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ARTICLES

Legal Aid Without Lawyers: How Boston's Nonlawyers Delivered and Shaped Justice for the Poor, 1879–1921

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ABSTRACT

Women nonlawyers were some of the first actors to provide organized legal aid to America's poor. Yet, today, unauthorized practice of law statutes bar nonlawyers from providing legal help, citing concerns about malpractice and public harm. This Article uses a historical case study to challenge conceptions that nonlawyers cannot provide effective legal services to the people. The study focuses on the development of legal aid in Boston via two organizations, the nonlawyer-led Women's Educational and Industrial Union and the lawyer-centric Boston Legal Aid Society. Although organized legal aid in Boston began with the nonlawyers at the Union, they were eventually overtaken by the lawyer-centric Legal Aid Society. This paper examines this transition in legal aid practitioners, emphasizing how nonlawyers provided effective legal help. In doing so, it challenges the modern-day conception that access to justice requires access to an attorney and serves as a powerful counter to claims that nonlawyer practitioners endanger the public.

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I. Introduction

In America today, the notion of access to justice is commonly linked to access to a lawyer.[1] Though one's ability to obtain legal counsel is not the only way justice has been defined, having access to representation by an attorney is considered a central means for an individual to seek legal redress.[2] So much so that there is a national movement in America calling for state and local legislators to guarantee a right to counsel for low-income people with civil cases involving basic human needs.[3] Attorneys have been understood as the key to unlocking the complexities that accompany engaging with legal procedures and institutions. According to Earl Johnson, we are "violating the social contract because we are not providing justice for all, but justice only for those who can afford it or who are lucky enough to find a legal aid lawyer or a pro bono lawyer with enough time to take on their cases."[4] Lawyers are understood as necessities for the people to obtain justice. Federal judge Jack Weinstein opined in 2015 that "without representation by counsel, it is probable, to some degree, that adequate justice cannot be served . . . ."[5] However, in the late nineteenth century, litigants, especially those unable to afford legal counsel, commonly sought and obtained justice without lawyers.

That is not to say that such clients handled their legal matters alone as unrepresented litigants. Rather, they were aided by nonlawyers, individuals who lacked formal legal training yet were nonetheless providing services of a legal nature. This was possible because, in the late nineteenth century, the boundary of what constituted the practice of law was in flux.[6] With regards to legal education, many lawyers were receiving their legal training in law offices as opposed to law schools and bar associations, and the organized bar was largely insensible of the supposed "grave public danger unauthorized practice [of law] has since been thought to pose."[7] Thus, nonlawyers were not formally barred from dispensing

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1. *See generally* Emily Ryo & Ian Peacock, *Represented but Unequal: The Contingent Effect of Legal Representation in Removal Proceedings*, 55 L. & Soc'y Rev. 634, 634 (2021); Rebecca Sandefur, *Access to Civil Justice and Race, Class and Gender Equality*, 34 Ann. Rev. of Socio. 339, 339 (2008); Catherine Albiston et al., *Public Interest Law Organizations and the Two-Tier System of Access to Justice in the United States*, 42 L. & Soc. Inquiry 990, 991 (2017); Erin York Cornwell et al., *Networking in the Shadow of the Law: Informal Access to Legal Expertise Through Personal Network Ties*, 51 L. & Soc'y Rev. 635, 636 (2017); Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 Geo. J. Legal Ethics 485, 500 (2017).

2. Nourit Zimmerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 Fordham Urb. L.J. 473, 474 (2010).

3. *See* Nat'l Coal. For a Civ. Right to Couns., *About the NCCRC*, http://www.civilrighttocounsel.org/about (last visited Apr. 8, 2022).

4. Earl Johnson, Jr., To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States 926 (2014).

5. Floyd v. Cosi, 78 F. Supp. 3d 558, 561 (E.D.N.Y. 2015).

6. *See* Felice Batlan, *The Ladies' Health Protective Association: Lay Lawyers and Urban Cause Lawyering*, 41 Akron L. Rev. 701, 704 (2008).

7. Deborah Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 Stan. L. Rev. 1, 7 (1981).

legal services to the people. In fact, nonlawyers founded and managed legal aid agencies that sprouted in major cities across America, beginning with the first one in 1863 in New York, 1878 in Boston, and 1885 in Chicago.[8] Each of these nineteenth-century organizations preceded the creation of more traditional legal aid societies in the respective cities. As articulated by legal historian Felice Batlan, such nonlawyer agencies were "the first to offer legal aid to the poor."[9]

The nonlawyers—who also happened to be predominantly women—at these agencies provided justice to indigent litigants. The women listened to clients' stories "to determine whether a colorable legal claim existed,"[10] advised on actionable steps,[11] wrote letters to defendants,[12] and mediated between parties.[13] People turned to the nonlawyers to seek justice that was client-centered, revolved around a lay perception of fairness, preserved the people's voices, and existed outside of the courts and in society. Yet this successful delivery of services would not withstand the test of time. By the early twentieth century, many of the women nonlawyer-led legal aid agencies ceased to exist.[14] Instead, the primary providers of legal aid became lawyers, the "guardians of the American system of justice," endowed with an obligation to maintain an accessible system for the people.[15]

This conception that lawyers are synonymous with justice has pervaded the minds of academics, jurists, and policymakers. Roscoe Pound explained in 1953 that organized society must have lawyers, for the alternative would be economically and socially wasteful.[16] Litigants could not and should not directly turn to their legal systems alone because of complex legal statutes and arcane court procedures.[17] In the face of such inhibitions, lawyers serve as a means for clients to unshroud the legal system's mystifying veil. With the aid of lawyers, clients could better turn their grievances into actionable legal disputes,[18] understand court

8. Felice Batlan, Women and Justice for the Poor: A History of Legal Aid, 1863–1945, 17, 38, 47 (2017). New York's Legal Aid Society was formed in 1876, Chicago's Bureau of Justice in 1888, and Boston's Legal Aid Society in 1900. *Id.* at 87, 72, 135.

9. Batlan, *supra* note 8, at ii.

10. *Id.* at 27.

11. *See, e.g.*, Women's Educ. and Indus. Union, Protective Committee Minutes (February 21, 1887) (on file with Harvard Radcliffe Institute) [hereinafter Union].

12. *See, e.g.*, Union, Protective Committee Minutes (October 14, 1889) (on file with Harvard Radcliffe Institute).

13. *See* Union, Protective Committee Minutes (May 31, 1880) (on file with Harvard Radcliffe Institute). *See also* Union, Protective Committee Minutes (March 29, 1881) (on file with Harvard Radcliffe Institute).

14. Batlan, *supra* note 8, at ii.

15. Norah Rexer, *A Professional Responsibility: The Role of Lawyers in Closing the Justice Gap*, 22 Geo. J. on Poverty L. & Soc'y Rev. 585, 610 (2015).

16. *See* Roscoe Pound, The Lawyer from Antiquity to Modern Times 26 (1953).

17. *See generally* Gillian K. Hadfield, Why Humans Invented Law and How to Reinvent it for a Complex Global Economy 174 (2016); Alfred S. Konefsky, *The Legal Profession: From the Revolution to the Civil War*, *in* The Cambridge History of Law in America 68, 95 (Michael Grossberg & Christopher Tomlins eds., 2008).

18. *See* William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 L. & Soc'y Rev. 631, 633 (1980).

procedures and legal claims,[19] correctly complete forms,[20] and have a voice in court proceedings.[21] This conception of lawyers as required for justice even manifested itself in a 1963 landmark decision by the U.S. Supreme Court, which recognized in *Gideon v. Wainwright* that "[t]he right to be heard would be, in many cases, of little avail, if it did not comprehend the right to be heard by counsel."[22] The assumption that lawyers are requirements for justice has guided judicial decisions and policies for the last century.

This lawyer-centric concept of access to justice has been so ingrained that standard historical questions of how and why lawyers and justice became linked have neither been posed nor answered. Given the contemporary debates for and against justice without lawyers, from instituting a right to counsel for civil legal matters to augmenting self-help tools and services,[23] it is remarkable that scholars have yet to conduct a serious historical investigation of how lawyers became entrenched in efforts to obtain justice.

This article conducts such an inquiry by examining the development of legal aid in America, with an eye towards the role of nonlawyers in providing justice for the people. I proceed where Batlan has left off in retelling the history of legal aid in America to include the efforts of women nonlawyers.[24] Batlan's revisionist critique provides the most comprehensive narrative thus far on the role of nonlawyers in legal aid, but like any pivotal pioneering project, her research prompts further investigation. Nonlawyers provided litigants with justice before legal aid lawyers even entered the frame. How exactly did the nonlawyers provide justice to indigent litigants and why did the primary providers of legal aid services shift from nonlawyers to lawyers?

A. Methodology

To answer these questions, I examine the shift in legal aid providers and explore its implications for vulnerable people's access to justice through a case study set in Boston from 1878 until 1921. I focus on the development of legal aid in Boston through the lens of two organizations that shared a devotion to providing legal aid for Boston's impoverished residents yet had one critical difference:

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19. *See* Alicia M. Farley, *An Important Piece of the Bundle: How Limited Appearances Can Provide an Ethically Sound Way to Increase Access to Justice for Pro Se Litigants*, 20 GEO. J. LEGAL ETHICS 563, 570 (2007).

20. Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 HASTINGS L.J. 1389, 1394 (2016).

21. Michael O'Connell, *Improving Access to Justice: Procedural Justice Through Legal Counsel for Victims of Crime*, *in* AN INTERNATIONAL PERSPECTIVE ON CONTEMPORARY DEVELOPMENTS IN VICTIMOLOGY 207, 217 (Janice Joseph & Stacie Jergenson eds., 2020).

22. Gideon v. Wainwright, 372 U.S. 335, 344–45 (1963); *see also* Vivek S. Sankaran, *Moving Beyond* Lassiter*: The Need for a Federal Statutory Right to Counsel for Parents in Child Welfare Cases*, 44 J. LEGIS. 1, 12 (2017).

23. *See, e.g.*, Tonya L. Brito, *The Right to Civil Counsel*, 148 DÆDALUS 56, 56 (2019); J. David Griener et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1121 (2017).

24. *See* Robert W. Gordon, *Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History*, 148 DÆDALUS 177, 179 (2019).

one was led primarily by nonlawyers and the other by lawyers. The nonlawyer-dominated Women's Educational and Industrial Union ("Union") was founded in 1877 and began providing legal aid services one year later in 1878. Meanwhile, the lawyer-led Boston Legal Aid Society ("Legal Aid Society") did not emerge until 1900.

Boston's legal aid landscape from the late nineteenth to early twentieth century makes it an apt place to study how the transition from an expert nonlawyer to a professional legal aid lawyer affected legal services for the poor. Although Boston was not the first city in the United States to witness the creation of a lawyer-led and lawyer-centric legal aid society—it came third after New York and Chicago, respectively—it was the city that witnessed the clearest distinction between lawyer- and nonlawyer-dominated legal organizations.[25] The women nonlawyers in Boston operated the Union, while professional male lawyers ran the Legal Aid Society.

Thus, I draw on records from the Women's Educational and Industrial Union and the Boston Legal Aid Society to trace the development of legal aid in Boston and reveal the critical role nonlawyers played in providing justice for the poor. For the set of sources from the Union, there are forty-three annual reports dating from 1879 until 1922; minutes from the legal aid committee's meetings from 1878 until 1894; and a typescript document entitled "History of the Women's Educational and Industrial Union" published in 1955. The Union's annual reports contain the addresses of the President and Secretary of the Union as well as reports from each of the Union's departments, including the one responsible for legal aid services: the Protective Department. As for the Boston Legal Aid Society, I rely on their annual reports as well, beginning with the first publication in 1901 until its twenty-second in 1922.[26] Using this dataset, I tell the story of the development of legal aid providers in Boston and its implications for justice.

1. Theoretical Framing

In a historical sense, this article traces how justice changed in the early twentieth century when the legal aid providers changed. In a socio-legal sense, I use theory as a lens to contextualize why the shift in primary legal aid providers, and its ensuing effects, occurred. To conduct such an inquiry, I ask why private lawyers decided to provide subsidized legal aid services in the first place. Current

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25. In New York, the agency that preceded the lawyer-run New York Legal Aid Society, the Working Women's Protective Union, was staffed by expert nonlawyers but was still managed and led by professional lawyers. Chicago's Legal Aid Society was a culmination of its nonlawyer-led Protective Agency for Women and Children and its lawyer-centric Bureau of Justice, making the Chicago Legal Aid Society a unique hybrid organization. *See* BATLAN, *supra* note 8, at 17, 81.

26. Despite the potential biases inherent in annual reports written not only to give an account of the work but also to appeal to potential donors, they are nonetheless useful for telling us what the organization believed might appeal to donors and the attitudes of those at the organization. *See* Mark Spiegel, *Legal Aid 1900 to 1930: What Happened to Law Reform?* 8 DEPAUL J. FOR SOC. JUST. 199, 208 (2015).

scholarship suggests that the lawyers engaged in public interest work to fulfill an ideal of legal practice,[27] improve the image of the bar,[28] or participate in the civic culture of the times.[29] While all of these are plausible, they fail to explain why the nature of services had to change when the provider changed. One can enter a field of practice without radically reforming the rules of the game, so why change the meaning of justice for the poor?

I argue that the lawyers who created and maintained the Boston Legal Aid Society distinguished their approach to legal services because the nonlawyers' growing presence constituted a threat towards the lawyers' monopoly over legal matters. That nonlawyers could provide litigants with a cheaper and more satisfactory means of resolving legal disputes endangered lawyers' domain over legal services and their distinctiveness as a profession. To ward off this threat, the Boston lawyers entered the legal aid landscape and began to offer low-cost and free legal services to the poor, thus effectively competing with the nonlawyers over control.

It is here that I find Andrew Abbott's sociological theory valuable in explaining why the lawyers entered the landscape and transformed the delivery of legal services for the poor. Abbott views competition as the backbone of professional development; groups compete for legitimate, exclusive control—or what he terms "jurisdiction"—over an area of work.[30] Abbott proposes that "professions coexist in an ecological system and develop through interprofessional competition, that is, turf battles over controlling professional work."[31] The currency that professionals use to "fight for turf" is by "using abstract knowledge to annex new areas" or maintain current domains.[32] I argue that the lawyers created abstract knowledge by redefining justice in terms of the law. As Kathryn Leader suggested about the Litigant in Person in England (otherwise known as a *pro se* litigant in the United States), the failure of nonlawyers to operate the law "is a means of maintaining the specialist legal profession: it sustains dependence on legal representation to navigate [the] legal process."[33] Thus, by changing the meaning of justice, the

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27. *See* Robert W. Gordon, *"The Ideal and the Actual in the Law": Fantasies and Practices of New York City Lawyers, 1870–1910*, *in* THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA 51, 51–57 (Gerard W. Gawalt ed., 1984).

28. *See* Michael Grossberg, *The Politics of Professionalism: the Creation of Legal Aid and the Strains of Political Liberalism in America, 1900–1930*, *in* LAWYERS AND THE RISE OF WESTERN POLITICAL LIBERALISM: EUROPE AND NORTH AMERICA FROM THE EIGHTEENTH TO TWENTIETH CENTURIES 305, 307 (Terence C. Halliday & Lucien Karpik eds., 1997); JACK KATZ, POOR PEOPLE'S LAWYERS IN TRANSITION 45 (Rutgers Univ. Press ed., 1982).

29. Mark Spiegel, *The Boston Legal Aid Society: 1900–1925*, 9 MASS. LEGAL HIST. 17, 26 (2003).

30. Andrew Abbott, *Jurisdictional Conflicts: A New Approach to the Development of the Legal Professions*, 11 AM. B. FOUND. RES. J. 187, 191 (1986).

31. Sida Liu, *The Legal Profession as a Social Process: A Theory on Lawyers and Globalization*, 38 L. & SOC. INQUIRY 670, 672 (2013).

32. ANDREW ABBOTT, THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR 102 (1988).

33. Kathryn Leader, Fifteen Stories: Litigants in Person in the Civil Justice System 16 (2017) (Ph.D. dissertation, London School of Economics) (ResearchGate).

lawyers precluded nonlawyers—both advocates and litigants—from handling legal disputes independently of lawyers.

B. Paper Structure

The remainder of this Introduction sets forth how the argument of this paper will unfold. Part II describes the lay origins of legal aid in Boston in 1878. Part III illuminates the services that the nonlawyers provided, with an eye towards the type of justice that clients received. Part IV charts the emergence of the Boston Legal Aid Society, a lawyer-led and lawyer-centric organization dedicated to providing low-cost legal aid to impoverished neighbors. Part V explores how justice at the Legal Aid Society differed from that of the Protective Department and proposes an explanation for the variance.

Whereas the nonlawyers delivered procedural justice to their clients by remaining accessible, responsive, empathetic, and committed, this changed with the lawyers, who provided a justice that revolved around the law and the lawyers' conception of it. While both institutions managed to coexist for over two decades, in 1921, the Women's Educational and Industrial Union's legal aid branch ceded control over direct legal services to lawyers at the Boston Legal Aid Society. This shift in providers represented not only a change in whom the poor would turn to with their legal needs but also in whether and how they would receive that justice. Because to access justice, one would now need access to a lawyer.

II. Creating A Nonlawyers' Protective Department

In late-nineteenth-century Boston, litigants obtained justice via nonlawyers. Despite lacking formal legal training and education, these nonlawyers nevertheless became experts in handling legal claims and providing relief to clients.[34] To properly understand how nonlawyers could have both established a legal aid agency and dispensed the actual services, it is critical to shed the notion that only a lawyer can perform legal tasks. In late-nineteenth-century Massachusetts—and until 1935—unauthorized practice of law statutes prohibiting nonlawyers from engaging in legal activities, such as interpreting legal documents or dispensing legal advice, were nonexistent.[35] Without such formal restrictions, anonymous newspaper columns, such as *The Boston Globe*'s "People's Lawyer," could address community members' legal conundrums in weekly editions.[36] In addition, women nonlawyers could provide legal advice. Thus, this story begins with the creation of the organization that housed Boston's first legal aid agency for women, the Women's Educational and Industrial Union.

