

## REVIEW ARTICLE\*

*Legal Practice in the 90s* by D STEIN and C STEIN (Australia: The Law Book Company, 1994) pp i-xii + 292. Softcover recommended retail price \$45.00 (ISBN 0 455 21281 3).

The authors of *Legal Practice in the 90s* say in their introduction that they hope their book (which is about successfully dealing with the challenges facing legal practices) will appeal to lawyers, law students and the wider community.

On one level that seems a reasonable enough hope. It would not seem totally unrealistic to assume that practitioners might like to have work or equity in a successful practice; that law students, many of whom are prospective practitioners, might be interested in what makes a practice successful rather than unsuccessful and that judging by the preponderance of television drama and journalistic prose on the subject of the legal profession, the wider community might like to get a "window" into legal practice.

However, I am not convinced that this book will appeal to all the markets at which it aims. Time constraints and attitudinal resistance can make it difficult to persuade a busy practitioner to put down a client file or refrain from answering an incessantly ringing telephone and instead pick up a book on practice management. Therefore, the more compelling the book is, and the more linguistically refreshing and enthusiastic its style, the more likely it is that this objective will be achieved. Unfortunately, the existence of a compelling, refreshing and enthusiastic style is not a claim which can be easily be made *Legal Practice in the 90s*. Of course, that is not to say that the content of the book is flawed or unworthy of praise. It is merely to suggest that the style is a little woolly and colourless, despite the book's attempt to use an extended metaphor involving a tornado and a journey across the USA!

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What of the law student? Will this book reach him or her? I suggest that contemporary management theories and practices might seem a little removed from many law students, even those who are yet-to-be junior solicitors.

As far as the wider community is concerned, it might well be interested in how lawyers “think and the interaction between lawyers, the law and society?”<sup>1</sup> but I suggest that many of the more contemplative members of the community would want to challenge some of the curious assumptions that Stein and Stein make in this regard. For example, the authors state that:

[E]very practitioner knows *clouds* [my emphasis] are beginning to gather over the profession [and] [a]t an ever increasing pace government and clients are imposing changes on lawyers [and that these changes]...are making the individual practitioner more accountable and less financially and socially comfortable.<sup>2</sup>

This assertion would seem to imply that all practitioners see accountability as a retrograde step. Such a suggestion would not only be untrue but also unfair to those practitioners who do not resent the changing demands placed on them, if, in their view, fulfilment of the demands results in a better, fairer, more efficient and more equitable legal system. Such practitioners might even see rays of sunshine penetrating the profession!

Despite the fact that this book might not reach a great proportion of its target audience, it will reach some, and what message will it take them?

Put simply the book suggests that because lawyers operate in a changing world they need to assess whether the techniques, procedures and management decisions they presently use and/or take, are still the best for their practices. In the face of enforced externally generated change, in particular, the inference is that legal practices will position themselves better by being proactive rather than reactive. It is also inferred that such practices should approach change creatively. Hence a good strategist, who can see the choices available and who can employ imaginative approaches resulting in favourable outcomes, will assist in setting the legal practice apart from others.

Not surprisingly, being a good strategist involves reviewing the way things are done and to Stein and Stein that involves examining, among other things, the way a practice does or does not create “value”. “Value” appears to be a term of art and according to the authors, “You cannot justifiably charge to clients activity that does not create value”.

One of the book’s strong points is that it focuses on “value activities” delineating ways a practice can distinguish itself from other legal practices. The material quoted from Porter (who writes on competitive performance) is helpful in suggesting a range of discriminators which include timing, location, inter-relationships with sister business units, policy choices and proprietary knowledge. In a sense, it is these discriminators which are explored later in the book where a number of practical concerns are discussed such as: the impact of technology on legal practice; marketing; the people who work in the practice and how they are selected, developed and deployed; costing; and redefining and redesigning the office, to name but a few. Many of the ideas discussed in these categories are

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1 D Stein, C Stein, *Legal Practice in the 90's*, Law Book Company (1994) p1.

2 *Ibid*, p 5.

interesting and provocative but unfortunately the discussion is cloaked in jargonistic language that alienates the reader.

In terms of techniques and methods to assist in corporate-style self reflection, the time honoured SWOT analysis, where one identifies strengths, weaknesses, opportunities and threats, is suggested as a means by which a clearer picture of the legal practice can be obtained. The authors suggest that such an analysis ties strategic thinking to the reality of the individual legal practice. At this point one cannot escape the irony that the SWOT analysis (along with a number of other approaches suggested in the book as assisting in the development of thriving, commercial private sector firms)<sup>3</sup> have been used for at least ten years in the oft-maligned public sector. One wonders whether the correct conclusion to be drawn is that the public sector must have been at the cutting edge for quite some time.

In regard to format, the book relies on tables that are not always well placed in the text. The tables should not be separated from the descriptive explanations of them if the reader is to gain full benefit. By interspersing the text with a table or diagram which does not immediately relate, the fluidity of the prose is also affected.

Stylistically, the authors are also inclined to quote what practitioners say without citing sources.<sup>4</sup> This leads one to the conclusion that the evidence could be merely anecdotal. Further, the authors are inclined to rely on generalised assertions such as “[l]awyers *never* [my emphasis] understand how their actions contribute to the image others have of them, because their self image is tightly bound up with who they are and what they do”.<sup>5</sup> Unsupported assertions such as this tend to lead one to question the academic rigour of the work, which is unfortunate, because the book does have some worthwhile contributions to make. It offers the reader the tools by which the practice can be reviewed and improved. Such tools are invaluable.

Finally, the book leads us to face, head-on, a view which it is objectively difficult to dispute but which can often be overlooked in the “hurley-burley” of the recruitment process and in the web of practice management decisions. The view can be paraphrased in the following terms: “Placing a group of accomplished black-letter lawyers together will not guarantee a successful firm.” As the authors correctly say, the leaders of legal practice in the 90s “will be legal professionals who understand the need for management and managers who understand the needs of legal professionals”.<sup>6</sup> If that simple truth sounds banal then perhaps we should remind ourselves of why when some established practices are failing, other new firms, which often largely consist of practitioners pilfered from the existing market, are succeeding.

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3 *Ibid*, Chapter Ten.

4 *Ibid*, p 20.

5 *Ibid*, p 10.

6 *Ibid*, p 143.