TRENDS IN THE LEGAL PROFESSION

LEGAL ADVERTISING—AN ATTITUDINAL STUDY OF IOWA'S PRIVATE PRACTITIONERS

I. Introduction and Background

On February 17, 1976, the American Bar Associaton revised its Code of Professional Responsibility to permit publication of lawyers' areas of specialization, schools attended, military service and other data in the yellow pages of the telephone directories.[1] This was the first time since 1908 that advertising directed to the public-at-large was permitted by the ethical canons of the legal profession.[2] The change in the American Bar Association's position has been traced to four likely causes. First, the United States Supreme Court had suggested in opinions that advertising bans were possibly violative of the antitrust laws and the first amendment protections of freedom of speech and press.[3] Second, suits against state bar associations had been filed by consumer groups and individual plaintiffs throughout the country challenging existing practices.[4] Third, the federal government had threatened action.[5] Finally, several studies were published which indicated a general ignorance among members of the public with respect to the availability of legal services.[6]

The American Bar Association's action proved to be inadequate for, on June 27, 1977, the United States Supreme Court handed down *Bates v. State Bar of Arizona,*[7] which found the prohibition of lawyer advertising of the Arizona Code of Professional Responsibility[8] to be violative of lawyers' first amendment rights.[9] *Bates* decided a narrow issue: whether a barrier to the truthful advertising of "routine" legal services in newpapers was legal.[10]

In response to *Bates,* the American Bar Association, at its August, 1977 meeting, adopted revisions to its ethical code permitting both newspaper and

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1. ABA Code of Professional Responsibility, DR 2-102(A)(6) (1976).
2. Smith, *Making the Availability of Legal Services Better Known,* 62 A.B.A.J. 855, 855 (1976).
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. 433 U.S. 350 (1977).
8. Arizona Code of Professional Responsibility, DR 2-101(B) (1976). This rule stated: "(B) A lawyer shall not publicize himself, or his partner or associate, or any other lawyer affiliated with him or his firm, as a lawyer throuh newspaper or magazine advertisements, radio or television announcements display announcements in the city or telephone directories or other means of commercial publicity, nor shall he authorize or permit others to do so on his behalf."
9. 433 U.S. at 384.
10. *Id.* The court found an additional attack based on the Sherman Act to be inappropriate since the state action exemption was applicable to the regulation at issue. *Id.* at 359-63.

radio advertising.[11] However, it was not decided whether or to what extent television advertising would be permitted. The Iowa Code of Professional Responsibility for Lawyers was also amended by the Iowa Supreme Court on February 17, 1978 to comply with *Bates*. The changes in the Iowa ethical code were not as extensive as the American Bar Association's revisions insofar as the Iowa amendments permitted yellow page and newspaper advertising but remained silent on electronic media advertising.[12]

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11. *American Bar Association approves radio for lawyer ads*, BROADCASTING, August 15, 1977, at 20.

12. IOWA CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS, DR 2-101 (1977), as it existed before the revisions provided:

> (A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.
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> (B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer or a lawyer as well as by name:
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> (1) In political advertisements when his professional status is germane to the political campaign or to a political issue.
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> (2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.
>
> (3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.
>
> (4) In and on legal documents prepared by him.
>
> (5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.
>
> (6) As provided in Section 610.24, Code of Iowa.
>
> (C) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communications medium in anticipation of or in return for professional publicity in a news item.

The new provisions pertaining to publicity, DR 2-101 (1978), now provide:

> (A) A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use, or participate in the use of, any form of public communication which contains a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement, which contains any statement or claim relating to the quality of his legal services or which contains any claim that is not verifiable; nor shall he use or participate in the use of any form of public communication, calculated to attract clients, which contains any information not hereafter specifically permitted. In all communications under DR 2-101 and DR 2-102 the lawyer shall avoid all subjective characterizations of his rates or fees, such as, but not limited to, "cut-rate," "lowest," "reasonable," "moderate," "very reasonable," "give-away," "below-cost," "special"; and shall further avoid the use of all signs and symbols such as, but not limited to, logos, trademarks, graphics, design work, and pictures.
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> (B) The following information, in words and numbers only, may be communicated to the public in newspapers or periodicals of general circulation in the geographic area

in which the lawyer maintains offices or in which a significant part of the lawyer's clientele resides or in reputable legal directories generally available in such area, provided such information is presented in a dignified manner:

(1) Name, including name of law firm and names of professional associates, addresses and telephone numbers and the designation "lawyer," "attorney," "law firm" or the like;

(2) Fields of practice, limitation of practice or specialization, but only to the extent permitted by DR 2-105;

(3) Date and place of birth;

(4) Date and place of admission to the bar of state and federal courts;

(5) Schools attended, with dates of graduation, degrees and other scholastic distinctions;

(6) Public or quasi-public offices;

(7) Military service;

(8) Legal authorships;

(9) Legal teaching position;

(10) Memberships, offices and committee assignments in bar associations;

(11) Membership and offices in legal fraternities and legal societies;

(12) Technical and professional licenses;

(13) Memberships in scientific, technical and professional associations and societies;

(14) Foreign language ability;

(15) Names and addresses of bank references;

(16) With their written consent, names of clients regularly represented;

(17) Subject to DR 2-103, prepaid or group legal services programs in which the lawyer participates;

(18) Whether credit cards or other credit arrangements are accepted;

(19) Office and telephone answering service hours.

