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Auto Clubs and the Lost Origins of the Access-to-Justice Crisis

ABSTRACT. In the early 1900s, the country's 1,100 auto clubs did far more than provide the roadside assistance, maps, and towing services familiar to the American Automobile Association members of today. Auto clubs also provided—free to their members—a wide range of legal services. Teams of auto-club lawyers defended members charged with driving-related misdemeanors and even felonies. They filed suits that, mirroring contemporary impact litigation, were expressly designed to effect policy change. And they brought and defended tens of thousands of civil claims for vehicle-related harms. In the throes of the Great Depression, however, local bar associations abruptly turned on the clubs and filed numerous lawsuits, accusing them of violating nascent legal-ethics rules concerning the unauthorized practice of law (UPL). In state after state, the bar prevailed, and within a few short years, auto clubs' legal departments were kaput.

Drawing on thousands of pages of archival material, this Feature recovers the lost history of America's auto clubs, as well as their fateful collision with the bar. It then surveys the wreckage and shows that the collision's impact continues to reverberate throughout the legal profession and law itself. For one, we show how the bar's litigation campaign against auto clubs—as well as the era's many other group-legal-service providers, including banks, unions, and homeowners' associations—helped establish the so-called "inherent-powers doctrine," which cemented courts, rather than legislators, as the ultimate arbiters of legal-practice regulation. The result was a profound power shift, with the authority to regulate legal services consequentially placed in politically insulated courts, not politically accountable legislators. More practically, the bar's concerted campaign decimated a once-thriving system for the provision of group legal services to ordinary Americans, which, we argue, ultimately helped consign millions of individuals with legal problems to face them alone, or not at all.

Finally, in the rise and fall of America's auto clubs, we find new, untapped evidence that contributes to a range of critical contemporary debates. In particular, our story uncovers fresh evidence to support the value of corporate practice, currently—but controversially—banned by the American Bar Association's Model Rule 5.4. In the bar's relentless campaign to shutter auto clubs—not because they harmed members, but because they threatened lawyers' livelihoods—we unearth direct proof that today's UPL bans, which continue to stymie the delivery of affordable legal services, have fundamentally rotten roots. And ultimately, we show that the present-day access-to-justice crisis—a crisis that dooms the vast majority of Americans to navigate complex legal processes without any expert assistance—is not a product of inattention or inertia. The crisis was, rather, constructed by the legal profession of which we are a part.

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INTRODUCTION

On January 7, 1930, a surprisingly balmy New York day just three months into the Great Depression, the American Automobile Association (AAA) convened a board meeting at the Hotel Pennsylvania to discuss a curious development.[1] A handful of the AAA's local affiliates had suddenly started getting complaints about some of the services they offered their members. The complaints, though, were coming from a surprising place: those protesting were not disgruntled *members*, but rather, disgruntled *lawyers*.

On what had these local lawyers soured? Surely not the touring advice the auto clubs doled out to members, nor their roadside assistance, published maps, or towing services. Instead, lawyers and local bar associations had suddenly taken issue with auto clubs' *legal* departments.

It may come as a surprise that AAA affiliates even *had* legal departments. Today, after all, such departments are long forgotten. But at the time, legal work comprised a sizeable chunk of auto clubs' member services. Teams of (usually salaried) lawyers occupied entire floors of auto-club headquarters, running what amounted to bustling law firms for all things auto. Ticketed for speeding and unsure whether to contest the fine? Just call your auto-club lawyer for free advice. In a car accident and interested in suing the other driver for negligence? Club lawyers could settle the case or even represent you in court. Arrested for reckless driving? Club lawyers would defend you — and might even file and argue a habeas petition on your behalf. Charged after killing someone in a collision? Some clubs would even represent you for auto-related felonies, up to and including manslaughter. And eager to land a drunk driver, abusive cop, or car thief in prison? Some clubs would provide you with a lawyer for your own private prosecution.[2] All of this was covered by clubs' annual membership dues. And all of it was sparking sudden, if not yet thunderous, protest from the bar.

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1. American Automobile Association, *Foreword* to Report of Advisory Committee to Special Committee on A.A.A. Legal Service, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (Mar. 1931) [hereinafter AAA Report] (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 7). For the weather, see *New York City Weather in 1930*, EXTREME WEATHER WATCH, https://www.extremeweatherwatch.com/cities/new-york/year-1930 [https://perma.cc/MV8Y-A78B]. We believe that the American Automobile Association (AAA) convened all its meetings at the Hotel Pennsylvania that week based on a *New York Times* article discussing a different AAA board meeting there the following day. *See Stock Car Racing to Be Encouraged*, N.Y. TIMES, Jan. 9, 1930, at 11, 11. Although the organization is often delineated as "A.A.A.," here and throughout, we use the simpler abbreviation "AAA."

2. For more on private prosecutions, see generally Jonathan Barth, *Criminal Prosecution in American History: Private or Public?*, 67 S.D. L. REV. 119 (2022). For clubs' use of lawyers to pursue prosecutions for their members, see *infra* Section I.B.2.c.

At that January 1930 meeting, the AAA appointed a "special committee," composed of the heads of some of its clubs' biggest legal departments, to investigate.[3] The committee of ten went to work and put the finishing touches on their comprehensive report a year later, in March 1931. At that time, complaints remained a quiet murmur: of the eighty-four clubs that the committee had surveyed, only four had fielded complaints from their local bar association, and only twelve had reported that "individual lawyers had registered a complaint."[4] Moreover, of the few objections, "[n]one . . . seem to have been pressed after the club service was explained."[5] After all, who could argue that the clubs' legal services, once clarified, were not of value, not only to members but to the entire motoring public? Still, the fuss left the committee frustrated:

> [T]he unfavorable attitude of the bar serves to cast serious aspersion upon the ethics and legitimacy of the practices of the automobile clubs and the character and standing of the lawyers who serve them. It is intolerable that these associations, including in their membership as they do citizens of unimpeachable character and reputation, should permit their practices to be impeached as shady, or below the standards of the legal profession, without demanding that such aspersions be brought out into the open, thoroughly aired and debated in the light of day, and determined upon their merits.[6]

They would come to regret this invitation. Within a decade of the report's publication, local bar associations had sued auto clubs' legal departments into submission. After this onslaught, America's auto clubs could no longer represent or advise their members on legal issues in almost any capacity. Indeed, as the Chicago Motor Club put it, "The sole result of the [bar]'s efforts . . . [was] to destroy."[7] Auto clubs' legal departments, for all intents and purposes, were dead.

The bar's triumphant campaign against the clubs' legal services—driven mainly, we argue, by a spirit of protectionism induced by the Great Depression—would reverberate far beyond the auto clubs themselves. It would obliterate then-burgeoning group-legal-service providers of every stripe, stamping out a unique and socially valuable mechanism to deliver affordable legal services at scale. It would fundamentally alter the balance of power held by legislatures and

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3. *See Foreword* to AAA Report, *supra* note 1.

4. AAA Report, *supra* note 1, at 6.

5. *Id.* at 6-7.

6. *Id.* at 7.

7. Brief and Argument for Respondent 23, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (May 22, 1935) [hereinafter Chicago Motor Club Brief] (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 2).

courts when it came to defining and policing law practice. And it would plant other doctrinal seeds that eventually sprouted and grew into the country's current, profound access-to-justice crisis. Recovering this fateful collision, this Feature unearths a history that shaped — and continues to shape — the legal profession and law itself.

This Feature unfolds in four Parts. Part I tells the untold story of America's auto clubs. Drawing on voluminous archival material, we detail the rough, unregulated, and often calamitous landscape early motorists faced; sketch the many nonlegal services that auto clubs supplied; and catalog the wide array of legal services early auto clubs offered, which were hailed even by bar officials — the clubs' eventual foes — as "of great convenience and value to many thousands of" motorists.[8] Just as importantly, we show that the clubs supplied *serious* legal services. Not confined to speeding tickets or fender benders, auto-club lawyers handled complex civil and criminal cases from trial through appeal, up to and including habeas petitions and litigation in state supreme courts. And clubs did all this on a massive scale. Auto clubs brought and defended *tens of thousands* of car-wreck claims, represented thousands of motorists charged with felonies, and spearheaded prosecutions cutting to the heart of the corruption and graft that infected the early auto landscape. Stunningly, then, at a time when car ownership was skyrocketing, auto clubs furnished a form of affordable and wide-ranging legal insurance to hundreds of thousands of American families.

Part II traces the clubs' fateful Depression-era collision with the bar. This Part shows that the organized bar's relationship with auto clubs cooled just as the economy tanked. And it explains how the bar crushed clubs' provision of legal services by plugging a newly minted (and counterintuitive) position that unauthorized practice of law (UPL) restrictions not only prohibited nonlawyers from practicing law, but they also prohibited fully licensed *lawyers* from furnishing legal services if those lawyers happened to work in "corporate" enterprises.

Then, Part III abstracts out to nest the bar's crusade against auto clubs inside the bar's simultaneous, larger (and ultimately successful) campaign to restrict *many* organizations from furnishing legal assistance to their members and customers. We show that, in the early years of the last century, auto clubs were not alone in their provision of legal services. Numerous for-profit and nonprofit organizations similarly delivered a wide array of legal services to ordinary Americans: banks drafted wills, unions helped injured members prosecute tort or workers' compensation claims, and homeowners even created groups to fend off

8. E.S. Williams, Felix T. Smith, A.G. Bailey, James T. Barstow, D.W. Burbank, J. Thomas Crowe, Donald P. Goodwin, W.H. Hatfield, Frank J. Hennessey, Henry G. Hill & Wayne E. Jordan, *Report of Committee on Unlawful Practice of the Law*, 5 ST. BAR J. (PART II), Sept. 1930, at 19, 28.

efforts at home foreclosure.[9] The bar's 1930s-era campaign targeted all of these arrangements and brought nearly all of them to a halt, fatefully consigning generations of Americans to seek legal services alone and on a one-off basis—or not at all.

Part III further shows how these same battles also cemented courts as the ultimate arbiters of legal-practice regulation. In state after state, it was in this context that a clear articulation of what we now call the "inherent-powers doctrine" was first articulated, as courts declared that they (not legislatures) had the final say over the definition and regulation of law practice. By wresting control away from more democratically accountable branches of government, the courts "staked a claim to self-regulation radically unlike that of any other profession" and created a conception of attorney regulation nearly entirely insulated from public accountability.[10] This means, concretely, that would-be innovators wishing to push the envelope in the delivery of legal services cannot just lobby the legislature or appeal to the public; they must petition (lawyer-dominated) courts.[11] It also means that, even as other professions have come to accept more affordable means of service delivery (e.g., nurse practitioners in the medical context), law—with its singular insulation from legislative action—has stubbornly resisted these reforms.[12]

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9. For a discussion of legal services offered by banks, unions, and homeowners' associations, see *infra* notes 148-151, 154.

10. Charles W. Wolfram, *Lawyer Turf and Lawyer Regulation—The Role of the Inherent-Powers Doctrine*, 12 U. Ark. Little Rock L.J. 1, 4 (1989-90).

11. *See* Laurel A. Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law*, 37 Quinnipiac L. Rev. 97, 163-64 (2018) (articulating a similar point).

12. In the majority of states, nurse practitioners have full practice authority, meaning that they can "evaluate patients; diagnose, order and interpret diagnostic tests; and initiate and manage treatments, including prescribing medications and controlled substances, under the exclusive licensure authority of the state board of nursing." *State Practice Environment*, Am. Ass'n Nurse Pracs. (Oct. 2023), https://www.aanp.org/advocacy/state/state-practice-environment [https://perma.cc/EP3Q-J3DU]. Thus, pursuant to these laws, nurse practitioners can treat patients, even without physician supervision. There exists significant evidence that, even when "unsupervised," nurse practitioners furnish high-quality care—and, in some instances, the quality of care they provide actually eclipses that furnished by primary-care physicians. *See* Peter Buerhaus, *Nurse Practitioners: A Solution to America's Primary Care Crisis*, Am. Enter. Inst. 10, 15-17 (Sept. 2018), https://www.aei.org/wp-content/uploads/2018/09/Nurse-practitioners.pdf [https://perma.cc/5KJA-ZHEX]. For how policymakers overcame some physicians' resistance to nurse practitioners, see generally Heather M. Brom, Pamela J. Salsberry & Margaret Clark Graham, *Leveraging Health Care Reform to Accelerate Nurse Practitioner Full Practice Authority*, 30 J. Am. Ass'n Nurse Pracs. 120 (2018); and Philip G. Peters, Jr., *Lessons from Medicine's Experiment with Nurse Practitioners and Physician Assistants*, *in* Rethinking the Lawyers' Monopoly: Access to Justice and the Future of Legal Services (David Freeman Engstrom & Nora Freeman Engstrom eds., forthcoming 2024).

Finally, Part IV steps back, finding in the auto clubs' story larger lessons that deepen—and, in key ways, complicate—our understanding of the country's increasingly controversial structure of legal-service regulation. In the grips of a profound access-to-justice crisis that sees roughly three-quarters of civil cases pursued or defended without the assistance of counsel and tens of millions of Americans locked out of the legal system entirely, many have come to conclude that the civil-justice system has "reached the breaking point."[13] In the course of this reckoning, many have also concluded that a thicket of laws that limit the provision of legal assistance contributes to the crisis and must yield.[14] And *that*,

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By contrast, the closest analogue in law (in most states) is the paralegal, who is not authorized to practice law—and must, at all times, be supervised by an attorney. *See* MODEL RULES OF PRO. CONDUCT r. 5.3 (AM. BAR ASS'N 1983); *see also* JOAN W. HOWARTH, SHAPING THE BAR: THE FUTURE OF ATTORNEY LICENSING 12 (2023) (explaining that, in the vast majority of states, "[t]he legal equivalents of physician assistants or nurse practitioners do not exist").

13. The Utah Supreme Court made the "breaking point" declaration in the course of issuing Standing Order 15, which substantially revamped the regulation of the legal profession in the Beehive State. *See Utah Supreme Court Standing Order No. 15*, UTAH SUP. CT. 1 (2020), https://www.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2020/08/FINAL-Utah-Supreme-Court-Standing-Order-No.-15.pdf [https://perma.cc/X78N-Z7NG]. For state-court statistics, see generally Paula Hannaford-Agor, Scott Graves & Shelley Spacek Miller, *The Landscape of Civil Litigation in State Courts*, NAT'L CTR. FOR STATE CTS. (2015), https://www.ncsc.org/__data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf [https://perma.cc/8492-HR57]; and *Family Justice Initiative: The Landscape of Domestic Relations Cases in State Court*, NAT'L CTR. FOR STATE CTS. (2018), https://www.ncsc.org/__data/assets/pdf_file/0018/18522/fji-landscape-report.pdf [https://perma.cc/5RAT-YYX2]. The statistics in federal court (which, on a numbers basis, represent a small share of the civil-litigation landscape) are somewhat better—although by no means good. *See* Judith Resnik, *Mature Aggregation and Angst: Reframing Complex Litigation by Echoing Francis McGovern's Early Insights into Remedial Innovation*, 84 LAW & CONTEMP. PROBS., no. 2, 2021, at 231, 238-39 ("Of some 260,000 civil cases filed annually [in the federal courts], about twenty-five percent are brought by people without lawyers, and more than half the cases before the federal appellate courts are brought by self-represented parties."). For a discussion of nonlitigants, often called "lumpers," see *infra* note 277 and accompanying text.

14. For a discussion of the impact of such laws on legal assistance, see generally Shoshana Weissman, Daniel Greenberg, Luke Wake, Braden Boucek & Jonathan Riches, *The World Needs More Lawyers*, THE REGUL. TRANSPARENCY PROJECT OF THE FEDERALIST SOC'Y (Sept. 28, 2023), https://rtp.fedsoc.org/wp-content/uploads/The-World-Needs-More-Lawyers.pdf [https://perma.cc/QEQ8-2T9P]; *Report and Recommendations of the Texas Access to Legal Services Working Group*, TEX. ACCESS TO JUST. COMM'N (Dec. 5, 2023) [hereinafter *Texas Report*], https://www.texasatj.org/sites/default/files/2023.12.05%20Final%20Report.pdf [https://perma.cc/9SUP-7LYG]; Ralph Baxter, *Dereliction of Duty: State-Bar Inaction in Response to America's Access-to-Justice Crisis*, 132 YALE L.J.F. 228 (2022); Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 HASTINGS L.J. 1191 (2016); Neil M. Gorsuch, *Access to Affordable Justice: A Challenge to the Bench, Bar, and Academy*, 100 JUDICATURE, no. 3, 2016, at 47; and *In re* Petition to Amend Rules 31, 32, 41, 42 (ERs 1.0-5.7), 46-51, 54-58, 60, 75 and 76, Ariz. R. Sup. Ct., and

in turn, has set off the most "dramatic reexamination" of the market for legal services "in decades."[15]

In the course of this reexamination, numerous states are either experimenting with or weighing whether to experiment with a flurry of possible reforms. Indeed, activity within the past five years has been dizzying.[16] Some states, including Alaska, Delaware, and New Hampshire, have relaxed UPL restrictions to permit nonlawyers to help individuals pursue certain kinds of claims.[17] Others, including Arizona and Utah, have relaxed Model Rule 5.4 to permit some nonlawyer ownership.[18] And still others, including Colorado, Minnesota, and Oregon, have created special certification programs to permit some licensed nonlawyers to supply help.[19] Additional states, including Michigan, Texas, and

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Adopt New Rule 33.1, Ariz. R. Sup. Ct., No. R-20-0034 (Ariz. Jan. 31, 2020), https://www.azcourts.gov/DesktopModules/ActiveForums/viewer.aspx?portalid=0&moduleid=23621&attachmentid=7619 [https://perma.cc/6JFR-GF38].

15. Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan & Alyx Mark, *Judges and the Deregulation of the Lawyer's Monopoly*, 89 Fordham L. Rev. 1315, 1325-27 (2021).

16. For a helpful compilation, see generally Michael Houlberg & Janet Drobinske, *The Landscape of Allied Legal Professional Programs in the United States*, Inst. for the Advancement of the Am. Legal Sys. (Nov. 2022), https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf [https://perma.cc/NB38-NE32].

17. For Alaska, see Stephen Embry, *Alaska Offers Practical Approach to A2J Crisis*, TechLaw Crossroads (Dec. 6, 2022), https://www.techlawcrossroads.com/2022/12/alaska-offers-practical-approach-to-a2j-crisis [https://perma.cc/MDY4-VX46]. For Delaware, see Charlie Megginson, *New Court Rule Allows Non-Lawyers to Represent Tenants in Eviction Proceedings*, Del. Live (Feb. 2, 2022), https://delawarelive.com/new-court-rule-will-allow-non-lawyers-to-represent-tenants-in-eviction-proceedings-2-1 [https://perma.cc/P7ZF-7DWW]. For New Hampshire, see N.H. Rev. Stat. Ann. § 311:2-a (2023). *See also Texas Report*, *supra* note 14, at 10 ("In the United States, nine states currently permit paraprofessional practice in some form, and others are considering reform.").

18. David Freeman Engstrom, Lucy Ricca, Graham Ambrose & Maddie Walsh, *Legal Innovation After Reform: Evidence from Regulatory Change*, Stan. L. Sch. Deborah L. Rhode Ctr. on the Legal Pro. 10 (Sept. 2022), https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf [https://perma.cc/6GXV-25QY]. Arizona and Utah have taken other reforms as well. *See id.* For more on these states' efforts, see Rebecca Love Kourlis & Neil M. Gorsuch, *Legal Advice Is Often Unaffordable. Here's How More People Can Get Help: Kourlis and Gorsuch*, USA Today (Sept. 17, 2020, 3:15 AM ET), https://www.usatoday.com/story/opinion/2020/09/17/lawyers-expensive-competition-innovation-increase-access-gorsuch-column/5817467002 [https://perma.cc/693J-SYER]. For more on Rule 5.4, see *infra* notes 306-326 and accompanying text.

19. For Minnesota, see Order Implementing Legal Paraprofessional Pilot Project at 1-3, No. ADM19-8002 (Minn. Sept. 29, 2020), https://mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/RecentRulesOrders/Administrative-Order-Implementing-Legal-Paraprofessional-Pilot-Project.pdf [https://perma.cc/74LT-58LX]. *See also* Nora Freeman Engstrom, *Effective Deregulation: A Look Under the Hood of State Civil Courts*, Jotwell (Oct. 31, 2022), https://legalpro.jotwell.com/effective-deregulation-a-look-under-the-hood-of-

North Carolina, are actively considering whether to follow suit.[20] And, in recent years, prominent nonprofits, including the National Association for the Advancement of Colored People (NAACP), have challenged UPL laws on First Amendment grounds, contending essentially that these laws impermissibly stunt their members' constitutional rights.[21]

Yet, in the face of those efforts, the American Bar Association (ABA) has been steadfast in its resistance to change. In 2022, the ABA House of Delegates overwhelmingly passed a resolution doubling down on the current (restrictive) system of lawyer regulation.[22] And, over the past two years, under extraordinary pressure from organized attorney coalitions, regulatory-reform initiatives in

state-civil-courts [https://perma.cc/TE4Z-ZEV9] (discussing the deregulation of legal-service provision). For the Colorado and Oregon reforms, which were both adopted in 2023, see *Rule Change 2023(06): Rules Governing Admission to the Practice of Law in Colorado*, COLO. JUD. BRANCH (2023), https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2023/Rule%20Change%202023(06).pdf [https://perma.cc/YW5W-KRZC]; and *Oregon Licensed Paralegals*, OR. STATE BAR (2023), https://www.osbar.org/lp [https://perma.cc/H37V-RB8T].

