

BOOKS,
ARTS,
LEISURE

AFTER HOURS

'Seeing Ourselves as Others See Us'

BY LAWRENCE SAVELL

There are, arguably, three types of allegedly humorous books that attempt to convey "the lighter side" of lawyers and the legal profession. First, and most common, are those marketed primarily to non-lawyers, providing people who have some general sense of what lawyers do (based on watching "L.A. Law" or late-night personal injury commercials) with broad and largely derogatory shots at the vested brigade. Second are those volumes aimed again at the general public, but designed to be given by them to lawyers as gifts. By necessity, these are considerably more benign, and, occasionally, even somewhat laudatory. In the third category are those books marketed directly to lawyers themselves and that normally require being a lawyer (or at least a client) to be appreciated, if not enjoyed.

Arnold B. Kanter's *Advanced Law Firm Mismanagement* falls into that last category. *Advanced Law Firm Mismanagement* (following up Kanter's 1990 effort, *The Handbook of Law Firm Mismanagement*) presents the often humorous and continuously on-target observations of its author, who in real life is of counsel to Chicago's Sonnenschein Nath & Rosenthal.

Advanced Law Firm Mismanagement conveys its messages in the form of ruminations by one Stanley J. Fairweather, Esq., the fictional founder and "man for all seasons" at the equally fictional and meteorologically appellationed firm of Fairweather, Winters & Sommers.

Fairweather provides Kanter with a vehicle through which to bemoan how the practice of law has changed from "the old days," as typified by the lamented obsolescence of carbon paper. Illustrating difficulties "old-line" lawyers have had adapting to modern technology, he tells of an attorney's ill-fated attempt to use his firm's new video equipment for a presentation on securities law. Unfortunately, the lawyer grabbed the wrong tape, forcing the group to watch his daughter's wedding reception.

But not all the changes in firm life he cites are technological; some are personal. He observes that the days are over when longevity alone allegedly was enough to make one a partner. Yet, to a degree, he welcomes this development. "[W]hen the expectation is that everybody will be admitted, it becomes very difficult to maintain quality." The standard, he felt, had been devalued to the lowest common denominator: "Sure, Joe is no Justice Brandeis, but he's every bit as good as that idiot Harry in the trusts and estates department."

A change in standards has occurred at the other end of the brass ring as well. Nowadays, he notes, "it's no longer 'until death (or sometimes, mandatory retirement) do us part.' We're defrocking partners almost as fast as we're frocking them."

Fairweather saves his true disdain for unnecessary firm bureaucracy. For example, he defines a firm committee as "a group of two or more persons charged with considering an issue or a related

series of issues in enormous detail, at great length and without discernible benefit to the firm."

Fairweather also takes issue with the recruiting process. He argues that firms focus on grades only because of a lack of confidence in our ability to determine which students truly possess the personal qualities to succeed in practice. This, he believes, makes us rely on an inherently unreliable basis for comparison: "[W]e wind up choosing one law student over another because some constitutional law professor who hasn't practiced law a day in his life thought he wrote a slightly better exam than the person sitting next to him."

His cynicism increases in his assessment of how firms deal with their associates. He candidly defines the "going rate" paid to associates as "the minimum salary that Associates will accept without going." Similarly, he condemns the failure of firms to provide adequate mentoring for young lawyers. To him, the realistic (albeit rarely uttered) response to a partner's question "Will I receive credit and recognition from the firm for the time I spend mentoring?" is "Yes, in a life to come."

Turning to dealings with clients, Fairweather describes the real attorney-client privilege, namely, "the privilege of [being] an attorney representing a client." He nostalgically recalls the days when the relation between lawyer and client was simpler, and closer. "You were a counselor, a trusted friend, a confidant. You didn't feel like a hired gunslinger, paid by the bullet—even if that's what you were." And, in return, the lawyer truly cared about his or her client's problems. "He was a real human being, not a client code number that you billed quarter-hours for five-minute phone calls."

