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## Review of “Lawyers and the Promotion of Justice,” By Esther Brown

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tion the fight over the Court reorganization proposal, wherein Mr. Chief Justice Hughes' letter to Senator Wheeler played so important a part.

If a work on judicial biography is really to exhibit "a cross-section of American history cut at a new angle,"<sup>30</sup> it will have to be a much more powerful performance than is here exhibited.

CHARLES FAIRMAN.†

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LAWYERS AND THE PROMOTION OF JUSTICE. By Esther Lucille Brown. New York: Russell Sage Foundation, 1938. Pp. 302.

As the fifth in its current series of studies of professional life in the United States, the Russell Sage Foundation trains its sociological microscope on the legal profession and reports the results of its impartial investigation of the data available. *Lawyers and the Promotion of Justice* deals with the relation of the legal profession to society in terms of the interest and activity of the organized bar in the promotion of justice. The picture, as those alert to the problems of organized bar activity will readily admit, is not entirely pleasant, nor is it altogether hopeless. The primary value of this study lies in the objective focus provided by the lay point of view; and yet this virtue contributes to the major weakness of the observations set forth by taking statistics at their face value and placing too great reliance on purely objective analysis of factual data that is not always complete, without going behind the results to inquire more deeply into the causes. This is not to say that the analysis of the data here presented is without worth or meaning, but simply to point out that a more penetrating study might have made possible a more faithful rendering of the subject at hand.

Take, for example, the observations of the author with regard to the treatment of grievance complaints by the organized bar. No one is more acutely aware of the shortcomings of bar grievance procedure than the conscientious bar association executive, and no one would be more willing to conduct vigorous prosecution of well-founded complaints than the average bar association committee on grievances. A principal reason for these apparent shortcomings is simply that bar organizations lack the funds necessary to carry on investigations and hearings of these complaints. Until those funds are made available, their work in these fields will continue to be restricted. In the major metropolitan centers these funds are frequently available, and it is in these areas that grievance prosecution reaches its greatest effectiveness.

The author, however, overlooks this obvious situation and blames the lack of adequate grievance machinery upon a supposed indifference of the bar to the social implications of continued unethical practices. Granted the hesitance of individual lawyers to prosecute their professional brethren, there is no such lack of social responsibility on the part of state grievance

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Davis (1937) 301 U. S. 619; Carmichael v. Southern Coal & Coke Co. (1937) 301 U. S. 492.

30. P. xiv.

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committees in their impartial investigation of complaints within the limited physical means at their disposal.

After pointing out the difficulty of defining precisely the scope of ethical conduct, the author belabors grievance committees because statistics show that but a small percentage of cases originally complained of reach ultimate disbarment or censure in the courts, and concludes that these statistics prove that these committees are vigilant to whitewash other members of the bar in these matters. If the author had made even a cursory examination of the original complaints filed before the average committee on grievances, she would have found that she herself, as a layman, would dismiss at once almost half of these complaints as being either the bitter recriminations of a disgruntled client dissatisfied with an adverse ruling of a court or the ramblings of a neurotic obsessed by visions of persecution. Another large proportion would be found to involve disputes over fees or other questions totally unrelated to the ethical conduct of the lawyer concerned, which can and should be settled in regular courts of law. A goodly number of the cases remaining on the docket would fall into the category defined by the author as defying application of a definite rule of conduct. Yet the author makes no attempt to analyze the statistics on the grounds of the reasonableness of the dismissals. She simply points to the seeming disparity of the proportions and draws her conclusions accordingly, although she might have found on further study that the very conditions enumerated above have led the Chicago Bar Association to appoint a committee on inquiry to cull out these frivolous or misconceived complaints from those in which actionable unethical conduct is indicated to be considered by the committee on grievances. Nor does she appear willing to concede the possibility that the comparatively low number of actual disbarments and censures is really due to the fact that the overwhelming proportion of lawyers do comport themselves fairly and ethically in their dealings with their clients.

The treatment of bar integration is not entirely convincing, but shows rather an inclination to rely too greatly on the fact of the widespread adoption of bar integration in the United States without seeking to measure the practical effectiveness of the integrated bar as compared with the voluntary bar association. Integration of the bar does undoubtedly have its merits in bringing greater unity to the bar and providing funds for more adequate grievance and unauthorized practice of law activities. It has yet to prove that there is any magic in the act of integration that transforms a dormant state bar into one of progressive activity. A partnership which has conducted a mediocre business does not become an outstanding success merely by incorporating and bringing in a large number of new stockholders if the business continues to function along the same lines and with the same methods of the old management. New capital can never remedy the evils of poor management in business, and the greater strength of numbers in bar integration is no assurance of improved leadership in organized bar activity. Even Herbert Harley, the champion of bar integration in this country, concedes that few integrated bars have achieved the

practical results in organized bar activity and progressive reform in general law and legislation that have been attained by the leading voluntary bar associations. The recent conferences of state bar association executives sponsored by the Section of Bar Organization Activities of the American Bar Association have demonstrated that the promotion of justice by the organized bar is not so much a matter of the form of its organization as the vigorous leadership of those who take active part in carrying forward its programs.

These are but two illustrations of the pitfalls that await the lay author who approaches the problems of the organized bar on the basis of statistical data alone without seeking further to ascertain the causes that have produced the effects summarized in these statistics, or investigating thoroughly the actual experience of the bar in dealing with these problems. This lack of accurate knowledge of conditions in the practice of the law and the progressive programs of the organized bar is reflected in many other instances. There is thus no mention of the excellent revision of the rules of federal practice and procedure carried out with the cooperation of the lawyers of the entire nation; the progressive statutory revision being carried on by committees of the organized bar in such important fields as insurance, taxation, and administrative law; and the recently completed study of the economic condition of the bar published last summer by the American Bar Association. We find the author, too, falling into the error of accepting without qualification or investigation the oft-repeated charge that corporation lawyers dominate the profession of the bar, a charge that has as yet never been conclusively or satisfactorily substantiated by proof or experience. It is intimated that future revision of this volume is contemplated, and we hope that more extensive study of these problems will be a part of that revision so as to make the picture more complete and well-rounded in its details. That the author can present such a well-rounded picture is evident in the portion dealing with legal education and admission to the bar, which covers more than half of the volume, where she has dealt adequately, accurately, capably, and sympathetically with her subject.

On the whole, this volume is a stimulating challenge to the thoughtful bar association executive who is seeking guidance in the administration of his duties and the planning of the activities of his organization. It is a book which may be read with profit by every lawyer who is concerned with the future of his profession and the steps that may be necessary to adapt the practice of law and the administration of justice to the changing needs of modern life. Its chief significance, perhaps, lies in the fact that since it approaches these problems from the lay point of view, it presents the typical lay magnification of the shortcomings of the bar coupled with the typical lay lack of accurate knowledge as to what the bar is doing to overcome these shortcomings.

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