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34. Women's Educ. and Indus. Union, Report of the Women's Educational and Industrial Union for the Year Ending May 1, 1884, at 43 (1884) [hereinafter Union].

35. *See People's Lawyer: Globe to Abandon Column as Result of New Law*, Bos. Globe, Sept. 9, 1935, at 5.

36. *See Questions of Law*, Bos. Globe, June 9, 1887, at 4.

A. Origins of the Union and its Protective Department

On May 6, 1877, eight middle-class women in Boston gathered for their weekly "Sunday Meetings for Women" (and only women) for their usual discussions about "ethical, moral and spiritual questions of interest."[37] Yet this meeting was no ordinary confab. As the women prepared to exchange farewells, organizer and hostess Dr. Harriet Clisby, a forty-six-year-old physician, made an announcement. She was ready to act on a plan she had long fostered to form an association to "aid, strengthen and elevate women" and invited the seven "earnest" meeting attendees to join her as founding members.[38] If interested, they were to meet at her office the following week. On that day, those seven women (and thirty-four others) arrived at Dr. Clisby's office, where she shared her plans with great enthusiasm. At the close of the gathering, most attendees agreed to join the movement. They provided their names as members of the proposed association, brainstormed how to generate funds to pursue the venture, and parted ways. Two weeks later, the women met again, having raised $185 for the proposed association and appointed a committee to draft a constitution. On June 11, 1877, fifty-five women signed and ratified the organization's constitution, and the Women's Educational and Industrial Union was born.[39]

According to the Union's constitution, the organization existed to "increase fellowship among women [and promote] the best practical methods for securing their educational, industrial, and social advancement."[40] To these ends, the Union comprised six committees that each managed their own departments: Finance; Social Affairs; Moral and Spiritual Development; Education; Hygiene and Physical Culture; and Industries and Employment. These committees did activities such as hosting events for members, organizing lectures by guest speakers on scientific and cultural topics, helping women find jobs, and teaching them how to direct their talents in the arts and trade towards profitmaking.[41] In addition to the distinct departments, there was a Board of Directors, which comprised a President, Vice President, Secretary, Treasurer, and three to four general Board Members.[42] All members of the Union, ranging from the President to a member of the Education Committee, were unpaid volunteers.

And instead of receiving compensation for their time and efforts, the volunteers had to pay to join the Union. Through these membership fees (and donations

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37. Erica Harth, *Founding Mothers of Social Justice: The Women's Educational and Industrial Union of Boston, 1877–1892*, 28 HIST. J. MASS. 140, 143–144 (1999); S. Agnes Donham, History of the Women's Educational and Industrial Union 5 (1955) (unpublished manuscript) (on file with Harvard Radcliffe Institute).

38. Donham, *supra* note 37, at 5–6.

39. *See* UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 7, 1879, at 9 (1879); Charlotte H. L. Briggs, From Social Reform to Social Science: The Women's Educational and Industrial Union of Boston, 1877–1912, at 26 (1985) (B.A. Honors Thesis, Oberlin College) (on file with author).

40. UNION, REPORT FOR 1879, *supra* note 39, at 29.

41. *Id.* at 32–33.

42. Donham, *supra* note 37, at 8.

from the public), the Union operated. To become a member, which would allow one to help manage and facilitate events and services, applicants had to pay an annual fee of $1.[43] Such charges were the norm in Boston's charitable culture. And unlike other women's associations at the time, some of which had charged initial entry fees of $10 and annual fees of $5, the Union remained more financially accessible.[44] This furthered Dr. Clisby's vision of an organization that would serve as a "union of all for the good of all."[45] By the first annual meeting in May 1878, there were 400 members.[46] Ten years later, it had 1,200.[47] The Union served as an open forum for women willing and able to contribute $1 to collaborate with fellow women to uplift all women. One year into the existence of the Union, its leaders identified a group of women who desperately needed their protection: working women.

In Boston in 1880, 38,881 people out of a total population of 360,000 were working women.[48] Of this subset, about 75% of them (over 30,000) were involved in either domestic service or manufacturing.[49] At the time, the labor conditions for many of these women were less than ideal, with such things as rushed meals, minimal pay (if at all), and enforced standing. Saleswomen in shops felt as though their health and strength were strained from standing hours on end, with no stools being provided and no opportunity to sit. Factory workers spent all day in workrooms that they thought would be a "good place for the Board of Health" to visit, as there was poor ventilation, crowded conditions, and unbearable odors.[50] Yet these employees had little to no bargaining power; complaining women could be easily replaced with new, eager workers.[51] It is against this backdrop that organized legal aid in Boston began.

Although the organizers who provided legal aid to working women were also women, they were not lawyers. Instead, free legal services for vulnerable residents began with nonlawyers. While there existed various charities in Boston to protect vulnerable children (and even animals), the nonlawyers at the Women's Educational and Industrial Union realized there was a dearth of services to defend

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43. Harth, *supra* note 37, at 144.

44. Some Boston charitable groups with costly entry fees included: the Young Women's Christian Association in 1866, the New England Women's Club in 1868, and the Women's Christian Temperance Union in 1874. *See* Harth, *supra* note 37, at 143–144.

45. *Id.* at 144.

46. Donham, *supra* note 37, at 13.

47. Sarah Deutsch, *Learning to Talk More Like a Man: Boston Women's Class-Bridging Organizations, 1870–1940*, 97 AM. HIST. REV. 379, 390 (1992).

48. CARROLL D. WRIGHT, THE WORKING GIRLS OF BOSTON 3, 6–7, 9 (1889). There were about 18,000 working women involved domestic or personal service and 13,000 women involved in manufacturing.

49. *Id.*

50. *Id.* at 68–70.

51. *See* ALICE KESSLER-HARRIS, WOMEN HAVE ALWAYS WORKED: A CONCISE HISTORY 76 (2d ed. 2018) (noting the oversupply of women workers).

working women.[52] Thus, under the aegis of the Union, three women nonlawyers created Boston's first legal services division organized for women: the Protective Department.

1. Creating the Protective Department

In November 1878, Union members Mrs. Caroline Streeter, Mrs. B.F. Redfern, and Mrs. Abby Diaz banded together to discuss what they could do to safeguard women's rights. During that meeting, Abby Diaz, who would later become the President of the Women's Educational and Industrial Union, shared her knowledge about the Working Women's Protective Union that served "to promote the interests of working women by providing them with legal protection."[53] This New York-based agency founded in 1863 also happened to be the first legal aid organization in America.[54] Inspired by the enterprise of the New York organization and motivated to improve the livelihood of vulnerable Bostonians, the three Union women decided it was time to create their own Protective Department.

Despite having a general vision to follow, it was unclear how the nonlawyers would protect vulnerable litigants. The Constitution of the Women's Educational and Industrial Union merely announced that the Protective Department existed to "commend the legal and social rights of women to public attention, and endeavor to awaken a sentiment which shall be a sufficient guarantee that no wrong shall be unredressed and no right disregarded."[55] This omission in articulating how the nonlawyers would commend people's rights could partly be explained by the Protective Department's lack of knowledge about the means to achieve that goal.[56] How were they to accommodate clients' legal needs when they themselves were not lawyers?

B. Structuring the Protective Department

Every week, the nonlawyers at the Protective Department hosted intake sessions known as "Complaint Days," where community members could share

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52. Groups for the protection of children and animals include the Society for the Prevention of Cruelty to Children and the Society for the Prevention of Cruelty of Animals. *See* UNION, REPORT FOR 1879, *supra* note 39, at 20.

53. *Protection for Working Women*, BOS. POST, December 28, 1878, at 3; Briggs, *supra* note 39, at 4.

54. BATLAN, *supra* note 8, at 17.

55. UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 3, 1881, at 51 (1881).

56. Prior to providing direct legal services, the Protective Department sought to protect women's legal and social rights via advocacy. Their first major effort involved campaigning against "enforced standing," a policy by which shopkeepers required their employees to stand all day, even when there were no customers around. UNION, REPORT FOR 1879, *supra* note 39, at 19. The Union's nonlawyers appeared in shops to speak with employers and employees, placed advertisements titled "Facts Wanted" in the local newspaper to seek further information from community members, and even considered hiring traveling agents to speak to hundreds of sources to conduct a thorough investigation. *Id.* at 19–20. However, they lacked the financial means to hire other agents, so they concluded their efforts by encouraging investigators at the Bureau of Labor Statistics to look into the issue. *Id.*

perceived injustices and secure advice or assistance with how to proceed. Although none of the women at the Protective Department—which had quickly grown from three to seven members since its inception—had a formal legal education, they served on the frontlines of the agency.[57] On Wednesday and Saturday afternoons, from three until five, Mrs. Sewall, an active member of the Union, vociferous abolitionist, and strong supporter of women's rights, or Mrs. Redfern, the Protective Department's Chairwoman, would sit across from prospective claimants and patiently listen to their stories.[58]

Union annual reports described how the women nonlawyers assisted their clients. The nonlawyers would first rely on their inquisitorial skills to see if they could reach a resolution without resorting to legal means.[59] Parties would divulge their complaints, often about their employers, to the sympathetic nonlawyer. The most common claims concerned allegations that employers had not paid employees their rightfully due wages.[60] To address these matters, the nonlawyer volunteer listening to the client would absorb the narrative and gather critical details about the identity of the opposing party and the grounds for the claim.[61] In the interest of seeking the truth and understanding the story from both sides, the nonlawyer would then locate the opposing party and hear their version of the story.[62] But the questioning was not limited to only the individuals directly involved in the dispute; sometimes, and especially when claims were contested, the nonlawyers would also contact neighbors or other community members familiar with the parties to inquire into their characters.[63] The nonlawyers' conceptions of individuals' worthiness and reputation influenced how the nonlawyers proceeded with the cases. If they discovered that any of the parties involved had a history of

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57. At the December 16, 1878, meeting for the Protective Department, there were seven women present, Mrs. Sewall, Mrs. Temple. Mrs. Diaz, Mrs. Garrison, Miss Chamberlin, Miss Sprague, and Mrs. Redfern. There was one male volunteer attorney present at the meeting, Mr. Curtis, however, he did not host the Complaint Day sessions. *See* Union, Protective Committee Minutes (Dec. 16, 1878) (on file with Harvard Radcliffe Institute).

58. *Id.*

59. *See* UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 1, 1892, at 45 (1892).

60. *See* UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 7, 1889, at 36 (1889).

61. *See* UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 1, 1888, at 37 (1888).

62. *See* Union, Protective Committee Minutes (May 2, 1881) (on file with Harvard Radcliffe Institute) (Mrs. Whitehall, a defendant in a dispute, complained that the Union's nonlawyers had trusted "the girl's story but had not heard [the defendant's] claims").

63. *See* Union, Protective Committee Minutes (Feb. 3, 1879) (In a contested dispute over wages, employer Mrs. M claimed that she promised her worker $3 per week, while the worked claimed it was $3.50 per week. To address this dispute, the nonlawyers invited a witness to the dispute, the owner of intelligence office, which "testified that she heard Mrs. M. promise the sum." Based on the "testimony of witness," the nonlawyers "advised Mrs. M. to pay." She did). *See also* Union, Protective Committee Minutes (Feb. 18, 1884) (on file with Harvard Radcliffe Institute) (In a dispute over wages where an employer neglected to pay nurse Mrs. Wiswall for allegedly being "incompetent," the Protective Department's nonlawyers received letters "from people whom claimant has nursed" and through such evidence determined that the nurse was in the right).

breaking promises or refusing to pay, the nonlawyers used this as evidence for whose claims to believe.[64] Rather than rely on technical legal knowledge about whether a specific law applied to a client's case, the nonlawyers instead turned to their personal skills as good listeners.[65]

Upon gathering the relevant evidence, the nonlawyer in charge of the case would then take it to one of the Department's bi-weekly committee meetings, where the other committee members would gather and discuss their cases from the prior weeks.[66] The purpose of these meetings was two-fold: the first was to inform and update one another about the issues that came before them, and the second was to solicit advice on how to proceed with the dispute.[67] Together, the nonlawyers would learn about the issues that community members brought to them and collectively brainstorm solutions.

The nonlawyers were able to meet many of their clients' legal needs by themselves because the resolutions they opted for were not necessarily legal. For the most part, the nonlawyers would attempt to make an "amicable arrangement [] with the employer if possible" and avoid taking issues to court.[68] In one instance, a girl working as a housekeeper alleged that her employer had retained $1 of her wages for "preparing a dish of prunes she had spoiled" and for using "a coffee pot which she had been told not to and had ruined it."[69] Upon hearing this complaint, the nonlawyer in charge of the case, Mrs. Sewall, approached the employer.[70] After Mrs. Sewall "found her living in a handsome house and nicely dressed," she discussed the matter with the employer and obtained the dollar for the claimant.[71] Through gentle negotiations and patience, the nonlawyers were able to secure relief and justice for their clients.

However, if a case seemed embedded with legal technicalities beyond the nonlawyers' purview, or if the parties could not successfully reach a settlement, then the nonlawyers would refer the case to a professional lawyer.[72] Although nonlawyers managed and ran the Protective Department, there were a few

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64. Union, Protective Committee Minutes (May 12, 1879) (on file with Harvard Radcliffe Institute).

65. *See infra* Part III(b).

66. *See, e.g.*, Union, Protective Committee Minutes (Jan. 27, 1879) (on file with Harvard Radcliffe Institute).

67. *See, e.g.*, *id.*; Union, Protective Committee Minutes (Nov. 5, 1883) (on file with Harvard Radcliffe Institute) (noting that at a Protective Department Committee meeting on November 5, 1883, the present members discussed a case involving an employer's unlawful taking of an employee's luggage. The Union's nonlawyers reported that although they had sent the employer a letter, they "voted that no money be spent on this case").

68. Union, Protective Committee Minutes (Dec. 13, 1878) (on file with Harvard Radcliffe Institute).

69. Union, Protective Committee Minutes (Apr. 18, 1881) (on file with Harvard Radcliffe Institute).

70. *Id.*

71. *Id.*

72. *See* UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 1, 1885, at 34 (1885).

volunteer private lawyers on the fringes.[73] However, there appeared to be no written rule for when a case warranted an attorney's attention. During the first year of the Department's operations, the nonlawyers gave cases to attorneys more liberally. In the case of *Crowley v. Gunther*, Mrs. Gunther owed money to the opposing party, and although she had agreed to a settlement, she alleged that a sudden illness prevented her from bringing the money to the Union.[74] The nonlawyers decided to give Mrs. Gunther another week; however, if she did not return within a week—and she did not—they would refer her case to their attorney.[75] In another instance, after investigating an alleged defendant, Mr. Brazillian, the nonlawyers discovered his pattern of unpaid debts, deemed him untrustworthy, and handed the case to their lawyer.[76] In a case of suspected fraud, the Protective Department nonlawyers moved to pass the case to the attorney.[77] The common thread among these cases was that the nonlawyers referred matters to attorneys when they suspected that the parties needed more incentives to cooperate than what the nonlawyers alone could offer. Yet as the nonlawyers gained more relational experience, which involves "understanding how to navigate the relationships involved in getting work done," they became more confident in handling more types of cases.[78]

1. Developing Nonlawyer Expertise

Over time, the two primary nonlawyers who triaged concerns on Complaint Days became Mrs. Harriett Sewall and Mrs. Tolman Willey, both of whom had developed their own relational and experiential expertise that allowed them to allay claimants' concerns themselves. Mrs. Sewall was one of the original Protective Department members who had joined the Department in 1878, and Mrs. Willey became involved as a nonlawyer at the Protective Department in 1879.[79] Both women's husbands were lawyers who also donated their services to the Union's Protective Department, yet neither of the women nonlawyers themselves had received formal legal training.[80] Despite this, Mrs. Sewall and Willey had developed a reputation within the Department as the individuals to turn to

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73. *See, e.g.*, Union, Protective Committee Minutes (Dec. 13, 1878) (on file with Harvard Radcliffe Institute). *See also* Union, Protective Committee Minutes (Mar. 3, 1879) (on file with Harvard Radcliffe Institute).

74. Union, Protective Committee Minutes (Apr. 21, 1879) (on file with Harvard Radcliffe Institute).

75. *See id.*; Union, Protective Committee Minutes (Jun. 9, 1879) (on file with Harvard Radcliffe Institute) (noting that the Union's attorney, Mr. Ladd, ended up recovering the whole amount of thirty dollars in the *Crowley v. Gunther* dispute).

76. Union, Protective Committee Minutes (May 12, 1879) (on file with Harvard Radcliffe Institute).

77. Union, Protective Committee Minutes (May 26, 1879) (on file with Harvard Radcliffe Institute).

78. Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers' Impact*, 80 AM. SOCIO. REV. 909, 911 (2015).

79. *See* Union, Protective Committee Minutes (Dec. 8, 1879) (on file with Harvard Radcliffe Institute); Union, Protective Committee Minutes, *supra* note 57.

