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THE 'BLOODSUCKER' PROXY USAIR CASE REOPENS DEBATE OVER WHEN, HOW LAWYERS CAN SOLICIT CLIENTS

*LISA GREENE**Staff Writer*

If he weren't a lawyer, it wouldn't be a crime.

For most people, trying to rustle up new clients is good business. But when your potential clients are people who have been struck by tragedy, the landscape changes - changes so much that John O'Quinn, one of the nation's best-known lawyers, could lose his law license and even go to prison.

Lawyers are quick to condemn the scheme O'Quinn is accused of masterminding: sending people to grieving families' doorsteps, just days after family members had been killed in the 1994 crash of USAir Flight 1016.

O'Quinn is one of four Texas lawyers facing charges in Richland County's 5th Circuit Court of illegally soliciting clients. With few exceptions, contacting potential clients in person or by phone is strictly forbidden.

But after that point, lawyers don't agree on how best to attract new clients.

Some write to grieving families. Others refuse. Some advertise. Some don't.

And those who don't advertise or write letters want more rules restricting those who do.

The debate pits a wish to respect the privacy of people struck by tragedy against the free-speech rights of lawyers.

And it is heated. Few things lawyers do affect them as much, other lawyers believe. Those who oppose contacting potential clients say the practice hurts the profession.

"Many lawyers believe that it affects the public's opinion of lawyers in general," said Will Hornsby, staff counsel to the American Bar Association Commission on Advertising. "We haven't been able to substantiate that belief . . . but clearly lawyers believe that."

That's why the O'Quinn accusations are upsetting. They exemplify the most negative image of lawyers: as ambulance chasers who feed on others' pain.

'Bloodsuckers at the door.' Columbia lawyer **Jack Swerling** has represented an Episcopal bishop's son turned murderer and the notorious kidnapper and killer of two children. It takes a lot to shock him.

But what happened after **Swerling** agreed to represent Elizabeth Jeter did shock him.

Jeter's son, daughter-in-law and their three children were all on Flight 1016. All five died.

"People were continuously going out to Mrs. Jeter's house, trying to get them to sign up, and making promises to them - cash bonuses, large advances on the settlement, representations they would be set for the rest of their lives," **Swerling** said.

"They were trying to grieve," **Swerling** said. "We were trying to recover the bodies from Charlotte. We were planning the funeral. And you had bloodsuckers at the door."

Elizabeth Jeter has spoken about the tragedy only rarely and declined to talk about the lawyers. But **Swerling** called it "some of the most despicable conduct I have ever seen."

The Jeters are mentioned in the indictments against one person charged in the O'Quinn case. However, **Swerling** stressed that he personally doesn't remember who the lawyers were. He remembers only that they were out-of-state, and that they weren't the lawyers whom he worked with in this year's trial against USAir.

Making a name. **Swerling** says he doesn't even use tactics that are legal - advertising or sending out mailings - to look for clients.

Of course, **Swerling** doesn't need to. His reputation as one of the state's pre-eminent criminal defense lawyers is well-established. He gets advertising for free - media coverage of the cases he covers.

But what if you're an expert whom nobody knows?

That's the problem that people such as Chicago attorney David Rapoport confront. Rapoport signed up nine Flight 1016 clients and was the lead plaintiff's attorney in this year's trial.

Rapoport specializes in aviation law. He has represented families of other crash victims, and won an \$8.1-million verdict against USAir for the family of a man killed in a 1992 crash in New York.

But when Flight 1016 crashed near Charlotte, none of the victims' families knew that.

So Rapoport, like many lawyers who specialize in disasters, reluctantly sent out mailings.

"Air-crash victims should have rights to privacy," Rapoport said. "On the other hand, there aren't Yellow Pages that tell you lawyers with successful air-crash experience."

Lawyers who advertise in other kinds of cases use a similar argument: Without such ads, they say, people with money and connections will have lawyers. Working people less familiar with the law may lose out.

But right now, Rapoport said, his firm isn't sending out marketing material.

