**8.3: Solicitation**

*Sweet cream ladies, forward march, the world owes you a living. Sweet cream ladies, do your part, think of what you’re giving, to the lost and lonely people of the night.*[[1]](#footnote-0)

In addition to prohibiting advertising, bar associations historically also prohibited attorneys from “soliciting” clients, or approaching potential clients directly, rather than as members of the general public. For example, Canon 28 of the 1908 ABA Canons of Professional Ethics specifically proscribed attorneys from volunteering legal advice to a stranger or seeking out injured parties in the hope of providing legal advice.

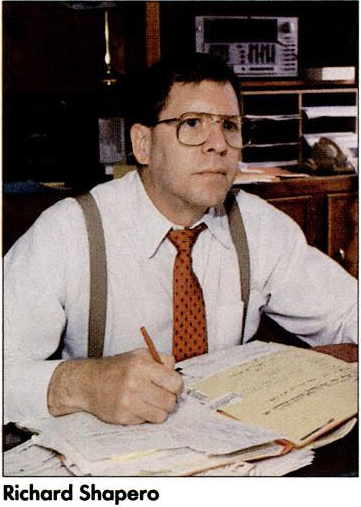
Indeed, bar associations typically monitored and punished solicitation considerably more aggressively than advertisement. The stated objection to solicitation was the concern that unscrupulous attorneys might take advantage of unsophisticated members of the public, who lacked the capacity to evaluate the quality of their legal services or the fairness of their fees. Of course, the bar associations were also dominated by successful attorneys at large firms, who tended to represent corporate defendants, rather than injured plaintiffs.

[**Model Rule 7.3: Solicitation of Clients**](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_7_3_direct_contact_with_prospective_clients/)

1. “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.
2. A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless the contact is with a:
   1. Lawyer;
   2. person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or
   3. person who routinely uses for business purposes the type of legal services offered by the lawyer.
3. A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (b), if:
   1. the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
   2. the solicitation involves coercion, duress or harassment.
4. This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

[**Model Rule 7.3: Comments**](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_7_3_direct_contact_with_prospective_clients/comment_on_rule_7_3/)

1. Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or the law firm’s pecuniary gain. A lawyer’s communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.
2. “Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self‑interest in the face of the lawyer’s presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.
3. Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.



[***Shapero v. Kentucky Bar Assn.*, 486 U.S. 466 (1988)**](https://scholar.google.com/scholar_case?case=10781928571449440206)

**Summary:** Shapero wanted to send a letter advertising his legal services to people with foreclosure actions filed against them. The Kentucky Supreme Court held that Model Rule of Professional Conduct 7.3 prohibited direct mail solicitation. The Supreme Court reversed, holding that a direct mail solicitation was no different from an advertisement, and was protected by the 1st Amendment. The dissent argued that the court had gone too far in limiting regulation of attorney advertising and solicitation, and that advertising would harm the profession.

JUSTICE BRENNAN announced the judgment of the Court and delivered the opinion of the Court as to Parts I and II and an opinion as to Part III in which JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE KENNEDY join.

This case presents the issue whether a State may, consistent with the First and Fourteenth Amendments, categorically prohibit lawyers from soliciting legal business for pecuniary gain by sending truthful and nondeceptive letters to potential clients known to face particular legal problems.

I

In 1985, petitioner, a member of Kentucky’s integrated Bar Association, applied to the Kentucky Attorneys Advertising Commission for approval of a letter that he proposed to send “to potential clients who have had a foreclosure suit filed against them.” The proposed letter read as follows:

It has come to my attention that your home is being foreclosed on. If this is true, you may be about to lose your home. Federal law may allow you to keep your home by ORDERING your creditor to STOP and give you more time to pay them.

You may call my office anytime from 8:30 a. m. to 5:00 p. m. for FREE information on how you can keep your home.

Call NOW, don't wait. It may surprise you what I may be able to do for you. Just call and tell me that you got this letter. Remember it is FREE, there is NO charge for calling.

The Commission did not find the letter false or misleading. Nevertheless, it declined to approve petitioner's proposal on the ground that a then-existing Kentucky Supreme Court Rule prohibited the mailing or delivery of written advertisements “precipitated by a specific event or occurrence involving or relating to the addressee or addressees as distinct from the general public.” The Commission registered its view that Rule 3.135(5)(b)(i)’s ban on targeted, direct-mail advertising violated the First Amendment — specifically the principles enunciated in *Zauderer* — and recommended that the Kentucky Supreme Court amend its Rules. Pursuing the Commission's suggestion, petitioner petitioned the Committee on Legal Ethics of the Kentucky Bar Association for an advisory opinion as to the Rule’s validity. Like the Commission, the Ethics Committee, in an opinion formally adopted by the Board of Governors of the Bar Association, did not find the proposed letter false or misleading, but nonetheless upheld Rule 3.135(5)(b) (i) on the ground that it was consistent with Rule 7.3 of the American Bar Association’s Model Rules of Professional Conduct.

On review of the Ethics Committee’s advisory opinion, the Kentucky Supreme Court felt “compelled by the decision in Zauderer to order Rule 3.135(5)(b)(i) deleted,” and replaced it with the ABA’s Rule 7.3.

The court did not specify either the precise infirmity in Rule 3.135(5)(b)(i) or how Rule 7.3 cured it. Rule 7.3, like its predecessor, prohibits targeted, direct-mail solicitation by lawyers for pecuniary gain, without a particularized finding that the solicitation is false or misleading. We granted certiorari to resolve whether such a blanket prohibition is consistent with the First Amendment and now reverse.

II

Lawyer advertising is in the category of constitutionally protected commercial speech. The First Amendment principles governing state regulation of lawyer solicitations for pecuniary gain are by now familiar: “Commercial speech that is not false or deceptive and does not concern unlawful activities may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest.” Since state regulation of commercial speech “may extend only as far as the interest it serves,” state rules that are designed to prevent the “potential for deception and confusion may be no broader than reasonably necessary to prevent the” perceived evil.

Our lawyer advertising cases have never distinguished among various modes of written advertising to the general public. Thus, Ohio could no more prevent Zauderer from mass-mailing to a general population his offer to represent women injured by the Dalkon Shield than it could prohibit his publication of the advertisement in local newspapers. Similarly, if petitioner’s letter is neither false nor deceptive, Kentucky could not constitutionally prohibit him from sending at large an identical letter opening with the query, “Is your home being foreclosed on?,” rather than his observation to the targeted individuals that “It has come to my attention that your home is being foreclosed on.” The drafters of Rule 7.3 apparently appreciated as much, for the Rule exempts from the ban “letters addressed or advertising circulars distributed generally to persons who are so situated that they might in general find such services useful.”

The court below disapproved petitioner’s proposed letter solely because it targeted only persons who were “known to need the legal services” offered in his letter, rather than the broader group of persons “so situated that they might in general find such services useful.” Generally, unless the advertiser is inept, the latter group would include members of the former. The only reason to disseminate an advertisement of particular legal services among those persons who are “so situated that they might in general find such services useful” is to reach individuals who actually “need legal services of the kind provided and advertised by the lawyer.” But the First Amendment does not permit a ban on certain speech merely because it is more efficient; the State may not constitutionally ban a particular letter on the theory that to mail it only to those whom it would most interest is somehow inherently objectionable.

