

THE LEGAL PROFESSION: WHAT IS WRONG AND HOW TO FIX IT

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THE LEGAL PROFESSION: WHAT IS WRONG AND HOW TO FIX IT

Sheldon Krantz



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MATTHEW  BENDER

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public interest careers, along with Ted and our 8 grandchildren, represent the next generations, for whom I hope the reforms I propose can make a difference.

Sheldon Krantz
August 2013

DEDICATION

To Eli, Seth, Caleb, Kayla, Ellie, Liora, Abby and Noah, 8 extraordinary grandchildren

FOREWORD

The shortcomings and looming crises confronting the legal profession are now familiar topics, spawning a cascade of books and articles on the current literary scene. Commentators — academic and popular — opine freely on the failings of law schools to provide practical training for their overcharged students, record levels of attorney dissatisfaction with long hours and thin job satisfaction, a fluctuating market that results in no jobs for large numbers of law school graduates, and a profession that speaks of its noble aspirations but fails dismally to provide for the essential legal needs of a majority of poor and middle class citizens.

Sheldon Krantz adds a new and useful voice to this critical conversation. Acknowledging the severity of the problem — “[T]he legal profession is in trouble . . . and it should be.” — he diligently dissects the causes, including theoretically oriented law teachers distanced from and disinterested in how law is actually practiced “out there,” “lawyer greed” at the top echelons of “BigLaw,” inertia in adjusting traditional career patterns to the needs of women and families, antiquated modes of payment for billable hours, a recalcitrant legal establishment unwilling to innovate or accept new and cheaper ways of providing legal service, and the refusal of the leaders of the bar to push harder to implement pro bono commitments by all lawyers.

But fortunately for readers who want answers to “What Can We Do about It?”, he follows up with an impressive array of recommendations, bolstered by specific examples of burgeoning projects and innovations in operation already. His overriding approach is a holistic one — it is not possible to reform one part of the system without addressing all the rest; the relationships among the several parts are too embedded and subtle. Meaningful change will not come without a tariff levied on law schools, law firms, bar associations, and state and national governments. Nor will it come on its own. Professor Krantz is uniquely qualified for his diagnostic and transformative tasks; he has been a prosecutor, a small law firm associate, a big law firm partner, head of a state criminal justice agency, a law school dean as well as a pioneer in partnering a major law firm with in-country forces to satisfy global pro bono needs. (It was in this last endeavor that we both worked for several years with him and can attest personally to his acuity, sensitivity, and practical insights.)

On the whole, Krantz is optimistic the profession can right itself but only with dedication, perseverance, and targeted strategies. He presents four major goals for his “new agenda”:

- To make the legal profession genuinely responsive to client and public service needs;
- To resolve (or substantially mitigate) the access to justice crisis;
- To involve law schools directly in the reform of the profession: and
- To create a new leadership body — a “guiding coalition” — to initiate and oversee necessary reforms.

The first three goals are unassailable. Many will raise doubts or concerns about the fourth, primarily on the makeup of the “guiding coalition” to spearhead an ambitious and

FOREWORD

controversial reform campaign. The American Bar Association and the American Law Institute have been for nearly a century the leading legal organizations of national scope, the first dealing with practice and policy issues across the board that affect the profession, the second with painstaking scholarly projects to articulate and update the substantive law itself. But neither has shown any enthusiasm for undertaking major structural reform of the profession, and because of its national membership and open accessibility to all lawyers, the ABA inevitably has in its ranks some elements that resist change and could slow or halt the process. Both organizations would have to cast off traditional cautions and don the unaccustomed robes of robust warriors.

An effective coalition, as Krantz indicates, might well need “outsiders” to the profession who have stake holds in its reform, consumers, government representatives, the business community. Krantz’s original concept of a “guiding coalition” will likely be controversial. It should not deflect from the importance of his critique of what is wrong with the legal profession or his goals for what must be made right. Those are the core of his book.

Make no mistake. Change will come for the profession in some form; it is urgent that change be in the right direction and that its course be guided toward realization of the aspirations of a noble profession. This book is an eminently worthy first step in that direction.

Patricia Wald

Chief Judge

US Court of Appeals

D.C. Circuit (ret.)

Esther F. Lardent

President

Pro Bono Institute

August, 2013

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