"This is something that's been a personal struggle," he said. "When I first learned it was being done, it shocked me. . . . This is not something I love talking about."

Still, Rapoport said that such mailings are "minimally intrusive." And not having a lawyer can hurt people who have legal claims.

Los Angeles attorney Michael Baum, who worked with Rapoport in this year's USAir trial, said he's fighting a claim now in which an insurance company settled with one family member, but not others.

"They settled for about one-fifth, maybe one-tenth of what the case was worth," Baum said.

Baum's firm sends out mailings and has a more innovative way for potential clients to reach its lawyers. The firm has its own Web site.

More restrictions likely. Baum, Rapoport and other aviation lawyers must now comply with more restrictive rules on contacting clients. A federal law went into effect this year saying lawyers can't contact crash victims' families, even by mail, for 30 days. The rule works both ways - airline lawyers and insurance companies aren't supposed to contact them either.

Hornsby says the law might not withstand a legal challenge, based on free-speech rights.

"Clearly, people who have suffered a tremendous loss ought not to have their emotions toyed with," Hornsby said. "On the other hand, if the regulations designed to protect these people are overly broad, there are other people who don't have avenues for finding a lawyer who might be denied one."

More broad restrictions could be coming to South Carolina. The state Supreme Court is studying whether to enact a 30-day waiting period on all types of personal injury cases. The court is looking at that proposal as part of proposed restrictions on lawyer advertising by the S.C. Bar.

"I don't think it's too harsh to let families get settled and go through their mourning without being contacted," said Columbia attorney Steedley Bogan.

Bogan chaired the Bar committee that recommended the rule changes and now is the director of the Bar's Law Office Management Assistance Program.

The Bar's proposal would not include insurance adjusters, but would require settlement papers to say that injured people are giving up legal rights and may wish to consult a lawyer before signing.

Bogan said that, while lawyers are divided on how to contact clients, even plaintiffs' lawyers agree that allegations such as those against O'Quinn need to be prosecuted. O'Quinn's case is being handled by local prosecutors and lawyers in Attorney General Charlie Condon's office.

"Most of the plaintiffs' lawyers I've talked to are, strangely enough, on the side of Charlie Condon on this issue," Bogan said. "He's never been a friend of the plaintiffs' bar, but most are

on his side."

Lisa Greene writes about lawyers and federal courts She can be reached at 771-8659.

How to find a lawyer

The South Carolina Bar has a free referral service for people who need lawyers. The number is 799-7100 or (800) 868-2284. The service refers people to lawyers who have agreed to charge no more than \$25 for an initial 30-minute consultation. Also, the lawyers must have more than three years' experience and have malpractice insurance.

#1. Texas attorney John O'Quinn, center, with his wife Julie, and his attorney, Bart Daniel, faces charges for illegally soliciting clients after the USAir Flight 1016 crash. Columbia attorney Steedley Bogan says his peers agree allegations like those against O'Quinn should be prosecuted. FILE PHOTOGRAPH BY ERIC SEALS/THE STATE. #2. Elizabeth Jeter. HANDOUT.



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FLIGHT 1016 LAWYER FACE INDICTMENT S.C. TARGETS PROMINENT TEXAN

LISA GREENE, Staff Writer

One of the nation's best-known lawyers was charged Thursday with illegally soliciting clients among the grieving families of USAir Flight 1016 passengers.

The charges against Texas attorney John O'Quinn appear to be the first time in South Carolina that a lawyer has been criminally charged with solicitation. Five other Texans - three of them lawyers - and a Lexington man also were charged. O'Quinn is accused of using the other Texas lawyers to hire "accident runners" - people who went to South Carolina to seek out crash victims' families and sign them as O'Quinn clients.

Lawyers aren't allowed to contact potential clients such as crash victims in person or on the phone.

Flight 1016 was traveling from Columbia when it crashed in July 1994 near Charlotte. Thirty-seven of the 57 people aboard were killed; 34 of the victims were from South Carolina.

