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Ethics in the Age of Entrepreneurship Symposium: Ethical Obligations and Liabilities Arising from Lawyers' Professional Associations

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ETHICS IN THE AGE OF ENTREPRENEURSHIP

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I. INTRODUCTION

The *South Texas Law Review* on Ethical Obligations and Liabilities Arising from Lawyers' Professional Associations presented an important opportunity to consider how law is practiced at a time of exciting economic, political, and social change. Small wonder that the computerization of the workplace, the innovations in information technology, the globalization of commerce, and the radical changes in the law of business enterprises are major factors moving law practice into the current age of entrepreneurship.[1] To be sure, entrepreneurial activity has occurred in the past and marks humankind's evolution from cave-dwelling hunter-gatherers, to the industrial revolution, to a post-modern society where boundaries for business and social intercourse have disappeared.[2] Similarly, the boundaries for how and

* Tom Bevill Chairholder of Law, The University of Alabama School of Law. The author expresses gratitude and appreciation to Professor Teresa Stanton Collett for hosting this Symposium and for inspiring my reflection. I am also grateful for the insights of my colleague, Bill Brewbaker, and the research assistance of Stephanie Larkins.

1. For over thirteen years I have taught a Small Business Theory Seminar which studies entrepreneurship, small businesses, economic development, and attendant legal and policy issues informing legal practitioners who assist entrepreneurial business enterprises. Much of the material on entrepreneurship is drawn from my article, Steven H. Hobbs, *Toward a Theory of Law and Entrepreneurship*, 26 CAP. U. L. REV. 227, 241 (1997).

2. For a unique perspective on the changes in the world spurred by the age of information, see PETER F. DRUCKER, THE NEW REALITIES: IN GOVERNMENT AND POLITICS, IN ECONOMICS AND BUSINESS, IN SOCIETY AND WORLD VIEW 257–58 (1989). Drucker, in summarizing his work and reviewing the changes from agrarian society to post-industrial society, notes:

> A great deal these days (almost too much) is being said and written about the impact of the information technologies on the material civilization, on goods,

where lawyers practice have disappeared, offering fascinating ethical challenges.[3]

To fully appreciate the impact change has had on our current professional climate, we should first consider some of the salient features of the entrepreneurial era. Entrepreneurship is fundamentally about the identification of POSSIBILITIES! How can one deliver a service or provide a product which will reap financial, social, and psychological rewards? A concise statement of this phenomenon is: "Entrepreneurship is the process of creating value by pulling together a unique package of resources to exploit an opportunity."[4] The entrepreneur sees the world from a unique perspective and visualizes the possible when no one else can. First, note that entrepreneurship is an analytical *process* which requires scanning the legal, social, and economic environment for opportunities to provide the service.[5] Second, these opportunities usually are marked by recognizing changes in the business or legal environment.[6] Third, the changes themselves are often

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> services, and businesses. The social impacts are, however, as important; indeed, they may be more important. One of the impacts is widely noticed: any such change triggers an explosion of entrepreneurship. In fact the entrepreneurial surge which began in the United States in the late 1970s, and which within ten years had spread to all non-Communist developed countries, is the fourth such surge since Denis Papin's [original designer of the steam engine] time three hundred years ago.

Id. at 256.

3. We now have multi-jurisdictional law practices which required an addition to our rules of ethics. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.5 (1997) (explaining guidelines used to choose law and disciplinary authority when more than one jurisdiction's rules may potentially apply). For a comprehensive discussion of this issue, see the 1995 Symposium, *Ethics and the Multijurisdictional Practice of Law*, 36 S. TEX. L. REV. 657 (1995). Ethical challenges also face those who practice in the international arena. *See generally* STEIN INSTITUTE OF LAW & ETHICS, RIGHTS, LIABILITY, AND ETHICS IN INTERNATIONAL LEGAL PRACTICE (Mary C. Daly & Roger J. Goebel eds., 1994).

4. HOWARD H. STEVENSON ET AL., NEW BUSINESS VENTURES AND THE ENTREPRENEUR 16 (2d ed. 1985).

5. *See generally* Larry R. Smeltzer et al., *Environmental Scanning Practices in Small Business*, J. SMALL BUS. MGMT., July 1988, at 55 (providing a detailed discussion of information gathering and strategic planning for small business).

6. For a provocative critique of our current legal system, see generally Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Post-Modern, Multi-Cultural World*, 1 J. INST. FOR STUDY LEGAL ETHICS 49 (1996). Professor Menkel-Meadow urges us to rethink how we resolve problems in contemporary society. *See id.* at 49–50. She observes:

> Modern life presents us with complex problems which often require complex and multi-faceted solutions. Courts, with what I have called their "limited remedial imaginations" (limited by statute and common law to the powers of granting monetary damages or injunctions) may not be the best institutional settings for resolving some of the disputes we continue to put before them.

Id. at 50 (citations omitted).

produced by technical or theoretical innovations introduced into the marketplace.[7] This could include new regulatory schemes,[8] legal principles,[9] or evolving needs of potential clients.[10] As suggested above, computer technologies have created new and faster methods of providing services.[11]

This statement about entrepreneurship entails the source of two ethical challenges for lawyers. The first is that clients, who are also impacted by the entrepreneurial age, now demand that lawyers deliver services which add value to their endeavors. Clients are faced with the same legal, social, and economic forces and must conduct their increasingly complex affairs in an efficient and effective fashion.[12] Legal professional services must add value and enhance the en-

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7. "Innovation is the specific instrument of entrepreneurship. It is the act that endows resources with a new capacity to create wealth. . . . There is no such thing as a 'resource' until man finds a use for something in nature and thus endows it with economic value." PETER F. DRUCKER, INNOVATION AND ENTREPRENEURSHIP 30 (1985).

8. For a discussion of new tax incentives designed to promote investment in small businesses, see generally Marc D. Teitelbaum, *The New Tax Benefit Entities: Qualified Small Business Corporations and Specialized Small Business Investment Companies*, 21 J. CORP. TAX'N 220 (1994).

9. This symposium focuses on the law of limited liability companies, which is an example of radical change in the legal environment.

10. A new area of practice has emerged to meet the special needs of elderly clients. *See generally* Special Issue, *Ethical Issues in Representing Older Clients*, 62 FORDHAM L. REV. 961 (1994).