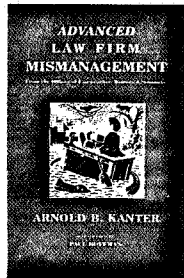
As for legal fees, Fairweather advises clients seeking fee estimates that his firm's fees for a project will be "in the general neighborhood" of "quite-a-bit-but-not-too-much-considering-what's-involved." Of course, he explains, "this fee estimate is inherently improbable, unreliable, and unenforceable." Ultimately, he advises, they will likely end up somewhere between "way-too-much" and "you've-got-to-be-kidding."

And Fairweather, Winters & Sommers is not adverse to value billing. Thus, its form engagement letter provides, "We may deviate from the hourly rate to charge you a premium if the result we achieve is better than We expected." Of course, "[s]ince We tend to be very conservative and pessimistic in our expectations, You should expect that our results will be better than We expected more often than You expect."

Part of the problem with legal billing, Fairweather reasons, is that lawyers have lost sight of cost concerns in their feverish effort to produce "perfect" work product. His point is that the marginal benefit from many more hours may not justify the expense. "Too often, if we had bothered to ask the question of whether something was worth bettering, the candid answer would have been, 'to me, yes—I'm paid by the hour; to my client, no—he's paying the bill.'"



PATRICIA LITTE



*Advanced
Law Firm
Mismanagement*
by Arnold B.
Kanter (Catbird
Press; 219
pages; \$12.95)

Recognition of this problem is not just altruism; in these economic times, it's necessary for keeping your clients. As Fairweather warns, "Our penchant for stylistic perfection is making us plain unaffordable to too many clients." Thus, a sense of perspective is required. "Sometimes a Volkswagen will do. If we don't build one for them, they'll find someone who will."

Fairweather also takes aim at some of the most cherished eccentricities of legal practice, such as lawyers' compulsively and unnecessarily retaining virtually every piece of paper they encounter (and, frequently, multiple copies thereof). He also takes pot shots at the peculiar (and somewhat incestuous) relation between cc's, bcc's, and their progeny. He observes that, since there may be bcc's with or without cc's, some or all of the cc's may be advised of the existence of bcc's, and some bcc's may or may not be advised of the existence of other bcc's, "the possibilities for intrigue are nearly endless."

Humor is, by its nature, very subjective. Things one person may find hilarious and witty another person may despise and disdain. (I've been on enough first dates to know this is true.) Thus, I cannot guarantee that *Advanced Law Firm Mismanagement* will be everyone's cup of tea. It would be wrong, however, to characterize this book as simply a work of humor (although that is how its publisher classifies it on the cover, just after the price). It goes beyond that to provide valuable insights to lawyers, not the least of which is the "cost" of the modern and increasingly narrow focus on the allegedly all-important "bottom line."

Despite Fairweather's status and the title's reference to firm management, *Advanced Law Firm Mismanagement* is not just for members of firm managing committees, or even just for partners;

I enjoyed it even though I've never been any of those things. Indeed, its observations provide good (and rarely available) advice for beginning lawyers.

There are some caveats. Fairweather occasionally wanders toward thin ice in discussing female attorneys—presumably reflecting the views (stated or not) of some of his contemporaries. He sometimes stretches to make a point, such as saying that he learned more about the practice of law in a cooking class than he did in three years of law school. (Sounds a little half-baked to me.)

The author's prose also tends to ramble a bit, which will frustrate lawyers schooled in (although rarely successful at) brevity, clarity, and focus. The narrator openly concedes this: "Seems I've gotten off on a bit of a tangent. But I'm not going to apologize for that. In fact, I think we need more tangents."

Why? Because, he argues, "We lawyers are altogether too lineal." While a totally logical, "point-A-to-point-B" approach to legal practice may lead to adequate results, "it often doesn't lead to the kind of creativity that's necessary in the law today." To the author, that creativity "demands an open mind, a willingness sometimes to travel down a few wrong paths, a sense of humor." Those willing to attempt such reckless behavior are advised to start by reading this book.

Like Robert Burns, 200 years ago, and Allen Funt, a few decades ago, Arnold Kanter knows the value of "seeing ourselves as others see us." But he takes this useful (and humbling) perspective a step further, allowing lawyers to see ourselves through the eyes of one of our own—who possesses veneer-penetrating vision, tempered with wit and humor.

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