

THE ADVERTISING AGENCY LAWYER IN RADIO AND TELEVISION

(Or, *Blackstone in Wonderland*)

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A lawyer for a large advertising agency has a most diversified practice. There is hardly a field of law—literary and artistic, business and economic, social and political—that does not at one time or another claim his professional attention. And it is always the law in motion, with no surcease from the incessant race against the calendar and the clock. He is expected, and it is his duty, to dispatch contracts, approvals, and advice at a somewhat supersonic pace, in matters which generally involve—at least for the interests directly concerned—great sums,¹ or critical relations, or important principles, or some of each.

Of all the challenges to whatever learning and resourcefulness and equanimity the advertising agency lawyer may possess, the most complex, and sometimes the most frustrating, arise out of radio and television—especially television.

I

It was complicated enough in the days of radio alone, when the techniques of advertising were adapted to the new mass entertainment medium. Then the advertising agency lawyer, who was an expert in the laws and regulations affecting the sale of goods and the promotion of goodwill by means of printed words and immobile pictures, began to broaden his professional horizons in the wonderland of show business.

The fact that the advertising message now talked out loud in millions of homes did not place any particular strain on his experience and equipment so far as jurisprudence was concerned. It was the fact that the agency began more and more to develop and produce the radio program itself that caused his friends to notice a change. He began to read *Variety* along with the advance court reports and trade regulation services; he made trips to Hollywood; he was heard to drop strange names such as William Morris Agency and MCA; he became concerned with labor union negotiations; and he began to take on the look of a man who is delinquent in getting his work out due to no lack of diligence on his part.

At the same time, however, he continued his old habits as a legal authority on

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¹ According to a survey by Advertising Age, a trade publication, the total expenditure in United States advertising in 1956 is estimated at nearly 10 billion dollars. The one hundred leading national advertisers invested more than 2 billion dollars in advertising in that year. Advertising Age, Aug. 19, 1957, p. 1, cols. 3, 4, 5. The total billings of the top twenty advertising agencies for 1956 ranged from 39 million dollars to 255 million dollars. Advertising Age, Feb. 25, 1957, p. 68.

print advertising, and though in a way he was leading a double life, he remained basically unperturbed.

After all, with few exceptions, each radio program in which he was interested had but a single sponsor, and that advertiser was his agency's client. The legal ramifications of talent and production problems were limited to audio performances and sound transmission. When he had a union problem, there was usually only one union and one code to a problem. Most of the time, the networks seemed anxious to accommodate the advertiser's requirements. Washington was, of course, concerned with radio broadcasting and from time to time instituted proceedings, but these governmental activities—even the Supreme Court litigation on chain broadcasting rules²—did not call for or require the advertising agency lawyer's concentrated attention or participation to any extent.

II

Then, like Minerva born full-grown from the head of Zeus, television made its explosive entrance. Its development was "fabulous." It contains not one, but many amazing new ingredients, among them:

A. Big-Time Multiple Sponsorships

Owing primarily to the tremendous costs, more frequently than not television programs have co-sponsors, alternate-week sponsors, segment sponsors, and other sponsorship combinations and permutations giving rise to novel relationships and numerous contingencies which must be provided for and disposed of in facilities contracts, program contracts, and arrangements with fellow sponsors.

B. Ossa on Pelion

Upon the legal edifices of publication, advertising, and radio there are now superimposed, by the switch of a dial that turns on a television set, the complete structures of the law of the living theatre and the law of motion pictures, buttressed by the complexities of modern electronics.

C. Multiplication of Union Codes

The labor relations repertory of the agency lawyer must now embrace numerous separate union codes directly governing the advertiser's activities in television relating to actors (including announcers, dancers, singers, etc.), musicians, directors, and writers, with one set of terms and conditions for live programs in each case and another set for filmed or recorded;³ and he must have a general idea about the unions and codes affecting technical personnel, such as cameramen, electricians, stagehands,

² National Broadcasting Co. v. United States, 319 U.S. 190 (1943).