The court below did not rely on any such theory. Rather, it concluded that the State’s blanket ban on all targeted, direct-mail solicitation was permissible because of the “serious potential for abuse inherent in direct solicitation by lawyers of potential clients known to need specific legal services.” The court observed:

Such solicitation subjects the prospective client to pressure from a trained lawyer in a direct personal way. It is entirely possible that the potential client may feel overwhelmed by the basic situation which caused the need for the specific legal services and may have seriously impaired capacity for good judgment, sound reason and a natural protective self-interest. Such a condition is full of the possibility of undue influence, overreaching and intimidation.

Of course, a particular potential client will feel equally “overwhelmed” by his legal troubles and will have the same “impaired capacity for good judgment” regardless of whether a lawyer mails him an untargeted letter or exposes him to a newspaper advertisement — concededly constitutionally protected activities — or instead mails a targeted letter. The relevant inquiry is not whether there exist potential clients whose “condition” makes them susceptible to undue influence, but whether the mode of communication poses a serious danger that lawyers will exploit any such susceptibility.

In assessing the potential for overreaching and undue influence, the mode of communication makes all the difference. Our decision in *Ohralik* that a State could categorically ban all in-person solicitation turned on two factors. First was our characterization of face-to-face solicitation as “a practice rife with possibilities for overreaching, invasion of privacy, the exercise of undue influence, and outright fraud.” Second, “unique difficulties” would frustrate any attempt at state regulation of in-person solicitation short of an absolute ban because such solicitation is “not visible or otherwise open to public scrutiny.” Targeted, direct-mail solicitation is distinguishable from the in-person solicitation in each respect.

Like print advertising, petitioner’s letter — and targeted, direct-mail solicitation generally — “poses much less risk of overreaching or undue influence” than does in-person solicitation. Neither mode of written communication involves “the coercive force of the personal presence of a trained advocate” or the “pressure on the potential client for an immediate yes-or-no answer to the offer of representation.” Unlike the potential client with a badgering advocate breathing down his neck, the recipient of a letter and the “reader of an advertisement can effectively avoid further bombardment of his sensibilities simply by averting his eyes.” A letter, like a printed advertisement (but unlike a lawyer), can readily be put in a drawer to be considered later, ignored, or discarded. In short, both types of written solicitation “convey information about legal services by means that are more conducive to reflection and the exercise of choice on the part of the consumer than is personal solicitation by an attorney.” Nor does a targeted letter invade the recipient’s privacy any more than does a substantively identical letter mailed at large. The invasion, if any, occurs when the lawyer discovers the recipient’s legal affairs, not when he confronts the recipient with the discovery.

Admittedly, a letter that is personalized (not merely targeted) to the recipient presents an increased risk of deception, intentional or inadvertent. It could, in certain circumstances, lead the recipient to overestimate the lawyer's familiarity with the case or could implicitly suggest that the recipient’s legal problem is more dire than it really is. Similarly, an inaccurately targeted letter could lead the recipient to believe she has a legal problem that she does not actually have or, worse yet, could offer erroneous legal advice.

But merely because targeted, direct-mail solicitation presents lawyers with opportunities for isolated abuses or mistakes does not justify a total ban on that mode of protected commercial speech. The State can regulate such abuses and minimize mistakes through far less restrictive and more precise means, the most obvious of which is to require the lawyer to file any solicitation letter with a state agency, giving the State ample opportunity to supervise mailings and penalize actual abuses. The “regulatory difficulties” that are “unique” to in-person lawyer solicitation — solicitation that is “not visible or otherwise open to public scrutiny” and for which it is “difficult or impossible to obtain reliable proof of what actually took place” — do not apply to written solicitations. The court below offered no basis for its “belief that submission of a blank form letter to the Advertising Commission does not provide a suitable protection to the public from overreaching, intimidation or misleading private targeted mail solicitation.” Its concerns were presumably those expressed by the ABA House of Delegates in its comment to Rule 7.3:

State lawyer discipline agencies struggle for resources to investigate specific complaints, much less for those necessary to screen lawyers’ mail solicitation material. Even if they could examine such materials, agency staff members are unlikely to know anything about the lawyer or about the prospective client's underlying problem. Without such knowledge they cannot determine whether the lawyer's representations are misleading.

The record before us furnishes no evidence that scrutiny of targeted solicitation letters will be appreciably more burdensome or less reliable than scrutiny of advertisements. As a general matter, evaluating a targeted advertisement does not require specific information about the recipient's identity and legal problems any more than evaluating a newspaper advertisement requires like information about all readers. If the targeted letter specifies facts that relate to particular recipients, the reviewing agency has innumerable options to minimize mistakes. It might, for example, require the lawyer to prove the truth of the fact stated; it could require the lawyer to explain briefly how he or she discovered the fact and verified its accuracy; or it could require the letter to bear a label identifying it as an advertisement, or directing the recipient how to report inaccurate or misleading letters. To be sure, a state agency or bar association that reviews solicitation letters might have more work than one that does not. But “our recent decisions involving commercial speech have been grounded in the faith that the free flow of commercial information is valuable enough to justify imposing on would-be regulators the costs of distinguishing the truthful from the false, the helpful from the misleading, and the harmless from the harmful.”

III

The validity of Rule 7.3 does not turn on whether petitioner’s letter itself exhibited any of the evils at which Rule 7.3 was directed. Since, however, the First Amendment overbreadth doctrine does not apply to professional advertising, we address respondent’s contentions that petitioner’s letter is particularly overreaching, and therefore unworthy of First Amendment protection. In that regard, respondent identifies two features of the letter before us that, in its view, coalesce to convert the proposed letter into “high pressure solicitation, overbearing solicitation,” which is not protected. First, respondent asserts that the letter’s liberal use of underscored, uppercase letters “fairly shouts at the recipient that he should employ Shapero.” Second, respondent objects that the letter contains assertions that “state no affirmative or objective fact,” but constitute “pure salesman puffery, enticement for the unsophisticated, which commits Shapero to nothing.”

The pitch or style of a letter's type and its inclusion of subjective predictions of client satisfaction might catch the recipient’s attention more than would a bland statement of purely objective facts in small type. But a truthful and non-deceptive letter, no matter how big its type and how much it speculates can never “shout at the recipient” or “grasp him by the lapels,” as can a lawyer engaging in face-to-face solicitation. The letter simply presents no comparable risk of overreaching. And so long as the First Amendment protects the right to solicit legal business, the State may claim no substantial interest in restricting truthful and nondeceptive lawyer solicitations to those least likely to be read by the recipient. Moreover, the First Amendment limits the State’s authority to dictate what information an attorney may convey in soliciting legal business. “The States may not place an absolute prohibition on certain types of potentially misleading information if the information may also be presented in a way that is not deceptive,” unless the State “asserts a substantial interest” that such a restriction would directly advance. Nor may a State impose a more particularized restriction without a similar showing. Aside from the interests that we have already rejected, respondent offers none.