11. Electronic technologies, such as e-mail and facsimile transmissions, present new concerns for legal ethics. Some states are addressing the issue of Internet technologies and have issued ethics opinions giving guidance on proper use. *See* Arizona State Bar Comm. on Rules of Professional Conduct, Op. 97-04, *reprinted in* 13 Laws. Man. on Prof. Conduct (ABA/BNA) 125 (May 14, 1997); North Carolina State Bar Ass'n Ethics Comm., Op. 239, *reprinted in* 13 Laws. Man. on Prof. Conduct (ABA/BNA) 42 (Mar. 5, 1997); Vermont Bar Ass'n Comm. on Professional Responsibility, Op. 97-5, *reprinted in* 13 Laws. Man. on Prof. Conduct (ABA/BNA) 210 (July 23, 1997).

12. Lawyers are not, and never have been, luxuries. The pressure not to waste valuable time and resources is behind the promise of alternative dispute resolution techniques. *See* Kelly P. Corr & David R. Goodnight, *Making ADR Cost Effective: Simple Tips to Make ADR Work for You* 1993, at 517 (PLI Litig. & Admin. Practice Course Handbook Series No. 481, 1993). Additionally, clients are concerned about the high fees associated with legal services. Some have advocated a system of value billing as articulated by one author:

> The concept of value billing is based on two principles. The first is that the value of legal services is, in large part, determined by the client rather than the lawyer, after the client is placed in a position to make informed decisions concerning the type and scope of legal services to be rendered. The other principle is that the attorney shares with the client the economic risk of bearing the expense of the legal services being rendered.

Demetrios Dimitriou, *The Individual Practitioner and Commercialism in the Profession: How Can the Individual Survive?*, 45 S.C. L. REV. 965, 972–73 (1994). *But see generally* Marilyn V. Yarbrough, *Is Value Billing the Answer?: A Response to* The Individual Practi-

deavors of clients.[13] Second, to succeed in a profession which is increasingly competitive, a lawyer must be creative and innovative in delivering and marketing his or her professional services. To stand out from the crowd, the lawyer must "pull together a unique package of resources" to competently and efficiently service a client. Here, the entrepreneurial process calls for the lawyer to ask five questions about the practice: "Where is the opportunity? How do I capitalize on it? What resources do I need? How do I gain control over them? What structure is best?"[14] The entrepreneurial lawyer looks out into the world to see where there are growing areas of legal services.[15] The lawyer must consider the number of associations or affiliations that would produce the desired results.[16] Additionally, electronic innovations in legal research and service provision must be considered.[17] Finally, thought must be given to how these services are delivered given the context of legal, social, and economic forces. The myriad of forms of lawyers' professional associations offer new possibilities for structuring a legal practice.

Faced with an entrepreneurial reality, I find Professor Thomas Morgan's comments examining present day practice complexities telling in an obvious manner: "It was a simpler world .... But those days are probably gone forever."[18] This reflection explores how ethical tensions are produced when lawyers choose innovative and creative professional associations designed to meet present entrepreneurial realities. It begins with a re-examination of the old debate on whether lawyers are in a profession or a business. The next section identifies ethical tensions springing from changes in the way lawyers practice. These tensions are recognized in United States Supreme Court decisions issued over the past twenty years. The cases considered by the

tioner and Commercialism in the Profession, 45 S.C. L. REV. 991 (1994) (responding to Demetrios Dimitriou and exploring why attorneys "must pay attention to the bottom line in order to service their clients.").

13. *See* Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239, 241–43 (1984); *see also generally* Ronald J. Gilson & Robert H. Mnookin, *Foreword: Business Lawyers and Value Creation for Clients*, 74 OR. L. REV. 1 (1995) (discussing the notion that lawyers can create value).

14. Howard H. Stevenson & David E. Gumpert, *The Heart of Entrepreneurship*, HARV. BUS. REV., Mar.–Apr. 1985, at 85, 87.

15. Consider for a moment the changes in tort reform and limitations on damage awards. Are there still enough economic incentives to enter the field of personal injury?

16. *See* Gary S. Rosin, *The Hard Heart of the Enterprise: Goodwill and the Role of the Law Firm*, 39 S. TEX. L. REV. 315, 323–31 (1998).

17. Many states have laws and legal forms on CD-ROM format. Westlaw and Lexis construct research engines to search increasingly diverse and voluminous databases.

18. Thomas D. Morgan, *Conflicts of Interest and the New Forms of Professional Associations*, 39 S. TEX. L. REV. 215, 243 (1998).

Court during this entrepreneurial era examine new methods of marketing and delivering professional services, including lawyer advertising, solicitation, and trial publicity. The third section focuses on economic pressures which drive traditional professionals, such as lawyers and doctors, to deliver their services in new and more complex modalities. Finally, the reflection concludes that while we are practicing law in a whole new world, the traditional values of the profession must still inform ethical lawyers who seek to deliver services efficiently and effectively.

II. REVIVAL OF AN OLD DEBATE

The current age of entrepreneurial activity dictates looking anew at how we practice law. Professor Allan Vestal suggests in his work that we have entered "new regimes" where increasingly different ways of organizing a law firm abound.[19] Professor Vestal argues that the model of practice has changed from a professional to a mercantilist model.[20] I take him to mean that the practice of law is increasingly driven by business considerations and protecting the financial bottom-line of law practice. Of primary concern is limiting the impact of legal malpractice judgments on law firm participants by introducing business entities which limit liabilities.[21]

This certainly is not a new debate. In 1916, Julius Henry Cohen published his book entitled *The Law: Business or Profession?*, in which issues such as commercial advertising, solicitation, and lawyers managing debt collection agencies (an early version of ancillary business) are considered.[22] Then, as now, the concern was for the commercialization of law practice.[23] Professor Vestal expertly summarizes the literature outlining the parameters of the debate.[24] More impor-

19. *See* Allan W. Vestal, *Special Ethical and Fiduciary Challenges for Law Firms Under the New and Revised Unincorporated Business Forms*, 39 S. TEX. L. REV. 445, 447–50 (1998).

20. *See id.* at 457–60.

21. *See* Susan Saab Fortney, *Professional Responsibility and Liability Issues Related to Limited Liability Law Partnerships*, 39 S. TEX. L. REV. 399, 400–01 (1998).

22. *See* JULIUS HENRY COHEN, THE LAW: BUSINESS OR PROFESSION? 173–200, 299–301 (1916).