80. Harth, *supra* note 37, at 154.

when one needed further information about a case. For example, the Protective Department committee members decided at a meeting on February 9, 1880, that a case concerning a railroad company that had damaged a woman's farm "should be given to Mrs. Sewall and Mrs. Willey for investigation."[81] Rather than refer the legal case to a volunteer lawyer, the committee first gave it to their primary nonlawyer investigators for screening.[82]

Through their persistent efforts, Mrs. Sewall and Mrs. Willey developed a reputation among community members as committed champions for clients.[83] And as an organization, they had developed a reputation as a dispute resolution force to be reckoned with. When the Department first began in 1878, the committee members reported that when the nonlawyers brought claims against defendants, the accused would fervently deny the claims, yet as early as 1882, four years after the Department's inception, the committee reported, ". . . we are dreaded by dishonest and careless employers; and now claims are often soon settled, which once would have been contested."[84] In the words of the Secretary of the Protective Department, people complied with the nonlawyers' requests because "the defendant, realizing the persistency and the justice of our work, yields to our demands."[85] After a few years of service, the nonlawyers at the Protective Department had developed prowess in resolving legal matters. They developed their "relational expertise" and knew "how to navigate the relationships involved in getting work done."[86] The nonlawyers understood that the key to getting the defendants to comply was persistency.

The investigations and settlements by nonlawyers proved so successful that the Union's Annual Report in 1884 compared Mrs. Sewall and Willey to some of Boston's top lawyers. The document read that "in the future there may be a firm of Mesdames Sewall and Willey, which will rival that of Russell & Putnam or Sohier & Welch."[87] The so-called "rival" law firms were some of Boston's oldest and most prominent law firms, which were founded in 1838 as two of the first law offices and served "the legal needs of Boston's industrialists."[88] Rather than suggest creating a practice led by their husbands, who were also attorneys, the

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81. Union, Protective Committee Minutes (Feb. 9, 1880) (on file with Harvard Radcliffe Institute).

82. *See id.*; *see also* Union, Protective Committee Minutes (Jan. 12, 1880) (on file with Harvard Radcliffe Institute); Union, Protective Committee Minutes (May 31, 1880) (on file with Harvard Radcliffe Institute).

83. *See* UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 2, 1882, at 46 (1882) ("Mrs. Sewall and Mrs. Willey are the prosecuting agents of the department. They hear and investigate all complaints, and have already attained such legal skill that the Boston bar could with propriety call them *sisters-in-law.*").

84. UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 2, 1882, at 47 (1882).

85. *Id.*

86. Sandefur, *supra* note 78, at 911.

87. UNION, REPORT FOR 1884, *supra* note 34, at 43.

88. WELCH & FORBES LLC, *Overview & History*, https://www.welchforbes.com/overview-history/ (last visited Apr. 8, 2022). Firm of Putman & Bell began as the law office of William Whiting

two women nonlawyers proposed that they would be leading their own law firm. This was especially unusual, even for those few women lucky enough to obtain a formal legal education. At the time, women lawyers whose husbands were lawyers typically shared a practice with them, but they did not do the same tasks. While the wife remained in the office to oversee administrative duties, the husband argued cases in court.[89] But at the fantasy law firm of "Mesdames Sewall and Willey,"[90] the women would be at the forefront. Nonlawyers at the Union's Protective Department had managed to build an institution that they thought compared to private lawyers' firms, yet central to the practice were not lawyers but nonlawyers.

C. Lawyers on the Margins

Although the Protective Department was a nonlawyer-led agency, that is not to say that there were no lawyers involved in the organization whatsoever. From the outset, the nonlawyers had also procured the volunteer services of professional lawyers to assist them with cases that proved too difficult for the nonlawyers alone to handle. But these attorneys remained at the margins of the nonlawyers' agency.

The Department hired Mr. Benjamin R. Curtis as its first Prosecuting Attorney, but he held the post for no longer than four months.[91] Two months into the job, Mr. Curtis began to demand more fees for his services. The committee members thought that compensating Mr. Curtis for court costs, which ranged from $1.50 to $2.00, was sufficient; however, Mr. Curtis disagreed, requesting either a percent of the sum recovered from clients or a "small" salary of $300 for his services.[92] Since the nonlawyers at the time had no other attorneys to assist them, they conceded to Mr. Curtis' request for a small percentage of claims recovered, though they limited this by granting him supervision over only four cases and nothing else.[93] Meanwhile, the nonlawyers decided it was time to look for his replacement, other potential "young lawyers" who would be willing to do business for the Department free of charge.[94] By April 1879, Mr. Curtis's name

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(1838-1845), followed by Whiting & Russell (1845-1873), before becoming Russell & Putnam (1873-1896). JAMES CLARK FITFIELD, THE AMERICAN BAR 675 (J.C. Fitfield Co., 1963).

89. VIRGINIA DRACHMAN, WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1890, at 28 (1993).

90. UNION, REPORT FOR 1884, *supra* note 34, at 43.

91. Mr. Curtis first appeared in the Protective Committee Minutes as an assisting attorney on December 13, 1878, and the last mention of him in that capacity was March 24, 1879. *See* Union, Protective Committee Minutes (Dec. 13, 1878) (on file with Harvard Radcliffe Institute); Union, Protective Committee Minutes (Mar. 24, 1879) (on file with Harvard Radcliffe Institute).

92. Union, Protective Committee Minutes (Feb. 24, 1879) (on file with Harvard Radcliffe Institute); DRACHMAN, *supra* note 89, at 28.

93. Union, Protective Committee Minutes (Mar. 24, 1879) (on file with Harvard Radcliffe Institute).

94. Union, Protective Committee Minutes (Mar. 3, 1879) (on file with Harvard Radcliffe Institute).

no longer appeared in the meeting minutes of the Protective Committee.[95] Although the lawyers had a titular advantage that the committee members lacked, the nonlawyers made clear that at the Protective Department, the committee members were in charge.

Initially, the nonlawyers were optimistic about the prospect of securing free legal services from attorneys. They noted that at the neighboring Society for the Prevention of Cruelty to Children, attorneys there "transacted the business free of charge" and had hoped to find similar attorneys willing to do the same for them.[96] Another charitable organization, the Moral Reform Society, which was also based in Boston, had a lawyer there who supervised bastardy cases and gave his services free of charge. Upon visiting the society, the Protective Department's chairwoman Mrs. Redfern shared at a committee meeting that the Moral Reform Society's lawyer suggested that the Department should "experience no trouble getting all the necessary legal assistance."[97] Ultimately, the committee managed to secure intermittent services from various attorneys; however, if they wanted sustained, committed assistance, they would need to provide the lawyers with more than the mere badge of benevolence. Unfortunately, the reality was that they could not; their finances strained them.

One of the founding principles of the Protective Department was that their legal services would be completely gratuitous for their clients, even if it came at a cost for the agency. It was not abnormal for charities to collect a portion of the sums that they had helped litigants recover. After all, the charity workers invested significant time and energy in resolving the dispute. Furthermore, it was thought that by having clients share a cut of their proceeds with the charities that helped them, the litigants "might not be encouraged to [depend] too much . . . on others."[98] Yet, at the Union's Protective Department, the majority of nonlawyers held a different philosophy.[99] In furnishing legal assistance to litigants, the nonlawyers did not view themselves as giving "a present to a plaintiff"; instead, they argued that they were "simply restor[ing] to them their own."[100] Thus, even if they had helped a client collect hundreds of dollars, the Protective Department would not require the client to contribute so much as a penny. Meanwhile, if the case did go to court, which incurred various procedural expenses, those fees

95. The last mention of Mr. Curtis as a service provider for the Protective Committee in the minutes was March 24, 1879. At the next recorded Protective Committee meeting on April 7, 1879, and thereafter, there is no mention of Mr. Curtis as a lawyer who assisted the Union. *See* Union, Protective Committee Minutes (Mar. 24, 1879), *supra* note 91; Union, Protective Committee Minutes (Apr. 7, 1879) (on file with Harvard Radcliffe Institute).

96. Union, Protective Committee Minutes (Mar. 3, 1879), *supra* note 94.

97. Union, Protective Committee Minutes (Apr. 21, 1879) (on file with Harvard Radcliffe Institute).

98. Union, Protective Committee Minutes (Mar. 3, 1879), *supra* note 94.

99. The Department's belief in providing its labor to working women for free was reinforced a year later on March 8, 1880, at a committee meeting by a vote of seven to two. Union, Protective Committee Minutes (Mar. 8, 1880) (on file with Harvard Radcliffe Institute).

100. Union, Protective Committee Minutes (Mar. 3, 1879), *supra* note 94.

would come from the Department's "own treasury," not the client's pockets.[101] The Protective Department members promoted a vision of justice that involved securing for the client what rightfully belonged to them, in its fullest amount. This belief, however, would restrict sources of revenue for the Protective Department, thereby preventing the nonlawyers from being able to pay attorneys for their services and making them rely on volunteer attorneys.

Without much to offer to the volunteer lawyers but experience and gratification, the Protective Department saw a stream of volunteer attorneys come and go. In the Protective Department's bi-weekly meeting minutes, the Secretary recorded instances of committee members expressing their needs for legal assistance,[102] recommending new potential lawyers to reach out to,[103] inviting certain lawyers to work with the Department,[104] referring cases to lawyers,[105] and reporting summaries of the cases under the lawyers' supervision.[106] While these minutes may not reflect the exact extent to which the lawyers were involved with the Protective Department, they provide a modest picture of the lawyers whom the nonlawyers relied on for aid. The Protective Department minutes cover the years 1878 until 1894, and during this period, the agency saw at least twenty-three volunteer attorneys.[107] During the Department's first five years, from its inception in November 1878 until the end of its fiscal year in May 1883, the Department witnessed at least eight lawyers come and go.[108] The women recognized that they could not rely too heavily on the private lawyers, as the "young men [would] so quickly become skilled practitioners that their business increases and they have less time for charity."[109] The nonlawyers recognized that for the volunteer lawyers, working with the Protective Department came, at best, second to their full-time occupations as attorneys in private practice.

There was one attorney, however, who would become the Protective Department's longest-serving lawyer: Mr. Willey, the husband of leading

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101. *Id.*

102. Union, Protective Committee Minutes (July 7, 1879) (on file with Harvard Radcliffe Institute); Union, Protective Committee Minutes (Jan. 7, 1884) (on file with Harvard Radcliffe Institute); Union, Protective Committee Minutes (Nov. 11, 1884) (on file with Harvard Radcliffe Institute).

103. Union, Protective Committee Minutes (Mar. 31, 1879) (on file with Harvard Radcliffe Institute).

104. Union, Protective Committee Minutes (Jan. 26, 1880) (on file with Harvard Radcliffe Institute).

105. Union, Protective Committee Minutes (Jan. 12, 1880) (on file with Harvard Radcliffe Institute).

106. *Id.*

107. In the Protective Committee Minutes from December 13, 1878, until December 10, 1894, which span the entire collection of the only known recorded minutes of the Protective Department, twenty-three different attorneys' names were mentioned in their capacities as lawyers assisting the Protective Department. The following are the number of new attorneys mentioned in the minutes for the calendar year: 1878 – two; 1879 – four; 1880 – three; 1882 – two; 1883 – one; 1887 – two; 1888 – three; 1889 – one; 1891 – one; 1892 – two; 1893 – one; 1894 – one. *See* Union, Protective Committee Minutes (Dec. 13, 1878–Dec. 10, 1894) (on file with Harvard Radcliffe Institute).

108. The Protective Committee minutes suggest that there were eleven new attorneys who had acted as volunteer attorneys for the Protective Department from 1878 to 1883, however, only three of the eleven—Mr. Ladd, Mr. Willey, and Mr. Richards—continued being mentioned in the minutes after 1883. *See id.*

109. UNION, REPORT FOR 1892, *supra* note 59, at 46.

nonlawyer Mrs. Willey. The committee members had voted to invite him to serve as their attorney on January 26, 1880.[110] Mr. Willey initially declined the request, but the nonlawyer committee members responded that they "cannot accept his declination" and proposed that they would lighten his load by allowing him to forego in-court responsibilities by delegating cases that need to go to court to the other volunteer attorneys.[111] Within two weeks, Mr. Willey had accepted the offer. Perhaps Mr. Willey joined because he faced pressure from the fact that his wife was a nonlawyer who had joined the Protective Department a few months prior, or because the other nonlawyers would not take no for an answer; nonetheless, he stayed for over a decade until 1893, and one of the variables influencing his decision could have been that the Department was able to pay him an annual salary of $200 from 1882 onwards.[112] This payment was made possible by a $2,000 donation in February 1882 from local supporters Mrs. Leyman and her father.[113] Having secured a substantial donation for the Protective Department, the committee members invested that money in a lawyer who served as a clerk and did not take cases to court.

Admittedly, none of the nonlawyers at the Protective Department received compensation for their services; they, like most of the lawyers, with the exception of Mr. Willey, were volunteers. But the difference between the nonlawyers and lawyers was that while the lawyers who volunteered with the Protective Department had the option of turning to fruitful law office jobs, the women nonlawyers did not. The women nonlawyers at the Protective Department lacked the requisite training for them to officially practice law, so working at the Protective Department served as a viable alternative for them to assist indigent community members with their legal issues and help resolve their disputes. The nonlawyers remained at the center of their agency, not only because perhaps they wanted to, but also because it was the only channel through which they could provide legal services to the poor. In this role, the women nonlawyers eventually crafted their own means of obtaining redress for clients, relying on their relational expertise and persistence. But they did much more than merely help settle and investigate clients' claims for wages; the nonlawyers provided the working class with an accessible means of obtaining justice.

III. Justice With Nonlawyers

That the nonlawyers named their agency the "Protective Department" portends how they would approach their work in the late nineteenth century. Although the decision to call the group the "Protective Department" simply could have been a result of copying its New York counterpart, the Working Women's

110. Union, Protective Committee Minutes (Jan. 26, 1880) (on file with Harvard Radcliffe Institute).

111. Union, Protective Committee Minutes (Feb. 9, 1880) (on file with Harvard Radcliffe Institute).

112. Union, Protective Committee Minutes (Apr. 2, 1882) (on file with Harvard Radcliffe Institute).

113. Union, Protective Committee Minutes (Feb. 28, 1882) (on file with Harvard Radcliffe Institute).

Protective Union, the "protective" terminology provides a lens to understanding how the nonlawyers assisted litigants with their legal disputes. Legal scholar Minna Kotkin has pushed for present-day women lawyers to serve as "'protective' advocate[s] [who] concentrate on the importance of 'taking care' of her client . . . ."[114] Kotkin contends that they should pursue an "advocacy of protection" in which "the lawyer focuses on an empathetic understanding of a client's powerlessness in the litigation process and a deep connection with the client's goals."[115] Whether Kotkin was aware of the various protective agencies for women in late-nineteenth-century America is unclear. And while her suggestion referred to how lawyers in the present day should act, her comment aptly describes how nonlawyers in the Union's Protective Department approached their work. They understood their clients' powerlessness, protected them from the litigation process where possible, and allowed their clients' goals to guide their efforts. The client-centric approach is reflected by how the nonlawyers handled clients' disputes and how they defined justice for litigants. This justice did not emerge from the outcomes that resulted from settlements, whether compensatory or equitable; rather, it stemmed from the processes through which the nonlawyers heard and resolved claims. At the Protective Department, the nonlawyers took care of their clients, created a space for their voices, and delivered procedural and lay justice.

A. Providing Procedural Justice

Adopting a framework promoted by Tom Tyler, "the normative perspective on procedural justice views people as being concerned with aspects of their experience not linked only to outcomes."[116] Such features of procedure that shape the experience of litigants—with either criminal or civil matters—include voice, neutrality, respect, and trust. "Voice" refers to the people's "opportunity to present their side of the story in their own words, before decisions are made about how to handle the dispute or problem"; "Neutrality" describes an aspect of the court experience whereby decisions are made "based upon rules and not personal opinions"; "Respect" denotes "courtesy and politeness and showing respect for people's rights" by "providing people with information about what to do"; and "Trust" involves whether people feel that others are "listening to and considering their views" and "acting in the interests of the parties."[117] Of all factors, however, Tyler argues that the most influential one is voice. When one feels that they have a voice, "they view procedures as more neutral, have more trust in the decision-maker, and feel that they have been treated with greater respect."[118] Though these elements have been defined with respect to legal representatives, such as lawyers

114. Minna J. Kotkin, *Professionalism, Gender and the Public Interest: The Advocacy of Protection*, 8 ST. THOMAS L. REV. 157, 173 (1995) (discussing professionalism from a relational feminist theoretical perspective).

115. *Id.* at 171.

116. TOM R. TYLER, WHY PEOPLE OBEY THE LAW 7 (1990).

117. Zimmerman & Tyler, *supra* note 2, at 487–89.

118. *Id.* at 487.

and judges, procedural justice can be—and was—delivered by nonlegal actors in nonlegal settings. In Boston, beginning in 1878, justice was dispensed by the Protective Department's nonlawyers at the Union site on 4 Park Street.[119]

1. Voice: Providing Clients with a Platform

The nonlawyers served as the frontline workers, listening to clients' claims from the very beginning at Complaint Day sessions and providing them with a platform to share their stories. The Complaint Day hearings were not meant to provide litigants with immediate relief to their issues. The clinic did not operate as a one-stop shop; rather, the sessions were the first step where the client entered her complaint. After that, the nonlawyer would determine what further steps to take, either by deciding independently or by speaking to others, such as fellow nonlawyer committee members, neighbors to the parties involved, or the defendant themself.[120] The Complaint Day intake sessions served as opportunities for clients to divulge distresses and injustices. Since the focus of the initial sessions was not to provide immediate relief but to understand clients' perceived injustices so that the nonlawyers could then diagnose the proper treatment, the nonlawyers prioritized being good listeners.

The nonlawyers understood the importance of wholly listening to clients' stories, even if such narratives proved to be superfluous and time consuming. The committee members acknowledged that how they dealt with clients' cases was not the most efficient means of approaching the issue. Even if a "girl [took] an hour to relate what could be concisely told in ten minutes," the nonlawyers did not rush her.[121] Instead, they simply recognized that they "suffered from loss of time."[122] But for the expert nonlawyers, Mrs. Sewall and Willey, the time investment was worth it. During clients' monologues, the nonlawyers would "win the confidence and learn the secret griefs or zealous hatreds of their plaintiffs."[123] Furnishing a platform for clients to share their stories not only allowed for the clients to feel like they had a voice, but also benefited the nonlawyers' investigations into the disputes. Whether the complainants harbored ill will towards the defendants helped the nonlawyers discern whether the client's claim was legitimate or not.