To be sure, a letter may be misleading if it unduly emphasizes trivial or “relatively uninformative facts,” or offers overblown assurances of client satisfaction. Respondent does not argue before us that petitioner’s letter was misleading in those respects. Nor does respondent contend that the letter is false or misleading in any other respect. Of course, respondent is free to raise, and the Kentucky courts are free to consider, any such argument on remand.

The judgment of the Supreme Court of Kentucky is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

I agree with the Court that the reasoning in *Zauderer* supports the conclusion reached today. That decision, however, was itself the culmination of a line of cases built on defective premises and flawed reasoning. As today's decision illustrates, the Court has been unable or unwilling to restrain the logic of the underlying analysis within reasonable bounds. The resulting interference with important and valid public policies is so destructive that I believe the analytical framework itself should now be reexamined.

I

Zauderer held that the First Amendment was violated by a state rule that forbade attorneys to solicit or accept employment through advertisements containing information or advice regarding a specific legal problem. I dissented from this holding because I believed that our precedents permitted, and good judgment required, that we give greater deference to the State’s legitimate efforts to regulate advertising by their attorneys. Emphasizing the important differences between professional services and standardized consumer products, I concluded that unsolicited legal advice was not analogous to the free samples that are often used to promote sales in other contexts. First, the quality of legal services is typically more difficult for most laypersons to evaluate, and the consequences of a mistaken evaluation of the “free sample” may be much more serious. For that reason, the practice of offering unsolicited legal advice as a means of enticing potential clients into a professional relationship is much more likely to be misleading than superficially similar practices in the sale of ordinary consumer goods. Second, and more important, an attorney has an obligation to provide clients with complete and disinterested advice. The advice contained in unsolicited “free samples” is likely to be colored by the lawyer's own interest in drumming up business, a result that is sure to undermine the professional standards that States have a substantial interest in maintaining.

III

The roots of the error in our attorney advertising cases are a defective analogy between professional services and standardized consumer products and a correspondingly inappropriate skepticism about the States’ justifications for their regulations.

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. Restrictions on truthful advertising, which artificially interfere with the ability of suppliers to transmit price information to consumers, presumably reduce the efficiency of the mechanisms of supply and demand. Other factors being equal, this should cause or enable suppliers (in this case attorneys) to maintain a price/quality ratio in some of their services that is higher than would otherwise prevail. Although one could probably not test this hypothesis empirically, it is inherently plausible. Nor is it implausible to imagine that one effect of restrictions on lawyer advertising, and perhaps sometimes an intended effect, is to enable attorneys to charge their clients more for some services (of a given quality) than they would be able to charge absent the restrictions.

Assuming, arguendo, that the removal of advertising restrictions should lead in the short run to increased efficiency in the provision of legal services, I would not agree that we can safely assume the same effect in the long run. The economic argument against these restrictions ignores the delicate role they may play in preserving the norms of the legal profession. While it may be difficult to defend this role with precise economic logic, I believe there is a powerful argument in favor of restricting lawyer advertising and that this argument is at the very least not easily refuted by economic analysis.

One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper one’s selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market. There are sound reasons to continue pursuing the goal that is implicit in the traditional view of professional life. Both the special privileges incident to membership in the profession and the advantages those privileges give in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth. That goal is public service, which in the legal profession can take a variety of familiar forms. This view of the legal profession need not be rooted in romanticism or self-serving sanctimony, though of course it can be. Rather, special ethical standards for lawyers are properly understood as an appropriate means of restraining lawyers in the exercise of the unique power that they inevitably wield in a political system like ours.

It is worth recalling why lawyers are regulated at all, or to a greater degree than most other occupations, and why history is littered with failed attempts to extinguish lawyers as a special class. Operating a legal system that is both reasonably efficient and tolerably fair cannot be accomplished, at least under modern social conditions, without a trained and specialized body of experts. This training is one element of what we mean when we refer to the law as a “learned profession.” Such knowledge by its nature cannot be made generally available, and it therefore confers the power and the temptation to manipulate the system of justice for one's own ends. Such manipulation can occur in at least two obvious ways. One results from overly zealous representation of the client’s interests; abuse of the discovery process is one example whose causes and effects (if not its cure) is apparent. The second, and for present purposes the more relevant, problem is abuse of the client for the lawyer’s benefit. Precisely because lawyers must be provided with expertise that is both esoteric and extremely powerful, it would be unrealistic to demand that clients bargain for their services in the same arm’s-length manner that may be appropriate when buying an automobile or choosing a dry cleaner. Like physicians, lawyers are subjected to heightened ethical demands on their conduct towards those they serve. These demands are needed because market forces, and the ordinary legal prohibitions against force and fraud, are simply insufficient to protect the consumers of their necessary services from the peculiar power of the specialized knowledge that these professionals possess.

Imbuing the legal profession with the necessary ethical standards is a task that involves a constant struggle with the relentless natural force of economic self-interest. It cannot be accomplished directly by legal rules, and it certainly will not succeed if sermonizing is the strongest tool that may be employed. Tradition and experiment have suggested a number of formal and informal mechanisms, none of which is adequate by itself and many of which may serve to reduce competition (in the narrow economic sense) among members of the profession. A few examples include the great efforts made during this century to improve the quality and breadth of the legal education that is required for admission to the bar; the concomitant attempt to cultivate a subclass of genuine scholars within the profession; the development of bar associations that aspire to be more than trade groups; strict disciplinary rules about conflicts of interest and client abandonment; and promotion of the expectation that an attorney's history of voluntary public service is a relevant factor in selecting judicial candidates.

Restrictions on advertising and solicitation by lawyers properly and significantly serve the same goal. Such restrictions act as a concrete, day-to-day reminder to the practicing attorney of why it is improper for any member of this profession to regard it as a trade or occupation like any other. There is no guarantee, of course, that the restrictions will always have the desired effect, and they are surely not a sufficient means to their proper goal. Given their inevitable anticompetitive effects, moreover, they should not be thoughtlessly retained or insulated from skeptical criticism. Appropriate modifications have been made in the light of reason and experience, and other changes may be suggested in the future.

In my judgment, however, fairly severe constraints on attorney advertising can continue to play an important role in preserving the legal profession as a genuine profession. Whatever may be the exactly appropriate scope of these restrictions at a given time and place, this Court’s recent decisions reflect a myopic belief that “consumers,” and thus our Nation, will benefit from a constitutional theory that refuses to recognize either the essence of professionalism or its fragile and necessary foundations. In one way or another, time will uncover the folly of this approach. I can only hope that the Court will recognize the danger before it is too late to effect a worthwhile cure.