23. *See generally* Symposium, *Conference on the Commercialization of the Legal Profession*, 45 S.C. L. REV. 875 (1994) (discussing the commercializing trend in the legal profession).

24. *See* Vestal, *supra* note 19, at 446 n.2.

tantly, he correctly puts forward the *Howard v. Babcock*[25] case for the proposition that:

> One could argue that these economic changes have transformed the practice, resulting in a mercantilist model for the practice of corporate and commercial law. This new model rivals and may have eclipsed, but not yet completely displaced, the traditional professional model of corporate and commercial law practice. The core of the mercantilist model is the conceptualization of law as a commodity to be sold in a competitive market. The attitudinal change associated with the commodification of the law is the compromise or abandonment of the practitioner's identity as a professional.[26]

The commodification of the practice of law partly views clients as means to the greater financial ends of lawyers. Professor Gary Rosin's article on the mobility of lawyers furthers this inquiry.[27] He studies the economic forces propelling lawyers to move from one firm to another, taking clients and dollars with them.[28] Again, the emphasis is on how the practice of law has become grounded in the active management of a business enterprise. The commercial nature of law practice is guiding the legal structures and the relationships lawyers create for engaging in this enterprise.

Professor Vestal, in another work, has argued that in the new regime of unincorporated and limited liability business entities, we have made a mess of partnerships and partnership law.[29] The key concern

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25. 863 P.2d 150 (Cal. 1993), *rev'd upon appeal from remand*, 46 Cal. Rptr. 2d (Ct. App. 1995), *and review denied and opinion ordered not officially published*, Cal. Minutes, at 24 (Feb. 15, 1996).

26. Vestal, *supra* note 19, at 459–60. I would expand his analysis to include other forms of practice, including family law. The traditional model of practicing family law has changed as lawyers are called upon to assist with the intergenerational needs of a family. *See* Steven H. Hobbs & Fay Wilson Hobbs, *The Ethical Management of Assets for Elder Clients: A Context, Role, and Law Approach*, 62 FORDHAM L. REV. 1411, 1424 (1994).

27. *See generally* Rosin, *supra* note 16.

28. *See generally id.*

29. *See generally* Allan W. Vestal, *"Assume a Rather Large Boat . . .": The Mess We Have Made of Partnership Law*, 54 WASH. & LEE L. REV. 487 (1997) (discussing the legal profession's collective failure in the area of partnership law). Professor Vestal analyzes the recent changes in the Revised Uniform Partnership Act (RUPA) against the backdrop of *Beasley v. Cadwalader, Wickersham & Taft*, a case which holds a law firm liable for breach of fiduciary duty in the ouster of a firm partner. *See id.* at 489–94 (discussing Beasley v. Cadwalader, Wickersham & Taft, No. CL-94-8646 "AJ", 1996 WL 438777 (Fla. Cir. Ct. July 23, 1996)). He posits:

> Behind advocates' arguments over the application of the existing or emerging law, and behind disputes over new forms and uniformity within forms, we have abandoned the historical consensus on the theory of partnership law without having any consensus with which to replace it. We have discarded historical assumptions about the nature of partnership law, the importance of personal

is that now the fundamental value of fiduciary duty has been constricted, and in a way which leaves it unclear as to the ethical obligations of lawyers to each other in a firm and to their clients.[30] I suggest that this debate can be placed in the larger context of fundamental changes in our society, in our economy, and in our legal, economic, and social relationships.[31] Moreover, the context must consider the issue of how professional services are delivered to clients in an age of fast-moving, entrepreneurial activity. In the next section, I argue that we are witnessing a major paradigm shift in the presentation and performance of professional services.

III. CONSTITUTIONAL COMMITMENT TO ENTREPRENEURIAL PRACTICE

The practice of law has always been in a state of flux, but the way we practice changed irrevocably when the United States Supreme Court decided *Bates v. State Bar of Arizona*.[32] By permitting legal advertising,[33] the Court allowed the profession to fully enter the entrepreneurial age. When lawyers can market their services and distinguish themselves from an ever-growing field, the seeds of creativity and innovation germinate.[34] Lawyers now aggressively go after busi-

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responsibility as reflected in the liability of general partners, and the desirability of uniform laws. And that abandonment of shared assumptions is the root cause of our failure and the *resulting mess* we have made of the law of the unincorporated firm.

Id. at 488 (emphasis added).

30. *See id.* at 487–88.

31. For a perceptive discussion considering the contextual nature of practice, see generally David B. Wilkins, *Afterword: How Should We Determine Who Should Regulate Lawyers?—Managing Conflict and Context in Professional Regulation*, 65 FORDHAM L. REV. 465 (1996). Wilkins describes the contextual situation of the lawyer thusly:

> As a descriptive matter, the universal claims of the traditional model are belied by two features of contemporary law practice. First, the increasing specialization and diversification among lawyers and clients renders any single image of the lawyer/client relationship, e.g., the traditional model's implicit image of a solo practitioner representing an individual client, inaccurate and misleading. At the same time, the proliferation of formal and informal regulatory mechanisms directed either expressly or as a practical matter at particular subgroups within the profession belies any suggestion that these diverse lawyers and clients are subject to a unitary set of normative rules and enforcement practices.

Id. at 482–83 (citation omitted). *See also* Hobbs & Hobbs, *supra* note 26, at 1412 (discussing practicing in the context of elder clients).

32. 433 U.S. 350 (1977).

33. *See id.* at 383.

34. The organized bar was concerned about the impact of legal advertising. The ABA Commission on Advertising conducted a survey to determine what, if anything, lawyers and clients thought of legal advertising. *See* Jerome E. Bogutz & William E. Hornsby, Jr.,

ness in unprecedented fashions. In *Zauderer v. Office of Disciplinary Counsel of the Supreme Court*,[35] a lawyer used a newspaper advertisement to let the public know of his availability to bring action against the manufacturer of a defective intrauterine device.[36] The advertisement contained illustrations and a short description of the possible harm caused by the defective intrauterine device.[37] While stating that false and misleading advertising can be regulated,[38] the Court concluded that such advertisements inform the public of legal issues and offer opportunities to protect one's rights.[39] Such class action cases can now be packaged by lawyers trolling for dollars in the world of product failures and consumer fraud.[40]

Dignity in Lawyer Advertising: What the Survey Says, B. LEADER, July–Aug. 1990, at 15. One review of the survey found that, for those lawyers who desire to advertise:

> [T]he study suggests that you exercise good judgment in the quality and content of your advertising. To compromise your profession for short-term gains is short sighted. If you believe clients want competent representation from professionals they can respect and trust, then we believe . . . that such good judgment will not only improve respect for you and your profession but, in the long term, should prove positive to your bottom line.

