Stanley Moot Court Competition. The namesake of the competition, the late Judge Edwin M. Stanley, was a distinguished alumnus of Wake Forest who served as a United States District Court Judge.

The participants in the competition may choose to take Appellate Advocacy in conjunction with the competition, or they may simply participate in the competition for enjoyment and experience. The popularity of the competition has grown each year, as evidenced by the fact that seventy students competed in this year's competition.

Each year, the legal problem used focuses on an issue which is contemporaneous with the competition. This year's problem concerned the Federal regulation of a broad category of weapons, all of which could be loosely categorized as "assault rifles." When the bill regulating possession of such guns was passed by Congress, the American Rifle Association (ARA) objected to its purpose, contending that it violated the Second Amendment's granting of the right to bear arms. Moreover, passage of the bill meant that a summer camp sponsored by the ARA for underprivileged teens and young adults would not receive government support, because the camp taught the campers about the use of firearms. This was expressly forbidden in the bill restricting the possession of firearms. The ARA argued that this violated their First Amendment right to freedom of speech, and that they should be free to instruct their campers in the safe use of firearms. Thus, the two issues to be argued before the court in this action were:

1. Whether the bill regulating the possession, sale or manufacture of certain

firearms violates the Second Amendment?

2. Whether the Government violates the First Amendment by denying funding to an applicant based on the content of the speech within that program?

Each of the competition participants wrote an appellate brief on these two issues, with one-half of the competitors taking the petitioner's case (the ARA) and the other half taking the respondent's case (Smith N. Wesson, the United States Attorney General). On the basis of two preliminary oral arguments, sixteen competitors from the original field of seventy were chosen to continue in the competition.

This year's semi-finalists were Donna McLamb, a third-year student, Terry Kilbride, a third-year student, Lee Nelson, a second-year student and Stephanie Townsend, a second-year student. From these four students, Terry Kilbride and Lee Nelson were chosen to compete in the final round.

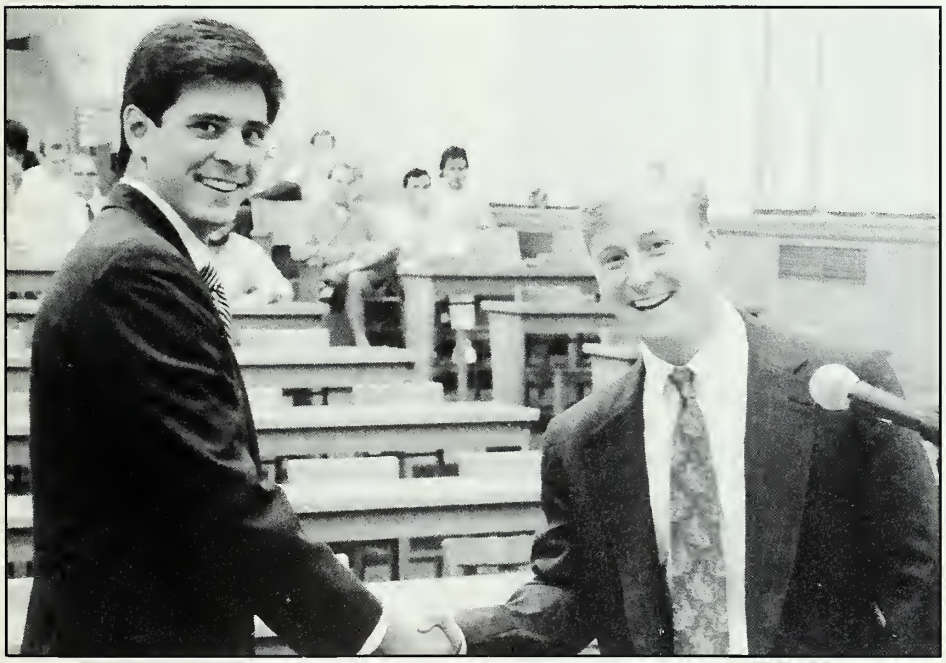
The panel who judged the final round of the competition included the Honorable Bailey Brown, Senior Judge, Sixth Circuit Court of Appeals; the Honorable Donald Lay, Chief Judge, Eighth Circuit Court of Appeals; and the Honorable Joseph Branch, Retired Chief Justice of the North Carolina Supreme Court and a distinguished alumnus of the School of Law. The panel asked both finalists very difficult and thought-provoking questions throughout their respective arguments. At the close of the final arguments, the panel declared Terry Kilbride the winner in an extremely close contest.

The judges had nothing but praise for the two finalists. Judge Lay, who served as the Chief Judge, said that "Both of the young men were able to deftly answer the questions posed to them. They did not attempt to evade a question or respond to a question by stating that they would get to it in a minute. They were, in fact, better prepared and more responsive than many of the lawyers I deal with in the Circuit Court." Judge Brown also appreciated the efforts of the men, and said "This was a difficult problem. For these young men to be able to handle it so well is really a credit to them." Finally, Justice Branch felt that "It is obvious with participants and students like these young men, that the Law School at Wake Forest has not gone back, but taken giant steps forward."

In addition to Kilbride and Nelson being recognized for their outstanding accomplishments, several other students were recognized for their work in the competition. The James C. Berkowitz Award for Best Oralist, named in honor of a Wake Forest Law Student who died in 1984 while participating in the Stanley Competition, went to Denise Hartsfield, a second-year student. Hartsfield received a plaque, a cash award of $200, and will have her name inscribed on a permanent plaque which hangs in the Law School. Also, Jeff Whittle, a second-year student, received the award for the Best Brief in the competition.

Wake Forest takes pride in the fact that its trial and appellate teams place highly in national competitions each year. The Stanley Competition is just one example of the quality of education available at the Law School, and each of the participants should be proud of their accomplishments in this year's competition.

By Michael Beal a second-year student from Mt. Airy, NC



Lee Nelson congratulates Terry Kilbride

Moot Court Board Sends Three Teams to National Competitions

The Moot Court Board had three teams arguing in national competitions last semester: the Benton Team and two National Teams. The Benton Competition took place in Chicago on October 26-28. Wake Forest's Benton Team was composed of one third-year student, Marcy Louza, and two second-year students, Howell Burkhalter and Lynn Rowe.

The Benton Team, with advisor Professor David Logan, spent many long hours both in the library and in the courtroom preparing for the Chicago competition. The issue that the team briefed and argued dealt with the First Amendment right to privacy.

This year marked the Fortieth Annual National Moot Court Competition, and Wake Forest has two distinct and talented national teams. One team consisted of Rusty Chapman, David Flowers and Joyce Terress; the other had Mark Childers, Tom Coulter and Alan Powell as mem-

bers. The advisor for both national teams was Professor Charles Rose.

The issue faced by the national teams pertained to the hostile take-over of a corporation, which brings into play the Clayton Act and the Securities Exchange Act of 1934. The teams started their practice rounds on October 25 in order to be ready for the regional competition, which was held in Richmond, Virginia, on November 17 and 18. Twenty-four teams from twelve schools competed at the regional level but only the top two teams advanced to the final rounds of the national competition in New York.

By Brian Davis, a second-year student from Candler, NC

Twenty-Five Years of the Civil Rights Act

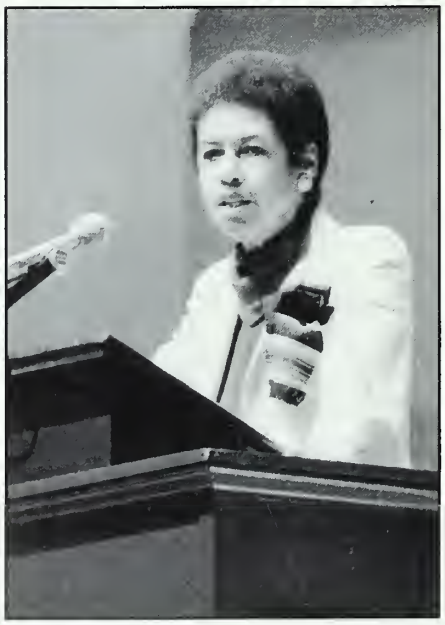
Wake Forest University School of Law sponsored a two-day program celebrating the 1964 Civil Rights Act. The program, "Twenty-Five Years of the Civil Rights Act: History and Promise," was held November 9-10, 1989 in Brendle Recital Hall in the James Ralph Scales Fine Arts Center.