The nonlawyers at the Protective Department continued to prioritize making space for clients' voices, listening to disputes that not only took a long time but

119. The Union's first site when it opened in 1877 was at 4 Park Street in Boston, Massachusetts. There were two rooms that the Union had used—"A reception room and a free reading-room." One of these two rooms was used for the Protective Committee's Complaint Day Sessions in 1878. By 1905, however, the Union had moved to—and purchased—a house in Boston: 264 Boylston Street. *See* UNION, A REPORT OF PROGRESS MADE IN THE YEAR 1905: BEING THE TWENTY-FIFTH ANNIVERSARY OF THE INCORPORATION OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION 8 (1905).

120. UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 1, 1883, at 45 (1883).

121. *Id.*

122. *Id.*

123. UNION, REPORT FOR 1884, *supra* note 34, at 43.

also amounted to little monetary value. In determining what cases and clients deserved to be heard, the Protective Department committee members did not discriminate between cases based on how much was at stake in monetary terms. They did not impose a floor for the minimum dollar amount of a claim for it to be taken up by the nonlawyers. Rather, the committee members realized "that the loss of fifty cents in wages to a girl is equal to the loss of $5 to a retail merchant or $500 to a wholesale dealer."[124] Mrs. Sewall and Willey did not discredit a client's claim merely because it was of menial monetary value; rather, they gave similar weight to each claim, understanding that dollar amounts did not proportionally correspond to importance. They acted on this realization, too, taking "a large number of cases in which less than $1.00 [was] involved" in the year 1888.[125] Accepting a dispute of less than one dollar was not economically sound for the Protective Department. If the dispute necessitated court proceedings, the process of even starting the legal claim would cost more than the claim in contention. Nonetheless, the nonlawyers did not allow for such cost-benefit metrics to determine whether they would take the case.

Despite the potential inefficiencies of the nonlawyer-led practice, they continued to run their services in that manner because their desire to preserve clients' voices outweighed their interest in running an efficient practice. Although they expressed an exasperation by "constant disputes between mistress and maid concerning domestic service" that was "petty in the details at issue and in the amounts of money received," they nonetheless vociferously listened and attempted to help them resolve their issues.[126] Regardless of how trivial a dispute seemed, the nonlawyers ensured that all prospective clients who attended Complaint Day intake sessions would, at the very least, share their voices and be heard.

2. Neutrality: A Rights-Based System of Rules

While the nonlawyers established the Protective Department on behalf of working women—who were disproportionately employees as opposed to employers—the nonlawyers still strove to occupy a position of neutrality when hearing cases. The "neutrality" that Tyler described referred to decision-making processes "based upon rules and not personal opinions."[127] The Protective Department lacked codified rules that guided their decisions on whether to accept a client's case, but their duty "to commend the legal and social rights of women to public attention" served as their constitution.[128] The nonlawyers' understanding of what they deemed women's legal and social rights determined what actions, if any, the nonlawyers would take on behalf of the litigants.

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124. *Id.*
125. UNION, REPORT FOR 1888, *supra* note 61, at 35.
126. *Id.* at 36.
127. Zimmerman & Tyler, *supra* note 2, at 487.
128. UNION, REPORT FOR 1881, *supra* note 55, at 51.

The neutrality of the nonlawyers' operations at the Protective Department is especially evident in instances where the nonlawyers' perceptions of a conflict clashed with those of their clients. Although the Department purported to protect the vulnerable class of working women, the committee members did not "invariably side with the employee."[129] If the nonlawyers discovered that the plaintiff had "drawn on her imagination rather than on facts relating to the case, they [exposed] her falsity, and she depart[ed] without their legal aid."[130] There were also cases that were less black-and-white, where the nonlawyers had discovered that the client's legal rights were infringed but that the complainant could not be absolved of all blame, either. In such cases where "sometimes we find that she has not stated the case fairly," the nonlawyers nonetheless worked to collect the wages because "the wages withheld were *legally* her due."[131] The nonlawyers scrutinized how clients had presented their disputes and announced when they suspected partial depictions of disputes. But despite the nonlawyers' impressions, they honored those clients' claims and recognized their rights.

That is not to say, however, that the nonlawyers blindly abided by their mission of protecting legal rights at the expense of all discretion. In the above instance, where the nonlawyers discovered that the employee did not present her wage claim fairly, they helped to collect the payment on the client's behalf, but not without any reproach. After dispensing the wages to the employee, the nonlawyers reported that "at the same time we have blamed the girl for her conduct or refused to recommend her elsewhere; because . . . her impertinence and carelessness towards her employer did not *morally* justify her in receiving them."[132] While the nonlawyers exercised neutrality and fulfilled their duty when they worked to recover the woman's legally obliged wages, they refused to take further actions to assist the woman because they perceived her as being in the wrong. Thus, in abiding by their mission of seeing that women's social and legal rights were realized, the nonlawyers exercised neutrality; however, when assisting clients beyond what their rights had entitled them to, the nonlawyers' personal beliefs shaped their responses.

3. Respect: Dedication and Education

In addition to maintaining neutrality when empowering litigants to exercise their rights, they also exhibited respect via their commitment to clients' causes. Once the nonlawyers decided to accept a client and provide them with services, they approached their issues with due regard and attentiveness. If the nonlawyers deemed the client credible and her story reliable, they would proceed by writing a letter to the defendant and await a reply. If they did not receive one, they would locate the defendant, and if they "judge[d] him delinquent," they would proceed

129. UNION, REPORT FOR 1883, *supra* note 120, at 45.
130. UNION, REPORT FOR 1884, *supra* note 34, at 44.
131. UNION, REPORT FOR 1883, *supra* note 120, at 45.
132. *Id.*

to make "his life uncomfortable" until they could discern whether he could or could not pay.[133] It was not unusual for cases to "drag on for two or three years" until the nonlawyers obtained their clients' claims.[134] Mrs. Willey recovered over one hundred dollars in a bank case that "took three years' time and seventeen visits" and ten dollars that required "ten letters."[135] The nonlawyers respected the wishes and causes of the clients enough to patiently and attentively tend to litigants' cases, regardless of how long the effort took.

The nonlawyers demonstrated their respect for people who turned to them for guidance by not only listening to their stories and representing them but also educating them. In addition to providing relief for clients, the nonlawyers also took the time to inform clients about their rights and about what employers could or could not do. This went both ways, as the nonlawyers also enlightened employers. When the nonlawyers spoke with employers, they attempted to disabuse them of the "notion that damages can be collected" for every possible mistake that employees made.[136] Whether the recipients of this information listened was another matter, but the women at the Protective Department lived up to the Union's overarching mission of uplifting women through education. Whereas the nonlawyers could have disregarded their clients as vulnerable working women unable to defend themselves and understand their legal rights, they instead used their interactions with the people as an opportunity to uplift them with knowledge. At one point, a former client wrote to the Protective Department asking whether they would consider creating and publishing a "book entitled 'Every Woman Her Own Lawyer,' as she thought it would be useful to her."[137] That the former client felt confident enough to ask if the nonlawyers had informational pamphlets for the public suggested two things: first, that she felt empowered to safeguard her own rights after receiving aid from the nonlawyers, and second, that she viewed nonlawyers as competent and capable enough to serve the role of lawyers.

4. Trust: Clients' Perception of the Union's Protective Department

The final element of the client experience that may shape the production of procedural justice is trust, which can be measured by whether clients feel that others are "listening to and considering their views" and acting in their interests.[138] Evidence of the people's trust in the Union's nonlawyers can be found in the decisions of women who had the luxury of choosing whether to turn to the Protective Department with their legal claims or to a professional lawyer. Such women who owned "a little property in land and house [came to the Department]

133. UNION, REPORT FOR 1892, *supra* note 59, at 45.

134. *Id.*

135. *Id.*

136. UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 1, 1894, at 45 (1894).

137. *Id.*

138. Zimmerman & Tyler, *supra* note 2, at 487.

to know if all is right in the title, to ask about insurance, mortgage, [and] getting rid of undesirable tenants."[139] They deliberately chose to go to the Department to seek information from the nonlawyers about their rights and legal procedures. Writing about these middle-class women, the nonlawyers explained that "they could pay small fees to lawyers but they trust us—'those ladies at the Union will tell them what to do, and if need be, will direct them to honest lawyers.'"[140] Faced with the option to go to a professional lawyer or a volunteer nonlawyer, some Boston women of modest means went to the latter. Among women, the nonlawyers developed a reputation as a trustworthy agency that community members could turn to for advice. Neighboring women believed that the Protective Department nonlawyers would give them sound advice that served the clients' best interests, whether it meant telling the clients how to settle the matter themselves or referring them to reliable lawyers. Furthermore, that the nonlawyers did not restrict services to only those clients too poor to afford attorneys suggests that they truly sought to live up to the founding ideal of being a "union of all for the good of all."[141]

The Protective Department had successfully established itself as an agency devoted to seeking legal redress for vulnerable residents in Boston. The nonlawyers who comprised the Department provided a critical outlet for clients to share their stories to nonlawyers who would patiently listen without prejudice and treat them with respect. The forum that they created and the methods they adopted did more than view the client as just another working woman with a mundane case of wage garnishing. Rather, the nonlawyers recognized that what was at stake was an individual's rights and an individual's conception of justice.

B. Delivering Lay Justice

Although the Protective Department aimed to protect and defend clients' legal and social rights, they did not limit their understanding of justice to only the law. Rather, they defined justice through a lay conception of fairness that revolved around how clients understood the concept. This was particularly notable in cases where there was no monetary relief to be obtained for the client. In such instances, although the nonlawyers were unable to obtain pecuniary compensation for clients, often because the defendants themselves had no money to pay, "the plaintiff's sense of justice [was] gratified by knowing that her claim has received full attention [], and that the defendant has been interviewed, examined, and compelled to prove his worthlessness, generally to his mortification."[142] There existed no such thing as a codified legal or social right to a sense of gratification. Yet, the nonlawyers still worked toward such ends because they produced "justice" for the

139. UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 1, 1891, at 43 (1891).

140. *Id.*

141. Harth, *supra* note 37, at 144.

142. UNION, REPORT FOR 1884, *supra* note 34, at 46.

clients. The justice that the nonlawyers sought to secure for their clients did not exist only in law; it also existed in a nonlegal, or, as Richard Moorhead and Mark Sefton would term, "social" understanding.[143] It was based on a lay conception of fairness.

Although the nonlawyers may not have been able to secure material relief for their clients, they did not let that halt their efforts. Rather, they continued to investigate and interrogate defendants to get them to admit potential wrongdoings. The nonlawyers themselves did not benefit from such actions, yet they pursued the defendant to help restore the client's sense of justice. If the nonlawyers could not acquire the money for the litigant, they would at least give them the gratification of knowing that the nonlawyers had interrogated and beleaguered the defendant until they acknowledged their wrongdoing.

The nonlawyers at the Protective Department provided legal services that revolved around the client's experience and their sense of fairness. In contrast to what Austin Sarat and William Felstiner discovered in their contemporary study of divorce attorneys who operated on the principle that "clients ought to be suspicious of their own judgment" and depend on the lawyers for "sound guidance," the nonlawyers at the Protective Department instead abided by and used clients' judgments to guide further action.[144] In this way, the nonlawyers empowered, rather than suppressed, the clients and their voices in the process of seeking redress. And as noted in the same study by Sarat and Felstiner, when clients believe that their lawyers—or, in this case, nonlawyers—understand and empathize with them, clients end up more satisfied with the advocate.[145] The nonlawyers at the Protective Department provided legal services to the poor that empowered clients and their voices.

C. Insufficiencies of the Protective Department

But it would be remiss to portray the early operations of the Protective Department's legal arm as blip-free. If only the nonlawyers could address clients' conflicts and concerns by relying solely on their inquisitorial instincts and persistent efforts. The nonlawyers' extralegal methods for resolving their clients' disputes were not always successful. For example, there were instances when parties refused to heed to the nonlawyers' requests to compromise with claimants. In the case of *O'Neal v. Reed*, an employer, Dr. Reed, refused to pay housekeeper, Mrs. O'Neal, who went to the Protective Department for help in November 1880. Even after one of the nonlawyers with the Department attempted to have the parties "settle the trouble themselves" by mediating between the two, her efforts proved

143. Richard Moorhead & Mark Sefton, Dep't for Const. Aff. Rsch. Series 2/05, Litigants in Person: Unrepresented Litigants in First Instance Proceedings 154 (2005).

144. Austin Sarat & William L. F. Felstiner, *Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction*, 22 L. & Soc'y Rev. 737, 755 (1988).

145. *Id.* at 765.

unsuccessful until the nonlawyers threatened to sue.[146] One month later, on December 13, 1880, Dr. Reed paid the five dollars and settled the claim.[147] The extralegal mode of dispute resolution—via conversing with the claimant to come to a compromise—did not compel Dr. Reed to pay the claim, but the threat of a lawsuit did. During such instances, the Protective Department's lawyers would emerge from the fringes and provide clients with the type of help that the nonlawyers could not provide.

As the turn of the century approached, questions about the ability of the Protective Department to handle the community's legal needs became more evident. When in 1897 the question arose as to whether "a Legal Aid Society like the one existing in New York" should be formed in Boston, the Secretary of the Women's Educational and Industrial Union reported that "the formation of a new Society of this character in Boston [was] inexpedient."[148] In the eyes of the charities, "the work of this sort [was] done by our [Protective] Committee, by various churches, and by other institutions already active in this direction."[149] The nonlawyers at the Protective Department publicly presented their efforts as sufficient in meeting—or being adapted to meet—the community's legal needs. Yet the declarations they made and the actions they took the following year suggested a more tenuous confidence.

The nonlawyers at the Protective Department admitted a greater need for legal expertise. With regards to "cases of bastardy, or divorce, and of failure to support wife or children," the nonlawyers acknowledged that those instances "require[d] more than advice."[150] The workers admitted that "it is legal aid that is desired."[151] As much knowledge as the nonlawyers had developed in their almost two decades of experience with the Protective Department, the nonlawyer volunteers could not operate completely independent of professional lawyers; the nonlawyers still depended on and needed the lawyers.

Doing so, however, would require more resources. Thus, despite the nonlawyers' decades-long stance against charging clients for services, they began to charge clients for services; their need for additional funding superseded their desire to cling onto tradition. In 1898, women at the Protective Department admitted that "the question presses upon us, whether or not it is desirable to enlarge the scope of our work and also whether or not our clients should pay a small fee . . . as is done in the Legal Aid Society of New York."[152] The following

146. Union, Protective Committee Minutes (Nov. 8, 1880) (on file with Harvard Radcliffe Institute).

147. Union, Protective Committee Minutes (Dec. 13, 1880) (on file with Harvard Radcliffe Institute).

148. The charity workers were referring to the New York Legal Aid Society. *See* UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING MAY 1, 1898, at 13 (1898).

149. *Id.*

150. *Id.* at 61.

151. *Id.*

152. *Id.*

year, the Protective Department, for the first time, began to charge clients a 5% commission fee on collections.[153] And yet, this was not enough to sustain the organization. From 1898 to 1904, the Protective Department still saw an annual deficit that ranged from $192.44 to $677.72.[154]

A partial explanation for the Protective Department's precarious financial situation could be found in its rising expenses from 1899 onwards, when the nonlawyers promoted their volunteer attorney, Mr. Edward H. Savary, as its Head Counsel and began to pay him a "small" annual salary.[155] Mr. Savary was a lawyer who had been involved with the Union's Protective Department since October 16, 1892.[156] After seven years of serving as a volunteer and providing his time and energy to the Union, the Department resolved to pay him a yearly sum for his efforts. The nonlawyers at the Protective Department were optimistic about this decision to pay Mr. Savary, as they thought that they would now be "at liberty to ask for larger assistance than [they] had ever dared to claim from the volunteer services for an attorney."[157] This, however, would not be enough for the Protective Department to sufficiently satisfy the legal needs of the community and ward off the creation of a more formal Legal Aid Society. They formally hired an attorney but neglected to expand their domain of services. The nonlawyers remained firm in their position on domestic relations cases, declaring, without further explanation, "[d]ivorce cases we do not take. Non-support cases are usually turned over to the city or state authorities."[158] Though they hired an attorney and increased the Department's potential for providing more legal services, the Department's refusal to accept domestic relations cases left still the issue of unmet legal needs.

Despite the nonlawyers' efforts to adapt their agency to the changing legal landscape, their efforts would ultimately prove unsuccessful in securing a stronghold over legal services for Boston's poor. It was a case of what sociologist Andrew Abbott would call "excess jurisdiction," which existed when "potential jurisdiction [was] expanding relative to potential professional output."[159] The

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153. UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING APRIL 1899, at 50 (1899).

154. The average value of the deficit from the years 1898 to 1904 was $373.60. *See* UNION, REPORT FOR 1898, *supra* note 148, at 21; UNION, REPORT FOR 1899, *supra* note 153, at 18; UNION, REPORT OF THE WOMEN'S REPORT FOR THE YEAR ENDING APRIL 1900, at 18 (1900); UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING APRIL 1901, at 60 (1901); UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING APRIL 1902, at 18 (1902); UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING APRIL 1903, at 18 (1903); UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING APRIL 1903, at 17 (1904).

155. UNION, REPORT FOR 1899, *supra* note 153, at 50.

156. According to the Protective Committee's minutes from October 16, 1892, the women nonlawyers had agreed to invite Mr. Savary to assist the Protective Department as attorneys. *See* Union, Protective Committee Minutes (Oct. 16, 1892) (on file with Harvard Radcliffe Institute).

