

***The Behavioral Economics of Lawyer Advertising:  
An Empirical Assessment***

ILLINOIS LAW REVIEW (forthcoming 2019)  
*Draft-in-progress, comments welcome to rknake@uh.edu*

Jim Hawkins\*  
Renee Knake\*\*

***Abstract***

When Justice Blackmun authored the famed opinion striking down the universal ban on lawyer advertising in *Bates v. Arizona State Bar*, he envisioned opening the market to information and competition in ways that would address a long-enduring access to justice problem for low and moderate income individuals. Nearly a half-century later, the same access to justice gap endures. Yet lawyer advertisements proliferate, ranging from late night television commercials with flames and aliens to website profiles with performance reviews and live-chat features.

In this first-of-its-kind empirical project, we examine the persisting market failure. Using the lens of behavioral economics, we explain why opening the market to advertising failed to resolve the access to justice gap. We studied the dominant form of modern lawyer advertising—online advertisements—in three legal markets: Austin, Texas, Buffalo, New York, and Jacksonville, Florida. Our research included review of the websites for all driving-while-intoxicated and automobile crash lawyers in those cities and coding over 60,000 pieces of unique data. This article describes our findings and recommends regulatory interventions designed to fulfill the Supreme Court’s ambitions in *Bates*. In particular, we suggest ways to expand access to information about legal representation for those in need.

---

\* Professor of Law and George Butler Research Professor, University of Houston Law Center.

\*\* Professor of Law and Doherty Chair in Legal Ethics, University of Houston Law Center. For excellent research assistance, we thank Katy Badeaux, Stephen Countryman, Michael Dearman, Joseph Hayes, Barbara Light, Jordan Mack, Collin Marshall, and Katherine Stitely. We are grateful for the helpful comments and suggestions from Nora Freeman Engstrom, Ben Barros, Teddy Rave, and participants at the 2017 UCLA Legal Ethics Schmooze.

## *Table of Contents*

Introduction.....	3
Part I: History of Lawyer Advertising and Modern Debates.....	7
A. A Brief History of Lawyer Advertising.....	7
B. Modern Debates on the Efficacy and Ethics of Lawyer Advertising.....	12
Part II: Literature Review and Study Methodology.....	14
A. Literature Review .....	14
B. Study Methodology .....	17
Part III: Study Findings.....	20
A. What do lawyers advertise?.....	20
B. Do lawyers' advertisements appeal to rational consumers of legal services? .....	25
1. Advertising About Past Victories .....	26
2. Advertising Through Selected Client Testimonials.....	31
3. The Absence of Price Information.....	34
C. Do lawyers' advertisements encourage disadvantaged groups to seek legal help?.....	37
1. Race and Gender of Photographs.....	37
2. Readability .....	40
Part IV: Recommendations .....	41
Conclusion .....	43

## Introduction

Lawyer advertising—what’s the first thought that comes to mind? Likely it is the late-night television commercial for a failed medical device or a mass tort. Images of sledgehammers, swiveling gavels, flames or even aliens appear with a voiceover asking: “Have you or someone you know been injured? If so, call now!”<sup>1</sup> Selling lawyers is a big business, projected to soon reach almost a billion dollars.<sup>2</sup>

The main source individuals use to actually find an attorney when in need, however, is not that late-night television commercial but increasingly websites. According to recent studies, an Internet search is a primary route to finding legal representation, even over asking family or friends for a recommendation.<sup>3</sup> For most consumers of legal services, a website profile often will be the first encounter with the attorney they hire (or decline to hire).

Online websites with live-chat features and blogs surely are not what the United States Supreme Court had in mind when it struck down the nation-wide ban on lawyer advertising in *Bates v. Arizona State Bar*.<sup>4</sup> Instead, the Court envisioned straight-forward, easy-to-understand print ads like that published by newly-licensed attorneys John Bates and Van O’Steen in 1976.<sup>5</sup> Their legal clinic advertisement listed routine services such as an uncontested divorce

---

<sup>1</sup> Sean Cole, *Call NOW*, Life of the Law Podcast, <http://www.lifeofthelaw.org/2013/06/call-now/>.

<sup>2</sup> Ken Goldstein & Dhavan V. Shah, *Trial Lawyer Marketing Broadcast, Search and Social Strategies* 10 (2015), [http://www.instituteforlegalreform.com/uploads/sites/1/KEETrialLawyerMarketing\\_2\\_Web.pdf](http://www.instituteforlegalreform.com/uploads/sites/1/KEETrialLawyerMarketing_2_Web.pdf).

<sup>3</sup> See, e.g., Cassandra Burke Robertson, *Online Reputation Management in Attorney Regulation*, 29 GEO. J. LEGAL ETHICS 97, 106–07 (2016) (“By 2014, however, those numbers had changed dramatically, with a significant shift from personal connections to online resources: a full 38% would search on the Internet first, with only 29% turning to personal recommendations from friends and family.”); <https://www.mosesandrooth.com/how-people-find-lawyers-in-2015/> (According to a 2015 survey of 1,500, 13.6% turn to friends and 9.4% turn to the Internet, though participants ages 18 to 24 and participants earning more than \$150,000 a year were more likely to select an attorney through an Internet search); Gyi Tsakalakis, *How Do People Find and Hire Attorneys?*, <http://lawyernomics.avvo.com/legal-marketing/how-do-people-find-hire-attorneys.html> (last visited Aug. 3, 2017) (“According to a 2013 survey of 1,183, 34.6% ask a friend and 32.4% use an Internet search”).

<sup>4</sup> 433 U.S. 350 (1977).

<sup>5</sup> A reproduction of the Bates and O’Steen advertisement appears in the Appendix.

or a name change and the corresponding flat-fee. The opening text read: “Do you need a lawyer? Legal services at very reasonable fees.”<sup>6</sup> The only graphic in the black and white ad was a scale, and it directed potential clients to the address of the Legal Clinic of Bates and O’Steen.<sup>7</sup> The ad’s clarity and simplicity is refreshing, easily understandable to all.

The Court justified its holding in *Bates*, at least in part, on a hypothesis that advertising would expand access to legal services for some 70% of the American public that could not afford an attorney or lacked information about legal rights and entitlements. In analyzing the market impact, the Court noted that advertising bans make it difficult, if not impossible, for consumers to find “the lowest cost seller of acceptable ability.”<sup>8</sup> “Protecting attorneys from competition,” wrote Justice Blackmun in the 5-4 majority opinion, decreases the “incentive to price competitively” but “where consumers have the benefit of price advertising, retail prices often are dramatically lower than they would be without advertising.”<sup>9</sup> In an important NYU LAW REVIEW article published soon after the *Bates* decision, scholars similarly speculated about the potentially positive impact of advertising on supply and demand in the legal services market.<sup>10</sup>

Yet, nearly a half-century later, the *Bates* Court’s promise has gone unrealized.<sup>11</sup> Studies show that at any given time as many as 80%

---

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 433 U.S. at 377.

<sup>9</sup> *Id.*

<sup>10</sup> Geoffrey C. Hazard, Jr., Russell G. Pearce & Jeffrey W. Stempel, *Why Lawyers Should Be Allowed to Advertise: A Market Analysis of Legal Services*, 58 N.Y.U. L. REV. 1084, 1087 (1983) (applying “basic market and economic theory to the production and consumption of legal services and demonstrat[ing] that lawyer advertising offers important advantages to consumers of legal services”).

<sup>11</sup> See, e.g., Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 GEO. J. LEGAL ETHICS 369, 421 (2004) (“Almost two decades ago, in a prominent report on professionalism, the American Bar Association concluded that the middle class’s lack of access to affordable legal services was ‘one of the most intractable problems confronting the profession today.’ That problem remains . . . .” (citation omitted)); John T. Broderick, Jr. & Ronald M. George, *A Nation of Do-It-Yourself Lawyers*, N.Y. TIMES, Jan. 2, 2010, at A21 (“An increasing number of civil cases go forward without lawyers. Litigants who cannot afford a lawyer, and either do not qualify for legal aid or are unable to have a lawyer assigned to them because of dwindling budgets, are on their

of American households face two to three legal problems without assistance from a lawyer.<sup>12</sup> Lack of information is the primary reason, followed by cost, according to a 2015 study by the American Bar Foundation—the very concerns the Supreme Court aimed to address.<sup>13</sup>

More, not less, of the American public now goes without legal help even after decades of advertising. This incongruity between *Bates's* aspirations and modern realities raises the question: was the

---

own—pro se. What's more, they're often on their own in cases involving life-altering situations like divorce, child custody and loss of shelter.”).

<sup>12</sup> See, e.g., Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (Aug. 8, 2014), <http://ssrn.com/abstract=2478040>; WASH. STATE SUP. CT. TASK FORCE ON CIV. EQUAL JUSTICE FUNDING, THE WASHINGTON STATE CIVIL LEGAL NEEDS STUDY 8 (2003) (documenting that more than 85% of people in Washington State face legal problems without an attorney's help); POVERTY RESEARCH INST. OF LEGAL SERVS. OF N.J., LEGAL PROBLEMS, LEGAL NEEDS: THE LEGAL ASSISTANCE GAP FACING LOWER INCOME PEOPLE IN NEW JERSEY 13 (2002) (documenting that 65% of lower income adults who experienced a legal problem attempted to resolve the issues without the assistance of counsel); D. MICHAEL DALE, THE STATE OF ACCESS TO JUSTICE IN OREGON (2000) (documenting that the legal services delivery system is only meeting the needs of low income people in 17.8% of cases requiring a lawyer's assistance); THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2010), <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf> (reporting that “97 percent of tenants are unrepresented in eviction cases in New York City, and 98 percent are unrepresented outside of the City. 99 percent of borrowers are unrepresented in hundreds of thousands of consumer credit cases filed each year in New York City. 97 percent of parents are unrepresented in child support matters in New York City, and 95 percent are unrepresented in the rest of the State; and 44 percent of home owners are unrepresented in foreclosure cases throughout [the] State”).

<sup>13</sup> See, e.g., Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (Aug. 8, 2014), available at <http://ssrn.com/abstract=2478040>. See also Robert Echols, *State Legal Needs Studies Point to “Justice Gap,”* A.B.A. DIALOGUE, Summer 2005, at 35 <http://apps.americanbar.org/legal-services/dialogue/downloads/dialogue2005sum.pdf> (“These findings indicate that for most of those with legal needs who did not seek help, the reason was *not* that they regarded the problem as unimportant. Rather, many did not understand that their problem had a potential legal solution . . . .”); D. MICHAEL DALE ET AL., CIVIL LEGAL NEEDS OF LOW AND MODERATE INCOME HOUSEHOLDS IN GEORGIA 27 (2009), [http://www.georgiacourts.org/files/legalneeds\\_report\\_2010%20final%20with%20addendum.pdf](http://www.georgiacourts.org/files/legalneeds_report_2010%20final%20with%20addendum.pdf) at 2 (noting that “many low and moderate income Georgians are not sufficiently aware of available resources to help resolve one's legal needs” and that “a lack of understanding as to how the court process works represents an obstacle to the courts' ability to administer justice for all”).

Supreme Court's market analysis about the impact of lawyer advertising flawed?

Some suggest yes and argue for a return to the advertising ban. For example, with the aftermath of advertising like those notorious late-night commercials that thrive post-*Bates*, Justice O'Connor declared that the Court should have gone the other way and upheld the ban.<sup>14</sup> Her concern, however, is grounded in notions of professionalism rather than an economic market analysis.

Others contend that the complexity of restrictions currently placed on lawyer advertising by state regulatory authorities effectively compromises the market for legal services in the same way as a wholesale ban.<sup>15</sup> In other words, it may be that we have yet to see the full impact of advertising because lawyers are so restricted in the content and timing of the information they share. If lawyers were subject to fewer restrictions, advertising would be less costly and the public would have greater knowledge about legal options.

We offer a different explanation here, deploying a novel research method that uses advertisements to diagnose behavioral market failure in the legal services market. By performing an empirical content analysis of attorney advertisements, we detect ways in which consumers make irrational or sub-optimal decisions in the current market for legal services because of their behavioral biases. Our study is the only comprehensive empirical examination of website advertisements for attorneys specializing in DWI/DUI (driving while intoxicated/driving under intoxication) and personal injury work. We use this analysis as a basis for recommending advertising reforms that will create advertisements that better achieve the objectives articulated in *Bates*.