Id. at 35.

35. 471 U.S. 626 (1985).

36. *See id.* at 630. The attorney also placed an advertisement advising of his availability to defend drunk driving cases. *See id.* at 629–30.

37. *See id.* at 631. While there were no allegations that the ads were "false, fraudulent, misleading, or deceptive," *Id.* at 634, the attorney was charged with violating several provisions of the *Ohio Code of Professional Responsibility*:

> With respect to the Dalkon Shield advertisement, the complaint [as subsequently amended], alleged that in running the ad and accepting employment by women responding to it, appellant had violated the following Disciplinary Rules: DR 2-101(B), which prohibits the use of illustrations in advertisements run by attorneys, requires that ads by attorneys be "dignified," and limits the information that may be included in such ads to a list of 20 items; DR 2-103(A), which prohibits an attorney from "recommend[ing] employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer;" and DR 2-104(A), which provides (with certain exceptions not applicable here) that "[a] lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice."

Id. at 631–33 (alterations in original).

38. *See id.* at 638. For a discussion of developing law which regulates and establishes guidelines on false and fraudulent advertising, see Jeffrey S. Edelstein, *Advertising Law in the New Media Age* 1997, at 9 (PLI Corp. Law & Practice Course Handbook Series No. 1010, 1997).

39. *See Zauderer*, 471 U.S. at 640.

40. *See* PATRICK M. GARRY, A NATION OF ADVERSARIES: HOW THE LITIGATION EXPLOSION IS RESHAPING AMERICA 179–82 (1997). *But see generally* Russell F. Moran, *System Self-Corrects Tort "Flaws,"* N.J. LAW., Mar. 13, 1995, at 6 ("A GAO study that questioned the existence of a 'litigation explosion' noted that only 10 percent of the 7 million cases filed in state courts across the country are tort cases of any kind.").

Other cases extended the profession's journey into commercialism. After *Shapero v. Kentucky Bar Ass'n,*[41] lawyers were allowed to reach out and touch potential clients with direct mail and phone solicitation.[42] The ability to directly target potential clients with identifiable legal issues was a major leap for lawyers.[43] Consequently, lawyers now utilize the Internet for general and targeted solicitation.[44] They create web pages for placing ads and link their sites with those of satisfied clients.[45] Client getting, or what was historically called rainmaking, has entered the entrepreneurial age.

The spirit of entrepreneurship has fostered the development of niche markets for lawyers. Joel Hyatt created franchised, walk-in legal clinics to provide legal services to the average citizen who may not know how to find a lawyer or how to pay for one.[46] Legal service plans, funded like medical insurance, emerged to meet legal needs in an economical manner.[47] Creative lawyers sought to separate themselves from the crowded field of practitioners by boldly identifying their unique specialties. The Supreme Court upheld a lawyer's right to so identify him or herself as a specialist as long as it was not misleading.[48] Even within special areas of practice, such as family law, lawyers created subspecialities and methods for identifying extraordinary practitioners. Now the elite lawyer who meets stringent qualifications may be invited to join the chosen few in the American

41. 486 U.S. 466 (1988).

42. *See id.* at 479.

43. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.3 (1997) (governing direct in-person and live telephone contact of prospective clients). The rule was modified in 1989 to reflect the holding in *Shapero*. *See id.* It is, however, limited to direct mail and autodialed phone calls as the comments reflect:

> This potential for abuse inherent in direct in-person or live telephone solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services.

Id. cmt.

44. *See* Ethics Opinions, *supra* note 11.

45. *See* Cincinnati Bar Ass'n Ethics and Professional Responsibility Comm., Op. 96-97-01, *reprinted in* 13 Laws. Man. on Prof. Conduct (ABA/BNA) 235 (Aug. 6, 1997) (permitting such practice).

46. *See generally* Gay Jervey, *Joel Hyatt*, AM. LAW., Mar. 1989, at 88.

47. A friend of mine markets legal service plans to truckers. These plans provide legal assistance and bail bond service while a trucker is on the road away from home.

48. *See In re* R.M.J., 455 U.S. 191, 207 (1982); Peel v. Attorney Registration & Disciplinary Comm'n of Ill., 496 U.S. 91, 111 (1990).

Academy of Matrimonial Lawyers.[49] This group of distinguished lawyers has even promulgated their own standards of ethical conduct.[50]

Attorneys must be creative and innovative in providing services to clients, in part because their needs and expectations have changed. The work goes beyond the boundaries of the law office and the courtroom. A lawyer may be called upon to be aggressively entrepreneurial in the marketplace of public opinion and to serve in a public relations capacity. In *Gentile v. State Bar of Nevada*,[51] Dominick Gentile was sanctioned by the Nevada Bar for violating the trial publicity provisions of Nevada Supreme Court Rule 177, which is almost identical to Model Rule 3.6.[52] The Supreme Court considered the extent to which a lawyer could communicate with the press without violating the ethical rule constraining trial publicity.[53] The Court essentially considered this case as one involving the free speech rights of the lawyer acting on behalf of a client balanced against the state's interest in preserving the integrity and fairness of the trial process.[54] The Court overturned the sanction in part because the rule was ambiguous and in part because the Court recognized that often a zealous,

49. Founded in 1962, the Academy of Matrimonial Lawyers' main objective is "[t]o encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law, to the end that the welfare of the family and society be preserved." Edward Schaefer, *Message from the President*, 1 J. AM. ACAD. MATRIMONIAL LAW. *vii* (1985).

50. *See* Robert H. Aronson, *Introduction: The Bounds of Advocacy*, 9 J. AM. ACAD. MATRIMONIAL LAW. 41, 41 (1992); Martin Guggenheim, *The Making of Standards for Representing Children in Custody and Visitation Proceedings: The Reporter's Perspective*, 13 J. AM. ACAD. MATRIMONIAL LAW. 35, 55 (1995).

51. 501 U.S. 1030 (1991).