(C) The following fee information, in words and numbers only, may be communicated to the public in newspapers or periodicals of general circulation which are published at least once each month and which are distributed in the geographic area in which the lawyer maintains offices or in which a significant part of the lawyer's clientele resides, provided such information is presented in a dignified manner:

(1) Fee for an initial consultation;

(2) Availability upon request of either a written schedule of fees or an estimate of the fee to be charged for specific services, or both;

(3) Contingent fee rates subject to DR 2-106(c), provided that the statement discloses whether percentages are computed before or after deduction of costs;

(4) Fixed fees or range of fees for specific legal services or hourly fee rates provided that, in print size at least equivalent to the largest print used in setting forth the fee information, the statement discloses:

(a) that the stated fixed fees or range of fees will be available only to clients whose matters are encompassed within the described services, and

(b) if the client's matters are not encompassed within the described services, or if an hourly fee rate is stated the client is entitled, without obligation, to a specific written estimate of the fees likely to be discharged.

(D) For purposes of this Rule, the term "specific legal services" shall be limited to the following services:

(1) Abstract examinations and title opinions not including services in clearing title;

(2) Uncontested dissolutions of marriage involving no disagreement concerning custody of children, alimony, child support or property settlement [see DR 5-105 (a)];
(3) Wills leaving all property outright to one beneficiary and contingently to one beneficiary or one class of beneficiaries;
(4) Income tax returns for wage earners;
(5) Uncontested personal bankruptcies;
(6) Changes of name;
(7) Simple residential deeds;
(8) Residential purchase and sale agreements;
(9) Residential leases;
(10) Residential mortgages and notes;
(11) Powers of attorney;
(12) Bills of sale.

The Committee on Professional Ethics and Conduct of the Iowa State Bar Association, acting as commissioners of the Supreme Court as provided by court rule 118, on its own motion or upon the request of a lawyer admitted to practice in this state, shall, from time to time, consider and recommend to the court proposed amendments to the code, expanding or constricting the above list of "specific legal services". In considering such amendments the committee shall apply the following criteria which have guided the Supreme Court in determining which services should be included in the above list:
(1) The description of the service would not be misunderstood by the average lay person or be misleading or deceptive;
(2) Substantially all of the service normally can be performed in the lawyer's office with the aid of standardized forms and office procedures;
(3) The service does not normally involve a substantial amount of legal research, drafting of unique documents, investigation, court appearances or negotiation with other parties or their attorneys; and
(4) Competent performance of the service normally does not depend upon ascertainment and consideration of more than a few varying factual circumstances.

The committee shall adopt regulations, subject to the approval of the Supreme Court, to provide a procedure to receive and consider such requests from lawyers, and for the prompt submission to this court of any appeal from a determination adverse to such request. Said commitee may further issue, subject to the approval of the Supreme Court, regulations further defining or describing "specific legal services" within the meaning of this rule.

(E) Unless otherwise specified in the public communication concerning fees, the lawyer shall be bound, for a period of at least 90 days thereafter, to render the stated legal service for the fee stated in the communication unless the client's matters do not fall into the described services. In that event or if a range of fees is stated he shall render the service for the estimated fee given the client in advance of rendering the service.

(F) A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use the public communication of fee information concerning specific legal services as an indirect means of attracting clients for whom he performs other legal services not related to the specific legal services publicized; nor may the term "clinic" or any similar term be used in any communication to the public unless the practice of the lawyer or his firm is limited to routine matters for which costs of rendering the service can be substantially reduced because of the repetitive nature of the services performed and the use of standardized forms and office procedures.

In the process of changing the ethical canons two problems became apparent. First, any revisions would have to comply with various laws, thereby imposing potentially conflicting demands on the new provisions. For example, if the controls were too narrow, the revisions could be struck down on the basis of the first amendment and antitrust laws.[13] On the other hand, if the regulations were too broad, violations of the Federal Trade Commission's regulations against false advertising could result.[14] The second problem involved regulation and enforcement of the rules once adopted. One of the points stressed by counsel for the Arizona Bar in *Bates*, both in oral argument before the Court[15] and on petition for rehearing,[16] was that enforcement of more liberal advertising guidelines would be impossible due to the fact that legal services advertising is inherently misleading. The Court disagreed with this contention and charged the state bar with the responsibility of regulation: "If the naiveté of the public will cause advertising by attorneys to be misleading, then it is the bar's role to assure that the populace is sufficiently

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Whether or not it contains fee information, a lawyer shall preserve in his office a copy of each advertisement placed in a newspaper or periodical for at least 3 years and a record of the date or dates and name of the publication in which it appeared.

(G) A lawyer recommended by, paid by or whose legal services are furnished by, a qualified legal assistance organization may authorize or permit or assist such organization to use means of dignified commercial publicity, which does not identify any lawyer by name, to describe the availability or nature of its legal services or legal service benefits.