157. *Id.* at 50.

158. *Id.* at 52.

159. ABBOTT, *supra* note 32, at 250.

nonlawyers at the Union could not adapt to the work and possessed weak control over it, thus giving outsiders "a clearer chance" at invading the existing jurisdiction.[160] The inabilities of the nonlawyers to adjust to the people's expanding legal needs created a vacuum for services for certain types of civil legal aid disputes affecting Boston's vulnerable residents. And in 1900, a new set of actors, seeing an opportunity to "provide more effective service" and poach the weakly held jurisdiction from the nonlawyers,[161] would attempt to fill this void.

IV. Creating A Lawyers' Legal Aid Society

In April of 1900, sixteen Harvard-bred men—fifteen of whom were lawyers and one of whom was a financier and philanthropist—gathered to discuss how they could meet what they perceived as an unmet legal need in their community.[162] They discovered that "numbers of persons were applying to the Bar Association for relief, and that there was no effective way of aiding them."[163] Despite the contributions and services of the nonlawyer agencies in dispensing legal aid services, the "prominent attorneys" did not consider the efforts sufficient and decided to organize their own society: the Boston Legal Aid Society.[164]

However, the lawyers did not have to create their own organization; they could have remained on the fringes of the nonlawyer-led charities. In fact, the very attorneys who handled the Boston Legal Aid Society's cases and clients when it first opened had previously worked as the legal counsel for a Boston charity called the Associated Charities.[165] Yet despite the option of joining a pre-existing nonlawyer-led charity as the legal counsel, the private lawyers decided to create their own lawyer-led and lawyer-managed legal aid group. With their mutual elite educational backgrounds and professional titles, these men were "leaders of Boston's legal establishment."[166] Together, they created a new organization that became a source "for creation and destruction of jurisdiction" in Boston's legal aid domain.[167] By establishing the Legal Aid Society, the lawyers both invaded the nonlawyers' jurisdiction and created their own niche within the existing landscape.

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160. Abbott, *supra* note 32, at 250.

161. *Id.* at 251.

162. Spiegel, *supra* note 29, at 21.

163. Bos. Legal Aid Soc'y, Fifteenth Annual Report of the Boston Legal Aid Society, 1914-1915, at 16 (1916) [hereinafter Legal Aid Society].

164. *Id.*

165. The first legal counsel at the Boston Legal Aid Society, Arthur D. Hill, had previously served as Honorary Counsel for District eleven of the Associated Charities of Boston. *See* Assoc. Charities of Bos., Nineteenth Annual Report of the Associated Charities of Boston, November 1898, at 10 (1898).

166. Michael Grossberg, *Altruism and Professionalism: Boston and the Rise of Organized Legal Aid, 1900-1925, Part I,* 22 Bos. Bar J. 21, 22 (1978).

167. Abbott, *supra* note 32, at 93.

A. The Boston Legal Aid Society: A Lawyer-led Model for Legal Services

While the Legal Aid Society was comparable to the other charities in that it provided legal services to vulnerable Bostonians, what set the Legal Aid Society apart was that it was an institution of lawyers. Whereas at the charities the lawyers resided on the margins, at the Boston Legal Aid Society, attorneys remained front and center. It was, as a former counsel of the Legal Aid Society once stated, "pre-eminently a lawyer's institution" that was "founded by lawyers . . . guided and controlled by lawyers."[168]

Although the Legal Aid Society abounded with members of the bar who were well versed in the language of the law, the lawyers who led the agency were not the same ones who provided direct services to clients. The institution was run by a Board of Directors, which comprised seven or eight annually elected members. On the Board sat a President, at least one Vice President, a Secretary, Treasurer, and three Law Committee members.[169] The purpose of the Law Committee was to "be ready at all times to give their legal advice and their services gratuitously, and shall act as counsel in the courts whenever it seems to them necessary."[170] However, the Law Committee members were not the main actors in charge of providing direct legal services to the poor. The actual task of administering legal aid was left to the General Counsel.

The first General Counsel that the Legal Aid Society had commissioned was the law office of Hill & Homans, a nascent Boston firm founded in 1895.[171] Two attorneys from the practice, Arthur Hill and Robert Homans, carried on the Legal Aid Society's work in their law office at 53 State Street.[172] As the General Counsel for the Legal Aid Society, Hill and Homans were the individuals charged with managing clients' legal matters, which included not only dispensing services but also keeping records of cases, making reports, and "giving a detailed statement of the progress made."[173] The General Counsel did not provide services for free; rather, they received an annual salary. In its first year, the Legal Aid Society had an annual budget of $1,793.78, which came from membership fees, donations, and interest accrued.[174] Of this total, $1,200 went to "counsel fees," which were the wages for the General Counsel.[175] The Legal Aid Society could afford to offer their General Counsel such a salary because they had a larger operating budget, one that largely relied on the pockets of lawyers.

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168. Reginald Heber Smith, *A Lawyers' Legal Aid Society*, 23 CASE & COMMENT 1008, 1008 (1917).

169. LEGAL AID SOC'Y, FIRST ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY, 1900-1901, at 20–22 (1901).

170. *Id.* at 22.

171. ALBERT F. BIGELOW, TWENTY-FIVE YEARS OF LEGAL AID IN BOSTON 7 (1926).

172. *Id.* at 8.

173. LEGAL AID SOC'Y, FIRST ANNUAL REPORT, *supra* note 169, at 22–23.

174. *Id.*

175. *Id.* Giving the lawyers a salary did not completely deplete the Legal Aid Society's funds. Compared to what the Protective Department had paid its attorney, Mr. Savary, the Legal Aid Society paid their General Counsel about six times more. *See id.*

Although the Legal Aid Society did not exclude others or limit membership to exclusively lawyers, its high membership fees influenced who could afford to join the Society. In contrast to the Union that had charged only one dollar in annual membership fees, the Legal Aid Society set its annual dues at ten dollars.[176] Furthermore, the founders of the Society expected "every member of the Boston Bar" to "come to the aid of our Society, for we serve them by relieving them of the burden of attending to charity cases."[177] In its first year, 107 people became members of the Legal Aid Society, with some members making additional donations, giving the Legal Aid Society a baseline budget of $1,770.[178] Although the Union had more members in its first year—four hundred as opposed to the Legal Aid Society's one hundred—the Legal Aid Society had a larger financial allowance at the outset because it charged members ten times what the Union had charged. Being an organization funded by lawyers allowed for the Legal Aid Society to build an agency with more capital.

Yet despite its ability to pay the General Counsel higher salaries, the Legal Aid Society nonetheless struggled to retain talented attorneys. In the early twentieth century, the Legal Aid Society was not just competing with other private charities for lawyers; it was also competing with private law firms. It was during this period that cities saw the emergence of the big law firm. In the first decade of the twentieth century, prominent attorney Paul D. Cravath established the "'Cravath system' of hiring outstanding graduates straight out of law school . . . on the understanding that they might progress to partnership after an extended probationary period . . . paying them salaries; [and] providing training."[179] Such stability afforded by the private law firms made them a more promising route than that of a budding legal aid agency for impoverished community members. Internal changes to the legal profession would affect the possibilities for whom the Legal Aid Society could hire and how long the lawyers would stay.

With the exception of the first seven years of the Legal Aid Society's operations, the Legal Aid Society witnessed turbulent turnover rates for their General Counsel position. For seven years, the Legal Aid Society managed to retain the services of lawyers at the firm Hill & Homans.[180] When the Legal Aid Society first partnered with Hill & Homans in 1900, the law firm was still a budding law office, having been founded only five years prior. But the private law office attorneys resigned in July 1907 because "their law practice had grown to such an extent that the Legal Aid clients absorbed too much of their time, for which the salary paid them by the Society was entirely inadequate."[181] Mr. Hill and

176. UNION, REPORT FOR 1879, *supra* note 39, at 29; LEGAL AID SOC'Y, FIRST ANNUAL REPORT, *supra* note 169, at 3.

177. LEGAL AID SOC'Y, FIRST ANNUAL REPORT, *supra* note 169, at 10–11.

178. *Id.* at 12.

179. MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 9 (1991).

180. BIGELOW, *supra* note 171, at 8.

181. *Id.*

Mr. Homans saw their work at the Legal Aid Society as secondary to their role as partners and leaders of their law office. And when their legal practice grew to the point where they had to choose between serving Boston's poor and running a business, they ultimately chose the latter. While Mr. Hill and Homans afforded the Legal Aid Society a sense of stability during its first seven years, this would change during the next period of the Society's growth.

From 1907 to 1913, the Legal Aid Society saw a change in the General Counsel position five times. The law firm of Boyden, Palfrey, Bradlee & Twombly served as General Counsel from 1907 until 1908; Warren, Hoague, James & Bigelow from 1908 until 1910; William Sabine from 1910 until July 1912; and Richard Wiswall from July 1912 until August 1913.[182] The high turnover rate from 1907 until 1913 could be attributed to what the private lawyers deemed too "little an increase in [their] salaries" from the Legal Aid Society, referring to it as "inadequate compensation."[183] Compared to what the attorneys could earn from going to private law firms or starting their own practice, the Legal Aid Society was neither lucrative nor prestigious. Thus, until the Legal Aid Society underwent a more stable period with the appointment of a young Harvard Law graduate Reginald Heber Smith in 1914 (though even he would leave in 1918 to join Boston law firm Hale and Dorr as a managing partner),[184] they struggled to retain a steady stream of lawyers committed to the Legal Aid Society's efforts.

That the Society underwent so many changes in its counsel negatively affected the organization's prospects for establishing itself in Boston. The Legal Aid Society members considered the volatile lawyer turnover rates to be "mainly responsible for the lack of growth in the [agency's] work."[185] From 1901 until 1907, when Hill & Homans presided as the General Counsel, cases had increased by over fivefold, from 200 to 1085,[186] but in that same six-year time frame from 1907 until 1913, cases only increased by a margin of 6%, going from 1,085 to 1,154.[187] Though there could be multiple explanations for the disparity in growth, the very members at the Legal Aid Society proposed that the constantly changing lawyers confused clients about where to go should they need legal assistance.[188]

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182. *Id.* at 8–9.

183. *Id.* at 9.

184. John M.A. DiPippa, *Reginald Heber Smith and Justice and the Poor in the 21st Century*, 40 CAMPBELL L. REV. 73, 75 (2018); BIGELOW, *supra* note 171, at 16; *Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, WILMERHALE (Aug. 9, 2010), https://www.wilmerhale.com/en/insights/publications/slice-of-history-reginald-heber-smith-and-the-birth-of-the-billable-hour-august-9-2010.

185. BIGELOW, *supra* note 171, at 9.

186. *Id.* at 7.

187. *Id.* at 10.

188. *Id.* at 8, 10 (describing that the changing of counsel had a discouraging effect because changing lawyers meant changing offices, and this required the "Society's clients to become familiar with a new address, which always causes some interruption in the work").

B. Distinct from the Charities

1. An Ideological Difference: Dispensing Justice, Not Giving Charity

Being a Society founded, guided, and controlled by lawyers, however, also meant that the lawyers would have their own philosophy about how to dispense legal aid.[189] Although some of the Legal Aid Society lawyers had previously partnered with local charities to handle the legal aid aspects, at their new lawyer-led institution, Legal Aid Society attorneys declared that they were "not conducting a charity."[190] Instead, they understood themselves to be providers of justice, which, in their view, was distinct from charity: "[t]o give a man coal [was] one thing; [but] to secure him justice [was] a far different thing."[191] The lawyers explained that whereas charity work hinged on the whims and the benevolence of the givers, justice was "the right of every citizen."[192] According to the lawyers, although people were not entitled to charity services, everyone had the right to seek and obtain justice.

This ideological distinction also materialized itself in a physical separation between local charities and the Legal Aid Society. The lawyer's organization saw itself as distinct from, and better than, the philanthropic groups. In describing the efforts of Boston's benevolent bodies, the lawyers wrote how the groups "ha[d] been distributing to the poor of Boston material necessities of life costing the generous public millions of dollars," while the "Legal Aid Society ha[d] been saving for the poor that which is theirs by right."[193] The lawyers highlighted how the local charities indeed delivered material necessities to impoverished residents; however, they also highlighted how expensive those acts of giving were, not only for the charities but also for the public. Meanwhile, the lawyers neglected to mention how much their efforts had cost and only highlighted the beneficial work of the Legal Aid Society.

The Legal Aid Society lawyers further drew on the contrast between their work and that of charities through a series of comparative examples that suggested the superiority of the legal aid lawyers. Explicitly asking "which is better," the lawyers posed a list of hypothetical scenarios: giving aid to a family whose wage earner cannot collect earnings because of an illegal attachment, or removing the attachment; helping a family that becomes homeless because of an illegal foreclosure, or enjoining the foreclosure itself; protecting a man from an unlawful interest for a loan, or allowing him to borrow again in a "fallacious attempt" to remove the burden.[194] Although these questions remained unanswered, they capture the difference in how the lawyers perceived their own work compared to that

189. Smith, *supra* note 168, at 1008.

190. Legal Aid Soc'y, Eighteenth Annual Report of the Boston Legal Aid Society for the Year of 1918, at 47 (1918).

191. *Id.*

192. *Id.*

193. Legal Aid Soc'y, Justice Within Reach: A Survey of the Work of the Boston Legal Aid Society, Including the Twentieth Annual Report 9 (1921).

194. *Id.*

of nonlawyers. While the nonlawyers at charities were responding to individuals' specific problems, the lawyers framed themselves as addressing the causes behind those problems. This perceived difference in how both groups approached aiding vulnerable litigants with legal matters could be captured by the lawyers' "fundamental principle of legal aid work . . . that it is better to prevent a man from being wronged by giving him an opportunity to set in motion the machinery which the law erects for all than to provide for him by charity because of the wrong."[195] As opposed to appreciating what the charity organizations had been doing to provide relief to vulnerable residents, the legal aid lawyers framed their contributions as more valuable than those of the philanthropic agency workers.

2. Claiming the Unclaimed Terrain

By the legal aid lawyers' standards, not only was the charities' work inferior to that of the legal aid lawyers, but the nonlawyers' efforts would also fall short of helping clients achieve justice. In weighing other means through which litigants could obtain relief for their legal needs, such as law school clinics and charities' legal aid groups, the Legal Aid Society lawyers concluded that the charities could not reach all those in need of assistance. In the lawyers' view, the philanthropies, by nature, had a limited scope because "the legal aid department of any charity [was] able to reach only persons who are also applicants for charity."[196] And since a legal aid society was not a charity, but a place where "justice and charity [were] distinct," the workers there were able to reach a "much wider class of those who need[ed] legal protection but [were] not yet dependents on charity."[197] Even though legal aid departments at nonlawyer agencies assisted clients with their legal matters, the lawyers ultimately deemed them as insufficient in satisfying people's legal needs.

Despite the drawbacks of being a lawyer-led institution—such as the high costs of hiring and retaining counsel—being a "Lawyer's Legal Aid Society" also had its advantages. For instance, it allowed the lawyers to better differentiate their group from the existing nonlawyer agencies and establish control over certain areas of work. For example, that the Legal Aid Society was composed of lawyers allowed them to accept the very types of cases that the Union's Protective Department could not. Unlike the Union's Protective Department, which had refused to take on divorce cases, the Legal Aid Society took on such disputes "only on behalf of women."[198] Of the 198 applications that the Society received in its first year, forty (20%) concerned claims for matrimonial disputes and forty-three (22%) for wages.[199] These classes of cases composed the two highest represented case types, respectively, with frauds (8%) as the next most-represented

195. *Id.*
196. LEGAL AID SOC'Y, FIFTEENTH ANNUAL REPORT, *supra* note 163, at 18.
197. *Id.*
198. LEGAL AID SOC'Y, FIRST ANNUAL REPORT, *supra* note 169, at 14.
199. *Id.* at 13.

classification.[200] Furthermore, of the cases that the Society actually accepted—154 out of the total 198—"fully one half were cases involving matrimonial difficulties or claims for wages."[201] Both the Protective Department and the Legal Aid Society operated within the legal aid landscape. Both agencies handled wage claims, but unlike the Protective Department, which cited resource constraints as the reason why it could not expand its services, the Legal Aid Society was able to accept domestic relations disputes. And in doing so, the Legal Aid Society began to claim jurisdiction over such case types.

In addition to taking on claims that other charities had previously denied, the Legal Aid Society also handled more cases than the Protective Department. During its first year alone, the Legal Aid Society almost assisted more clients with legal aid services than the Union's Protective Department had helped in its twenty-second year. While the Legal Aid Society had received 198 applications for aid and assisted 154, the Protective Department provided aid in 173 cases.[202] Part of this could be explained by the fact that the Legal Aid Society filled a gap and provided services that the local charities did not. The Legal Aid Society noted in its first annual report that they were grateful for the cooperation of such groups, including the Associated Charities, the Massachusetts Infant Asylum, the Waltham Training School for Nurses, the Women's Educational and Industrial Union, the German Aid Society (later renamed the New York Legal Aid Society), and the Society for the Prevention of Cruelty to Children.[203] For the Union's Protective Department that sent over fourteen cases to the Legal Aid Society, the committee members postulated that "wherever cases can be settled through letters signed by this Committee, this Committee will act, but not in those cases where legal proceedings are necessary."[204] While the Protective Department still handled what legal matters it could, the entrance of the Legal Aid Society allowed for the Department to jettison those cases requiring court-based legal proceedings to the legal aid lawyers. They were able to do this because the Legal Aid Society, unlike the other charities' legal aid branches, was a lawyers' institution.

Finally, given that the Legal Aid Society was largely run and managed by lawyers, impoverished litigants who wanted more streamlined access to lawyers could obtain such direct assistance by going to the Legal Aid Society as opposed to being triaged and referred by nonlawyers at another charity. If a prospective client went to the Protective Department for legal aid and discovered that extralegal letters and discussions between the parties via intervention by a nonlawyer were not sufficient, only after having gone through that process would the litigant be

200. *Id.*

201. *Id.* at 9–10.