**Questions:**

1. Richard D. Shapero died at his home in Louisville, Kentucky on December 31, 2006, at 63. According to his [obituary](https://www.legacy.com/obituaries/louisville/obituary.aspx?n=richard-d-shapero&pid=20505492), “Richard was an attorney and Pin Ball Wizard. Richard’s U.S. Supreme Court Case, Shapero vs. Kentucky Bar Association established laws regarding lawyer advertising in the United States.” His colleagues also [remembered](http://www.louisvilledivorce.com/farewell-legal-advertising-trailblazer-richard-d-shapero) him fondly, “As we were pondering our past and setting goals for our future, Richard D. Shapero died yesterday at age 63. He will always be remembered for taking the Kentucky Bar Association to the United States Supreme Court, which resulted in a significant opinion striking down bar restrictions on lawyer advertising. A gutsy guy, lightyears ahead of his time, he enjoyed the business side of law much more than the actual practice of law. His forte was bringing in P.I. cases and then farming them out to other attorneys. His trademark, long before other lawfirms thought of tag lines or trademarks, was ‘I Know The Experts.’ His early TV ads made traditional lawyers cringe, but he spoke a language lay people understood and they hired him.”
2. The majority found a direct mail solicitation indistinguishable from an advertisement to the public. Do you agree? Is it reasonable to be more concerned about solicitation of potential clients who appear to need legal assistance than advertisements directed at the general public? Or perhaps we should encourage attorneys to offer legal services to potential clients who are most in need of them?
3. The dissent argues that advertisements and solicitation are debasing the profession and its ethical standards. Have its concerns borne fruit?

**Further Reading:**

* [David O. Stewart & Scott Nelson, *Hawking Legal Services*, ABA Journal, August 1, 1988, at 44](https://books.google.com/books?id=XOjjli7ncX8C&pg=PA44&lpg=PA44&dq=%22Richard+D.+SHAPERO%22&source=bl&ots=GG77fC5vud&sig=ACfU3U0pa8Ypi8HDbHMz-d0He3U0nVtR6w&hl=en&sa=X&ved=2ahUKEwitzI2_lK_hAhVLPq0KHaaDBiY4ChDoATABegQICRAB#v=onepage&q=%22Richard%20D.%20SHAPERO%22&f=false)

[***Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995)**](https://scholar.google.com/scholar_case?case=9524077868218834965)

Justice O’Connor delivered the opinion of the Court.

Rules of the Florida Bar prohibit personal injury lawyers from sending targeted direct-mail solicitations to victims and their relatives for 30 days following an accident or disaster. This case asks us to consider whether such Rules violate the First and Fourteenth Amendments of the Constitution. We hold that in the circumstances presented here, they do not.

I

In 1989, the Florida Bar completed a 2-year study of the effects of lawyer advertising on public opinion. After conducting hearings, commissioning surveys, and reviewing extensive public commentary, the Bar determined that several changes to its advertising rules were in order. In late 1990, the Florida Supreme Court adopted the Bar’s proposed amendments with some modifications. Two of these amendments are at issue in this case. Rule 4-7.4(b)(1) provides that “a lawyer shall not send, or knowingly permit to be sent, a written communication to a prospective client for the purpose of obtaining professional employment if: (A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication." Rule 4-7.8(a) states that “a lawyer shall not accept referrals from a lawyer referral service unless the service: (1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer.” Together, these Rules create a brief 30-day blackout period after an accident during which lawyers may not, directly or indirectly, single out accident victims or their relatives in order to solicit their business.

In March 1992, G. Stewart McHenry and his wholly owned lawyer referral service, Went For It, Inc., filed this action for declaratory and injunctive relief in the United States District Court for the Middle District of Florida challenging Rules 4-7.4(b)(1) and 4-7.8(a) as violative of the First and Fourteenth Amendments to the Constitution. McHenry alleged that he routinely sent targeted solicitations to accident victims or their survivors within 30 days after accidents and that he wished to continue doing so in the future. Went For It, Inc., represented that it wished to contact accident victims or their survivors within 30 days of accidents and to refer potential clients to participating Florida lawyers. In October 1992, McHenry was disbarred for reasons unrelated to this suit. Another Florida lawyer, John T. Blakely, was substituted in his stead.

The District Court referred the parties’ competing summary judgment motions to a Magistrate Judge, who concluded that the Bar had substantial government interests, predicated on a concern for professionalism, both in protecting the personal privacy and tranquility of recent accident victims and their relatives and in ensuring that these individuals do not fall prey to undue influence or overreaching. Citing the Bar’s extensive study, the Magistrate Judge found that the Rules directly serve those interests and sweep no further than reasonably necessary. The Magistrate recommended that the District Court grant the Bar’s motion for summary judgment on the ground that the Rules pass constitutional muster.

The District Court rejected the Magistrate Judge’s report and recommendations and entered summary judgment for the plaintiffs, relying on *Bates v. State Bar of Ariz.* and subsequent cases. The Eleventh Circuit affirmed on similar grounds. The panel noted, in its conclusion, that it was “disturbed that *Bates* and its progeny require the decision” that it reached. We granted certiorari, and now reverse.

II

A

Nearly two decades of cases have built upon the foundation laid by *Bates*. It is now well established that lawyer advertising is commercial speech and, as such, is accorded a measure of First Amendment protection. Such First Amendment protection, of course, is not absolute. We have always been careful to distinguish commercial speech from speech at the First Amendment's core. “Commercial speech enjoys a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, and is subject to modes of regulation that might be impermissible in the realm of noncommercial expression.” We have observed that “to require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment’s guarantee with respect to the latter kind of speech.”

Mindful of these concerns, we engage in “intermediate” scrutiny of restrictions on commercial speech, analyzing them under the framework set forth in *Central Hudson*. Under *Central Hudson*, the government may freely regulate commercial speech that concerns unlawful activity or is misleading. Commercial speech that falls into neither of those categories, like the advertising at issue here, may be regulated if the government satisfies a test consisting of three related prongs: First, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be “narrowly drawn.”

B

The Bar asserts that it has a substantial interest in protecting the privacy and tranquility of personal injury victims and their loved ones against intrusive, unsolicited contact by lawyers. This interest obviously factors into the Bar’s paramount (and repeatedly professed) objective of curbing activities that “negatively affect the administration of justice.” Because direct-mail solicitations in the wake of accidents are perceived by the public as intrusive, the Bar argues, the reputation of the legal profession in the eyes of Floridians has suffered commensurately. The regulation, then, is an effort to protect the flagging reputations of Florida lawyers by preventing them from engaging in conduct that, the Bar maintains, “is universally regarded as deplorable and beneath common decency because of its intrusion upon the special vulnerability and private grief of victims or their families.”

We have little trouble crediting the Bar’s interest as substantial. On various occasions we have accepted the proposition that “States have a compelling interest in the practice of professions within their boundaries, and as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions.” Our precedents also leave no room for doubt that “the protection of potential clients’ privacy is a substantial state interest.” In other contexts, we have consistently recognized that “the State’s interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.” Indeed, we have noted that “a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions.”

Under *Central Hudson*’s second prong, the State must demonstrate that the challenged regulation “advances the Government’s interest in a direct and material way.” That burden, we have explained, “is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.”