(H) This Rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

(1) In political advertisements when his professional status is germane to the political campaign or to a political issue;

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients;

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer;

(4) In and on legal documents prepared by him;

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof; and

(6) In communications by a qualified legal assistance organization, along with the biographical information permitted under DR 2-101(B), directed to a member or beneficiary of such organization.

(I) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item nor voluntarily give any information to such representatives which, if published in a news item, would be in violation of DR 2-101(A).

13. Student Project, *Attorney Advertising: Bates' Impact on Regulation*, 29 S.C.L. REV. 457, 502 (1978).

14. *Id.*

15. *Lawyers present final arguments on right to advertise*, ADVERTISING AGE, January 24, 1977, at 3, 78.

16. Lawyers ads out of control, bar unit cries, ADVERTISING AGE, August 1, 1977, at 1, 70.

informed as to enable it to place advertising in its proper perspective."[17] Thus the bar associations were left with the job of determining what was "routine" legal service and what was misleading. Also undefined was the degree of care to be exercised in advertising to insure against misleading approaches.

With this background, several surveys were conducted to determine what the profession's reaction was to advertising. Of the four surveys uncovered, two were random telephone surveys conducted by the American Bar Association of its members, and the other two were surveys conducted by private individuals through the use of questionnaires.

The first American Bar Association poll, conducted in August, 1977, was comprised of 602 telephone interviews.[18] Of those polled, 42% believed advertising was among the most important issues facing the legal profession.[19] Regarding *Bates,* 46% approved of the decision and 44% disapproved.[20] Furthermore, it was revealed that there was a positive correlation between age and disapproval of *Bates.*[21] Additionally, a majority of those attorneys earning less that $50,000 per year approved of the decision.[22] However, 61% believed that large firms would not advertise[23] and a majority of those surveyed in cities smaller than 250,000 disapproved of the *Bates* decision.[24] Finally, most of the attorneys believed that advertising would not result in competitive pricing and would mislead the public.[25]

The second American Bar Association survey, taken from 599 members of that association and conducted in March, 1978, concluded that client solicitation bothered lawyers more than advertising.[26] Of the lawyers polled, 3% had actually advertised during the nine months following the *Bates* decision. Thus the 46% approval of *Bates,* revealed in the 1977 survey, was apparently "a matter of principle rather than practical need."[27]

The second survey also indicated that changes in ethical codes to permit client solicitation were favored by 23% and disfavored by 71%.[28] However, it was revealed that, given a decision permitting client solicitation, a larger percentage would solicit than would advertise.[29] Significantly, there was not much variation in attitude toward a decision favorable to client solicitation among groups classified by age, income and size of population center.[30]

Of the 3% that had advertised in the nine months prior to the second

17. 433 U.S. at 375.
18. *Law Poll,* 63 A.B.A.J. 1541, 1541 (1977).
19. *Id.*
20. *Id.* at 1542.
21. *Id.*
22. *Id.*
23. *Id.* at 1543.
24. *Id.* at 1542.
25. *Id.* at 1543.
26. *Law Poll,* 64 A.B.A.J. 673, 673 (1978).
27. *Id.*
28. *Id.*
29. *Id.* at 673-74.
30. *Id.* at 673.

American Bar Association survey, 53% had used the yellow pages, 40% had used newspapers, 7% had used magazines or journals, 7% had used the radio and none had used television.[31] Twenty-two percent of the fifty lawyers who expressed an intent to advertise indicated they would use the yellow pages, 42% said they would use the newspapers, 18% expressed an intent to use magazines or journals, 4% revealed they would use radio and none of the respondents declared an intent to advertise on television.[32]

Thus, the poll concluded that "[w]hile there is a hard core of support for and potential use of solicitation, the feeling is that it is more likely than advertising to be deceptive and unprofessional and less likely to provide useful information to the public."[33]

The third survey was conducted one year prior to *Bates* and it polled by questionnaire 970 Ohio lawyers resulting in 313 usable answers.[34] The survey utilized seven-point Likert-scale[35] questions.[36] The survey results lead to the

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31. *Id.* at 674.
32. *Id.*
33. *Id.*
34. Shimp, *Ohio Lawyers' Attitudes Toward Legal Service Advertising*, 4 OHIO N.U.L. REV. 576, 581 (1977) [hereinafter cited as Shimp].
35. A "Likert scale" is a summated scale where a respondent is asked the degree to which he agrees or disagrees with a number of statements and these responses are then assigned numerical values and tallied to form an overall score. The Likert scale normally has three, five, or seven degrees of agreement. The instant study used a five point scale. *See* C. EMORY, BUSINESS RESEARCH METHODS 248-50 (1976).
36. The results of the Shimp study can be summarized as follows:

	AGREE	DISAGREE
1. Demand for legal services will increase with legal service advertising.	53.1%	40.3%
2. The lawyer client relationship is unique and cannot be established with legal service advertising.	69.3%	21.7%
3. Advertising will expand large established law firms while making smaller firms less competitive.	48.6%	33.9%
4. Legal services advertising will help provide thousands of positions for new lawyers.	12.2%	79.3%
5. Prices of legal services will decrease with advertising.	28.1%	61.3%
6. Quality of services will improve with advertising.	14.7%	79.3%
7. The public will be provided useful information through advertising.	46.1%	47.0%
8. Advertising will heighten the perception of when service is needed.	49.6%	46.9%
9. Advertising will help in the choice of competent counsel.	35.8%	60.7%

general conclusion that Ohio lawyers believed that legal service advertising would be debilitating to the profession while offering no substantial benefit to the public.[37] The author of the study suggested three explanations for the results. First was the feeling that advertising to generate business was antithetical to the fiduciary nature of the profession.[38] Second, the author suggested that lawyers generally feared that others would resort to deceptive advertising.[39] Finally, the author posed the possibility that successful attorneys would naturally favor the status quo and thus disfavor legal service advertising.[40] Although this study was of some value, it was not as informative as it could have been had the author stratified[41] his results and had he received a greater response.

The fourth survey resulted in an unpublished paper by Patrick D. Cavanaugh. The questionnaire survey, conducted in the fall of 1977, elicited fifty-nine usable responses.[42] The study was stratified based on length of practice, size of firm and size of population center in which respondents practiced and specialization. Additionally, types of media, kinds of service and various items of advertising content were disaggregated in the questionnaire in order to ascertain the attitudes toward various combinations of advertising possibilities. A five-point Likert-scale model[43] was used for the questions.

The conclusions of the Cavanaugh study were that Iowa lawyers did not have nearly as negative an attitude toward legal service advertising as the other literature indicated; the length of practice did not bear a significant relation to attitude toward legal service advertising; a correlation existed between size of population center and attitude toward legal service advertising; lawyers in large firms were less adverse to advertising than those in

10.	Public confidence in the profession will be impaired by advertising.	63.8%	28.4%
11.	Advertising will eventually lead to "a circus of misleading and deceptive ads."	73.5%	22.7%
12.	Stringent regulation of advertising will be necessary.	84.6%	8.0%

Shimp, *supra* note 34, at 582-90.

37. *Id.* at 592-93.

38. *Id.* at 592.

39. *Id.* at 593.

40. *Id.*

41. The population of a sample can normally be divided into mutually exclusive *strata*. A sample which is divided into sub-populations, or stratified, can be more significant statistically, can analyze and compare the various *strata* and can facilitate use of different statistical tools on different sub-populations. *See* EMORY, *supra* note 35, at 154-60.

The Shimp study used a stratified approach to select the recipients of its questionnaire, but did not contain stratified results. Shimp, *supra* note 34, at 581.

42. P. CAVANAUGH, ADVERTISING IN THE LEGAL PROFESSION: AN ATTITUDINAL SURVEY OF ATTORNEYS IN IOWA (December 19, 1977) (unpublished graduate business paper on file at the Drake Law Review Offices).

43. *See* note 35 *supra* for an explanation of Likert scales.

smaller firms; and no correlation was found between attitude toward advertising and areas of specialization.[44]

The four studies together indicate that although lawyers do not oppose the concept of legal service advertising to the extent that may have been expected, they still prefer not to use it. However, the available literature pertaining to legal service advertising is deficient in that there are no longitudinal studies comparing one year's attitudes with a prior year's.[45] While it may seem that the American Bar Association's surveys were longitudinal because they were conducted over two successive years, they actually were not because different attitudes were measured by each survey. The only valid comparison which may be made on the basis of the American Bar Association surveys is between attitude toward *Bates* and advertising one year and attitude toward solicitation the next year. Additionally, no published studies were found relating to attitudes toward either the American Bar Association revisions or any state's revision of its ethical code sections regarding lawyer service advertising.

II. The Survey—Methodology

In order to obtain a definitive description of the attitudes of Iowa lawyers, including any attitudinal change among Iowa's private practitioners during the last year and attitudes toward the amended provisions of the Iowa Code of Professional Responsibility, a questionnaire survey was conducted of 340 Iowa attorneys in private practice. The longitudinal study of the attitude change was made possible by the previously discussed unpublished survey of Iowa practitioners.

Thus, the guiding investigative questions of the survey conducted were: 1) whether a significant change in attitude among Iowa practitioners toward lawyer service advertising occurred over the last year; 2) what the level of awareness was of the new amendments to Iowa's ethical code among Iowa private practitioners; 3) whether the amended ethical code of Iowa satisfied the practitioners' needs; 4) to what extent have Iowa practitioners used advertising; and 5) assuming that Iowa lawyers, like other lawyers throughout the country, have not utilized advertising to any great extent, what the reasons are for this under-utilization.[46]

To learn the answers to these questions, questionnaires were sent to an

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44. Although the aggregate results of the Cavanaugh study are useful for purposes of comparison with the instant study, the number of responses within several segments was too small to give a similar comparison of segmented results any value. *See* note 54 *infra* for an explanation of adjustments to the aggregate results of the Cavanaugh study.

45. Research studies that are repeated over a period of time to determine what changes have taken place are considered longitudinal. *See* Emory, *supra* note 35, at 81.