202. UNION, REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR ENDING APRIL 1901, at 57 (1901).

203. LEGAL AID SOC'Y, FIRST ANNUAL REPORT, *supra* note 169, at 10.

204. UNION, REPORT FOR 1901, *supra* note 202, at 58.

able to receive assistance from an attorney and take the issue to court.[205] On the other hand, if a litigant had gone to the Legal Aid Society, the lawyers could have more directly and quickly taken the client's issue to court, if that was the proper resolution for the dispute.[206]

Thus, by creating their own lawyer-led Legal Aid Society, the legal aid lawyers were able to take on case types that even nonlawyers at the veteran Protective Department could not handle and provide more direct access to lawyers. In the context of interprofessional development, the provision of what Abbott would refer to as "more effective service" boosted the lawyers' prospects of "seiz[ing] more central areas."[207]

C. Nonlawyers on the Margins

Although the lawyers had established a lawyer-led and -managed Legal Aid Society, that was not to say that the organization operated completely independent of nonlawyers. For one, the lawyers navigated through what was initially a nonlawyer-dominated legal aid landscape. A consequence of this was that the nonlawyer-run charities served as a substantial referral source for the Legal Aid Society. The Legal Aid Society's annual reports reflected the sources from which cases came; charities were one of the largest referral sources.[208]

But the nonlawyers' influence was not limited to just scattered charities with whom the Legal Aid Society interacted; in 1910, the Legal Aid Society went so far as to hire its own nonlawyer. In July of 1910, the Legal Aid Society added, for the first time, a nonlawyer to its payroll and hired Ms. Alice W. Palmer from the Boston Associated Charities as its "Social Secretary."[209] Meanwhile, the Legal Aid Society also hired, for the first time, its own lawyer who would work solely

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205. In its annual report from 1902, the Union's Protective Committee wrote that "most of the cases are dealt with by the Committee; a few that cannot be settled in this way are taken to a lawyer, and yet others that are known to be court cases are turned over to the Boston Legal Aid Society." From this, it is reasonable to infer that the nonlawyers handled most cases on their own and only referred cases to attorneys after realizing that nonlawyer settlements would not suffice. *See* UNION, REPORT FOR 1902, *supra* note 154, at 59 (1902).

206. For cases that required litigation, the head Counsel at the Legal Aid Society would handle such matters. *See* LEGAL AID SOC'Y, FOURTEENTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY, 1913-1914, at 10 (1914).

207. ABBOTT, *supra* note 32, at 251.

208. From 1909 until 1914, between 21% and 28% of the Boston Legal Aid Society's cases came from local charities. In 1915 and 1916, however, the proportion of cases that came from charities dropped to 15% and 14%, respectively. Instead, in 1915, former clients and private individuals became the primary referral sources. For context, 1914 marked the beginning of World War I. *See* LEGAL AID SOC'Y, NINTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY 8 (1909); LEGAL AID SOC'Y, TENTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY 8 (1910); LEGAL AID SOC'Y, ELEVENTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY 9 (1911); LEGAL AID SOC'Y, TWELFTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY 9 (1912); LEGAL AID SOC'Y, THIRTEENTH ANNUAL REPORT OF THE BOSTON LEAL AID SOCIETY 9 (1913); LEGAL AID SOC'Y, FOURTEENTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY 16 (1914); LEGAL AID SOC'Y, FIFTEENTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY 25 (1915); LEGAL AID SOC'Y, SIXTEENTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY 17 (1916).

209. BIGELOW, *supra* note 171, at 9.

for the Legal Aid Society. This lawyer would "devote his entire time to the work of the Society," as opposed to handling both his own private practice work and the Legal Aid Society's work.[210] The attorney they employed, Mr. William Sabine, would be "ably seconded by Miss Palmer, our social worker, whose long training with the Associated Charities has been of great service to us in investigating the condition of many of the individuals and families who have applied for our aid."[211] Though the Legal Aid Society acknowledged the benefits that Miss Palmer had already brought their organization in her capacity as an agent with a local charity, they clarified that within their Legal Aid Society she would be a suitable second to their lawyer.

Miss Palmer's role as a nonlawyer at the Legal Aid Society bore some initial semblance to what nonlawyers such as Mrs. Sewall and Willey did at the Protective Department. At the Legal Aid Society's building on 39 Court Street, Miss Palmer had her own room, "where clients [could] come and tell their stories with entire privacy and receive from her the sympathy and advice that [were] necessary."[212] In her position as the Legal Aid Society's Social Secretary, Miss Palmer interviewed and screened all clients prior to handing off the cases to the Legal Aid Society's legal counsel. In this manner, she preserved the critical procedural justice element that Tom Tyler had identified—voice—and gave litigants a platform to "present their side of the story in their own words."[213] Furthermore, Miss Palmer provided an avenue for extralegal dispute resolution for clients. In one instance, Miss Palmer arranged for a "complaining wife" to meet with her "well-meaning husband" at the Legal Aid Society branch, and at the gathering, the spouses compromised with one another, with the husband "promising to abstain wholly from intoxicants" and the wife pledging "to abstain from impatient and irritating speech."[214] Miss Palmer offered litigants an accessible forum for conflict resolution.

Yet, there was a critical difference between the roles of the nonlawyers at the Protective Department and that of the Social Secretary at the Legal Aid Society. Miss Palmer's purpose was not to provide client-centered justice but to contribute to the efficiency of the Legal Aid Society's practice. When Miss Palmer listened to clients' claims, it was not just to understand their cases and identify the best means of proceeding; her interrogations served to identify which clients to refer to the lawyers and which to turn away. The Legal Aid Society received many of its cases as referrals from local charities, some of which had already examined clients' issues before referring them; however, for those cases that did not seem to

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210. Legal Aid Soc'y, Tenth Annual Report of the Boston Legal Aid Society, 1909-1910, at 5 (1911).

211. *Id.*

212. Legal Aid Soc'y, Eleventh Annual Report of the Boston Legal Aid Society, 1910-1911, at 5 (1912).

213. Zimmerman & Tyler, *supra* note 2, at 487.

214. Legal Aid Soc'y, Twelfth Annual Report of the Boston Legal Aid Society, 1911-1912, at 17 (1912).

receive sufficient initial screenings, Miss Palmer would evaluate the "honesty and worthiness of all cases not already investigated by some other responsible person."[215] Members at the Legal Aid Society decided that compared to having a lawyer conduct the initial questioning, "a keen and sympathetic investigator can often get at the facts and present them to our Counsel more quickly and accurately than can the clients themselves."[216] Rather than listen to what the clients themselves had to say, the lawyers at the Legal Aid Society hired Miss Palmer to serve as a buffer between the lawyers and the clients; she screened clients and translated their concerns to the lawyers. The focus of Miss Palmer's job was not just to identify how the Legal Aid Society could best aid the prospective litigant; rather, it was to determine whether the clients themselves were worthy enough to receive the Legal Aid Society's assistance.

What Miss Palmer concluded from these investigations mattered; they served as the bases for the Legal Aid Society's decisions to drop certain cases. In the Legal Aid Society's annual records for the disposition of cases, for the years 1912 to 1913 and 1913 to 1914, about nine percent of the cases for each year were categorized as "investigated, no merit."[217] That specific classification referred to "cases [with] which the Social Service Secretary decide[d] not to proceed after having made an actual investigation."[218] If Miss Palmer concluded that an applicant had passed the initial screening, then they could continue with the Legal Aid Society. They would be able to see an attorney for further assistance.[219] But if Miss Palmer decided against it, then the client's interaction with the organization would come to a halt.

In addition to conducting intake interviews, Miss Palmer had permission to handle certain case types beyond their initial walk-in screenings. For claims involving domestic relations, custody or guardianship of children, and other matters which "require[d] an investigation into the character of [the] applicant,"[220] Miss Palmer conducted the initial screening. In certain cases, she would also "give helpful advice to the applicants and, where possible, bring about a peaceable adjustment."[221] But the lawyers gave her jurisdiction over only domestic relations cases, which were the types of cases that the nonlawyers at the Protective Department had earlier refused to handle, suggesting that Miss Palmer was critical to the Legal Aid Society's efforts to claim new jurisdiction within Boston's legal aid terrain. Yet although the lawyers acknowledged that Miss Palmer was an "assistant of inestimable value" to the Legal Aid Society, they reserved for

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215. *Id.* at 5.

216. LEGAL AID SOC'Y, NINTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY, 1908-1909, at 6 (1909).

217. LEGAL AID SOC'Y, FIFTEENTH ANNUAL REPORT, *supra* note 163, at 26.

218. *Id.* at 25.

219. Cases were dropped if the Social Service Secretary Miss Palmer decided not to proceed after the investigation. This suggests that Miss Palmer acted as a gatekeeper of sorts, determining whether a case warranted further assistance and when it did not. *See id.*

220. LEGAL AID SOC'Y, FOURTEENTH ANNUAL REPORT, *supra* note 206, at 10.

221. *Id.*

themselves the "most important cases," often those "requiring litigation or careful settlement or drastic action of some sort."[222] In this way, the lawyers pushed their sole nonlawyer to the fringe of their lawyer-led organization. Although Miss Palmer played a critical role in helping maintain the Legal Aid Society's operations, her influence was limited as she was able to act only on those cases in which the lawyers had permitted her to act.

Miss Palmer's marginalized role within the Legal Aid Society is further captured by the disparity in pay between what she received and what the other lawyers had received. Whereas in 1912, Miss Palmer was paid only $833.33 for her annual salary, the General Counsel, Mr. Sabine, earned $1,548.91, almost double the salary of Miss Palmer.[223] It was both of their full-time jobs, yet Miss Palmer received a little more than half in wages than the General Counsel. This discrepancy in wages, as well as the lawyers' understanding of Miss Palmer's role as a supporter of the Society's lawyer, illuminates how the Society viewed the status of the nonlawyer within their agency.

Even if she wanted to, Miss Palmer could not dispense justice to litigants in the same way that the nonlawyers at the Protective Department could. Miss Palmer was only able to see cases from the beginning and not until their ends. She lacked the authority to pursue a case further and had jurisdiction only over the matters that the lawyers had delegated to her. Although she preserved clients' voices and gave them a platform to share their grievances, her lack of authority within the Legal Aid Society prevented her from fully aiding clients. Miss Palmer could not dispense client-centered and procedural justice in the same way as the Protective Department women. She was, after all, a nonlawyer within a lawyers' society, and this difference in who managed the legal aid agency would affect the type of justice that clients of the Legal Aid Society would receive.

V. Justice With Lawyers

Both the Boston Legal Aid Society and the Union's Protective Department existed primarily to provide clients with legal services. But beyond the general purpose of each institution—to help vulnerable Bostonians with their legal matters—the similarities are less apparent. For one, each organizations' constitution articulated the aims of their work differently. The Legal Aid Society sought "to render legal aid and assistance, gratuitously, if necessary, to all persons who may appear worthy thereof, and who, from poverty, are unable to procure it."[224] It explicitly mentioned that the work that it was doing was of a legal nature and that the envisioned recipients of such services were Boston's poor and worthy. Meanwhile, the Protective Department's goal was "to enforce the legal and social rights of women, and to awaken a sentiment which shall be a sufficient guarantee

222. *Id.*

223. Legal Aid Soc'y, Twelfth Annual Report, *supra* note 214, at 7.

224. Legal Aid Soc'y, Third Annual Report of the Boston Legal Aid Society, 1902-1903, at 25 (1903).

that no wrong shall be unredressed."[225] The Protective Department mentioned neither poverty nor worthiness, two characteristics that the Legal Aid Society's constitution used to describe its target populace. Furthermore, while the Legal Aid Society acknowledged how it would be assisting clients—rendering legal aid—the Protective Department mentioned only the ends—enforcing rights and awakening sentiments—not the means.

In contrast to the nonlawyers' lack of clarity about how they would assist litigants, the lawyers at the Legal Aid Society knew precisely what they were going to do to fulfill their vision. As formally trained and educated legal professionals, the lawyers would rely on this professional qualification to "render legal aid" to clients. This nonlawyer-lawyer variation between the providers of legal services would set off a cascade of differences in how the newcomers to legal aid—the lawyers—would deliver services to clients. This final section explains how and why the Legal Aid Society lawyers offered the kind of justice that they did and concludes with an examination of the Boston legal aid landscape two decades after the Legal Aid Society's emergence.

A. Shifting Away from Client-Centered Lawyering

The legal aid organization that the Boston lawyers had adopted had a different philosophy than that of the nonlawyers at the Protective Department. The nonlawyers at the Protective Department had preserved elements of voice, neutrality, respect, and trust when helping clients seek redress for their legal disputes. In addition to delivering procedural justice to clients, the nonlawyers practiced "client-centered lawyering," which legal scholar Monroe Freedman defined as being "premised on respect for the dignity and autonomy of each member of society."[226] Yet this would change with the lawyers at the Legal Aid Society, who would neglect to demonstrate such respect when delivering legal services to Boston's impoverished residents.

1. Protecting the Lawyers from Clients

Respect was not something that the lawyers at the Legal Aid Society automatically imparted on their clients; rather, it was earned. Although the Legal Aid Society purported to make legal services more accessible for the indigent in Boston, they adopted rigid standards for who could qualify for the lawyers' assistance. According to the Legal Aid Society's certificate of incorporation in 1900, the lawyers established that the purpose of the agency was to provide "legal aid and assistance, gratuitously, if necessary, to all persons who may be worthy thereof and who from poverty are unable to procure it."[227] Two elements become apparent from this statement: the first is that legal aid is gratuitous, if *necessary*;

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225. UNION, REPORT FOR 1902, *supra* note 154, at 83.

226. Monroe H. Freedman, *Client-Centered Lawyering—What It Isn't,* 40 HOFSTRA L. REV. 349, 353 (2011).

227. LEGAL AID SOC'Y, FIRST ANNUAL REPORT, *supra* note 169, at 5.

the second is that those eligible for the lawyers' services must be *worthy* of such aid.

These guidelines existed because the lawyers harbored skepticism about the clients whom they purported to serve. Although there were no recorded criteria for what made a client or their case worthy, descriptions of what the members of the Legal Aid Society deemed unworthy illuminated what they were trying to avoid. The attorneys feared that since the services they provided were free or low cost, unscrupulous individuals would bring their claims to the Legal Aid Society. Annual reports of the Legal Aid Society highlighted concerns that litigants would bring "unreasonable and even absurd"[228] claims and that "the loafers, the quarrelsome, and the vicious" rather than the "hard-working right-minded man or woman" would find and use the Legal Aid Society's services.[229] Furthermore, the Legal Aid Society expressed skepticism towards clients who, despite being "able to pay counsel in matters of any importance," still brought "their unimportant cases to an office where they can obtain legal services without paying for them."[230] In the view of the Legal Aid Society attorneys, worthiness was determined by the lawyers' perception of the case's importance to the litigant, the claim's reasonableness, and the litigant's character.

Thus, to ward off those clients who might have otherwise brought in false and frivolous disputes, the Legal Aid Society required all clients to pay fees for the services. The lawyers declared that there was "no better short test of the real merit of a claim and of the sincerity of a client than asking for the payment of a small sum."[231] Hence, the Legal Aid Society established a rule that if a client wanted the organization to take up a claim, then the client would have to furnish an initial payment ranging from fifty cents to one dollar.[232] Such fees would protect the organization from classes of "unworthy people" and those who could pay for private lawyers.[233] The Legal Aid Society erected a financial barrier for all prospective clients out of a concern about some potentially unscrupulous litigants.

In addition to requiring applicants to pay initial retainer fees, the lawyers required the prospective clients to prove why their cases were worthy of the lawyers' assistance. Aside from the fees, the lawyers had applicants furnish letters from a "responsible person vouching for his character" and conducted "rigid examination[s]" of the litigants.[234] Such practices existed "to guard the Society

228. Legal Aid Soc'y, Fourth Annual Report of the Boston Legal Aid Society, 1903-1904, at 8 (1904).

229. Legal Aid Soc'y, Fifth Annual Report of the Boston Legal Aid Society, 1904-1905, at 5 (1905).

230. Legal Aid Soc'y, Seventh Annual Report of the Boston Legal Aid Society, 1906-1907, at 16 (1907).

231. Legal Aid Soc'y, Fourth Annual Report, *supra* note 228, at 20.

232. Legal Aid Soc'y, First Annual Report, *supra* note 169, at 15.

233. *Id.*

234. *Id.*

from being used by unworthy persons."[235] What the Society did not want were clients who would "come in simply to afford themselves the luxury of talking about their affairs to a lawyer," bringing in hopeless grievances from as far back as twenty years ago.[236] In describing such applicants, the Legal Aid Society wrote that they came in after "a day of idleness or after some trifling dislocation of their ordinary affairs which has started their minds on running their grievances."[237] Rather than acknowledge that some of the older claims could be meritorious, the lawyers complained that the litigants had "been to other lawyers before" and viewed those interactions where clients have retold "the whole story" as wastes of time.[238] The standard was not for lawyers to automatically acknowledge the dignity of each litigant; instead, the litigants themselves had to prove their worthiness and gain the lawyers' respect to receive their help.

2. Overriding Clients' Concerns

The lawyers neglected to provide a client-centered practice not only in how they had treated prospective applicants but also in how they interacted with those applicants who had managed to make it past the initial barriers. The other requirement of client-centered lawyering is for lawyers to place the client's concerns above the lawyer's wishes by "paying close attention to what the client says and according respect to the client's desires."[239] Yet on this front, too, the Legal Aid Society lawyers adopted a lawyer-centered—as opposed to a client-centered—approach.