The Bar submitted a 106-page summary of its 2-year study of lawyer advertising and solicitation to the District Court. That summary contains data—both statistical and anecdotal—supporting the Bar’s contentions that the Florida public views direct-mail solicitations in the immediate wake of accidents as an intrusion on privacy that reflects poorly upon the profession. As of June 1989, lawyers mailed 700,000 direct solicitations in Florida annually, 40% of which were aimed at accident victims or their survivors. A survey of Florida adults commissioned by the Bar indicated that Floridians “have negative feelings about those attorneys who use direct mail advertising.” Fifty-four percent of the general population surveyed said that contacting persons concerning accidents or similar events is a violation of privacy. A random sampling of persons who received direct-mail advertising from lawyers in 1987 revealed that 45% believed that directmail solicitation is “designed to take advantage of gullible or unstable people”; 34% found such tactics “annoying or irritating”; 26% found it “an invasion of your privacy”; and 24% reported that it “made you angry.” Significantly, 27% of direct-mail recipients reported that their regard for the legal profession and for the judicial process as a whole was “lower” as a result of receiving the direct mail.

The anecdotal record mustered by the Bar is noteworthy for its breadth and detail. With titles like “Scavenger Lawyers” and “Solicitors Out of Bounds,” newspaper editorial pages in Florida have burgeoned with criticism of Florida lawyers who send targeted direct mail to victims shortly after accidents. The study summary also includes page upon page of excerpts from complaints of direct-mail recipients. For example, a Florida citizen described how he was “appalled and angered by the brazen attempt” of a law firm to solicit him by letter shortly after he was injured and his fiancee was killed in an auto accident. Another found it “despicable and inexcusable” that a Pensacola lawyer wrote to his mother three days after his father’s funeral. Another described how she was “astounded” and then “very angry” when she received a solicitation following a minor accident. Still another described as “beyond comprehension” a letter his nephew’s family received the day of the nephew’s funeral. One citizen wrote, “I consider the unsolicited contact from you after my child’s accident to be of the rankest form of ambulance chasing and in incredibly poor taste. I cannot begin to express with my limited vocabulary the utter contempt in which I hold you and your kind.”

In light of this showing—which respondents at no time refuted, save by the conclusory assertion that the Rule lacked “any factual basis”—we conclude that the Bar has satisfied the second prong of the *Central Hudson* test. In dissent, Justice Kennedy complains that we have before us few indications of the sample size or selection procedures employed by Magid Associates (a nationally renowned consulting firm) and no copies of the actual surveys employed. As stated, we believe the evidence adduced by the Bar is sufficient. In any event, we do not read our case law to require that empirical data come to us accompanied by a surfeit of background information. Indeed, in other First Amendment contexts, we have permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether, or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and “simple common sense.” After scouring the record, we are satisfied that the ban on directmail solicitation in the immediate aftermath of accidents targets a concrete, nonspeculative harm.

In reaching a contrary conclusion, the Court of Appeals determined that this case was governed squarely by *Shapero*. Making no mention of the Bar’s study, the court concluded that “a targeted letter does not invade the recipient’s privacy any more than does a substantively identical letter mailed at large. The invasion, if any, occurs when the lawyer discovers the recipient’s legal affairs, not when he confronts the recipient with the discovery.” In many cases, the Court of Appeals explained, “this invasion of privacy will involve no more than reading the newspaper.”

While some of *Shapero*’s language might be read to support the Court of Appeals’ interpretation, *Shapero* differs in several fundamental respects from the case before us. First and foremost, *Shapero*’s treatment of privacy was casual. Contrary to the dissent’s suggestions, the State in *Shapero* did not seek to justify its regulation as a measure undertaken to prevent lawyers’ invasions of privacy interests. Rather, the State focused exclusively on the special dangers of overreaching inhering in targeted solicitations. Second, in contrast to this case, *Shapero* dealt with a broad ban on all direct-mail solicitations, whatever the time frame and whoever the recipient. Finally, the State in *Shapero* assembled no evidence attempting to demonstrate any actual harm caused by targeted direct mail. The Court rejected the State’s effort to justify a prophylactic ban on the basis of blanket, untested assertions of undue influence and overreaching. Because the State did not make a privacy-based argument at all, its empirical showing on that issue was similarly infirm.

We find the Court’s perfunctory treatment of privacy in *Shapero* to be of little utility in assessing this ban on targeted solicitation of victims in the immediate aftermath of accidents. While it is undoubtedly true that many people find the image of lawyers sifting through accident and police reports in pursuit of prospective clients unpalatable and invasive, this case targets a different kind of intrusion. The Bar has argued, and the record reflects, that a principal purpose of the ban is “protecting the personal privacy and tranquility of Florida’s citizens from crass commercial intrusion by attorneys upon their personal grief in times of trauma.” The intrusion targeted by the Bar’s regulation stems not from the fact that a lawyer has learned about an accident or disaster, but from the lawyer’s confrontation of victims or relatives with such information, while wounds are still open, in order to solicit their business. In this respect, an untargeted letter mailed to society at large is different in kind from a targeted solicitation; the untargeted letter involves no willful or knowing affront to or invasion of the tranquility of bereaved or injured individuals and simply does not cause the same kind of reputational harm to the profession unearthed by the Bar’s study.

The purpose of the 30-day targeted direct-mail ban is to forestall the outrage and irritation with the state-licensed legal profession that the practice of direct solicitation only days after accidents has engendered. The Bar is concerned not with citizens’ “offense” in the abstract, but with the demonstrable detrimental effects that such “offense” has on the profession it regulates. Moreover, the harm posited by the Bar is as much a function of simple receipt of targeted solicitations within days of accidents as it is a function of the letters’ contents. Throwing the letter away shortly after opening it may minimize the latter intrusion, but it does little to combat the former.

Passing to *Central Hudson*’s third prong, we examine the relationship between the Bar’s interests and the means chosen to serve them. With respect to this prong, the differences between commercial speech and noncommercial speech are manifest. The “least restrictive means” test has no role in the commercial speech context. “What our decisions require,” instead, “is a fit between the legislature’s ends and the means chosen to accomplish those ends, a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served, that employs not necessarily the least restrictive means, but a means narrowly tailored to achieve the desired objective.” Of course, we do not equate this test with the less rigorous obstacles of rational basis review; in *Cincinnati v. Discovery*, for example, we observed that the existence of “numerous and obvious less-burdensome alternatives to the restriction on commercial speech is certainly a relevant consideration in determining whether the fit between ends and means is reasonable.”

Respondents levy a great deal of criticism, at the scope of the Bar’s restriction on targeted mail. “By prohibiting written communications to all people, whatever their state of mind,” respondents charge, the Rule “keeps useful information from those accident victims who are ready, willing and able to utilize a lawyer’s advice.” This criticism may be parsed into two components. First, the Rule does not distinguish between victims in terms of the severity of their injuries. According to respondents, the Rule is unconstitutionally overinclusive insofar as it bans targeted mailings even to citizens whose injuries or grief are relatively minor. Second, the Rule may prevent citizens from learning about their legal options, particularly at a time when other actors—opposing counsel and insurance adjusters—may be clamoring for victims’ attentions. Any benefit arising from the Bar’s regulation, respondents implicitly contend, is outweighed by these costs.