Time after time, regulatory bodies have implemented advertising regulations for lawyers without any empirical studies. Our research here provides empirical justification for regulatory intervention. Our argument is not that *Bates* should be reversed even though we challenge the Court's reliance on traditional economics in making the decision to overturn the advertising ban. Instead, we propose

---

<sup>14</sup> See discussion *infra* n. 45-46.

<sup>15</sup> See, e.g., Renee Newman Knake, *Legal Information, the Consumer Law Market, and the First Amendment*, 82 *FORDHAM L. REV.* 2843 (2014); Gillian Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control Over Corporate Legal Markets*, 60 *STAN. L. REV.* 1689 (1980).

mechanisms to more fully realize the benefits of advertising in the legal services market espoused by *Bates*. Our recommendations include a proposal that policy makers require certain disclosures or disclaimers to address consumer irrationality and biases. We also call on bar associations and legal education institutions use advertising to engage in public education campaigns in order to counter consumers' biases and remedy market failure.

This article proceeds as follows. Part I provides a brief history of lawyer advertising and identifies current debates about the efficacy and ethics of advertising regulation relevant to the findings of our study. Part II situates our work in the larger context of empirical work on attorney advertising. Here we also explain the research design and methodology of our study. Part III unveils our findings and uses them to critique the Court's analysis in *Bates*. Part IV offers recommendations for regulatory interventions and related efforts to enhance consumer understanding about legal services.

### **Part I: History of Lawyer Advertising and Modern Debates**

Advertising creates and influences markets.<sup>16</sup> The market for legal services, for many years, went without advertising precisely because of this influence. Regulators of the legal profession feared advertising might manipulate the public to pursue unnecessary litigation or otherwise cause harm. Part I provides a brief history of American lawyer advertising and identifies current debates about the efficacy and ethics of advertising regulation relevant to the findings of our study.

#### **A. A Brief History of Lawyer Advertising**

Lawyer advertising was not prohibited in the early years of the United States. Abraham Lincoln, for example, famously posted information about his services in Illinois newspapers during the 1830's.<sup>17</sup> When the American Bar Association adopted its Canons of Professional Responsibility in 1908, however, among the

---

<sup>16</sup> See, e.g., Richard Craswell, *Interpreting Deceptive Advertising*, 65 B.U. L. REV. 657, 662-63 (1985); Raj Sethuraman et al., *How Well Does Advertising Work? Generalizations from Meta-Analysis of Brand Advertising Elasticities*, 48 J. OF MARKETING RES. 57 (2011); Kyle Bagwell, *The Economic Analysis of Advertising*, in 3 HANDBOOK OF INDUSTRIAL ORGANIZATION 1724 (Mark Armstrong & Rob Porter, eds. 2007).

<sup>17</sup> See L. Andrews, *Birth of a Salesman: Lawyer Advertising and Solicitation* 1 (A.B.A. 1980).

restrictions was a complete bar on lawyer advertising and solicitation.<sup>18</sup> The most a lawyer could do was to communicate via family, friends, or existing clients about their services, and list a phone number in a directory. Anything more was considered unprofessional and unethical. When the ABA revised the canons and adopted the Code of Professional Responsibility in 1969, the ban was reaffirmed.

The nationwide ban endured nearly 70 years until Supreme Court struck down the State Bar of Arizona's prohibition on lawyer advertising because it violated the first amendment. Chief among the Court's justifications for doing so was a concern about "the right of the public as consumers and citizens to know about the activities of the legal profession."<sup>19</sup> The Court believed that advertising could address market inefficiencies caused by the lack of information about legal services. The particular advertisement at issue in the case is instructive.

Two newly-licensed attorneys, John Bates and Van O'Steen, established a legal aid clinic targeting what is now known as the "consumer law market,"<sup>20</sup> *i.e.* those who do not qualify for legal aid but cannot afford a lawyer at six-figures-per-hour for multiple hours. In short, they aimed to fill a justice-gap, a phenomenon that still persists today.<sup>21</sup> In an effort to reach their target market, they placed a simple newspaper advertisement listing the cost of basic legal services including uncontested divorce, adoption, personal bankruptcy, and name change.<sup>22</sup> The Arizona State Bar disciplined them, contending that all advertising compromised professionalism and might cause clients to have unjustified expectations or to sue when they otherwise would not do so, stirring up unnecessary litigation.<sup>23</sup>

The Supreme Court sided with Bates and O'Steen. The Court criticized the advertising ban as the State Bar of Arizona's "failure

---

<sup>18</sup> See generally James M. Altman, *Considering the ABA's 1908 Canons of Ethics*, J. PROF. LAWYER 235 (2008). By 1924 nearly all states had adopted the Canons of Ethics or a similar version. See *id*

<sup>19</sup> 433 U.S. 350, 358 (1977) (quoting *In re Bates*, 555 P.2d 640, 648 (Ariz. 1976) (Holohan, J., dissenting)).

<sup>20</sup> See generally Renee Newman Knake, *Legal Information, the Consumer Law Market, and the First Amendment*, 82 FORDHAM L. REV. 2843 (2014).

<sup>21</sup> *Id.*

<sup>22</sup> See Appendix for image of ad appearing in the Supreme Court opinion.

<sup>23</sup> See *Bates v. State Bar of Arizona*, 433 U.S. 350, 368, 372 (1977).



to reach out and serve the community.”<sup>24</sup> Justice Blackmun, authoring the majority, opinion wrote:

Although advertising might increase the use of the judicial machinery, we cannot accept the notion that it is always better for a person to suffer a wrong silently than to redress it by legal action. As the bar acknowledges, the middle 70% of our population is not being reached or served adequately by the legal profession. ***Among the reasons for this underutilization is fear of the cost, and an inability to locate a suitable lawyer. Advertising can help to solve this acknowledged problem: Advertising is the traditional mechanism in a free-market economy for a supplier to inform a potential purchaser of the availability and terms of exchange.*** The disciplinary rule at issue likely has served to burden access to legal services, particularly for the not-quite-poor and the unknowledgeable. A rule allowing restrained advertising would be in accord with the bar’s obligation to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.<sup>25</sup>

The Court acknowledged that “[a]dvertising does not provide a complete foundation on which to select an attorney,” but went on to observe that “it seems peculiar to deny the consumer . . . at least some of the relevant information needed to reach an informed decision.”<sup>26</sup>

In the years that followed *Bates*, the Supreme Court continued to take up a variety of cases involving questions about state regulations of lawyer advertising. The Court struck down a rule constraining the American Civil Liberties Union from in-person solicitation,<sup>27</sup> but upheld a rule banning ambulance chasers.<sup>28</sup> A categorical ban on

---

<sup>24</sup> *Id.* at 370.

<sup>25</sup> *Id.* at 376-77 (internal punctuation and citation omitted)(emphasis added).

<sup>26</sup> *Id.* at 374.

<sup>27</sup> See *In re Primus*, 436 U.S. 412 (1978) (holding that the use of a state disciplinary rule to bar the solicitation of a client by a political association attempting to effectuate political change is an unconstitutional infringement of that organization’s First and Fourteenth Amendment rights).

<sup>28</sup> See *Ohralik v. Ohio State Bar*, 436 U.S. 447 (1978) (upholding ban on in-person solicitation of personal injury victims).

direct-mailings to potential clients was struck,<sup>29</sup> but a 30-day waiting period for sending such mailings upheld.<sup>30</sup> The Court held that mandatory disclosures did not violate the first amendment,<sup>31</sup> but that some restrictions on the content of advertising might.<sup>32</sup> Lower courts and disciplinary authorities continually grapple with questions about lawyer advertising, often reaching inconsistent results.<sup>33</sup>

A state-by-state patchwork of advertising restrictions currently exists throughout the country. Although no jurisdiction bans lawyer advertising completely, many place significant restrictions on the content and the timing. At one end of the spectrum, some jurisdictions merely prohibit false or misleading advertising.<sup>34</sup> At

---

<sup>29</sup> See *Shapiro v. Ky. Bar Ass'n*, 486 U.S. 466, 472 (1988) (holding that categorical ban on direct-mail solicitation targeting potential clients with specific legal claims violates First Amendment).

<sup>30</sup> See *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 635 (1995) (holding that a thirty-day prohibition on direct mail solicitation by lawyers of personal injury or wrongful death clients withstood First Amendment scrutiny under *Central Hudson*).

<sup>31</sup> See *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 627 (1985) (holding that disciplinary rules could mandate disclosure regarding payment of costs in advertisement, but that First Amendment protected attorneys so long as the advertisement is truthful and nondeceptive); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324, 1340–41 (2010) (applying *Zauderer* to uphold mandated disclosure in advertising by lawyers for bankruptcy-related services).

<sup>32</sup> See *In re R.M.J.*, 455 U.S. 191, 203–04 (1982) (striking down Missouri restrictions on allegedly deceptive advertising terms, for example the use of the term “personal injury” instead of the authorized term “tort”); *Peel v. Attorney Registration & Disciplinary Comm’n of Ill.*, 496 U.S. 91, 100 (1990) (striking down Illinois regulation prohibiting listing as certified specialist); *Ibanez v. Florida Department of Business and Professional Regulation*, 512 U.S. 136 (1994) (striking down Florida regulation prohibiting listing of degrees on business card).

<sup>33</sup> As just one example of this divergence, compare *Connecticut Advisory Opinion 07-00188* (requiring a disclaimer with the use of “Connecticut Super Lawyer”); *Delaware Opinion 2008-2* (permitting lawyers to reference the designation as a “Super Lawyer” or “Best Lawyer” if the “lawyer states the year and particular specialty or area of practice of the designation”); *Michigan Opinion RI-341* (allowing reference to designation as a “Super Lawyer” but the lawyer cannot state he or she is the best lawyer); *North Carolina Opinion 2007-14* (permitting lawyers to state “Super Lawyer” so long as the advertisement is not misleading or deceptive and no compensation paid).

<sup>34</sup> This test is based on *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). See also *Mason v. Florida Bar*, 208 F.3d 952 (11th Cir. 2000) (holding that a lawyer’s truthful claim that he is “AV Rated, the Highest Rating in the Martindale-Hubbell National Law Directory” is not a misleading or potentially misleading statement

the other end, some jurisdictions impose heavy burdens, such as mandatory disclaimers, waiting periods, and pre-approval of advertising content by the regulatory authority.<sup>35</sup> The American Bar Association, for its part, adopted Model Rules of Professional Conduct in 1983 to govern advertising and solicitation. While the Model Rules are simply that—models—most jurisdictions are heavily influenced by them. Model Rule 7.2 expressly authorizes lawyer advertising “subject to the requirements of Rules 7.1 and 7.3 ... through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication.”<sup>36</sup> Rule 7.1 provides that “[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.”<sup>37</sup> Rule 7.3 lays out the parameters for in-person or written solicitation of prospective clients.<sup>38</sup> States subsequently adopted regulatory provisions based upon the ABA Model Rules, though they vary wildly in their specific requirements.<sup>39</sup>

Even with these burdensome restrictions, advertising plays a significant role in the legal services markets. Lawyers spend millions of dollars annually on legal advertising, close to \$800 million in 2016.<sup>40</sup> While much of this goes to television commercials, increasingly lawyers invest in Internet advertising such as individual websites, pop-up ads, and search engine optimization.<sup>41</sup> Indeed, legal terms dominate Google the keyword

---

and rejecting the Florida Bar’s argument that it had “an interest in encouraging attorney rating services to use objective criteria”).

<sup>35</sup> See, e.g., *Florida Bar v. Went-For-It*, 515 U.S. 618 (1995) (holding that a thirty-day prohibition on direct mail solicitation by lawyers of personal injury or wrongful death clients withstood First Amendment scrutiny). A number of states mandate pre-approval of advertising content, including the jurisdictions studied in this Article.

<sup>36</sup> MODEL RULES OF PROF’L CONDUCT R. 7.1, R. 7.2, and R. 7.3 (Am. Bar Ass’n 1983).

<sup>37</sup> MODEL RULES OF PROF’L CONDUCT R. 7.1 (Am. Bar Ass’n 2017).