Before an audience of approximately 400 people, Professor Eleanor Holmes Norton delivered the keynote address: "Assessing the Damage: The Supreme Court and Title VII of the 1964 Civil Rights Act." Norton received her law degree from Yale Law School and is currently a professor of law at Georgetown University Law Center. In addition, she was appointed by former President Jimmy Carter to chair the Equal Employment Opportunity Commission.

Earlier in the program, Professor Maya Angelou, Reynolds Professor of American Studies at Wake Forest, read the poem "Let America be America Again" by Langston Hughes. Norton commented that the program was truly inspired. "Any group who would have the good sense to put a lawyer and a poet on the same program has my high regards. I am inclined to think we would have a lot more justice if we had more of that combination."

In her keynote address, Norton focused on recent civil rights cases decided by the United States Supreme Court. "Americans, both liberal and conservatives, engaged in no small amount of self-congratulations on the distance they have come since minority Americans were routinely excluded from jobs in every part of the country, and from since it was rare for women to find work outside of women occupations," Norton stated. "Yet, the very remedies that have brought these changes are under attack and often from the very same people who logged the nation's progress. After last term's decisions, not only the remedies but the future of the Civil Rights statute itself has been seriously called into question.

"The fact is the new equality in American life owes no small part to Title VII and its remedies. Without them America would look much more like it did than like it does," Norton commented. "When the Court says no to equality its word carries as much history as when it says yes. The Supreme Court is linked to equality for better and for worse."



Professor Eleanor Norton opens the Civil Rights celebration. (photo by Gardner)

Norton stated that with such recent decisions as *Wards Cove Packing Co., Inc. v. Atonio, Lorance v. AT&T Technologies, Inc.* and *Martin v. Wilks*, the "Court abruptly broke with its own understanding of discrimination law in a cloudburst of debilitating reinterpretations which did not come on the controversial issues of goals and quota as feared in the Reagan years, but on technical decisions which make it harder to prove discrimination and easier to attack court-approved consent decrees."

Norton said that for the past twenty-five years, the law required the plaintiff to put on an initial statistical case. Then, the burden of proof shifted to the employer to explain the reasons for differences that appeared based on race or sex. She viewed this approach as reasonable since only the employer has the information that would prove or disprove discrimination.

However, with *Wards Cove*, the Supreme Court reversed this burden. Now, plaintiffs have the burden of the costly discovery process in order to establish discrimination. Norton stated that in addition to the financial burden, the Court imposed "almost impossibly exacting standards for demonstrating that particular practices caused particular effects to particular plaintiffs.

"The Court appeared to lower the standards set by its earlier interpretations that only a compelling business purpose could override a practice that disproportionately eliminated minorities and women," Norton explained. "Instead the employer need only show a legitimate employment goal. Even business practices that are discriminatory could meet this standard. The combination of practically unfeasible standards of proof and of the costs *Wards Cove* adds to Title VII litigation, which is already prohibited to most litigants, sends the statute to an early grave."

On the second day of the program, before an audience of approximately 225 people, Norton moderated a panel which consisted of Nicholas deB. Katzenbach, Julius Chambers and Cruz Reynoso.

Katzenbach, who was Attorney General during the Johnson Administration and is now a partner with Riker, Danzig, Scherer, Hyland & Perretti, presented the view of government enforcement. He explained the intricate legislative strategy for ensuring that there were enough Con-

gressional votes to pass the Act. He noted that there had been earlier legislation and cases which were ineffective in abolishing state-supported discrimination. "The problem was that cases were won after a long time, but they did not really have much impact because people went ahead and did what they did before," Katzenbach said.

He stated that the powerful Civil Rights Act of 1964 was passed because Blacks succeeded in putting an intolerable amount of pressure on Congress by marching and boycotting. Also, he noted that television, as a medium, moved the rest of the nation with pictures of the blatant discrimination of the South.

Julius Chambers presented the view of private litigation of the Act. Presently, Chambers is Director-Counsel of the NAACP Legal Defense and Educational Fund. He has litigated landmark civil rights cases such as *Griggs v. Duke Power Co.* Chambers noted that the Act oddly placed enforcement on the private litigants. "Congress has told the victim of discriminations: 'You enforce your own rights.'"

Chambers also stated that during the early years of the Act, courts gave it very broad and liberal interpretations. The courts reasoned that they were "enforcing a remedial statute designed to root out the evils." However, he noted that modern courts' use of Rule 11 has had a chilling effect. "If you can find a lawyer, he or she is going to be concerned about the courts' ruinous use of Rule 11 to sanction the attorney," Chambers stated. "What we have found is that many lawyers across the country are abandoning involvement in employment discrimination cases."

Finally, Cruz Reynoso presented the view of personal impact of the Act. Currently, Reynoso is special counsel with Kay, Scholer, Fierman, Hays & Handler. Reynoso said that as an Hispanic in California, he experienced discrimination as a child. During those days, Hispanic children were required to attend segregated schools. Of his class, only three students graduated from high school. Of those three, he was the only one who went on college. "The amorphous notion that somehow the dreams for others were not for us did seem to have, what schools now call, a self-selecting process," Reynoso noted.

Lorraine Schmall, an associate law professor at Wake Forest, originally thought of the idea for the Civil Rights Act program. She chaired the law school's Civil Rights Act Committee which consisted of faculty members and students. Of that committee, law professors Charles Rose, Jr. and Suzanne Reynolds were involved in planning and obtaining financial support for the program.

Judge Cruz Reynoso provides a legal perspective to the Civil Rights Act. (photo by Gardner)

Schmall described the panel members as "our personal heroes." She said, "The people we brought to you today are among that small, dedicated, brilliant and generous cadre of American heroes who were and are a part of the history and promise of the Civil Rights Act of 1964."

Rose said that work for the conference began in March, 1989. The committee wanted the program to appeal to all parts of the student body and University. "In my view the program was a success," Rose said. "The panel worked out well because it consisted of high quality people who had a good rapport with each other. These people are the types that law students ought to become in-tuned with, not 'L.A. Law' stars."

Reynolds is credited with having the foresight to put a lawyer and a poet on the same program. The idea came to her last summer when she went to see some of the productions of the National Black Repertory Theatre. There, she heard Dr. Maya Angelou make an introduction. She knew that Angelou is a civil rights activist so she wanted Angelou on the program.

Reynolds stated that she was disappointed that more students did not participate. She described the Civil Rights Act of 1964 as a "rich part of our history." She said, "No American could consider himself or herself well-educated without knowing about this Act. These people made part of our national heritage come alive in a way that only those people who were involved in it during the sixties would know."

By Patricia A. Everett, a second-year student from Ahoskie, NC

Lawyer Advertising: Ethical Guidelines

*By Katrina E. Chisolm, Michael W. Crews, and Jeffrey S. Whittle**

Lawyer advertising has expanded over the past decade culminating with the American Bar Association's formulation of specific aspirational goals for attorneys.[1] From a business perspective, advertising is essential to name recognition and educating the public about legal services.[2] Although media advertising may not be appropriate for all practices of law, this type of advertising is especially important for legal clinics and newly established firms.[3]

Many attorneys have seen a dramatic increase in their practice through advertising[4] since the Supreme Court of the United States lifted the ban in 1977.[5] Prior to the 1977 ruling, advertising was discouraged by most attorneys[6] and restricted by most state ethical rules.[7] Since 1977, the Court has decided six key cases[8] that now leave the field of advertising wide open for law firms in North Carolina.

The purpose of this article is to give attorneys in North Carolina, who are considering advertising, ethical guidelines to follow when creating a marketing/advertising plan. The article will discuss the Supreme Court cases classifying attorney advertising as commercial speech and then will describe the North Carolina Rules of Professional Conduct that pertain to advertising.