52. *See id.* at 1033. Gentile was concerned that certain pretrial publicity would hurt his client's chances of obtaining a fair trial. *See id.* at 1042. In fact, the client was being railroaded by corrupt law enforcement agents and the First Amendment issues were broader than just the application of the trial publicity rule. *See id.* at 1034.

53. *See generally id.* at 1031 (balancing the First Amendment rights of attorneys to discuss pending cases against the state's interest in having a fair trial).

54. The Court stated:

> The matter before us does not call into question the constitutionality of other States' prohibitions upon an attorney's speech that will have a "substantial likelihood of materially prejudicing an adjudicative proceeding," but is limited to Nevada's interpretation of that standard. On the other hand, one central point must dominate the analysis: this case involves classic political speech. The State Bar of Nevada reprimanded petitioner for his assertion, supported by a brief sketch of his client's defense, that the State sought the indictment and conviction of an innocent man as a "scapegoat" and had not "been honest enough to indict the people who did it; the police department, crooked cops." At issue here is the constitutionality of a ban on political speech critical of the government and its officials.

Id. at 1034 (citation omitted).

competent counsel is duty-bound to publicly speak for his client.[55] On this point, the Court, in an opinion by Justice Kennedy, found:

> An attorney's duties do not begin inside the courtroom door. He or she cannot ignore the practical implications of a legal proceeding for the client. Just as an attorney may recommend a plea bargain or civil settlement to avoid the adverse consequences of a possible loss after trial, so too an attorney may take reasonable steps to defend a client's reputation and reduce the adverse consequences of indictment, especially in the face of a prosecution deemed unjust or commenced with improper motives. A defense attorney may pursue lawful strategies to obtain dismissal of an indictment or reduction of charges, including an attempt to demonstrate in the court of public opinion that the client does not deserve to be tried.[56]

Taking an offensive position may be the best way to defend a client.[57]

Although attorneys are pushing the boundaries of the way services are marketed and delivered, there are limits. In *Ohralik v. Ohio State Bar Ass'n*,[58] the Supreme Court reviewed a case where a lawyer directly solicited legal business from two individuals injured in an automobile accident.[59] Although analyzing the matter in First Amendment terms, the Court grounded its discussion on the traditions of the profession:

> The solicitation of business by a lawyer through direct, in-person communication with the prospective client has long been viewed as inconsistent with the profession's ideal of the attorney-client relationship and as posing a significant potential for harm to the prospective client. It has been proscribed by the organized Bar for many years.[60]

The Court also recognized that the state has strong reasons to regulate this form of commercial activity by a licensed professional.[61]

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55. . *See id.* at 1043, 1048.

56. *Id.* at 1043.

57. For a discussion of such an approach involving attorney Ron Hoevet's defense of Jeff Gillooly, ex-husband of Olympic skater Tonya Harding, see generally Peter R. Jarvis, *An Overview of the Hoevet Case*, PROF. LAW., Nov. 1994, at 18. Mr. Hoevet held a press conference to announce the plea agreement reached in charges stemming from Ms. Harding's involvement in the attack on fellow skater Nancy Kerrigan. *See id.* Mr. Hoevet was subsequently charged with violating Oregon's version of ABA Model Rule 3.7; however, the Oregon State Bar chose not to pursue disciplinary action. *See id.*

58. 436 U.S. 447 (1978).

59. Lawyer Ohralik visited one client while she was still hospitalized and in traction. *See id.* at 450. He visited the other one at her home directly after her release. *See id.* at 451.

60. *Id.* at 454.

61. The Court stated:

> The state interests implicated in this case are particularly strong. In addition to its general interest in protecting consumers and regulating commercial transac-

The need to protect clients was at the heart of the later case of *Florida Bar v. Went For It, Inc.*[62] At issue in *Went For It* was a Florida Bar regulation which required lawyers to wait for thirty days before they could send direct-mail advertisements to mass disaster victims or their families.[63] The particular lawyer in that case was, in entrepreneurial fashion, operating a lawyer referral service, essentially herding in victims of mass disasters and passing them on to other lawyers for a cut of the action.[64] The Supreme Court upheld the regulation, finding that the state's interest in protecting the privacy of its citizens during the emotional aftermath of a tragedy[65] and its interests in preserving the professional image of lawyers,[66] were strong enough to justify a finding that such First Amendment speech could be restricted.[67] *Went*

> tions, the State bears a special responsibility for maintaining standards among members of the licensed professions. . . . While lawyers act in part as "self-employed businessmen," they also act "as trusted agents of their clients, and as assistants to the court in search of a just solution to disputes."

Id. at 460 (citations omitted).

62. 515 U.S. 618 (1995).

63. *See id.* at 620–21.

64. The facts were as follows:

> 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 . . . . 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.

See id. at 621.

65. The Court stated, "The Florida 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.'" *Id.* at 630 (alteration in original) (quoting from Brief for Petitioner at 8).

In his dissent, Justice Kennedy took a contrary view of what the weight of the evidence demonstrated. *See id.* at 640–41 (Kennedy, J., dissenting) (finding that the "Summary of the Record" prepared by the Florida Bar, which is a "study," and other evidence used by the majority to show harm were insufficient to show that the regulation advanced the state's interest).

66. The Court stated:

> 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.'"

Id. at 625 (quoting Brief for Petitioner 28 (quoting *In re* Anis, 599 A.2d 1265, 1270 (N.J. 1992))).

67. *See id.* at 634–35.

For It stands for the proposition that there are some ethical and professional limits on the marketing and provision of legal services.[68]

Went For It also ignited the old profession-business debate, although it had been simmering since *Bates*.[69] Justice Sandra Day O'Connor has consistently decried the commercialism movement.[70] In *Zauderer*, Justice O'Connor left no doubt about where she stood in the old debate, declaring, "The States understandably require more of attorneys than of others engaged in commerce. Lawyers are *professionals*, and as such they have greater obligations."[71] In *Peel*, she again reiterated her view that commercial speech should be regulated by the States.[72] Finally, in *Shapero*, she called for an outright reversal of the commercialism movement, stating:

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68. Justice O'Connor concluded, "We believe that the Florida Bar's 30-day restriction on targeted direct-mail solicitation of accident victims and their relatives withstands scrutiny under the three-part *Central Hudson* test that we have devised for this context." *Id.* at 635. *But see* Ficker v. Curran, 119 F.3d 1150, 1156 (1997) (restricting the breadth of a 30-day restriction on direct mail advertisements by permitting this method in criminal matters).