<sup>38</sup> MODEL RULES OF PROF’L CONDUCT R. 7.3 (Am. Bar Ass’n 2017).

<sup>39</sup> See, e.g., American Bar Association Study on Differences in State Advertising and Solicitation Rules (2016),

[https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/state\\_advertising\\_and\\_solicitation\\_rules\\_differences\\_update.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/state_advertising_and_solicitation_rules_differences_update.authcheckdam.pdf) (last visited June 24, 2017).

<sup>40</sup> See Victor Li, *Ad It Up*, ABA JOURNAL (April 2017) at 36 (citing Kantar Media’s Campaign Media Analysis Group figures from October 31, 2016).

<sup>41</sup> As just one example, the national personal injury firm Sokolove Law “spends about \$30 to \$40 million per year on advertising...45 percent on TV, 45 percent

search terms purchases, with “nine out of the top 10 and 23 of the top 25” terms being legal terms in 2015.<sup>42</sup> The most expensive phrase is “San Antonio car wreck attorney,” which cost \$670.<sup>43</sup>

### **B. Modern Debates on the Efficacy and Ethics of Lawyer Advertising**

Many scholars and commentators suggest advertising restrictions (beyond a requirement that the ad be truthful and not misleading) undermine the market for legal services without any benefit to the public.<sup>44</sup> Calls for reform over the years have fallen on deaf ears, and in some instances led to more restrictive rules.

Some advocate for a return to the advertising ban. For example, not once but twice Justice O’Connor wrote in dissent to make this point. She critiqued *Bates* a decade after it was decided as “an early experiment with the doctrine of commercial speech, and it has proved to be problematic in its application.”<sup>45</sup> She would leave the States to determine whether to permit advertising and, if so, how to do so, reasoning that “it is quite clear to me that the States may ban such advertising completely.”<sup>46</sup> Several years later, she again observed that “this Court took a wrong turn with *Bates v. State Bar of Arizona* ... and [] it has compounded this error by finding increasingly unprofessional forms of attorney advertising to be protected speech.”<sup>47</sup>

The Association of Professional Responsibility Lawyers (“APRL”) spearheaded the most recent nationwide effort to revise lawyer advertising restrictions in 2015. APRL contends that “rules of professional conduct governing lawyer advertising ... are outdated and unworkable in the current legal environment and fail to achieve

---

on Internet, and 10 percent on other outlets such as social media or print.” *Id.* at 38.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See Renee Knake, *Legal Information, the Consumer Law Market, and the First Amendment*, 82 *FORDHAM L. REV.* 2843 (2014); Gillian Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 *MICH. L. REV.* 953, 964 (2000).

<sup>45</sup> *Shapiro v. Ky. Bar Ass’n*, 486 U.S. 466, 485, 487 (1988) (O’Connor, J., dissenting).

<sup>46</sup> *Id.*

<sup>47</sup> *Edenfeld v. Fane*, 507 U.S. 761, 778 (1993) (O’Connor, J., dissenting).

their stated objectives.”<sup>48</sup> Their report observes that “[t]he trend toward greater regulation in response to diverse forms of electronic media advertising too often results in overly restrictive and inconsistent rules that are under-enforced and, in some cases, are constitutionally unsustainable.”<sup>49</sup>

It is notable that lawyer advertising restrictions—typically justified as protecting potential clients as well as the reputation of the legal profession—rarely (if ever) are the subject of bar discipline complaints from clients or the public.<sup>50</sup> Rather, lawyers complain about the advertising engaged in by other lawyers,<sup>51</sup> or lawyers challenge the impact of the restrictions on their own ability to communicate about their services.<sup>52</sup>

It is equally notable that lawyer advertising restrictions are adopted with minimal or no serious empirical study about the actual impact on the market for legal services. For example, in one rare instance of reliance upon a study, the Supreme Court upheld a waiting period for attorney mailings based upon a purported “empirical study” surveying Florida residents by telephone that subsequently was critiqued as invalid and misinterpreted.<sup>53</sup> Even the most recent calls for reform are not grounded in studies of the impact advertising has on the legal services market.

Our empirical work here aims to fill this void.

---

<sup>48</sup> See ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS, LAWYER ADVERTISING REPORT (2015), [https://www.aprl.net/publications/downloads/APRL\\_2015\\_Lawyer-Advertising-Report\\_06-22-15.pdf](https://www.aprl.net/publications/downloads/APRL_2015_Lawyer-Advertising-Report_06-22-15.pdf) (last visited June 18, 2017) [hereafter APRL ADVERTISING REPORT].

<sup>49</sup> *Id.*

<sup>50</sup> See APRL ADVERTISING REPORT, *supra* n.47 at 27 (2015) (noting “a general lack of consumer complaints and virtually no empirical data demonstrating actual consumer harm caused by lawyer advertising”). The lack of consumer complaint could, however, not be due to lack of harm but lack of sufficient information to assess harm, as discussed more fully below in Part IV. Recommendations.

<sup>51</sup> See APRL ADVERTISING REPORT, *supra* n. 47 at 28 (finding in a 2014 study of thirty-six lawyer regulation offices in the United States that “complaints about lawyer advertising are rare” and “people who complain about lawyer advertising are predominantly other lawyers and not consumers”).

<sup>52</sup> See, e.g., *Alexander v. Cahill*, 589 F.3d 70 (2nd Cir. 2010).

<sup>53</sup> *Florida Bar v. Went-For-It*, 515 U.S. 618 (1995).

## Part II: Literature Review and Study Methodology

### A. Literature Review

We are the first, to our knowledge, to attempt a study of this breadth and depth regarding lawyer advertising via the Internet.<sup>54</sup> Some scholars have examined the impact of advertising generally on the market for legal services. For example, studies have documented “that advertising increases competition among sellers in a market” to the benefit of consumers through lower prices<sup>55</sup> and that the audience of “clients most likely to be attracted [by advertising] are relatively poor and uneducated.”<sup>56</sup> Other studies primarily focus on the image of lawyers and the legal profession. Many of these were conducted, not surprisingly, in twenty years following the Supreme Court’s decision in *Bates*.<sup>57</sup> More recently, a longitudinal study found that public perception of lawyer advertising has deteriorated significantly.<sup>58</sup> For example, respondents in 2003 believed

---

<sup>54</sup> To the extent studies have been conducted about electronic or online lawyer marketing, the focus is on whether the marketing activities violate professional conduct rules. *See, e.g.*, Eric Goldman and Angel Reyes III, *Regulation of Lawyers’ Use of Competitive Keyword Advertising*, 2016 U. ILL. L. REV. 103; Tanya M. Marcum and Elizabeth A. Campbell, *Legal Marketing Through the Decades: Pitfalls of Current Marketing Trends*, 6 ST. MARY J. ON LEGAL MALPRACTICE 244 (2016).

<sup>55</sup> John R. Schroeter, Scott L. Smith and Steven R. Cox, *Advertising and Competition in Routine Legal Service Markets: An Empirical Investigation*, JOURNAL OF INDUSTRIAL ECONOMICS 49 (September 1987) (conducting study of lawyers advertising in Yellow Pages, newspaper, TV or radio for routine legal services such as wills, uncontested divorce, and uncontested bankruptcy).

<sup>56</sup> Michael G. Parkinson & Sabrina Neeley, *Attorney Advertising: Does It Meet Its Objective?* 26 SERVS. MARKETING Q. (2003).

<sup>57</sup> *See, e.g.*, ABA Commission on Advertising, *The Impact of Advertising on the Image of Lawyers: A Mall Intercept Study* i (1995); Frank N. Magid Associates, *Attitudes & Opinions of Florida Adults Toward Direct Mail Advertising by Attorneys* (Dec. 1987) (prepared for the Florida Bar); 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); Roy M. Sobelson, *The Ethics of Advertising by Georgia Lawyers: Survey and Analysis*, 6 GA. ST. U. L. REV. 23 (1989); Richard J. Cebula, *Does Lawyer Advertising Adversely Influence the Image of Lawyers in the US? An Alternative Perspective and New Empirical Evidence*, 27 J. LEGAL STUD. 503 (1998); Richard J. Cebula, *Historical and Economic Perspectives on Lawyer Advertising and Lawyer Image*, 15 GA. ST. U. L. REV. 315 (1998).

<sup>58</sup> H. Ronald Moser, *An Empirical Analysis of Consumers’ Attitudes Toward Legal Services Advertising: A Longitudinal View*, SERVS. MARKETING Q. 40 (2005). *See also* Robert E. Hite and Edward Kiser, *Consumer’s Attitudes Toward Lawyers with Regard to Advertising Professional Services*, J. ACADEMY MARKETING SCI. (1985).

advertising costs were passed onto clients (where the 1988 respondents did not) and they did not believe “that advertising helps consumers make more intelligent choices between lawyers” whereas the earlier study indicated greater optimism for the usefulness of lawyer advertising.<sup>59</sup> The same researchers revisited their conclusions in a 2014 study finding that while “the present image of lawyers is not positive, most respondents agreed it is proper for lawyers to advertise” and that “the quality of service and reputation of lawyers were more important to the consumer than price.”<sup>60</sup>

Another significant study published in the STANFORD LAW REVIEW relies upon behavioral economics in connection with an analysis of lawyer advertising, though our use here is different. That piece uses behavioral economics and cognitive psychology to help explain why personal injury advertisements do not drive down contingency fees<sup>61</sup> That study explained a known market failure through behavioral economics; by contrast, we endeavor to uncover previously undetected market failures.

Our study makes an important contribution to the empirical literature on lawyer advertising for three reasons. First, while limited empirical work on lawyer advertising exists, most of it focuses on print ads such as Yellow Pages directories and newspapers or media such as television and radio.<sup>62</sup> We offer new insights by performing a comprehensive content analysis of lawyer advertising on websites.

Second, our study is exceptional in the use of behavioral economics to diagnose market failures in legal services markets. Behavioral economics challenges the traditional, rational-choice economic model that assumes people act rationally to maximize their utility when making decisions. It argues that people deviate from the rational actor model of human decision-making in systematic and

---

<sup>59</sup> *Id.*

<sup>60</sup> H. Ronald Moser et al., *An Empirical Analysis of the Public's Attitude Toward Legal Services Advertising*, *SERVS. MARKETING Q.* 121 (2014).

<sup>61</sup> Nora Freeman Engstrom, *Attorney Advertising and the Contingency Fee Cost Paradox*, 65 *STAN. L. REV.* 633, 686 (2013).

<sup>62</sup> Notable examples include Elizabeth Tippet, *Medical Advice from Lawyers: A Content Analysis of Advertising for Drug Injury Lawsuits*, 41 *AM. J.L. & MED.* 7 (2015); Fred C. Zacharias, *What Lawyers Do When Nobody's Watching: Legal Advertising as a Case Study of the Impact of Underenforced Professional Rules*, 87 *IOWA L. REV.* 971 (2002).

predictable ways.<sup>63</sup> As just one example, people are predictably over-confident. When asked to rate themselves relative to other drivers, 93% of people consider themselves above average drivers.<sup>64</sup> When people make bad decisions because sellers of products and services are exploiting buyers' cognitive limitations, economists conclude that the market is experiencing behavioral market failure.<sup>65</sup>

Third, we are the first to examine and explain why the prediction of the *Bates* Court has not yet borne out. Our study aims to detect market failure by analyzing the content of lawyer advertising. The content of advertising, we argue, provides evidence of how efficiently a market is functioning.<sup>66</sup> Advertisements show what companies think is motivating consumers' purchasing decisions.<sup>67</sup> In general, advertisers are excellent at assessing what attributes of a transaction potential buyers value, and they actively work to exploit poor decision-making if buyers are susceptible to it.<sup>68</sup> If advertising presents information that a rational buyer would value, then the advertising offers evidence that the market is operating as traditional economic principles suggest it should.<sup>69</sup> But, if the advertising only exploits the poor decision-making that behavioral economics

---

<sup>63</sup> E.g., DANIEL KAHNEMAN, THINKING: FAST AND SLOW (2011); RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2008).

<sup>64</sup> Ola Svenson, *Are We All Less Risky and More Skillful Than Our Fellow Drivers?*, 47 ACTA PSYCHOLOGICA 143, 146 (1981).