46. An additional investigative question, whether the demographic breakdown in the Cavanaugh study is accurate with a larger response, also guided the direction of the instant research. It was hypothesized that the breakdown in the Cavanaugh project was accurate with a larger response.

optimum stratified random sample[47] of 340 private practitioners in Iowa.[48] The universe was limited to attorneys in private practice because attorneys in the public sector presumably would be unlikely to advertise. The recipients of the questionnaires were selected from that section of the *Martindale-Hubbell Law Directory*[49] in which attorneys may list their names without charge.[50] Likert-scale questions were used to develop an attitudinal score to enable comparison of one survey segment with another.[51] An open-ended

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47. *See* note 41 *supra*.

48. The sample unit chosen was the individual lawyer rather than the firm or the local bar association because the latter two units cannot be said to have an attitude. Although the questionnaire was equipped for stratification based on firm size, high correlation between firm size and city size made separate segmentation by firm size frivolous.

49. Vol. II (110 ed. 1978).

50. This list was compiled for Martindale-Hubbell by the Iowa State Bar Association and it is not limited to those bar members choosing to advertise in the law dictionary.

The recipients of the questionnaire were chosen using a random number table, counting through the list and repeating the procedure until each segment was filled. It should be noted that each of the segments for those attorneys who had been practicing less than five years was adjusted up to 35, 30 being the minimum required for a statistically significant result. *See* note 52 *infra*. *See also* E. McELROY, APPLIED BUSINESS STATISTICS: AN ELEMENTARY APPROACH, 151 (1971).

51. The questionnaire sent out read as follows:

1. Are you in private practice? Yes___ No___
2. If so, how many attorneys are in your firm? _____
3. How long have you been in private practice? _____ yrs.
4. How large is the population center in which you practice?
   - Large Metropolitan Area (over 60,000) _____
   - Other Urban (between 2,500 and 60,000) _____
   - Rural (under 2,500) _____
5. Do you engage in a specialty? Yes___ No___
6. Have you used legal service advertising at any time? Yes___ No___
7. If yes, which media?
   - _____ Yellow Pages
   - _____ Newspaper
   - _____ Journal/Magazine
   - _____ Law Directory
8. If no, why not? _____
9. Do you believe you will ever use legal service advertising? Yes___ No___
10. If yes, which media?
    - _____ Yellow Pages
    - _____ Newspaper
    - _____ Journal/Magazine
    - _____ Law Directory

question was used to determine why some lawyers have chosen not to advertise. The answers to this open-ended question were categorized and tabulated manually.

In order to parallel Cavanaugh's study, and thus determine attitude change since the past year, the questionnaire asked for the number of years

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11. Are you familiar with the specific Ethical Considerations and Disciplinary Rules in the recently amended Canon 2 of the *Iowa Code of Professional Responsibility for Lawyers?* Yes___ No___

12. With respect to the following statements, indicate by circling the appropriate number whether you (1) Strongly Agree, (2) Mildly Agree, (3) Have No Opinion, (4) Mildly Disagree, or (5) Strongly Disagree.

	Strongly Agree				Strongly Disagree
a. Advertising atorneys' fees for routine services will erode the public's trust in the profession.	1	2	3	4	5
b. Advertising by lawyers will stir up unnecessary litigation.	1	2	3	4	5
c. Advertising by lawyers will improve the overall quality of legal services.	1	2	3	4	5
d. The general public is not sufficiently sophisticated to realize the inherent limitations of lawyer advertising.	1	2	3	4	5
e. The new code will prevent unethical advertising by lawyers.	1	2	3	4	5
f. New lawyers will have a greater opportunity to begin practice because of advertising.	1	2	3	4	5
g. Standards for lawyer advertising will be easy to enforce.	1	2	3	4	5
h. Advertising for lawyers will force single practitioners and small firms to group practices.	1	2	3	4	5
i. Rules permitting advertising by lawyers will have no effect on the practice of law in my community.	1	2	3	4	5
j. Advertising by lawyers will increase the kinds of services offered by the legal profession.	1	2	3	4	5
k. The new code provides enough options for those lawyers who want to advertise.	1	2	3	4	5

in practice—more than five years or five years or less—and size of the population center where the attorney practiced.[52]

There was a 56% response rate to the survey: 340 questionnaires were mailed out and 190 usable responses were received. While this was a good return rate, three of the segments had less than thirty responses[53] which was the minimum number of responses necessary for a statistically significant result. The responses were compiled in a form suitable for manipulation by a computer[54] and the results were then statistically analyzed using a

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In addition to the above questionnaire, each of the attorneys selected for the survey received two letters. The first letter, over the signature of Mr. Ed Jones, the Secretary of the Iowa State Bar Association, confirmed that the credentials of the surveyors were legitimate and that the Iowa Bar Association would be supplied with the results of the survey. The other letter, signed by the surveyors, stated the topic and purpose of the survey and assured absolute anonymity.

52. The table below is descriptive of the mathematical manipulations which were performed to determine the sample stratification based on the number of years in practice in Iowa and size of the population center where the attorney practiced.