³ The principal unions with which the advertising agency is most concerned (in varying degrees) are: American Federation of Musicians, American Federation of Television and Radio Actors, Radio and Television Directors Guild, Screen Actors Guild, Screen Directors Guild, and Writers Guild of America. Not only are there differing provisions relating to live, on the one hand, and recorded, or filmed broadcasts, on the other, but in most cases, there are also separate conditions governing the commercials or advertising elements of broadcasts.

scenic designers, etc., since a dispute involving any one of them could result in taking a sponsor's program off the air. And the union ramifications incident to magnetic tape for motion pictures and television, which looms in the near distance, are far from completely clarified.

D. Leading Into Strength

The attitude of the networks toward the demands of its customers—the advertisers—has, in recent years, toughened in geometric proportion to the skyrocketing of financial stakes in television broadcasting and the tightening of the seller's market in television broadcasting facilities. For the agency lawyer, this has been reflected in many ways, particularly in more arduous contract negotiations and more pressure and work in connection with measures to protect what the agency and clients regard as the legitimate rights and privileges which they have hitherto enjoyed.

E. Washington Close-Up on Video

At least four major authorities of the United States Government have recently undertaken to investigate television network practices and other phases of the television industry.⁴ Antitrust proceedings have been commenced against six distributors of old feature motion picture films for television broadcasting.⁵ As one of the informed and featured players in the *dramatis personae* of this great industry, the advertising agency has been requested by the Government to answer questionnaires, furnish data to investigators and agents, and otherwise make available information which government attorneys, deem relevant to these inquiries. All this has, of course, added new breadth and interest to the "My Day" of the advertising agency lawyer.⁶

⁴ House Committee on the Judiciary, *Report of the Antitrust Subcommittee on the Television Broadcasting Industry*, 85th Cong., 1st Sess. (1957); Senate Committee on Interstate and Foreign Commerce, *The Television Inquiry—Television Network Practices*, 85th Cong., 1st Sess. (1957); In the Matter of Study of Radio and Television Network Broadcasting pursuant to Delegation Order No. 10, dated July 20, 1955, now pending before the FCC, particularly Network Study Committee Order No. 1, adopted Nov. 21, 1955. An investigation is also being conducted by the Antitrust Division of the Attorney General's Office of the United States. See, for example, the testimony of Honorable Victor R. Hansen, Assistant Attorney General, in *Hearings before the Antitrust Subcommittee of the House Committee on the Judiciary on Monopoly Problems in Related Industries, Pt. 2, The Television Industry*, 84th Cong., 2d Sess. 4115-40 (1956). See Celler, *Antitrust Problems in the Television Broadcasting Industry*, and Hansen, *Broadcasting and the Antitrust Laws*, elsewhere in this symposium.

⁵ *United States v. Loew's Inc.*, instituted in the United States District Court for the Southern District of New York on March 27, 1957, and similar suits by the United States instituted in that court on April 18, 1957, against (1) Screen Gems, Inc., distributing Columbia feature films, (2) C & C Super Corp., distributing RKO feature pictures through a subsidiary, (3) Associated Artists Productions, Inc., distributing the Warner Bros. feature film library, (4) National Telefilm Associates, Inc., distributing 20th Century-Fox pictures, and (5) United Artists Corp., distributing feature films it produces in association with independent companies.

⁶ Even the networks' severest critics have a kind word to say about the networks' contribution to the development of television in this country. For example, the Staff Report prepared for the Senate Committee on Interstate and Foreign Commerce notes:

"Anyone examining the record compiled in the committee's hearings must be impressed by the astonishing development of television in a comparatively brief span of time—in terms both of the number of stations now serving the public and of the quality and scope of the service thus provided. While there are aspects of this programming service which can be criticized, and on which further improve-

III

These are but a few of the intensifications and expansions of the challenges to the professional range and competence of the advertising agency lawyer which have been brought about by the millions of little silver screens in the homes in America. An exposition of the many and diverse specific problems which must be encountered and solved by an agency lawyer in the legal ramifications of the myriads of relationships involving the sponsors, the networks and stations, the talent, the talent agents, the unions, the Government, both national and local, and the general public, would require many chapters of a treatise of respectable size. Some aspects of only a few of these subjects provide the content for several articles in this symposium.