We are not persuaded by respondents’ allegations of constitutional infirmity. We find little deficiency in the ban’s failure to distinguish among injured Floridians by the severity of their pain or the intensity of their grief. Indeed, it is hard to imagine the contours of a regulation that might satisfy respondents on this score. Rather than drawing difficult lines on the basis that some injuries are “severe” and some situations appropriate (and others, presumably, inappropriate) for grief, anger, or emotion, the Bar has crafted a ban applicable to all postaccident or disaster solicitations for a brief 30-day period. Unlike respondents, we do not see “numerous and obvious less-burdensome alternatives” to Florida’s short temporal ban. The Bar’s rule is reasonably well tailored to its stated objective of eliminating targeted mailings whose type and timing are a source of distress to Floridians, distress that has caused many of them to lose respect for the legal profession.

Respondents’ second point would have force if the Bar’s Rule were not limited to a brief period and if there were not many other ways for injured Floridians to learn about the availability of legal representation during that time. Our lawyer advertising cases have afforded lawyers a great deal of leeway to devise innovative ways to attract new business. Florida permits lawyers to advertise on prime-time television and radio as well as in newspapers and other media. They may rent space on billboards. They may send untargeted letters to the general population, or to discrete segments thereof. There are, of course, pages upon pages devoted to lawyers in the Yellow Pages of Florida telephone directories. These listings are organized alphabetically and by area of specialty. These ample alternative channels for receipt of information about the availability of legal representation during the 30-day period following accidents may explain why, despite the ample evidence, testimony, and commentary submitted by those favoring (as well as opposing) unrestricted direct-mail solicitation, respondents have not pointed to—and we have not independently found—a single example of an individual case in which immediate solicitation helped to avoid, or failure to solicit within 30 days brought about, the harms that concern the dissent. In fact, the record contains considerable empirical survey information suggesting that Floridians have little difficulty finding a lawyer when they need one. Finding no basis to question the commonsense conclusion that the many alternative channels for communicating necessary information about attorneys are sufficient, we see no defect in Florida’s regulation.

III

Speech by professionals obviously has many dimensions. There are circumstances in which we will accord speech by attorneys on public issues and matters of legal representation the strongest protection our Constitution has to offer. This case, however, concerns pure commercial advertising, for which we have always reserved a lesser degree of protection under the First Amendment. Particularly because the standards and conduct of state-licensed lawyers have traditionally been subject to extensive regulation by the States, it is all the more appropriate that we limit our scrutiny of state regulations to a level commensurate with the “subordinate position” of commercial speech in the scale of First Amendment values.

We believe that the Bar’s 30-day restriction on targeted direct-mail solicitation of accident victims and their relatives withstands scrutiny under the three-pronged Central Hudson test that we have devised for this context. The Bar has substantial interest both in protecting injured Floridians from invasive conduct by lawyers and in preventing the erosion of confidence in the profession that such repeated invasions have engendered. The Bar’s proffered study, unrebutted by respondents below, provides evidence indicating that the harms it targets are far from illusory. The palliative devised by the Bar to address these harms is narrow both in scope and in duration. The Constitution, in our view, requires nothing more.

Justice Kennedy, with whom Justice Stevens, Justice Souter, and Justice Ginsburg join, dissenting.

Attorneys who communicate their willingness to assist potential clients are engaged in speech protected by the First and Fourteenth Amendments. The Court today undercuts this guarantee in an important class of cases and unsettles leading First Amendment precedents, at the expense of those victims most in need of legal assistance. With all respect for the Court, in my view its solicitude for the privacy of victims and its concern for our profession are misplaced and self-defeating, even upon the Court’s own premises.

I take it to be uncontroverted that when an accident results in death or injury, it is often urgent at once to investigate the occurrence, identify witnesses, and preserve evidence. Vital interests in speech and expression are, therefore, at stake when by law an attorney cannot direct a letter to the victim or the family explaining this simple fact and offering competent legal assistance. Meanwhile, represented and better informed parties, or parties who have been solicited in ways more sophisticated and indirect, may be at work. Indeed, these parties, either themselves or by their attorneys, investigators, and adjusters, are free to contact the unrepresented persons to gather evidence or offer settlement. This scheme makes little sense. As is often true when the law makes little sense, it is not first principles but their interpretation and application that have gone awry.

Although I agree with the Court that the case can be resolved by following the three-part inquiry we have identified to assess restrictions on commercial speech, a preliminary observation is in order. Speech has the capacity to convey complex substance, yielding various insights and interpretations depending upon the identity of the listener or the reader and the context of its transmission. It would oversimplify to say that what we consider here is commercial speech and nothing more, for in many instances the banned communications may be vital to the recipients’ right to petition the courts for redress of grievances. The complex nature of expression is one reason why even so-called commercial speech has become an essential part of the public discourse the First Amendment secures. If our commercial speech rules are to control this case, then, it is imperative to apply them with exacting care and fidelity to our precedents, for what is at stake is the suppression of information and knowledge that transcends the financial self-interests of the speaker.

I

As the Court notes, the first of the *Central Hudson* factors to be considered is whether the interest the State pursues in enacting the speech restriction is a substantial one. The State says two different interests meet this standard. The first is the interest “in protecting the personal privacy and tranquility” of the victim and his or her family. As the Court notes, that interest has recognition in our decisions as a general matter; but it does not follow that the privacy interest in the cases the majority cites is applicable here. The problem the Court confronts, and cannot overcome, is our recent decision in *Shapero*. In assessing the importance of the interest in that solicitation case, we made an explicit distinction between direct, in-person solicitations and direct-mail solicitations. *Shapero*, like this case, involved a direct-mail solicitation, and there the State recited its fears of “overreaching and undue influence.” We found, however, no such dangers presented by direct-mail advertising. We reasoned that “a letter, like a printed advertisement (but unlike a lawyer), can readily be put in a drawer to be considered later, ignored, or discarded. We pointed out that “the relevant inquiry is not whether there exist potential clients whose ‘condition’ makes them susceptible to undue influence, but whether the mode of communication poses a serious danger that lawyers will exploit any such susceptibility.” In assessing the substantiality of the evils to be prevented, we concluded that “the mode of communication makes all the difference.” The direct mail in *Shapero* did not present the justification for regulation of speech presented in *Ohralik*.

To avoid the controlling effect of *Shapero* in the case before us, the Court seeks to declare that a different privacy interest is implicated. As it sees the matter, the substantial concern is that victims or their families will be offended by receiving a solicitation during their grief and trauma. But we do not allow restrictions on speech to be justified on the ground that the expression might offend the listener. On the contrary, we have said that these “are classically not justifications validating the suppression of expression protected by the First Amendment.” And in *Zauderer*, where we struck down a ban on attorney advertising, we held that “the mere possibility that some members of the population might find advertising offensive cannot justify suppressing it. The same must hold true for advertising that some members of the bar might find beneath their dignity.”