	Number	Percent	(P)	(Q)	PQ	Sample
A. FIVE YEARS OR LESS						
Population:						
Over 60,000	320	8	48	52	15988	35
2,500 to 59,999	400	10	61	52	19510	35
Under 2,500	160	4	71	29	7260	35
B. MORE THAN FIVE YEARS						
Population:						
Over 60,000	1200	30	38	62	58246	90
2,500 to 59,999	1200	30	49	51	59988	90
Under 2,500	720	18	57	43	35645	54

The variances were obtained from the Cavanaugh study.

53.

QUESTIONNAIRE RESPONSE

	Number Sent	Number Received	Per Cent Return
A. FIVE YEARS OR LESS			
Population:			
Over 60,000	35	22	62.8%
2,500 to 59,000	35	31	88.6%
Under 2,500	35	10	28.6%
B. MORE THAN FIVE YEARS			
Population:			
Over 60,000	90	45	50.0%
2,500 to 59,000	90	57	63.3%
Under 2,500	54	25	46.3%

The results would seem to indicate that some of the attorneys in the "under 2,500" category responded indicating that they were in the "2,500 to 59,000" category.

54. To permit computer analysis two scores were aggregated. The first pertained to attitude toward legal service advertising and the second pertained to attitude toward the amended

"canned" computer program, the *Statistical Package for the Social Sciences.*[55]

There are some limitations on the validity of the survey. Although the number of responses received in the instant survey have resulted in a sounder statistical foundation than the earlier study conducted by Cavanaugh, there was still a 44% nonresponse. Follow-up letters were not used since that would have brought into question the assurance of respondents' anonymity. Additionally, the disproportionate rate of response of attorneys practicing five years or less may have been caused by error in either the questionnaire design or the sample selection process. Finally, some confusion occurred in the questionnaire reference to use of the yellow pages in that a distinction was not required to be made between listings and advertisements.

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code of professional responsibility. The theoretical or absolute range for the first was through 45 with a midpoint of 26. The absolute range for the second was 2 through 10 with a midpoint at 6.

To faciliate cross tabulation the range of scores pertaining to attitude toward legal services advertising was condensed into broad categories, a score of 9 through 17 represented a "high negative attitude;" a score of 18 through 26 represented a "negative attitude;" a score of 27 through 35 represented a "positive attitude;" and finally, a score of 36 through 45 represented a "high positive attitude."

In order to answer the investigative question concerning the accuracy of the Cavanaugh study, *see* note 46 *supra*, the range used in that study had to be adjusted. The absolute range in that study for the aggregate score for legal advertising attitude was 9 through 45. Instead of using this range in classifying the results, Cavanaugh used the range of his actual responses, 23 through 38. When this range was broken into the four broad categories mentioned in the preceeding paragraph, a different classification resulted than would have if the absolute range had been used. This difference is set out in the table below.

COMPARISON OF THE CAVANAUGH STUDY RESULTS USING ALTERNATE SCALES

	High Negative Attitude	Negative Attitude	Positive Attitude	High Positive Attitude
Response Using Cavanaugh's Relevant Range	23-26	27-30	31-34	25-38
	25.4%	32.2%	33.9%	8.5%
Response Using Absolute Range	9-17	18-26	27-35	36-45
	0%	25.4%	67.8%	6.8%

The relevant range used in the Cavanaugh study measured attitude in relation to the other respondents. In other words an attorney with an aggregate score of 27 was negative when compared to the responses of the other attorneys which ranged from 23 to 38. However, using the absolute range of 9 through 45, a score of 27 would be a positive attitude. It should be noted then, from the above table, that substantially over half of the attorneys that responded to Cavanaugh's questionnaire had a positive attitude toward legal service advertising.

55. *See* N. NIE, C. HULL, J. JENKINS, K. STEINBRENNER & D. BENT, STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES (2d ed. 1975).

III. Findings

A. *Use of Advertising*

The raw data pertaining to the use of advertising is summarized in the table below, along with miscellaneous frequencies describing the sample.

Use of Advertising and Miscellaneous Data

Have used advertising		Yes: 32.6%
		No: 67.4%
Yellow pages:	14.2%	
Newspapers:	3.7%	
Journals and Magazines:	0.0%	
Law Directories:	31.6%	
Will use advertising		
Yellow pages:	24.0%	
Newspapers:	10.1%	
Journals and Magazines:	3.4%	
Law Directories:	31.8%	
Are specialized		Yes: 28.6%
		No: 71.4%
Are familiar with the amended ethics provision		Yes: 91.1%

Thus the survey information revealed that advertising is not presently being utilized on a widespread basis.

However, in the future, certain media use could expect to receive more attention from lawyers, *i.e.*, yellow pages and newspapers.

B. *Attitudes Toward Legal Service Advertising*

For the most part, the percentages of lawyers in different segments having a positive attitude toward legal service advertising was considerably lower in the instant project than in the Cavanaugh study. The one exception was among those attorneys in the urban areas who had practiced five years or less. The results of this comparison are set out in the table below.

