

By John Dentinger

Lawyers' Ad Man

When Phoenix, Arizona, attorney Van O'Steen and his then-partner John Bates decided in February 1976 to advertise their legal services, they first got themselves a lawyer. They contacted their former Arizona State University professor, William Canby, now a Ninth Circuit Court judge. "If you want my legal counsel," he said, "my first advice is not to run the ad."

"The die is cast," they said.

So it was. The type was already set for their small ad in the Sunday *Arizona Republic*. "Do You Need a Lawyer?" it asked. Promising "legal services at very reasonable fees," the ad listed prices and gave the address and phone number of the Legal Clinic of Bates and O'Steen.

"Before the ink was dry on the newspaper of the ad," says O'Steen, they were served with a complaint, alleging a violation of the state bar association's code of ethics. (All advertising was deemed to violate it.)

Ever the contentious souls—O'Steen had been a high-school and college debater and had always wanted to be a lawyer—they were prepared to take the case as far as necessary to win. Canby agreed to represent them, refusing to accept any pay.

The first forum at which they won was the last one: the U.S. Supreme Court, in 1977. (By that time, the ACLU had stepped in and agreed to pay out-of-pocket costs.) Five justices sided with them, opening the way to today's widespread advertising by lawyers. Two dissenters agreed that a total ban on ads violates the First Amendment but said price advertising isn't protected. The remaining two—the hard-core dissenters—were Warren Burger and William Rehnquist.

"Rehnquist has a very peculiar view of the world," comments O'Steen. "He seems to think that governments and agencies, particularly at local levels, have the power to do very nearly anything they want to do."

And Burger, who never misses a chance to attack such advertising? "I think lawyer advertising offends Burger's sense of dignity, his feeling about the way the profession should run. But an American Bar Association study prior to the decision showed that two-thirds of Americans don't use lawyers and fear that they'll cost too



Van O'Steen: "The informational value of advertising will, over time, put fears to rest. The public and the bar will both be better served."

much. The informational value of advertising will, over time, put many of those fears to rest. The public and the bar will both be better served."

What Burger still doesn't comprehend, O'Steen learned the hard way. Over the years, he has gradually moved from conventionally liberal beliefs to an understanding that consumers and justice are better served by the marketplace than by restrictions.

In the early 1970s, he and Bates were staff attorneys at a county legal aid society. "I liked the feeling of accomplishment that came from successfully handling legal matters for people who were unaccustomed to using legal services—because they couldn't afford them."

Still, they turned away many people whose incomes exceeded legal-aid limits and who often couldn't afford lawyers on their own. O'Steen and Bates saw a large untapped market for inexpensive legal services and figured that with the right forms and procedures, clerks could do much of the routine work.

Taking this "systems approach," they opened a "legal clinic" in a tiny \$200-a-month office in an old building on the edge of downtown Phoenix; a drunk lived on the

front sidewalk. They offered wills for \$25, uncontested divorces for \$95, and bankruptcy papers for \$150, figuring high volume would make up for low fees.

But they wound up with low fees and low volume. The clinic's net income the first year was slightly below zero. O'Steen and his wife, Debbie, sold their cars and resorted to bicycles, living off the money Debbie made managing a flower shop. Bates went into debt and later had to sell his house.

The problem was clear: How was the public to know about the firm's bargain rates? It was advertise or close. So they advertised. The rest is history.

A few months after they won their case, however, O'Steen and Bates formed separate law firms. O'Steen now spends about 70 hours a week as a consultant to lawyers who want to advertise effectively—something they don't always do.

For example, says O'Steen, Ken Hur, an attorney in Wisconsin, "did these crazy, hilarious TV commercials. He offered a free 10-speed bike for anyone they represent who loses a driving-under-the-influence case." Hur got on the Johnny Carson show, but he went broke.

O'Steen believes successful legal marketing leads to better legal practice. "With the high volume of work comes a need to systematize, so the work can be handled with a high level of quality assurance." Clients may be more impressed with costly "customized" word-processed boilerplate than with filled-out forms, but the latter, he says, tend to minimize errors and omissions.

"These high-volume firms will withstand the rigors of the shakeout period. It's like going from mom-and-pop grocery stores to supermarkets. We are seeing the emergence of regional and international law firms: Jacoby & Meyers, Hyatt Legal Services (in 20 states)—law firms could not grow that way without advertising."

And other restrictions? "Statutes prohibiting the unauthorized practice of law should be abolished. State legislatures, bar associations, and supreme courts have no business restricting the buyer's choice to licensed lawyers." Legal Luddites, look out.

