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HISTORICAL AND ECONOMIC PERSPECTIVES ON LAWYER ADVERTISING AND LAWYER IMAGE

Richard J. Cebula[†]

I. BACKGROUND AND STUDY OBJECTIVE

Most forms of legal services advertising were prohibited in the United States until the Supreme Court deemed such bans unconstitutional in the historic 1977 case of *Bates v. State Bar of Arizona*.[1] In recent years, the Supreme Court has rendered decisions in various other cases involving issues of lawyer advertising and commercial free speech;[2] however, several such cases have been litigated solely in the lower courts.[3]

Since 1977, a vigorous debate has developed regarding the alleged impact of legal services advertising: "[o]ver the past

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1. 433 U.S. 350 (1977).
2. *See, e.g.,* Florida Bar v. Went For It, Inc., 515 U.S. 618 (1995); Ibanez v. Florida Dep't of Bus. and Prof'l Regulation, Bd. of Accountancy, 512 U.S. 136 (1994); Shapero v. Kentucky Bar Assoc., 486 U.S. 466 (1988); Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985); Ohralik v. Ohio State Bar Assoc., 436 U.S. 447 (1978); Bigelow v. Virginia, 421 U.S. 809 (1975). Related to the commercial free speech issue, see also Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557 (1980); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976).
3. A few recent examples include: Falanga v. State Bar, 150 F.3d 1333 (11th Cir. 1998); Schwartz v. Welch, 890 F. Supp. 565 (S.D. Miss. 1995); Texans Against Censorship, Inc. v. State Bar, 888 F. Supp. 1328 (E.D. Tex. 1995).

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several years, there has been increased speculation and
conjecture about the role the communication of legal services
plays in the public's image of the legal profession . . . ."[4] The
American Bar Association (ABA) Commission on Advertising
observes the increased concern over "the extent the
communication of legal services contributes to a diminished
public image of the legal profession."[5] Apparently,
"[c]ommercialization, as evidenced by lawyer advertising and
solicitation, is thought of by the legal profession as a major
factor contributing to the perceived decline of the profession in
the eyes of the public."[6] Simply stated, the ABA has been
observed that "the legal profession strongly believes that
advertising contributes to the decline of the profession's
image."[7]

Heretofore, empirical research on the impact of lawyer
advertising on the public's image of the law profession has
generally taken the form of surveys. Indeed, one such survey
formed the basis for the recent major U.S. Supreme Court
decision *Florida Bar v. Went For It, Inc.*[8] In that case, "the Court
relied on empirical research to find a substantial state interest
justifying regulation."[9] The alleged "empirical" research in
question was in fact a simple marketing survey involving
telephone interviews of Florida residents.[10] In other cases, the
Florida study in question was severely criticized and
characterized as unclear, imprecise, biased, nonrepresentative,
and generally as misinterpreting the available information as
well as facts.[11] Market surveys, if they are to be at all useful,

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4. AMERICAN BAR ASSOCIATION (ABA) COMMISSION ON ADVERTISING, LAWYER
ADVERTISING AT THE CROSSROADS i (1995) [hereinafter ABA: CROSSROADS].
  5. *Id.* at ii.
  6. *Id.* at 1.
  7. *Id.* at 3.
  8. 515 U.S. 618 (1995); *see* FRANK N. MAGID ASSOCIATES, ATTITUDES & OPINIONS OF
FLORIDA ADULTS TOWARD DIRECT MAIL ADVERTISING BY ATTORNEYS (Dec. 1987)
(prepared for the Florida Bar) [hereinafter MAGID STUDY] (available in Georgia State
University College of Law Library).
  9. ABA COMMISSION ON ADVERTISING, THE IMPACT OF ADVERTISING ON THE IMAGE OF
LAWYERS: A MALL INTERCEPT STUDY i (1995) [hereinafter ABA: MALL INTERCEPT]
(referencing *Went For It,* 515 U.S. 618 (1995), and MAGID STUDY, *supra* note 8).
  10. *Went For It,* 515 U.S. at 626-28.
  11. *See* Edenfield v. Fane, 507 U.S. 761, 771-72 (1993); Falanga v. State Bar, 150 F.3d
1333, 1340 (11th Cir. 1998).

must meet a variety of criteria. These criteria include the following thirteen items:[12]

1. Clearly identify the information being sought. The purpose of the survey should be clearly identified without conveying said purpose to either the interviewers or respondents in the survey.

2. Identify precisely the target population – the group whose views one is attempting to represent and study.

3. Determine the sampling frame – the source from which the actual sample is to be drawn.

4. Use a sample that accurately represents the target population. Ideally, this is accomplished by using a true *random sample* – A sample in which every element has a positive, known, and equal probability of being chosen and in which all possible random samples of equal size from the same population have an equal probability of being chosen. An always questionable, but nevertheless frequently chosen alternative to a true random sample is the *non-probability convenience sample*, typified by the "Mall Intercept study."[13] The latter, if done properly, is essentially a controlled experiment that uses readily available respondents and attempts to screen those respondents so as to create a *representative sample*. Even if respondents are well-screened, non-probability convenience samples yield outcomes that are generally only crude indicators of what a true random sample would generate. In part, this is because there are so many vectors of population traits that have to be accounted for in creating a genuinely representative sample, traits that could easily be overlooked or improperly measured (but that in fact would *automatically* be accounted for with a true random sample).