I. CONSTITUTIONAL CONSIDERATIONS

A. The Supreme Court Opens the Door to Lawyer Advertising

In 1977, the Supreme Court of the United States opened the door to lawyer advertising by lifting the total ban which had been in effect since 1908.[9] A rapid development of case law[10] surrounding lawyer advertising has followed the Supreme Court's decision that a total ban is unconstitutional.[11]

B. Lawyers May Advertise Prices of Routine Services

In *Bates v. State Bar of Arizona*[12], the plaintiff challenged a disciplinary rule which the Arizona Supreme Court had imposed on the state bar restricting advertising by attorneys.[13] Since the plaintiff's advertisement only publicized the attorneys' "legal clinic" and claimed that such attorneys offered services at "very reasonable" prices, the Court narrowed the issue to whether lawyers may constitutionally advertise the prices at which certain routine services will be performed.[14] The Court turned to the first amendment's freedom of speech clause to decide that lawyer advertising is commercial speech[15] because "it serves individual and societal interests in assuring informed and reliable decision-making" and, thus, is

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**Katrina E. Chisolm (JD/MBA candidate 1990), Michael W. Crews (JD/MBA candidate 1991), Jeffrey S. Whittle (JD/MBA candidate 1991).* *The authors would like to especially thank Polly K. Whittle for her faithful support and Brien D. Stockman (JD candidate 1990) for his excellent comments.*

[1]American Bar Commission on Advertising:

Ten Aspirational Goals for Attorney Advertising

1. Lawyer advertising should encourage and support the public's confidence in the individual lawyer's competence and integrity as well as the commitment of the legal profession to serve the public's legal needs in the tradition of the law as a learned profession.

2. Since advertising may be the only contact many people have with lawyers, advertising by lawyers should help the public understand its legal rights and the judicial process and should uphold the dignity of the legal profession.

3. While "dignity" and "good taste" are terms open to subjective interpretation, lawyers should consider that advertising which reflects the ideals stated in these Aspirational Goals is likely to be dignified and suitable to the profession.

4. Since advertising must be truthful and accurate, and not false or misleading, lawyers should realize that ambiguous or confusing advertising can be misleading.

5. Particular care should be taken in describing fees and costs in advertisements. If an advertisement states a specific fee for a particular service, it should make clear whether or not all problems of that type can be handled for that specific fee. Similar care should be taken in describing the lawyer's areas of practice.

6. Lawyers should consider that the use of inappropriately dramatic music, unseemly slogans, hawkish spokespersons, premium offers, slapstick routines or outlandish settings in advertising does not instill confidence in the lawyer or the legal profession and undermines the serious purpose of legal services and the judicial system.

7. Advertising developed with a clear identification of its potential audience is more likely to be understandable, respectful and appropriate to that audience, and, therefore, more effective. Lawyers should consider using advertising and marketing professionals to assist in identifying and reaching an appropriate audience.

8. How advertising conveys its message is as important as the message itself. Again, lawyers should consider using professional consultants to help them develop and present a clear message to the audience in an effective and appropriate way.

9. Lawyers should design their advertising to attract legal matters which they are competent to handle.

10. Lawyers should be concerned with making legal services more affordable to the public. Lawyer advertising may be designed to build up client bases so that efficiencies of scale may be achieved that will translate into more affordable legal services.

Marcotte, *Lawyer Ads—The Next Step*, 74 A.B.A. J., Aug. 1, 1988, at 17, 18.

[2]See Philip Kotler, *Marketing Management: Analysis, Planning, Implementation, and Control*, 617-42 (6th ed. 1988).

[3]*See id.*

[4]*See* Marcotte, *Lawyer Ads—The Next Step*, 74 A.B.A. J., Aug. 1, 1988, at 17; Blodgett, *A Guide To*

"entitled to certain protection under the first amendment."[16] The Court also noted, however, that reasonable restrictions may be placed on the time, place, and manner of such advertising.[17] This commercial speech analysis was used in Bates to conclude that the first amendment permits regulation of advertising by attorneys that is false, deceptive or misleading or which concerns transactions which are themselves illegal.[18]

The *Bates* Court, however, expressly did not consider the issues of advertisements which make claims as to the quality of services and in-person solicitation.[19] The Court also reserved consideration of the "special problems of advertising on the electronic broadcast media"[20] saying that it "will warrant special attention."[21]

C. Direct, In-person Advertising Discouraged

The questions that remained following the Bates case did not go unanswered for long. The Court soon considered one of these questions in *Ohralik v. Ohio State Bar Assoc.*[22] and *In re Primus*[23], where the issue was the constitutionality of direct, in-person communication with a prospective client. The first case, *In re Primus*, involved a practicing lawyer from South Carolina who informed a woman in a letter that free legal assistance was available from the American Civil Liberties Union (ACLU).[24] This assistance was available to women who had been sterilized as a condition of receiving public medical assistance.[25] The Court held that this case was unique because the lawyer engaged in solicitation by mail on behalf of a nonprofit organization (ACLU) that pursues litigation as a vehicle for effective political expression and association.[26] This type of expression is protected by the first amendment.[27]

In the second case, *Ohralik*, the Court addressed a situation where the solicitation was not on behalf of an organization such as the ACLU. Rather, the lawyer in this case personally confronted two automobile accident victims to solicit their business.[28] Following the view that first amendment protection of commercial speech allows for reasonable restrictions on the time, place, and manner of advertising, the Court held that solicitation of business by lawyers through direct, in-person communication with a prospective client is viewed as inconsistent with the profession's ideal of the attorney-client relationship.[29] This direct contact, the Court reasoned, poses a significant potential harm to the client.[30] Furthermore, the State bears special responsibility for maintaining standards among members of the licensed professions,[31] especially members of the Bar,[32] to protect the "public from those aspects of solicitation that involve fraud, undue influence, intimidation, overreaching, and other forms of 'vexatious conduct.'"[33] Therefore, these purposes should be

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Successful Marketing, 74 A.B.A. J., Aug. 1, 1988, at 19; Stewart and Nelson, *Hawking Legal Services*, 74 A.B.A. J., Aug. 1, 1988, at 44; Andrews, *The Model Rules and Advertising*, 68 A.B.A. J., July 1982, at 808.

[5]*See Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

[6]See Note, *Attorney Solicitation By Target, Direct-Mail Advertisements: The Demise of a Profession — Shapero v. Kentucky Bar Association*, 24 W.F.U. L. Rev. 481 (1989); Calvani, Langenfeld, Shuford, *Attorney Advertising and Competition at the Bar*, 41 Vand. L. Rev. 761 (1988); Bowers, Stephens, *Attorney Advertising and the First Amendment: The Development and Impact of a Constitutional Standard*, 17 Mem. St. U.L. Rev. 221 (1987); Note, *Attorney Advertising and Commercial Speech After Zauderer v. Office of Disciplinary Counsel*, 21 Tulsa L. J. 591 (1986).

[7]See Calvani, Langenfeld, Shuford, *Attorney Advertising and Competition at the Bar*, 41 Vand. L. Rev. 761, 763 (1988).

[8]*Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *In re Primus*, 436 U.S. 412 (1978); *Ohralik v. Ohio State Bar Assoc.*, 436 U.S. 447 (1978); *In re R.M.J.*, 455 U.S. 191 (1982); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985); *Shapero v. Kentucky Bar Assoc.*, 108 S. Ct. 1916 (1988).

[9]Andrews, *The Model Rules and Advertising*, 68 A.B.A. J., July 1982, at 808; *See Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

[10]*See Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *In re Primus*, 436 U.S. 412 (1978); *Ohralik v. Ohio State Bar Assoc.*, 436 U.S. 447 (1978); *In re R.M.J.*, 455 U.S. 191 (1982); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985); *Shapero v. Kentucky Bar Assoc.*, 108 S. Ct. 1916 (1988).

[11]*Bates*, 433 U.S. at 357.

[12]433 U.S. 350 (1977).

[13]*Id.* at 355.

[14]*Id.* at 367.

[15]The Supreme Court case of *Virginia Pharmacy Board v. Virginia Consumer Council*, 425 U.S. 748 (1976), opened the door to professional advertising in general by reclassifying this area as commercial speech. Prior to *Virginia Pharmacy*, commercial speech received no first amendment protection.