As the interest here is in contemporary problems in radio and television and the law, and these problems are being considered from the position of the advertising agency lawyer, it is appropriate (and within the realm of possible achievement) to limit this survey to a brief sketch of the specific types of questions presented from that point of view, with a passing reference to the broader social and professional implications of these questions.

First, and of paramount consideration, what is the professional responsibility of the lawyer for a large advertising agency, whose activities have such an intimate concern with people, their wants, their standards of living, and their sensibilities; and whose resources and skills are being utilized more and more, on the contemporary electronic scene, for affairs of state and for public service?⁷ This responsibility is, for the most part, the same as that of his brethren in the other fields, but, because advertising has such an immediate impact upon so many exposed nerves, his opportunities as "Keeper of the Corporate Conscience" are perhaps quantitatively greater.

As in many other areas of business and personal endeavor, the basic interests of even the parties directly concerned may transcend the expedient solution of this morning's crisis. Because most troublesome problems are exposed to him (without any fine appraisal as to whether they are "legal" or not) from all quarters and levels

ment must be sought, there can be no doubt that our people receive the best and most varied television service in the world. Nor can it be denied that a major part of the credit for the development of our television system must go to the network organizations. To a large extent it was they who developed the programs which persuaded the public to buy sets by the millions and, having developed such acceptance, were able to build advertising support for our present television system. Although an excellent job is being done by most individual stations on the local level, and there has been great expansion in film programming for television, it remains true that much of the development of new programs and techniques continues to come from the networks." Senate Committee on Interstate and Foreign Commerce, *supra* note 4, at 5-6.

⁷ For an outline of the nature of one activity by advertisers and advertising agencies in the public interest during the 12-month period ending February 28, 1957, see the 15th Annual Report of the Advertising Council, a private nonprofit organization supported by advertisers, media, and advertising agencies. Among other things, advertisers and media contribute free advertising time and space to the campaigns, and advertising agencies create and prepare materials without charge. This report describes briefly the Council's work in campaigns for Cleaning Up Slums, Armed Forces Manpower, Better Schools, CARE Food Crusade, Crusade for Freedom, Fire Prevention, Forest Fire Prevention, Ground Observer Corps, Red Cross, Register and Vote, Religion in American Life, Religious Overseas Aid, Stop Accidents, United Community Campaigns, United Nations Day, United States Savings Bonds, People's Capitalism, and Hungarian Emergency Relief.

of the agency's operations, the agency lawyer is frequently in a position of vantage to help clarify and judge the issues on this score. Despite the increasing involvement of the present-day lawyer in the machinery of business, he yet wears the mantle of Counsellor. This role has been most eloquently delineated by William T. Gossett, Vice President and General Counsel of Ford Motor Company, one of the nation's great advertisers:⁸

The corporation counsel of today, if he is to live up to the challenge of his new responsibilities, will shun the kind of advice that is motivated by a desire to preserve the rubrics of a vanished era; he will be alive to the social, economic and political implications of the time; he will avoid a narrow, short-sighted approach to his corporation's problems; he will have the courage to advise against a business program or device which, although legally defensible, is in conflict with the basic principles of ethics. Failing this, he not only will be ignoring his obligations to his profession, he will be doing a disservice to his company, which may find itself in the position of winning a legal battle but losing a social war.