Given the flow of cases within the Legal Aid Society, the lawyers were not directly involved with listening to the clients' initial concerns. Oftentimes the lawyers themselves were not even the individuals who listened to clients' concerns during the initial intake processes; rather, nonlawyers or charity workers filtered through the cases at the start. Only after this initial screening, during which the Social Secretary Miss Palmer determined whether a case needed "litigation or careful settlement or drastic action of some sort" did the Legal Aid Society attorneys examine the case at hand.[240] For those litigants who would pour out their grievances the nonlawyers served as receptacles to absorb what the client had said and relayed the important information to the lawyers. Clients could not directly convey their concerns to the lawyers without first speaking with the nonlawyers, who served as the intermediary between the clients and the lawyers.[241]

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235. *Id.*

236. LEGAL AID SOC'Y, NINTH ANNUAL REPORT, *supra* note 216, at 12.

237. *Id.*

238. *Id.*

239. Freedman, *supra* note 226, at 354.

240. LEGAL AID SOC'Y, FOURTEENTH ANNUAL REPORT, *supra* note 206, at 10.

241. In the development of Chilean legal aid, nonlawyers played a similar role in "not only translat[ing] the language of the law to poor people: [but] also translat[ing] the language of the poor to the lawyers." Marienne González Le Saux, *Legal Aid, Social Workers, and the Redefinition of the Legal Profession in Chile, 1925–1960*, 42 L. & SOC. INQUIRY 347, 364 (2017).

Part of the reason why the lawyers siphoned off such tasks to their nonlawyer was that engaging with clients to understand their situations and determine whether they were worthy of aid was laborious. The attorneys' limited time compelled them to focus their efforts on those tasks requiring the use of their legal expertise. But this came at the expense of a time-consuming yet critical component of providing justice to litigants: listening. For conventional poverty law cases, including claims for wages, landlord and tenant cases, and bastardy and criminal cases, the lawyers at the Legal Aid Society recognized that although such claims involved the simplest questions of law, the facts were "complicated and not easily ascertainable."[242] Thus, they concluded that it would be beneficial to have a "good investigation of the home conditions or conditions of employment."[243] Such inquiries, however, required time and patience. And rather than listen to clients' concerns and conduct the investigations, the lawyers delegated such tasks to Miss Palmer.[244] The act of listening to litigants' concerns and prying into the facts of a case did not prove critical enough for the lawyers to attend to themselves.

Furthermore, when the clients' desires were at odds with those of the lawyers, it was the lawyers' interests that prevailed. Explaining why in 1915 the Legal Aid Society had "declined its assistance" in 55 of the 2,230 prospective cases that came to them, the lawyers clarified that the "applicants did not merit the help of such an organization as ours."[245] Such clients who did not warrant the aid were those who would present the Society with a "bill for collection" and state that "he does not care about the money but for reasons of spite wants the debtor harassed to the fullest extent of the law."[246] In this scenario, what the client wanted could not be measured in monetary terms alone; rather, what the client sought from legal aid was a form of punitive justice. The client wanted the debtor to experience as much distress as the law allowed. Yet the lawyers, "irrespective of the legal merits of the case," refused to take on such matters.[247] Thus, in some scenarios when clients' interests differed from those of the lawyers, the attorneys followed their own inclinations as opposed to abiding by litigants' wishes.

3. Decreasing the Accessibility of Legal Aid for the Poor

The shift away from client-centered justice resulted in less accessible legal services for the people. By requiring payments from clients, the lawyers at the Legal Aid Society effectively deterred litigants from bringing certain types of claims. For example, for impoverished clients attempting to recover claims of one or two dollars, an initial cost greater than the amount in controversy could prove prohibitive. But the initial retainer fees were not the only payments that the lawyers had required. If the lawyers successfully retrieved the claims, there was an

242. Legal Aid Soc'y, Ninth Annual Report, *supra* note 216, at 10.
243. *Id.*
244. *Id.*
245. Legal Aid Soc'y, Fifteenth Annual Report, *supra* note 163, at 27.
246. *Id.*
247. *Id.* at 26.

additional charge of ten percent on the collections if they were over ten dollars.[248] Although the advent of the Legal Aid Society gave poorer litigants another avenue for redress by lawyers (aside from private law firms), such help came at a cost.[249]

In contrast to the Union's Protective Department that prided itself in accepting cases that were of little to no monetary value, the Legal Aid Society considered such matters unappealing. In the first annual report where the Society recorded having received applications for 198 cases, yet only undertook 154, the lawyers explained that "in addition to the cases rejected, there have been a number of others in which it has been undesirable or impossible to do much."[250] Cases fell into the "undesirable" category when the lawyers discovered that the claim was less just than it had initially appeared or when "the expense of prosecuting it [was] out of all proportion to the probable advantage."[251] In such matters, the lawyers explained that they had either attempted to arrange a compromise or had simply dropped the matters. In determining whether to take on certain cases, the lawyers applied a cost-benefit analysis. When cases did not meet their standards, the lawyers discarded the claim and moved on to the next.

Although the data does not reveal whether lawyers accepted claims of one or two dollars, the annual reports do suggest that the lawyers viewed such sums as trivial. The Society's retainer fees collected from clients ranged from fifty cents to one dollar and were described as "small fees."[252] However, the Society also recognized that in the year spanning 1914 to 1915, of the 2,229 cases that they handled, 744 clients paid such retainer fees, suggesting that only one in three clients was able to pay them.[253] That the Society nonetheless took on clients who did not pay the retainer fees suggests that perhaps the lawyers did not make the fees a necessary requirement to receive legal aid from the Society. But they still required such a payment as a test for how seriously the client deemed the case, however "small" it seemed to them.

Although the attorneys did make occasional exceptions to their rule and accepted clients who were unable to pay the initial retainer fees, in some cases, the clients themselves refused to proceed with their legal matters. From 1914 to 1915, of the 664 applications from the year, 138 (20.7%) were either, according to the attorneys, abandoned by the applicants or dropped with their consent.[254] Explaining why claimants would abandon their cases, the attorneys explained that the usual reason was the "unwillingness of the applicants to advance the

248. *See* LEGAL AID SOC'Y, FIRST ANNUAL REPORT, *supra* note 169, at 15.

249. For clients in "extreme poverty," the Legal Aid Society did not charge clients an out-of-pocket fee. But if the attorneys recovered over $10 for the client, the clients had to give the attorneys commission. *Prima facie*, this policy made legal aid accessible for the neediest, but there is no recorded written rule for what constituted "extreme poverty;" rather, this hinged on the lawyers' discretion. *See id.*

250. *Id.* at 14.

251. *Id.* at 14–15.

252. *See* LEGAL AID SOC'Y, FIFTEENTH ANNUAL REPORT, *supra* note 163, at 30.

253. *Id.*

254. LEGAL AID SOC'Y, FIFTH ANNUAL REPORT, *supra* note 229, at 10.

necessary cash for expenses."[255] Had the services by the Legal Aid Society been free for everyone, perhaps litigants would not have refused to proceed with their claims. But since the Society required claimants to contribute to efforts to provide legal assistance, they increased the price of justice.

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Compared to the nonlawyers at the Protective Department, the lawyers at the Legal Aid Society did not adopt a client-centered approach when dispensing aid to litigants. At the core of client-centered lawyering is respect for the client's voice and desires; in other words, lawyers should listen to what the client has to say and act with the client's interests in mind. The Legal Aid Society lawyers neglected to take the time to listen to ordinary litigants' concerns, delegating time for only the most important cases, and followed their own instincts, even if it meant dismissing the clients' wishes. The following section seeks to make sense of the lawyers' divergent approach to providing legal aid. I argue that such differences had to do with the lawyers' contrasting conception of justice. Practices changed at the Legal Aid Society because meanings and understandings of justice had changed as well. For the lawyers at the Legal Aid Society, justice was not determined by what the client wanted but by what the law decreed.

B. Changing the Meaning of Justice

The nonlawyers at the Protective Department understood justice from a lay perspective. And because of such framing, justice for the people was accessible. It did not hinge solely on the law; one did not need to possess expertise in legalese, nor did one need to participate in formal court proceedings. Yet, from the lawyers' perspective, if even indigent litigants and nonlawyers could obtain redress for their legal issues without seeking assistance from formally trained legal experts, it undermined the exclusivity of their work. Thus, the Boston Legal Aid Society lawyers redefined the meaning of justice by tying it to an area of the lawyers' prowess in efforts to distinguish themselves as legal aid professionals. According to Abbott, what differentiates an occupation from a profession is abstract knowledge: "Many occupations fight for turf, but only professions expand their cognitive domain by using abstract knowledge to annex new areas, to define them as their own proper work."[256] Justice changed at the Legal Aid Society because of lawyers' broader efforts to professionalize and control the legal aid domain in Boston.

1. Defining Justice

Whereas the nonlawyers understood justice in reference to their clients' conceptions of fairness, the lawyers defined justice in relation to the law, which the lawyers understood as too lethal a weapon for the people themselves to wield. The Legal Aid Society lawyers declared that the "all-embracing law," when

255. *Id.*
256. ABBOTT, *supra* note 32, at 102.

properly enforced, "protect[ed] the savings of a lifetime, control[ed] the relationships of husbands and wives, guarantee[d] the title to the land and house which mean a home, [and] watche[d] over the welfare of little children."[257] The attorneys understood the law as encroaching on intimate aspects of people's lives, from their pocketbooks to their marital relations to the shelter above their heads. And yet, despite the positive potential of the law, the legal professionals admitted its duality. If one abused the law, that meant "that the savings may be swept away, that a husband may cruelly abuse his wife with impunity, that the home may be destroyed through illegal foreclosure, and parents robbed of their children by fraudulent guardianship proceedings."[258] The Legal Aid Society lawyers showcased the two extreme by-products of the law: it had the potential to protect and to destroy. As beneficial a tool it could be for the people, the lawyers warned that "in the hands of unscrupulous persons . . . the law [was] the most powerful and the most ruthless weapon ever invented."[259] Given the law's propensity for destruction, the lawyers posited that the law proved too dangerous for the people themselves to engage with.

Thus, lawyers existed to serve as a buffer between the people and the law, and when a party lacked legal representation, they could not access the law and hence derive justice from it. The Legal Aid Society lawyers argued that when exploitative individuals used the law against "persons too poor or too ignorant to protect their rights," there was a "denial of justice."[260] The lawyers defined justice as that which emanated from a relatively fair playing field between litigants. Because when both parties in a dispute could access the law to protect their rights, then, in the lawyers' view, one litigant could not use the law to destroy another's livelihood without that party also using the same law to defend oneself. In its ideal usage, the law afforded litigants with safeguards. However, when certain litigants were unable to deploy that resource, as was the case with "the rich and poor [who did] not stand on an equality before the law," there was no justice.[261] In other words, for there to be justice for the poor, especially those with legal disputes against the well-off, the less fortunate litigant would need to have as equal access to the law as the opposing party. Lawyers were, therefore, critical channels through which the people could access justice.

2. Lawyering Justice

The lawyers viewed access to justice as access to the law. And for litigants to be able to use the law to protect their rights, the Legal Aid Society lawyers argued that there were two requirements: the law would need to be "enforced only by a

257. LEGAL AID SOC'Y, FIFTEENTH ANNUAL REPORT, *supra* note 163, at 9.
258. *Id.*
259. *Id.*
260. *Id.*
261. *Id.* at 8.

court (at a price) and through an attorney (at a price)."[262] Without neither a legitimate forum to hear and settle disputes nor a skilled advocate to present the arguments to the court, both of which came at a financial cost, the codified protections that would otherwise trickle down from the books and into reality were beyond the litigants' reach. The lawyers had confined their conception of justice to that which can be achieved only through courts and attorneys, thus precluding the possibility of obtaining justice outside the court and from actors beyond the bar.

By redefining justice in legal terms, the Legal Aid Society lawyers made the process of seeking legal redress one that only legal professionals could initiate. As Abbott theorized, when a group seeks to establish a jurisdictional claim, they enact the "diagnosis-inference-treatment" framework.[263] Abbott employed a healthcare metaphor to understand the sociology of professions and argued that in contrast to the "clear" opening diagnosis and endgame of treatment, inference is the intermediary that "relates professional knowledge, client characteristics, and chance in ways that are often obscure."[264] This uncertain space is where tacit knowledge resides and thus defines professional expertise. Yet, while inference may be the critical turning point in healthcare where miscalculation about a treatment may result in irreversible damage to a patient, with regards to the law, sociolegal scholar Sida Liu proposes that diagnosis is the "first and most crucial aspect in this cultural machinery of professional work."[265] Diagnosis involves "colligat [ing] the client's problem and then classif[ying] it into the professional knowledge system."[266] When the Legal Aid Society lawyers framed justice as a law-dependent concept, they attempted to place legal aid within their professional domain. Under this definition, only lawyers could engage in the professional process of diagnosis, inference, and treatment because it depended on prior knowledge of the law. This precluded the type of accessible, procedural justice that the nonlawyers had dispensed.

The lawyers' framing of justice was a means of differentiating the lawyers from the nonlawyers. The Legal Aid Society lawyers argued that attorneys were necessary for litigants to seek justice via courts because lawyers purportedly possessed the requisite knowledge and skills for litigants to access the law. Taking a case to court involved a multitude of technical, bureaucratic steps that required an actor to satisfy requirements of "venue, jurisdiction, service, entry, and the law of pleadings."[267] Not just anybody from anywhere could begin a proceeding in a court. And after a case appeared in court, the representative for the client, be it the client him or herself or a formally trained legal professional, would have to

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262. Legal Aid Soc'y, Sixteenth Annual Report (Second Edition) of the Boston Legal Aid Society, 1915-1916, at 7 (1916).

263. Abbott, *supra* note 32, at 40.

264. *Id.* at 48.

265. Liu, *supra* note 31, at 674–75.

266. *Id.*

267. Legal Aid Soc'y, Fifteenth Annual Report, *supra* note 163, at 11.

determine the applicable law—or identify a proper diagnosis—select "the material facts admissible according to the law of evidence"—make an accurate inference—prepare "witnesses and documents at hand," and present the case in compliance "with the rules governing trials"—or properly treat the case.[268] Possessing this expertise and knowing how to apply the insights to a tangible case were skills predominately confined to trained legal professionals. Thus, the Legal Aid Society attorneys argued that court proceedings "made necessary the appearance of parties by attorneys."[269] An effective advocate in court needed to know more than the facts of the case and to wield more than a strong conviction of right versus wrong; rather, they needed to know how to operate the judicial machine. And the attorneys' arcane knowledge and technical know-how made them the appropriate and ideal actors to represent the people in court and assist them in seeking justice.

Such knowledge barriers limited what nonlawyers could do to help litigants obtain justice and strengthened the role of lawyers in justice-seeking endeavors. In the legal aid lawyers' view, even nonlawyers, however much experiential and relational expertise they had gained through their practice, were no match against other lawyers in court. Without an attorney, the legal aid lawyers contended that "no progress in litigation could be made by any layman, regardless of the justice of his cause."[270] Thus, recognizing the people's need for more accessible lawyers, lawyers created the Boston Legal Aid Society to provide litigants with subsidized access to attorneys. And in doing so, the Legal Aid Society understood itself as becoming "a link in the perpetuation of the national tradition that all men are equal before the law."[271] Thus, efforts to cement the link between lawyers and justice progressed.

Under the Legal Aid Society lawyers' conception of justice, which they understood as a by-product of the proper administration of law—that is, when both parties were on an equal footing—lawyers were critical. Without an attorney, the litigant would still face "the great stumbling-block in the path toward freedom and equality of justice."[272] Thus, the role of legal aid societies—not just in Boston but also around America—was to provide indigent clients with the opportunity to access professional lawyers either gratuitously or at a low cost.[273] Under this notion, lawyers were required if people wanted to access justice. In a way, the lawyers adopted a "procedural definition" of justice in that they "equated equal justice with individual access to legal institutions."[274] Yet this differed from the nonlawyers' approach to procedural justice. The nonlawyers' conception of

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268. *Id.* at 11.
269. Legal Aid Soc'y, Twentieth Annual Report, *supra* note 193, at 10.
270. *Id.*
271. *Id.*
272. Reginald Heber Smith, Justice and the Poor 31 (1919).
273. *See id.* at 129.
274. Michael Grossberg, *Altruism and Professionalism: Boston and the Rise of Organized Legal Aid, 1900-1925, Part II*, 21 Bos. Bar J. 11, 20.

procedural justice did not hinge on the litigants' literal access to certain services; rather, it was influenced by an understanding that "the process used in resolving a dispute strongly influence[d] the disputants' level of satisfaction with the resolution."[275] While the lawyers emphasized the clients' access to the law, the nonlawyers focused on the preservation of the clients' voice throughout the process of dispute resolution. Ultimately, however, only one of these conceptions of justice would prevail in Boston's arena for legal services.

C. Dominance and Demise

When the Boston Legal Aid Society first joined the legal aid domain in 1900, it was the sole lawyer-run legal aid organization in Boston, but only one of many groups already providing legal aid services to the poor.[276] Initially, the Protective Department remained puzzled with whether and how to interact with the Legal Aid Society: should the nonlawyers send their cases to the lawyers at the Legal Aid Society, or should they continue to rely on their own volunteer attorneys? Will the existence of the Legal Aid Society make the services of the Protective Department's nonlawyers null? The remainder of this section answers the above questions and explains how the entrance of lawyers into the legal aid realm crowded out nonlawyer providers of legal aid and ultimately determined how access to a lawyer became associated with access to justice.