John Dentinger is a free-lance writer in Los Angeles.

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Jack Kerouac, American

By Bill Kauffman

*When I pass to and fro, different latitudes,
different seasons, beholding the crowds of the
great cities, New York, Boston, Philadelphia,
Cincinnati, Chicago, St. Louis, San Francisco,
New Orleans, Baltimore—when I mix with
these interminable swarms of alert, turbu-
lent, good-natured, independent citizens,
mechanicks, clerks, young persons—at the
idea of this mass of men, so fresh and free,
so loving and so proud, a singular awe falls
upon me. I feel, with dejection and amaze-
ment, that among our geniuses and talented
writers or speakers, few or none have yet
really spoken to this people, created a single
image-making work for them, or absorb'd the
central spirit and the idiosyncrasies which
are theirs—and which, thus, in highest ranges,
so far remain entirely uncelebrated, unex-
press'd.*

—Walt Whitman
Democratic Vistas, 1871

Whitman's despair was premature and perhaps unfounded—for 16 years earlier he had published an earthy, rapturous book of poems titled *Leaves of Grass* that was to serve as a touchstone for all who wished to explore the American soul. And just 14 years after the elegiac *Democratic Vistas*, Mark Twain set a runaway slave named Jim and a runaway boy named Huck Finn on a raft down the Mississippi River, creating an enormously resonant image that has since served generations of American writers (and filmmakers): the journey in search of freedom—and its frequent consequence, self-discovery—played out against the backdrop of this vast and wondrous continent.

But Walt Whitman's lament was a common refrain in the 19th century. It sprung from the conviction, ragged today but still right, that there was a distinct American character: open, raw, free, democratic, exuberant, virile. And just as the colonies had declared political independence from Europe, with her accursed monarchies, despotisms,



and aristocracies, so too should the American writer reject the chains and shackles of the Old World. New England clergyman William Ellery Channing admonished his countrymen: "It were better to have no literature, than form ourselves unresistingly on a foreign one....A country, like an individual, has dignity and power only in proportion as it is self-formed."

All of which brings us to yet another decennial observance. Not, this time, of some epic battle or ephemeral peace treaty. Rather, this year we commemorate a book and an author who answered Old Whitman's fervent prayers. For 1987 marks the 30th anniversary of the publication of Jack Kerouac's novel *On the Road*, perhaps the most ecstatic celebration of America ever written.

Kerouac's life is happy proof that the writer need not be an effete *observer* of life; he can live it with gusto. Born in 1922 into a devoutly Catholic French-Canadian family in the grimy old mill town of Lowell, Massachusetts, young Jack's boyhood was

devoted to that venerable trio—football, girls, and writing.

Yet this dashing, hard-drinking football star adopted early in life a starkly simple, childlike moral philosophy from his saintly older brother Ti Gerard, who died at age nine: "Never hurt any living being, all living beings whether it's just a little cat or squirrel or whatever, all are going to heaven straight into God's snowy arms so never hurt anything and if you see anybody hurt anything stop them as best you can." Now this might sound mawkish or wimpy, even to the modern Phil Donahue man, but to Kerouac it was no joke. He remained, till his dying day, that holy incongruity: a rugged pacifist.

Jack the nonviolent running back set off, football scholarship in hand, for Columbia University, where a broken leg promptly ended his athletic career. So he resolved, instead, to become "a great writer like Thomas Wolfe," and he soon fell in with a crowd of defiantly unkempt poets and wildmen who were to turn the staid, musty literary world on its ear.

Kerouac and his new friends, most notably the poet Allen Ginsberg, called themselves "Beats." San Francisco "humorist" Herb Caen renamed them "beatniks," a term the passionately anticommunist Kerouac disavowed for its Soviet-stooge connotations. But the moniker caught on, fanned by sensationalist news coverage, and by the mid-'50s a new ha-ha cultural stock figure was born—the Beatnik, a sullen, goateed *artiste* with a black beret and a spacey girlfriend who recites, in monotone, bad poetry blaming Dad and Mom for the atom bomb.

That image was a lie, lived only by the fools who gather like June bugs whenever the fickle spotlight of the media illumines the latest Movement of the Day. Kerouac took pains to distance himself from the faddists—a difficult task, since the precise meaning of Beat was always unclear. Some claimed that it meant liberation from the conformity and cultural straitjacket of the postwar era; others took it as affirmation of the wisdom of bums and hobos and other "beat down" rascals. The Catholic Kerouac