Second, what is the professional relationship of the agency lawyer to the agency's client, the advertiser? While an advertising campaign may be created and executed almost entirely by and through the agency, and the elements necessary for the dissemination of the advertising message selected and negotiated by the agency, the agency lawyer acts as counsel only for his own agency. He must, of course, be a legal specialist in all the fields in which the advertising agency is a specialist and for which the advertiser has turned to the agency, and he must have a grasp of the legal problems of the advertiser which are affected by its advertising. But as to the many phases and elements of an advertising campaign which involve or reflect the advertiser's own areas of endeavor, these are for the client's own counsel, never the agency's lawyer. Even in matters which are peculiarly within the experience and ken of the agency lawyer, the advertiser's own counsel has the final authority. The lawyers for the two interests may, and frequently do, confer and exchange opinions, but when that interchange is concluded, it is a very unwise agency lawyer who undertakes to win an argument from the client's counsel, and it is a very foolish one who actually presses such an argument to a victory. It goes without saying, of course, that if a case should arise in which a question of principle for the agency is present, that is another matter.

This position of the agency lawyer as attorney for an agency which itself acts in a representative capacity for another, adds—and properly so—to the difficulties of concluding much of his work with reasonable dispatch. A complicated television program contract may be negotiated, and the issues and language finally resolved, with blood on every page; when it is submitted to the advertiser's lawyer, he naturally approaches it as, to some extent, a new problem. This is a salutary procedure, and in the end is usually extremely helpful to the agency and the agency lawyer, as well as the advertiser; but this procedure must, of necessity, add to the many other factors

⁸ William T. Gossett, *The Role of the Corporation Counsel*, in II JOHN RANDOLPH TUCKER LECTURES, 1953-1956, 190, 208 (1957).

which have made radio and television contracts legendary in the industry as an example of the law's delay.

Why are so many radio and television contracts not signed until long after the program goes on the air and frequently not even then? This is a plaint which lawyers in this field hear from many sides. In the answers lie many of the frustrations which beset the advertising agency lawyer. Here, again, a small volume could be devoted to an exposition of the countless barricades which must be hurdled in concluding a program agreement, from the time that the program is a gleam in the eye of an advertising executive until the final meeting of the minds and approval of documents by talent, the talent's agent, the talent's lawyer, the agency's television department and account executive, the sponsor, the sponsor's lawyer, the package producer, etc., not to mention the consummation of the necessary synchronization with the commitments and documents affecting the network facilities over which the program is to be broadcast. Perhaps one composite episode taken from real life (with the names and a few of the details changed to protect the innocent) may illustrate the character of a few of these frustrations and delaying actions.

IV

"The John and Mary Show" is one of the top rated shows on television and is sponsored every week in a prime time period over a national network by the Smith Company, which has acquired the rights from Jones Productions. For various reasons, budgetary or otherwise, the Smith Company decides that it wishes to relinquish the broadcasts every other week and become an alternate-week sponsor. When the first inklings of the availability of this program and the time spot reach Madison Avenue, the alert agencies and advertising executives are galvanized into action. Eventually one of the suitors prevails, and the diligent agency acting on behalf of this fortunate company, Consolidated Companies, is given a paper by Jones Productions and by the network granting it an option, exercisable within but not later than forty-eight hours, to contract for the program and for the network facilities "on the same terms and conditions" as the current sponsor, the Smith Company. There is one other sentence in the paper specifying the present cost of the program and the length of the term.

Shortly before the sun is about to set on the second day, the necessary presentations having been made by the agency to the advertising, financial, and other officials of the management of its client, Consolidated Companies, and authorization having been obtained to close the deal, the joyful parties descend upon the agency lawyer with the urgent request to drop everything and prepare the papers and take the necessary steps to exercise the option immediately.

Now on some past occasions, Consolidated Companies has conveyed the opinion to the agency that the best business practice is to have contracts negotiated and signed before performance begins, and so, for this and other reasons, the agency lawyer expresses an interest in examining the "same terms and conditions," *i.e.*, the existing

contracts under which the Smith Company is sponsoring the show, and also to have a chance to discuss any provisions of these contracts which might seem unduly burdensome, and to advise with Consolidated's lawyers and perhaps undertake to get some revisions before any final commitment is made. Without narrating the reactions of the various persons interested to this efficient suggestion, let this scene dissolve to the delivery of the documents exercising the option on behalf of Consolidated, as outlined in the two-sentence letters from Jones Productions and the network.