[16]*Id.* at 357.

[17]*Id.* at 384: *See Virginia Pharmacy Board v. Virginia Consumer Council*, 425 U.S. 748, 771 (1976).

[18]*Bates*, 433 U.S. at 383.

[19]*See In re Primus*, 436 U.S. 412 (1978); *Ohralik v. Ohio State Bar Assoc.*, 436 U.S. 447 (1978).

[20]These types of media include radio, television, and certain telephone advertisements.

[21]*Bates*, at 383.

[22]436 U.S. 447 (1978).

[23]436 U.S. 412 (1978).

[24]*Id.* at 416.

[25]*Id.*

[26]*In re Primus*, 436 U.S. at 427.

[27]*Id.*

[28]*Ohralik*, 436 U.S. at 447.

[29]*Id.* at 454.

[30]*Id.*

[31]Pharmacists, doctors, lawyers, engineers, and others.

[32]Each state has its own ethics rules and guidelines. Most of these state rules are modeled after the American Bar Association's Model Rules of Professional Conduct.

[33]*Ohralik*, 436 U.S. at 462.

[34]*Id.*

[35]*In re R.M.J.*, 455 U.S. 191 (1982).

viewed as a legitimate and an important state interest.[34]

D. States Cannot Absolutely Prohibit Potentially Misleading Information when Presented in a Non-Deceptive Manner

In 1982, the Court went a step further by considering whether a state may place an absolute prohibition on certain types of potentially misleading information when the information may be presented in a way that is not deceptive.[35] The lawyer in the case of *In re R.M.J.* had advertised in print media that he was a member of the Illinois, Missouri, and U.S. Supreme Court bars.[36] Although this was all true, the Missouri advertising rule did not permit these items for inclusion in an advertisement.[37]

A four-step analysis has developed in commercial speech cases to determine whether a regulation should be upheld or struck down.[38] The first step is to question whether the expression is protected by the first amendment.[39] To be protected, "it at least must concern lawful activity and not be misleading."[40] The second step is to determine "whether the asserted governmental interest is substantial."[41] If the answers to the first two inquiries are affirmative, the next step is to "determine whether the regulation directly advances the government interest asserted" and, finally, "whether it is more extensive than necessary to serve that interest."[42]

The Supreme Court struck down the Missouri rule using the fourth step in the commercial speech analysis which mandates that a state regulate "with care and in a manner not more extensive than reasonably necessary to further substantial interest."[43] In sum, the Court found that the provisions of the Missouri Supreme Court rule regulating lawyer advertising,[44] which prohibited deviating from a precise listing of areas of practice, violated the first amendment.[45] The Court stated that the Ohio State Bar Association did not show that the advertising was misleading or that the mailings and handbills would be more difficult to supervise than mass media advertising.[46]

E. Blanket Bans on Price Advertising are Impermissible

In 1985, the Court was faced with the issue of whether blanket bans on price advertising by lawyers violate the first amendment.[47] The appellant in *Zauderer v. Office of Disciplinary Counsel* first ran a small newspaper advertisement which stated that his law firm would represent defendants in drunk driving cases and that his clients' "full legal fee [would be] refunded if [they were] convicted of DRUNK DRIVING."[48] Several months later, appellant ran a second newspaper advertisement which "publicized his willingness to represent women who had suffered injuries resulting from their use of a contraceptive device known as the Dalkon Shield Intrauterine Device."[49]

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[34]*Id.* at 197.

[35]*Id.* at 205.

[36]*Central Hudson Gas & Elec. Corp. v. Public Serv. Comm.*, 447 U.S. 557, 566 (1980).

[37]*Id.*

[38]*Id.*

[39]*Id.*

[40]*Id.*

[41]*Ohralik*, 436 U.S. at 207.

[42]Rule 4 of the Missouri Supreme Court, regulating advertising by lawyers, states that a lawyer may include 10 categories of information in a published advertisement: name, address and telephone number; areas of practice; date and place of birth; schools attended; foreign language ability; office hours; fee for initial consultation; availability of a schedule of fees; credit arrangements; and the fixed fee to be charged for certain 'routine' legal services." *Ohralik*, 436 U.S. at 207.

[43]*Ohralik*, 436 U.S. at 206.

[44]*Id.*

[45]*Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985).

[46]*Zauderer*, 471 U.S. at 629.

[47]*Id.* at 630.

[48]*Id.*

[49]*Id.* at 631.

[50]"[F]ull legal fee refunded if convicted of DRUNK DRIVING." *Zauderer*, 471 U.S. at 629.

[51]*Id.*

[52]"DID YOU USE THIS IUD?" Id. at 630.

[53]Ohio Disciplinary Rule 2-101(B); *See Zauderer*, 471 U.S. at 632-33.

[54]Ohio Disciplinary Rule 2-101(B); *See Zauderer*, 471 U.S. at 632-33.

[55]*Zauderer*, 471 U.S. at 632.

[56]*Id.* at 637-38.

[57]*Id.* at 644.

[58]*Id.* at 641.

[59]*Id.* at 638.

[60]108 S. Ct. 1916 (1988).

[61]*Id.* at 1923-24.

[62]The attorney in *Shapero* applied to the Kentucky Attorneys Advertising Commission for approval of a letter that he proposed to send to potential clients. The Commission did not find the letter to be false or misleading, but nevertheless denied the request. The Commission based its decision on Ky. Sup. Ct. Rule 3.135(5)(b)(i) which prohibited the mailing or delivery of written advertisements "precipitated by a specific event or occurrence involving or relating to the addressee or addressees as distinct from the general public." *See Shapero*, 108 S. Ct. at 1919.

[63]*Shapero*, 108 S. Ct. at 1924.

[64]*Id.* at 1925.

[65]*See Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

[66]*See Ohralik v. Ohio State Bar Assoc.*, 436 U.S. 447 (1978).

[67]*See In re R.J.J.*, 455 U.S. 191 (1982).

[68]*See Shapero v. Kentucky Bar Assoc.*, 108 S. Ct. 1916 (1988).

[69]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT (1989).

[70]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Canon II (1989).

[71]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.1 comment (1989).

[72] NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.1 (1989).

Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading

Appellant also featured a "drawing of the Dalkon Shield accompanied by the question, 'DID YOU USE THIS IUD?'"[50] The Office of Disciplinary Counsel alleged that these two advertisements violated several Disciplinary Rules on lawyer advertising contained in the Ohio Code of Professional Responsibility.[51]

The Office of Disciplinary Counsel alleged that the first advertisement[52] used by appellant was "'false, fraudulent, misleading, and deceptive to the public' because it offered representation on a contingent-fee basis in a criminal case — an offer that could not be carried under the Disciplinary Rules."[53] The second advertisement[54] allegedly violated other Disciplinary Rules which prohibited the use of illustrations in lawyer advertising,[55] which require advertisements to be "dignified,"[56] and which "limit the information that may be included in such ads to a list of 20 items."[57]

The Supreme Court again used the commercial speech analysis to conclude that blanket bans on price advertising by attorneys and rules preventing attorneys from using non-deceptive terminology to describe their fields of practice are impermissible.[58] The Court's rationale was that a rule was overly broad which prevented an attorney from making accurate statements regarding the nature of his practice merely because some readers will infer that he has some expertise in those areas.[59] Furthermore, the Court found no merit in the Disciplinary Counsel's position that the State's power to prohibit advertising that is "inherently misleading" could justify Ohio's prohibition of newspaper advertisements directed to persons with specific legal problems.[60] The Supreme Court, however, did retain its position that "rules prohibiting in-person solicitation of clients by attorneys are, at least under some circumstances, permissible."[61]

F. Direct Mailings Not Strictly Prohibited

The latest Supreme Court case on lawyer advertising, *Shapero v. Kentucky Bar Assoc.*[62], directly reviewed the propriety of direct mailings to potential clients.[63] The Court stated that such advertising[64] was constitutionally protected commercial speech which a state could regulate through less restrictive and more precise means, such as requiring lawyers to file any solicitation letter with a state agency.[65] Thus, *Shapero* held that a state could not categorically prohibit lawyers from soliciting legal business for pecuniary gain by sending truthful and non-deceptive letters to potential clients known to face particular legal problems.[66]

G. Summary of Supreme Court Guidelines

(1) Lawyers may advertise prices of routine services.[67]

(2) Direct, in-person advertising dis-

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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 lawyers' services, unless the comparison can be factually substantiated.

