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The Legal Aid Society, established in 1905 from a merger of PAWC and the Legal Aid Bureau, photo by Charles J. Bernauer, 1919, ICHI-36161, Chicago History Museum.

INVENTING LEGAL AID: WOMEN AND LAY LAWYERING

Felice Batlan

When we think of extraordinary nineteenth century legal institutions and innovations, we generally do not think of women. In fact, in 1875, the United States Supreme Court ruled that Illinois' refusal to admit women to the bar did not violate the newly passed Fourteenth Amendment of the U.S. Constitution. Yet remarkably, in 1885, women in Chicago created the Protective Agency for Women and Children (PAWC), which was one of the very first organizations in the country to provide free legal aid to the poor.

The PAWC began inauspiciously

and indirectly. In 1876, Caroline M. Brown, a wealthy woman and mother of two children, founded the Chicago Women's Club (CWC) by inviting 21 women to meet in her living room to learn about and discuss the day's pressing social, political, and cultural issues. Brown was acutely aware of the limited sphere in which elite women could maneuver respectably and worried that some might take a dim view of the club. Yet, in the aftermath of the disastrous 1871 fire, Chicago was a particularly hospitable place for such a group, as women had created organizations to provide charity

and relief to victims of the fire. Thus a tradition of middle-class and elite women's organizing already was beginning to develop in Chicago.

One of the first projects of the CWC was to place a woman night matron in each police station and the club hired and raised funds for the matron's salary. The issue of having women police matrons was one embraced by numerous women's organizations across the country. It was an appropriate women's issue because it involved the supervision of working-class and poor women under the rationale of protecting such women's virtue from male prisoners and from policemen (often immigrant men). Responsibility for the matron gave CWC members cause to visit the jails as well as to follow jailed women's cases through court proceedings. They observed firsthand the treatment of poor women and girls in Chicago courts as defendants, witnesses, and victims.

These experiences underlay the CWC's decision to create the Protective Agency for Women and Children in 1885. The PAWC announced as its objective: "To secure justice for women and children, to give legal counsel free of charge, and to extend moral support to the wronged and helpless." Significant to notice here is that the PAWC limited its clientele to women. In fact, gender was fundamental to how members of the PAWC viewed themselves, constructed their roles and du-

ties, and defined the problems that they sought to solve. According to the PAWC, elite and middle-class women had a unique responsibility to protect poor and working-class women from a host of dangers and injustices. Central to the PAWC's ideology was the argument that men as a whole had failed to create a moral and just society. Instead, men had constructed a world that was rife with injustices to women and governed by a corrupt political system in which men put self-interest before the public good.

Charlotte Holt was hired by the PAWC as the organization's superintendent. She ran the office and interviewed women who sought aid. She and her assistants, board members, and volunteers then would investigate cases and attempt to settle them. A male attorney would become involved only if a lawsuit was filed, which was a rare event. Each year, the number of clients to whom the PAWC ministered grew exponentially. In its first year, the PAWC handled 156 cases, in its third year 1,145, and by 1905 over four thousand. There were few rules regarding the types of cases that the PAWC would take. Rather it functioned flexibly and often improvised, meeting needs as they arose. Thus unlike the practice of most later legal aid societies, the PAWC did not have eligibility requirements, did not require that a client be worthy, and was entirely unconcerned that it might take cases

away from attorneys. As the PAWC's superintendent stated, "We do not make any rules, but judge of each case as it comes to us."

The two largest categories of cases were wage claims involving women whose employers had failed to pay them and domestic relations claims. In wage cases, Holt and other board members, using their influence and persuasion through letters and personal visits, pressured employers to pay such wages. This form of conciliation was used so often that the PAWC dubbed it "White Mailing." The "white" was intended to imply that it was done in the name of justice, morality, and the public good, as opposed to blackmail which was done for self-interest.

The bulk of the PAWC's domestic relations cases raised issues of abandonment and/or non-support of wives by husbands. These cases went to the heart of the PAWC's belief in the absolute obligation of a husband to support his wife and children. In a typical case, a woman would appear at the PAWC's office claiming that her husband disappeared weeks ago, leaving her penniless. Now the landlord was demanding rent, and the furniture was being repossessed. At times, the husband was close by living with relatives and at other times he had traveled far away. Often the wife would have some sense of where the husband was staying and where he worked. The PAWC would take the case, search for the

husband, threaten him with a lawsuit for failure to support, and collect support payments for the wife. If the husband did not agree to pay, the PAWC often would convince his employer to pay wages directly to the PAWC for the benefit of the wife. Actions such as these combined the threat of litigation with public humiliation by making visible a man's failure as a breadwinner. In the small number of cases where these methods failed, the PAWC might file a lawsuit against the husband for non-support. Meanwhile the PAWC also would negotiate with the landlord and furniture dealer for lower or postponed payments. The PAWC rarely initiated lawsuits and this was for good reason. A lawsuit would require that the PAWC's male lawyer become involved. Even more important, the PAWC had little faith in the courts and did not believe that courts could actually deliver justice.