The next day, the agency lawyer requests Jones Productions to furnish it with a copy of its contract with the Smith Company so that he may advise his people as to the numerous terms and conditions outside of price and term under which they have acquired the show. The attorney for the producer indicates that he would be very happy to comply but there has been a delay in drafting that contract due to certain complications which Jones had been having with Mr. John and Miss Mary, and which John and Mary had been having with the two feature players, and as a consequence of which Jones' agreement with John and Mary had not been "finalized," and, therefore, he could not conclude his agreement with the sponsor, the Smith Company. It is hoped that the current difficulties will be resolved very soon and that the agency lawyer can then be furnished with the documents as requested.

The agency lawyer suggests that, as long as the contract with Smith has not been concluded, it would be appropriate for him to participate in the completion of that document. Neither Smith Company nor Jones Productions takes very kindly to this suggestion, as there are already enough lawyers to satisfy in the negotiations, and the essence of the new arrangement was that the agency's client would take the show on the same terms and conditions.

The agency lawyer turns to his friends at the network and requests a copy of the facilities agreement under which the client is to function on the same terms. He is courteously advised that, although the show has been on the air for some time, the facilities agreement still has not been completed because the Smith Company and its agency have taken very serious objection to some provisions in the new form of printed facilities contract, reflecting a new programming policy by the network, under which the network (in addition to its right to pre-empt the time for any of these programs for the purpose of broadcasting an event of public importance) is "withholding from sale" the time period for a designated number of nights (the exact dates, described as "tentatively unavailable," to be selected by the network and communicated to the sponsor later). By "withholding from sale," instead of the established right of pre-emption, the network disposes of the obligation to pay the sponsor's out-of-pocket talent costs for the program omitted, and eliminates any question as to the right to use the time period so taken not only for events of public importance but for shows broadcast on those particular nights for other commercial sponsors, usually extravaganzas or spectacles. The agency lawyer is advised that

the Smith folks have threatened that they will never sign a facilities contract with this provision.

A long time passes. There are numerous follow-up calls, but other urgent crises are now engaging the parties, and "The John and Mary Show" is consistently among the top ten. An account executive comes to the agency lawyer's office with a perfectly reasonable question: what are our contract rights on approval of guest stars on "The John and Mary Show"? The lawyer answers, "I don't know. Perhaps I can get some idea from the Smith Company lawyer." The account executive is polite and does not articulate his obvious opinion that this is a rather peculiar way to run a legal department.

Eventually, a copy of the agreement between Smith Company and Jones Productions arrives, and the agency lawyer proceeds to prepare a similar agreement with Jones on behalf of the agency's client. But, even accepting all "the same terms and conditions," there are some other questions arising out of the alternate-week sponsorship which are not covered. For example, what happens if the Smith Company decides to discontinue the show altogether, and to abandon its alternate-week sponsorship? If Consolidated should then desire to go every week, it should have a reasonable option to do so. There has also been some question about the positioning of cross-plugs by the alternate sponsors, and a rather serious dispute looms between the two sponsors as to the right of one to advertise a product on the show which the other regards as competitive to one of his own products. After due delay, a satisfactory, or at least a livable, solution of these matters is worked out.

But a right from the owner of the program for an every-week broadcast when available is not of any value unless the network is also willing to let Consolidated have the time period every week. Or, if Consolidated decides not to exercise its option to pick up the alternate weeks, should the network have the right to sell the time in its entirety to one advertiser who is ready and willing to broadcast every week, and thereby eliminate Consolidated? The resolution of these contingencies takes a little time.

With these last few points out of the way, the contract may be consummated any day now, except that the networks have commenced broadcasting occasional programs in color, and a new question is presented as to the responsibility for the substantial extra costs, and the other rights and liabilities of the parties, in the event that it should be determined to broadcast in color on some kind of a regular basis.