5. Ask questions that are clear, precise, and unbiased. Ask those questions courteously and allow a reasonable amount of time for respondents to ponder the questions and provide thoughtful responses. Courteously repeat any and all questions clearly if asked to do so.

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12. These criteria parallel those outlined and discussed in the Federal Judicial Center's REFERENCE MANUAL ON SCIENTIFIC EVIDENCE (1994) [hereinafter REFERENCE MANUAL].

13. A Mall Intercept study is "a social science research tool that enables researchers to interview and survey individuals at a public place such as a shopping mall." ABA: MALL INTERCEPT, *supra* note 9, at 6.

6. Detail how non-response rates were handled. A response rate of at least 90% is deemed desirable in order to establish credibility.

7. Order questions, as well as response alternatives on closed-ended questions, in such a fashion as to prevent ordering biases such as *primacy effects* (in which the respondent tends to choose the first choice or earlier choices) and *recency effects* (in which the respondent tends to choose the last choice or later choices). Rotating response alternatives is one possible way to at least partially alleviate potential primacy and recency effects.

8. Limit the number of questions so as not to tax respondents' attention spans or create "respondent animosity" that could jeopardize the objectivity and thereby compromise the dependability of the survey. This procedure may be especially important in the case of telephone surveys, in which, ordinarily, only auditory means of communication exist between the interviewer and the respondents.

9. Limit the number of response alternatives in each closed-ended question so as not to tax the respondents' attention spans or create respondent confusion and frustration.

10. With open-ended questions, always document all responses obtained with written notes and other means when feasible. Indicate meticulously when "no response" or "no opinion" is encountered for specific questions or portions thereof.

11. Do not in any way pressure respondents to provide answers to open-ended or closed-ended questions when they indicate "no opinion."

12. Make reasonable efforts to avoid *timing bias*. Conduct surveys when respondents are not inordinately "rushed," short on time, or preoccupied, such as near major holidays (especially the Christmas holidays), and such that the respondents are not made resentful by the timing of surveys over the course of the day, such as late at night or very early in the morning.

13. Use only competent, properly trained interviewers who are subject to systematic monitoring and other procedures to ensure minimal bias and maximum accuracy. All supervisory and survey design personnel should be properly trained and

adequately educated in relevant fields, especially in statistics and marketing research.[14]

Mall Intercept surveys *potentially* can be somewhat useful, especially if they are carefully structured and conducted so that they reasonably conform to the criteria listed above. However, Mall Intercept surveys must be interpreted *very* cautiously and viewed as merely crude indicators because they in fact are *not* random samples and because they suffer from other limitations. For instance, the use of a Mall Intercept approach is generally limited because it is merely a snapshot; that is, it applies merely for a point in time or for a very short period of time and does *not* readily lend itself to tracing information, such as changing attitudes about lawyer image, *over time.* Indeed, it should be stressed that even true random-sample-based surveys, *taken individually,* suffer from the latter limitation. In theory, the choice of shopping malls in a Mall Intercept survey also should be randomly determined. When the mall choices are not randomly determined, further limitations on the usefulness of the Mall Intercept survey approach may be encountered because constructing a representative sample may become more difficult.

Furthermore, as a recent ABA-commissioned study has indicated, the dependability of Mall Intercept studies must be interpreted very carefully because "the Mall Intercept creates an artificial condition in which . . . images are examined. In other words, people are filling out forms and watching television commercials in the middle of a shopping center instead of a more natural and comfortable environment such as their home or office."[15] The artificial (unnatural) environment may alter response patterns and hence render the survey less dependable and potentially even misleading.

Most Mall Intercept surveys and most other non-probability convenience samples are rather limited in what information they can usefully impart. A more powerful quantitative approach to the impact of lawyer advertising on the image of the

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14. It should be noted that Supreme Court Justice Anthony M. Kennedy criticizes the Magid Study of Florida adults along the lines that are consistent with the criteria in his writing of the dissenting opinion in *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 640-41 (1995).

15. ABA: MALL INTERCEPT, *supra* note 9, at 20.

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profession is needed to generate concrete, dependable, and meaningful conclusions. Accordingly, this study provides an alternative approach to the issue at hand. In particular, this study adopts a widely-used and recognized tool for empirical analysis, *multivariate regression estimation*, to help determine whether the image of the legal profession has in fact been damaged by lawyer advertising since 1977. Moreover, this study examines annual data (based on random sampling) on the issue at hand over a seventeen year period, 1977-1993, and therefore is not flawed (as Mall Intercept studies and even *individual* random samples generally are) by the limitations of examining only one point in time or a brief period of time.

This study focuses on explaining the results of Gallup polls regarding the public's ratings of the legal profession as having very high or high standards of honesty and ethics. Since these Gallup poll ratings are taken from *random samples* of the adult population, collectively they should be useful measures of the image of lawyers and how that image has changed over time. Section II of this study discusses the variables and data included in the analysis and provides the data and data sources. The results of two alternative Ordinary Least Squares multivariate regression estimates are then provided and discussed in Section III. Finally, Section IV draws conclusions from the preliminary findings provided in this study regarding the impact of legal services advertising on the public's image of the legal profession.