We have applied this principle to direct-mail cases as well as with respect to general advertising, noting that the right to use the mails is protected by the First Amendment. In *Bolger*, we held that a statute designed to “shield recipients of mail from materials that they are likely to find offensive” furthered an interest of “little weight,” noting that “we have consistently held that the fact that protected speech may be offensive to some does not justify its suppression.” It is only where an audience is captive that we will assure its protection from some offensive speech. Outside that context, “we have never held that the Government itself can shut off the flow of mailings to protect those recipients who might potentially be offended.” The occupants of a household receiving mailings are not a captive audience, and the asserted interest in preventing their offense should be no more controlling here than in our prior cases. All the recipient of objectionable mailings need do is to take “the short, though regular, journey from mail box to trash can.” As we have observed, this is “an acceptable burden, at least so far as the Constitution is concerned.” If these cases forbidding restrictions on speech that might be offensive are to be overruled, the Court should say so.

In the face of these difficulties of logic and precedent, the State and the opinion of the Court turn to a second interest: protecting the reputation and dignity of the legal profession. The argument is, it seems fair to say, that all are demeaned by the crass behavior of a few. The argument takes a further step in the amicus brief filed by the Association of Trial Lawyers of America. There it is said that disrespect for the profession from this sort of solicitation (but presumably from no other sort of solicitation) results in lower jury verdicts. In a sense, of course, these arguments are circular. While disrespect will arise from an unethical or improper practice, the majority begs a most critical question by assuming that direct-mail solicitations constitute such a practice. The fact is, however, that direct solicitation may serve vital purposes and promote the administration of justice, and to the extent the bar seeks to protect lawyers’ reputations by preventing them from engaging in speech some deem offensive, the State is doing nothing more (as amicus the Association of Trial Lawyers of America is at least candid enough to admit) than manipulating the public’s opinion by suppressing speech that informs us how the legal system works. The disrespect argument thus proceeds from the very assumption it tries to prove, which is to say that solicitations within 30 days serve no legitimate purpose. This, of course, is censorship pure and simple; and censorship is antithetical to the first principles of free expression.

II

Even were the interests asserted substantial, the regulation here fails the second part of the *Central Hudson* test, which requires that the dangers the State seeks to eliminate be real and that a speech restriction or ban advance that asserted state interest in a direct and material way. The burden of demonstrating the reality of the asserted harm rests on the State. Slight evidence in this regard does not mean there is sufficient evidence to support the claims. Here, what the State has offered falls well short of demonstrating that the harms it is trying to redress are real, let alone that the regulation directly and materially advances the State’s interests. The parties and the Court have used the term “Summary of Record” to describe a document prepared by the Florida Bar (Bar), one of the adverse parties, and submitted to the District Court in this case. This document includes no actual surveys, few indications of sample size or selection procedures, no explanations of methodology, and no discussion of excluded results. There is no description of the statistical universe or scientific framework that permits any productive use of the information the so-called Summary of Record contains. The majority describes this anecdotal matter as “noteworthy for its breadth and detail,” but when examined, it is noteworthy for its incompetence. The selective synopses of unvalidated studies deal, for the most part, with television advertising and phone book listings, and not direct-mail solicitations. Although there may be issues common to various kinds of attorney advertising and solicitation, it is not clear what would follow from that limited premise, unless the Court means by its decision to call into question all forms of attorney advertising. The most generous reading of this document permits identification of 34 pages on which direct-mail solicitation is arguably discussed. Of these, only two are even a synopsis of a study of the attitudes of Floridians towards such solicitations. The bulk of the remaining pages include comments by lawyers about direct mail (some of them favorable), excerpts from citizen complaints about such solicitation, and a few excerpts from newspaper articles on the topic. Our cases require something more than a few pages of self-serving and unsupported statements by the State to demonstrate that a regulation directly and materially advances the elimination of a real harm when the State seeks to suppress truthful and nondeceptive speech.

It is telling that the essential thrust of all the material adduced to justify the State’s interest is devoted to the reputational concerns of the Bar. It is not at all clear that this regulation advances the interest of protecting persons who are suffering trauma and grief, and we are cited to no material in the record for that claim. Indeed, when asked at oral argument what a “typical injured plaintiff gets in the mail,” the Bar’s lawyer replied: “That's not in the record, and I don't know the answer to that question.” Having declared that the privacy interest is one both substantial and served by the regulation, the Court ought not to be excused from justifying its conclusion.

III

The insufficiency of the regulation to advance the State’s interest is reinforced by the third inquiry necessary in this analysis. Were it appropriate to reach the third part of the *Central Hudson* test, it would be clear that the relationship between the Bar’s interests and the means chosen to serve them is not a reasonable fit. The Bar’s rule creates a flat ban that prohibits far more speech than necessary to serve the purported state interest. Even assuming that interest were legitimate, there is a wild disproportion between the harm supposed and the speech ban enforced. It is a disproportion the Court does not bother to discuss, but our speech jurisprudence requires that it do so.

To begin with, the ban applies with respect to all accidental injuries, whatever their gravity. The Court’s purported justification for the excess of regulation in this respect is the difficulty of drawing lines between severe and less serious injuries, but making such distinctions is not important in this analysis. Even were it significant, the Court’s assertion is unconvincing. After all, the criminal law routinely distinguishes degrees of bodily harm, and if that delineation is permissible and workable in the criminal context, it should not be “hard to imagine the contours of a regulation” that satisfies the reasonable fit requirement.

There is, moreover, simply no justification for assuming that in all or most cases an attorney’s advice would be unwelcome or unnecessary when the survivors or the victim must at once begin assessing their legal and financial position in a rational manner. With regard to lesser injuries, there is little chance that for any period, much less 30 days, the victims will become distraught upon hearing from an attorney. It is, in fact, more likely a real risk that some victims might think no attorney will be interested enough to help them. It is at this precise time that sound legal advice may be necessary and most urgent.

Even as to more serious injuries, the State's argument fails, since it must be conceded that prompt legal representation is essential where death or injury results from accidents. The only seeming justification for the State's restriction is the one the Court itself offers, which is that attorneys can and do resort to other ways of communicating important legal information to potential clients. Quite aside from the latent protectionism for the established bar that the argument discloses, it fails for the more fundamental reason that it concedes the necessity for the very representation the attorneys solicit and the State seeks to ban. The accident victims who are prejudiced to vindicate the State’s purported desire for more dignity in the legal profession will be the very persons who most need legal advice, for they are the victims who, because they lack education, linguistic ability, or familiarity with the legal system, are unable to seek out legal services.