20. For Michigan, see *Justice for All*, MICH. CTS. (2024), https://www.courts.michigan.gov/administration/special-initiatives/jfa [https://perma.cc/YE5N-RXS8]. For North Carolina, see *Issues Subcommittee on Regulatory Change: Report and Recommendations*, N.C. STATE BAR 4-5 (Jan. 2022), https://www.ncjfap.org/_files/ugd/8a3baf_e6fe61abff614570a7c73eaf98342f07.pdf [https://perma.cc/GGF5-99E5]. *See also* Karen Sloan, *Loosened Lawyer Regulations Show Promise in Utah, Ariz., Stanford Study Says*, REUTERS (Sept. 27, 2022, 4:46 PM EDT), https://www.reuters.com/legal/legalindustry/loosened-lawyer-regulations-show-promise-utah-ariz-stanford-study-says-2022-09-27 [https://perma.cc/FPD9-DCEK] (discussing reform initiatives in Utah and Arizona). For Texas, see generally *Texas Report*, *supra* note 14, which summarizes proposals from the Texas Access to Legal Services Working Group.

21. For litigation initiated by Upsolve, see Nora Freeman Engstrom, *UPL, Upsolve, and the Community Provision of Legal Advice*, SLS BLOGS: LEGAL AGGREGATE (Jan. 27, 2022), https://law.stanford.edu/2022/01/27/upl-upsolve-and-the-community-provision-of-legal-advice [https://perma.cc/Q9JT-UCNU]; and Bruce A. Green & David Udell, *What's Wrong with Getting a Little Free Legal Advice?*, N.Y. TIMES (Mar. 17, 2023), https://www.nytimes.com/2023/03/17/opinion/lawyers-debt-monopoly-advice.html [https://perma.cc/ED4S-VSH4]. For the National Association for the Advancement of Colored People's (NAACP's) litigation in South Carolina, see *In re South Carolina NAACP Housing Advocate Program*, 897 S.E.2d 691, 698 (S.C. 2024), in which the South Carolina Supreme Court provisionally granted the NAACP's petition to permit certain nonlawyer volunteers to provide legal assistance. For litigation filed by the North Carolina Justice for All Project currently pending in the Tarheel State, see Sara Merken, *North Carolina Group Revamps Lawsuit over Legal Practice Rules*, REUTERS (Mar. 20, 2024, 3:33 PM EDT), https://www.reuters.com/legal/legalindustry/north-carolina-group-revamps-lawsuit-over-legal-practice-rules-2024-03-20 [https://perma.cc/8BW9-EJGR].

22. *See Resolution 402*, AM. BAR ASS'N 1-6 (Aug. 8-9, 2022), https://www.americanbar.org/content/dam/aba/directories/policy/annual-2022/402-annual-2022.pdf [https://perma.cc/2JDH-E95N]. For further discussion of Resolution 402, which passed by a "landslide vote," see Stephen P. Younger, *The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms*, 132 YALE L.J.F. 259, 272-73 (2022).

Florida and California fizzled.[23] In opposing these initiatives, the bar, of course, insists that its motivations are pure — and that its opposition lies in the protection of the public.[24]

The auto-club story, we argue, directly and powerfully informs this ongoing battle for the future of legal-service delivery. It does so in three ways. First, we show that, by shuttering a once-thriving system that was providing affordable legal services to hundreds of thousands of ordinary Americans and, in the process, constructing the tangled regulatory architecture that continues to stunt meaningful efforts to address unmet legal need, the bar bears direct responsibility for the current access-to-justice crisis. Remarkably, a half-century ago, in a brief filed in the U.S. Supreme Court, the NAACP made a similar point. "Were it not for the early cases declaring group services unlawful," the NAACP reasoned, "the most prevalent form of group [legal] services today might be those organized by special interest groups whose members have a peculiar need for legal assistance; e.g., automobile clubs."[25] Second, we assemble compelling evidence that restrictions on corporate law practice are not necessary to ensure adequate performance or to protect clients. This evidence directly undercuts the bar's contrary claims. Third, and perhaps most startlingly, we show that the bar's ban on UPL, which continues to block the effective delivery of affordable legal services, was not fashioned out of a desire to protect the public but, rather, grew out of the bar's self-interest. In other words, the ban on nonlawyer assistance fueling our current and calamitous access-to-justice crisis has thoroughly rotten roots.

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23. For California, see David Freeman Engstrom & Nora Freeman Engstrom, *Why Do Blue States Keep Prioritizing Lawyers over Low-Income Americans?*, SLATE (Oct. 17, 2022, 12:29 PM), https://slate.com/news-and-politics/2022/10/blue-states-legal-services-lawyers-fail.html [https://perma.cc/Y89F-DWTS]. For Florida, see generally Letter from Michael G. Tanner, President, Fla. Bar, to Honorable Charles T. Canady, C.J., Sup. Ct. of Fla. (Dec. 29, 2021) [hereinafter Tanner Letter], https://www-media.floridabar.org/uploads/2021/12/Tanner-letter-to-CJ-re-final-report-12-29-2021-Signed.pdf [https://perma.cc/996H-U2N4]; and Lyle Moran, *Florida Supreme Court Rejects Bar Committee's Reform Proposals, Asks for Alternatives*, A.B.A. J. (Mar. 22, 2022, 8:37 AM CDT), https://www.abajournal.com/web/article/florida-supreme-court-rejects-bar-committees-reform-proposals-asks-for-alternatives [https://perma.cc/8R87-3BFP].

24. *See infra* notes 331-332 and accompanying text.

25. Motion for Leave to File Brief Amicus Curiae, Brief Amicus Curiae, and Motion for Leave to Participate in Oral Argument of the NAACP Legal Defense and Educational Fund, Inc., and the National Office for the Rights of the Indigent at 18, United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n, 389 U.S. 217 (1967) (No. 33) [hereinafter NAACP Brief].

I. CRUISING: THE RISE OF AMERICA'S AUTO CLUBS

The automobile's invention in the late 1800s sparked profound change in the nation's technological and legal landscapes.[26] As "discussions of horseflesh gave way to talk of horse power," roads and highways needed to be built, safety measures needed to be developed, and laws needed updating, or often, wholesale invention.[27]

More broadly, as the AAA's special committee explained in its March 1931 report, the automobile reflected and reinforced a "revolutionary" social and cultural transformation.[28] As the automobile roared onto the scene, the individualist society of the nineteenth century—where "every farmer raised his own food, butchered his own meat, hewed his own fuel and drew water from his own well or spring"[29]—began to yield. "[T]he individual" was "more and more merged in the group."[30] This merging, in the AAA's telling, ushered in a new "age of cooperation and corporation . . . the age of the big unit; an age when society must reckon not only with individual men, but with machines."[31]

The country's 1,100 auto clubs not only assisted in this "revolutionary" transformation; they also reflected it.[32] Drawing on thousands of pages of previously untapped material, Section I.A provides a brief overview of the early, unregulated roads drivers traveled. Section I.B details the extensive services auto clubs supplied.

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26. *See generally* JAMES J. FLINK, THE AUTOMOBILE AGE (1988) (exploring the socioeconomic impact of the automobile); JOHN HEITMANN, THE AUTOMOBILE AND AMERICAN LIFE (2009) (exploring the cultural impact of the automobile); Anedith Jo Bond Nash, Death on the Highway: The Automobile Wreck in American Culture, 1920-40, at 66 (June 1983) (Ph.D. dissertation, University of Minnesota) (ProQuest) ("Adoption of the automobile provided, in microcosm, an example of the adjustments of American society to 'modern times.'").

27. *Nags to Riches—Story of Autos*, CHI. DAILY TRIB., Apr. 18, 1959, at A2, A2.

28. AAA Report, *supra* note 1, at 2.

29. *Id.* at 1.

30. *Id.* at 1-2. In fact, even earlier, Americans sought to band together to "counter the vicissitudes of economic and social change." John Fabian Witt, *Toward A New History of American Accident Law: Classical Tort Law and the Cooperative First-Party Insurance Movement*, 114 HARV. L. REV. 690, 812 (2001).

31. AAA Report, *supra* note 1, at 2; *accord* Harvey W. Peck, *Civilization on Wheels*, 7 SOC. FORCES 300, 304, 306 (1928) (similarly crediting the automobile with "mitigating rural isolation" and forging new ties between urban and rural populations). Ironically, although the AAA and some contemporary observers credited the automobile with knitting people together, in the ensuing decades, many have come to see the automobile (and its follow-on developments, including the rise of highways, sprawl, and suburban living) very differently. For a discussion, see, for example, James J. Flink, *Three Stages of American Automobile Consciousness*, 24 AM. Q. 451, 470-71 (1972).

32. AAA Report, *supra* note 1, at 2, 5.

A. The Early Auto Landscape

The AAA was founded in 1902, less than a decade after the car's invention and six years before Henry Ford introduced his "everyman's car," the Model T.[33] At the time, the American auto landscape—traversed by only 23,000 cars—was vastly different from that of the present day.[34]

For starters, the roads looked different. Rarely straight, and often disconnected from one another, they were mostly made of dirt and became impassable when it rained or snowed.[35] Cars shared these twisting and unpaved roads with horses, and the automobiles' sputters and honks frequently caused the poor animals to bolt.[36]

Limited and piecemeal regulation compounded drivers' difficulties. Throughout the 1920s and 30s, driver's license and car-registration requirements were spotty.[37] Insurance mandates were mostly nonexistent, and even watered-down financial-responsibility laws were rare, contributing to an environment where roughly three-quarters of drivers lacked any form of liability insurance.[38] Road signs were limited. Speed limits were haphazardly posted.[39] And there was

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33. For a brief historical background of the AAA's founding, see Charles C. Collins, *Automobile Club Activities: The Problem from the Standpoint of the Clubs*, 5 Law & Contemp. Probs. 3, 3 (1938). For a history of the automobile's invention, see Flink, *supra* note 26, at 22-26. For a history of the Model T, see *Encyclopedia of Detroit: Model T*, Det. Hist. Soc'y, https://detroithistorical.org/learn/encyclopedia-of-detroit/model-t [https://perma.cc/8JD5-3APM].

34. Collins, *supra* note 33, at 3.

35. *See* Flink, *supra* note 26, at 169.

36. *See* Frank B. Woodford, We Never Drive Alone: The Story of the Automobile Club of Michigan 4 (1958).

37. *See generally* Legislative Bureau Chicago Motor Club, What Illinois Needs, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (Mar. 1933) (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 9) (providing a tabulation of states with laws related to driver's licenses, antitheft, and financial responsibility).

38. Only two states (Massachusetts and California) had any kind of compulsory insurance in the 1920s, and only a handful of others had financial-responsibility laws, which notoriously lacked teeth. David Blanke, Hell on Wheels: The Promise and Peril of America's Car Culture, 1900-1940, at 168-70 (2007); *see also* Robert E. Helm, *Motor Vehicle Liability Insurance: A Brief History*, 43 St. John's L. Rev. 25, 29 (1968) (noting that, after Massachusetts adopted compulsory car insurance in 1925, no other state followed suit until the 1950s). For a discussion of financial-responsibility laws, see Report by the Committee to Study Compensation for Automobile Accidents to the Columbia University Council for Research in the Social Sciences 97, 207-08 (1932) [hereinafter Columbia Report]. For a discussion of insurance rates in the 1920s, see Blanke, *supra*, at 167-68.

39. *See* Jonathan Simon, *Driving Governmentality: Automobile Accidents, Insurance, and the Challenge to Social Order in the Inter-War Years, 1919-1941*, 4 Conn. Ins. L.J. 521, 526 (1998) (describing a "scramble" to create speed limits).

little effort at interjurisdictional consistency, such that, if the driver traveled any appreciable distance, she invariably faced a "chaotic state" of "[c]onflicting municipal, state, and federal" traffic regulations.[40] In the words of one commentator: "To know the various rules applying in towns and villages through which one might drive on a hundred-mile trip required the wisdom of a legal wizard."[41]

All the above — coupled with pervasive driver inexperience and primitive vehicle-safety equipment — contributed to a scandalously high accident rate. In 1915, the fatality rate per mile traveled was over *twenty-five times* what it is today,[42] while the 1920s would see nearly a quarter-million Americans (mostly pedestrians) killed in automobile accidents.[43] It was, as one commentator put it, "as if the explosive force and potential for violence of the great industrial manufactories had exploded out."[44]

But all these dangers and difficulties did little to dissuade throngs of American consumers from lining up to get behind the wheel. So powerful was the automobile's pull that by 1926, the majority (55.7%) of American families owned at least one vehicle,[45] and by 1928, it was estimated that four in five American families owned at least one car.[46]

40. BLANKE, *supra* note 38, at 120-22.

41. WOODFORD, *supra* note 36, at 162.

42. *Compare* BLANKE, *supra* note 38, at 60 tbl.2.11 (reporting 34.71 fatalities per 100 million vehicle miles traveled in 1915), *with NHTSA Estimates for 2022 Show Roadway Fatalities Remain Flat After Two Years of Dramatic Increases*, U.S. DEP'T TRANSP. (Apr. 20, 2023), https://www.transportation.gov/briefing-room/nhtsa-estimates-2022-show-roadway-fatalities-remain-flat-after-two-years-dramatic [https://perma.cc/6ZX7-2LED] (reporting 1.35 fatalities per 100 million vehicle miles traveled in 2022).

43. Simon, *supra* note 39, at 540.

44. *Id.*

45. SARAH A. SEO, POLICING THE OPEN ROAD 14 (2019).

46. Peck, *supra* note 31, at 300 ("There are now in America four cars for every five families.").

FIGURE 1. U.S. CAR SALES BY YEAR[47]

Year	Sales (Thousands)
1910	181
1915	896
1920	1,910
1925	3,740

It was into this dangerous, chaotic, and rapidly changing world that auto clubs were born.

B. The Advent of Auto Clubs

In its earliest days, the AAA sought to "lobby for improved public highways, [to] protect the legal rights of drivers,"[48] and also "to prove that [the automobile] wasn't a rich man's toy but was really a means of transportation."[49] As to how these disparate goals were achieved, the 65,000-member Chicago Motor Club—one of the original clubs in the AAA—presents a useful example.[50] Formed in 1906, the Club spent its first few years sponsoring "hill climbs and reliability runs," seeking to prove "to a somewhat doubting public that the automobile was really a means of transportation that could be used economically."[51] Then, around 1914, as the auto's popularity grew, the Chicago Motor Club decided that the "automobile had arrived and there was no need to promote it any more."[52] With that reckoning, the Club's focus changed from promoting the automobile

47. Simon, *supra* note 39, at 531.

48. HEITMANN, *supra* note 26, at 22.

49. Abstract of Record 66, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (May 14, 1935) (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 1).

50. *See* Chicago Motor Club Brief, *supra* note 7, at 8 (providing a membership estimate of 65,000).

51. Abstract of Record, *supra* note 49, at 66-67. Founded in 1902, the Detroit Automobile Club had a similar beginning, as, early on, it sponsored "club runs" to "arouse interest in the new form of transportation." WOODFORD, *supra* note 36, at 8.

52. Abstract of Record, *supra* note 49, at 67.

to "rendering service to motorists individually."[53] Other clubs at the time made similar transitions (or formed anew for that latter purpose).[54]

Club ranks soon swelled. For example, the Detroit Automobile Club went from 3,000 members in 1918 to 55,000 in 1927.[55] The Cleveland Automobile Club went from about 18,000 members in 1922 to more than 30,000 in 1923—a 66.7% jump in just twelve months.[56] And the Automobile Club of Southern California's membership skyrocketed from about 1,200 members in 1910 to roughly 100,000 in 1925.[57]

53. *Id.*

54. *See* WOODFORD, *supra* note 36, at 8-11 (charting the creation of the Detroit Automobile Club, which began as an offshoot of earlier social clubs); *Another Year of Progress: President W.L. Valentine's Annual Report*, TOURING TOPICS, Mar. 1926, at 16, 16 (noting that the Automobile Club of Southern California "was organized as a social club on December 13, 1900," and charting its "reorganiz[ation] to meet the larger needs" of motorists in subsequent years).

55. WOODFORD, *supra* note 36, at 20, 25, 42.

56. Fred H. Caley, *What Your Club Did in 1922*, OHIO MOTORIST, Apr. 1923, at 5, 5.

57. *Another Year of Progress: President W.L. Valentine's Annual Report*, *supra* note 54, at 16. Importantly, although these clubs expanded to accommodate more of the motoring public, they were not uniformly welcoming. Troublingly, for instance, the Chicago Motor Club's membership was limited to white people. *See* By-Laws of Chicago Motor Club art. II, § 1, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (Feb. 21, 1922) (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 3) ("Any white person over the age of eighteen years, of good moral character, may become a member of this club upon application . . . ."). For more on the deplorable history of segregation within the auto industry, see HEITMANN, *supra* note 26, at 40; and FLINK, *supra* note 26, at 127-28.

FIGURE 2. AUTO CLUB OF SOUTHERN CALIFORNIA MEMBERSHIP, 1910-1931[58]

Year	Membership	Year	Membership
1900	46	1920	49,406
1910	1,200	1921	62,145
1911	2,500	1924	104,355
1915	6,841	1925	112,925
1916	9,373	1927	127,000
1917	12,895	1928	129,536
1918	16,686	1930	134,870
1919	30,320	1931	125,778

1. Nonlegal Services

Club services expanded just as rapidly as memberships. Different clubs varied on the particulars, but broadly speaking, clubs' activities could be classified as "general" (those services that benefited the public) and "specific" (those geared toward members).[59]

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58. Calculations are drawn from the annual reports in the March issues of the 1920s and 1930s *Touring Topics* publications. *Another Year of Progress: President W.L. Valentine's Annual Report*, *supra* note 54, at 16 (providing membership figures from 1900, 1910, 1911, and 1925); *A Wonderful Year of Progress: President W.L. Valentine's Report for 1921*, TOURING TOPICS, Mar. 1922, at 26, 28 (providing membership figures from 1915-1921); *President Valentine's Annual Report*, TOURING TOPICS, Mar. 1925, at 26, 27 (providing the 1924 membership figure); *Club Achievements During 1927: President Horace G. Miller's Annual Report*, TOURING TOPICS, Mar. 1928, at 15, 15 (providing the 1927 membership figure); *Another Milestone in the Club's Progress: President Horace G. Miller's Annual Report*, TOURING TOPICS, Mar. 1929, at 15, 15 (providing the 1928 membership figure); *Your Club and Its Achievements During 1930: The Annual Report of the President Harry J. Bauer*, TOURING TOPICS, Mar. 1931, at 15, 15 (providing the 1930 membership figure); *Club Maintains Splendid Service During 1931 Despite Abnormal Conditions: President Harry J. Bauer's Annual Report*, TOURING TOPICS, Mar. 1932, at 9, 10 (providing the 1931 membership figure).

59. Abstract of Record, *supra* note 49, at 68-69. For further discussion, see Ivan Kelso, *Legal Service by Automobile Clubs*, 9 ST. BAR J. 193, 193 (1934). Some activities straddled these categories. For example, certain litigation—undertaken on behalf of individual members—was, in reality, impact litigation, as its aim was to effect systemic change. *See infra* notes 100-107 and accompanying text.