II. THE FRAMEWORK OF ANALYSIS

Starting with 1976 and for years thereafter through 1993, the Gallup Organization routinely polled the public on their perceptions of honesty and ethical standards for a variety of professions, including the legal profession.[16] Given the fashion in which these polls were taken, their results for different years are entirely comparable. In all cases, the polls used random sampling to generate observations.

The percentage of the adults polled who rated the legal profession as possessing either very high or high standards of

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16. *See* Table 1, *infra* page 321.

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Table 1.
Raw Data

Year	Gallup Poll %	TV Outlay 000's	Implicit Price Deflator 1987=1.00	Civil Suits 000's	Film	Total Pop. Millions	RADPOP
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
1976	25	---	---	---	0	---	.0000
1977	26	98.0	.559	130.6	0	220.2	.0008
1978	25.8	833.8	.603	138.8	0	222.6	.0062
1979	25.5	3788.7	.655	154.7	0	225.1	.0257
1980	25.2	5075.0	.717	168.8	0	227.7	.0311
1981	25	6151.5	.789	180.6	0	230.0	.0359
1982	24.5	1102.7	.838	206.2	0	232.2	.0567
1983	24	17803.3	.872	241.8	1	234.3	.0871
1984	25.5	28192.4	.910	261.5	1	236.3	.1311
1985	26.5	38261.6	.944	273.7	1	238.5	.17
1986	27	46967.2	.969	254.8	1	240.7	.2014
1987	22.5	59015.9	1.000	239.0	2	242.8	.2431
1988	18	63949.0	1.039	239.6	2	245.0	.2512
1989	20	82291.8	1.085	233.5	2	247.9	.3066
1990	22	94772.3	1.133	217.9	2	249.9	.3347
1991	22	102495.6	1.176	207.7	3	252.6	.345
1992	18	113345.2	1.209	226.9	3	255.4	.3671
1993	16	125971.6	1.235	228.6	4	258.1	.3952

Data Sources:

(a) The *Gallup Report* and *The Gallup Poll Monthly*.

(b) American Bar Association, Division for Legal Services.

(c) *Economic Report of the President, 1995*, Table B-3.

(d) *Statistical Abstract of the United States*, 1978-94 (variable refers to civil suits commenced in United States district courts; dependable data on civil suits commenced in non-federal courts are not available for the first eight years of the study period).

(f) *Economic Report of the President, 1995*, Table B-32.

(g) RADPOP consists of the data in column (b) divided by those in column (c) and then by those in column (f).

honesty and professional ethics for the years 1976 through 1993 is represented in column (a) of Table 1. As shown, the percentage of adults polled who rated the legal profession as very high or high ranged from twenty-five percent in 1976 to a high over the study period of twenty-seven percent in 1986 to a low over the period of sixteen percent in 1993.

But is this decline in the image of the legal profession fundamentally attributable to advertising? To help answer this question, a useful measure of the magnitude of advertising dollars expended must be included in the analysis. Apparently, the only time series for which dependable data are available over the entire post-*Bates* decision period are those for television advertising. Column (b) of Table 1 provides the total amount expended each year, expressed in thousands of current dollars,[17] by the legal profession on lawyer advertising on television over the 1977-1993 period. As shown in Table 1, the current dollar outlays for television advertising grew at a very rapid rate over the time period.

The issue that now must be addressed is how to measure these television advertising outlays in view of the fact that both (1) price inflation and (2) population growth occurred over the time period studied. In other words, to express advertising outlays in useful terms, what is needed is an allowance for each of these two phenomena. To begin with, given the presence of inflation in the economic system, it is impossible to meaningfully compare the current dollar amounts from one year to the next. In order to make year-to-year comparisons, it is necessary to express the data in column (b) in terms of a uniform measure of purchasing power. This is most easily done by dividing the dollar amounts shown in column (b) by the so-called "implicit price deflator." As shown in Table 1, the implicit price deflator currently available pertains to the year 1987; therefore, 1987 is the "base year." The implicit price deflator adjusts for inflation over time and dividing by it converts current dollar values for various years into "constant dollar" values, in other words, into the purchasing power of money in the year serving as the base year for the implicit price deflator. Thus, dividing the current dollar amounts in column (b) by the

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17. Dollar amounts expressed in current dollars are simply dollar amounts that have not been adjusted to allow for inflation.

implicit price deflator values in column (c) converts the advertising outlays in each year studied to a common denominator—1987 purchasing power. These figures can be directly compared with one another.

Of course, over time, the population of the United States also has grown. Accordingly, the best way to measure the advertising outlays is to allow not only for inflation but also for population growth. This merely involves the division of the constant dollar values of television outlays by the population (see column (f) of Table 1). Thus, the most appropriate measure of outlays on television advertising of legal services is the per capita, constant dollar outlays.[18] These figures are provided in column (g) of Table 1 as variable "RADPOP."[19] As shown, the value for RADPOP rises measurably from year to year.