<sup>65</sup> OREN BAR-GILL, SEDUCTION BY CONTRACT: LAW, ECONOMICS, AND PSYCHOLOGY IN CONSUMER MARKETS 2 (2012); Ron Harris & Einat Albin, *Bankruptcy Policy in Light of Manipulation in Credit Advertising*, 7 THEORETICAL INQUIRIES L. 431, 442 (2006); Xavier Gabaix & David Laibson, *Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets*, 121 Q.J. ECON. 505, 505 (2006); Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 N.Y.U. L. REV. 630, 635-37 (1999).

<sup>66</sup> See generally Jim Hawkins, *Exploiting Advertising*, 80 LAW & CONTEMPORARY PROBLEMS 43 (2017) (proposing and arguing for this approach and applying it to reverse mortgage advertising).

<sup>67</sup> *Id.* at 45.

<sup>68</sup> See Sarah C. Haan, *The "Persuasion Route" of the Law: Advertising and Legal Persuasion*, 100 COLUM. L. REV. 1281, 1282 (2000) ("[A]dvertising researchers study human decision-making shortcuts . . . to create advertisements that steer consumers down particular routes to persuasion. By investing millions of dollars in follow-up quantitative research—consumer surveys, focus groups, and retail sales information, much of which is never published—advertisers hone their appeals.").

<sup>69</sup> Hawkins, *supra* note 66, at 45.



identifies, then the advertising suggests the market is failing to operate efficiently.<sup>70</sup>

## **B. Study Methodology**

We studied website advertising by lawyers who defend people charged with the crime of driving while intoxicated (DWI) and lawyers who sue defendants for causing injuries in car accidents. We included attorneys in Austin, Texas, Buffalo, New York, and Jacksonville, Florida. Our study coded 60 variables for 1,064 websites about 532 attorneys.

To obtain as complete of a picture as possible of the market for DWI and personal injury lawyers in specific cities, we tried to locate every lawyer in each city that did that type of work. We obtained our list of attorneys in these cities from Avvo's public website.<sup>71</sup> Avvo is a company that provides a website with general legal information and detailed information about lawyers, such as biographical information, client reviews, and disciplinary actions.<sup>72</sup> We selected Avvo's listing of lawyers in each city because "Avvo uses publicly-available data to populate the basic information we have for 97% of attorneys in the US."<sup>73</sup> Avvo obtains its data from state lawyer licensing authorities.<sup>74</sup> All lawyers have a basic profile on the Avvo website, which they may claim by registering and editing information.<sup>75</sup> Avvo does not charge the lawyer for the basic profile, but the lawyer may purchase advertising.<sup>76</sup>

To obtain our sample, we searched the "DUI and DWI" and "Car accident" categories on Avvo<sup>77</sup> and manually entered every

---

<sup>70</sup> *Id.*

<sup>71</sup> In future work, we plan to explore the differences between lawyer webpages and their Avvo profiles.

<sup>72</sup> Avvo, *About Us*, at [https://www.avvo.com/about\\_avvo](https://www.avvo.com/about_avvo) (last visited June 12, 2017). Avvo was founded in 2006 by Mark Britton, previously legal counsel to Expedia, Inc. See <https://en.wikipedia.org/wiki/Avvo>.

<sup>73</sup> Avvo, *How does Avvo get information about lawyers?*, at <https://support.avvo.com/hc/en-us/articles/208463046-How-does-Avvo-get-information-about-lawyers-> (last visited June 8, 2017).

<sup>74</sup> See *About Us*, AVVO, [http://www.avvo.com/about\\_avvo](http://www.avvo.com/about_avvo) (last visited June 24, 2017).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Our list was generated on February 8, 2017 for Austin, Texas DWI attorneys and May 18, 2017 for car accident attorneys, and on February 21, 2017 for Buffalo, New York for both DWI and car accident attorneys.

attorney's name and the website for that attorney's Avvo profile. We also entered the attorney's firm's website address if the Avvo profile had the address, or we searched for the firm's website using standard search engines. We decided to study both Avvo profiles and firm websites because they represent different ways attorneys market themselves online. In future work, we plan on exploring the effect that the marketing platform has on the content of attorney advertising.

Table 1 shows the number of each type of attorney in the cities we studied as well as the population of those cities.

*Table 1: Number of Lawyers and Population of Study Cities*

City	Population	DWI Attorneys	Car Accident Attorneys
Austin	949,587 <sup>78</sup>	97	106
Buffalo	292,648 <sup>79</sup>	52	101
Jacksonville	913,010 <sup>80</sup>	76	100

After locating the attorneys and their websites, a team of seven research assistants coded 60 pieces of information from each website from February 2017 to September 2017. To establish the coding categories, we reviewed numerous websites for DWI and personal injury lawyers, and we surveyed the existing literature on attorney advertising. We trained the research assistants how to code information from the websites, and they inputted the coded information into an Excel spreadsheet. In general, for websites, we only included information from the firm's homepage, the "About" page, and any page named something like "why pick us." We reviewed the data they inputted to evaluate their coding decisions and to minimize concerns related to interrater reliability. Finally, we used Stata to analyze the results.

We choose to study attorney advertising on the Internet because is an important source of information for people seeking an attorney.

<sup>78</sup> City of Austin, Demographics, at <http://www.austintexas.gov/demographics> (last visited June 12, 2017).

<sup>79</sup> City of Buffalo, Population, at [https://www.ci.buffalo.ny.us/files/1\\_2\\_1/mayor/cob\\_comprehensive\\_plan/section\\_2459139390.html](https://www.ci.buffalo.ny.us/files/1_2_1/mayor/cob_comprehensive_plan/section_2459139390.html) (last visited June 12, 2017).

<sup>80</sup> City of Jacksonville, Demographics, at <http://www.coj.net/departments/office-of-economic-development/about-jacksonville/demographics> (last visited June 12, 2017).

According to a Pew Charitable Trust report, 88% of American adults use the Internet.<sup>81</sup> Even among adult making less than \$30,000 a year, 79% use the Internet.<sup>82</sup> According to Google, 1.5 million legal-related queries occur each month.<sup>83</sup> As far back as 1996, the topic “internet marketing” occupied an entire book for lawyers, and now, the Internet’s importance for legal advertising has “mushroomed.”<sup>84</sup>

We selected to study DWI and car accident attorneys because people seeking both types of representation are unlikely to be repeat players who already have established relationships with attorneys, so they likely need advertising to direct them to suitable lawyers.<sup>85</sup> Also, both types of clients include groups that are unlikely to have access to lawyers through existing professional relationships and that have lower incomes. Finally, many people use Avvo and the Internet to search for these types of lawyers. More than 70,000 searches a month on Google are for criminal law alone.<sup>86</sup> ‘DUI’ is one of the top five most expensive key words on Bing.<sup>87</sup> The top area of client contacts for Avvo is criminal defense—15 percent—with DUI/DWI ranking on its own as number four at 9 percent.<sup>88</sup> Personal injury lawyers are especially important because they are “the biggest attorney advertisers.”<sup>89</sup>

Finally, we chose Austin, Buffalo, and Jacksonville because these cities had a similar number of each type of attorney, had similar populations,<sup>90</sup> and were in states with distinct lawyer advertising rules.<sup>91</sup>

---

<sup>81</sup> PEW INTERNET & AMERICAN LIFE PROJECT, WHO’S ONLINE: INTERNET USER DEMOGRAPHICS, <http://www.pewinternet.org/data-trend/internet-use/latest-stats/> (last visited June 13, 2017).

<sup>82</sup> *Id.*

<sup>83</sup> Avvo Study 2016, on file with authors.

<sup>84</sup> Deborah McMurray, *Introduction to this Fourth Edition*, in THE LAWYER’S GUIDE TO MARKETING ON THE INTERNET (2017).

<sup>85</sup> Parkinson & Neeley, *supra* note 56, at 23 (“Advertising is most important for “one-shotters” or people who do not regularly use the services of an attorney.”).

<sup>86</sup> Avvo Study 2016, on file with authors.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Engstrom, *supra* note 61, at 667.

<sup>90</sup> Buffalo is obviously substantially smaller than Austin and Jacksonville, but we selected it because it is the largest city in New York after New York City, which would have dwarfed Austin and Jacksonville. Also, despite its smaller size, Buffalo has a similar number of car accident attorneys as the other cities.

<sup>91</sup> The similarities and differences among lawyer advertising rules in New York and Texas reflect the complicated array of rules across the country. In a

Our study has several limitations. First, we only examined lawyers in specific cities, so we cannot claim that these cities are representative of lawyers nationally or even in the states in which the cities are located. Second, we examined only two practice areas—DWI and car accidents—so we cannot claim that these areas are representative of all specializations. Third, we limited our review of websites to only the first page, with the exception of searching the entire website for cost. Thus, some attributes may be advertised but not counted here if a user is required to click through two or more pages to locate the information. Last, we did not measure interrater reliability, so it is possible that having multiple people coding could introduce errors. However, we did not consider interrater reliability to be a major concern because the assistants were all trained exactly the same and because the coding criteria were relatively objective.<sup>92</sup>

### **Part III: Study Findings**

This Part discusses the major findings of this study. First, we offer a descriptive account of what attributes lawyers highlight on their Avvo profiles and individual websites. Second, we focus on several specific attributes that lawyers advertise to assess whether a rational consumer would value the information attorneys present. While some things attorneys advertise certainly appeal to rational consumers, we conclude that there is evidence of behavioral market failure. Third, we evaluate whether attorney advertising is increasing access to justice for groups currently underutilizing legal services.

#### **A. What do lawyers advertise?**

We counted the number of Avvo profiles or websites that advertised different attributes of the firm or lawyer. Table 2 describes our findings. We excluded Avvo profiles that were unclaimed by attorneys (n=75) because these profiles only reflect the information Avvo gathered from public sources and not attorneys' advertising

---

subsequent paper, we take up the impact these differences have on the market for legal services and explore how we find these differences impacting the results of our empirical study.

<sup>92</sup> See, e.g., Jack Y.J. Huang et al., *Quality of Fertility Clinics Websites*, 83 *Fertility & Sterility* 538, 543 (2005) (“[T]he interrater reliability was not assessed. Nevertheless, because the websites were evaluated according to a set of objective criteria, we believe that interrater reliability should not have been a significant factor in this study.”).

choices. Also, we excluded all entries for websites where the attorney did not have a website at all (n=74). Finally, we excluded websites and Avvo profiles for attorneys who were not in private practice but were in house counsel or were employees at a nonprofit organization (n=6). After we excluded both, we had 909 observations remaining.

The number of each type of advertising appears low in some cases. Several factors cause these low incidences of advertising. First, some profiles and websites are extremely sparse. Even if attorneys have claimed their Avvo profile, they may not have put any additional details beyond those Avvo generated. Also, because we only looked at a limited number of pages on each website, the websites might advertise other attributes that we miss because of the limits on our study. Because of the lower number of each type of advertising, we suggest that the best way to view the frequency of each type of advertising is in relation to other attributes advertised.

*Table 2 Attributes Advertised (n=909)*

<b>Attribute</b>	<b>Percentage</b>	<b>Number</b>
Years of Experience	66.78	607
Website has Relevant Legal Information for Free	64.76	294 <sup>93</sup>
Free Consultations	55.67	506
Endorsements from Professional Associations	48.18	438
Good Reputation	44.22	402
Client Reviews/Testimonials	43.83	199 <sup>94</sup>
Past Victories	39.16	356
Provides Personalized Service	24.31	221
Avvo Ranking Presented on Website	21.81	99 <sup>95</sup>
States Actual Cost of Legal Services	18.59	169
Board Certified	13.75	125
Attorney Involved in Pro Bono/Community	13.75	125
Honesty	5.72	52
Attorney Offers Payment Plan	4.29	39
Attorney is Religious	3.85	35
Attorney Offers Loans to Clients	0.55	5

Professionalism clearly dominated lawyers' overall advertising themes. The general theme for the vast majority of the websites 70.04% (n=318) was a professional theme. When attorneys and/or clients were pictured on the websites or Avvo profiles, 93.38% (n=678) of them were dressed in professional attire as opposed to casual attire.

In addition to coding what information websites presented, we also evaluated some of the ways websites presented information to visitors. We disregarded Avvo profiles<sup>96</sup> and observed 454 websites

---

<sup>93</sup> We only counted websites for this variable because Avvo does not provide a place on its profile page for legal advice.