The reasonableness of the State’s chosen methods for redressing perceived evils can be evaluated, in part, by a commonsense consideration of other possible means of regulation that have not been tried. Here, the Court neglects the fact that this problem is largely self-policing: Potential clients will not hire lawyers who offend them. And even if a person enters into a contract with an attorney and later regrets it, Florida, like some other States, allows clients to rescind certain contracts with attorneys within a stated time after they are executed. The State’s restriction deprives accident victims of information which may be critical to their right to make a claim for compensation for injuries. The telephone book and general advertisements may serve this purpose in part; but the direct solicitation ban will fall on those who most need legal representation: for those with minor injuries, the victims too ill informed to know an attorney may be interested in their cases; for those with serious injuries, the victims too ill informed to know that time is of the essence if counsel is to assemble evidence and warn them not to enter into settlement negotiations or evidentiary discussions with investigators for opposing parties. One survey reports that over a recent 5-year period, 68% of the American population consulted a lawyer. The use of modern communication methods in a timely way is essential if clients who make up this vast demand are to be advised and informed of all of their choices and rights in selecting an attorney. The very fact that some 280,000 direct-mail solicitations are sent to accident victims and their survivors in Florida each year is some indication of the efficacy of this device. Nothing in the Court’s opinion demonstrates that these efforts do not serve some beneficial role. A solicitation letter is not a contract. Nothing in the record shows that these communications do not at the least serve the purpose of informing the prospective client that he or she has a number of different attorneys from whom to choose, so that the decision to select counsel, after an interview with one or more interested attorneys, can be deliberate and informed. And if these communications reveal the social costs of the tort system as a whole, then efforts can be directed to reforming the operation of that system, not to suppressing information about how the system works. The Court’s approach, however, does not seem to be the proper way to begin elevating the honor of the profession.

IV

It is most ironic that, for the first time since *Bates v. State Bar of Arizona*, the Court now orders a major retreat from the constitutional guarantees for commercial speech in order to shield its own profession from public criticism. Obscuring the financial aspect of the legal profession from public discussion through direct-mail solicitation, at the expense of the least sophisticated members of society, is not a laudable constitutional goal. There is no authority for the proposition that the Constitution permits the State to promote the public image of the legal profession by suppressing information about the profession’s business aspects. If public respect for the profession erodes because solicitation distorts the idea of the law as most lawyers see it, it must be remembered that real progress begins with more rational speech, not less. I agree that if this amounts to mere “sermonizing,” the attempt may be futile. The guiding principle, however, is that full and rational discussion furthers sound regulation and necessary reform. The image of the profession cannot be enhanced without improving the substance of its practice. The objective of the profession is to ensure that “the ethical standards of lawyers are linked to the service and protection of clients.”

Today’s opinion is a serious departure, not only from our prior decisions involving attorney advertising, but also from the principles that govern the transmission of commercial speech. The Court’s opinion reflects a new-found and illegitimate confidence that it, along with the Supreme Court of Florida, knows what is best for the Bar and its clients. Self-assurance has always been the hallmark of a censor. That is why under the First Amendment the public, not the State, has the right and the power to decide what ideas and information are deserving of their adherence. “The general rule is that the speaker and the audience, not the government, assess the value of the information presented.” By validating Florida’s rule, today’s majority is complicit in the Bar's censorship. For these reasons, I dissent from the opinion of the Court and from its judgment.

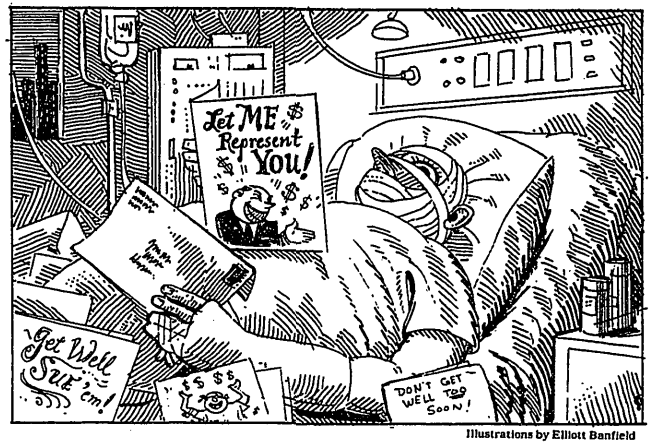
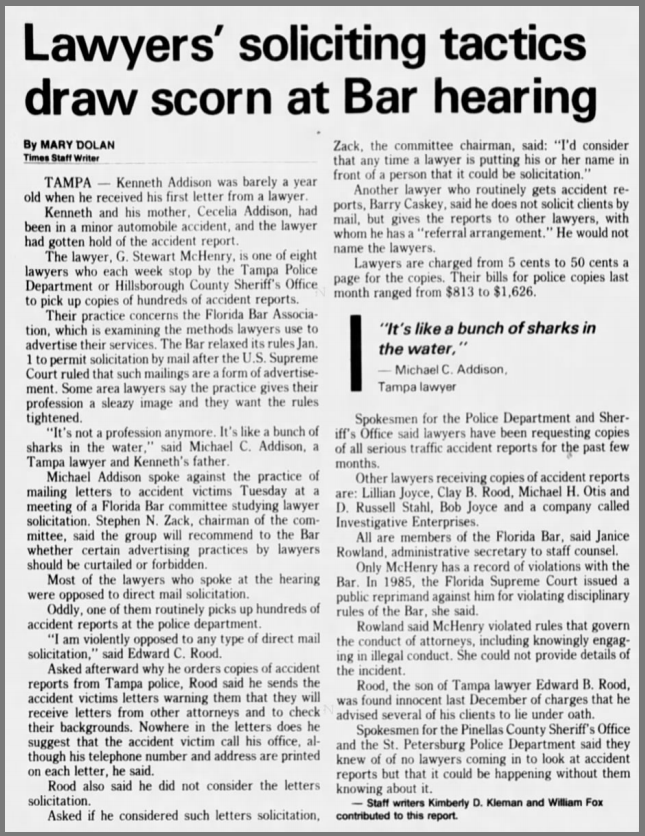


Illustration for [Linda Greenhouse, *In the longtime war over lawyer advertising, the latest shot leaves as many wounds as ever*, New York Times, June 23, 1995, at A23](https://www.nytimes.com/1995/06/23/us/bar-longtime-war-over-lawyer-advertising-latest-shot-leaves-many-wounds-ever.html)

**Questions:**

1. G. Stewart McHenry was disbarred in 1992 for masturbating in front of one female client and fondling another. He was also disciplined by the bar in 1985 and 1988, for brandishing a gun in his office, hitting a paralegal with a file and refusing to pay her when she quit, improperly withdrawing funds from his client trust account, and drunk driving, among other things.
2. Opponents of bar association rules limiting attorney advertisements and solicitation argue that the rules are motivated by the fear of increased competition and intended to protect the interests of established attorneys. Supporters of those rules argue that they reflect philosophical principles, including an aversion to “ambulance chasing.” Which argument do you find more compelling? Can both be true?
3. Justice O’Connor’s majority opinion relied on empirical evidence submitted by the bar showing that attorney solicitations sent to people after they or a family member suffered an injury caused harm and were unwanted. Justice Kennedy’s dissent questioned the credibility of the empirical evidence and argued that attorney solicitations could help consumers, who didn’t realize they had a potential claim or didn’t know who to contact. Did you find O’Connor’s empirical claims convincing? Do you think they provided adequate evidence of harm to overcome Justice Kennedy’s 1st Amendment objections?



Tampa Bay Times (St. Petersburg, Florida), Wed., Oct. 7, 1987, at 24



The Tampa Tribune (Tampa, Florida), Tues., Oct 31, 1989, at 8

1. The Box Tops, *Sweet Cream Ladies Forward March*, Dimensions (1969). [↑](#footnote-ref-0)