Clubs supplied a wide range of general services. First, at a time when autos, on a per capita basis, inflicted extraordinary carnage, auto clubs engaged in a dizzying array of activities to promote vehicle safety. Clubs erected directional and warning signs at dangerous intersections and dead-end streets, installed warnings at railroad crossings, engaged in highway-improvement efforts, and constructed safety fences to keep drifting cars from plunging off roads at steep turns.[60] During storms, they furnished real-time updates on road conditions.[61] They led "broken glass patrols" to rid the roadways of dangerous material.[62] And they even marshalled so-called "schoolboy patrols," hiring children—by 1930, upwards of 175,000 kids throughout the country—to stand guard at crosswalks near schools to prevent unsuspecting students from getting struck by motorists—a horrifically common occurrence.[63]

60. Apparently, in fact, "[t]raffic-control devices such as signposts were first developed by private automobile clubs in the northeastern states." Peter J. Hugill, *Good Roads and the Automobile in the United States 1880-1929*, 72 GEOGRAPHICAL REV. 327, 344 (1982); *see also What the Club Does*, AUTO. CLUB OF PHILA. MONTHLY BULL., Mar. 1911, at 12, 12 (reporting that, over the previous eighteen months, the club had erected "[a]pproximately 1,500 road signs"); WOODFORD, *supra* note 36, at 65 (describing one club's involvement in "road marking"); *A Letter—Read the Post-Script*, OHIO MOTORIST, Dec. 1923, at 28, 28 (noting how one club erected "'Dangerous Crossing' warnings" at one crossing after a member's accident); *FREE Truck Relief Service and Other Great Benefits of the Chicago Motor Club Arranged for Members in This Vicinity*, HARV. HERALD, Apr. 14, 1921, at 6, 6 (advertising the services available to club members); *Club Acts on Highway Hazard Near Oglesby*, MOTOR NEWS, Jan. 1930, at 24, 24 (documenting the erection of barriers along a highway); *Elevated Highways*, MOTOR NEWS, Aug. 1929, at 18, 18 (describing one club's involvement in lobbying for elevated highways); *Club Launches Track Elevation Campaign*, MOTOR NEWS, Aug. 1929, at 6, 6-7, 37 (describing one club's lobbying for railroad-track elevation); Abstract of Record, *supra* note 49, at 77 (describing how club lawyers handled members' cases).

61. Abstract of Record, *supra* note 49, at 70-71.

62. *N.Y. Auto Club Starts Broken Glass Patrol*, N.Y. TIMES, Aug. 26, 1928, at 14, 14.

63. WOODFORD, *supra* note 36, at 152; *Notes from Here and There*, MOTOR NEWS, Jan. 1930, at 14, 14; *School Patrols Praised*, N.Y. TIMES, June 19, 1933, at 15, 15. At the time, automobiles killed a startling number of children. Bill Loomis, *1900-1930: The Years of Driving Dangerously*, DET. NEWS (Apr. 26, 2015, 2:14 PM ET), https://www.detroitnews.com/story/news/local/michigan-history/2015/04/26/auto-traffic-history-detroit/26312107 [https://perma.cc/P2NA-TEH5] ("In the 1920s, 60 percent of automobile fatalities nationwide were children under age 9.").

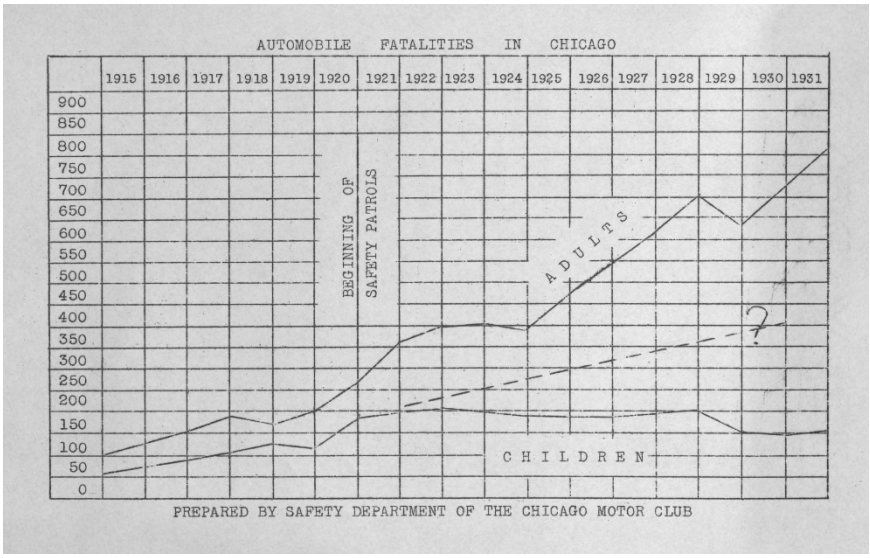
FIGURE 3. SCHOOLBOY PATROL FOR THE CALIFORNIA STATE AUTOMOBILE ASSOCIATION, 1926[64]

As Figure 4 shows, auto clubs eventually took to boasting that these "patrols" led to an "impressive drop" in the fatality rate of underage pedestrians.[65]

64. Al B. Kerkie, *Safety and By-Products*, MOTOR LAND, Mar. 1926, at 14, 14.

65. Proposal of the Chicago Motor Club for the Regulation of Organizations Rendering Legal Service 12, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (June 1, 1932) (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 6); *accord* Nash, *supra* note 26, at 67 (discussing a decline in "[d]eath rates of children as pedestrians . . . by the early 1930s").

FIGURE 4. AUTOMOTIVE FATALITIES IN CHICAGO BY AGE, 1932[66]



Beyond these practical safety measures, clubs engaged in extensive lobbying and legislative advocacy. They pushed for a uniform traffic code, lobbied for the construction of interstate highways, encouraged the consistent enforcement of traffic regulations, and advocated for all manner of legislative enactments, including financial-responsibility laws, driver's license requirements, and "the prevention of excessive taxation and other impositions upon motorists."[67] In the words of the Chicago Motor Club: "Where proposed legislation directly and seriously affects the motoring public, the Chicago Motor Club Legal Department spares no efforts to effect its enactment or defeat, as the case may be."[68]

Clubs' "special services"—that is, the services furnished specifically to their dues-paying members—were just as significant. Like AAA members today, members back then—who paid dues of approximately $10 per year (roughly $170 in today's dollars)—were eligible for emergency roadside assistance and

66. Proposal of the Chicago Motor Club for the Regulation of Organizations Rendering Legal Service, *supra* note 65 (unnumbered page between pp. 12 & 13).

67. People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, 199 N.E. 1, 3 (Ill. 1935); *see* WOODFORD, *supra* note 36, at 163; Collins, *supra* note 33, at 6; *Auto Club Asks Malrooney to Enforce Headlight Law*, N.Y. TIMES, Feb. 12, 1931, at 14, 14.

68. Chicago Motor Club Legal Department, Organization and Activities 6, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (Mar. 1, 1932) [hereinafter Chicago Motor Club Organization and Activities] (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 6).

mechanical help. Clubs would tow stalled or broken-down cars free of charge, replace flat tires, and test members' brakes and headlights.[69] Clubs also supplied maps and other navigational resources; some went so far as to employ "[p]athfinder[s]" who would "roam[] the states looking for decent roads which its members could travel."[70] Clubs published magazines that touted club accomplishments, gave travel advice, and reported on both local and national automobile-related news.[71] And many clubs offered members the option to purchase insurance and other forms of car protection (although, given the prevalence of uninsured motorists, it appears that the appetite for such insurance was limited).[72] The Chicago Motor Club even hired the famous Pinkerton Detective Agency to investigate any member's car theft, and members' cars bore stickers broadcasting that fact as a warning to thieves.[73]

On top of all these perks, auto clubs also offered their members a panoply of free legal services. And here, of course, is where the trouble began.

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69. *What Members Are Saying*, Motor News, Jan. 1930, at 16, 16; *see also* Woodford, *supra* note 36, at 30; *What Members Are Saying*, Motor News, Aug. 1929, at 32, 32, 43 (publishing testimonials from club members about the assistance received). As noted, club dues averaged roughly $10. *See, e.g.*, Am. Auto. Ass'n v. Merrick, 117 F.2d 23, 23 (D.C. Cir. 1940) (noting that dues were $12 for the D.C.-based AAA branch); *In re* Thibodeau, 3 N.E.2d 749, 750 (Mass. 1936) (explaining that dues were $12 for the first year and $10 thereafter for the Automobile Legal Association); *Classes of Maclub Membership*, Friends Along the Road, June 1927, at 30, 30 (listing dues as $10 per year for membership in the Maclub of America); Woodford, *supra* note 36, at 209 (explaining that dues were $10 for the Detroit Auto Club for the first thirty years of the Club's existence before increasing to $12); Abstract of Record, *supra* note 49, at 84 (noting that dues were $15 for Cook County residents and $10 for nonresidents in the Chicago Motor Club).

70. *Nags to Riches—Story of Autos*, *supra* note 27, at A2; *accord* Woodford, *supra* note 36, at 86.

71. The magazines included *Motor News*, *Automobilist*, *Westways*, *Illinois Motorist*, and *Friends Along the Road*. Anyone could buy the magazines, but members received them automatically. *See, e.g.*, Motor News, Jan. 1930, at 2 (listing the price at "20c"); *Service Contract*, Automobilist, May 1929 (unnumbered page before table of contents) ("The member agrees that $1.00 of said consideration may be set aside by the Association as an annual subscription to its monthly magazine, The Automobilist . . . .").

72. *See, e.g.*, Kelso, *supra* note 59, at 193 (providing insurance information for the Automobile Club of Southern California); Woodford, *supra* note 36, at 100–05 (discussing insurance for the Detroit Automobile Club); Abstract of Record, *supra* note 49, at 84 (discussing the Chicago Motor Club's insurance policy). Other clubs opted against these offerings. *See, e.g.*, *Insurance Plan Is Rejected*, Ohio Motorist, Feb. 1923, at 17, 17 (noting that the Automobile Club of Missouri "voted unanimously against" offering such a plan). For insurance rates as of 1929, see Columbia Report, *supra* note 38, at 45–46.

73. Transcript of Record 28, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (Jan. 12, 1934) (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 4) (discussing this during the cross examination of Joseph H. Braun).

2. *Legal Services*

Starting in their early days, most auto clubs offered a wide array of legal services. Indeed, these legal services were a prime (some said *the* prime) benefit of membership.[74]

Many auto clubs' legal departments operated like law firms by employing salaried, experienced lawyers to represent members and furnish complimentary advice.[75] Rather than bringing lawyers in-house, some clubs chose a contracting approach, giving members either an exclusive or nonexclusive list of names of attorneys to call and then footing the bill.[76] Still others, including the Chicago Motor Club, adopted a hybrid approach, allocating either a salaried or contract lawyer to the member based on the member's location.[77] Either way, auto-club legal assistance was free to the member beyond the member's payment of annual dues and, when necessary, court costs.[78]

a. Legal Advice

Whether in-house or on-contract, auto-club lawyers gave advice on all things auto—which necessarily spanned a wide range of subjects. Indeed, one

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74. *See* J.E. Bulger, *Handling Legal Difficulties for Members: An Interview with O.P. Lightfoot, General Counsel, Chicago Motor Club*, MOTOR NEWS, Feb. 1924, at 17, 25 ("If the club had no other service but this [legal service], I am of the firm belief that it would be well worth the price of membership to obtain the service offered by the legal department alone."); *Unauthorized Practice*, 5 TEX. BAR J. 150, 152 (1942) (stating that legal services were "by far the major part of the consideration which the customer receives for his [auto club] membership fee" (quoting R.I. Bar Ass'n v. Auto. Serv. Ass'n, 179 A. 139, 145 (R.I. 1935))).

75. *See* AAA Report, *supra* note 1, at 71; *see also* Abstract of Record, *supra* note 49, at 82-83 (describing one motor club's legal staff); Kelso, *supra* note 59, at 194-95 (same); Dworken v. Cleveland Auto. Club, 29 Ohio N.P. (n.s.) 607, 609-10 (C.P. Cuyahoga 1931) (describing the duties of one club's legal department); *Enters Private Law Practice: Mr. H.H. Gorman Resigns as Club Counsel*, OHIO MOTORIST, Feb. 1923, at 28, 28, 35 (noting that the then-head of the Cleveland Auto Club's legal department was an alumnus of Harvard Law School and a former lawyer for the State Department); *Braun Memorial Symposium*, UIC LAW, https://law.uic.edu/about/signature-events/braun-memorial-symposium [https://perma.cc/8YVR-WEHJ] (detailing the legacy of Joseph H. Braun, the head of the Chicago Motor Club).

76. *E.g.*, *In re* Maclub of Am., Inc., 3 N.E.2d 272, 273 (Mass. 1936); *In re* Thibodeau, 3 N.E.2d 749, 751 (Mass. 1936). Certain of these arrangements presaged forms of legal insurance that would emerge in the 1970s. For a history of legal insurance, its promise, its downfall, and its pitfalls, see generally Nora Freeman Engstrom, *Legal Insurance and Its Limits*, 124 MICH. L. REV. (forthcoming 2025).

77. Abstract of Record, *supra* note 49, at 77.

78. *Id.* at 78, 83, 87.

club boasted: "No possible legal question can arise from the ownership or the operation of an automobile that the legal department will not handle for the club members."[79] Likewise, the Automobile Service Association's membership contract promised: "The Association's attorneys will furnish consultation and legal advice free of charge to the Member or members of his family on any legal matter pertaining to the use, operation, ownership and transfer of an automobile."[80]

Much of this advice was preemptive, aimed at helping members avoid legal entanglements. The Automobile Club of Southern California, for example, fielded frequent calls from members who were worried that if they gave people a ride in their cars "as a matter of friendship, courtesy, or charity," they would be liable for any ensuing injuries.[81] Another club recounted that, if a member were to call "to ask whether he may drive a ten ton truck and trailer to San Antonio, Texas," the legal department would find out—even if that meant "consult[ing] . . . the motor vehicle laws of several states, and perhaps the regulations of the various state commerce commissions."[82]

Sometimes, members called auto clubs *after* arrests or accidents. Then, too, advice was on offer.[83] But when advice alone was not enough, many clubs offered members broader representation.

b. Criminal Defense

When it came to criminal defense, different clubs drew different lines. On one end of the continuum, many clubs imposed serious limits. Some, for instance, supplied only out-of-court assistance.[84] Others helped only if the charge

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79. William M. Henry, *The Ace of Clubs*, Touring Topics, Mar. 1923, at 26, 32. Quantifying its support, the Carolina Motor Club reported that, as of April 1935, "6,150 members have been given legal advice by club attorneys." Seawell v. Carolina Motor Club, 184 S.E. 540, 542 (N.C. 1936). Clubs also turned advice outward, publishing articles on automobile-related law for the benefit of anyone who read their magazines. *See, e.g.*, *Legal Department*, Automobilist, May 1929, at 12, 12 (reassuring readers that "[t]he mere fact that an automobile runs over a dog is not enough to charge the operator with negligence").

80. Service Contract of Automobile Service Association ¶ 7 [hereinafter Automobile Service Association Service Contract], *in* Answer of Automobile Service Association, R.I. Bar Ass'n v. Auto. Serv. Ass'n, No. 623 (Mar. 5, 1935) (on file with authors).

81. David R. Faries, *Am I Liable to the Man I Carry Free?*, Touring Topics, Oct. 1918, at 20, 20.

82. Chicago Motor Club Organization and Activities, *supra* note 68, at 6.

83. Jeanette Hamilton, *He Said I'd Find Out and I Did—And Now I Belong to Something Big*, Ohio Motorist, Sept. 1923, at 16, 16 (explaining that, after an accident, an auto club would advise on who was at fault, what information to collect, and how to "fix it all up").

84. In its 1931 report, the AAA claimed that "the majority of . . . clubs do not represent such defendants in court, but limit their service to advice only." AAA Report, *supra* note 1, at 12.

was minor.[85] Still others carved out (and excluded) those who had been accused of certain crimes.[86] The Carolina Motor Club, for instance, withheld representation if the motorist's offense grew out of the "illegal transportation of whiskey or the operation of a car while under the influence of intoxicating beverages."[87]

But, on the other end of the continuum, numerous clubs offered representation for the gamut of auto-related crimes—up to and including manslaughter.[88] And often, clubs offered soup-to-nuts representation—from arrest through acquittal or conviction, and even postconviction relief.[89]

Consider the Chicago Motor Club. Pictured here, the Club's nine in-house lawyers worked on salary and were joined by some sixty-five lawyers who worked for the Club on an occasional contract basis. Together, they defended members who faced a stunning 3,459 criminal charges in 1931 alone.[90]

Perhaps. But our research reveals that many of the largest clubs—including from Chicago, Detroit, Washington, D.C., Florida, Kentucky, North Carolina, Pennsylvania, Rhode Island, and Southern California—offered fuller-scale representation.

85. *E.g.*, Dworken v. Cleveland Auto. Club, 29 Ohio N.P. (n.s.) 607, 609-10 (C.P. Cuyahoga 1931) (explaining that the Cleveland Auto Club would "defend members arrested in speed traps or arrested for technical violations of traffic laws"); Schuur v. Detroit Auto. Club, No. 194195 (Mich. Cir. Ct. 1932), *reprinted in* UNAUTHORIZED PRACTICE DECISIONS 698, 699 (George E. Brand ed., 1937) (explaining that the Detroit Automobile Club assisted its members charged with "minor traffic violations").

86. Abstract of Record, *supra* note 49, at 76 (describing testimony by Joseph H. Braun that the Chicago Motor Club withheld representation if the motorist had been charged with driving under the influence, a felony, or "any offense involving moral turpitude").

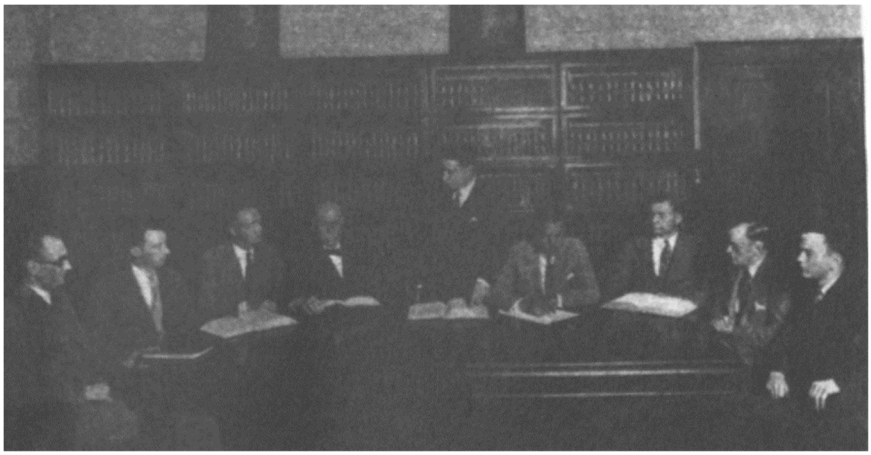
87. Seawell v. Carolina Motor Club, Inc., 184 S.E. 540, 541 (N.C. 1936); *accord* People *ex rel.* Chi. Bar Ass'n v. Motorists' Ass'n of Ill., 188 N.E. 827, 828 (Ill. 1933) (explaining that the 50,000-member Motorists' Association of Illinois would handle all criminal matters, "[i]ntoxication or reckless driving charges excluded"); Harrison G. Kildare, *How the Legal Department Can Help You*, KEYSTONE MOTORIST, Nov. 1928, at 18, 36 (explaining that the Keystone Automobile Club's legal department withheld representation for "charges amounting to a felony" and that in cases of reckless driving, "the department reserves the right to decline its service").

88. *E.g.*, Yeats v. Auto. Owners Ass'n of Fla., Inc., No. 49754-C (Fla. Cir. Ct. 1934), *reprinted in* UNAUTHORIZED PRACTICE DECISIONS, *supra* note 85, at 326, 327; Allin v. Motorists' All. of Am., 29 S.W.2d 19, 20 (Ky. 1930); *In re* Maclub of Am., Inc., 3 N.E.2d 272, 273 (Mass. 1936); R.I. Bar Ass'n v. Auto. Serv. Ass'n, 179 A. 139, 140 (R.I. 1935); *see also* Williams et al., *supra* note 8, at 26 (reporting that some auto clubs "[a]gree to 'defend . . . in all criminal proceedings which may be instituted'").

89. Clubs also offered representation at coroner's juries after fatal accidents. Coroner's juries were—and are—groups of jurors whom coroners or other officers summon to assess and "render a verdict" on the cause of someone's death. *See*, *e.g.*, CAL. CIV. PROC. CODE § 236 (West 2024).

90. Chicago Motor Club Organization and Activities, *supra* note 68, at 15; Abstract of Record, *supra* note 49, at 82-83. The contract lawyers were paid an average of $15 per case. The attorney would bill the club for the services given to the member, on a rate agreed upon by the

FIGURE 5. THE CHICAGO MOTOR CLUB'S IN-HOUSE LEGAL DEPARTMENT[91]



These charges included some seemingly significant offenses, including possessing fictitious licenses (thirty members), leaving the scene of the accident (forty-five members), and reckless driving (eighty-four members).[92] After a member's arrest, the member could go to a Club branch office to be directed to a clerk. That clerk would "take record" of the offense, the "time and place of trial," and the facts surrounding the incident.[93] A lawyer would then be assigned – and the lawyer would "consult[]" with the member and decide whether "an offense has been committed."[94] If, after that investigation, the lawyer concluded that the member was "guilty of the offense," the lawyer would advise the entry of a guilty plea.[95] If, on the other hand, the lawyer concluded that the member was innocent, the lawyer would advise the member to contest the charge – and the Club would furnish representation.[96] This representation frequently involved trial practice: the Chicago Motor Club reported bringing more than 250 cases to trial in a single month of 1923.[97]

"downstate manager of the Chicago Motor Club." Abstract of Record, *supra* note 49, at 83 (recounting testimony by Joseph H. Braun).