1. Nonlawyers Holding onto the Turf

When the Legal Aid Society first entered the legal aid realm in Boston, the nonlawyers at the Protective Department hesitated with how to engage with the lawyers. In its 1901 annual report, the Protective Department noted that "the problem of acting with the Legal Aid Society has been a very important one, and has not as yet been solved."[277] Rather than view the addition of the Legal Aid Society into the realm of legal services as a boon, they instead referred to it as a "problem."[278] Furthermore, the nonlawyers expressed skepticism that the lawyers would even be able to solve clients' legal matters. The Protective Department's committee did not feel "sure that it [was] advisable to turn all cases over to the Legal Aid Society" because when they sent over 14 out of the total 173 they had encountered that year, the nonlawyers noted that those 14 cases that had gone to the Legal Aid Society "[had] not as yet been settled."[279] The nonlawyers at the

275. William M. O'Barr & John M. Conley, *Lay Expectations of the Civil Justice System*, 22 L. & SOC'Y REV. 137, 137 (1988).

276. Some examples of Boston charities that had volunteer lawyers help them provide legal services to community members include the Society for the Prevention of Cruelty to Children, the Society for the Prevention of Cruelty for Animals, and local churches. *See* UNION, REPORT FOR 1879, *supra* note 39, at 20; UNION, REPORT FOR 1898, *supra* note 148, at 13.

277. UNION, REPORT FOR 1901, *supra* note 154, at 58.

278. *Id.*

279. *Id.*

Protective Department did not automatically feel relieved that there was a new lawyer-led legal aid group in Boston; rather, they felt threatened by its presence.

The nonlawyers' reticence about handing over cases to the Legal Aid Society could be inferred from the number of cases that the Protective Department referred to the Legal Aid Society. For the first four years after the addition of the Boston Legal Aid Society, the nonlawyers in their annual report began to delineate which legal actors—the Protective Department lawyers or the Legal Aid Society attorneys—handled the more technical cases at the Protective Department. The data suggests that rather than lightening the load of cases for the Protective Department's counsel by sending them to the Legal Aid Society, the nonlawyers sent more claims to their own lawyers.[280]

In addition to relying more on its own counsel, the nonlawyers at the Protective Department began to emphasize the utility and necessity of their services to the community. The nonlawyers acknowledged that although the Legal Aid Society had the advantage of being a lawyer-run institution, the nonlawyers nonetheless contributed valuable services to the community. Namely, the Protective Department began to document the number of cases that the committee itself had settled without the aid of any lawyers whatsoever—both of its own counsel and of the Legal Aid Society lawyers. These settlements were handled exclusively by nonlawyers and in the eyes of the Protective Department "justif [ied] the work of the Committee, by indicating that it [met] a need among wage-earners."[281] The nonlawyers sought to demonstrate how they were providing a valuable service that only they, as nonlawyer experts in legal aid, could provide. Their knowledge was distinct from that of laypersons and of legal professionals. The nonlawyers clung to this perceived uniqueness and cited an increase in caseload and collections from 1902 to 1903 and "hoped" that those results proved that the Protective Department met "a need in the community not supplied by other organizations."[282] The nonlawyers feared that the addition of the Legal Aid Society into the realm of Boston legal services would dissolve the need for the Protective Department.

But the response of the Protective Department's nonlawyers to the threat posed by the Legal Aid Society was not just about differentiating one organization from another; rather, it was also about delineating the difference between

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280. From the year 1901 to 1904, the Union's Protective Department began to record where cases at the Department were referred, either to the Union's own lawyer or to the Legal Aid Society. With the exception of the number of cases referred to their own lawyers in 1901, there is data for the number of cases referred to their own lawyer and to the Legal Aid Society for all four years. The data suggest that from the year 1902 to 1904, the proportion of cases that they referred to their own lawyer (number of cases referred to lawyer/total number of cases) increased from 7.3% to 19.9%. Meanwhile, for that same time period, the proportion of cases that the Union nonlawyers referred to the Legal Aid Society (number of cases referred to Legal Aid Society/total number of cases) decreased from 8.4% to 6.3%. *See* UNION, REPORT FOR 1901, *supra* note 154, at 58; UNION, REPORT FOR 1902, *supra* note 154, at 60; UNION, REPORT FOR 1903, *supra* note 154, at 51; UNION, REPORT FOR 1904, *supra* note 154, at 46.

281. UNION, REPORT FOR 1902, *supra* note 154, at 61.

282. UNION, REPORT FOR 1903, *supra* note 154, at 52.

lawyers and nonlawyers. Writing about the settlements that the nonlawyers had produced, the nonlawyers added that such resolutions were results that "neither the counsel of their friends nor the legal profession supplie[d]."[283] They were not arrangements that ordinary neighbors with a desire to help a struggling friend could make, nor were they results that even legal professionals who had undergone years of formal legal training could achieve. The nonlawyers relied on what they understood to be their unique abilities as lay experts who could rely on their experience and reputation in the community to help clients seek redress.

2. Encroaching on the Nonlawyers' Services

The Protective Department's concerns about how the existence of the Legal Aid Society would affect their operations were one-sided; although the Legal Aid Society gladly received referrals from the Union's Protective Department, they did not depend on them. In detailing from where the Legal Aid Society had received cases, the lawyers demonstrated in their annual reports from 1901 until 1905 how many cases they had received from the Protective Department, which the Legal Aid Society had referred to as the Women's Educational and Industrial Union.[284] Yet beginning in 1906, the Union no longer appeared in the referral sources chart, and instead, the Legal Aid Society included a grouped categorization titled "29 different charitable societies, each of which sent less than 3 cases."[285] There is no indication that the Union even sent a single case to the Legal Aid Society from 1906 onwards, either in the Union's annual reports or in those of the Legal Aid Society. And although the Union eliminated its pipeline of cases to the Legal Aid Society, the Legal Aid Society's flow of cases was hardly affected; they had over forty-two charities from which they received claims.[286] Because there were dozens of nonlawyer charities in Boston and only one lawyer-led legal aid organization, the latter had a distinct competitive edge above the others.

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283. UNION, REPORT FOR 1902, *supra* note 154, at 61.

284. The Legal Aid Society listed in its 1901 report that the Women's Educational and Industrial Union was one of six organizations with whom they had "co-operated" to do business. The Legal Aid Society's report from 1901 did not capture how many referrals they had received from the Union, but the Union's annual report from 1901 stated that the Protective Department had referred fourteen cases to the Legal Aid Society. One thing to note, however, is that the Union and Legal Aid Society measured their years differently—the Legal Aid Society's year "ended" in September, while the Union's year "ended" in May. *See* LEGAL AID SOC'Y, FIFTEENTH ANNUAL REPORT, *supra* note 163, at 10; UNION, REPORT FOR 1901, *supra* note 154, at 58. Similarly, there is no data from the Legal Aid Society's 1902 annual report; however, the Union's 1902 annual report noted that the Protective Department sent fifteen cases to the Legal Aid Society in the year ending May 1902. *See* UNION, REPORT FOR 1902, *supra* note 154, at 60. The Legal Aid Society recorded the number of cases it received from the Union in its annual reports from 1903, 1904, and 1905. Those numbers, respectively, were nineteen, nineteen, and thirteen. LEGAL AID SOC'Y, THIRD ANNUAL REPORT, *supra* note 224, at 2; LEGAL AID SOC'Y, FOURTH ANNUAL REPORT, *supra* note 228, at 14; LEGAL AID SOC'Y, FIFTH ANNUAL REPORT, *supra* note 229, at 11.

285. LEGAL AID SOC'Y, SIXTH ANNUAL REPORT OF THE BOSTON LEGAL AID SOCIETY, 1905–1906, at 12 (1906).

286. *Id.* at 12–13.

The Legal Aid Society lawyers grew their organization and claimed increasingly more jurisdiction. In the first year of service in 1900, the Legal Aid Society had received 198 cases; in its twentieth year, they had 4,625.[287] This contrasted starkly with the Protective Department, which had received 144 cases in 1880 and only 394 by 1920.[288] At its peak, the Union's Protective Department handled 530 cases in 1911, which was only about four times greater than its capacity when it first opened.[289] In contrast, as elucidated by the Legal Aid Society itself, the organization had established itself as "the poor man's lawyer, and [gave] him the essential assistance he [could not] obtain elsewhere."[290] The utility of the Legal Aid Society for the public was demonstrated by the sheer volume of their work, and this growth would continue for decades to come.

3. Exiting the Legal Aid Landscape

For two decades after the entrance of the Legal Aid Society into Boston's legal services turf, the Union's Protective Department attempted to maintain its utility for vulnerable residents. The nonlawyers tried to expand their efforts beyond just direct services. Beginning in 1904, the Union's Protective Department decided to take on a "new and special branch of work bearing indirectly upon its legitimate province."[291] The venture comprised of investigating into common issues, as opposed to individual conflicts, and resulted in the committee drafting bills to send to the Massachusetts Legislature.[292] Although the Protective Department's committee had recognized that this new domain lay beyond their expertise, they nonetheless expanded the boundaries of their work in hopes that they would preserve their importance and existence in Boston. In 1905, the Protective Department reported that their work had taken on more of a "preventative" nature and that they had become "a power for good in investigating errors and abuses with the hope of effecting certain reforms."[293] Yet, despite their efforts, it was not enough to preserve the Union's legal aid department.

In 1921, the Women's Educational and Industrial Union closed its legal aid branch. The Board of Government voted to eliminate the Protective Department (which at the time was known as the Law Department).[294] In explaining why they decided to close their legal aid division, the committee members cited two recent developments that "remove[d] most of our opportunities for usefulness in the Law Department in the future."[295] One reason was "that the Boston Legal Aid

287. LEGAL AID SOC'Y, TWENTIETH ANNUAL REPORT, *supra* note 193, at 9.

288. UNION, REPORT FOR 1881, *supra* note 55, at 41; UNION, FORTY-THIRD ANNUAL REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR 1920–1921, at 17 (1922).

289. UNION, THIRTY-FOURTH ANNUAL REPORT OF THE WOMEN'S EDUCATIONAL AND INDUSTRIAL UNION FOR THE YEAR 1911–1912, at 20 (1913).

290. LEGAL AID SOC'Y, TWENTIETH ANNUAL REPORT, *supra* note 193, at 16.

291. UNION, REPORT FOR 1904, *supra* note 154, at 9.

292. UNION, A REPORT OF PROGRESS MADE IN THE YEAR 1905, *supra* note 119, at 50–51.

293. *Id.* at 51.

294. UNION, REPORT FOR 1921, *supra* note 288, at 16.

295. *Id.*

Society ha[d] decided to employ a woman on its staff"—in fact, the woman lawyer whom the Legal Aid Society had hired was the head counsel of the Union's Law Department prior to its closing in 1921.[296] But the Legal Aid Society had a woman on staff—Miss Palmer—from 1910 to 1916, casting doubt on their argument that it was the inclusion of a woman at the Legal Aid Society that nullified the utility of the Union's Law Department. The other purported reason concerned "the establishment of the Small Claims Court," which would theoretically give clients direct access to the courts and nullify the need for legal representatives in matters concerning paltry sums.[297] But even if litigants could bring their cases to court directly without legal representatives, that did not necessarily affect extralegal settlements like the ones that the nonlawyers had conducted. More likely, the Union closed its Law Department because the nonlawyers lost control over its jurisdiction to the Legal Aid Society.

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The lawyers at the Legal Aid Society adopted a different approach to legal services than the nonlawyers at the Protective Department. Whereas the nonlawyers at the Protective Department had provided services that revolved around the client—listening to long stories, fighting for paltry sums, and treating clients with respect—the Legal Aid Society lawyers conducted their practice with a different philosophy in mind. The lawyers were more concerned with running an efficient practice and dispensing a justice defined not by the client but by the law. And for the people to obtain justice via the law, the legal aid attorneys argued that access to an attorney was the essential—and only—means of bridging the gap between the people and the law. In this way, the lawyers positioned themselves as necessary accessories for justice, precluding the possibility of relying only on a nonlawyer at a charitable organization to seek and receive legal redress. Ultimately, this conception of justice for the poor dominated by the 1920s. When the Union closed its Protective Department in 1921, it exited the legal aid landscape and conceded its control over a portion of legal aid cases for Boston's indigent residents. By withdrawing, the nonlawyers could no longer deliver client-centered legal aid to the people and shape their conceptions of justice through the services they offered. Instead, the lawyer-led Boston Legal Aid Society would become the dominant legal aid provider in the area and, like other lawyer-led legal aid agencies in America, would extend "rough justice to people who otherwise had no hope for justice at all."[298]

Conclusion

In the decade following the Union's departure from Boston's legal aid landscape, lawyers across Massachusetts had managed to secure their hold over more

296. *Id.*

297. *Id.*

298. Martha Davis, Brutal Need: Lawyers and the Welfare Rights Movement, 1960–1973 16 (1993).

areas of the law, beyond just legal aid. As of September 11, 1935, the Massachusetts Legislature enacted its unauthorized practice of law statute, which forbade nonlawyers from encroaching on legal matters, including dispensing free legal advice to litigants.[299] This law represented the lawyers' domination over the field of law and sustained the people's dependence on the legal profession. But well before the passage of the 1935 statute, the people's access to justice was already slowly whittling away.

The loss of the Union's Protective Department resulted in not just one fewer provider of legal services for the poor but also a change in how justice would be dispensed. The nonlawyers understood justice as rooted in the clients' desires and conceptions and strove to obtain that justice for litigants. Whether that meant listening to clients' stories for hours, making countless visits to defendants' houses, or toiling away over disputes worth one dollar, the nonlawyers lived up to their roles as protectors of the people. They revealed that perhaps sometimes what was desired from a legal representative was not technical expertise in how to classify a legal claim or invoke legal force, but a willingness to listen to and respect the client's voice.

Yet, unlike the nonlawyers at the Protective Department, the lawyers at the Legal Aid Society would provide a different kind of justice, one that hinged not on clients' interests, but on the abilities of the lawyers to connect the litigants to the law. At the lawyer-led legal aid institution, gone were the days of being able to vent stories about injustices to a patient listener who would translate those frustrations into legal actions. Justice was not about knocking on defendants' doors for paltry sums and mediating settlements between litigants, but about whether the law warranted redress. Clients and grievances at the Legal Aid Society were filtered to determine whether, in the lawyers' views, the individuals and claims were worthy enough to pursue justice. Compared to the nonlawyer-led Protective Union, the lawyer-heavy Legal Aid Society enacted stricter barriers for who could and could not seek justice via the lawyers.

While litigants could theoretically waffle between their pick of legal aid organizations in Boston during the first two decades of the twentieth century, this would change after 1921, when the Union's legal aid arm left the turf. They tried to maintain their utility and uniqueness as an institution. The nonlawyers emphasized how they helped clients reach settlements without lawyers and continued to provide legal advice to litigants who needed only information and no further intervention. Yet this was not enough for the nonlawyers to justify maintaining their presence in the legal aid sector. Thus in 1921, the nonlawyers ultimately ceded control over the small sliver of legal services that they had managed to the Legal Aid Society, marking the end of the Union's direct participation in legal aid and furthering the Legal Aid Society's endeavor to establish exclusive control over legal services for the people.

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299. *People's Lawyer: Globe to Abandon Column as Result of New Law*, BOS. GLOBE, Sept. 9, 1935, at 5.

The domination of the lawyers and the demise of the nonlawyers supports Abbott's framework on interprofessional competition as the main driver of the development of professions. The legal aid lawyers gained terrain from the nonlawyers not only by using "abstract knowledge" to change the meanings of and approaches to justice for the poor but also by providing more services than the nonlawyers.[300] Yet this paper also provides nuance into Abbott's model by illuminating how preexisting societal conditions, such as gender and class, can influence which groups can access the privilege of professionalization. Socially, the Union's Protective Department workers were marginalized both in the sense that they were "nonlawyers"—a term defined in a negative as opposed to a positive sense—and that they were women. Indeed, the women nonlawyers initially arose to fill what they had identified as a gap in legal protections for the working poor, but they failed to secure a strong hold over these services. Perhaps because they never sought complete control over the legal aid market, or because their marginalized positions in society never allowed them to have the same resources and opportunities as their male lawyer counterparts. With the gap in legal services for the poor, male private lawyers, who were able to rely on fellow lawyers for manpower and financial support, managed to build an institution that could compete, and eventually outdo, that of the nonlawyers. In the decades to come, lawyers across America would become the primary providers of legal aid and the gatekeepers of justice.

Yet conflating access to counsel with access to justice has since resulted in too little justice for too many people. While legal aid societies have been filling critical needs in connecting impoverished litigants to free or low-cost attorneys, today, there are far too many indigent litigants with civil legal needs for lawyers alone to address.[301] It is here, in determining how best to provide justice to the indigent, that we should turn to history. Rather than merely echo the Protective Department nonlawyers' approaches to client-centered lawyering and procedural justice and patiently hope that lawyers today will fulfill visions for ideal modes of lawyering, perhaps more action is needed. We can begin by acknowledging our myopic focus on lawyers and shifting our attention to nonlawyers. The story of the women nonlawyers at the Protective Department teaches us that nonlawyers can, and should, be allowed to provide legal advice and assistance. If the goal is to obtain justice for clients, we ought to loosen restrictions on who can provide legal services and allow for nonlawyers to return to the legal aid domain. Instead of a relationship mired in competition, hopefully, this time, lessons from the past can pave the path for collaboration.

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300. ABBOTT, *supra* note 32, at 102.

301. HELEN HERSHKOFF & STEPHEN LOFFREDO, GETTING BY: ECONOMIC RIGHTS AND LEGAL PROTECTIONS FOR PEOPLE WITH LOW INCOME 786 (2019). In a 2017 study, the Legal Services Corporation determined that approximately "71% of low-income households experienced at least one civil legal problem" and noted that "86% of the civil legal problems reported by low-income Americans received inadequate or no legal help." LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2017). *See also* Rebecca L. Sandefur, *What We Know and Need to Know about the Legal Needs of the Public*, 67 S. CAROLINA L. REV. 443, 448 (2016).