<sup>94</sup> Because Avvo allows consumers to post reviews without attorney consent, we did not count Avvo reviews.

<sup>95</sup> We only counted websites because Avvo profiles automatically contain the Avvo ranking on them.

<sup>96</sup> Some Avvo profiles have these vehicles as well. For instance, 19.34% (n=88) had videos.

for the vehicles through which they provided information beyond the actual webpage. Table 3 summarizes these findings.

*Table 3 Special Vehicles of Advertising on Websites (n=454)*

<b>Vehicles of Advertising</b>	<b>Percentage</b>	<b>Number</b>
Blog	48.24	219
Videos	26.21	119
Live online chat	15.42	70

The number of websites with blogs is remarkable, given the fact that twelve years ago bar journal articles were suggesting that most lawyers would “be hard pressed to define the word”<sup>97</sup> and law review articles were arguing that blogs would have little effect on the practice of law.<sup>98</sup>

In addition to blogs, we discovered that many websites had icons or pop-up screens that offered live online chat capabilities. Despite the prevalence of this method of advertising, it is rarely mentioned in academic legal literature. Only one article we could locate mentions live chats by non-attorneys on lawyer websites,<sup>99</sup> and one CLE program included a description of an ethics opinion on the topic.<sup>100</sup>

<sup>97</sup> Sarah Kellogg, *Do You Blog?*, S.C. LAW., July 2005, at 30, 30. Other bar journal articles from that year define the term for readers. Toby Brown, *Tune in and Blog on: New Marketing Technology for Lawyers*, R.I.B.J., May/June 2005, at 19 (“The term blog comes from the fusion of the terms web and log. Blogs are a type of web site that . . .”). Even years later, law review articles continued to feel the need to explain blogs to readers. See Judy M. Cornett, *The Ethics of Blawging: A Genre Analysis*, 41 LOY. U. CHI. L.J. 221, 223 n.10 (2009) (defining blog).

<sup>98</sup> Tom W. Bell, *The Impact of Blogging on the Practice of Law: Hit the Snooze Button*, NEXUS, 2006, at 75.

<sup>99</sup> On June 22, 2017, we searched Westlaw’s JLR database of law reviews and journals using this search: (attorney or lawyer) /20 live /3 (consultation or chat). The only law review mentioning this topic was Daniel M. Schaffzin, *Warning: Lawyer Advertising May Be Hazardous to Your Health! A Call to Fairly Balance Solicitation of Clients in Pharmaceutical Litigation*, 8 Charleston L. Rev. 319, 338 (2014).

<sup>100</sup> ETHICAL ISSUES IN EMPLOYMENT LITIGATION, SY002 ALI-CLE 1751 (N.C. 2011 Formal Ethics Op. No. 8 (July 15, 2011) (Use of live chat support services on a law firm’s website is permitted under the Rules of Professional conduct, but the practice is not without its risks, and a law firm utilizing this service must exercise certain precautions.

The law firm must ensure that visitors who elect to participate in a live chat session are not misled to believe that they are conversing with a lawyer if such is not the case. While the use of the term “operator” seems appropriate for a nonlawyer, a designation such as “staff member,” or something similar, would

Given the number of websites that have this feature, however, more critical attention is needed.<sup>101</sup>

We found different websites used the live-chat feature in different ways. Some websites have icons located on the page that use language such as “live chat,” “need help?,” or “have questions?” Other websites have a screen that pops up with a picture of the attorney on the website and a statement: “Hi, you may just be browsing, but we are available to answer your questions . . . Can we help you?”<sup>102</sup>

For both types of live chat, it appears that non-lawyers respond to consumers that initiate these chat requests because in some cases the chat representative is called an operator.<sup>103</sup> However, as demonstrated by the pop-up screen discussed above and by some of the online chat icons, consumers may be confused about whether they are communicating with an attorney.<sup>104</sup> Thus, the live online chat features differ from medical or legal services offering a similarly named product. For example, in the case of medical providers, live online consultations often involve an actual doctor consult with patients over the Internet.<sup>105</sup> Some legal websites have

---

require an affirmative disclaimer that a nonlawyer staff member is not an attorney. The law firm must ensure that the nonlawyer agent does not give any legal advice. The firm should also be wary of creating an “inadvertent” lawyer-client relationship and should be mindful of its duties to prospective clients under Rule 1.18(c)).

<sup>101</sup> See generally Paige A. Thomas, *Online Legal Advice: Ethics in the Digital Age*, 4 ST. MARY’S J. LEGAL MAL. & ETHICS 440, 474 (2014) (discussing ethical issues faced by legal consultation online).

<sup>102</sup> Observation 146.

<sup>103</sup> E.g., Observation 334.

<sup>104</sup> E.g., Observation 238 (“Leon: Hi, welcome to the [Observation 238] Attorneys at Law website. How can we assist you today?”).

<sup>105</sup> See Brian Monnich, *Bringing Order to Cybermedicine: Applying the Corporate Practice of Medicine Doctrine to Tame the Wild Wild Web*, 42 B.C. L. REV. 455, 458–59 (2001) (“CyberDocs is representative of websites that offer consumer-patients the opportunity to initiate “live” consultations with physicians on the Internet. The two co-founders of the website, Dr. Steven Kohler and Dr. Kerry Archer, advertise the service as a “virtual house call.” Upon connecting to CyberDocs, patients input their medical history, reason for consulting the doctor and credit card number. After the patient completes these preliminary matters, the “cyberdoctor” logs on and the physician and patient can engage in real-time communication over the Internet.”); Courtney Kahle, *Scope of Practice Constraints on Nurse Practitioners Working in Rural Areas*, 23 ANNALS HEALTH L. ADVANCE DIRECTIVE 90, 99–100 (2013) (“[T]he state permits [nurses] to use telemedicine techniques. These techniques include remote monitoring systems for patient data through the internet, call centers staffed by nurses, live video consultations, and interactive videos. Telemedicine



that goal.<sup>106</sup> Our observations, however, reveal that lawyers often use online chats as business generators rather than for actual consultations, further underscoring the need to study this phenomenon.

### **B. Do lawyers' advertisements appeal to rational consumers of legal services?**

Sub-part A offered a descriptive account of how lawyers advertise. This sub-part now turns to assessing whether legal markets are functioning efficiently by considering some of the ways lawyers advertise. As discussed above, we exploit the advertising on attorney websites and Avvo profiles to better understand the dynamics of these legal markets. If attributes that are commonly advertised would not appeal to rational actors, we try to discern an explanation from behavioral economics for the existence of these types of advertisements. If behavioral economics offers a superior explanation for the existence of these types of advertising, we conclude that the market is experiencing market failure.

Evaluating whether lawyer advertising is aimed at rational consumers is important in assessing the validity of the pivotal *Bates* decision and in unlocking the explanation for why *Bates* has failed to increase access to legal services. In *Bates*, Justice Blackmun and his majority accept a view of advertising that assumes people act rationally.<sup>107</sup> Traditional economic theory argues that advertising

---

techniques allow NPs to interact remotely with patients to conduct medical evaluations, patient education, and provide follow up care.”).

<sup>106</sup> Leigh Jones, *Lights, Camera, Lawyer: Meeting Potential Clients Through the Internet*, NAT'L L.J. (Aug. 20, 2012); Darren Franklin, *Hanging A Shingle on the Information Superhighway Legal Advice on the Internet and the Problems of Prohibited Client Solicitation and Unintended Attorney-Client Relationships*, 2001 STAN. TECH. L. REV. 2, 4 (2001); Dave Pantzer, Bonnie Sullivan, *Technology Expands Pro Bono Service Opportunities*, MD. B.J., July/August 2014, at 34, 37; Lawrence M. Friedman, *Handheld Marketing*, CBA REC., October 2005, at 60; Michael W. Loudenslager, *E-Lawyering, the ABA's Current Choice of Ethics Law Rule & the Dormant Commerce Clause: Why the Dormant Commerce Clause Invalidates Model Rule 8.5(b)(2) When Applied to Attorney Internet Representations of Clients*, 15 WM. & MARY BILL RTS. J. 587, 652 (2006).

<sup>107</sup> For a discussion of the rational-choice theory of advertising, see JERRY KIRKPATRICK, IN DEFENSE OF ADVERTISING: ETHICAL EGOTISM, AND THE LAISSEZ-FAIRE CAPITALISM 22 (2007).

lowers search costs for people seeking goods and services.<sup>108</sup> Blackmun endorses this approach whole-heartedly: “Advertising is the traditional mechanism in a free-market economy for a supplier to inform a potential purchaser of the availability and terms of exchange.”<sup>109</sup> Subsequent opinions on advertising repeat this rational-choice rationale.<sup>110</sup> If it turns out, however, that advertising does not act to inform rational choices, our findings have the potential to undermine *Bates*’ reasoning and explain why advertising has failed to increase access to lawyers as contemplated by the Court.

Some types of advertisements that we found have obvious rational-choice explanations. For example, a rational consumer would care if an attorney is board certified in an area of law because a third party performs this certification and the certification evidences that the attorney has the requisite knowledge base to perform legal work in that area.

We focus here on relatively common types of advertising that do not have obvious explanations under traditional economic theory but have compelling explanations using behavioral economics principles. These types of advertising, we argue, suggest that the legal market for DWI and car accident attorneys in these markets is experiencing behavioral market failure.

### **1. Advertising About Past Victories**

Lawyers frequently mention past victories. 39.16 % (n=356) of profiles and websites highlighted the past victories that lawyers or firms had achieved. For instance, one website heralded a DWI victory:

---

<sup>108</sup> Lillian R. BeVier, *Competitor Suits for False Advertising under Section 43(a) of the Lanham Act: A Puzzle in the Law of Deception*, 78 VA. L. REV. 1, 8 (1992).

<sup>109</sup> *Bates v. State Bar of Arizona*, 433 U.S. 350, 376 (1977).

<sup>110</sup> *See Shapero v. Kentucky Bar Ass’n*, 486 U.S. 466 (1988) (O’Connor, J., dissenting) (“Even if I agreed that this Court should take upon itself the task of deciding what forms of attorney advertising are in the public interest, I would not agree with what it has done. The best arguments in favor of rules permitting attorneys to advertise are founded in elementary economic principles.”); *Sullo & Bobbitt, PLLC v. Abbott*, No. 3:11-CV-1926-D, 2012 WL 2796794, at \*8 (N.D. Tex. July 10, 2012), *aff’d in part sub nom. Sullo & Bobbitt P.L.L.C. v. Abbott*, 536 F. App’x 473 (5th Cir. 2013) (quoting *Bates*’s reasoning).

Head-on Collision with .20 blood test—NOT GUILTY. After causing a serious, head-on, collision and failing field sobriety tests, APD's DWI Enforcement Team procured a search warrant to draw our client's blood. His blood alcohol came back at over .20. We took this case to jury trial and our client was found NOT GUILTY.<sup>111</sup>

Personal injury attorneys similarly pointed to past victories as evidence they could obtain positive outcomes for potential patients. One website noted, "With more than 20 multi-million-dollar net-to-client verdicts and settlements, [our firm] has the expertise required to get the maximum value for your case."<sup>112</sup>

Despite mentioning victories frequently, websites with advertising about victories often did not have the mandatory disclaimers required in some jurisdictions (including those studied here) regarding prior successes.<sup>113</sup> Some websites did post disclaimers, such as "All cases are unique and there are no express or implied guarantees as to the results or outcome of any future cases."<sup>114</sup> Yet, websites with disclaimers were rare. Of the 356 websites that discussed past successes, only 19.94% (n=71) had any disclaimers about the meaning of information about past successes. And, even on some of these websites with a disclaimer, other language undermined the disclaimer's effectiveness. One website said:

Although past results do not predict future outcomes they do reflect the experience the firm has had handling significant cases. A law firm's record of results should be seriously considered when you are researching a personal injury law firm. The experienced attorneys at [this firm] have proven themselves, time and again.<sup>115</sup>

---

<sup>111</sup> Observation 134.

<sup>112</sup> Observation 654.