This study argues that a meaningful evaluation of whether legal services (lawyer) advertising has influenced the public's image of the legal profession must account for the fact that "the image of the legal profession was already on a downward trend prior to the *Bates* decision."[20] The ABA Commission on Advertising observes that, as far back as the early nineteenth century, "[l]awyers were viewed as guardians of the American aristocracy."[21] The ABA Commission on Advertising further notes that "[t]he public saw this as an 'undemocratic' situation."[22]

Evidence of the public's negative perceptions of the legal profession in the United States may be found elsewhere as well. For instance, Auerbach observes that "[e]ven before the nineteenth century ended, the legal profession seemed far removed from any golden age."[23] He also observes "a weakened

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18. In analyses involving time-series data (data tracked over time), converting variables expressed in nominal (current dollar) terms into per capita, constant dollar (so-called "real") terms is very common. *See, e.g.,* Richard J. Cebula, *Federal Government Budget Deficits and Interest Rates: An Empirical Analysis for the United States, 1955-1984,* 43 PUB. FIN./FINANCES PUBLIQUES 337 (1988); Gregory Hoelscher, *New Evidence on Deficits and Interest Rates,* 18 J. MONEY, CREDIT & BANKING 1 (1986).

19. *See* Table 1, *supra* page 321.

20. CATHY J. COBB-WALGREN & KENNETH L. BERNHARDT, CONSUMER REACTIONS TO LEGAL SERVICES ADVERTISING IN THE STATE OF GEORGIA 191 (Oct. 1995) (prepared for the State Bar of Georgia).

21. ABA CROSSROADS, *supra* note 4, at 29.

22. *Id.* at 30.

23. JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN

sense of professional dignity and 'a latent and sometimes an open hostility between . . . lawyers and the . . . masses.' "[24] In 1838, Alexis de Tocqueville observed that "[i]f I were asked where I place the American aristocracy, I should reply without hesitation . . . that it occupies the judicial bench and the bar."[25] Historian R. Kent Newmyer, characterizing the days of Andrew Jackson, adds that "there seems strong evidence that an identifiable, self-conscious, and dominant portion of the profession was found consistently in collusion with the advance guard of commercial and industrial capitalism."[26]

Moreover, the image of the law profession was apparently badly tarnished by the early years of the twentieth century. As John R. Dos Passos observed in 1907, the law profession in the United States was in "a transformation, from a profession to a business."[27] Dos Passos viewed the postbellum years as a period of "intellectual decadence" in the bar.[28] In his view, the lawyer's "aristocratic and social prestige" has disappeared, and the lawyer's "moral and intellectual standard has been lowered."[29] These sentiments are expressed somewhat similarly in the words of attorney James Lewis, who in 1905 lamented "the end of lawyers" and observed that "[t]he lawyer who is but a lawyer, however talented, learned and refined, must take second place beside the director of the company for which he is counsel or beside the client who is rich."[30] Another attorney of the era, Theron Strong, essentially echoes these basic observations when stating that "the incursion of . . . money-making power" had robbed the lawyer of his stature and self respect.[31] Strong argued that "many of the best-equipped lawyers . . . are to all

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AMERICA 18 (1976).

    24. *Id.*

    25. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 259 (Henry Reeve, trans., London 3d ed. 1838).

    26. R. Kent Newmyer, *Daniel Webster as Tocqueville's Lawyer: The* Dartmouth College *Case Again*, 11 AM. J. LEGAL HIST. 127, 146-47 (1967).

    27. JOHN R. DOS PASSOS, THE AMERICAN LAWYER: AS HE WAS—AS HE IS—AS HE CAN BE 25 (Rothman & Co. 1986) (1907).

    28. *Id.*

    29. *Id.* at 33-34.

    30. James Hamilton Lewis, *The End of Lawyers,* 13 AM. LAW. 115, 116-17 (1905).

    31. THERON G. STRONG, LANDMARKS OF A LAWYER'S LIFETIME 347 (1914).

intents and purposes owned by the . . . corporate and individual interests they represent."[32]

Moreover, not only have historical image problems existed for lawyers in the United States, but those image problems also appear to have become exacerbated over time by factors that preceded the post-*Bates* advertising experience. This is probably most succinctly expressed by ABA analysts who observe that "[q]uestions of dishonesty and greed have shaped opinions about lawyers for generations, but most sharply since the Watergate scandal between 1972 and 1974."[33] Accordingly, following a standard procedure in regression analysis, a linear trend variable is included in the estimates provided in this study in order to account for any longer-term trend (pattern) in the public's image or perception of lawyers in the United States.[34]

Certain factors, aside from advertising per se and allowing for longer-term trends in the image of the legal profession, are reasonable components of the analysis. For example, the study considers the rising number of civil suits commenced in United States district courts over the study period as a whole.[35] As observed above, the legal profession in the United States historically has been viewed as elitist and as serving principally the American aristocracy. In view of this perception, a rising number of civil suits commenced (per capita) could be interpreted as an indication that the legal profession is better serving the public in the provision of legal services. If this be the case, then the image of the legal profession might very well be enhanced by a rising number of such civil suits per capita. The data for the number of civil suits commenced in United States district courts are provided in column (d) of Table 1.

One additional factor that may have influenced the public's view of the law profession is the film industry in the United States and how it has portrayed the behavior of lawyers to the public, especially in recent years. In point of fact, since 1977, at least four major films produced by major Hollywood studios

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32. *Id.* at 354.

33. ABA: CROSSROADS, *supra* note 4, at 69.

34. The linear trend variable in this study is simply a variable with the values 1 to 17 for the years 1977 to 1993, respectively. For a clear exposition of the use of trend variables, see DAMODAR N. GUJARATI, BASIC ECONOMETRICS 17 (1995).