Comparison of Iowa Attorneys Favoring Legal Services Advertising

	Per Cent Favoring Advertising in 1977	Per Cent Favoring Advertising in 1978
A. FIVE YEARS OR LESS		
Population:		
Over 60,000	48	55.0
2,500 to 60,000	61	36.7
Under 2,500	71	33.3

B. MORE THAN FIVE YEARS

Population:		
Over 60,000	38	17.1
2,500 to 60,000	49	19.6
Under 2,500	57	17.4

The stark differences suggested by this table indicate one or both of the following propositions: either the results of the 1977 study were inaccurate or lawyers' attitudes toward legal service advertising have changed markedly since 1977 toward disfavoring advertising.

The breakdown of the aggregated score for attitude toward advertising indicates that 14.9% of the lawyers responding have a highly negative attitude; 59.1% have a negative attitude; 23.2% have a positive attitude and 2.8% have a highly positive attitude.[56] The mean attitude score was in the negative category.[57]

Several cross tabulations[58] were performed to compare various break-

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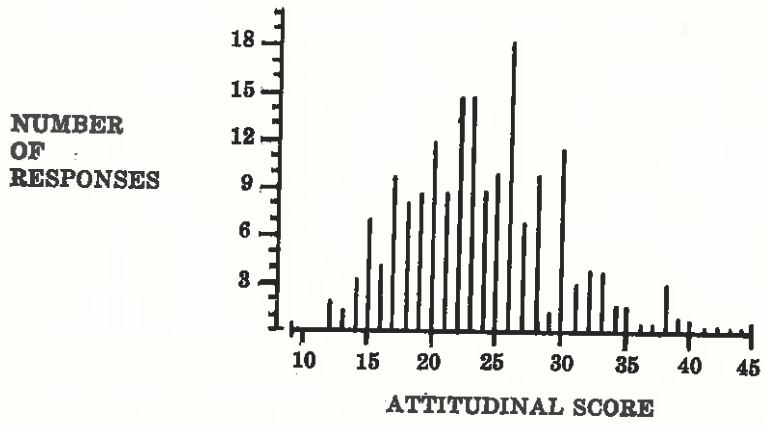
56.

FREQUENCY DISTRIBUTION OF ADVERTISING ATTITUDE SCORES



57. The mean was 23.5.

58. Cross tabulation involves a two-way table wherein one classification is broken down in terms of another. The following table is an example.

CROSS TABULATION OF ADVERTISING ATTITUDE SCORE AND SPECIALIZATION

	High Negative Attitude	Negative Attitude	Positive Attitude	High Positive Attitude	Totals
SPECIALIZATION					
YES	7	30	11	1	49
NO	20	76	31	4	131
TOTALS	27	106	42	5	180

downs of the survey population and their attitude toward legal service advertising. Using a 95% confidence level, it was apparent that the length of time a respondent had practiced was related to his attitudinal score.[58] Of those practicing five years or less, 58% had a highly negative attitude or a negative attitude and 42% had a positive or highly positive attitude. On the other hand, of those practicing more than five years, 82% had a negative or highly negative attitude and only 18% had a positive or highly positive attitude. A comparison of intention to use advertising in the future and attitude toward legal advertising showed a significant relationship.[60] Most of those planning to use advertising in the future favor advertising, while most of those not planning to advertise have a negative attitude. Such a result is not unexpected.

For a further discussion of cross tabulation see EMORY, *supra* note 35 at 357-58.

The chi square test is used to analyze a cross tabulation in an attempt to discover whether a significant difference exists between the subclassifications of one category in terms of the other category. From the above, then, the following question arises: can it be said that attorneys who are specialized have a different attitude than those who are not specialized. To answer this question one must make a null hypothesis, *i.e.*, there is no attitudinal difference based on specialization. If this hypothesis were true the table below would reflect in its figures the relationship between attitude and specialization.

HYPOTHETICAL RELATIONSHIP BETWEEN ADVERTISING ATTITUDE SCORE AND SPECIALIZATION

	High Negative Attitude	Negative Attitude	Positive Attitude	High Positive Attitude	Totals
SPECIALIZATION					
YES	13.5	53.0	21.0	2.5	49.0
NO	13.5	53.0	21.0	2.5	131.0
TOTALS	27.0	106.0	42.0	5.0	180.0

The chi square test measures the extent to which the table of actual cross tabulations varies from the table of cross tabulations representing the hypothetical situation. If the raw chi square is higher than the critical chi square, which is obtained from a chi square table, for a given significance level, the null hypothesis is rejected and the conclusion is drawn that there is a significant difference between the classifications. *See* MCELROY, *supra* note 50, at 152-56 and EMORY, *supra* note 35, at 382-85.

The computer program used for the instant study automatically provides a significance level for the raw chi square figure. This significance level indicates the probability that a systematic relationship exists between the two variables. Thus, a .99 significance means there is nearly a 100% surety that there is no difference between the classifications being compared. Conversely a .00 significance indicates nearly a 100% assurance that there is a systematic relationship between the variables. For purposes of the instant survey, a significance level of .95 was chosen. This means that in a cross tabulation with a significance of .05 or lower, it may be said that a systematic relationship between the classifications exists. Similarly, where the significance is .95 or greater, such a relationship will be said to be nonexistant. A significance between .05 and .95 indicates an inconclusive result. *See* NIE, *supra* note 55, at 223-24.