[75]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.1 comment (1989).

[76]*See* NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.1 comment (1989) (Examples of statements which may create unjustified expectation).

[77]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.1 (1989).

[78]*Central Hudson Gas & Elec. Corp. v. Public Service Comm.*, 447 U.S. 557, 566 (1980).

[79]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.2 (1989).

Advertising

(A) Subject to the requirements of Rule 2.1, a lawyer may advertise services through public media, such as telephone directories, legal directories, newspapers or other periodicals, outdoor advertising, radio or television, or through written communications not involving solicitation as defined in Rule 2.4.

(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.

(C) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization. A lawyer may participate in and share the cost of a private lawyer referral service so long as the following conditions are met:

(1) Only compensation for administrative service may be paid to a lawyer or layman incident to the operation of the private referral service, which compensation shall be reasonable in amount;

(2) All advertisements shall be paid for by the participants in the service;

(3) No profit in specie or kind may be received other than from legal fees earned from representation of referred clients;

(4) Employees of the referral service may not initiate contact with prospective clients; and

(5) All advertisements shall:

(a) State clearly and conspicuously that the referral service is privately operated, which statement shall be given the same prominence as the name of the referral service:

(b) State that a list of all participating lawyers will be mailed free of charge to members of the public upon request and state further where such information may be obtained; and

(c) Indicate that the service is not operated or endorsed by any public agency or any disinterested organization.

Any lawyer participating in a private lawyer referral service shall be professionally responsible for its operation.

couraged.[68]

(3) Court concerned with false or misleading advertising.[69]

(4) Direct mailings not strictly prohibited.[70]

II. NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT

Canon II of the North Carolina Rules of Professional Conduct governs lawyer advertising.[71] The goal espoused in the heading of Canon II is that "a lawyer should assist the legal profession in fulfilling its duty to make legal counsel available."[72]

A. Advertisements Must Not Be Misleading

Rule 2.1 requires that a lawyer must not communicate information about himself or his services[73] which is "false or misleading."[74] In simpler terms, such communication must be truthful.[75] In addition, such communication may not create an unjustified expectation about results the lawyer can achieve."[76] Finally, a lawyer may only compare his services to those of another lawyer if the "comparison can be factually substantiated."[77] Rule 2.1 is in accordance with the first step of the first amendment commercial speech analysis which requires that the expression "at least must concern lawful activity and not be misleading."[78]

B. Attorneys May Use All Types of Media for Advertisements

Rule 2.2 imposes specific regulations on attorney advertising.[79] The rule authorizes the advertisement of services through all types of public media,[80] but prohibits solicitation.[81] Also, Rule 2.2(B) requires the lawyer to keep a copy of the communication and a record of when and where it was used "for two years after it was last disseminated."[82]

A lawyer cannot pay someone to recommend his services but may participate in a lawyer referral service if the conditions in Rule 2.2(C) are followed.[83] At least one lawyer or law firm must take responsibility for the content of such communication by including the name(s) in the advertisement.[83] This rule is also narrowly tailored in accordance with the Supreme Court's commercial speech analysis which provides that a regulation must not be more extensive than necessary.[85]

C. Guidelines on Names and Letterheads

Rule 2.3 prohibits firm names, letterheads, and other professional designations from violating Rule 2.1 or 2.2.[86] In addition, Rule 2.3 prohibits trade names which "imply a connection with a government agency or with a public or charitable legal services organization" and requires trade names to be registered with the North Carolina State Bar.[87]

(D) Any communication made pursuant to this rule other than that of a lawyer referral service as described in subsection (C) above shall include the name of at least one lawyer or law firm responsible for its content.

[68]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.2 comment (1989); North Carolina Commission on Professional Responsibility, Formal Op. 39.

[69]*See* NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.4 (1989) for guidelines on solicitation.

[70]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.2 (1989).

[71]*See* Rule 2.1 *supra* note 72.

[72]*Id.*

[73]*See Central Hudson Gas & Elec. Corp. v. Public Service Comm.*, 447 U.S. 557, 566 (1980).

[74]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.3 (1989).

Firm Names and Letterheads

(A) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rules 2.1 or 2.2. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise false or misleading. Every trade name used by a law firm shall be registered with the North Carolina State Bar, and upon a determination by the Council that such name is potentially misleading, a remedial disclaimer or an appropriate identification of the firm's composition or connection may be required. For purposes of this section, the use of the names of deceased former members of a firm shall not render the firm name a trade name.

(B) A law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of its members and associates in any communication shall indicate the jurisdictional limitations of those not licensed to practice in North Carolina.

(C) A law firm maintaining offices only in North Carolina may not list any person not licensed to practice law in North Carolina as an attorney affiliated with the firm.

(D) The name of a lawyer holding a public office shall not be used in the name of the law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm, whether or not the lawyer is precluded from practicing by law.

(E) A lawyer shall not hold himself out as practicing in a law firm unless the association is in fact a firm.

(F) No lawyer may maintain a permanent professional relationship with any lawyer not licensed to practice law in North Carolina unless law offices are maintained in North Carolina and in a state where such other lawyer is licensed and practices and a certificate of registration authorizing said professional relationship is first obtained from the Secretary of the North Carolina State Bar.

[87]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.3 (1989).

[88]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.4 (1989).

Direct Contact with Prospective Clients

(A) A lawyer shall not by in-person or live telephone contact solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the

D. Solicitation in North Carolina

Rule 2.4 which regulates solicitation by lawyers was recently amended to permit targeted, direct-mail to potential clients.[88] This recently amended rule now follows the current guidelines established in *Shapero v. Kentucky Bar Assoc.*[89] Thus, solicitation of an accident victim by targeted, direct-mail is now permissible if the guidelines of the rule are followed.[90] The rule, however, retains the prohibition of in-person or live telephone contact to solicit employment from a prospective client with whom the lawyer has no family or prior professional relationship.[91]

The comment to Rule 2.4 expresses the concern that in-person communication has a much higher chance of misleading a client than written advertisements.[92] North Carolina lawyers should create clean and professional advertisements that are not intended to use undue influence on potential users of legal services. Lawyers should also avoid in-person contact of potential clients based on a specific event occurring (i.e., automobile accident). The United States Supreme Court did not overrule *Ohralik v. Ohio State Bar Assoc.*[93] when it made the decision in *Shapero v. State Bar of Arizona.*[94] The Court merely allowed written advertisements that were not false or misleading.[95]

E. Restrictions on Attorneys as Specialists

Finally, Rule 2.5 advises when a lawyer can represent himself as a specialist.[96] The rule also gives alternatives to using the term "specialize."[97]

III. CONCLUSION

From a business perspective, advertising is essential to building a legal practice. Advertising may be by word-of-mouth, business cards, firm stationery, telephone book, newspapers, radio, television, or some other type of media. Many fine attorneys disagree on the methods that are appropriate in reaching their targeted clientele. The American Bar Association's new goals for advertising show that what has been acceptable ethically and legally has changed over the past fifteen years.[98] Lawyers should continue to avoid direct in-person solicitation. The North Carolina Rules of Professional Conduct prohibit in-person solicitation and the United States Supreme Court did not overrule *Ohralik v. Ohio State Bar Assoc.*[99] in its most recent decision allowing written advertisements that are not misleading.[100]

Firms must now make tough decisions on the image they want to project when creating a marketing/advertising plan. With these marketing objectives in mind, they must still follow the ethical guidelines as established by the American Bar Association and the North Carolina Rules of Professional Conduct when using advertising to reach current or future clients.

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lawyer's pecuniary gain.

(B) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (A), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, harassment, compulsion, intimidation or threats.

(C) Every written or recorded communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship, shall include the words "This is an advertisement for legal services" on the outside envelope and at the beginning of the body of the written communication in print as large or larger than the lawyer's or law firm's name and at the beginning and ending of any recorded communication.