35. *See* Table 1, *supra* page 321.

were very successful at the box office and depicted lawyers in especially unfavorable ways such as unethical, unprofessional, and dishonest. The four films were: *The Verdict* (1983),[36] *Fatal Attraction* (1987),[37] *Cape Fear* (1991),[38] and *The Firm* (1993).[39] By virtue of this box office success and the adverse image of lawyers promoted in these films, it seems more than feasible that the public's image of lawyers might have suffered as a consequence of viewing these films.

The data used to represent this "film" variable are found in column (e) of Table 1. To measure this variable, the number of these films that had been or could have been viewed by the public by the end of each given year were used. For the years 1977-1982, the public had been exposed to none of the four films in question; hence, the value of the film variable is zero. For the years 1983-1986, the public had exposure or access to only one of the films, *The Verdict*, so that the film variable has a value of one. For the years 1987-1990, the public clearly had exposure or access to two of the four films, *The Verdict* and *Fatal Attraction*, so that the film variable is represented by the number two. For the period 1991-1992, a third film entered the picture, *Cape Fear*, so the film variable is represented by the number three. And for 1993, with the fourth film, *The Firm*, entering the picture, the value of this variable is four.

III. PRELIMINARY EMPIRICAL EVIDENCE

The basic issue under examination in this study is whether, as much of "the legal profession strongly believes[,] . . . advertising contributes to the decline of the profession's image."[40] As Justices O'Connor and Kennedy have recently emphasized, there are those who hold this belief because they allegedly believe that advertising may adversely affect the dignity and reputation of the law profession.[41] However, an ABA study has found that many "of those who oppose lawyer

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36. THE WORLD ALMANAC & BOOK OF FACTS 1984, 431 (Hana Umlauf Lane ed., 1983).

37. THE WORLD ALMANAC AND BOOK OF FACTS 1989, 348 (Mark S. Hoffman ed., 1988).

38. THE WORLD ALMANAC AND BOOK OF FACTS 1993, 295 (Mark S. Hoffman ed., 1992).

39. THE WORLD ALMANAC AND BOOK OF FACTS 1995, 301 (Robert Famighetti ed., 1994).

40. *See* ABA: CROSSROADS, *supra* note 4, at 3.

41. *See* Florida Bar v. Went For It, Inc., 515 U.S. 618, 625 (1995); *id.* at 638 (Kennedy, J., dissenting).

advertising have direct or indirect competing interests. . . . Some who oppose advertising complain about its effects on the image of the profession . . . but in fact are far more concerned about the fiscal impact on their practice."[42] In many if not most instances, those attorneys falling into the latter category would very likely regard advertising as increasing competition in the marketplace. Naturally, this perception of increased competition due to lawyer advertising would also imply the perception of diminished revenues and profits as a result of such advertising. Interestingly, recent research commissioned by the ABA finds no link between the advertising of legal services and the image of the law profession: "[t]he research does not demonstrate a nexus between lawyer advertising and public opinions about lawyers in general."[43] In other words, "[t]he findings . . . indicate that . . . lawyer advertising did not influence the public's image[] of lawyers in general."[44]

Aside from the effectively unsubstantiated speculation by many members of the profession and the findings of responsible studies such as those recently commissioned by the ABA, there may be reason to expect that lawyer advertising could potentially even have a positive impact on the image of the profession. For example, it has been observed that "[t]he possibility of a reduction in the prices of legal services as a result of competition brought on by lawyer advertising is fundamentally important."[45] Moreover, "there is evidence that the competition for legal services stimulated by advertising has served to reduce prices."[46] To the extent that lawyer advertising has reduced legal costs, it is likely to enhance the public's image of the profession by creating a more positive attitude (in the sense of feeling more fairly treated in terms of being charged fairer prices) toward the rendering of legal services by lawyers. Moreover, this is all the more likely to be experienced since evidence also exists "that there is no loss of quality for legal services resulting from advertising."[47]

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42. ABA: CROSSROADS, *supra* note 4, at 127.
43. ABA: MALL INTERCEPT, *supra* note 9, at ii.
44. *Id.* at 22.
45. ABA: CROSSROADS, *supra* note 4, at 130.
46. *Id.*
47. *Id.* at 134.

Furthermore, advertising has become an important way for certain segments of the population, especially the poor, less educated, and younger segments, to obtain access to legal services.[48] As has been found in various studies, "for a minority of consumers, advertising may be the only mechanism for choosing an attorney."[49] Advertising may well serve to raise the image of the legal profession, at least among such population segments, by promoting a more democratic image to shed its elitist image, and by promoting improved access to legal representation through increased efficiency in the transmission of information that lawyer advertising can provide.[50]

To empirically determine the impact of lawyer advertising on the image of the law profession, this study employed a widely recognized and used statistical tool known as *multivariate regression analysis.* A form of regression analysis that is both conventional and useful involves a procedure known as Ordinary Least Squares (OLS). This is a statistical technique used to identify relationships among variables using data that represent those variables. OLS analysis is based ultimately on probability theory and is widely recognized for its extremely broad range of applications.[51]

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48. *See id.* at 63; *see also* AUERBACH, *supra* note 23, at 10-69.

49. COBB-WALGREN & BERNHARDT, *supra* note 20, at 191.

50. According to the ABA, the latter "is consistent with the Association's goals." ABA: CROSSROADS, *supra* note 4, at 63.