91. Brief and Argument for Relator, Exhibit D, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (June 8, 1935) (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 2).

92. Chicago Motor Club Organization and Activities, *supra* note 68, at 15.

93. Abstract of Record, *supra* note 49, at 77.

94. *Id.*

95. *Id.* at 87.

96. *Id.* at 77.

97. *Legal Department Report*, MOTOR NEWS, Aug. 1923, at 23, 23.

Clubs also engaged in habeas practices. For example, in *Cavanaugh v. Gerk*, the Automobile Club of Missouri appears to have successfully filed a habeas petition before the Missouri Supreme Court to earn the release of a member incarcerated in St. Louis after he was caught running a stop sign and driving the wrong way on a one-way street.[98] Likewise, the Keystone Automobile Club of Pennsylvania instituted habeas proceedings to free nine club members who were jailed by a crooked alderman for their grave sin of "fail[ing] to blow horn at certain crossings."[99]

Meanwhile, mirroring present-day impact litigation, clubs often used the defense of misdemeanors as "test case[s]" to secure broader rights for motorists.[100] A significant but nonexclusive focus of these efforts involved speed traps. Typically run by dishonest police officers in cahoots with local magistrates, speed traps peppered certain rural areas, much to the auto clubs' dismay. When ensnared by one, the motorist (irrespective of actual guilt) would be arrested for violating a "petty and technical offense[]" and then fined, with the spoils shared by the unscrupulous officials.[101] Victimized by such schemes, the "individual motorist" was "practically helpless."[102] But the traps, the clubs found, could be

98. 280 S.W. 51, 51, 53 (Mo. 1926). We believe the Automobile Club of Missouri litigated this case because the counsel of record—Gustav Vahlkamp—led the Club's legal department. *See Law Variations a Handicap*, NAT'L UNDERWRITER, Dec. 16, 1926, at 33, 33 (noting that Vahlkamp was "counsel for the Automobile Club of Missouri"). Both the Keystone Automobile Club and the Chicago Motor Club also litigated habeas claims. For the former, see *Nine Club Members Throw Wrench into Chester Fining Mill*, KEYSTONE MOTORIST, Mar. 1923, at 3, 3, which describes how nine members of the Keystone Automobile Club were released from jail after the Club brought a habeas proceeding on their behalf. For the latter, see, for example, Hal Foust, *Attack Indiana J.P. Law in War on Speed Traps*, CHI. DAILY TRIB., July 2, 1931, at 20, 20, which discusses a case testing the constitutionality of an Indiana statute through a habeas proceeding.

99. *Nine Club Members Throw Wrench into Chester Fining Mill*, *supra* note 98, at 3. The habeas action won the members' release and put an end to the alderman's "fining mill." *Id.*

100. *Middletown Club Small but Active*, KEYSTONE MOTORIST, Jan. 1923, at 16, 16; *see also* Transcript of Record 17, Am. Auto. Ass'n v. Merrick, No. 7646 (Mar. 30, 1940) [hereinafter *Merrick* Transcript] (on file with Nat'l Archives, Recs. of U.S. Cts. of Appeals, Rec. Group 276, U.S. Ct. of Appeals for the D.C. Cir., Gen. App. Jurisdiction Case Files, 1894-1996) (describing the District of Columbia Motor Club's impact litigation efforts, which "succeeded in having invalidated . . . many laws of the 'horse and buggy' era").

101. *See* Collins, *supra* note 33, at 3.

102. Statement of the Chicago Motor Club in Answer to a Report of a Sub-Committee of the Inquiry Committee of the Chicago Bar Association 4-5, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (n.d.) [hereinafter Statement of the Chicago Motor Club] (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 6); Chicago Motor Club Organization and Activities, *supra* note 67, at 7 ("Individually they were powerless against the system, but organized into motor clubs they waged bitter warfare . . . ."); Collins, *supra* note

curbed by litigation initiated "by an organized body, having the power of a united membership behind it."[103]

In one case, for instance, a club attorney discovered that, in a nearby town, the mayor, police officers, and prosecutor had set up a speed trap and were splitting the resulting fines, and that the state's laws entitled the mayor—who doubled as the "trial justice"—to pocket more money from a conviction than an acquittal.[104] A club attorney defended and appealed a member's case, arguing that the mayor "could not be expected to be above partiality" due to his financial incentive to find guilt.[105] The litigation and its "attendant publicity" caused the legislature to "change[] the law" such that "'speed traps' were abolished throughout the state."[106] The Chicago and District of Columbia Motor Clubs went so far as to defend *non*members in court "where the circumstances indicated that a speed trap was operating or that law enforcement officers were guilty of abuses."[107]

c. Criminal Prosecution

In the American auto frontier of the 1920s, the clubs did not just defend their members from criminal charges. They also turned the tables to investigate wrongdoing, to pay rewards for the capture of car thieves and hit-and-run drivers, and sometimes even to *prosecute privately* those engaged in antisocial activity.[108]

33, at 8 ("As individuals, they have no way of obtaining relief. The amount of money involved in any one individual case is usually small, the grievance not severe—but the interests of motorists as a class may be very adversely affected.").

103. Statement of the Chicago Motor Club, *supra* note 102, at 4-5.

104. Collins, *supra* note 33, at 4.

105. *Id.* at 4-5.

106. *Id.* at 5.

107. Petition of Respondent for Rehearing 2-3, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (Nov. 8, 1935) (on file with Ill. State. Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 1); *Merrick* Transcript, *supra* note 100, at 17 (discussing the Club's representation of nonmembers where the representation would, inter alia, "promote the purposes for which [the District of Columbia Motor Club] exists").

108. *E.g.*, Automobile Service Association Service Contract, *supra* note 80, ¶ 9 ("The Automobile Service Association offers a reward of Twenty-five ($25) Dollars for information leading to the arrest and conviction of any person or persons causing serious damage to a member's car and leaving the scene of such accident without making his identity known. A Fifty ($50) Dollar reward is also provided for information leading to the arrest and conviction of any person who may steal a member's car."); *"Hit and Run" Motorists Find Evildoer's Way Stony*, L.A. TIMES, May 23, 1926, at G3, G3 (explaining that the Automobile Club of Southern California

On this score, for instance, the Chicago Motor Club was given "full investigating powers" by the state's attorney's office to uncover speed traps involving crooked officers.[109] Sometimes, in fact, when it came to speed traps, the line between investigation and prosecution blurred. Consider this testimony from the Chicago Motor Club's chief lawyer, Joseph H. Braun, when he was cross-examined during a bar-initiated lawsuit:

> Q: Wouldn't you assist the State officials in prosecuting cases?
> A: No, we believe that is the sole duty of the State's Attorney in State cases and the City Prosecutor in City cases.
> Q: But you have in certain instances done that?
> A: Only in such cases where the motoring public as a class would be affected.[110]

While Braun downplayed the Chicago Motor Club's prosecution activity, other clubs were not so circumspect. In 1925, the Keystone Motor Club of Pennsylvania boasted that it was "ready at all times to extend its legal aid in assisting Club members to prosecute drivers of motor vehicles who have grossly violated the law."[111] Likewise, in 1935, the Carolina Motor Club declared that it had "employed the services of duly licensed attorneys to prosecute" both hit-and-run drivers and car thieves, landing the criminal defendants in prison for a total of 108.5 and 298 years, respectively.[112]

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paid $50 and $250 rewards for information leading to the capture of hit-and-run drivers—the higher reward reserved for incidents involving fatal injuries); Affidavit of J.H. Monte 26, Seawell v. Carolina Motor Club, Inc., No. 114 (Sept. 2, 1935) (on file with Sup. Ct. of N.C., Off. of the Clerk, Recs. & Briefs, Spring Term—1936, Vol. 2, 2-19) ("[I]n a number of such cases the Carolina Motor Club employed the services of duly licensed attorneys to prosecute or assist in the prosecution of such 'hit and run drivers.'").

109. J.L. Jenkins, *Speed Traps Swept from County Roads, Survey Reveals*, CHI. DAILY TRIB., Sept. 5, 1926, at A8, A8.

110. Testimony of Joseph H. Braun 131, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (Nov. 17, 1933) (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 4) .

111. *Do Not Be Victimized*, KEYSTONE MOTORIST, Feb. 1925, at 8, 9. By 1928, the Club had retreated from that position, stating: "The Department does not assist in the prosecution of criminal cases, as prosecutions are required by law to be conducted by public officers. It will, however, assist in bringing such matters before the proper authorities." Kildare, *supra* note 87, at 36.

112. Affidavit of J.H. Monte, *supra* note 108, at 26. Among their successes, the Carolina Motor Club prosecuted a farmer who, living near a highway and apparently frustrated with increased car traffic, repeatedly placed a "block of wood . . . some 3 to 5 inches in length . . . with sharpened nails driven through it" in the road to puncture the tires of unsuspecting motorists. State v. Malpass, 127 S.E. 248, 250 (N.C. 1925). Once convicted, the farmer was sentenced to four years of road work. *Id.* at 251-52.

d. Civil Cases

Auto clubs' legal services also extended to the civil side of the docket. In this realm (as above), the clubs displayed great variation both in terms of procedures utilized and claims accepted.

In terms of procedures, some clubs merely penned letters to help members resolve claims out of court.[113] Thus, the 29,000-member District of Columbia Motor Club (which, unlike the vast majority of its counterparts, staffed its civil-claims department with nonlawyers) tended to assist members in the prosecution or defense of very small property-damage claims—and frequently resolved those small claims by utilizing the following procedures:

> The member makes a formal report. [The District of Columbia Motor Club] then writes to the other person involved in the accident, states the amount of damages, presents the claim, and requests an answer . . . . If no response is received, [the Club] sends a follow-up letter concluding as follows: "Unless we hear from you within the coming week, we shall be obliged to advise our member that apparently no amicable settlement can be made of this matter, and to place the case in the hands of his counsel. We trust that such action will not be necessary, and that the matter may be amicably adjusted." . . . If settlement is made, [the Club's] employee fills out release forms for signature of the proper party. If no amicable settlement can be reached, the member is so informed and advised to get his own attorney or to proceed in the small claims court.[114]

Some clubs, likewise, tended to resolve tort claims via informal arbitration rather than litigation, while many other clubs would route claims to an in-house system of arbitration only when the dispute arose between members (which, given club sizes, seems to have been a common occurrence).[115] These

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113. This limit was imposed, for instance, by the Carolina Motor Club. Affidavit of J.H. Monte 23, Seawell v. Carolina Motor Club, Inc., No. 114 (Sept. 6, 1935) (on file with Sup. Ct. of N.C., Off. of the Clerk, Recs. & Briefs, Spring Term—1936, Vol. 2, 2-19).

114. Am. Auto. Ass'n v. Merrick, 117 F.2d 23, 24 (D.C. Cir. 1940). As noted, claim values were small; a large majority were under $25. *See Merrick* Transcript, *supra* note 100, at 14, ¶ 7.

115. Bulger, *supra* note 74, at 17, 24; *see, e.g.*, *From the Secretary's Notebook: Doings of Ohio State Automobile Association Clubs*, OHIO MOTORIST, June 1923, at 20, 20 (noting that the Sandusky County Automobile Club would settle all cases between members by arbitration "when possible," and that "[a]n attorney also has been employed to give legal aid and advice to members" on both sides); Kildare, *supra* note 87, at 18 ("In controversies between [Keystone Automobile] Club members, if the contending parties request it and agree to be bound by the decision, one of the representatives of the Legal Department will act as arbiter."); *Merrick* Transcript, *supra* note 100, at 28, ¶ 10 ("In many instances two members of [the District of Columbia

arbitrations, which were frequently "presided over by club members," gave the "involved motorists and their witnesses" an opportunity to "appear and testify" and tended to resolve cases efficiently, keeping "many small claims . . . out of courts."[116]

In terms of claim type, most clubs' legal departments helped members only with property-damage (not personal-injury) claims,[117] while some clubs engaged only in defense work.[118] On the other end of the continuum, however, some clubs went much further. Some extended their services far beyond car wrecks to supply services (in the words of Pennsylvania's Keystone Automobile Club) *whenever* a motorist had an auto-related complaint, including complaints about "unfair treatment by mechanics, defective tires and automobile equipment, misrepresentation in the sale of an automobile, etc."[119]

When it came to car wrecks, some clubs represented members in personal-injury claims—and bona fide lawsuits—on both sides of the proverbial "v." Taking this tack, the Automobile Club of Southern California (which boasted 100,000 members) and the Cleveland Automobile Club (with its 18,000 members) included personal-injury claims in their out-of-court claims-adjustment practices,[120] while the Automobile Club of Missouri, the Automobile Owners Association of Florida, the Motorists' Association of Illinois, and the Kentucky-based Motorists' Alliance of America clearly represented members with personal-injury claims, both in and out of court.[121]

Motor Club] are involved in the same accident . . . and, in those cases, an attempt is made . . . to arbitrate the claims of the members and reach an amiable settlement.").

116. Collins, *supra* note 33, at 6.

117. *See* AAA Report, *supra* note 1, at 15 ("The majority of automobile clubs do not handle personal injury cases at all, and those which do, do so only in cases involving small amounts."); *see, e.g.*, Schuur v. Detroit Auto. Club, No. 194195 (Mich. Cir. Ct. 1932), *reprinted in* UNAUTHORIZED PRACTICE DECISIONS, *supra* note 85, at 698, 699 (explaining that the Detroit Automobile Club's legal department "prosecut[ed] minor property damage claims").

118. *See In re* Thibodeau, 3 N.E.2d 749, 751 (Mass. 1936) (explaining that the Massachusetts-based Automobile Legal Association adhered to this restriction). Some straddled these categories. *E.g.*, Automobile Service Association Service Contract, *supra* note 80, ¶¶ 4-5 (entitling members to a full range of defense services, including in cases of personal injury—but limiting plaintiff-side work to that involving property-damage claims).

119. *Legal Department Saves Members $19,600*, KEYSTONE MOTORIST, Oct. 1927, at 6, 15.

120. Kelso, *supra* note 59, at 194 (discussing the Automobile Club of Southern Califonia). Auto clubs adjusted and settled claims for members with other parties and insurance companies, on those occasions when the at-fault motorist was insured. *Id.* For an explanation of the Cleveland Automobile Club's practices, see *Dworken v. Cleveland Automobile Club*, 29 Ohio N.P. (n.s.) 607, 610-11 (C.P. Cuyahoga 1931).

121. *Bars Club from Practice of Law*, MOBERLY MONITOR-INDEX, Nov. 3, 1941, at 1, 1 (recounting that the 48,500-member Automobile Club of Missouri acknowledged that "it had given the

For greater insight, consider again the 65,000-member Chicago Motor Club. That club claimed to restrict its civil practice to property-damage claims, possibly in the vain hope that, by handling only claims other lawyers would not find profitable, it would stay out of the bar's crosshairs.[122] But, for those mostly low-dollar property-damage cases, if necessary, lawyers in the Club's legal

club members advice and legal service on claims for personal injuries and property damage" and that "the club had in the past represented members in court"); Allin v. Motorists' All. of Am., Inc., 29 S.W.2d 19, 20 (Ky. 1930) (stating that the Kentucky-based Motorists' Alliance of America offered to "prosecute (without charge to him for attorney fees) any claim for damages for personal injuries to himself" from car wrecks); People *ex rel.* Chi. Bar Ass'n v. Motorists' Ass'n of Ill., 188 N.E. 827, 827-28 (Ill. 1933) (noting that the 50,000-member Motorists' Association of Illinois would "handle all damage claims for or against members without charge for said legal services"); Yeats v. Auto. Owners Ass'n of Fla., Inc., No. 49754-C (Fla. Cir. Ct. 1934), *reprinted in* UNAUTHORIZED PRACTICE DECISIONS, *supra* note 85, at 326, 327 (stating that the Automobile Owners Association of Florida both prosecuted and defended members "for damages done to his automobile or for personal injury to himself, a member of his family, his agent or employee while riding in said automobile"); *see also* Williams et al., *supra* note 8, at 26-27 (describing the legal representation offered by automobile associations).

122. Testimony of Joseph H. Braun, *supra* note 110, at 93 ("The service is confined to property damage only . . . ."); Reply Brief and Argument for Respondent 21, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (June 13, 1935) [hereinafter Chicago Motor Club Reply Brief] (on file with Ill. State. Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 2) (explaining its line drawing while noting that "[p]ersonal injury suits are generally regarded as remunerative to lawyers").

That said, we are dubious that this limitation was consistently honored and suspect that the Club engaged in at least some personal-injury representation. Fueling our skepticism is a hard-to-reconcile mismatch: when under bar scrutiny, Joseph H. Braun claimed to have, for the preceding sixteen years, "devoted all of [his] time to the work of the Chicago Motor Club," Abstract of Record, *supra* note 49, at 58, but Braun is listed as counsel in multiple auto-related cases from those years involving personal-injury claims, *see, e.g.*, Schwartz v. Lindquist, 251 Ill. App. 320, 322 (1929) (representing a client for a personal-injury claim); Bradley v. Langdon, 270 Ill. App. 618, 618 (1933) (same); McCarthy v. Fadin, 236 Ill. App. 300, 300 (1925) (same); Hamann v. Lawrence, 188 N.E. 333, 333 (Ill. 1933) (representing a client for death and personal-injury claims).

Our hunch is that other clubs also did more personal-injury work than they later let on. For example, when defending itself from the bar, the Detroit Automobile Club claimed to "prosecute minor property damage claims" otherwise unworthy of lawyers' time. *Schuur*, No. 194195, *reprinted in* UNAUTHORIZED PRACTICE DECISIONS, *supra* note 85, at 698, 699. But we found a reference to the club helping settle a claim for a member who, "while touring in Detroit, suffered injury due to the negligence of the Detroit United Railway Company." *Legal Department Busy Place: Automobile Thieves Brought to Time and Claims of Members Handled by Cleveland Club's New Department*, OHIO MOTORIST, Sept. 1920, at 14, 14. The Automobile Legal Association, too, claimed to limit its legal services to *defending* members in property-damage actions. *Legal Service*, AUTOMOBILIST, July 1928 (unnumbered page, front insert). At the same time, the Association published a member testimonial thanking its attorney for "ably winning" the member's personal-injury case as a *plaintiff*. *Letters from Our Mail Bag*, AUTOMOBILIST, July 1928, at 20, 20.

department would represent litigants up to and including appeal.[123] And, as Figure 6 demonstrates, the claim volume handled by the Chicago Motor Club's roughly ten full-time and sixty-five contract attorneys (who worked for the Club only sporadically) was simply staggering.[124]

FIGURE 6. CHICAGO MOTOR CLUB CIVIL CLAIMS: 1921–1931[125]

Year	Number of Civil Claims Handled
1921	3,233
1924	4,063[126]
1926	5,930
1927	6,319
1928	6,229
1929	6,946
1930	8,315
1931	8,640

123. *See, e.g.*, Partridge v. Eberstein, 225 Ill. App. 209, 210 (1922) (determining who has the right of way at an intersection in a case brought and appealed by the Chicago Motor Club).

124. For the attorneys employed on a full or occasional basis, see Abstract of Record, *supra* note 49, at 82-83. Other evidence indicates that the in-house Chicago Motor Club attorneys each handled roughly 500 to 1,000 cases per year, and that the number of "unlitigated" claims substantially eclipsed those claims that were "pending." Bulger, *supra* note 74, at 24. These days, by comparison, most personal-injury lawyers handle on the order of 110 cases per year, and even so-called "settlement mill" negotiators, who resolve mostly small car-wreck claims, handle only 300 to 400 cases annually. *See* Nora Freeman Engstrom, *Run-of-the-Mill Justice*, 22 GEO. J. LEGAL ETHICS 1485, 1492 & n.23 (2009) (collecting statistics). To be fair, auto clubs were handling mostly property-damage claims, which, logically, can be processed more simply than claims involving personal injury.

125. *What Your Dues Purchase*, MOTOR NEWS, Mar. 1922, at 15, 15 (providing the 1921 number); *Rendering Legal Service: $56,969.33 Saved for Members*, MOTOR NEWS, Jan. 1925, at 16, 16 (containing the 1924 number); Chicago Motor Club Organization and Activities, *supra* note 68, at 13 (listing the 1926-1931 numbers).

126. This year, the Chicago Motor Club reported 4,063 cases "disposed of"—a slight difference from the other years, in which the Club tallied cases "handled." To the extent the 1924 number is not accurate, then, it would seem too low. *Compare What Your Dues Purchase*, *supra* note 125, at 15 (noting that the Chicago Motor Club handled 3,233 new claims), *with id.* (reporting that the Club disposed of 2,076 new claims).