(D) Notwithstanding the prohibitions in paragraph (A), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan, so long as such contact does not involve coercion, duress or harassment and is not false, deceptive or misleading.

[89]108 S. Ct. 1916 (1988).

[90]This is contra to North Carolina Commission on Professional Responsibility, Formal Op. 348 decided before the *Shapero* ruling.

[91]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.4 (1989). This type of advertisement may be open to attack in light of *Shapero*.

[92]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.4 comment (1989).

[93]436 U.S. 447 (1978) (prohibiting direct in-person communication with a potential client because of the chance of undue influence on the victim).

[94]433 U.S. 350 (1977).

[95]*Id.*

[96]NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.5 (1989).

Specialization

A lawyer may not represent himself as a specialist in a communication unless he is certified as a specialist by the North Carolina State Bar or unless the communication includes the following disclaimer or language which is substantively similar:

"REPRESENTATIONS OF SPECIALTY DO NOT INDICATE STATE CERTIFICATION OF EXPERTISE."

[97]*See* NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT Rule 2.5 (a lawyer may describe his practice without using the term "specialize" in any manner truthful and not misleading).

[98]*See supra* note 1 and accompanying text.

[99]436 U.S. 447 (1978) (prohibiting in-person solicitation to protect the public from potential fraud and undue influence).

[100]*See Shapero v. Kentucky Bar Assoc.*, 108 S. Ct. 1916 (1988).

Partners' Banquet Honors Donors, Professor Billings

The 17th annual Partners' Banquet was held on Friday, November 3, 1989 at Bermuda Run Country Club. The banquet brought together faculty, staff, alumni and friends of the Wake Forest School of Law to recognize those who have contributed to the school.

Professor James E. Sizemore gave the opening invocation, and W. Frederick Williams, Sr., President of the Law Alumni Association, presided over the program.

As his first order of business, Williams recognized several attorneys who have practiced law for fifty years or more. These distinguished alumni included, among others, Joseph Branch, former Chief Justice of the North Carolina Supreme Court, as well as Judge David M. Britt. Williams also recognized that the Class of '59 was celebrating their thirtieth reunion, and the Class of '64 was celebrating their twenty-fifth reunion.

Williams also paid a special tribute to several people, including John D. Scarlett, former dean of the law school, and Kathie Walsh, Dean Robert K. Walsh's wife. Walsh then took the podium to present the new Partners and Friends of Wake Forest.

After reading an impressive list of the new Partners and Friends, Walsh thanked all of the donors who, through their loyalty and generosity, have helped to make Wake Forest a thriving and dynamic law school.

Following the acknowledgment of the donors, Walsh turned his attention to one of the highlights of the evening: the presentation of the Joseph Branch Excellence in Teaching Award. This year's award went to Professor Rhoda Bryan Billings ('66), former Chief Justice of the North Carolina Supreme Court. Although Billings could not attend the banquet because of an obligation as a commissioner from North Carolina to attend the National Conference of Commissioners on Uniform State Laws, she prepared an eloquent acceptance statement. In her statement, Billings described the special place Wake Forest holds in her heart and stated that the Branch Award would rank as one of the most cherished milestones of her career.

Professor Rhoda Billings

Williams then called Horace Kornegay, Sr., ('49), to the podium to introduce the keynote speaker of the banquet, Dean Robert K. Walsh. Kornegay recounted the selection process Walsh survived, which included 135 applicants for the position vacated by Scarlett. Kornegay underscored the importance of selecting a dean by noting that although nationally the average law school dean holds the position for only two-and-one-half years, Wake Forest School of Law has had only six deans in its entire history.

Walsh began his speech by applauding the loyalty of Wake Forest alumni. This loyalty, he stated, was one of the most important factors which attracted him to Wake Forest.

Walsh went on to say that law schools today are faced with a particularly acute dilemma: whether to push for quality or quantity. Wake Forest has opted for the former. Walsh believes that the "440 Plan" of limiting first-year courses to forty students per section has proven to be very successful. Walsh also pointed out that Wake Forest is a leader in computer-assisted research and education.

The Clinical Program and the Trial Advocacy Program were also singled out for commendation by Walsh. Both of these programs are helping Wake Forest solidify its reputation as one of the top litigation schools in the country, he said. This reputation is being seen in many areas and is evidenced by the fact that applications are up, with over 1,400 applications being taken for approximately 160 places.

Especially exciting for the new Dean is the much anticipated Professional Center for Law and Management which is scheduled to open in the fall of 1992. The new facility will house both the School of Law and the Babcock Graduate School of Management. Walsh said this new building symbolizes the cooperation that has grown between the two schools.

Although excited about the future of Wake Forest, Walsh did suggest a couple of areas where improvements are needed. He stressed the need for more scholarships, given the economic realities of private versus public legal education. He also proposed to establish a Distinguished Professor chair at Wake Forest and said the search should begin now.

By Bill Funderburk, a second-year student from Greensboro, NC

1989 Alumni Homecoming Reception

For two months R. Bruce Thompson, II, Director of Law and Alumni Development, made detailed plans for the alumni reception held at the Assembly Room of the Lawrence Joel Veterans Memorial Coliseum, on November 4th. Thompson, who is new to Wake Forest, admits that his work was made easy by the long-standing tradition of the event and by the faithfulness of the alumni to the law school.

Over 200 alumni who attended the reception were enthusiastic despite Wake's fall to Duke. (An oft heard phrase was "thank God for Carolina"). The class of '64 was well-represented. Its members told vivid stories of law school days, as well as recognized fellow members' recent achievements. For all alumni the reception was as much an indulgence in the past as it was a view into the spirited new changes of the law school. Alumni enjoyed catching up with old friends and seeing familiar faces of colleagues. The opportunities to meet Dean Walsh, socialize in Winston-Salem's new coliseum, and view the plans of the new law and management school building were taken advantage of by all alumni.

Expressing his happiness at the reception's success, Thompson remarked that it is one of the many bases for the confidence he has in the law school's supporters. After all, he says, "we do have very loyal alumni."

By Aimee N. Richardson, a first-year student from Ft. Myers, FL

Don and Lessy Pendleton enjoy this year's Homecoming activities

First Clinic Reunion Deemed a Success

Ann Robertson, a new law school staff member, was met with the challenge of organizing the first clinic reunion which was held on November 4. This event was created to honor all alumni who have participated in the program since its inception in the early 1980's. The Clinic Program allows third-year students to work under supervising attorneys in Winston-Salem in order to attain a more practical knowledge of the law. Robertson's biggest fear was finding a way to motivate this unique group of alumni to come together to share their clinic experiences with those students presently involved in the program. Fear soon dissolved when she began receiving enthusiastic replies to the invitations.

About 35 alumni, current students and staff attended the bountifully catered reunion tailgate before the Duke game. Besides enjoying the delicacies, students enjoyed meeting and speaking with alumni who now use their clinic experiences in actual practice.

Alumni who could not return for the reunion sent supportive letters to Robertson. Dean W. Hollandsworth, '89, wrote, "...the clinic program at Wake Forest is more than just a class, it is a unique learning experience led by caring instructors who take pride in the achievements and accomplishments of their students, even after graduation." Adding to those sentiments, Anna Wagoner wrote, "The experiences I gained in the clinical program have been invaluable to me, and, quite frankly, I do not see how anyone could begin to practice law if they had not participated in the clinical program. It has been a lifesaver for me."

All in all, Robertson says that the clinic reunion was a "feel good thing for everyone involved. We definitely plan to do it next year!"

By Aimee N. Richardson, a first-year student from Ft. Myers, FL

Two New Faculty Members

Luellen Curry

The JURIST would like to welcome two new members to the law school faculty: Robert K. Walsh joins the faculty as Dean and Professor of Law, and Luellen Curry joins the faculty as Assistant Professor of Law.

Robert K. Walsh comes to Wake Forest University from Arkansas. He is a Harvard Law School graduate. Walsh's career has been a blend of academia and litigation.

Since 1981 Walsh has been a partner in the firm of Friday, Eldredge and Clark, the largest law firm in the state of Arkansas. Prior to his litigation practice, Walsh served as Dean and Professor at the University of Arkansas at Little Rock School of Law.