69. *See* Bates v. State Bar of Ariz., 433 U.S. 350, 368–72 (1977). After discussing his view that the intractable matter of legal advertising regulations is best left to state bar associations, Justice Powell expressed the following fears:

> I am apprehensive, despite the Court's expressed intent to proceed cautiously, that today's holding will be viewed by tens of thousands of lawyers as an invitation—by the public-spirited and the selfish lawyers alike—to engage in competitive advertising on an escalating basis. Some lawyers may gain temporary advantages; others will suffer from the economic power of stronger lawyers, or by the subtle deceit of less scrupulous lawyers. Some members of the public may benefit marginally, but the risk is that many others will be victimized by simplistic price advertising of professional services "almost infinite [in] variety and nature. . . ." Until today, in the long history of the legal profession, it was not thought that this risk of public deception was required by the marginal First Amendment interests asserted by the Court.

Id. at 403–04 (Powell, J., concurring in part and dissenting in part) (citations omitted) (alteration in original).

70. *See, e.g.*, Zauderer v. Office of Disciplinary Counsel of Supreme Court, 471 U.S. 626, 673–74 (1985).

71. *Id.* at 676. She went on to describe her standard of higher duty:

> The legal profession has in the past been distinguished and well served by a code of ethics which imposes certain standards beyond those prevailing in the marketplace and by a duty to place professional responsibility above pecuniary gain. While some assert that we have left the era of professionalism in the practice of law, substantial state interests underlie many of the provisions of the state codes of ethics, and justify more stringent standards than apply to the public at large.

Id. at 677 (citation omitted).

72. Justice O'Connor stated:

> This case provides yet another example of the difficulties raised by rote application of the commercial speech doctrine in the context of state regulation of professional standards for attorneys. . . . Failure to accord States considerable latitude in this area embroils this Court in the micromanagement of the State's

> 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.[73]

The majority opinion in *Went For It* was Justice O'Connor's chance to make a stand for professionalism. While acknowledging that under current law lawyers have "a great deal of leeway to devise innovative ways to attract new business,"[74] the Court held that Florida's 30-day prohibition on targeted mailings was not constitutionally defective.[75] But as the next section suggests, the mercantilists continue to move forward, powered by the forces of societal change.

IV. EMERGING METHODS OF DELIVERING PROFESSIONAL SERVICES

Professor Vestal views the commodification of legal services from the lawyer's perspective and the resulting implications for lawyers' ethical duties.[76] The trend, as he sees it, is driven by recent changes in business entity law.[77] Clearly lawyers are engaging in the same choice-of-entity analysis that most businesses undergo at start-up. Liability, continuation, and tax consequences primarily inform the decision.[78] Professor Susan Saab Fortney's article thoughtfully considers the professional liability issues relevant to the choice-of-entity decision.[79]

One could also view professional service options from the client's perspective as a consumer of legal services.[80] The information age has made the consumer of legal services more knowledgeable. Further,

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inherent authority to police the ethical standards of the profession within its borders.

Peel v. Attorney Registration & Disciplinary Comm'n, 496 U.S. 91, 119 (1990).

73. Shapero v. Kentucky Bar Ass'n, 486 U.S. 466, 491 (1988) (citation omitted).
74. Florida Bar v. Went For It, Inc., 515 U.S. 618, 633 (1995).
75. *See id.* at 635.
76. *See generally* Vestal, *supra* note 19.
77. *See id.* at 494–95.
78. *See id.* at 470 n.119.
79. *See generally* Fortney, *supra* note 21.
80. *See* Morgan, *supra* note 18, at 243.

consumers demand economic value and quality services. Increasing competition in the marketplace is placing demands on lawyers to be creative in the delivery of legal services. Clients are no longer blindly loyal to one firm. If they cannot get the price, the quality of service, and the satisfaction they demand from one law firm, they will and do walk down the street to another provider of legal services.[81] This is a further reflection of the entrepreneurial age in which we currently live.

Factor into this trend the changing expectations of consumers of professional services. Rare it is that we have a close personal relationship with a trusted family doctor or a local, revered lawyer in whom we place unquestioning trust. Consumers of professional services demand the best, seek equal decision-making authority, and pursue redress if expectations are not met. They also demand choices and options. This is the cogent point made by Professor Thomas Morgan—that legal services are being delivered in new and entrepreneurial modalities.[82] However, multiple and varied layers of service delivery mechanisms can work to frustrate consumer expectations, leading to increased consumer complaints and more lawsuits.[83]

Economic forces in the marketplace are driving service delivery modalities.[84] All professionals, including doctors, accountants, financial advisors, and lawyers, are being pushed to be innovative in the way professional services are delivered.[85] Increased numbers of practitioners, increased costs of services, and new entrants into the field are pushing professionals to be innovative in the way they practice. Information technology, computerization of the workplace, and faster

81. As one commentator stated:

> Big-time practice has apparently become much more volatile; it is much less usual for a business to retain a single "outside" firm, and to stay married to that firm forever. Legal practice has become more "transactional," that is, a big company will hire lawyers and law firms for a particular "matter" or "deal," often a very large one to be sure. There is less or no loyalty to the "old firm." Law firms are becoming expendable, like advertising agencies. In a transactional legal world, slow and steady no longer wins the race. Law firms cannot rely on fixed, stable relationships with business clients.

Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1602 (1989) (citation omitted).

82. *See* Morgan, *supra* note 18, at 216–17.

83. *See, e.g.*, James Podgers, *Rediscovering the Middle Class*, 80 A.B.A. J., Dec. 1994, at 61, 61–62 (describing the bar's resistance to new legal service delivery mechanisms).

84. *See* Nancy Moore, *Conflicts of Interest for In-House Counsel: Issues Emerging From the Expanding Role of the Attorney-Employee*, 39 S. TEX. L. REV. 497, 499 (1998).

85. *See, e.g.*, F. Leary Davis, *Back to the Future: The Buyer's Market and the Need for Law Firm Leadership, Creativity and Innovation*, 16 CAMPBELL L. REV. 147, 148 (1994) (discussing the need for innovative legal services).

methods of electronic communication enhance the possibilities of practicing creatively.[86] But also, the new technologies force practitioners to keep up with the swift changes or be left behind.[87] Moreover, as Professor Nancy Moore's insightful essay on the challenges facing in-house counsel suggests, institutions outside of the traditional bar are shaping the way professional services are delivered.[88]

Here it is instructive to borrow from the medical field. We all are confronted with the need to obtain, utilize, and purchase medical services. At a time when the information age has also ushered in the commodification of medical professional services, the delivery of medical services is undergoing fundamental changes driven by entrepreneurial advances. Consumers of professional services have access to more information about the wonders of medicine.