Nor was the Chicago Motor Club an outlier. In 1925, the Detroit Automobile Club's legal department handled 3,260 claims for members.[127] In the first nine months of 1929, the Keystone Automobile Club reported that it handled "1400 damage cases."[128] In 1929, the Cleveland Automobile Club's legal department "received from 125 to 140 new cases each month."[129] In 1933, eight attorneys from the Automobile Club of Southern California handled 43,326 criminal and civil claims for individual members.[130] In 1935, the California State Automobile Association, based in Northern California, boasted that it "secured amicable settlements of small damages claims in 6419 automobile civil cases"—and that all those claims "were settled without the necessity of members going to court."[131] By 1935, the Carolina Motor Club announced that it had resolved $71,780.42 in property-damage claims[132] (roughly $1.6 million in today's dollars), even though the claims department was not staffed by lawyers[133] and only endeavored to "collect damages for members out of court."[134] And, during a twelve-month period between 1938 and 1939, the District of Columbia Motor Club (which, recall, staffed its civil-claims department entirely with nonlawyers), settled an impressive 1,232 claims.[135]

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127. WOODFORD, *supra* note 36, at 200.

128. *Legal Department Saves Members $19,600*, *supra* note 119, at 6. It appears that these involved both property-damage and personal-injury claims and that all the claims were resolved either by arbitration or settlement, with no lawsuits filed. *See* Kildare, *supra* note 87, at 18.

129. Dworken v. Cleveland Auto. Club, 29 Ohio N.P. (n.s.) 607, 611 (C.P. Cuyahoga 1931).

130. Kelso, *supra* note 59, at 193-94. These figures are mirrored in previous years. For an overview of the legal services rendered each year, see generally *Another Year of Progress: President W.L. Valentine's Annual Report*, *supra* note 54; *The Year 1926 and the Club's Progress: President H.W. Keller's Annual Report*, TOURING TOPICS, Mar. 1927, at 15; *Club Achievements During 1927: President Horace G. Miller's Annual Report*, *supra* note 58; *Another Milestone in the Club's Progress: President Horace G. Miller's Annual Report*, *supra* note 58; *Your Club and Its Achievements During 1929: The Annual Report of the President Edward D. Lyman*, TOURING TOPICS, Mar. 1930, at 15; *Your Club and Its Achievements During 1930: The Annual Report of the President Harry J. Bauer*, *supra* note 58; and *Club Maintains Splendid Service During 1931 Despite Abnormal Conditions: President Harry J. Bauer's Annual Report*, *supra* note 58.

131. Arthur H. Breed, *Progress of Your Club in 1935 Shown by Report of President*, MOTOR LAND, Mar. 1936, at 3, 13.

132. Seawell v. Carolina Motor Club, 184 S.E. 540, 541 (N.C. 1936).

133. *See* Affidavit of J.H. Monte, *supra* note 108, at 23.

134. *Seawell*, 184 S.E. at 542.

135. *Merrick* Transcript, *supra* note 100, at 47.

Still more remarkable, in 1929, all 1,100 or so AAA-affiliated auto clubs together handled *30,069 civil claims*.[136] By comparison, that same year, an influential study of auto-accident-claiming behavior surfaced only 1,494 property-damage lawsuits *total* across Philadelphia; New York City; Muncie, Indiana; Terre Haute, Indiana; San Francisco; San Mateo County, California; New Haven, Connecticut; rural Connecticut; Boston; and Worcester, Massachusetts.[137]

II. COLLISION: THE BAR'S TRIUMPHANT CAMPAIGN AGAINST AUTO CLUBS

In the mid-1920s, as auto clubs' legal departments thrived, the seeds of their demise sprouted imperceptibly beneath their feet. The trouble came in the form of UPL rules. This tangle of rules mostly gathered dust during the early years of the last century.[138] But, by 1930, UPL rules grew to become the bar's chief preoccupation—and its weapon of choice.[139]

UPL rests on a simple idea: for society's "benefit and protection," only qualified and licensed individuals should be permitted to practice law.[140] Without "preparatory study, educational qualifications, experience, [and]

136. AAA Report, *supra* note 1, at 16. In a companion piece, we explore what the clubs' unique manner of handling its members' tort cases (and the sheer volume of cases they resolved) teaches us about tort law—including its contingent evolution, its tendency to blur the boundary between fault and no-fault claim resolution, and its predisposition toward aggregate settlement. *See* Nora Freeman Engstrom & James Stone, Auto Clubs and Tort Law Lessons (unpublished manuscript) (on file with authors).

137. COLUMBIA REPORT, *supra* note 38, at 258 (tabulating cases from these jurisdictions).

138. *See* Paul H. Sanders, *Foreword*, 5 LAW & CONTEMP. PROBS. 1, 2 (1938) ("During the 20's there were occasional manifestations of interest in this subject [unauthorized practice of law (UPL)] over widely scattered areas—but it was not until after 1929 that the present widespread movement can be said to have begun."); Stephen K. Huber, *Competition at the Bar and the Proposed Code of Professional Standards*, 57 N.C. L. REV. 559, 587 (1979) ("No more than sporadic concern about unauthorized practice was expressed prior to 1930 . . . ."). For scattered early (pre-1930) expressions of concern, see *infra* note 155 and accompanying text.

139. For timing, see AM. BAR ASS'N COMM'N ON NONLAWYER PRAC., NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS 1 (1995), which states that "[t]he 1930s began several decades of aggressive enforcement of UPL laws"; and Sanders, *supra* note 138, at 2, which notes that, in a book that compiled "virtually all the cases in this field, only the first 98 pages are devoted to [UPL] decisions prior to 1930 and the rest of the 828 pages contain cases" from 1930 through 1938. For the fact that the bar was preoccupied with these efforts, see, for example, Richard L. Merrick, *Report of Committee on the Suppression of the Unauthorized Practice of Law*, 3 J. D.C. BAR ASS'N, Dec. 1936, at 34, 38 ("[T]he subject of the suppression of the unauthorized practice of law seems to be of more importance to the Bar Association than any other single question with which it has to deal.").

140. ABA Comm. on Pro. Ethics & Grievances, Formal Op. 8 (1925).

examination," individuals are unqualified to give legal advice, and unwitting clients could be harmed by staking their vital legal rights on those unfit to practice.[141] Furthermore, nonlawyers are not licensed. As such, they are not subject "to the same discipline that the lawyer is and they are not subject to the same body of rules which guides the conduct of attorneys."[142] Shorn of these safeguards, lay advocates, some say, are insufficiently regulated—and apt to cause harm.

It is, and has long been, similarly clear that *what counts* as "law practice" for purposes of UPL extends broadly. Far beyond court representation, UPL can encompass drafting legal documents, settling claims, completing forms, and furnishing advice, although the exact boundaries of what qualifies as law practice remain, to this day, stubbornly underspecified.[143]

Yet, while all that was clear enough, initially, there was no restriction on duly licensed *lawyers'* provision of legal advice—or any sense that that, too, could constitute UPL.[144] The ABA's Canons, which initially governed the profession, contained no prohibition on what, in the 1910s and 1920s, came to be known as the "corporate" practice of law and which today tends to be called group legal services, multidisciplinary practice (MDP), alternative business structures (ABS), or nonlawyer ownership (NLO).[145] And, of course, neither of the two

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141. People v. Alfani, 125 N.E. 671, 673 (N.Y. 1919).

142. John W. Kephart, *Unauthorized Practice of Law*, 40 Dick. L. Rev. 225, 230 (1936).

143. The ABA's Model Rules offer no definition. *See* Model Rules of Pro. Conduct r. 5.5 cmt. (Am. Bar Ass'n 2019). States each maintain their own definitions of what constitutes the practice of law; some offer guidance in statutes and others in judicial opinions. *See generally Appendix A: State Definitions of the Practice of Law*, Am. Bar Ass'n, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/model_def_statutes.pdf [https://perma.cc/42Q4-BUEQ] (providing these definitions by state). Yet, these definitions tend to leave one wanting. *See*, *e.g.*, R.I. Bar Ass'n v. Auto. Serv. Ass'n, 179 A. 139, 140 (R.I. 1935) ("The practice of law is difficult to define. Perhaps it does not admit of exact definition. Whether or not it can be reduced to definition is not important to the decision of the matter before us at this time . . . . That the practice of the law is a special field reserved to lawyers duly licensed by the court, no one denies."); William R. Matheny, *A Program for the Elimination of the Unauthorized Practice of the Law*, 26 Ill. Bar J. 10, 11 (1937) ("The practice of the law is incapable of exact definition."). The imprecision, some say, causes its own cascade of harms. *See generally* Lauren Sudeall, *The Overreach of Limits on "Legal Advice,"* 131 Yale L.J.F. 637 (2022) (advocating for a narrow definition).

144. For our guess as to why the bar ultimately expanded its conception of UPL to encompass lawyers working for corporations, see *infra* notes 352-359 and accompanying text.

145. All of these unfortunately overlapping terms refer to nonlawyer-owned organizations that employ lawyers to offer legal services directly to members or customers, rather than to the organization itself. A multidisciplinary practice (MDP) is defined, inter alia, as an "entity that includes lawyers and nonlawyers and has as one, but not all, of its purposes the delivery of legal services to client(s) other than the organization itself." Comm'n on

main concerns that undergird UPL restrictions—the notion that nonlawyers are (1) unqualified and (2) unregulated—apply when the provider is, in fact, a licensed attorney.

Perhaps because there was no prohibition, in the early 1900s, these "corporate" law practices started to proliferate.[146] It was not just that auto clubs were booming. It was also that *other* new organizations sprouted up while existing organizations expanded their services.[147] Banks started to write wills.[148] Trust companies started to administer estates.[149] Radio programs hired lawyers to advise callers.[150] And trade and protective associations started to provide their members with all manner of services. These included unions that would help members assert tort or workers' compensation claims,[151] cooperatives that

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Multidisciplinary Prac., Am. Bar Ass'n, Report to the House of Delegates, at C2 (1999). Group-legal-service plans are defined, inter alia, as "[p]lans by which legal services are rendered: (1) To individual members of a group identifiable in terms of some common interest, (2) By a lawyer provided . . . by . . . [t]he group." Frank N. Bratton, *A Public Warning! Clear and Present Danger: Approval of Group Legal Services*, 4 Tenn. Bar J., Aug. 1968, 9, 9-10 (supplying the broadly accepted definition). For a discussion of alternative business structures (ABS), see Comm'n on the Future of Legal Servs., *For Comment: Issues Paper Regarding Alternative Business Structures*, Am. Bar Ass'n 2 (Apr. 8, 2016), https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/issues-paper-regarding-alternative-business-structures040816.pdf [https://perma.cc/4QK5-4U9V]. Auto clubs would fit within the parameters of any of these overlapping categories (a corporate law practice, group legal service, MDP, ABS, or nonlawyer-ownership (NLO) entity).

146. *See* Paul P. Ashley, *The Unauthorized Practice of Law*, 16 A.B.A. J. 558, 558 (1930) ("In increasing numbers and with increasing strength corporations are invading fields long felt to be reserved to members of the legal fraternity.").

147. *See* Henry A. Shinn, *How to Deal with the Unlawful Practice of Law*, 17 A.B.A. J. 98, 98 (1931); Joseph L. Stern, *The Volunteer Fire Department Arrives!*, 35 Ohio L. Rep. 331, 331 (1931); Sol Weiss, *Legal Entrenchments and Lay Encroachments*, 37 Com. L.J. 19, 20 (1932).

148. *See In re* E. Idaho Loan & Tr. Co., 288 P. 157, 158 (Idaho 1930); People *ex rel.* Ill. State Bar Ass'n v. People's Stock Yards State Bank, 176 N.E. 901, 905 (Ill. 1931); *In re* Umble's Est., 177 A. 340, 341 (Pa. 1935).

149. *See* K.N. Llewellyn, *The Bar's Troubles, and Poultices—And Cures?*, 5 Law & Contemp. Probs. 104, 111 (1938); *In re* Otterness, 232 N.W. 318, 319 (Minn. 1930) (per curiam) (involving a bank that hired an attorney to, among other things, "conduct[] probate proceedings").

150. *See NBC Sunday Feature Becomes Storm Center of Criticism*, Lincoln Sunday J. & Star, Dec. 6, 1936, at 10, 10.

151. *See* United Transp. Union v. State Bar of Mich., 401 U.S. 576, 578 (1971) (discussing the services of the Brotherhood of Railroad Trainmen—a union that, in 1930, began linking injured workers and their families with "attorneys designated by the Union as 'Legal Counsel'"); United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n, 389 U.S. 217, 219 (1967) (discussing the activities of the United Mine Workers, a union that established a legal department to help members assert workers' compensation claims in 1913).

would help members collect on unpaid debts,[152] protective corporations that would draft contracts,[153] and even neighborhood homeowners' associations that would help members in the event of home foreclosure.[154]

Yet, as these arrangements became more and more popular, the ABA started to develop the notion that these practices, too, should fall under the UPL umbrella, even when fully licensed lawyers were providing the relevant services.[155]

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152. *See* Hosp. Credit Exch. v. Shapiro, 59 N.Y.S.2d 812, 813-14 (Mun. Ct. 1946). *Shapiro* involved the "Hospital Credit Exchange," a membership corporation formed by numerous charitable hospitals in New York, which employed attorneys to represent individual member hospitals in the collection of unpaid bills. *Id.* at 814-15. Challenged on UPL grounds, the court concluded that while the Exchange's work was "commend[able]" and "helpful" and that the attorneys employed therein were "apparently honest and efficient," nevertheless, the Exchange had run afoul of laws prohibiting UPL. *Id.* at 818; *see also* Clayton M. Davis, *The Unauthorized Practice of Law*, 5 J. Bar Ass'n St. Kan. 281, 282 (1937) (describing the "Private School's Protective Bureau, Incorporated," an organization created to "collect claims against parents of children attending private schools").

153. *See* People *ex rel.* L.A. Bar Ass'n v. Cal. Protective Corp., 244 P. 1089, 1090-91 (Cal. Dist. Ct. App. 1926). Founded in Los Angeles in 1921, the California Protective Corporation pledged to render a wide range of legal services to its dues-paying members, including drafting "contracts, wills, [and] partnership agreements." *Id.* at 1090. Established in 1901 in New York, the Co-operative Law Company was similar. *See In re* Co-operative L. Co., 92 N.E. 15, 15-16 (N.Y. 1910).

154. *See* People *ex rel.* Courtney v. Ass'n of Real Est. Taxpayers, 187 N.E. 823, 824 (Ill. 1933). *Courtney* involved a nonprofit corporation organized in the midst of the Great Depression to protect homeowners from home foreclosures. *Id.* at 824. Nearly 25,000 property owners joined, paying on average dues of $15 per year. *Id.* at 825. Citing UPL, the Cook County Attorney sought to enjoin the organization. *Id.* at 824.

155. Not surprisingly, the bar's early efforts originated in New York, Illinois, and California—the states where corporate law practices first proliferated. *See* F. Trowbridge vom Baur, *An Historical Sketch of the Unauthorized Practice of Law*, 24 Unauthorized Prac. News, no. 3, 1958, at 1, 6 (suggesting New York's "high degree of industrialization" motivated its 1909 ban on corporate practice). New York banned corporate practice in 1909, and by 1910, the New York Court of Appeals ruled that "[a] corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it." *In re* Co-operative L. Co., 92 N.E. at 16. By 1914, the New York County Lawyers' Association had created a special committee "on the unlawful practice of law by corporations or individuals (including notaries)." Julius Henry Cohen, *Unlawful Practice of the Law by Laymen and Corporations*, 22 Law Student's Helper, Aug. 1914, at 12, 12; *see also* Rigertas, *supra* note 11, at 143-50 (describing New York's early efforts). Illinois, too, enacted a statute banning corporate practice in 1917, though it appears not to have been enforced in its early years. *See* Rigertas, *supra* note 11, at 149-55. Finally, the California Bar tried and failed to pass a law prohibiting corporate practice in the 1910s; undeterred, it ultimately notched a win in the California Supreme Court. *See* Corinne Lathrop Gilb, Self-Regulating Professions and the Public Welfare: A Case Study of the California Bar 231-32 (May 1956) (Ph.D. thesis, Radcliffe College) (on file with authors); *see also* People *ex rel.* Laws. Inst. of San Diego v. Merchs.' Protective Corp., 209 P. 363, 366 (Cal. 1922) (holding

To justify its position, the bar ventured numerous arguments.[156] One was formal (and strikingly circular): "If a lay agency is not entitled to practice law directly," the ABA reasoned, "it is not entitled to do so indirectly, by employing licensed attorneys to carry on that portion of its activities for it."[157] A second issue with corporate law practice, the ABA reasoned, was that the organization was "selling and exploiting the lawyer's professional services to its own benefit or profit."[158] As one bar leader put it:

> When a bank or club or organization undertakes to do law work or give legal opinions, even through lawyers constituting its law department, the law work is done in the name of the company and thus deprives individual lawyers of practice they are entitled to and the company has no legal right to.[159]

A third problem, said the bar, was that these arrangements helped circumvent prohibitions on lawyer advertising.[160] Then, a fourth and final problem, in the bar's view, went to loyalty. Namely, if a lawyer worked for an organization — such as an auto club, bank, trust company, union, trade group, or homeowners' association — the lawyer's loyalty to the client would be intolerably dimmed. "A lawyer's relation to his client," the ABA reasoned, "should be personal and the responsibility should be direct."[161]

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that a corporation could not employ counsel to furnish legal services to the corporation's members).

156. Interestingly, a few corporate law practices featured nonlawyers, rather than lawyers, and it is easy to imagine the bar distinguishing between the two flavors of corporate law practice — and outlawing the former but not the latter. The bar, however, did not take that tack. It chose instead to lump it all together, perhaps afraid that giving an inch to corporate competitors would mean losing a mile. For why we believe the bar took this aggressive (and strained) position, see *infra* notes 352-359 and accompanying text.

157. ABA Comm. on Pro. Ethics & Grievances, Formal Op. 8 (1925).

158. *Id.*

159. *Lawyers May Organize New Bar Association*, CIN. TIMES-STAR, Apr. 29, 1932, at 19, 19 (quoting the head of the Cuyahoga County Bar Association).

160. ABA Comm. on Pro. Ethics & Grievances, Formal Op. 8 (1925). For further discussion, see *infra* notes 352-359 and accompanying text.

161. CANONS OF PRO. ETHICS Canon 35 (1937); *see* Allan Greenberg, *The Case Against Unauthorized Practice of Law*, 18 B.U. L. REV. 298, 304 (1938) ("The fundamental objection to a corporation hiring lawyers, however competent, to perform legal services for others is that thereby the confidential trust relationship between client and attorney, which tradition and sound common sense regard as vital, would be destroyed."); John G. Jackson, *The Unauthorized Practice of the Law*, 12 NEB. L. BULL. 332, 335 (1934) ("If the lawyer becomes a salaried employee of business he then owes a single and undivided duty to contribute his efforts to the advantage of that business. As a lawyer, however, he owes a duty to the court and to the public, as well

In 1928, the ABA adopted Canon 35, fatefully enshrining that idea. Titled "Intermediaries," Canon 35 provided, in part:

> The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary.[162]

Canon 35 created a carve-out for "[c]haritable societies rendering aid to the indigent," but it contained no carve-out for nonprofits generally.[163] And though the ABA's Canons were not binding law, Canon 35 quickly became a powerful tool wielded against corporate practice.[164]

Soon after publishing Canon 35, in August 1930, the ABA created the "Committee on Unauthorized Practice," which was devoted, in large part, to investigating the potential unauthorized practice of corporate providers of legal

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as to his client. He can not consistently act in dual capacities at one and the same time."). Courts, too, articulated this concern. *See, e.g.*, People *ex rel.* Laws.' Inst. of San Diego v. Merchs.' Protective Corp., 209 P. 363, 366-67 (Cal. 1922) ("The essential relation of trust and confidence between attorney and client cannot be said to arise where the attorney is employed, not by the client, but by some corporation . . . . The attorney in such a case owes his first allegiance to his immediate employer, the corporation, and owes, at most, but an incidental, secondary, and divided loyalty to the clientèle of the corporation.").

Interestingly, today, the same argument continues to be accepted by courts. *See, e.g.*, Cap. Associated Indus. v. Stein, 922 F.3d 198, 209 (4th Cir. 2019) (holding that North Carolina's ban on corporate law practice was "sufficiently drawn" to survive intermediate scrutiny because supervision of lawyers by nonlawyers "could compromise professional judgment and generate conflicts between client interests and the corporation's interests").

162. CANONS OF PRO. ETHICS Canon 35 (1937). According to Henry S. Drinker, a leading ethicist of the era, in adopting Canon 35, the bar was influenced by, and drew heavily from, ABA Formal Opinion 8 regarding auto clubs, issued three years before. *See* HENRY S. DRINKER, LEGAL ETHICS 164 (1953). Nine years later, on September 30, 1937, the ABA again amended the Canons, this time to add Canon 47, which essentially fortified Canon 35. Titled "Aiding The Unauthorized Practice of Law," that provision stated: "No lawyer shall permit his professional services, or his name to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate." CANONS OF PRO. ETHICS Canon 47 (1937).