<sup>113</sup> See New York Rule of Professional Conduct 7.1(e) (2017) (when referencing past success or results obtained requiring the disclaimer "Prior results do not guarantee a similar outcome."). Texas Rule of Professional Conduct 7.02(a) (2017) does not mandate specific language but does require that the lawyer or firm have primary responsibility for the result, that any amount stated was received by the client, and that fees or expenses withheld be stated. Florida requires that such references be "objectively verifiable. See Florida Rule of Professional Conduct 4-7.13(b)(2) (2017).

<sup>114</sup> Observation 36.

<sup>115</sup> Observation 390.

While this website formally has a disclaimer, the disclaimer's significance is downplayed.

It is hard to articulate a rational-choice explanation for why websites and Avvo profiles would mention prior successes without explaining the limitations of the information. Would a rational consumer want to know about individual specific instances where the firm had succeeded in the past?

A large literature addresses the practice of companies advertising atypical results, or as Ahmed Taha aptly puts it, "selling the outlier."<sup>116</sup> Past results in a small sample of cases that the seller selects do not indicate the likelihood of success in a new client's case.<sup>117</sup> Every lawyer knows that the likelihood of success in each case depends on the facts of the case, the judge and jury, the law, and numerous other factors. Indeed, the Rules of Professional Responsibility codify this common understanding: "Prior results do not guarantee a similar outcome."<sup>118</sup>

Taha offers the example of a weight loss product that advertises past results to demonstrate that rational actors could not value this information:

For example, a weight-loss product advertisement that features a testimonial from someone who lost 30 pounds using the product logically implies only that there exists at least one person in the world who lost 30 pounds using the product. This fact would be virtually irrelevant to a reasonable consumer. The advertisement would be effective only if consumers infer that users experience significant weight loss far more often than that.<sup>119</sup>

The same might be said about legal services. The fact that one person avoided a DWI conviction does not provide any evidence that a potential client will have a similar result, so a rational actor would not value this information.

---

<sup>116</sup> Ahmed E. Taha, *Selling the Outlier*, 41 J. CORP. L. 459 (2015).

<sup>117</sup> *Id.* at 461–62.

<sup>118</sup> New York Rule of Professional Conduct 7.1(e) (2017).

<sup>119</sup> Taha, *supra* note 116, at 468.

While traditional economic theory cannot explain why lawyers would include this type of advertising, behavioral economics offer compelling explanations—the optimism bias and the availability heuristic. First, study upon study has documented that people are overly optimistic when making decisions about products with uncertain outcomes in a variety of contexts.<sup>120</sup> In one of the first papers on the optimism bias, a professor asked students if they were more or less likely to experience negative events in their lives than their classmates, such as cancer or divorce. Time after time, students said they were less likely to experience negative events and more likely to experience positive events than their classmates.<sup>121</sup> Research has demonstrated that people are too optimistic about a wide variety of things, ranging from their use of credit cards<sup>122</sup> to their food-safety skills<sup>123</sup> to their marriages.<sup>124</sup>

---

<sup>120</sup> Ulrike Malmendier & Geoffrey Tate, *Who Makes Acquisitions? CEO Overconfidence and the Market's Reaction*, 89 J. FIN. ECON. 20, 21-22 (2008) (mergers and acquisitions); Ola Svenson, *Are We All Less Risky and More Skillful Than Our Fellow Drivers?*, 47 ACTA PSYCHOLOGICA 143, 146 (1981) (driving); Kathryn Fritzdixon et. al., *Dude, Where's My Car Title?: The Law, Behavior, and Economics of Title Lending Markets*, 2014 U. ILL. L. REV. 1013, 1042 (2014) (auto title lending); Ron Harris & Einat Albin, *Bankruptcy Policy in Light of Manipulation in Credit Advertising*, 7 THEORETICAL INQ. L. 431, 434 (2006) (student loans); Lynn A. Baker & Robert E. Emery, *When Every Relationship Is Above Average: Perceptions and Expectations of Divorce at the Time of Marriage*, 17 LAW & HUM. BEHAV. 439, 443 (1993) (marriage).

<sup>121</sup> Neil D. Weinstein, *Unrealistic Optimism About Future Life Events*, 39 J. PERSONALITY & SOC. PSYCHOL. 806 (1980).

<sup>122</sup> Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U.L. REV. 1373, 1375-76 (2004) (“Consumers tend to underestimate the likelihood of adverse events that might necessitate borrowing. Optimistic individuals tend to underestimate the probability of being involved in an accident that might generate high medical bills or other liquidity needs. Similarly, individuals tend to underestimate the probability that either they or a loved one will become ill and require costly treatment (that is not covered or not entirely covered by their insurance plan). Finally, individuals tend to underestimate the likelihood that they will lose their job, or the time it will take them to find a new job. These and other manifestations of the optimism bias lead consumers to underestimate the likelihood that they will incur a liquidity shock that necessitates a resort to credit card borrowing.”).

<sup>123</sup> John Aloysius Cogan Jr., *The Uneasy Case for Food Safety Liability Insurance*, 81 BROOK. L. REV. 1495, 1536 (2016) (“For example, people generally believe that their risk of food poisoning is less than that of the average person, that they are in control of microbial food hazards when they prepare food themselves . . .”).

<sup>124</sup> Sean Hannon Williams, *Sticky Expectations: Responses to Persistent over-Optimism in Marriage, Employment Contracts, and Credit Card Use*, 84 NOTRE DAME L. REV. 733, 757-58 (2009) (“Both men and women believe that fifty percent of marriages end in divorce. More than half, however, predict that there

Potential clients who hear about a lawyer's past successes (without hearing qualifying disclaimers about the relevance of those past successes) are likely to misjudge the likely outcome of their case with that lawyer. An overly optimistic client will guess that her case will succeed if prior cases with the lawyer succeeded. Lawyers who want to capitalize on that cognitive failure to gain more business have a strong incentive to include information about past successes.<sup>125</sup> This type of advertising capitalizes on consumers' predictable over-optimism.

For our purposes, the existence of advertising about past successes helps us diagnose behavioral market failure in these markets. We can determine that potential clients are likely overly optimistic because lawyers are spending money trying to exploit this sub-optimal decision-making. This type of advertising skews the market for legal services because clients who think they will succeed will pay more than those who are less optimistic about the chances of success.

Second, the availability heuristic explains why lawyers would advertise past successes even if they are not statistically relevant to rational consumers. Cass Sunstein summarizes the vast literature on how this mental short-cut works:

Under the availability heuristic, people assess probabilities by asking whether examples readily come to mind. Lacking statistical information, people substitute an easy question (Can I think of illustrations?) for a hard question (What realities do the data actually show?). . . . But the availability heuristic can lead to significant mistakes. If an incident is readily available but statistically rare, the heuristic will lead to overestimation of risk; if examples do not come to mind, but the statistical risk is high, the heuristic can give people an unjustified sense of security.<sup>126</sup>

---

is no chance that they will divorce, that is, that their probability of divorcing is zero.”).

<sup>125</sup> Oren Bar-Gill, *Bundling and Consumer Misperception*, 73 U. CHI. L. REV. 33, 45 (2006).

<sup>126</sup> Cass R. Sunstein, *What's Available? Social Influences and Behavioral Economics*, 97 NW. U. L. REV. 1295, 1297 (2003).

As one common example, people are overly afraid of dying in a plane crash because stories about plane crashes are vivid and readily come to mind. On the other hand, stories of car crash are pedestrian, despite being much more statistically significant, leading people to underestimate the risk of dying in a car crash.<sup>127</sup>

Potential clients do not have data on the lawyer's overall success rate. Even if they did, it would be difficult to apply that rate to their own case given the unique circumstances of the potential client's case. So, lawyers who advertise past successes are counting on people employing the availability heuristic when evaluating whether they think the lawyer will succeed for them. Vivid examples of past successes (e.g., no conviction despite having a high blood alcohol level<sup>128</sup>) readily come to mind when a potential client is trying to assess the probability a lawyer will succeed in getting them out of charges.

In sum, advertising that focuses on past successes lacks a rational-choice explanation because no rational consumer could care about the results in one specific past case. But, behavioral economics offers a compelling explanation for this type of advertising, suggesting that it is likely that these markets are experiencing market failure.

## **2. Advertising Through Selected Client Testimonials**

Many websites also contained client testimonials about or reviews of the lawyer's services. Considering just the websites (where lawyers control 100% of the content), 43.83% (n=199) contained reviews by prior clients. Consumer reviews of professionals are becoming more and more common, and these reviews are influential to potential consumers.<sup>129</sup>

A rational consumer would not be interested in a limited number of customer reviews. Like prior successes, evidence of specific client's satisfaction with a lawyer does not demonstrate a lawyer's overall

---

<sup>127</sup> KENNETH S. BORDENS & IRWIN A. HOROWITZ, *SOCIAL PSYCHOLOGY* 92 (2013).

<sup>128</sup> See earlier discussion.

<sup>129</sup> See, e.g., Cassandra Burke Robertson, *Online Reputation Management in Attorney Regulation*, 29 *GEO. J. LEGAL ETHICS* 97, 103–06 (2016); Laurel A. Rigertas, *How Do You Rate Your Lawyer? Lawyers' Response to Online Reviews of Their Services*, 4 *ST. MARY'S J. L. MALP. & ETHICS* 242 (2014).

success rate. In one Avvo profile, an attorney claimed to have helped clients with 12,000 cases over his 28 year career.<sup>130</sup> The profile also had 5 very positive reviews.<sup>131</sup> A rational actor would not view information from 0.004% of an attorney's cases as representative of prior clients' experiences with the attorney.

But, customer reviews on websites controlled by the attorney are even more problematic than prior success stories. When consumer reviews appear on third-party websites like Avvo, there are risks that the reviews are biased.<sup>132</sup> But, when the sellers select which customer reviews they present, the selections are almost certainly going to be biased in favor of the seller.<sup>133</sup>

In our study, every testimonial on a firm's website that we recorded<sup>134</sup> was positive, stating things like they attorney "was amazing, professional and really knew what he was doing,"<sup>135</sup> "was up to date with the latest procedures,"<sup>136</sup> and was "professional" and exhibited "personal understanding."<sup>137</sup> And those reviews are just from the first three websites with testimonials in our study.

---

<sup>130</sup> Observation 367.

<sup>131</sup> *Id.*

<sup>132</sup> See David Adam Friedman, *Addressing the Commercialization of Business Reputation*, 80 L. & CONTEMP. PROBS. 73, 76, 79 (2017) (explaining that third-party websites like Angie's List can be biased because of classic search engine bias where the website filters reviews for the most relevant reviews and because of the website selling advertising to businesses being reviewed on the website).

<sup>133</sup> Taha, *supra* note 116, at 466 ("Advertisements often contain testimonials from people claiming to have had a positive experience using the advertised product. These advertisements feature a selection bias; the advertiser does not randomly select which users' experiences to include in the advertisement. Rather, only very positive results are included."). The arguments that customer reviews will increase efficiency assume that a third party is gathering the reviews, not the seller. *E.g.*, Kristin Tracy, "*and to Your Left You'll See ...*": *Licensed Tour Guides, the First Amendment, and the Free Market*, 46 U. BALT. L. REV. 169, 180 (2016) ("[W]hile *perfect* information may not be available to all consumers, the internet or even a travel agent can provide consumer reviews and feedback, which will likely help the consumer make rational decisions."). See also Laurel A. Rigertas, *How Do You Rate Your Lawyer? Lawyers' Response to Online Reviews of Their Services*, 4 ST. MARY'S J. L. MALP. & ETHICS 242 (2014) (noting that "little oversight of consumer reviews and anonymous reviews mean[s] that some reviews might not even be written by actual clients" and that there is the "risk that consumers will get information that is not helpful because it is false or too one-sided").

<sup>134</sup> Researchers only recorded the first client testimonial on a profile or website.

<sup>135</sup> Observation 2.

<sup>136</sup> Observation 6.

<sup>137</sup> Observation 8.



Indeed, selective customer testimonials are so problematic that the Federal Trade Commission requires that any customer testimonial must be typical before an advertiser uses it:

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation.<sup>138</sup>

A rational actor would not value testimony selected from only positive reviewers, so traditional economics cannot explain the existence of this type of advertising on lawyers' websites.