Specialization in the practice of medicine and tremendous technical advancements in the treatment of illnesses have heightened our expectations of what the medical community can accomplish. Yet these new medical miracles are not inexpensive and are not without risk. This brave new world demands creative methods of medical services distribution in an efficient manner, which contains costs, and in an effective manner, which assures quality or competent care.[89]

In a recent University of Alabama School of Law faculty colloquium, my colleague William Brewbaker examined healthcare delivery in a managed care regime.[90] His presentation was entitled *Medical Malpractice and Managed Care Organizations: The Implied Warranty of Quality*.[91] He commented on three facets of the trend in delivery of medical services in a variety of modalities which are instructive for our purposes.[92] First, forces in the medical marketplace

86. *See, e.g.*, Roger L. Rutherford, *Computers '96: The Information Explosion Continues*, 84 ILL. B.J., May 1996, at 263, 263–64 (explaining the need for attorneys to acquire computer skills in current practice).

87. See James Podgers, *Changing Times, Changing Rules*, A.B.A. J., Sept. 1997, at 62, for a series of mini-articles by various attorneys on such issues as representing elder clients, new arbitration rules, and the use of e-mail, fax, and cellular phones.

88. *Cf.* Moore, *supra* note 84, at 497–99.

89. *See generally* Clark C. Havighurst & James F. Blumstein, *Coping With Quality/Cost Trade-offs in Medical Care: The Role of PSROs*, 70 NW. U. L. REV. 6 (1975) (stating that Professional Standards Review Organizations are likely to enhance the quality of medical care and to produce some other significant benefits).

90. *See* William S. Brewbaker, III, *Medical Malpractice and Managed Care Organizations: The Implied Warranty of Quality*, 60 LAW & CONTEMP. PROBS. 1 (Winter 1997) (on file with the *South Texas Law Review*).

91. *Id.*

92. *See id.* at 1–7. Reflections produced here are drawn from his colloquium presentation, a draft copy of his article, and conversations I had with Professor Brewbaker. He also provided helpful references for this article.

are driving physicians to contract with managed care organizations to provide medical care as specified in plans in which patients are enrolled.[93] Second, the managed care organizations, in seeking to operate profitably, make demands on doctors which may restrict or limit the quantity and quality of medical services provided.[94] There is an issue as to whether the contractual relationship with the managed care organization compromises the medical judgment of the physician. Third, over time, significant changes in tort law, especially products liability, have increased the universe of potential medical malpractice actions.[95] Informed consumers and their lawyers do not hesitate to demand that medical services meet high standards of quality. These three facets create new and unprecedented tensions between the suppliers of healthcare (managed care organizations), the providers of healthcare (physicians and hospitals), and the consumers of healthcare (patients).[96] Professor Brewbaker proposes that both the suppliers and providers of healthcare services be responsible for the quality of those services.[97] He in fact suggests that, when a patient with a prepaid medical plan walks into a medical facility or doctor's office, there is an implied warranty of quality on services received.[98]

Similarly, interwoven into the discourse of this symposium is the search for ways to respond to new entrepreneurial realities in the way law practice is structured.[99] The pressure to creatively and innovatively manage entrepreneurial change in the marketplace produces new tensions between the consumer of legal services and the legal service provider. This is aggravated by external institutions structuring the market in ways designed to promote either economic efficiency or to control the parameters of liability for professional malpractice.[100]

93. *See id.* at 1.
94. *See id.* at 1, 55.
95. *See id.* at 3–18.
96. *See id.* at 1–2.
97. *See id.* at 19–44, 55–62.
98. *See id.*
99. This is part of the risk and part of the increased cost that flows from the ever-expanding basis of tort liability that professionals face. In products liability litigation, we have gone well beyond privity into a land in which no one has ever traveled before (witness the cigarette litigation). *See* Jan H. Schut, *Where There's Smoke: The Insurance Industry Would Like To Think It's Safe from Tobacco Liability*, INSTITUTIONAL INV., July 1, 1997, at 147, 147. Professionals and distributors of professional services are in an age of uncertainty. The potential exposure to unlimited liability in tort impacts the manner in which services are delivered. It is unclear what impact new methods of delivery will have on quality assurance. More post-symposium reflection is in order.
100. For a consideration of complex issues of lawyer regulation by a variety of non-Bar institutions, see generally Special Issue, *Institutional Choices in the Regulation of Lawyers*, 65 FORDHAM L. REV. 1 (1996).

Professor Ted Schneyer's broad review of non-bar regulatory techniques reflects this trend.[101] As the simpler times of earlier legal traditions are swallowed by this era of entrepreneurial complexity, the ultimate question remains: who is liable or who is responsible for the professional services that are delivered regardless of the delivery modality? Attorney Robert Keatinge's presentation on the obligations of supervising attorneys provided insight on how we wrestle with finding the locus of responsibility for delivering a quality product.[102] In words that Justice O'Connor would approve, the delivery of legal service, regardless of the structure of the association, requires the integrity and commitment of a professional in the classic sense.[103]

V. CONCLUSION: A RETURN TO CORE VALUES

Given these trends, how do we honor both efficiency, in a time when resources are constricting and clients seek value, and effectiveness, when the demand for quality services in a variety of formats is expanding? We must go back to the future and retrieve our core professional values, viewing them anew in light of a major paradigm shift in the delivery of professional services. Essential to a design of a professional services delivery system should be the commitment to quality and wide access at a reasonable cost. From an entrepreneurial perspective, the present realities open amazing opportunities to preserve the best from the past to use in an ever-changing future.

First, let us return to our original concise statement on entrepreneurship: "Entrepreneurship is the process of creating value by pulling together a unique package of resources to exploit an opportunity."[104] Certainly, a fuller study of entrepreneurship would produce a broader definition of the subject. Such a study would recognize that a significant portion of the literature on entrepreneurship considers *quality* a key factor to success in the endeavor and a way to measure value to the client. Whatever product or service one is offering, the service provider is committed to doing his or her best, at all

101. Professor Schneyer explored some of these issues in the Fordham Symposium on institutional regulatory issues. *See generally* Ted Schneyer, *Legal Process Scholarship and the Regulation of Lawyers*, 65 FORDHAM L. REV. 33 (1996) (noting that a number of private institutions regulate lawyers, such as the legal services market, law firms, and watchdog journalists).