163. It is in some ways puzzling that the bar took aim at these intermediary relationships because, unlike lay representation (where lawyers were clearly losing out to their nonlawyer counterparts), the corporate practice of law involved the employment of lawyers. For our best guess of what motivated the bar to target its own, see *infra* notes 352-359 and accompanying text.

164. *See* Maura Strassberg, *Taking Ethics Seriously: Beyond Positivist Jurisprudence in Legal Ethics*, 80 IOWA L. REV. 901, 906-08 (1995) (discussing the Canons' power).

services.[165] Very soon after that, state bar associations enthusiastically seized the baton, setting their sights on corporate providers, including auto clubs.

Indeed, the very same month—March 1931—that the AAA special committee issued its report reassuring its member organizations that "no court has thus far actually held that a corporation not for profit is prohibited . . . from practicing law," the Court of Common Pleas of Cuyahoga County did just that.[166] In an opinion that the Ohio Bar Association heralded as the "opening gun" in "the War on Unauthorized Practice," the court enjoined the Cleveland Automobile Club's legal department from further activity.[167]

The remainder of Part II explores the bar's UPL-fueled, Depression-era battles against auto clubs in two steps. Section II.A zeroes in on the Chicago Bar Association's litigation against the 65,000-member Chicago Motor Club, while Section II.B canvasses the bar's broader anti-auto-club campaign.

A. Chicago Bar Association v. Chicago Motor Club

The Chicago Bar Association's suit against the Chicago Motor Club was waged in the shadow of all the above. But the suit was also informed by two recent Illinois-specific developments.

First, like the ABA with its recent addition of Canon 35, the Chicago Bar revised its ethics code in 1928 to account for (and restrict) new "corporate" providers.[168] But, unlike Canon 35, the provision the Chicago Bar ultimately enacted contained an explicit carve-out *protecting* auto clubs and other similar member-driven nonprofits.[169] This, of course, led the Chicago Motor Club to believe it was in the clear.[170]

Second (and quite possibly explaining the Bar's abrupt about-face), in the years before the Chicago Bar set its sights on the Chicago Motor Club, the Illinois and Chicago Bar Associations had joined forces to target on UPL grounds

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165. *Report of the Special Committee on Unauthorized Practice of the Law*, 54 ANN. REP. A.B.A. 470, 470 (1931).

166. AAA Report, *supra* note 1, at 31 (emphasis omitted). *Compare id.* (reassuring members that no court has prohibited not-for-profit corporations from practicing law), *with* Dworken v. Cleveland Auto. Club, 29 Ohio N.P. (n.s.) 607, 622 (C.P. Cuyahoga 1931) (enjoining a not-for-profit corporation from practicing law).

167. *Dworken*, 29 Ohio N.P. (n.s.) at 622. For the opinion's gleeful reception by the Ohio Bar Association, see *Progress of the War on Unauthorized Practice*, 34 OHIO L. REP. 223, 223 (1931), which celebrates "the campaign to restore the lawyer to his rights" and vows that efforts would "not stop until it has swept on to a complete victory."

168. *See* Abstract of Record, *supra* note 48, at 49-51.

169. *See id.*

170. *See* Chicago Motor Club Brief, *supra* note 7, at 24-26.

a for-profit corporation: the People's Stock Yards State Bank. Sometime in the preceding years, the bank had started to draft wills for its customers and also help customers with estate administration.[171] Deploying its new and expanded conception of UPL, the bar sued, and, in a precedent-setting 1931 opinion, Illinois's high court concurred, stressing that, going forward, a "corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it."[172] That precedent, which applied to a for-profit corporation, raised the possibility that even nonprofits could be brought to heel.[173]

It was against that backdrop that, in 1931, the Chicago Bar Association changed tack. It amended its code to strike the carve-out for auto clubs.[174] And it filed suit "to restrain [the Chicago Motor Club] from engaging in the alleged practice of law and to compel it to show cause why it should not be punished for contempt of court."[175] Suddenly on the defensive, an indignant Chicago Motor Club offered a blizzard of arguments. First, it pointed to the Bar's sudden turnaround, contending that "a mere change of view . . . does not prove that the rules adopted in 1928 were wrong."[176]

Second, the Club argued that, although its lawyers were technically employed by the Chicago Motor Club, they were, importantly, not answerable to it. "The Club attorney's duty to the individual members," it explained, "is not in any way impaired by the fact that he is employed by the Club's membership as a whole."[177] This independence was preserved, said the Club, in part because, as the Club's chief lawyer, Joseph H. Braun, insisted, the Club "did not dictate the manner in which we rendered the service."[178] "When a case is assigned to a lawyer employed by the Chicago Motor Club, that lawyer has discretion to handle the matter as he thinks right and proper. *He is not told by any corporate*

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171. *Supreme Court Prohibits Legal Advice by Bank*, CHI. DAILY TRIB., June 19, 1931, at 10, 10; People *ex rel.* Ill. State Bar Ass'n v. People's Stock Yards State Bank, 176 N.E. 901, 903 (Ill. 1931). For the bar's campaign against the era's other group-legal-service providers, see *infra* Part III.

172. *People's Stock Yards State Bank*, 176 N.E. at 906-07.

173. Partially answering that question was another case, involving an auto club organized as a nonprofit, challenged by the Illinois State Bar. *See* People *ex rel.* Chi. Bar Ass'n v. Motorists' Ass'n of Ill., 188 N.E. 827, 827 (Ill. 1933). Yet, though seemingly on point, that case did not control, the Chicago Motor Club insisted, because it was "in effect a default matter" and no testimony had informed the court's determination. Chicago Motor Club Reply Brief, *supra* note 122, at 12. Perhaps persuaded, in its 1935 decision, the Illinois Supreme Court cites *Motorists' Association of Illinois* only once, in passing. *See* People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, 199 N.E. 1, 4 (Ill. 1935).

174. Chicago Motor Club Brief, *supra* note 7, at 26.

175. *Chi. Motor Club*, 199 N.E. at 1.

176. Chicago Motor Club Brief, *supra* note 7, at 26.

177. Statement of the Chicago Motor Club, *supra* note 102 , at 11.

178. Abstract of Record, *supra* note 49, at 85-86.

officer what should or should not be done."[179] Indeed, underscoring the arms-length relationship between Club lawyers and management, the Club insisted that it did not itself profit from its direct provision of legal services. "Neither the Chicago Motor Club nor any individual connected with it receives any financial gain from the performance of the duties of the lawyers employed by it."[180]

Third, the Club maintained that its fee structure—wherein no Club lawyer "receives one penny from the member for services rendered"—served to *discourage* unethical practices, as compared to other available attorney-payment mechanisms.[181] The contingent-fee system, the Club explained, tempted some to "win a case at all costs," while the hourly fee tempted some to "drag a case along to the detriment of the client."[182] Meanwhile, *many* fee systems induced lawyers to render better services to some clients than others.[183] By contrast, Club lawyers were freed of all those temptations, and—paid a fixed and dependable salary—they could simply focus on "serving the members of the Club . . . conscientiously and well."[184]

Fourth and finally, the Club emphasized that it was overwhelmingly handling very small claims. (Of claims handled, some 99.2% reportedly involved damages of less than $200,[185] which translates into roughly $4,500 in present-day dollars.) "We doubt," said the Club, "whether even the neediest young attorney would consider these desirable cases."[186] Accordingly, the relevant question was not whether private lawyers offered higher-quality service than Club lawyers; it was whether the motoring public was better served by a Club lawyer than by going it alone.[187]

The Chicago Bar batted away most of the Club's arguments as beside the point. It did not matter, said the Bar, whether or not Club attorneys were

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179. Chicago Motor Club Brief, *supra* note 7, at 19.

180. *Id.* at 15 (emphasis omitted). This contention was exaggerated, as it was also said that the provision of legal services was a prime benefit of auto-club membership. *See supra* note 74 and accompanying text.

181. Chicago Motor Club Brief, *supra* note 7, at 15.

182. Chicago Motor Club Organization and Activities, *supra* note 68, at 17.

183. Chicago Motor Club Brief, *supra* note 7, at 15.

184. Chicago Motor Club Organization and Activities, *supra* note 68, at 17.

185. *Id.* at 16.

186. *Id.*; *see also* Chicago Motor Club Brief, *supra* note 7, at 20 ("The kind of practice handled by respondent's legal department would be unremunerative to lawyers in private practice." (emphasis omitted)); *id.* at 35 (stating that, in the absence of the auto club, individuals with small claims or facing minor charges would be "deprived of legal counsel and representation").

187. *See* Chicago Motor Club Brief, *supra* note 7, at 21 ("The Chicago Bar Association has failed to . . . offer any plan as a substitute for the service heretofore rendered by respondent's legal department.").

"efficient, faithful, diligent and ethical in their professional conduct."[188] Nor did it matter that "many of the activities of the Chicago Motor Club, aside from the legal end, were beneficial and salutary in their nature."[189] The simple fact was that the Club "has no right to practice law"—and that, by practicing law, the Club was engaging in conduct "detrimental . . . to the interests of the public at large" (though, how, exactly, was left unspecified).[190] Or, as the Bar later put it in a bulletin to members: "Regardless of the quality of the service, the relationship of attorney and client was lacking."[191]

After a public hearing before a special commissioner, wherein the Chicago Motor Club introduced copious evidence detailing its services and the Chicago Bar introduced no evidence of any kind (including not a shred of evidence concerning consumer harm),[192] the commissioner rendered his decision. His findings of fact supported the Club's key contentions. He concluded that the Club had "rendered valuable services to its members and to the communities in which it operates,"[193] and that "leading members of the Chicago bar" had been poised to testify "that each and every lawyer employed by the Chicago Motor Club legal department . . . has conducted himself in a dignified and reputable manner."[194] He also found that, when it came to handling the cases on their dockets, the lawyers exercised independent professional judgment; they had, in his words, "free reign."[195] Nonetheless, where it really counted, the Bar prevailed. Notwithstanding its usefulness, the Chicago Motor Club "has been, and is, engaged in the practice of law."[196]

The Chicago Motor Club appealed, and the case made its way to the Illinois Supreme Court. Siding with the Bar, the court doubled down on the "fundamental principle" enshrined in Canon 35 and recently accepted in Illinois in *People's Stock Yards State Bank*.[197] "[A] corporation," said the Illinois Supreme Court, "can neither practice law nor hire lawyers to carry on the business of

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188. Brief and Argument for Relator 36-37, People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, No. 21712 (June 8, 1935) (on file with Ill. State Archives, Sup. Ct. of Ill. Case Files, Vault No. 48018, Folder 2).

189. *The Chicago Motor Club Case*, 17 CHI. BAR REC. 12, 12 (1935).

190. Brief and Argument for Relator, *supra* note 188, at 40.

191. *The Chicago Motor Club Case*, *supra* note 189, at 12.

192. Chicago Motor Club Brief, *supra* note 7, at 2 ("The relator introduced no evidence.").

193. Abstract of Record, *supra* note 49, at 42 (reproducing the decision of Sidney S. Pollack).

194. *Id.* at 38. Note that the Bar stipulated to the testimony, so the witnesses were not actually called. *Id.*

195. *Id.* at 39.

196. *Id.* at 42.

197. People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, 199 N.E. 1, 3 (Ill. 1935).

practicing law for it."[198] "The fact that respondent was a corporation organized not for profit does not vary the rule."[199] In short: "Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this state."[200]

B. Broader Battles Involving Auto Clubs

In targeting—and vanquishing—its local auto club, the Chicago Bar Association was not alone. The same story would play out repeatedly throughout the country.

In 1931, the Chair of the Special Committee on Unauthorized Practice of Law of the Cuyahoga County Bar Association secured an injunction against the Cleveland Automobile Club, barring it from future legal activity.[201] By the end of that year, the Motorists' Alliance of America, the Motorists Association Limited, the State Motorists Protective Association, the Auto Guardians, and the Metropolitan Automobile Owners Association—all Ohio-based (or branched) auto clubs—were also enjoined.[202] The California Bar Association successfully sued the Pacific Coast Automobile Association for unauthorized practice in 1932; its legal department was kaput.[203] By 1934, the Tampa Bar Association had sought injunctions against auto clubs (as well as banks, trust companies, real-estate firms, rental agencies, a "furniture company," and others), whose lay practice the *Florida Law Journal* disclaimed as being "to the irreparable injury of the members of the Bar."[204] On June 4, 1935, the Missouri Bar sought an injunction against the Automobile Club of Missouri.[205] The same year, the Rhode Island Bar Association vanquished the Automobile Service Association,

198. *Id.* at 3-4 (quoting People *ex rel.* Ill. State Bar Ass'n v. People's Stock Yards State Bank, 176 N.E. 901, 907 (Ill. 1931)).

199. *Id.* at 4.

200. *Id.*

201. Dworken v. Cleveland Auto. Club, 29 Ohio N.P. (n.s.) 607, 622 (C.P. Cuyahoga 1931).

202. Goodman v. Motorists' All. of Am., Inc., 29 Ohio N.P. (n.s.) 31, 32, 34 (C.P. Hamilton 1931); *Ohio Bar Association Report: Unauthorized Practice of Law*, 3 OHIO ST. BAR ASS'N REP. 395, 395 (1930).

203. *See The Work of the Board of Governors*, 7 ST. BAR J. 53, 54 (1932).

204. *Tampa Bar Moves Against Unauthorized Practice of Law*, 8 FLA. L.J. 136, 136 (1934). The Tampa Bar Association obtained an injunction against the Automobile Owners Association of Florida in short order. *See* Yeats v. Auto. Owners Ass'n of Fla., Inc., No. 49754-C (Fla. Cir. Ct. 1934), *reprinted in* UNAUTHORIZED PRACTICE DECISIONS, *supra* note 85, at 326, 326-27.

205. *Suit Filed Against Auto Club and Credit Association*, 6 MO. BAR J. 93, 93 (1935).

which had been operating in the Ocean State.[206] The following year, the Carolina Motor Club met the same fate.[207] And, in 1937, Richard L. Merrick, the head of the D.C. Bar's Unauthorized Practice Committee (and, as we will see, an outspoken UPL crusader), announced that his office was filing suits against two "so-called motor clubs": the Motorists Protective Association and the Metropolitan Motor Club, Inc.[208]

These suits tended to follow a similar script. The clubs frequently pointed to their nonprofit status and the lack of evidence — or even suggestion — of member harm.[209] Many also pointed to statutes explicitly exempting them from the reach

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206. R.I. Bar Ass'n v. Auto. Serv. Ass'n, 179 A. 139, 146-47 (R.I. 1935). Like the Chicago Motor Club, the Automobile Service Association, located in Rhode Island, had been operating without issue for twelve years, "openly and under the advice of members of the Rhode Island Bar," before the state's Committee on Illegal Practice of Law abruptly changed its tune in the mid-1930s. Answer of Automobile Service Association, *supra* note 80, at 4. The Northeast-based Automobile Legal Association saw the same abrupt turnaround. In 1934 and 1935, the club changed aspects of its membership advertisements in response to requests from the Boston Bar Association's Committee on the Unlawful Practice of Law and made clear to the Committee that any future "suggestions as to the conduct of the business . . . would be accepted." Charles H. Donahue, Report 6-7, *In re* Thibodeau, No. 3555 (Mar. 18, 1936) (on file with Jud. Archives, Archives of the Commonwealth, Bos., Sup. Jud. Ct. Suffolk Cnty., Case File Papers 1936 Att'y Gen.). Instead, they were hauled into court a year later.

207. Seawell v. Carolina Motor Club, Inc., 184 S.E. 540, 545 (N.C. 1936).

208. Richard L. Merrick, *Report of the Committee on Suppression of Unauthorized Practice of Law*, 4 J. D.C. Bar Ass'n, Mar. 1937, at 31, 31-32.

Reading the writing on the wall, other clubs simply capitulated and announced that they would "discontinue[] all efforts of settlement of claims." Richard L. Merrick, Richard A. Harman, D.L. Grantham, John D. Sadler, Wm. J. Rowan, I. Brill & Louis O. Hodges, Jr., *Report on Activities of Committee on Suppression of Unauthorized Practice of the Law*, 3 J. D.C. Bar Ass'n, July 1936, at 30, 37; *accord The Chicago Motor Club Case*, *supra* note 189, at 12 (explaining that, in the wake of the Chicago Bar's victory against the Chicago Motor Club, "[t]he Association's Committee on Unauthorized Practice has heretofore succeeded in procuring the cessation of every other automobile and motor club from practicing law in the City of Chicago"); *Progress Made in Movement Against Unauthorized Practice*, 5 Okla. St. Bar J. 64, 65 (1934) (reporting that the Oklahoma Auto Club and the Automobile Owner's Service Association had agreed to stop offering services that the bar deemed objectionable); *Washington State Bar Engages in Vigorous Program Against Unauthorized Practice*, 8 Unauthorized Prac. News, July 1935, at 8, 8 (reporting that, in Washington, "[t]wo automobile associations which engaged in the unauthorized practice of law when they offered to furnish counsel for any legal matter connected with the automobile, were contacted and, after negotiations with the committee, agreed to desist").

209. *See, e.g.*, Brief of Defendants Appellants 7-8, Seawell v. Carolina Motor Club, Inc., No. 114 (Sept. 2, 1935) (on file with Sup. Ct. of N.C., Off. of the Clerk, Recs. & Briefs, Spring Term — 1936, Vol. 2, 2-19).

of UPL laws.[210] Advancing something like a reliance argument, some stressed that they had spent years collaborating with their local bar association's UPL committee, making "changes . . . so as to conform rigidly to all legal and ethical requirements."[211] And, echoing arguments made by the Chicago Motor Club, some insisted that they specialized in very small cases that would not be accepted by conventional counsel,[212] while others pointed out that, compared to lawyers generally, club attorneys were better insulated from corrupting pressures.[213]

Bar arguments also sounded similar themes. Corporations, said the bar, are not natural persons entitled to practice law, and so they cannot practice law through natural persons.[214] Next, in at least one case, the bar openly argued that, if the courts did not restrict corporate law practice, it would result in the "contraction of [the] lawyer's field"—and permit entities that included nonlawyer personnel to "reap the rewards for the performance of functions belonging to the lawyer."[215] Another familiar complaint was that auto clubs in effect advertised their legal services at a time when attorneys were prohibited from engaging in such activity.[216] And, echoing Canon 35, the bar also argued that bans on corporate law practice were necessary, as a lawyer employed by a corporation but serving an individual client would not be capable of independent judgment.[217] His allegiance would be to the "organization rather than to the

210. *See, e.g.*, Brief and Argument for Relator, *supra* note 188, at 11-12; People *ex rel.* Chi. Bar Ass'n v. Motorists' Ass'n of Ill., 188 N.E. 827, 828 (Ill. 1933); Edward B. Bulleit, *The Automobile Clubs and the Courts*, 5 LAW & CONTEMP. PROBS. 22, 24 (1938).

211. Respondent's Answer to the Information Filed by the Attorney General 16, *In re* Thibodeau, No. 3555 (Oct. 8, 1935) (on file with Jud. Archives, Archives of the Commonwealth, Bos., Sup. Jud. Ct. Suffolk Cnty., Case File Papers 1936 Att'y Gen.); *see* Affidavit of Coleman H. Roberts 21, Seawell v. Carolina Motor Club, Inc., No. 114 (Sept. 6, 1935) (on file with Sup. Ct. of N.C., Off. of the Clerk, Recs. & Briefs, Spring Term—1936, Vol. 2, 2-19).

212. *E.g.*, Reply Brief of Appellant 5, Am. Auto. Ass'n v. Merrick, No. 7646 (Nov. 14, 1940) (on file with Nat'l Archives, Recs. of U.S. Cts. of Appeals, Rec. Group 276, U.S. Ct. of Appeals for the D.C. Cir., Gen. App. Jurisdiction Case Files, 1894-1996).

213. *E.g.*, AAA Report, *supra* note 1, at 61 ("[T]he practice of the automobile club law departments is more free from unethical conduct than is the legal profession in general.").

214. *See In re* Op. of the Justices, 194 N.E. 313, 317 (Mass. 1935) (accepting this argument); Seawell v. Carolina Motor Club, Inc., 184 S.E. 540, 545-46 (N.C. 1936) (same).

215. Brief for Appellees 41, 44, Am. Auto. Ass'n v. Merrick, No. 7646 (Sept. 17, 1940) [hereinafter D.C. Bar *Merrick* Brief] (on file with Nat'l Archives, Recs. of U.S. Cts. of Appeals, Rec. Group 276, U.S. Ct. of Appeals for the D.C. Cir., Gen. App. Jurisdiction Case Files, 1894-1996). For an additional spin on this argument, see *infra* notes 352-359 and accompanying text.