By now, a good year has passed (the program has been on the air for two years). But finally, there is an appointment to put ink on paper. The day before, the newspapers carry some pictures and stories insinuating some kind of moral turpitude on the part of one of the principals in the program many years ago. The recitals in the press, even if true, would appear to reflect innocence, but it is necessary to look into the matter. The situation is quite delicate, and nothing that can be handled summarily. Happily, in time there is complete vindication, and the contracts are signed.

Within about six months afterward, both Smith Company and Consolidated Companies discontinue sponsorship of the program. The original term and option periods have expired, and the contract demands for future years are regarded by the sponsors as too burdensome, even for a top show. Besides, a new quiz program sensation has appeared at a comparatively low budget (for television, that is), and the thing to do is to get a quick simple option for the client before the show is grabbed by someone else.

There are, of course, quite a respectable number of cases in which the selection of the programs and time are made substantially in advance of the first air date, and the final documents are actually signed before that time. However, while the particular delaying complexities may vary in many, many specifics from case to case,⁹ the episode narrated above is not unique by any means. Nor are these complexities limited to network shows. Local individual "spot" arrangements, and even agreements for station-break announcements, all present their own kinds of blocks which require some doing to surmount.

Many agency lawyers, knowing that a full-scale negotiation may well extend far beyond the first broadcast, and faced with the urgency of getting some kind of hold on the show or the time, or both, follow a procedure of preparing a brief preliminary agreement containing a few of the most essential elements of the transaction, both for program and for time. These preliminary agreements also may experience delays in being signed, but in varying degrees, they have constituted a workable memorandum of the most elemental terms of what may eventually turn out to be a twenty to sixty-page contract. It should be recorded, too, that there are extremely few instances of litigation or even arbitration of disputes arising out of these arrangements, and there are practically no cases where any of the parties have refused to perform on the grounds that a definitive document embodying all the terms and conditions of the contract has not been signed.

V

Even when the consummation "devoutly to be wish'd" is manifested in a neat bundle of program and facilities contracts duly signed, sealed, and delivered, the agency lawyer's daily performance in relation to the program does not simulate the tempo and character of, say, an estate lawyer's work in relation to a decedent's estate. And it is generally not the questions arising in the performance of these long-term and fairly complex contracts that account for the unremitting beat of the tom-tom. It is those three golden minutes in each and every half hour of sponsored broadcast (and a relative number in others) that carry the advertising message, the *raison d'être* for the advertiser's presence on the scene at all, to the tune of millions and millions of dollars. It is the commercials.

⁹No reference has been made here to one of the most trying controversial problems in the industry over the past few years. See, for example, JOHN COGLEY, REPORT ON BLACKLISTING (1956). This report has been the subject of much criticism from several quarters; from the agency point of view, see *Reports on Blacklisting Are Full of Holes*, Advertising Agency Magazine, Dec. 7, 1956, p. 63.

Not all commercials make the same urgent legal demands as, for example, the arrangements commencing Friday afternoon for the appearance on Sunday night of girls in costume from the Ascot Race scene of "My Fair Lady" in a television commercial. But the great and constant quest of good advertising writers for commercial content of freshness, originality, and importance—both in composition of new material and the adaptation of existing intellectual and artistic works, particularly current matter—demands that the legalities be disposed of with a little more than convenient speed. The filming of commercials does not abate the pressure because shooting schedules are often more urgent than live; and substantial investments are involved once the cameras have rolled.

Turning now to these basic legal problems attendant upon the primary original function of the advertising agency—*i.e.*, the creation and dissemination of the advertising message, as now applied to the new wireless media—they may be categorized under three very broad headings: (1) legal propriety of content of advertising copy, (2) protection against and handling of claims from outsiders, and (3) applicability to radio and television of the laws and regulations incident to the conduct of business generally, such as employer responsibilities, taxes, and the like.