102. *See generally* Robert R. Keatinge, *The Floggings Will Continue Until Morale Improves: The Supervising Attorney and His or Her Firm*, 39 S. TEX. L. REV. 279 (1998).

103. *See supra* notes 69–73 and accompanying text.

104. STEVENSON, *supra* note 4, at 16.

times, with integrity. Quality is a search for excellence, a guaranteed way to stand out from the crowd of mediocrity.

Philip Crosby has described quality this way: "Quality is free. It's not a gift, but it is free. What costs money are the unquality things—all the actions that involve not doing jobs right the first time."[105] If you do a task right the first time, you do not have to pay for the cost of having to do it over or for the damages caused for failing to deliver a quality service.[106] Crosby advises that quality can be achieved if one identifies appropriate standards and builds the pursuit of those standards into the way a business is run.[107] In teaching how to make quality a part of managing a business, he said:

> [W]e must define quality as "conformance to requirements" if we are to manage it. Thus, those who want to talk about quality of life must define that life in specific terms, such as desirable income, health, pollution control, political programs, and other items that can each be measured. When all criteria are defined and explained, then the measurement of quality of life is possible and practical.
>
> In business the same is true. Requirements must be clearly stated so that they cannot be misunderstood. Measurements are then taken continually to determine conformance to those requirements. The nonconformance detected is the absence of quality. Quality problems become nonconformance problems, and quality becomes definable.[108]

This fits neatly into the theme of this symposium, the ethical obligations and liabilities (or conformance requirements as Crosby might say) arising from lawyers' professional associations. Professor Vestal's concern about commercialism[109] can be turned into an opportunity to define the standards of good business practices for lawyers practicing in the entrepreneurial age. We are identifying ethical obligations and liabilities by describing the incidents when lawyers have to pay extra

105. PHILIP B. CROSBY, QUALITY IS FREE: THE ART OF MAKING QUALITY CERTAIN 1 (1979).

106. As Crosby notes:

> There is no such thing as economics of quality. It is always cheaper to do the job right the first time. Many companies confuse their people by using the sampling inspection criteria of acceptable quality levels as performance standards. As a result, each operation takes its 1 percent. The only proper standard is Zero Defects.

Id. at 271. Zero defects is a standard most lawyers were taught in legal writing classes. Any submissions to the court should be proofread and have zero errors in form or in citations to references.

107. *See id.* at 3–14.

108. *Id.* at 17.

109. *See* Vestal, *supra* note 19, at 457–60 (arguing that economic changes have transformed the traditional practice of law into a mercantilist model).

costs for not doing it right the first time. From a lawyer's perspective, quality can be measured by identifying the requirements of excellent legal practice. When we make mistakes in the practice of law, when we are implicated in the misdeeds of our clients (like the savings and loan scandals), and when we treat clients as secondary to our pursuit of profit, we are then not providing a quality service. This absence of quality, or nonconformance to professional ideals, costs us in terms of professional malpractice damages, fines, ethical complaints, and loss of client business.

I make two final observations about not conforming to professional requirements. First, for those who do not meet standards of quality, the pressures of the marketplace will weed out unprofessional entrepreneurial lawyers. Professor Schneyer's account of lawyer and law firm sanctions by non-bar legal and regulatory institutions is testimony to this.[110] Lawyers who overreach their clients or are obnoxious in their pursuit of business will lose clients. The remarks of Justice Kennedy in his dissent in *Went For It* are apropos:

> 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.[111]

Second, an inherent sense of professionalism will guide good lawyers' conduct and the pursuit of quality. Many panelists commented on the *National Law Journal* report on firms who have decided against forming limited liability professional associations.[112] These firms will collectively manage the quality of their work product and stand behind it. Professor Charles Wolfram further emphasized this in his discussion of client-centered lawyering.[113] Significantly, the *Bates* opinion recognized the core values inherent in professionalism in an entrepreneurial age:

> It is at least somewhat incongruous for the opponents of advertising to extol the virtues and altruism of the legal profession at

110. *See* Schneyer, *supra* note 101, at 35–36.

111. Florida Bar v. Went For It, Inc., 515 U.S. 618, 643 (1995) (Kennedy, J., dissenting).

112. *See generally* Darryl Van Duch, *Some Firms Hesitate to Adopt L.L.P.*, NAT'L L.J., May 5, 1997, at A1.

113. *See* Charles W. Wolfram, *Inherent Powers in the Crucible of Lawyer Self-Protection: Reflections on the LLP Campaign*, 39 S. TEX. L. REV. 359, 361–62 (1998).

> one point, and, at another, to assert that its members will seize the opportunity to mislead and distort. We suspect that, with advertising, most lawyers will behave as they always have: They will abide by their solemn oaths to uphold the integrity and honor of their profession and of the legal system. For every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straightforward. And, of course, it will be in the latter's interest, as in other cases of misconduct at the bar, to assist in weeding out those few who abuse their trust.[114]

It is incumbent on us to continue to identify evolving practice modalities which call for revising professional standards, such as Professor Moore has done with her review of in-house counsel obligations.[115] Further, it is important to advocate for the position that lawyers who practice in professional associations monitor and supervise each other's work. If for no other reason, this is the way to establish a good, quality-focused business for practicing law. Finally, those of us who teach future lawyers should boldly and without embarrassment proclaim the high virtues of our great profession.[116] While the bad apples receive significant press, we know former students and alumni of our institutions who practice creatively and innovatively in the grand old style with honor, integrity, and commitment to excellence in an entrepreneurial age.

114. Bates v. State Bar of Ariz., 433 U.S. 350, 379 (1977).

115. *See generally* Moore, *supra* note 84 (exploring conflict issues that confront corporate in-house counsel).

116. *See generally* Thomas L. Shaffer, *Inaugural Howard Lichtenstein Lecture in Legal Ethics: Lawyer Professionalism As a Moral Argument*, 26 GONZ. L. REV. 393 (1990/91) (expounding upon the relationship between professionalism and morality and virtue in an inaugural address at Hofstra University).