But, insights from behavioral economics can. In addition to the optimism bias and the availability heuristic, behavioral economists have documented that people observing samples suffer from selection neglect. Selection neglect was first documented in an article noting that, "investors respond to advertised performance data [that is selected by mutual funds] as if those data were unselected (i.e., representative of the population)."<sup>139</sup> Numerous other studies have confirmed the results, demonstrating, for example, that "investors are subject to a selection neglect when estimating the skill of top-performers [and] fail to take into account that they limit their analysis to a biased sample when chasing [high returns]."<sup>140</sup> The upshot is that even when people understand that a sample is biased, for instance because the seller picks the sample, they fail to fully adjust their expectations about what the average experience is like or even wrongly think that the sample reflects the entire dataset.<sup>141</sup>

---

<sup>138</sup> 16 C.F.R. § 255.2.

<sup>139</sup> Jonathan J. Koehler & Molly Mercer, *Selection Neglect in Mutual Fund Advertisements*, 55 MGMT. SCIENCE 1107, 1107 (2009).

<sup>140</sup> Justus Heuer et al., *Fooled by Randomness: Investor Perception of Fund Manager Skill*, 21 REV. FINANCE 605 (2017).

<sup>141</sup> Taha, *supra* note 116, at 464.

Lawyers who advertise selected client testimonials are likely trying to exploit potential consumers' selection bias. People considering hiring the lawyer, like people deciding whether to invest in a specific mutual fund, are probably relying too much on these selected consumer reviews. Thus, because behavioral economics explains the existence of these advertisements where rational-choice theory cannot, it is likely there is market failure.

### 3. The Absence of Price Information

One advertising attribute explored in our study is remarkable because of its absence—the price of their services. Usually, price is the most important term that a consumer considers when making a purchase,<sup>142</sup> so the dearth of exact prices on profiles and websites is rather striking. Prior empirical work has also found that lawyers fail to advertise prices.<sup>143</sup> In our study, only 18.59% of websites and profiles (n=169) presented price information. Avvo specifically requests that attorneys state the price of their services, which may encourage more attorneys to provide price information. Still, even with Avvo's request, only 140 Avvo profiles had prices. That means that many attorneys deliberately refused to include how much they would charge potential clients. We searched firms' entire websites for pricing information (instead of our normal practice of only looking on a limited number of pages). Even scouring the entire websites, only 6.39% (n=29) of websites mentioned the exact price of services.

The decision to omit pricing information from Avvo profiles and websites is also notable because of the advertisement at issue in the *Bates* case. As Appendix A shows, the advertisement in the *Bates*

---

<sup>142</sup> Oren Bar-Gill, *Bundling and Consumer Misperception*, 73 U. CHI. L. REV. 33, 45 (2006). See also Howard Beales et al., *The Efficient Regulation of Consumer Information*, 24 J.L. & ECON. 491, 492 (1981) ("Information about price . . . allows buyers to make the best use of their budget . . ."). Price is so important in advertising that advertising scholars use price as a key factor in determining if advertising is informative or merely persuasive. Alan Resnik & Bruce L. Stern, *An Analysis of Information Content in Television Advertising*, 41 J. MARKETING 50, 50–51 (1977).

<sup>143</sup> See Jeffrey O'Connell et. al., *Yellow Page Ads As Evidence of Widespread Overcharging by the Plaintiffs' Personal Injury Bar-and A Proposed Solution*, 6 CONN. INS. L.J. 423, 426–27 (2000) (finding in a study analyzing Yellow Page Ads of 12 major U.S. legal markets that "the number of ads that mentioned [(1) hourly rates, (2) the specific percentage of the fee exacted, (3) a flat fee, and (4) price competition] were all much less than one percent of the total of 1,425 ads").

case listed prices, giving credibility to the Court's claim that advertising might lower prices.<sup>144</sup> Scholars note that the law practice involved in *Bates* is a relic of history and that modern personal injury attorneys operate under different pricing models.<sup>145</sup> Yet, despite different pricing structures than that at issue in *Bates*, many of the attorneys in our study have price schemes that could be stated, especially for those charging contingency fees and set hourly rates.

Several plausible rational choice explanations might offer an account for why lawyers do not advertise price. First, it could be that in these markets, there is no price differentiation, so advertising price is superfluous.<sup>146</sup> For instance, in the market for payday loans, lenders do not advertise prices in states where all lenders charge the maximum legal amount.<sup>147</sup> Yet, it appears there is substantial price differentiation for legal services in the markets we studied. The websites and profiles that did state prices reflect heterogeneity in pricing. Hourly rates varied from \$125 an hour<sup>148</sup> to \$350 an hour,<sup>149</sup> and contingency fees ranged from 25%<sup>150</sup> to 45%.<sup>151</sup> So, this explanation is unlikely to be true.

Second, it could be that rational consumers do not care about costs. In medical markets, some patients do not evaluate costs because third parties pay them.<sup>152</sup> For law, however, clients typically bear

---

<sup>144</sup> *Bates*, 433 U.S. 350, 377 (1977).

<sup>145</sup> Engstrom, *supra* note 61, at 637–38.

<sup>146</sup> See Kimberly D. Krawiec, *Altruism and Intermediation in the Market for Babies*, 66 WASH. & LEE L. REV. 203, 222 (2009) (suggesting advertising accompanies price differentiation). For a source suggesting this explanation in the context of legal fees, see Engstrom, *supra* note 61, at 637–38 (“to the extent contingency fees are uniform, no firm has an incentive to advertise on the basis of price.”).

<sup>147</sup> Jim Hawkins, *Are Bigger Companies Better for Low-Income Borrowers?: Evidence from Payday and Title Loan Advertisements*, 11 J.L. ECON. & POL'Y 303, 314 (2015).

<sup>148</sup> Observation 339.

<sup>149</sup> Observation 59.

<sup>150</sup> Observation 59.

<sup>151</sup> Observation 23.

<sup>152</sup> Devon M. Herrick & John C. Goodman, *The Market for Medical Care: Why You Don't Know the Price; Why You Don't Know about Quality; And What Can Be Done about It*, NATIONAL CENTER FOR POLICY ANALYSIS 2 (2007), <http://www.ncpa.org/pdfs/st296.pdf> (“The primary reason why doctors and hospitals typically do not disclose prices prior to treatment is that they do not compete for patients based on price. Prices are usually paid not by patients themselves . . .”).

the cost themselves in the American system because each side pays its own attorney's fees, barring special circumstances.<sup>153</sup> Thus, there is a strong incentive for clients to evaluate costs.

If a rational consumer would want to know the cost of legal services when picking a lawyer, why is this information omitted from most websites and profiles? Behavioral economics offers a compelling account—attorneys want to shroud the cost of legal services by highlighting aspects of the transaction other than price. When people make complex decisions, like which lawyer to use, they have limited attention and can only focus on several attributes of a decision.<sup>154</sup> In one famous experiment, researchers asked subjects to focus on how many times one basketball team passed the ball.<sup>155</sup> Because participants in the research were so focused on counting the number of passes, around half of them missed the fact that a woman dressed like a gorilla appeared on the screen in addition to the basketball players.<sup>156</sup> By telling subjects to focus on one thing, researchers were able to keep them from recognizing a lady dressed like a gorilla.<sup>157</sup>

In the same way, lawyers can shroud the costs of legal services by focusing potential clients' attention on other attributes of the transaction. In our study, lawyers framed the transaction in terms of a variety of things—the lawyers' honesty, the lawyers' reputation, the lawyers' religion.<sup>158</sup> Lawyers even discussed the facts that they are excellent boxers,<sup>159</sup> that they make their own wine,<sup>160</sup> that they like playing pinball,<sup>161</sup> and that they brew their own beer.<sup>162</sup> In light of the fact some charge hundreds of dollars more an hour than others, it is hard to explain why a rational consumer would rather know information about home brewing habits than price. The

---

<sup>153</sup> Steven Shavell, *Suit, Settlement and Trial: A Theoretical Analysis Under Alternative Methods for the Allocation of Legal Costs*, 11 J. LEGAL STUD. 55, 55 (1982).

<sup>154</sup> Xavier Gabaix & David Laibson, *Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets*, 121 Q.J. ECON. 505, 505 (2006).

<sup>155</sup> For a discussion of the experiment, see DANIEL KAHNEMAN, *THINKING: FAST AND SLOW* 23-24 (2011).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> See Table II, *supra*.

<sup>159</sup> Observation 1.

<sup>160</sup> Observation 324.

<sup>161</sup> Observation 7.

<sup>162</sup> Observation 74; Observation 122.

absence of price information on many of the lawyers' websites and profiles is evidence of behavioral market failure.

\*\*\*

The market failure we uncover here offers a partial explanation for why the promise of *Bates* has not been realized. The rationale of the *Bates* decision relies explicitly on a functioning market. Part C below offers another piece of the puzzle—lawyer advertising does not encourage people left out of the legal system to seek help.

### **C. Do lawyers' advertisements encourage disadvantaged groups to seek legal help?**

Central to the holding of *Bates* was a promise for expanded access to legal help for disadvantaged groups. As Justice Blackmun noted, "The absence of advertising may be seen to reflect the profession's failure to reach out and serve the community: Studies reveal that many persons do not obtain counsel even when they perceive a need because of the feared price of services or because of an inability to locate a competent attorney."<sup>163</sup> The Court was especially concerned about "the poor and unknowledgeable" or, in other words, under-represented constituencies like minorities.<sup>164</sup>

We evaluated three factors to determine whether lawyers' advertisements encourage these communities to seek legal help—the race and gender of photographs displayed on the website as well as the readability of the website.

#### **1. Race and Gender of Photographs**

As a measure to assess whether the legal profession is making an effort to reach disadvantaged groups, we evaluated the photographs that appear on the Avvo profiles and the homepage of attorneys' websites. Of our 909 observations, 716 displayed pictures of attorneys or clients. Of these websites with pictures, 96.37% (n=690) websites had pictures of the attorney only, 0.98% (n=7) had pictures of the client only, 2.65% (n=19) had pictures of both the attorney and the client.

---

<sup>163</sup> *Bates v. State Bar of Arizona*, 433 U.S. 350, 368, 372 (1977).

<sup>164</sup> *Id.*

We instructed the coding assistants to use their best guess of the race of the people pictures on the websites or to indicate that it was impossible for them to tell the race of the person pictured. The assistants thought 4.47% (n=32) were impossible to determine. Table 4 summarizes our findings.

*Table 4 Race of Photographs on Homepages/Profiles (n=716)*

<b>Race of Photograph</b>	<b>Percentage<sup>165</sup></b>	<b>Number</b>
White	88.83	636
Black	4.89	35
Hispanic	10.89	78
Asian or Indian	1.40	10
Native American	0	0

On these websites, 79.61% (n=570) had pictures of exclusively white attorneys and clients.

We also coded information about the gender of people pictured on the website. Of the 716 websites with pictures, 77.09% (n=552) exclusively had pictures of men.

Our hypothesis, grounded in studies about the patient-physician relationship, is that individuals are more likely to utilize legal services if they “see themselves as similar to their [lawyers] in personal beliefs, values, and communication.”<sup>166</sup> One critical aspect of this is race/ethnicity or gender concordance. In the medical literature, studies show “that minority patients in race/ethnic concordant relationships are more likely to use needed health services, are less likely to postpone or delay seeking care, and report a higher volume of use of health services.”<sup>167</sup> Similarly, “[p]atients in race concordant patient–provider relationships also report greater satisfaction and better patient–provider communication.”<sup>168</sup>

<sup>165</sup> The percentage and number of pictures of each race do not necessarily equal 100% and 469 because (1) our assistants could not determine the race of some of the pictures and (2) some websites had pictures of different people from different racial groups.

<sup>166</sup> Richard L. Street, Kimberly J. O’Malley, Lisa A. Cooper, and Paul Haidet, *Understanding Concordance in Patient-Physician Relationships: Personal and Ethnic Dimensions of Shared Identity*, 6(3) ANN. FAM. MED. 198 (2008).

<sup>167</sup> Ana Traylor, Julie Schmittiel, Connie Uratsu, Carol Mangoine, and Ursula Subrama, *The Predictors of Patient-Physician Race and Ethnic Concordance: A Medical Facility Fixed-Effects Approach*, HEALTH SERVICES RES. 792 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2875760/>.