The PAWC's vision of legal aid went well beyond representing plaintiffs in claims for monetary damages. Rather the PAWC devised for itself the mission of overseeing the court system's treatment of poor and working-class women's cases involving sexual assault. The PAWC declared that they intended to protect such women from a legal system that too often failed to take seriously cases in which women made claims of rape or sexual abuse. Rather, courts and the state dis-

missed charges, charged defendants with minor offenses, or even found defendants innocent in cases where significant proof of abuse existed. The PAWC argued that defendants' lawyers endlessly delayed cases and inappropriately influenced judges. If a trial occurred, the defendant's lawyer humiliated the victim by attacking her character and chastity. Likewise the state's attorney, who was at best overworked and apathetic, could not be relied upon to prosecute cases fully.

Leaders of the Agency also believed that the court system was filled with justices of the peace and police magistrates who had obtained their appointment through political connections and were often corrupt. By contrast with corrupt non-elite justices of the peace, police magistrates, and lawyers, PAWC members considered themselves more competent and certainly more virtuous. In 1887, the PAWC confidently wrote a letter to state appellate judges regarding the deplorable state of the lower courts. The letter declared, "We have had cases in which we believe political influences have governed the Justices. We have had cases in which sympathy with vice seemingly decided the question. We have had cases in which the attorney for the accused controlled the Justice, and it was deemed impossible to secure a fair hearing." They further complained of intentional delays, mind-numbing technicali-

ties, discourteous treatment by court personnel, crowded courtrooms, and magistrates' and court officers' lack of sympathy with or concern for poor women. The letter urged the appellate justices to appoint only the most qualified attorneys to judicial positions. Regarding the issue of qualifications, the PAWC's complaints were laden with contradictions. Even its most powerful and active members did not have formal legal training, and the PAWC's mission was to exert their own influence over judges.

Part of what the PAWC found so objectionable was that police magistrates and other lower court judges were not only deeply ensconced in politics but were also non-elite, often immigrant men. The PAWC's attack on court officials reflected their larger fear of the power that immigrants and non-elite men, through political connections and the system of Chicago's ward bosses, had obtained. By contrast with the supposedly illegitimate power exercised by court officials, the members of the PAWC saw themselves and the power that they exercised to be earned, natural, and above reproach.

When the PAWC learned about a case of sexual violence, it became involved in multiple ways, including conducting its own investigation, gathering evidence, and speaking with judges and attorneys. At times, PAWC members would pressure the state's attorney into allowing the

PAWC's own attorney to prosecute cases. In their own words, they would act "the sister's part." One of the PAWC's best-publicized and most visible tactics was to appear *en masse* in courtroom proceedings involving cases of sexual assault. In doing so, they functioned as judicial watchdogs whose presence was intended to shame court officials and lawyers into proper behavior. PAWC members walked a fine line in assuming this role, as truly respectable women rarely appeared in court, which all recognized as a masculine space. Chicago's police courts were rough-and-tumble places—crowded, noisy, filled with smoke, and teeming with defendants of all sorts. These were hardly places where ladies appeared. Responding to the PAWC's actions, some court officials declared that the courts, especially police courts, were not an appropriate place for respectable women. Such judicial opprobrium only increased the PAWC's tenacity and paradoxically augmented the impact had by the public nature of their protests. As the PAWC explained, "The presence of a delegation of reputable women, women of social position and influence, changes the moral tone of Police court, and imparts courage to a timid girl, whose very innocence confuses her, in the presence of so many strange men."

As PAWC members invaded the courtroom, they also began to question substantive and evidentiary laws

regarding sex crimes. Particularly infuriating was how defense lawyers raised issues of a victim's consent and used past sexual conduct to demonstrate consent, even when crimes involved girls. The PAWC strongly condemned as hypocritical the double standard that permitted men to have sex outside marriage while condemning women who did so. Connecting this understanding to the legal arena, they sought to make a woman's chastity and morality irrelevant to the question whether she was the victim of a sex crime. As members continued to attend court, they began to assert that the courts' unfair treatment of women in cases regarding sexual violence was not caused only by individual men's behavior. Rather, the PAWC insisted, this unfair treatment was engrained into law and required the enactment of new laws that would exclude evidence of a women's chastity or previous conduct. It explained, "[I]mmorality should be no hindrance to legal rights in one sex more than the other." It also campaigned to raise the legal age of consent, which in Illinois was ten for a girl. Laws raising the age of consent went hand-in-hand with reforming evidentiary rules and burden of proof standards, as statutory rape made questions of consent and a girl's character and past sexual conduct moot. As the PAWC understood, such reformed laws removed a judge's discretion and further controlled defense attorneys' behavior.