When asked what he considered to be among his best achievements, Walsh described the advancement of the University of Arkansas at Little Rock School of Law into the Association of American Law Schools in record time. He also named the establishment of the Winthrop Rockefeller Scholarship Program, an affirmative action program, as another significant achievement.

Walsh views Wake Forest University School of Law as being on the right track academically. He welcomes the unique opportunity and challenge that a joint law and business school building presents. This project and its careful plan takes special attention by the Dean and keeps him very busy. However, Walsh expects life to settle down next semester when he begins teaching Federal Jurisdiction to second- and third-year students.

Luellen Curry joined the faculty in July 1989 as a full-time Assistant Professor of Law. Curry's experiences with the law school Clinical Program in 1987 and 1988, in addition to teaching Torts II in 1989, prepared her for this transition. Curry welcomes this opportunity to work more closely with the student body.

Curry received her Juris Doctor degree in 1982 from Northwestern University School of Law.

Upon completion of her studies at Northwestern University, Curry joined the staff at the Legal Aid Society of Northwest North Carolina, Inc., in Winston-Salem. She worked there as an attorney from 1982 until she joined the WFU law faculty as an adjunct faculty member.

Curry plans to remain active in the community by maintaining her position on the Board of Directors of the East Winston Community Development Corporation, the Forsyth Court Volunteers and N. C. Black Repertory Company.

Professor Curry currently teaches Torts I, Torts II and Legal Research and Writing.

Robert K. Walsh

By Sonya Campbell McGraw, a second-year student from Huntersville, NC and Annamarie D'Souza a second-year student from New York, NY

Alumni Profile: The Professional Center — A Corporate Attorney's View

Richard Lafferty ('87) said that after graduation, the worlds of law and business overlap for all lawyers, not just those specializing in corporate law. He believes that by increasing the interaction between the law and business schools students of both schools will benefit. "All lawyers eventually must practice some corporate law, even if only to face a corporation as a party opponent." Likewise, corporate executives must work within the confines of corporate law. Increased interaction between the schools would prepare students of both disciplines for the real world relationship between law and business.

Lafferty did not originally plan to practice corporate law, but after a year of litigation practice he joined NCNB Corporation as an Assistant Vice President and Associate Counsel. Lafferty has found he loves the corporate practice and the challenge it offers in combining both law and business. He sees a professional center as a great advantage, because students could combine the disciplines before entering a corporate practice.

By Jeff Hrdlicka, a second-year student from Greensboro, NC

Class Notes

1932

Joseph W. Garrett died earlier this year of respiratory failure. He was 77 years old. His accomplishments included serving as a member of the State House of Representatives between 1937 and 1939, and in 1941. He worked for the State Division of Motor Vehicles in 1943, and was assistant commissioner from 1945 until 1969. He was named commissioner in 1969. He served in that position until he retired in 1973. Mr. Garrett is survived by his wife, Mrs. Edythe Holloway Garrett; his daughter, Mrs. Bette Garrett Ludden; one brother, R. P. Garrett; and three grandsons.

1933

Ralph E. Mitchell, of Spartanburg, SC, died July 10, 1989. He was a judge in Spartanburg County for 35 years. Judge Mitchell is survived by his wife, Mrs. Mildred Moores Mitchell.

1949

Robert L. Graves retired from the federal government USDA-OIG in September, 1974. He lives in Raleigh, NC.

1953

B. T. Henderson II, is a general practitioner in Raleigh, NC. His concentration is in workers' compensation, wills and estates. Currently, he is chairman of the board of visitors for the Meredith College Legal Assistants Program. Also, he is a board member at East Central Carolina Legal Services.

1957

Dr. Owen Meredith Smaw has been listed in *Who's Who in American Law* (6th edition).

1963

Fred G. Morrison, Jr., a North Carolina administrative law judge since 1986, completed the Law, Ethics and Justice course which was taught at the National Judicial College in July, 1989. The course attracted 30 participants from fifteen states.

1970

Edgar B. Gregory is a district court judge in the 23rd Judicial District of North Carolina. He was recently elected as one of the vice presidents of the North Carolina Bar Association.

Warren L. (Butch) Pate was recently appointed as a North Carolina district court judge. He is chief district court judge of judicial district 16A for Scotland and Hoke counties.

1971

Randolph Loftis, Jr., a partner with Petree Stockton & Robinson, was recently appointed chairman of the North Carolina Bar Association's Labor and Employment Law Section. He is listed in the Labor and Employment section of *The Best Lawyers in America* (1989-1990 edition).

1972

Jerry C. Martin, chief district court judge of the 17B judicial district, recently received the 1989 Friend of Youth Award from the Surry-Stokes Friends of Youth organization. He was given the award for "always trying to look at every option with the kids in the court system" and for "his sincerity in what he is doing."

1974

John B. O'Donnell, Jr., is a general practitioner with Young, Moore, Henderson and Alvis, P.A., in Raleigh, NC. He and his wife, Rachel, have one daughter, Irwin.

Richard A. Straser is a trademark attorney for the U.S. Government. He was listed in *Who's Who in American Law* (4th edition). He is married to Beverly Jean Brickhouse. They have a daughter, Whitney Marie.

1975

Danny S. Higgins is the county attorney for Pender County, NC. He was county

attorney for Washington County from 1986 to 1989. He married Linda L. Sweeney, of Hampstead, NC, on October 28, 1989.

1977

William P. Creasman is senior vice president and general counsel for TCBY (The Country's Best Yogurt) Enterprises, Inc. He lives in Little Rock, AK with his wife and three children.

1978

Mark S. Thomas practices insurance, ERISA litigation and intellectual property law. Currently, he is the chairman of the North Carolina Bar Association (NCBA) Communications Advisory Committee. He was secretary of the NCBA Young Lawyers Division from 1988 to 1989. He and his wife Sally Zeigler, recently celebrated the birth of their daughter, Elizabeth Christine.

1979

Howard W. 'Pat' Paschal practices civil and criminal law. In June 1989, he was elected to the board of governors of the South Carolina Trial Lawyers Association. He has a daughter, Hogan.

1980

Carson Carmichael, III, is currently a partner with Bailey & Dixon in Raleigh, NC. He practices in the areas of administrative and regulation law. Carmichael and his wife announce the birth of their son, Neil McCall.

William H. Evans and his wife, Kathy, announce the birth of their second daughter, Sara Katherine.

Raymond R. Gatti is a solo practitioner in Southern Pines, NC. In 1987 he married Joanne Pompliano.

Ann R. Goodman practices criminal and civil litigation in Hickory, NC. Her partner, Stewart L. Cloer, specializes in tax law.

Peyton T. Hairston, Jr., was recently promoted to senior attorney with John Morrell and Co. in Cincinnati, OH. He specializes in labor and employment law. He recently celebrated the birth of his second child, Peyton, III.

J. Andrew Hartsfield, IV, is the chief legislative assistant for Senator Jesse Helms in Washington, D.C. He and his wife, Barbara, celebrated the birth of their first child, Jake.

1981

Daniel A. Monaco is a partner with Seidel, Gonda, Lavorgna and Monaco in Philadelphia, PA. He specializes in chemical and biotechnical patent law, and litigation. He and his wife, Arlene, celebrated the birth of their first child, Lauren Ashley.

1982

Eddie and Kim Booher live in Washington, D.C. Eddie is currently an investment banker with R. W. Corby & Co., Inc. They recently celebrated the birth of their second child, Cameron Christensen. Their first child is named Kendall.

Gary K. Joyner is an attorney in the law firm of Petree Stockton & Robinson. He has been appointed to one of two state chairs for the American Bar Association's Fund for Justice and Education. He will act as a local consultant for the Fund's contacts with North Carolina lawyers.

Clifton R. (Skip) Long is a partner with Morrow, Alexander, Tash, Long and Black in Winston-Salem, NC. He concentrates in domestic, criminal, and personal injury law. His second child, Elizabeth Clark, was born in August, 1987.

Rob Turner joined Pender and Coward, P.C. in Virginia Beach, VA. He and his wife, Jocelyn, celebrated the birth of their son, William Robert, IV, in March 1989.