216. *E.g.*, D.C. Bar *Merrick* Brief, *supra* note 215, at 43-44. For additional articulations of this concern, see *supra* notes 160, 163.

217. Grace M. Giesel, *Corporations Practicing Law Through Lawyers: Why the Unauthorized Practice of Law Doctrine Should Not Apply*, 65 MO. L. REV. 151, 158 (2000) (discussing this common refrain and collecting authorities).

individual served," thus impairing the "delicate, personal and confidential relationship of attorney and client."[218]

By any objective measure, the bar's arguments were weak. For starters, the only-humans-can-practice-law-corporations-are-not-humans-ergo-corporations-cannot-practice-law syllogism is almost laughable. As one commentator noted, it was akin to "saying that a trucking company cannot run the business of trucking because the company cannot obtain a license to drive trucks."[219]

Second, although the bar was, ostensibly, concerned that corporate law providers could advertise at a time when their lawyer counterparts couldn't, that discrepancy was hardly insoluble. As a 1931 note in the *Harvard Law Review* explained, if the bar really was concerned about such advertising, "[t]he prohibition of advertising" applicable to lawyers could simply "be extended to the legal activities of corporations."[220]

Third, throughout its campaign, the bar tended to lean hard on a particular *proxy* for lawyerly independence (direct payment from the client to the lawyer), without ever establishing the proxy's essential fit. The bar never convincingly explained why, exactly, client payment to the lawyer preserves professional independence (particularly since a key component of lawyer independence is independence *from* the client).[221] Nor did the bar grapple with the fact that, if direct payment *was* the sine qua non for lawyerly independence, in battling corporate practices, its campaign was deeply underinclusive. Even by the 1930s, for instance, plenty of lawyers worked in law firms and "owe[d] their bread and butter to the office"—and so, by rights, these lawyers, too, should have fallen outside the sanctioned paid-by-the-client scheme.[222]

Fourth (and similarly), in arguing that the corporate practice of law *necessarily* harms consumers, the bar never distinguished myriad similar arrangements that were wholly permitted. In particular, lawyers have long been

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218. Williams et al., *supra* note 8, at 27.

219. Giesel, *supra* note 217, at 176. Or, as Peter L. Zimroth tartly responded: "It is true, of course, that a corporation cannot take an oath and has no human qualities. It does not follow that the lawyers employed by the corporation are equally disabled." Peter L. Zimroth, *Group Legal Services and the Constitution*, 76 YALE L.J. 966, 973 (1967).

220. Note, *The Practice of Law by Corporations*, 44 HARV. L. REV. 1114, 1118 (1931).

221. Barlow F. Christensen, *Regulating Group Legal Services: Who Is Being Protected—Against What—And Why?*, 11 ARIZ. L. REV. 229, 240-41 (1969) (articulating a similar general point). For the importance of independence from one's client, see Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 34 (1988); and Bruce A. Green, *Lawyers' Professional Independence: Overrated or Undervalued?*, 46 AKRON L. REV. 599, 608-13 (2013).

222. H.H. Walker Lewis, *Corporate Capacity to Practice Law—A Study in Legal Hocus Pocus*, 2 MD. L. REV. 342, 345 (1938).

authorized to represent their corporate employer (as, apparently, lawyers' loyalty is only compromised when they are serving the corporation's members or customers, not the corporation itself).[223] Insurance companies have long been permitted to employ lawyers to represent policyholders.[224] Lawyers who served the indigent could be employed by intermediaries.[225] The government could employ lawyers to represent individuals.[226] Since the early days of the Republic, nonlawyers have been permitted to represent themselves.[227] Lawyers could employ nonlawyers (just not the opposite).[228] And lawyers could be compensated by nonclients, assuming the lawyer complied with certain requirements.[229] It is not clear—and the bar never persuasively explained—why we worry about lawyer independence in one context and not others.

Finally—and tellingly—in the course of its campaign, the bar neither surfaced concrete proof of *any* auto-club-inflicted harm, nor grappled with the

223. *E.g.*, *In re* Otterness, 232 N.W. 318, 319 (Minn. 1930) (per curiam) ("There can be no objection to the hiring of an attorney on an annual salary basis by banks, other corporations, firms, or individuals, to attend to and conduct its or their legal business.").

224. *See* Motion and Brief of National Lawyers Guild, Amicus Curiae at 15-16, United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n, 389 U.S. 217 (1967) (No. 33) (highlighting this inconsistency). In fact, in the early 1930s, insurers temporarily found themselves in the bar's crosshairs. But, in 1938, the insurance industry and bar reached an agreement that permitted the insurance industry to continue its operations, including (even) its employment of lay adjusters. *See Unauthorized Practice of the Law*, 9 LAW SOC'Y J. 50, 50 (1940). Cementing that peace, in 1950, the ABA issued Formal Opinion 282, which established that lawyers employed by insurance companies could represent insureds. ABA Comm. on Pro. Ethics & Grievances, Formal Op. 282 (1950). The arrangement did not run afoul of Canon 35, the ABA reasoned, given the "community of interest . . . between the company and the insured growing out of the contract of insurance." *Id.* We address the story of this midcentury clash between the bar and the insurance industry, and why its resolution differed from the fate of the auto clubs' legal departments, in a forthcoming piece. *See* Nora Freeman Engstrom & James Stone, Insurance Industry Exceptionalism (unpublished manuscript) (on file with authors).

225. CANONS OF PRO. ETHICS Canon 35 (AM. BAR ASS'N 1953) (excluding from the prohibition "[c]haritable societies rendering aid to the indigent[]"). As the Massachusetts Supreme Judicial Court intoned: "The gratuitous furnishing of legal aid to the poor and unfortunate . . . do[es] not constitute the practice of law." *In re* Op. of the Justices, 194 N.E. 313, 317-18 (Mass. 1935).

226. Bruce A. Green, *Disciplinary Restrictions on Multidisciplinary Practice: Their Derivation, Their Development, and Some Implications for the Core Values Debate*, 84 MINN. L. REV. 1115, 1152 (2000). That said, the bar has, at times, challenged even government-run programs. *See* NAACP Brief, *supra* note 25, at 27-28 (collecting examples).

227. *See* Faretta v. California, 422 U.S. 806, 812 (1975) ("In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation.").

228. Green, *supra* note 226, at 1153.

229. Chicago Motor Club Brief, *supra* note 7, at 17-18.

genuine harm that would predictably result from the *withdrawal* of the auto clubs' legal services.[230]

No matter. Whatever their merit, the arguments prevailed. In state after state, bars sued. Bars won. And auto-club legal departments that, prior to the 1930s, had been providing free legal advice and full-scale legal representation to tens of thousands of individuals each year, were shuttered.[231]

III. PILEUP: THE BAR'S BROADER CAMPAIGN AGAINST OTHER "CORPORATE" PROVIDERS AND THE REMAKING OF LAWYER REGULATION

Of all the organizations caught in the bar's crosshairs, it appears auto clubs were the largest and most prominent.[232] But they were neither the first nor the only target.[233] For example, in Cleveland, by 1932, injunctions were sought and obtained "in some eighteen suits brought to put an end to the unlawful practice of the law by different organizations and associations."[234] These suits enjoined not just auto clubs, but also "realty owners associations, title companies and banks."[235] Figures showed that, before the injunctions, the targeted organizations had a combined membership of 80,200 people.[236] After the injunctions, essentially all those people were deprived of previously available help.

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230. *E.g.*, D.C. Bar *Merrick* Brief, *supra* note 215, at 21 (dismissing the District of Columbia Motor Club's argument that, without its efforts, motorists would be deprived of legal representation by stating that this was "an argument of expediency and not of law").

231. By 1936, Stanley Houck, Chair of the ABA's Committee on Unauthorized Practice, surveyed the litigation landscape and concluded that auto clubs were now forbidden from "render[ing] any legal service whatsoever." Stanley B. Houck, *What the Courts Are Doing to Stamp Out Unauthorized Practice*, 13 DICTA 269, 270 (1936). For how certain clubs continued to try to offer scaled-down legal services in the shadow of court rulings, see BARLOW F. CHRISTENSEN, GROUP LEGAL SERVICES 24 (1967); and *Automobile Club of Missouri v. Hoffmeister*, 338 S.W.2d 348, 352–55 (Mo. Ct. App. 1960), which describes the restricted services of the Missouri Automobile Club, which, after an earlier skirmish with the bar, had lawyers merely enter guilty pleas on behalf of members, before ultimately finding that these limited efforts still constituted UPL.

232. *See* Williams et al., *supra* note 8, at 26 ("These [automobile] associations come into contact with a larger percentage of the public generally than do any of the other law agencies under investigation.").

233. For early efforts against corporate practice, see *supra* note 155 and accompanying text.

234. John G. Jackson, *Unauthorized Practice of Law in New York State*, 4 N.Y. ST. BAR ASS'N BULL. 136, 140 (1932).

235. *Id.*

236. *Id.*

The same story played out in city after city and state after state such that, by 1936, a broad array of associations and corporations had mostly given up on trying to provide legal services to their members or customers.[237] And by 1938—just ten years after Canon 35 was enacted to extend the reach of UPL prohibitions to lawyer-provided legal services—a commentator would declare that "[n]othing is better settled than the proposition that a corporation cannot practice law."[238]

This Part surveys the bar's broader battles in two steps. Section III.A surfaces one clear consequence of the bar's UPL campaign against corporate providers: the determination that courts (not politically accountable legislatures) have the authority to regulate law practice. Indeed, as we will see, in their campaign against auto clubs, some states went so far as to declare that legislation regarding law practice is subject to a remarkable asymmetry, such that statutory intervention is only constitutional when it curtails (not when it expands) access to legal services.[239] Then, Section III.B fast-forwards from the 1930s to the 1960s

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237. For a contemporary accounting, see *Minutes of the Thirty-Eighth Annual Meeting: June 5th and 6th, The Second Session*, 3 N.J. ST. BAR ASS'N Q. 171, 180-85 (1936). Of course, some organizations (such as the Brotherhood of Railroad Trainmen (BRT) and the United Mine Workers) persisted, although, in so doing, these organizations became battle-scarred. *See, e.g.*, Richard M. Markus, *Group Representation by Attorneys as Misconduct*, 14 CLEV.-MARSHALL L. REV. 1, 9-12 (1965) (describing the BRT's numerous—and sometimes unsuccessful—run-ins with the bar); *In re* O'Neill, 5 F. Supp. 465, 466 (E.D.N.Y. 1933) (per curiam) (censuring a lawyer for engaging with the BRT). We were unable to find a single state or local bar association that actively avoided targeting corporate practice. Early on, a small minority of officials suggested moderation, but none were successful. *See* Williams et al., *supra* note 8, at 26; *Lawyers May Organize New Bar Association*, *supra* note 159, at 19 (describing younger lawyers branching off from the Cincinnati Bar Association to form the Cuyahoga County Bar Association in protest of the former's failure to police corporate practice more aggressively).

238. Lewis, *supra* note 222, at 342. Reflecting on the quick consensus, in 1938, another commentator observed:

> It is a rare phenomenon in the history of jurisprudence for a body of law on a particular subject of consequence to crystallize within the short space of ten years. And yet, in even less time than that a virtually complete case has been made out against unauthorized practice of law.

Greenberg, *supra* note 161, at 314.

239. As of 1938, a commentator canvassed existing authority and explained that courts had come to agree that, although "the legislative department" could "expressly forbid[] practice of law by corporations," the legislature was not "competent to pass laws permitting corporations . . . to practice law." Greenberg, *supra* note 161, at 301; *see also* Henry M. Dowling, *The Inherent Power of the Judiciary*, 21 A.B.A. J. 635, 638 (1935) ("[W]hile the legislature may thus fix the *minimum* requirements, and forbid the admission of those lacking such, it cannot determine the *maximum* qualifications and require the acceptance of those who possess them . . . ."). For further discussion, see *infra* notes 254-255 and accompanying text.

and 1970s to consider four cases where the U.S. Supreme Court belatedly tapped the brakes on the ABA's concerted campaign.

A. Courts as the Arbiters of Law Practice

As part of its 1930s-era push against "corporate" law practice, the organized bar did more than snuff out the competition and substantially extend the reach of UPL laws to restrict even lawyer-supplied legal services. The bar also, consequentially, ensured that courts, not legislatures, would henceforth define — and regulate — the practice of law.[240]

It was not always thus. In fact, during the early years of the last century, the bar had lobbied legislatures to define the practice of law.[241] But that effort was stunted because state legislatures frequently demurred or, alternatively, drafted a definition that specifically authorized the activities of certain popular practitioners.[242] As Richard L. Merrick, the head of the D.C. Bar's Unauthorized Practice Committee, lamented in 1936: "Attempted legislation . . . prohibiting any but lawyers from engaging" in legal practice "has met with failure."[243] "[W]hen legislation comes before state legislatures," he continued, existing corporate practitioners "either defeat such measures or insert provisions excepting from the operation of those enactments particular lines of endeavor or particular agencies, such as . . . automobile clubs."[244]

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240. *See* Greenberg, *supra* note 161, at 314 (writing in 1938 and explaining how, over a very short period of time, "the courts assumed the right to define and regulate the practice of law, a right which they uniformly regard as inherent in them").

241. *See, e.g.*, Richard L. Abel, American Lawyers 112-15 (1989) (describing these efforts); Laurel A. Rigertas, *Lobbying and Litigating Against "Legal Bootleggers" — The Role of the Organized Bar in the Expansion of the Courts' Inherent Powers in the Early Twentieth Century*, 46 Cal. W. L. Rev. 65, 82-91 (2009) (same); *Report of Committee on Unauthorized Practice of Law*, 1 J. Bar Ass'n St. Kan. 65, 65-66 (1932) (calling for legislative activity); Gilb, *supra* note 155, at 231 (describing the California Bar's unsuccessful legislative efforts in 1913, 1915, 1917, and 1921); *Jersey Anti-Propaganda Bill, Aimed at Nazism, Becomes Law*, N.Y. Herald Trib., Apr. 9, 1935, at 1, 1 (describing the narrow defeat of a bill "which would have given lawyers a monopoly on semi-legal business, such as preparing wills").

242. Henry Weihofen, Comment, *"Practice of Law" by Non-Pecuniary Corporations: A Social Utility*, 2 U. Chi. L. Rev. 119, 123-25 (1934).

243. Richard L. Merrick, *Power of Courts to Suppress Unauthorized Practice of Law*, 3 J. D.C. Bar Ass'n, Oct. 1936, at 29, 31.

244. *Id.* at 31. Pennsylvania offers a vivid illustration. There, the bar sponsored legislation to snuff out corporate law practice, but, at the eleventh hour, an "exception" was inserted into the bill without the bar's knowledge, which "enable[d] automobile clubs to have the club's counsel represent their members." *Law, Lawyers, and Courts: State Bar Committee in Session*, 29 Luzerne Legal Reg. Reps. 548, 548 (1934); *accord Report of the Standing Committee on*

According to one contemporary scholar, this legislative obstinance was traceable to the fact that "there exists a strong sentiment among laymen in favor of the performance by corporations of many kinds of legal services."[245] "The layman," he explained, "seems to feel that the lawyer is frequently careless and irresponsible."[246] By contrast, in the public's view, "corporations possess many attractive advantages."[247] Echoing that sentiment, in 1930, even the President of the State Bar of California admitted: "One of the reasons why we have lay encroachments is because the public has not the largest amount of confidence in the bar."[248]

Undaunted, in the 1930s, the bar changed its strategy. Stymied for years by legislatures, in an abrupt pivot, the bar turned to courts.[249] And, once in the courts, the bar, in the reversal of all reversals, argued that it was *unconstitutional*

Unauthorized Practice of the Law, 58 ANN. REP. A.B.A. 521, 524 (1935) ("The committee has observed, with very great regret, the highly undesirable exceptions which seem, almost inevitably, to creep into legislation."); *Why Legislate?*, 1 UNAUTHORIZED PRAC. NEWS, Mar. 1935, at 8, 8 ("Legislation attempting to define the practice of law or to prohibit the doing of certain acts which may constitute the practice of law is dangerous, undesirable and ineffective. If history repeats itself, such legislation will always be burdened with exceptions in favor of lay practitioners.").

245. I. MAURICE WORMSER, FRANKENSTEIN, INCORPORATED 169 (1931).

246. *Id.* at 170.

247. *Id.* at 170-71; *see also* Shinn, *supra* note 147, at 98-101 (describing the public's strong preference for corporate, rather than individually provided, legal services); *The Practice of Law by Corporations*, *supra* note 220, at 1116 ("[T]he public apparently approves of the execution of various legal documents by banks, trust companies, and real estate offices, as well as the practice of incorporating through companies rather than individual attorneys."); *The Law Business Needs Reorganizing*, CHI. DAILY TRIB., Mar. 1, 1928, at 10, 10 (expressing opposition to the Chicago Bar's UPL litigation against the Stock Yards Bank and stating that "[t]he ordinary man feels, and rightly, that he is in better hands when dealing with an established bank than in going to some lawyer" while further stressing that the bar's hostility to corporate law practice "is not shared outside the profession").

248. Charles A. Beardsley, *Lay Encroachments*, 14 J. AM. JUDICATURE SOC'Y 130, 132 (1930).

249. *E.g.*, Merrick, *supra* note 139, at 36 ("It is believed by the Committee that legislation for the suppression of unauthorized practice of law or defining what constitutes the practice of law and specifying who may engage therein is not necessary, but that the courts are safe repositories of the power to regulate the practice of law . . . and that their inherent power is ample to meet the exigencies of all occasions."); *Report of the Standing Committee on Unauthorized Practice of the Law*, *supra* note 244, at 523 (reporting on a lack of legislative success and declaring that, going forward, "[l]egislation . . . is unnecessary and undesirable"); *Why Legislate?*, *supra* note 244, at 8 (explaining that, "shortly after its creation," the Committee on Unauthorized Practice determined that "legislation is undesirable" and that "[w]hat constitutes the practice of law ought to be left entirely to the judgment and determination of the judicial department"). For more on this pivot, see Rigertas, *supra* note 11, at 108-18.

for the legislature to define the practice of law; only courts possessed that authority.[250]

Notwithstanding the fact that, prior to this time, courts had generally agreed that legislatures were entitled "to make reasonable rules regarding admission to the bar," the courts bit.[251] Throughout the 1930s, in case after case, courts did not merely expand the bounds of "authorized" law practice (now encompassing only duly licensed and *independently employed* lawyers). Articulating a new and staggeringly broad conception of inherent powers, courts simultaneously declared that they, themselves, not only had power to regulate lawyers—they had the *sole* authority to regulate *lawyering*.[252]

Thus, in 1936, Merrick of the D.C. Bar was able to declare that "[t]here has grown up a very general conception . . . that the highest court in a state ought to have complete and unfettered power and authority to deal with all phases of the practice of law."[253]

Nowhere is this transition starker than in *In re Opinion of the Justices*.[254] There, in 1935, the Massachusetts Supreme Judicial Court not only disregarded a Massachusetts statute that had explicitly authorized auto clubs' legal services. The court also concluded that, henceforth, the practice of law would be governed

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250. In 1936, Richard L. Merrick of the D.C. Bar described the shift thus: "Having met with no success in the legislative field . . . [lawyers] resorted to the courts themselves, and here they have found the remedy for the existing evil." Merrick, *supra* note 243, at 31.

251. Weihofen, *supra* note 242, at 124.

252. Courts typically justified this newfound ability with a kind of separation-of-powers argument—that the regulation of lawyers was the court's province, not the legislature's. *See, e.g.*, *In re* Fla. State Bar Ass'n, 186 So. 280, 285 (Fla. 1938) (concluding that the power to regulate the profession is "inherent in the courts and cannot be taken from them by the Legislature"); People *ex rel.* Ill. State Bar Ass'n v. People's Stock Yards State Bank, 176 N.E. 901, 907 (Ill. 1931) ("The Legislature has not attempted to tie the hands of the courts in dealing with [corporate UPL], and any attempt to do so would be an infringement upon the inherent exclusive jurisdiction of the courts."); *In re* Tracy, 266 N.W. 88, 93 (Minn. 1936) ("No statute can control the judicial department in the performance of its duty to decide who shall enjoy the privilege of practicing law." (quoting *In re* Op. of the Justices, 180 N.E. 725, 726 (1932))), *modified*, 267 N.W. 142 (Minn. 1936); R.I. Bar Ass'n v. Auto. Serv. Ass'n, 179 A. 139, 142 (R.I. 1935) ("[T]his court . . . alone has the power to license attorneys and counselors at law in the courts of this state . . . ."). As Richard L. Merrick of the D.C. Bar put it: "When resort began to be had by lawyers to the courts for the suppression of unauthorized practice of law, the term 'inherent powers' of the courts came to have a new meaning." Merrick, *supra* note 243, at 33. For further discussion of this profound evolution, see Rigertas, *supra* note 241, at 69; and Dowling *supra* note 239, at 637, which explains that, in recent years, "whether rightfully or wrongfully, the courts have claimed an inherent judicial power of wide and expanding extent." For a broad discussion and critique, see Charles W. Wolfram, Modern Legal Ethics 27-31 (1986); and Wolfram, *supra* note 10, at 6, 16-17.