South Carolina prosecutors have taken on a large target. O'Quinn has been featured on the cover of Fortune magazine, and The Wall Street Journal described him as the second-highest-paid lawyer in the country. According to Forbes magazine, O'Quinn made \$40 million in 1994.

He is now trying the first class-action breast implant lawsuit in the nation, against Dow Chemical in Louisiana.

Two years ago, South Carolina prosecutors were criticized for rarely targeting lawyers who break the law. Prosecutions have stepped up since then.

But most lawyers in trouble tend to come from the fringes of the profession - those who develop financial woes or other problems, such as alcoholism. Certainly, none in South Carolina has been as well-known as O'Quinn, who could face up to 23 years in prison if convicted on all counts.

"Lawyers must be held to a higher level of legal accountability than other citizens," Attorney General Charlie Condon said in announcing the Richland County grand jury's indictments Thursday. "They are officers of the court, with special privileges and special responsibilities."

The Texas Bar Association is investigating O'Quinn as well, and he could lose his law license.

(South Carolina's Bar has no authority over O'Quinn, since he does not have a license to practice law here.)

O'Quinn proclaimed his innocence at a Houston news conference Thursday. He said he's a political target of corporate America and that big business wants to prevent him from trying cases that empty its wallets.

O'Quinn said the investigations of him began in 1996, after The Wall Street Journal ran "twisted and distorted" items about him on its editorial page.

"I believe corporate America wants me out of the American courtroom - breast implant manufacturer Dow Corning and other implant companies, the tobacco industry and other forces who cannot defeat me on the merits in an American courtroom."

But prosecutors say the investigation began after a phone call from U.S. District Judge Joe Anderson, who notified officials of complaints. Other lawyers complained as well, including Columbia attorney **Jack Swerling**, who represented the family of three passengers killed in the crash.

"I do have a subscription (to The Wall Street Journal), but to be honest with you, I didn't read the articles," said 5th Circuit Solicitor Barney Giese, whose office will prosecute the case with Condon.

Giese attended Condon's news conference, along with his deputy, Johnny Gasser, and SLED Chief Robert Stewart. Giese and Condon were cautious in their comments about O'Quinn, who has filed a lawsuit against the Texas Bar, and stressed that he's innocent until proven guilty.

O'Quinn represented five families of crash victims. Four settled; one, Houston resident Dorian Doucette, has yet to go to trial. Doucette was burned more severely than any other survivor of the crash.

O'Quinn gave out an affidavit from Doucette's father Thursday. Doucette's father said he hired O'Quinn because Houston lawyer Benton Musslewhite was already representing him on a different case. Musslewhite has worked with O'Quinn in the past. He and his son also were indicted Thursday.

O'Quinn and Musslewhite faced similar accusations by the Texas Bar several years ago. According to The Wall Street Journal, O'Quinn received little punishment, but Musslewhite couldn't practice law for three years.

Floyd Doucette defended O'Quinn and said the "false rumors" about him "are hurting me and my family."

However, O'Quinn isn't charged with soliciting Doucette. The accusations involve other crash victims.

O'Quinn has hired Texas lawyers to defend him, but has a South Carolina attorney as well - former U.S. Attorney Bart Daniel.

"He denies the charges contained in the indictment and looks forward to his day in court,"

Daniel said.

Swerling said his clients, the Jeter family, were badgered by out-of-state lawyers in the weeks following the crash. He said he couldn't recall who the lawyers were, but said the contacts only added to the family's grief. Five family members were killed in the crash; **Swerling** represented the estates of three of them.

"It was devastating to Mrs. Jeter," he said. "They were trying to grieve. We were trying to recover the bodies from Charlotte. We were planning the funeral. And you had some bloodsuckers at the door."

In addition to O'Quinn and Musslewhite, lawyers Carl Shaw and Musslewhite's son, Charles Benton Musslewhite Jr., were indicted. So were two other Texas residents and a Lexington man, the Rev. Charles Wesley "Carlos" Williams.

Williams is accused of being paid by the lawyers to sign clients. He could not be reached Thursday, but has said he was simply investigating the crash.

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O'Quinn



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