51. A partial list of the types of subject matter that are readily addressed by OLS regression estimation includes: causes of savings and loan failures and bank failures; causes of human migration; effects of cigarette smoking; impact of unemployment on inflation and wages; determinants of welfare outlays; black market trade behavior; determinants of revenues for professional team sports; effects of taxation on housing prices; mergers; determinants of geographic living cost differentials; executive salaries; impact of federal budget deficits on interest rates; and, determinants of investment outlays. Thus, applying the technique to the subject matter at hand is quite straightforward. For a sampling of some of these applications, see James R. Barth et al., *Federal Borrowing and Short Term Interest Rates: Comment,* 52 S. ECON. J. 554 (1985); Richard J. Cebula, *Determinants of Geographic Living-Cost Diffentials in the United States: An Empirical Note,* 56 LAND ECON. 477 (1980); Richard J. Cebula et al., *The Impact of Public Mass Transit on the Operating Income of Professional Sports Franchises in the United States: A Preliminary Analysis for the NFL, MLB, and NBA,* 11 J. SPORT MGMT. 335 (1997); Lowell E. Gallaway & Richard J. Cebula, *Differentials and Indeterminacy in Wage Rate Analysis: An Empirical Note,* 26 INDUS. & LAB. REL. REV. 991 (1973); Craig A. Gallet, *Mergers and Market Power in the U.S. Steel Industry,* 3 APPLIED ECON. LETTERS 221 (1996); James V. Koch & Richard J. Cebula, *In Search of Excellent Management,* 31 J. MGMT. STUD. 681 (1994); James V. Koch & Richard J. Cebula, *Smoking, Health Costs, and Public Policy,* 51 AM. J. ECON. & SOC. 159 (1992);

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The regression equation to be estimated initially is given by equation (1) as follows:

$$(1)\ GALLUP_t = a_0 + a_1\ RADPOP_t + a_2\ TREND + a_3\ CIVPOP_t + a_4\ FILM_t + \mu'$$

where:

$GALLUP_t$ = percentage of those in the Gallup poll in year t who rated lawyers as having either very high or high standards of honesty and ethics;

a_0 = constant term;

$RADPOP_t$ = per capita level of outlays on television advertising of legal services in year t, expressed in 1987 dollars;

$TREND$ = simple linear trend variable, with values 1,2, . . . ,17;[52]

$CIVPOP_t$ = per capita number of civil suits commenced in United States district courts in year t;

$FILM_t$ = variable used to represent the number of the films identified above that could have been viewed by the public by the end of year t;

μ' = stochastic error term.

The raw data and the data sources for all of these variables are provided in Table 1. The study period begins in 1977, the year of the *Bates* decision. The study period ends in 1993, the last year comparable Gallup ratings presently are available.

The OLS estimate of reduced-form equation (1), using the White procedure to correct for heteroskedasticity,[53] is provided below in equation (2):

Germano Mwabu & Joseph Wang'Ombe, *Black Market Trade: An Example From a Rural Hospital in Kenya*, 3 APPLIED ECON. LETTERS 213 (1996); Ira S. Saltz, *FDIC Coverage on Bank Failures: Cointegration Analysis Using Annual Data, 1942-91*, 3 INT'L ADVANCES IN ECON. RES. 71 (1997).

52. The trend variable not only accounts explicitly for the argued long-term trend in the image of lawyers, but also helps to adjust for "serial correlation" (sometimes referred to as "autocorrelation") and thereby to reduce the likelihood of spurious results. *See* JACK JOHNSTON & JOHN DINARDO, ECONOMETRIC METHODS 58, 174, 216, 259-63 (4th ed. 1997).

53. Regarding the White procedure, see Halbert White, *A Heteroskedasticity-Consistent Covariance Matrix Estimator and a Direct Test for Heteroskedasticity*, 48 ECONOMETRICA 817 (1980). Although this procedure is often used in cross-section analysis, it also has been used in time series analysis by various authors. *See* Richard J. Cebula, *The Impact of Federal Deposit Insurance on Savings and Loan Failures: Reply*, 62 SO. ECON. J. 256 (1995); Paul Evans, *Interest Rates and Expected Future Budget Deficits in the United States*, 95 J. POL. ECON. 34 (1987).

$$(2)\ \text{GALLUP}_t = +22.7 + 0.32\ \text{RADPOP}_t - 0.99\ \text{TREND}$$
$$(+2.18) \qquad\qquad (-2.96)$$
$$+ 0.007\ \text{CIVPOP}_t - 2.199\ \text{FILM}_t,\ \text{DW}=1.53,\ R^2=0.79$$
$$(+2.82) \qquad\qquad (-3.25)$$

where terms in parentheses are t-values.[54]

In equation (2), all four of the estimated coefficients exhibit the expected signs. In addition, two of the coefficients are statistically significant at the one percent level (those for variables FILM_t and TREND), one coefficient is statistically significant at the two percent level[55] (that for variable CIVPOP_t), and one coefficient is statistically significant at the five percent level (that for variable RADPOP_t). Furthermore, the coefficient of determination (R^2) is 0.79, implying that the variables in the model jointly explain nearly four-fifths of the variation in the Gallup poll ratings of the law profession in the United States over the study period.[56]