The first and most prolific category includes such questions as the right to use names, pictures, and testimonials; copyrights and other rights in intellectual property, both from the point of view of the acquisition of rights from others and the protection of the creations by the agency; product claims; safeguard of trademarks; regulations of administrative bureaus affecting advertising and marketing, such as the Federal Trade Commission, the Post Office, and the Department of Agriculture; and matters relating to the law of unfair competition generally. Also included in this category are such merchandising promotions as contests and lotteries, premiums and coupons, free offers, cooperative advertising plans and questions arising under the Robinson-Patman Act, resale price maintenance under the fair trade laws, guarantees, and the like. In these areas, there are many elements which are, as outlined above, the primary responsibility of the advertiser's own counsel. The agency lawyer frequently transmits suggestions to the advertiser that he take up such questions with his lawyer. Thus, as to matters on which the agency lawyer does not give the answers, he, nevertheless, performs a legal service which is perhaps at least as important—*i.e.*, to recognize and articulate the questions.

As to the second broad category, the protection against and handling of claims by outsiders: an agency lawyer sometimes gets the impression that for every person experienced in the process of creating advertising ideas, and engaged in it every day, there are millions in the unseen audience who feel that not only are they qualified and equipped to do this job at least as well and better, but also that the agency has a bounden duty to entertain their suggestions and ideas. One of the functions of the agency lawyer is to administer a courteous procedure for handling unsolicited ideas. Most agencies and advertisers carry insurance, called an "Errors and Omissions" policy, covering claims by outsiders who alleged infringement of their rights,

plagiarism, invasion of right of privacy, libel and slander, etc., and the agency lawyer works with the insurance company and its counsel on all questions and claims arising out of the policy. Of course, the continued availability of this insurance and the premiums and other costs depend upon the experience record; and, therefore, the responsibility of the agency lawyer in connection with matters which might be the subject of such insured claims, far from being attenuated by the existence of the insurance, is thereby intensified.

The third broad category of legal problems attendant upon the creation and dissemination of the advertising message includes the kinds of legal questions which are incident to conduct of business generally, such as employer responsibilities and taxes. A determination must be made in each case as to whether the performers in the commercials (or on the program, for that matter) are independent contractors or employees. If employees, whose? Where the contract is made by the agency directly with the performers (instead of with an independent producer or network for the entire program as a complete entertainment package) under arrangements giving rise to the employer-employee relationship, the Treasury has always held that as between the agency and the sponsor, the performers are employees of the sponsor.¹⁰ Accordingly, the employer-sponsor is responsible for employer taxes such as social security, etc. The same legal relationship prevails with respect to health and disability insurance, workmen's compensation, unemployment compensation, and the like. Interesting variations of the question have been presented by the introduction in some segments of the industry of paying re-use fees for the re-runs of filmed or recorded performances by commercial players.¹¹ An example of another tax question which has come to the fore recently is a claim, regarded by the industry as quite extreme, by some local authorities seeking to impose or extend sales taxes on television films and other paraphernalia of broadcasting. As to labor relations, the agency lawyer, as indicated above, has responsibilities in the negotiation and administration of union codes. Neither the advertisers nor the advertising agencies are generally parties directly to these collective bargaining agreements, but signify adherence, subject to certain conditions, by "letters of adherence" or some other method of informal acquiescence. The agency lawyers, therefore, usually participate in these matters in the role of "observers." Some of them, in the discharge of their duties, have been known to observe not only vocally, but vociferously. But for the most part, in their labor-management relations, they "do as adversaries do in law,/Strive mightily but eat and drink as friends."

As Sir William Blackstone admonished in earlier times, and as all lawyers know today, "The law is a jealous mistress." She "demands . . . an earnest and entire devotion."¹² For the advertising agency lawyer, as the foregoing brief survey may reveal, she has such versatility and excitement that "earnest and entire devotion" is not only a strenuous duty but a great fascination.

¹⁰ S.S.T. 333, 1938-2 CUM. BULL. 291.

¹¹ Rev. Rul. 54-225, 1954-1 CUM. BULL. 216.

¹² George Sharswood, *A Memoir of Sir William Blackstone*, in I BLACKSTONE'S COMMENTARIES (Sharswood ed. 1895).