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Lawyers and the Pursuit of Legal Rights

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LAWYERS AND THE PURSUIT OF LEGAL RIGHTS. By *Joel F. Handler, Ellen Jane Hollingsworth and Howad S. Erlanger*. New York: Academic Press. 1978. Pp. xvi, 272. Cloth, \$14.50; paper, \$5.95.

Lawyers and the Pursuit of Legal Rights surveys legal institutions and practices designed to promote social reform and to satisfy the needs of the poor. This concise monograph serves two purposes. First, it tests commonly held beliefs about public interest practice and practitioners. Second, it provides a useful survey of "alternative" legal careers and an extensive bibliography to current literature on public interest law. The focus of the authors' inquiry is "legal rights activities," which they define broadly to include any practice designed to serve traditionally underrepresented individuals and groups, including the poor, minorities, consumers, environmentalists, political causes, civil libertarians, traditional charities, and social reform organizations interested in a variety of other causes (p. 13).

The Legal Services program receives particular attention throughout the book.

The authors distinguish "traditional" legal rights activities from "aggressive" legal rights activities. They characterize the former as paternalistic, moralistic, nonlitigious, and supportive of the status quo; the latter encompasses law reform activity, vigorous client advocacy, and a general willingness to challenge existing political, social and economic conditions (pp. 13-14). Chapter two refines this distinction by tracing the dual antecedents of modern legal rights activities. The authors first describe the private bar's traditional legal aid efforts, which date to the past century and include the early criminal defender offices. While these services became established elements of the profession, they were few in number, small in size, and very limited in function. They were also chronically underfunded. The authors contrast these efforts merely to secure access to the legal system with the attempts of early reform organizations, such as the NAACP Legal Defense and Educational Fund, to effect social change through litigation.

Most of the book describes four types of legal rights activities in largely quantitative terms: (1) the Legal Services program; (2) public interest law firms; (3) the private bar; and (4) organizations of the private bar such as *pro bono* departments of large law firms, mixed public interest-private practice firms, and public interest programs of local bar associations. For example, the study constructs a statistical profile of the characteristics of lawyers in the Legal Services Program, the largest and most visible legal rights activity. Based on this data of income, family background, job satisfaction, legal education, and subsequent employment of those who have left the organization, the authors dispute the broad assertion that Legal Services lawyers have tended to become less aggressive and have reverted to more traditional service-related activities. They find no decrease in law reform activities among the various local Legal Services offices (p. 67). The authors also dispute the belief that departing Legal Services lawyers take positions in traditional practices, thus shifting from representing the poor to representing the rich. Their evidence shows that most Legal Services lawyers remain unwilling to enter corporate-type practices (pp. 156-65).

The authors argue that the absolute distinction between mainstream private practice and Legal Services is a false one. The authors see the Legal Services program and, apparently, other public interest practices, as serving an important channeling and training function. A significant number of former Legal Services lawyers are

now in government, in teaching, in other legal rights activities, and in small private practices. The authors conclude that this movement will create within the profession an active element sensitized to the needs of the underrepresented (p. 193). President Reagan's recent proposal to abolish the Legal Services Corporation, and his authority to select its board of directors in the coming year, suggests that this conclusion may be too optimistic.

The book's impressive detail and manageable review of the various alternatives to the large, corporations-oriented law firm, makes it a valuable reference. Particularly noteworthy are the sections on the *pro bono* activity of the private bar. The authors' findings strongly suggest that a substantial portion of *pro bono* work done during billable hours has little or no relation to social change (pp. 100-01). The book also delineates the subject matter distribution of cases handled by public interest law firms, finding that education, employment discrimination, environmental, and criminal cases consume the greatest amount of attorney time (pp. 71-73).

Lawyers and the Pursuit of Legal Rights is not without important weaknesses.¹ Some of the authors' factual and statistical assertions are unsupported, and it is often difficult to distinguish between such assertions and the hypotheses the authors test and beliefs they assert are widely held. A further ambiguity lies in the authors' extremely broad definition of their subject. The authors assume the reader has a sense of what constitutes "legal rights activity," yet leave him wondering which "political movements and organizations" and "consumers" have been underrepresented enough for inclusion in the definition. The book apparently presumes the reader will narrow these terms according to a given perspective: the law serves wealthy individuals and large businesses more adequately than it does other citizens, organizations and interests.

Such a perspective does not seem terribly implausible. The presumed maldistribution of legal services, when combined with the profession's commitment to equal justice, suggests lawyers have an affirmative obligation to remedy the problem.² *Lawyers and the Pursuit of Legal Rights* represents a largely successful attempt to answer the specific questions asked by those most interested in effectively discharging that obligation.³

1. For an extremely severe criticism, see Brakel, Book Review, 1978 AM. B. FOUNDATION RESEARCH J. 873 (1979).

2. See ABA COMMISSION ON EVALUATION OF PROFESSIONAL STANDARDS, MODEL RULES OF PROFESSIONAL CONDUCT § 8 (Discussion Draft) (1980) (requiring all lawyers to render unpaid public interest legal services).

3. For other reviews of *Lawyers and the Pursuit of Legal Rights*, see Baer, Book Review, 41