The results for the TREND variable potentially offer strong confirmation of the aforementioned observations that the image of the law profession was already on a longer-term downward trend, even prior to the *Bates* decision.[57] The results for variable CIVPOP_t offer compelling confirmation of the hypothesis that the image of the legal profession may well have benefitted from a perceived increase in the level of legal services being provided to the public. The evidence for variable FILM_t is also very

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54. To compute a t-value, the estimated coefficient for a given independent variable (which estimates the average change in the dependent variable in response to a change in that independent variable) is divided by the standard error (which measures variations around/deviations from the value of the coefficient). In this study, if a t-value is equal to or exceeds the absolute value of 2.17, then it is said to be "statistically significant at the five percent level." The latter terminology indicates that the "null hypothesis," which states that there exists no significant relationship between the specified variables, is rejected with a 95% confidence level. This is the usual criterion for rejection/acceptance of the null hypothesis. *See* REFERENCE MANUAL, supra note 12, at 238 (explaining that "[t]raditionally, scientists adopt the 95% level of confidence" as the critical test for rejecting the null hypothesis); *see also* DAVID R. ANDERSON ET AL., STATISTICS FOR BUSINESS AND ECONOMICS, chs. 14-16 (3d ed. 1987).

55. Statistical significance at the 2% level implies that the null hypothesis can be rejected at the 98% confidence level. This finding is even stronger than significance at the 5% level.

56. The coefficient of determination (R^2) indicates the portion of the variation in the dependent variable (GALLUP_t in this case) explained collectively by the right-hand-side variables of the equation.

57. *See supra* notes 20-22 and accompanying text.

compelling: there is strong evidence that the unfavorable image of lawyers portrayed in the four films identified above did in fact adversely affect the public's image of lawyers.[58] Finally, and from the perspective of this study, most importantly, the coefficient on the advertising variable, $RADPOP_t$, is positive and statistically significant at the five percent level. Thus, objectively speaking, there is substantive statistical evidence that higher levels of per capita, constant dollar outlays for lawyer advertising on television have over time actually *raised* the public's image of lawyers in the United States.

Thus, the evidence provided in equation (2) can be interpreted *most conservatively* as at least confirming at some level the ABA study findings that "lawyer advertising does not influence the public's image of lawyers in general, regardless of the style and content of that advertising."[59] Much more reasonably, however, the evidence strongly implies that such advertising actually tends to *elevate* lawyer image!

A problem that is not addressed in equations (1) and (2) is the possibility that the results of earlier Gallup polls on the image of lawyers may, to some degree, have become common knowledge and therefore may have somewhat affected the results of later Gallup polls on the same issue. In other words, if poll respondents perceive, on the basis of earlier, related Gallup polls, that the image of lawyers is declining, at the margin some respondents may alter their responses accordingly. To allow for such a possibility, equation (1) is now expanded to include the results of prior Gallup polls on lawyer image. The expanded reduced-form equation that is to be estimated next is given by equation (3) as follows:

$$(3)\ GALLUP_t = b_0 + b_1\ RADPOP_t + b_2\ TREND + b_3\ CIVPOP_t + b_4\ FILM_t + b_5\ GALLUP_{t-1} + \mu"$$

where:

b_0 = constant term;

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58. From this finding, one might infer that a book such as *The Firm*, which was a "#1 best seller," also may have contributed (jointly with the film based on it) to the lowering of the public's image of lawyers. *See* JOHN GRISHAM, THE FIRM (1991). Clearly, no effort has been made in this study to allow for the effects of books or television programs on the image of lawyers.

59. ABA: MALL INTERCEPT, *supra* note 9, at 20.

$GALLUP_{t-1}$ = value of the Gallup poll rating of lawyers as having very high or high standards of honesty and ethics in year t-1;

μ" = stochastic error term.

This specification differs from equation (1) only by its inclusion of the new variable, $GALLUP_{t-1}$, which is a one-period (one-year) lag of the $GALLUP_t$ variable. This specification tests whether there may have been a "contamination" of Gallup ratings by earlier ratings, specifically by ratings of perhaps one year prior. If such a contamination in fact did occur, it would be expected to generate a positive coefficient.

The OLS estimation of equation (3) is given by equation (4) as follows:

$$(4) \quad GALLUP_t = +13.5 + 0.321\ RADPOP_t - 0.78\ TREND$$
$$\qquad (+2.62) \qquad\qquad (-1.87)$$
$$+ 0.005\ CIVPOP_t - 2.24\ FILM_t + 0.4\ GALLUP_{t-1},$$
$$(+1.70) \qquad (-3.93) \qquad (+2.20)$$
$$R^2 = 0.82$$

In equation (4), all five of the estimated coefficients exhibit the expected signs. In addition, the model explains over four-fifths of the variation in the lawyer image measure over time because the coefficient of determination (R^2) is 0.82.

The TREND variable is significant at the nine percent level, enabling rejection of the null hypothesis at the ninety-one percent confidence level; therefore, it might be inferred that the image of lawyers was already on a longer-term downward trend, regardless of the *Bates* decision and the subsequent lawyer advertising surge. The coefficients on the $FILM_t$ and $GALLUP_{t-1}$ variables are significant at the five percent level or better, thereby permitting rejection of the null hypothesis at the ninety-five percent confidence level or beyond in both cases. Thus, the evidence strongly implies that the four box office successes that were identified above as unfavorably depicting lawyers did in fact contribute to the decline in lawyer image in recent years. In addition, the positive and significant finding for variable $GALLUP_{t-1}$ implies that earlier Gallup poll results regarding lawyer image may have acted to influence or taint later such polls. Hence, it appears appropriate to allow for such contamination when assessing lawyer image determinants. Finally, the coefficient on the lawyer advertising variable is

positive and significant at the one percent level. Therefore, the evidence again very strongly suggests, as hypothesized above, that lawyer advertising may have acted to enhance the image of lawyers.

