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Tuesday, May 7, 2013

Future of the legal profession

Rachel Van Cleave *is dean and professor of law at Golden Gate University School of Law.*

Many books and articles in the last few years describe a "profession in crisis" with no shortage of demons to blame: many equity partners in large law firms pursuing ever increasing profits, tenured law professors sitting on big salaries with no incentive to change how they teach, accrediting institutions imposing expensive regulation on law schools, and the examples of finger-pointing continue. In the words of YouTube sensation Kid President, "I think we all need a pep talk."

I believe that the future of the profession requires all of us, regardless of practice sector or role, to answer the critical existential question of *who* lawyers are. Our future will be stronger and brighter if we come together to answer this question collectively and focus on the positive opportunities and valid roles of each sector. We don't have to look far to find the words that answer this question. We need only return to the fundamentals and the foundation of the role and responsibility of being a lawyer. What are those essential values?

The preamble to the Model Rules of Professional Conduct (MRPC) set out a number of great and grand principles about the role of lawyers. In addition to serving her client and being an officer of the court, a lawyer has a "special responsibility for the quality of justice." Specifically, "as a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession." The MRPC goes even deeper by distinguishing the legal profession from others. Lawyers are not products of trade schools. Rather, lawyers are members of a "learned profession." As such, "a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education." In essence, lawyers are builders, thoughtful and courageous architects constantly striving to construct a more just and fair legal system, one client at a time, as well as at a broader level. This role of lawyers is essential for a stronger democratic society.

It is easy enough to read these words, but how can we best to internalize and live these values as individuals and as a profession? How do we get there in the context of so much noise and criticism about hourly rates topping $1,000, litigation as an investment, and "churn that bill, baby," regarding large law firms, and about law schools not adequately encouraging prospective students to consider carefully the pitfalls of practice in big law firms. The blame game is simply not productive. Instead, there are other ways to reach a place of strength and legitimacy.

First, we must recognize that large law firms, while they exert a large influence, make up only one part of the profession. Not all law students aspire to join Big Law. Not all law schools train their students for careers in large law firms to the exclusion of other types of practice. Lawyers work in government as public defenders and district attorneys. They work as in-house counsel and in business. According to the ABA, 70 percent of private practice lawyers work in solo practices or small firms (fewer than 20 lawyers). Recognizing the multi-faceted nature of the profession, two coalitions of law schools that make up Educating Tomorrow's Lawyers and the Alliance for Experiential Learning emphasize curricula that focus on a myriad of skills to prepare students for a variety of practice areas and for a rapidly changing profession.

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Second, we must recognize the impact technology will have on the future of the profession by creating new opportunities for young lawyers. Richard Susskind's recent examination of the legal profession, "Tomorrow's Lawyers; An Introduction to Your Future," describes new legal careers that will be technology-driven to provide more efficient, less costly, legal services. One example is using technology to address the need for inexpensive dispute resolution to help the sluggish court system. High tech entrepreneurs in California also take advantage of companies like LegalZoom, an online service that helps clients create their own legal documents. Pearl.com contracts with lawyers to offer online legal advice to clients. Firms are likewise responding to

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consumer demand for more efficient, lower cost services. Fenwick & West LLP, for example, launched Flex, a program that offers legal services at a fixed price.

Indeed, what emerges from Susskind's book is a vision of lawyers as entrepreneurs creating opportunities in a market more decentralized than the traditional corporate clients served by large firms. Many law schools recognize that students have infinite access to information, and thus continue to focus more and more on skills that will help graduates create their own careers. Skills such as critical reading and thinking, legal analysis, effective research skills, oral and written communication, fact investigation and collaboration - all instilling confidence and resilience, as well as cultivating sound judgment - are vital to supporting this entrepreneurial spirit and future. Law schools are creating programs to help students capitalize on this highly innovative time while ensuring they remain grounded in the fundamental values set out in the MRCP and the important role of a lawyer as counselor and advocate for fairness and justice.

Third, in addition to focusing on the existential question, we should look for more ways to collaborate to build a stronger community of lawyers. Experienced lawyers in various sectors often serve as mentors for law students as part of externship clinics that many law schools continue to develop. Expansion of these types of programs can help forge and strengthen collegiality as well as a greater sense of professional identity. Law schools should continue to discover more ways to collaborate among themselves and with local bar associations. Such partnerships have the potential to provide students with more career options and professionally enriching experiences.

Finally, and perhaps most importantly, we all need to find a way to quiet the noise around us in order for us to cultivate a less anxious and reactive posture. Responding to "the crisis" with a reflective, purposeful and mindful approach can help us internalize and live up to the aspirations of our profession. Over the last 10-15 years, more lawyers, judges, legal educators and law students have incorporated mindfulness practices into their lives and careers. A number of law schools offer courses on "mindfulness for lawyers." Reflection and mindfulness helps law students and lawyers of all sectors become better listeners, better problem solvers, better counselors at law, and better colleagues. A focus on conscious lawyering has great potential for helping lawyers develop attributes that are essential to happiness and satisfaction: empathy, resilience and wisdom. I believe that such an approach can allow law students and lawyers to respond with flexibility and calm in rapidly changing times.

Artist Jacob Lawrence's 1989 piece, "To the Defense," offers a quintessentially positive vision of lawyers. He depicts a lawyer helping people. At the heart of the vital principles of the MRPC quoted above, is the lawyer as adviser, advocate and peacemaker. Lawrence stated of his print, "I tried to show that the lawyer was a very important symbol of something, even beyond the law." Lawyers are an important symbol of access to justice, fairness, and thoughtful attention to solving problems without violence. Lawyers are a symbol of the rule of law rather than the rule of men or women. This is critically important for lawyers practicing in all of the different sectors. I believe that by returning to the core of lawyering, the heart of what it means to be counselors at law, law students and lawyers can have fulfilling and satisfying careers while they assist and serve their clients and in so doing contribute to a more inclusive, just and equitable society.

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