59. The significance was .001.

60. The significance was .000.

Five other cross tabulations were performed,[61] only one of which led to a definite conclusion. It was discovered that no significant difference existed between specialized attorneys attitudes, and the attitudes of those who were not specialized.[62]

C. *Attitude Toward and Awareness of the Amendments to the Code of Ethics*

A frequency distribution was also generated for attitudes toward the amendments to the code of ethics.[63] The mode, fifty-eight responses, occurred at the aggregate score of six. This score, the midpoint of the range of responses, represents a neutral attitude toward the amended disciplinary rule. Thus, 31.2% of the attorneys had a neutral attitude. Those lawyers with a score greater than six, indicating a positive attitude toward the code changes, numbered sixty-nine or 37.1%. The remaining fifty-nine practitioners, or 31.7% had a negative attitude. This distribution closely resembles a normal distribution, but was skewed slightly in favor of the code changes.

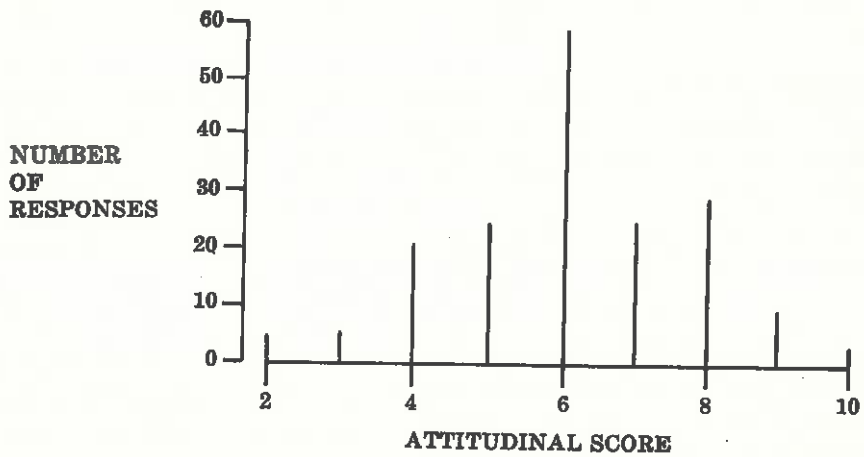
The only significant cross tabulation[64] dealing with the amended code

61. The following cross tabulations led to inclusive results: 1) the comparison of the attitude of those attorneys practicing five years or less and the size of the population center in which they practice (significance of .494); 2) the comparison of the attitude of those attorneys practicing more than five years and the size of the population center in which they practice (significance of .057); 3) the comparison of lawyers' attitudes and whether the attorney has used advertising (significance of .2); and 4) the comparison of lawyers' attitudes and the size of the population center in which they practiced (significance of .117).

62. The significance was .971.

63.

FREQUENCY DISTRIBUTION OF ETHICS CODE ATTITUDE SCORES



64. The following cross tabulations led to inconclusive results: 1) the comparison of attitude toward the code and the number of years in practice (significance of .838); 2) the comparison of the attitude toward the code among those attorneys practicing five years or less and the size

compared intention to advertise in the future and attitude toward the amended code. The resulting statistical significance of this comparison indicated there was no difference between attitude toward the code and intention to advertise in the future.[65]

D. *Reasons For Not Advertising*

Most of those who had not advertised gave their reasons in question eight of the questionnaire. These answers were placed into nine subjectively defined categories. The compilation of these answers indicated that by far the most common reason for not advertising was a lack of necessity:

	Respondents
Not necessary — enough work:	43
Unethical or unprofessional:	27
Unnecessary expense:	7
Did not believe in it:	6
Contrary to current community practice:	4
Bad image:	2
Intimidated by other bar members:	1
Others:	12
No answer:	9

IV. Conclusion

Based on the results of the survey and the statistical analysis, one can conclusively state that one of two mutually exclusive propositions is true: 1) the attitude of private practitioners in Iowa has changed during the past year, or 2) the findings of the previous Iowa study were invalid. In either event, the general attitude of Iowa practitioners is currently negative, although not highly negative on the average.

With respect to attitudes toward legal service advertising, there is a significant difference based on the number of years one has practiced: the longer, the more negative the attitude. Additionally, the size of community an attorney practices in can be said to correlate to a particular attitude toward legal service advertising: the larger the city, the less negative the attitude. Finally, attitude toward advertising does not vary with specialization.

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of the population center in which they practiced (significance of .924); 3) the comparison of the attitude toward the code among those attorneys practicing more than five years and the size of the population center in which they practiced (significance of .054); 4) the comparison of attitude toward the code and the size of the city in which the respondent practiced (significance of .20); 5) the comparison of attitude toward the code and whether the attorney was specialized (significance of .701); and 6) the comparison of attitude toward the code and whether the attorney had used advertising (significance of .451).

65. The significance was .997.

Among Iowa's private practitioners, 91% were familiar with the amendments to the code of ethics and the changes were looked upon favorably by 65% of the respondents.

While many extoll the virtues of advertising, less than one-third of Iowa private practitioners have availed themselves of legal services advertising. The apparent explanation for this is that most find advertising to be unnecessary.

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