IV. OBSERVATIONS

Before the twentieth century, lawyers in the United States were permitted to advertise their services to the public.[60] Both the general public and the bar tolerated lawyer advertising.[61] So commonplace was lawyer advertising that even Abraham Lincoln, before being elected President of the United States, attempted to attract new clients through newspaper advertising.[62] This tolerance of lawyer advertising effectively ended in 1908, however, with the adoption by the American Bar Association of the *Canons of Professional Ethics.*[63]

The door opened for lawyer advertising once again in 1977 with the Supreme Court's decision in *Bates v. State Bar of Arizona.*[64] Since 1977, however, the issue of lawyer advertising has been immersed in controversy, with many members of the law profession arguing that such advertising has acted to diminish the stature of the legal profession in the eyes of the public.

To address the latter argument, the present study has endeavored to gain useful insight into the true impact of lawyer advertising on lawyer image. In pursuit of this question, this study has used more rigorous tools than have generally been applied to the problem in the past, namely multivariate regression estimation. Using this procedure, the study generated two empirical estimates for the 1977-1993 period.

The *absolutely most conservative interpretation* of the results in this study is that legal services advertising has had *no*

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60. *See* Douglas Whitman, *Advertising by American Lawyers*, 13 BRIDGEPORT L. REV. QUINNEPIAC C. 813 (1993).

61. *See id.* at 813-14.

62. *See id.* at 813.

63. *See* American Bar Association, Canons of Professional Ethics (1980); *see also* AUERBACH, *supra* note 23, at 41 ("The new canons drew heavily upon George Sharswood's *Essay on Professional Ethics*, published in 1854.").

64. 433 U.S. 350 (1977).

adverse net impact on lawyer image in general.[65] A far more reasonable and objective assessment of the findings in equations (2) and (4) suggests very strongly that evidence exists that lawyer advertising has actually had a net positive impact on the image of lawyers, *ceteris paribus.*[66] Obviously, the empirical results provided in this study, which are based on dependable (so-called "hard") data, totally *contradict* the claim that legal services advertising has contributed to the decline of the law profession's image.[67]

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65. In any event, the findings presented here are rather convincing but nevertheless still somewhat preliminary. Further modeling of unaddressed factors is needed in order to make definitive deductions because there may be "omitted variables" that still need to be taken into account in the analysis. Very simply stated, the omitted variable problem deals with the issue of whether a variable that plays a key role in a relationship has been overlooked and should be included in the analysis. *See* Willie J. Belton, Jr. & Richard J. Cebula, *A Brief Note on Thrift Failures: A More Rigorous Analysis of Causal Factors,* 62 S. ECON. J. 247 (1995). Formal tests for stationarity of the time series data are also appropriate. Expressed simply, the issue of non-stationarity addresses whether data representing a variable exhibit significant upward or downward trends over time. There are tests that can formally determine whether such a trend exists. The best known of these are the Augmented Dickey-Fuller (ADF) test and the Phillips-Perron (PP) test. Related to the use and nature of such tests, see ROBERT S. PINDYCK & DANIEL L. RUBINFELD, ECONOMETRIC MODELS AND ECONOMIC FORECASTS 507-13 (1998). For an example of such tests in an actual application, see Richard J. Cebula, *The Impact of Net International Capital Inflows on Nominal Long-Term Interest Rates in France,* 25 ATLANTIC ECON. J. 179, 183-85 (1997). In any case, the issue of non-stationarity is addressed in the present study to some extent by the use of the trend variable (TREND). In addition, formal causality tests, such as Granger causality tests, should be integrated into the exploration of the issue at hand. Put very simply, the Granger-causality test attempts to determine whether a link of causality exists between a hypothesized explanatory variable and a dependent variable. *See generally* Richard J. Cebula, *The Rate of Return on Savings and Loan Assets,* 17 STUD. IN ECON. & FIN. 3 (1997) (providing an example of the Granger-causality test). Finally, the possibility of simultaneity bias must be explored as well. The issue of simultaneity bias deals with trying to allow for the fact that causality could potentially flow both ways, *i.e.,* the causality could be bi-directional between two contemporaneous variables. *See* John Thornton, *Investment and Saving in an Open Economy: Further Results,* 50 ECONOMIA INTERNAZIONALE 111 (1997).

66. This finding is consistent with the predictions of the "conventional wisdom" regarding the effects of advertising. Empirically, this finding is also consistent with the results found in the study of various other industries. *See* Junsoo Lee et al., *Causality Between Advertising and Sales: New Evidence From Cointegration,* 3 APPLIED ECON. LETTERS 299 (1996).

67. Certain studies reveal the relative *public* support for lawyer advertising in various media. *See, e.g.,* Roy M. Sobelson, *The Ethics of Advertising by Georgia Lawyers: Survey and Analysis,* 6 GA. ST. U. L. REV. 23 (1989).