Significantly, the PAWC did not conceptualize its legal work as distinct from its other work, which included providing non-legal advice, giving financial aid, locating lodgings, finding employment, and seeking medical services for its clients. It would have made little sense to the women of the PAWC to believe that the purpose of legal aid was simply to provide their clients the ability to go to court separated from a concern with substantive justice or material well-being. Moreover, they claimed, the PAWC provided its clients with “self-respect” and “self-dependence.”

The women of the PAWC also tended to accept the stories told by those women seeking their help. In other words, they presumptively believed their clients rather than finding their stories suspect. Moreover, they appreciated the importance of allowing clients to tell their stories slowly, which they asserted “busy lawyers would not bear.” As they recognized, many women who sought help did not have legally cognizable claims. But they believed that client narratives had value in and of themselves. “Many a tale of woe is told in our office, the mere listening to which by sympathetic and intelligent women is all the help possible. It is astonishing how grateful some of these women are for the opportunity of telling their trials to such lis-



teners.” For a poor woman to tell her story to a middle-class or wealthy woman and to have her listen to and acknowledge her story must have given the poor women a sense of empowerment and agency.

Like attorneys, volunteers and employees of the PAWC treated all conversations with clients as confidential, often refusing to write or speak about individual cases. As Holt wrote, “Much of our work is of a confidential nature, and as our aim has always been to encourage women to come to us for advice and counsel, it has been one of the essential stimulants to them to be assured of the strictly private nature of all work that could be kept private.” Thus the Agency never publicly discussed its cases in any detail, even in its fund-

Photo of Lucy Louisa Flower, long-time officer of the PAWC, Chicago Markers of Distinction, <http://chicagotribute.org/Markers/Flower.htm>.

raising materials. By contrast with a variety of reform organization, especially those related to women, the PAWC eschewed melodramatic narratives of seduction and betrayal of young women. In their view, such stories and issues were so serious that they needed to stand outside popular discourse. They were not to be traded upon and instead were to be treated as precious.

Early in its history, the PAWC's members correctly understood their power as coming from their class and social position. As time passed, they began to base their claims to expertise and authority on their growing legal knowledge and experience. They proudly proclaimed that the bench and the bar recognized and appreciated their expertise. The PAWCs relationship to judges and attorneys was complicated, because they simultaneously looked down on many lawyers and judges while still longing for their acceptance and basking in their compliments. When long-time officer and board member Mary Potter Crane died, the PAWC boasted that "she had a judicial mind, and was always welcome at the State's Attorney's office, and her advice and counsel in difficult cases . . . were frequently sought by attorneys." Likewise, one board member wrote that Charlotte Holt "has so won the respect and confidence of the courts that whatever case she presents

is sure of respectful hearing." The PAWC was also particularly proud when, in the late 1890s, they received requests from judges to have the PAWC station a representative in every police court to handle cases involving women, an affirmation of the PAWC's importance and its members' legal and practical expertise.

The work of the PAWC had lasting influence not only in shaping the idea and practice of providing organized legal aid to the poor, but also in building Chicago's specialized courts, including its juvenile and domestic relations courts. A number of women who were officers of the PAWC played significant roles in the creation of these courts and the PAWC may have functioned as a model for such courts. Both of these courts were intended to move away from an adversary model of law and sought to minimize the role of lawyers. Likewise, tremendous discretion was vested in social workers, often women, whose job was to understand holistically those who appeared before the court. They were to use such knowledge to fashion individual solutions and such courts were intended to be flexible institutions not bound by strict understandings of the rule of law.

The PAWC was an extraordinary institution. At a time when only a miniscule number of women were lawyers, it created a space in which women provided legal advice to

other women. Situated within a thick network of women's clubs, the PAWC expanded its activities to provide a wide range of legal services to women, and it refused to make hard distinctions either between the types of cases that it would handle or between legal versus non-legal cases.

Sources and Further Reading

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In 1905, the PAWC became the Chicago Legal Aid Society and its vision of legal aid as part of a continuum of care became the hallmark of a Chicago-style of legal aid which is still with us today. ♦

Felice Batlan earned her J.D. from Harvard and spent a decade working in New York in the financial services industry. She then earned her Ph.D. in history from NYU. She specializes in both the regulation of financial markets and in nineteenth and twentieth century U.S. legal history with a focus on women and gender. She has published widely in law reviews, history journals, and anthologies. This is an excerpt from her forthcoming book *Inventing Legal Aid: Lawyers, Social Workers, and the Poor, 1863–1960*.