1983

Jeffery S. Fulk has opened a general practice in New Bern, NC. He concentrates in personal injury litigation. He was formerly with Popkin and Associates.

Richard J. Votta was named a partner with Nichols, Caffrey, Hill, Evans and Murrelle in Greensboro, NC.

1984

John J. Carpenter was named a partner with Elliott and Marsh in Charlotte, NC. He specializes in tax and real estate law. He and his wife, Beth, celebrated the birth of their daughter, Carey Alice, who was born on January 30, 1989.

Brian Gallagher is associate general counsel for West Virginia University Hospitals, Inc., Morgantown, WV. Governor Gaston Caperton recently appointed him to fill unexpired term in the West Virginia House of Delegates.

Jerry T. Myers has become a partner with Smith, Debnam, Hibbert and Pahl in Raleigh, NC. He specializes in commercial litigation, creditor rights, and collections.

1985

David D. Daggett is a partner with Michael Lewis in Winston-Salem, NC. His practice is limited to personal injury. He competed in the 1989 European Ironman Triathlon in Roth, West Germany.

Andrea D. Edwards has become a partner with Corne, Pitts, Corne, Grant & Edwards, P.A., in Newton, NC.

Mitchell L. Meeks practices workers' compensation and personal injury law with the law firm of Michael Hemming in California. He recently celebrated the birth of his son.

William W. Pepper practices general law with an emphasis on criminal defense, personal injury litigation (plaintiff), and civil rights litigation (defense) with Schmittinger and Rodriguez in Dover, DE. He recently married Crystal L. Shockely.

H. David Powell practices law with Horack, Talley, Pharr & Lowndes. He recently married Kim Dennis.

Curtis R. (Randy) Sharpe, Jr. practices general law with a concentration in real property law, and probate and estate planning with Rudisill and Brackett in Hickory, NC. He recently married Mary Ella Miles.

Mark A. Weiermiller practices general law with Ziff, Weiermiller and Hayden in Elmira, NY. His second son, Nicholas Ryan was born in April, 1988.

1986

Terry and Karen Carlton, announce the birth of their first child, Ashley Kelly who was born July 21, 1989.

Sean B. Dail is a staff attorney with the North Carolina General Assembly in Raleigh.

Jennifer A. Labosky is a paralegal instructor for Davidson County Community College in North Carolina.

James E. Meadows practices computer law with Brown, Raysman and Millstein in New York City. He is the secretary for the Computer Law Committee of the New York City Bar Association (1988-1990).

1987

Kimberly F. Cathers was recently promoted to the Felony Division in the state attorney's office in Fort Myers, FL.

Julia A. Davison practices commercial litigation, family law, and real estate law with Currie and Kendall in Midland, MI. She recently married Craig D. Close.

David K. Holley practices general law with Ridge and Associates in Graham, NC. He recently appeared in oral argument before the North Carolina Supreme Court in the case of *State ex rel. Thornburg v. $52,029.00*, a case involving the North Carolina R.I.C.O. Act. He and his wife had their first child, Meredith White, in April.

John McCune is a captain with the U.S. Air Force (Assistant Staff, Judge Advocate General) in Hickcam A.F.B., Hawaii.

1988

Jill A. Bryan practices intellectual property law with W. Thad Adams, III, P.A. in Charlotte, NC.

Debra R. Jessup practices employment, anti-trust, environmental, unfair trade, and personal injury law with Moore and Brown in Winston-Salem, NC. She recently gave birth to a son, Harrison Reid Ragin.

Lance B. Sigmon has been promoted to captain with the U.S. Air Force (Judge Advocate General) at the Tyndall Air Force Base, Florida. He and his wife, Melissa Seagle Sigmon, celebrated the birth of their first child, Kirk Allen.

1989

Edwin Bowden has joined Petree Stockton & Robinson in Winston-Salem, NC.

Karen K. Fisher practices general law in Nashville, NC.

Dean W. Hollandsworth joined the law offices of Thomas W. King in Rocky Mount, NC.

Jonathan Gregory (Greg) Poole is currently an attorney in the general counsel's office of Jefferson-Pilot Life Insurance Co., in Greensboro. He and his wife, Vickie, are expecting their first child in June.

Byron W. Waters practices securities and general business law with Hirschler, Fleischer, Weinberg, Cox and Allen in Richmond, VA.

Mark J. Wittman lives in Milwaukee, WI.

Brent Wood practices bankruptcy, reorganization and liquidation law. He recently joined Smith, Debnam, Hibbert and Pahl in Raleigh, NC.

WHAT'S NEW? *Wake Forest Jurist* would like to hear from all alumni about any new developments in your life. Kindly take a few moments to fill out the form below and return it to *Wake Forest Jurist*, Wake Forest University School of Law, P. O. Box 7206, Winston-Salem, NC 27109-7206.

Name: _____ Year of Law School Graduation: _____

Business Address: ☐ (check if new address) _____

_____

Home Address: ☐ (check if new address) _____

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Brief description of law practice or business:

_____

Public offices, professional, and civic honors with dates: _____

_____

Personal items of current interest: (i.e. marriage, birth of child) _____

_____

_____

Wake Forest University School of Law
1990 Legal Education Schedule

Personnel Law Symposium

Jan. 18-19	Orlando, FL (Live)	Marriott World Center

12.0 MCLE Hours including 1.0 Ethics

Family Law Symposium

Jan. 18-19	New Bern, NC (Video)	Fairfield Harbor

12.0 MCLE Hours including 9.0 Practical Skills, 2.0 Ethics

Ninth Annual Review

Jan. 12-13	Winston-Salem, NC (Video)	Sheraton, North

12.0 MCLE Hours including 2.0 Ethics

Portraying and Defending Personal Injury Damages

Jan. 19	Winston-Salem, NC (Video)	Sheraton, North

6.0 MCLE Hours including 5.0 in Practical Skills

Practical Legal Ethics

Jan. 26	Winston-Salem, NC (Live)	Sheraton, North
Feb. 2	Raleigh, NC (Video)	Brownestone
Feb. 9	Asheville, NC (Video)	Radisson Hotel

6.0 MCLE Hours including 4.0 Practical Skills

North Carolina Will Drafting and Probate Practice

Feb. 23	Raleigh, NC (Live)	North Hilton
March 9	Winston-Salem, NC (Video)	Sheraton, North
March 23	Asheville, NC (Video)	Radisson Hotel
May 18	Charlotte, NC (Video)	Sheraton Airport

6.5 MCLE Hours including 5.0 Practical Skills & 1.0 Ethics

Individual and Business Bankruptcy Law

Mar. 15-16	Charlotte, NC (Live)	Sheraton Airport
April 19-20	Raleigh, NC (Video)	Brownestone
June 14-15	Winston-Salem, NC (Video)	Sheraton, North

12.5 MCLE Hours including 10.0 Practical Skills, 2.0 Ethics

Corporation & Partnership Law — 1990

Mar. 29-30	Raleigh, NC (Live)	Howard Johnson
May 3-4	Winston-Salem, NC (Video)	Sheraton, North
May 24-25	Asheville, NC (Video)	Grove Park Inn

13.0 MCLE Hours including 9.0 Practical Skills, 2.0 Ethics

S.E. Computer Law Institute

Apr. 5-6	Washington, DC (Live)	Bristol Hotel
May 3-4	Atlanta, GA (Live)	Terrace Garden
May 31-June 1	Chicago, IL (Live)	The Drake

12.0 MCLE Hours

N.C. Collection and Enforcement of Judgments

Apr. 27	Winston-Salem, NC (Live)	Sheraton, North
May 11	Raleigh, NC (Video)	Governors Inn
June 1	Asheville, NC (Video)	Grove Park Inn

6.5 MCLE Hours including 5.0 Practical Skills, 1.0 Ethics

Current Employment Law Issues

Apr. 26-27	Washington, DC (Live)	Bristol Hotel
May 24-25	Hilton Head, SC (Live)	Mariner's Inn
June 14-15	Chicago, IL (Live)	The Drake

12.0 MCLE Hours

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1990

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