<sup>168</sup> *Id.*

In addition to these patient-physician studies, social psychologists have found that advertising is most effective when potential clients observe people “like them” enjoying the product or service.<sup>169</sup> People determine how they should act by seeing how others in their social group act.<sup>170</sup> If specific groups do not observe anyone in their social group behaving a specific way, unconsciously the principle of social proof may lead them away from that behavior.<sup>171</sup>

While other factors beyond race or gender likely impact the relationship between a client and a lawyer, this seems to be an important aspect impacting whether an individual receives legal representation. Relatedly, the American Bar Association and others continue to push diversity measures forward in an effort toward a legal profession that reflects the public it serves.<sup>172</sup>

A significant body of scholarship examines issues related to the pipeline for who becomes a lawyer or advances within the profession, and numerous initiatives are devoted to this effort.<sup>173</sup> Fewer studies examine the race and ethnicity of individuals represented by an attorney. One of the rare studies documents that African Americans, Asian Americans, and Hispanics are significantly more likely to be unrepresented in legal matters than Whites.<sup>174</sup> Minimal attention, if any, falls on the images selected by

---

<sup>169</sup> ROBERT B. CIALDINI, *INFLUENCE: THE PSYCHOLOGY OF PERSUASION* 274 (2007).

<sup>170</sup> *Id.*

<sup>171</sup> Cf. Jim Hawkins, *Selling Art: An Empirical Assessment of Advertising on Fertility Clinics' Websites*, 88 *IND. L.J.* 1147, 1169–70 (2013) (“It is possible that pictures of white babies give social proof to white individuals considering fertility care but not to people who are of other races, driving up the number of white patients and driving down the number of patients from other races.”)

<sup>172</sup> See, e.g., ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES REPORT, 31-33 (2016),

[https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport\\_FNL\\_WEB.pdf](https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf) (last visited June 27, 2017).

<sup>173</sup> See, e.g., Cedric Ashley, *Taking Ownership of Diversity*, *THE INNOVATOR* (2017) (“Many of the diversity and inclusion initiatives within the legal profession focus on efforts to increase representation of diverse attorneys in settings that have historically lacked diversity. These efforts tend to be directed towards change within the institutional setting or securing employment within those environments for diverse lawyers.”),

[https://www.americanbar.org/content/dam/aba/images/racial\\_ethnic\\_diversity/Innovator\\_Vol02Issue01\\_.pdf](https://www.americanbar.org/content/dam/aba/images/racial_ethnic_diversity/Innovator_Vol02Issue01_.pdf) (last visited June 20, 2017).

<sup>174</sup> See Amy Myrick, Robert L. Nelson & Laura Beth Nielson, *Race and Representation: Racial Disparities in Legal Representation for Employment Civil Rights Plaintiffs*, 15 *N.Y.U. J. LEGIS. & PUB. POL’Y* 705 (2012)(noting the

lawyers in their advertising.<sup>175</sup> This is rather shocking given that these images may be the only view the public sees outside of lawyers portrayed on television shows or in the movies.

While it is beyond the scope of our study here to evaluate a direct correlation between the lack of legal representation with the images portrayed in lawyer advertising, we suggest our data support further investigation and study in this regard.

## 2. Readability

As another measure of whether lawyer advertising increases access for disadvantaged groups, we assessed the readability of the websites and profiles. We took the first 200 words on a webpage or profile and inputted them into an online tool that calculates the SMOG readability formula.<sup>176</sup> The SMOG readability formula uses word length and sentence length to predict how readable a passage is.<sup>177</sup> If there were not 200 words, we used as many as were available, but still 15.29% (n=139) of the observations had an insufficient number of words to test the readability.

Overall, the mean readability for the remaining websites with sufficient text was 10.97, meaning that someone reading at around an 11th grade level should be able to read the website. The readability scores varied from 2 to 29, and the median score was 11.

---

“intriguing” results that African Americans, Asian Americans, and Hispanics were more likely to represent themselves compared to white individuals—20.79% African American, 25.58% Asian American, 21.38% Hispanic, and 8.37% White).

<sup>175</sup> Our research uncovered no study precisely on point, though scholars have noted that race is understudied in the access to justice scholarship. *See, e.g.,* Martha Davis, *Race and Civil Counsel in the United States: A Human Rights Progress Report*, 64 SYRACUSE L. REV. 447, 451 (2014) (“Race has not been put forward as a central issue by the U.S. civil counsel movement, but the evidence demonstrating the racial disparities in access to counsel is deeply disturbing.”).

<sup>176</sup> Readability Formulas, Free Text Readability Consensus Calculator, at <http://www.readabilityformulas.com/free-readability-formula-tests.php> (last visited June 21, 2017).

<sup>177</sup> G. Harry McLaughlin, *SMOG Grading—a New Readability Formula*, J. OF READING 639 (May 1969).



Given that 50% of adults cannot read a book written at an 8<sup>th</sup> grade level,<sup>178</sup> and that 21% of adults read below a 5<sup>th</sup> grade level,<sup>179</sup> we conclude that lawyer advertising likely is not accessible for many of the individuals intended by the *Bates* Court. State bar representatives who regulate lawyer advertising complain that lawyers websites are aimed at law firms not potential clients,<sup>180</sup> and our results confirm that is in fact the case.

#### **Part IV: Recommendations**

The results of our empirical study lead us to several recommendations for regulatory interventions and related efforts to enhance consumer understanding about legal services.

First, we propose that policy makers require certain disclosures or disclaimers to address consumer irrationality and biases. Some jurisdictions already require these sorts of statements<sup>181</sup> but the rules may be under-enforced. For example, New York requires a specific disclaimer when lawyers advertise about past success, though our study revealed that not all websites are in compliance. We recommend the requirement of disclaimers for statements about past success and client testimonials.

While the effectiveness of disclosures is questioned in some contexts, for example the consumer credit literature, the unique circumstances of legal representation support their use. In other contexts, people have strongly criticized disclosures as a remedy for

---

<sup>178</sup> See National Institute for Literacy, National Center for Adult Literacy, The Literacy Company, U.S. Census Bureau, *available at* <http://literacyprojectfoundation.org/community/statistics/> (last visited June 27, 2017).

<sup>179</sup> See *The U.S. Illiteracy Rate Hasn't Changed in 10 Years*, HUFFINGTON POST (Sep. 6, 2013), *available at* [http://www.huffingtonpost.com/2013/09/06/illiteracy-rate\\_n\\_3880355.html](http://www.huffingtonpost.com/2013/09/06/illiteracy-rate_n_3880355.html) (last visited June 27, 2017).

<sup>180</sup> Pat Rafferty, *Best Practices in Attorney Advertising*, TexBarCLE (Dec. 11, 2013), *available at* <http://www.texasbarcle.com/CLE/AALegalSpanTransfer.asp?IEventID=13276&SeminarID=13276&lContactID=63141&sStatus=CCC>.

<sup>181</sup> See, e.g., *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 627 (1985) (holding that mandated disclosure regarding payment of costs in lawyer advertisement does not violate the first amendment); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324, 1340–41 (2010) (applying *Zauderer* to uphold mandated disclosure in advertising by lawyers for bankruptcy-related services).

market failure.<sup>182</sup> People argue that consumers ignore disclosures,<sup>183</sup> that they cannot understand disclosures,<sup>184</sup> and that they cannot use disclosures in complex markets.<sup>185</sup>

While we are sympathetic to these critiques of traditional disclosure regimes, we do not think they are fatal to our suggestion here. At a minimum, disclosures are a signaling and, and best, they are informative. One model that might be adopted is the Federal Trade Commission's adequate substantiation standard, which requires that an "advertiser should possess and rely upon adequate substantiation" when making representations containing endorsements.<sup>186</sup>

Second, we encourage lawyers to consider the images and readability of their websites. Studies show that individuals are more likely to engage with and trust professionals who reflect their own identities and personal characteristics.<sup>187</sup> Readability is important for helping individuals address their legal issues, whether or not the ultimately hire an attorney, but it also may increase the likelihood that an individual will do so. Lawyers wanting to expand their client base would be especially wise to heed the findings of our study.

---

<sup>182</sup> See generally OMRI BEN-SHAHAR & CARL E. SCHNIEDER, *MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE* (2014).

<sup>183</sup> Florencia Marotta-Wurgler, *Will Increased Disclosure Help? Evaluating the Recommendations of the ALI's "Principles of the Law of Software Contracts"*, 78 U. CHI. L. REV. 165 (2011).

<sup>184</sup> Debra Pogrund Star & Jessica M. Choplin, *A Cognitive and Social Psychological Analysis of Disclosure Laws and Call for Mortgage Counseling to Prevent Predatory Lending*, 16 PSYCHOL. PUB. POL'Y & L. 85, 89 (2010).

<sup>185</sup> Lauren E. Willis, *Decision-making and the Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 MD. L. REV. 707, 712 (2006).

<sup>186</sup> See Federal Trade Commission, 16 CFR Part 255.2(b) ("An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation.").

<sup>187</sup> See, e.g., Susan Hart & Gillian Hogg, *Relationship Marketing in Corporate Legal Services*, 18(3) SERVS. INDUSTRIES J. 55, 68 (1998) ("A further contribution of this research relates to the debate over the extent to which customers seek relationships with their suppliers. Our findings suggest that accessibility of the partner to the client is important, along with the partner's involvement with the case. ... [T]he personal chemistry and the 'fit' between partner and client are rated of high importance.").

Third, we call on bar associations and legal education institutions use advertising to engage in education campaigns in order to remedy market failure.<sup>188</sup> As the *Bates* Court observed: “it is the bar’s role to assure that the populace is sufficiently informed [about legal services] as to enable it to place advertising in its proper perspective.”<sup>189</sup> We echo this observation, and expand it to law schools. One of us previously called for “democratizing legal education” with law schools “banding together to conduct a wide-spread public information campaign to encourage access to legal services.”<sup>190</sup> Our study here reinforces the need for this sort of education.

### Conclusion

Nearly a half century after the US Supreme Court liberalized lawyer advertising rules to increase public information about and access to legal services, the same access to justice gap endures. Our pioneering advertising study of lawyer websites and Avvo profiles helps explain the persisting market failure. We found that advertising is not aimed at rational consumers like *Bates* envisioned but instead that some advertising exploits systematic poor decision-making. Also, far from Blackmun’s vision of advertising reaching the marginalized, current advertisements focus on pictures of white men and contain text that is inaccessible to many people with legal needs.

New avenues of regulation are needed to cultivate advertising that enhances the efficiency of the legal services market, in particular expanding access to information about legal representation for those in need. Lawyer advertising should include disclaimers about prior successes and testimonials; lawyers should consider advertising images and readability; and bar associations as well as law schools should work together supporting public information campaigns. *Bates*’s vision for expanded access to legal services has been unrealized, but it does not have to be. Our study offers empirical evidence of the causes for advertising’s failure and of potential solutions to makes *Bates*’s goals a reality.

---

<sup>188</sup> See Renee Newman Knake, *Democratizing Legal Education*, 45 CONNECTICUT LAW REVIEW 1281 (2013) (finding that few bar associations or law schools have engaged in public education campaigns, despite the Supreme Court’s suggestion that this is an important role for the bar).

<sup>189</sup> *Bates v. State Bar of Arizona*, 433 U.S. 350, 368, 375 (1977).

<sup>190</sup> Knake, *supra* note 188, at 1285.


**Appendix I**

Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

ADVERTISEMENT

**DO YOU NEED  
A LAWYER?**

**LEGAL SERVICES  
AT VERY REASONABLE FEES**



- Divorce or legal separation--uncontested  
(both spouses sign papers)  
\$175.00 plus \$20.00 court filing fee
- Preparation of all court papers and instructions on  
how to do your own simple uncontested divorce  
\$100.00
- Adoption--uncontested severance proceeding  
\$225.00 plus approximately \$10.00 publication cost
- Bankruptcy--non-business, no contested proceedings  
Individual  
\$250.00 plus \$55.00 court filing fee  
Wife and Husband  
\$300.00 plus \$110.00 court filing fee
- Change of Name  
\$95.00 plus \$20.00 court filing fee

Information regarding other types of cases  
furnished on request

---

**Legal Clinic of Bates & O'Steen**  
617 North 3rd Street  
Phoenix, Arizona 85004  
Telephone (502) 252-8838