253. Merrick, *supra* note 243, at 32.

254. 194 N.E. 313, 318 (Mass. 1935).

by a one-way ratchet. In the court's telling: "[L]egislation forbidding the practice of law . . . by corporations or associations . . . is permissible, but that legislation permitting the practice of law by such persons would not be constitutionally competent."[255] Basically, said the court: as long as the legislature seeks to limit, rather than expand, the pool of available legal assistance, the legislature's activity is perfectly fine.[256]

B. The Supreme Court's Ultimate Intervention

In the decades following its Depression-era flurry of UPL activity, the bar continued its campaign against corporate law practice. Here, too, the bar mostly succeeded.[257] The caveat comes because, between 1963 and 1971, the U.S. Supreme Court decided four cases—*NAACP v. Button*,[258] *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar* (*BRT*),[259] *United Mine Workers of America, District 12 v. Illinois State Bar Association*,[260] and *United Transportation Union v. State Bar of Michigan*[261]—wherein the bar recycled its familiar arguments to crack down on corporate service providers (specifically, the NAACP and unions, respectively). Yet, in these suits, the bar, ultimately, did not prevail. In each, the case made its way to the Supreme Court, and the Court held that the First Amendment protects the right of individuals to cooperate with one another to assert their legal rights.[262]

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255. *Id.* In fashioning this one-way ratchet, the Massachusetts Supreme Judicial Court was not alone. *See supra* note 239.

256. Though states have always differed in how they define and enforce restrictions on law practice, the vast majority continue to adhere to the courts-as-sole-arbiters approach. *See* Lucy Ricca & Thomas Clarke, *The Bar Re-Imagined: Options for State Courts to Re-Structure the Regulation of the Practice of Law*, STAN. L. SCH. DEBORAH L. RHODE CTR. ON THE LEGAL PRO. 5 (Sept. 2023), https://law.stanford.edu/wp-content/uploads/2023/09/Rhode_Center_Re-ImaginingTheBar.pdf [https://perma.cc/X7F6-PTTJ].

257. *See, e.g.*, Philip J. Murphy, *The Prepaid Legal Services Picture*, 62 A.B.A. J. 1569, 1569 (1976) (explaining that, as recently as 1965, the Hotel Workers Union in New York had tried to offer its members legal assistance but was stymied when UPL charges were brought against it).

258. 371 U.S. 415, 444 (1963).

259. 377 U.S. 1, 8 (1964).

260. 389 U.S. 217, 224-25 (1967).

261. 401 U.S. 576, 580-86 (1971).

262. *E.g.*, *Bhd. of R.R. Trainmen*, 377 U.S. at 8. Auto clubs had voiced similar associational arguments decades before. *See, e.g.*, Brief for Appellant 4, Am. Auto. Ass'n v. Merrick, No. 7646 (Aug. 22, 1940) (on file with Nat'l Archives, Recs. of U.S. Cts. of Appeals, Rec. Group 276, U.S. Ct. of Appeals for the D.C. Cir., Gen. App. Jurisdiction Case Files, 1894-1996) ("[M]otorists as a group have a right to band themselves together and secure for themselves

Decided in 1967, *United Mine Workers* is arguably the most relevant. There, the Illinois Supreme Court had ruled against the United Mine Workers, which had, for roughly half a century, operated a legal department staffed by a salaried lawyer who was tasked with helping union members or relatives of union members injured or killed in coal-mining accidents assert workers' compensation claims for personal injury or death.[263] On the facts, the union's case was strong. In the prior six years alone, the legal department had processed almost two thousand claims and collected over $2 million for injured or killed workers or their families—every penny of which had gone to clients.[264]

Further—and similar to the auto-club context—over the course of these two thousand claims, there was not even a whiff of client injury or attorney misconduct. The Illinois Bar Association identified "not one single instance of abuse, of harm to clients, of any actual disadvantage to the public or to the profession, resulting from the mere fact of the financial connection between the Union and the attorney who represents its members."[265] And as for fears of divided loyalties? There was "absolutely no indication that the theoretically imaginable divergence between the interests of union and member ever actually arose."[266]

Broader considerations also tilted in the union's favor. The Illinois Supreme Court recognized: "There can be no question of the hazards involved in coal mining, and undoubtedly the possibility exists that injured coal miners," who are deprived of legal assistance and who are "untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements."[267] There was, then, real harm that would attend the abrupt withdrawal of the union's assistance.

Yet, in a now-familiar refrain, the Illinois Supreme Court still sided with the Chicago Bar to enjoin the union's activity. In that court's words: "[A]s was said

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services in connection with automobiling which are not otherwise available."). But, when voiced by auto clubs, the argument did not gain traction. D.C. Bar *Merrick* Brief, *supra* note 215, at 22 (forcefully dismissing the argument).

263. Ill. State Bar Ass'n v. United Mine Workers of Am., Dist. 12, 219 N.E.2d 503, 504 (Ill. 1966); *see also United Mine Workers*, 389 U.S. at 219-21 (describing the legal department in the early 1910s).

264. Motion and Brief of National Lawyers Guild, Amicus Curiae, *supra* note 224, at 14; *see also United Mine Workers*, 389 U.S. at 221 ("The full amount of any settlement or award is paid directly to the injured member. The attorney receives no part of it, his entire compensation being his annual salary paid by the Union.").

265. *United Mine Workers*, 389 U.S. at 225.

266. *Id.* at 224.

267. *Ill. State Bar Ass'n*, 219 N.E.2d at 507.

in Chicago Motor Club . . . : 'Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this state.'"[268]

Unlike in the auto-club cases of the 1930s, however, that was not the end of the matter. In the shadow of *Button* and *BRT*, the U.S. Supreme Court granted certiorari and reversed the decision of the Illinois Supreme Court: "We hold that the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments gives [the union] the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights."[269]

Ultimately, the ABA had no choice but to scale back its sights. Initially, it did so grudgingly. In an early-1970s amendment to its Model Code, the ABA began permitting lawyers to work for lay organizations that furnished legal services "only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the service requires the allowance of such legal service activities."[270] The ABA, then, would comply with the Court's rulings — and give not an inch more.[271]

Today, the governing prohibition has softened some. Instead of banning all "intermediary" arrangements, Model Rule of Professional Conduct 5.4(d) only

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268. *Id.* at 506 (citation omitted) (quoting People *ex rel.* Chi. Bar Ass'n v. Chi. Motor Club, 199 N.E. 1, 4 (Ill. 1935)).

269. *United Mine Workers*, 389 U.S. at 221-22.

270. MODEL CODE OF PRO. RESP. DR 2-103(D)(5) (AM. BAR ASS'N 1974), *reprinted in* Walter P. Armstrong, Jr., *Ethical Problems in Connection with the Delivery of Legal Services*, 12 SAN DIEGO L. REV. 336, 337 (1975). Excepted from the prohibition were legal-aid plans, military legal-assistance offices, and approved lawyer-referral schemes. This grudging response to *Button* and its progeny was broadly criticized. *See, e.g.*, Huber, *supra* note 138, at 568 (criticizing the ABA's response to *Button* and its progeny as "recalcitrant and myopic"). For the advent of the Model Code of Professional Responsibility, see Strassberg, *supra* note 164, at 908-09. States were not formally required to adopt the Model Code (just as they are not formally required to adopt today's Model Rules), but they do, with some state-specific amendments and variations. For a discussion of the rapid and widespread adoption of the Model Code, see LISA G. LERMAN & PHILIP G. SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 38-39 (2d ed. 2008). For state adoption of the ABA's Model Rules by year, see *Alphabetical List of Jurisdictions Adopting Model Rules*, AM. BAR ASS'N (Mar. 28, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules [https://perma.cc/Q5GJ-MZKF].

271. Reading the tea leaves, the ABA also threw its weight behind open-panel legal-insurance plans. Under these plans, which operated like a modern-day medical preferred-provider organization, a legal insurer would foot the bill for legal assistance — and the insured retained the right to seek assistance from any lawyer, without restriction. *See* Engstrom, *supra* note 76 (manuscript at 53-58). It was not lost on contemporary commentators that these plans, which tended not to put any downward pressure on legal fees, would be a boon to lawyers' bottom lines. *See* Richard J. Hayes, *Delivery Systems for Legal Services — Prepaid Legal Services and Prepaid Legal Insurance*, 40 INS. COUNS. J. 414, 422 (1973) ("The possibilities for new legal business through the use of prepaid legal services stagger the imagination.").

precludes lawyers from practicing in for-profit (not nonprofit) corporations.[272] That means, in an ironic twist, most auto clubs' legal departments would probably pass muster if they were reevaluated today.[273] But apparently, it was all too little, too late. As far as we can tell, for whatever reason, there has been no revival of auto-club activity.[274]

IV. WRECKAGE: THE LEGACY OF AMERICA'S AUTO-CLUB EXPERIMENT

This final Part steps back to assess what lessons the rise and fall of American auto clubs holds for the regulation of lawyers, lawyering, and legal assistance. Undergirding this discussion sits a critical and easily overlooked fact: although legal-service-provider regulation—and its inescapably tangled discussion of

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272. *See* Green, *supra* note 226, at 1142 (tracing this history). An additional coda is that, between 1937 and 1978, the ABA reached what amounted to truces (called "Statements of Principles") with numerous other professionals—including, among others, accountants, title companies, insurers, realtors, and social workers. These agreements essentially carved up legal tasks into those reserved for lawyers and those that could be handled by nonlawyer professionals. For more on these arrangements, see Quintin Johnstone, *The Unauthorized Practice Controversy, a Struggle Among Power Groups*, 4 KAN. L. REV. 1, 22-29 (1955); and Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 9-10 (1981). For a similar accord the California Bar reached with the Motor Club of Southern California, see *infra* notes 361-363 and accompanying text. Many of these agreements were rescinded in 1979, in the shadow of antitrust considerations. *See* Rhode, *supra*, at 10 n.36.

273. Some auto clubs were for-profit entities rather than nonprofits, and the former would likely run afoul of contemporary Rule 5.4(d). *See* Williams et al., *supra* note 8, at 26 ("Automobile associations or motor clubs fall roughly into two classes, i.e. nonprofit . . . and for profit.").

274. It is a bit of a puzzle why clubs did not resume legal work. It could be that, by the time they were given the green light, other intervening developments—including compulsory liability-insurance laws, the rise in first-party auto-insurance coverage, some states' adoption of auto no-fault legislation, experimentation in legal insurance, and then, starting in the 1980s, the growth of settlement mills—filled some of the vacuum that auto clubs initially left. For a discussion of many of these developments, see generally Nora Freeman Engstrom, *An Alternative Explanation for No-Fault's "Demise,"* 61 DEPAUL L. REV. 303 (2012). In addition, for a time in the 1970s, legal-insurance plans likely picked up some of the slack. *See* Philip J. Murphy, *Prepaid Legal Services: Development and Problems*, 20 ARIZ. L. REV. 485, 498 (1978) (describing the successful Oklahoma-based prepaid legal-services plan "limited to automobile-related problems"); *see also* Engstrom, *supra* note 76 (manuscript at 18-20) (charting the rise and fall of legal insurance in the United States). Then, on the criminal side, *Gideon v. Wainwright*, 372 U.S. 335 (1963), decided in 1963, likely supplanted some clubs' defense work. More generally, the clubs may well have been scared off from experimentation, scarred by their blistering encounters with the bar. The upshot, though, is that, by the 1970s, the world had moved on, for better or worse, and the grounds for reviving auto-club legal practices were never fertilized.

Canon 35 and Model Rule 5.4(d),[275] UPL, MDPs, and NLOs—may seem academic or esoteric, it's all remarkably important. By determining who can (and cannot) supply legal help and by prescribing how legal help can (and cannot) be supplied, the thicket of laws governing the practice of law significantly affects who can (and cannot) vindicate their rights and on what terms.

All this particularly matters today because, as noted at the outset, the United States is in the grips of a staggering access-to-justice crisis. In roughly three-quarters of the civil cases adjudicated each year, at least one litigant proceeds pro se.[276] And every year, rather than try to take legal action (with a lawyer or otherwise), millions more Americans "lump it"; even when confronting serious legal issues (including domestic violence, uninhabitable dwellings, unpaid child support, tortiously inflicted personal injuries, or an insurer's refusal to pay a meritorious claim), most individuals fail to take legal action.[277] When individuals are on the other (defendant) side of the "v," the story is similar. The most frequent response to small-stakes civil litigation (think a debt-collection action) is inaction—though in this context, inaction very frequently takes the form of a default judgment when the defendant never shows up.[278]

The depth and breadth of this crisis is finally breaking through the stasis and causing states to consider fundamental (and many believe overdue) changes to the architecture of lawyer regulation. On the menu are a range of ambitious reforms, including a relaxation of rules regarding UPL and the abolition of Rule 5.4(d) (the current analogue to Canon 35). Indeed, as previously explained, some state courts have already made sweeping changes along one or both of these dimensions.[279]

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275. Model Rule 5.4 was Canon 35 by another name; decades after Canon 35's adoption in 1928, the ABA codified it in the Model Code (adopted in 1969), and then the Model Rules (adopted in 1983). *See* Edward S. Adams & John H. Matheson, *Law Firms on the Big Board?: A Proposal for Nonlawyer Investment in Law Firms*, 86 CALIF. L. REV. 1, 4-11 (1998). For more on the Model Code's adoption by states, see *supra* note 270.

276. Hannaford-Agor et al., *supra* note 13, at iv; *Family Justice Initiative: The Landscape of Domestic Relations Cases in State Court*, *supra* note 13, at ii, 2.

277. *See generally* Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443 (2016) (surveying the empirical literature). For the term "lumping it," see William L.F. Felstiner, *Influences of Social Organizations on Dispute Processing*, 9 LAW & SOC'Y REV. 63, 81 (1974).

278. *See* Nora Freeman Engstrom & David Freeman Engstrom, *The Making of the A2J Crisis*, 75 STAN. L. REV. ONLINE 146, 149-50 (2024) (charting the recent, sharp uptick in default judgments); *How Debt Collectors Are Transforming the Business of State Courts*, PEW 2 (May 2020), https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf [https://perma.cc/K6S9-VFH7] ("Over the past decade in the jurisdictions for which data are available, courts have resolved more than 70 percent of debt collection lawsuits with default judgments for the plaintiff.").

279. *See supra* notes 17-20 and accompanying text.

The auto-club story contributes concrete evidence to these live—and enormously consequential—debates. It does so in three steps. First, the bar's battles with auto clubs and the clubs' contemporary counterparts in large part *built* America's current access-to-justice crisis. The crisis is not something that just happened. Inertia is not to blame. The brute fact is that, by outlawing the provision of group legal services and by systematically suing competent, affordable providers into submission, the bar made it extraordinarily difficult for ordinary Americans to get help. As the NAACP remarked more than half a century ago, absent the bar's concerted campaign, "the most prevalent form of group [legal] services today might be those organized by special interest groups whose members have a peculiar need for legal assistance; e.g., automobile clubs."[280]

Second, the rise and fall of America's auto clubs provides powerful evidence that challenges the necessity and utility of modern legal-service restrictions—in particular, Model Rule 5.4(d), which forbids certain nonlawyer-owned entities (like the auto clubs of yore) from supplying legal assistance to the entities' members or customers.

Third, the auto-club story provides new and startling evidence regarding the bar's underlying motivation in restricting those who can supply help. A debate has long swirled concerning what *explains* the ban on UPL—and, indeed, in recent litigation, the question of what motivates UPL restrictions has been hotly contested.[281] In these fights, challengers argue that the ban is self-protective, whereas the bar has long insisted that "[n]othing could be further from the truth."[282] Drawing on thousands of pages of contemporary evidence, we confront the question head-on and side squarely with the former account. Self-interest was not the only thing that drove the bar. But self-interest was key to the campaign.

A. Auto Clubs and the Seeds of the Country's Access-to-Justice Crisis

First, we argue that, in its drive to vanquish auto clubs, along with the era's other group-legal-service providers, the bar sowed the seeds of the present-day access-to-justice crisis, which condemns the vast majority of those with bona fide legal needs to navigate the judicial system without any sort of professional

280. NAACP Brief, *supra* note 25, at 18.

281. *See infra* notes 331-332 and accompanying text.

282. Edwin M. Otterbourg, A Study of Unauthorized Practice of Law 3 (1951). For contrary claims, see *infra* notes 332, 334.

assistance—or not at all.[283] For one, the bar extinguished a rapidly growing engine for providing affordable and efficient legal assistance. But beyond that, in its battle to outlaw corporate law practice, the bar constructed a regulatory regime that straitjackets efforts to adapt to today's crisis.

Now, there are numerous explanations for why so many Americans proceed pro se or, even more often, lump it.[284] Some individuals might rationally decide that asserting (or defending) what's frequently a negative-value claim is not worth the time or trouble. Some, and particularly those who have been burned in the past, distrust the legal system.[285] Some suffer from an awareness problem, insofar as they fail to recognize that they have—or are facing—a bona fide legal claim.[286] Given notorious "sewer service," some supposed defendants might not have ever been served.[287] And some, under the pull of various cognitive biases (particularly myopia and overconfidence), might irrationally delay taking steps to protect their interests (e.g., writing a will).[288]

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283. Of course, numerous factors contributed to the current crisis, and it is very hard to say which factors (if any) are necessary or sufficient. *See generally* Engstrom & Engstrom, *supra* note 278 (detailing possible contributing factors). Even so, we are not the first to argue that the bar's crusade against group-legal-service providers bears some blame. As noted, in the 1960s, the NAACP said much the same. *See supra* note 280 and accompanying text. And Stanford's Lowell Turrentine articulated the argument in 1949:

> The simplest, most immediate way of bringing the cost of legal service within the reach of large numbers of our people is to . . . permit nonprofit organizations of all kinds, such as trade unions, fraternal orders, consumers' cooperatives, mutual automobile clubs, and business and professional associations, to employ counsel to advise and represent members in their individual affairs.

Lowell Turrentine, *Legal Service for the Lower-Income Group*, 29 Or. L. Rev. 20, 29 (1949).

284. For a thoughtful romp through this literature, see generally David M. Engel, The Myth of the Litigious Society: Why We Don't Sue (2016).

285. *See generally* Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 Iowa L. Rev. 1263 (2016) (describing how negative experiences with the criminal-justice system can impact choices about whether to seek help for civil legal problems).

286. *See* Loyd P. Derby, *The Unauthorized Practice of Law by Laymen and Lay Associations*, 54 Calif. L. Rev. 1331, 1333 (1966) ("[M]any persons are unaware of their legal rights and thus do not recognize the need for the services of an attorney.").

287. "Sewer service is defined as 'failing to serve a debtor and filing a fraudulent affidavit attesting to service so that when the debtor later fails to appear in court, a default judgment is entered against him.'" Capela v. Armcon Corp., No. EDCV 20-2144, 2021 WL 1220680, at *4 (C.D. Cal. Feb. 19, 2021) (quoting Freeman v. ABC Legal Servs., Inc., 827 F. Supp. 2d 1065, 1068 n.1 (N.D. Cal. 2011)). *See generally* Adrian Gottshall, *Solving Sewer Service: Fighting Fraud with Technology*, 70 Ark. L. Rev. 813 (2018) (reviewing the history of fraudulent service of process).

288. According to a 2022 survey, only one-third of Americans have a will, and persons of color are markedly less likely to have one than their white counterparts. "The most commonly selected

But there is another well-recognized obstacle: the difficulty of obtaining legal assistance. The harsh reality is that, even if an individual *were* inclined to vindicate, defend, or otherwise protect her rights, effective action frequently requires a lawyer.[289] And lawyers are hard to come by. The ones who charge by the hour or on a flat-fee basis are expensive.[290] Legal aid is overstretched and frequently unavailable.[291] And contingency-fee lawyers do not demand an ex ante out-of-pocket expenditure, but they are notoriously choosy; many will not represent those with even slam-dunk small-ball claims.[292] The upshot is that, these days, huge swaths of individuals (including those who are physically injured) are effectively locked out of the market for legal services, to their obvious and serious detriment.[293]

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reason among those without a will was that they plan to but haven't gotten around to it yet (43 percent)." Althea Chang-Cook, *Why People of Color Are Less Likely to Have a Will*, Consumer Reps. (Aug. 10, 2022), https://www.consumerreports.org/money/estate-planning/why-people-of-color-are-less-likely-to-have-a-will-a6742820557 [https://perma.cc/8F6X-3HVT]. Even twenty percent of those with assets of at least $1 million reportedly lack estate plans. Ashlea Ebeling, *The Confusing Fallout of Dying Without a Will*, Wall St. J. (May 2, 2023, 9:39 AM ET), https://www.wsj.com/articles/dying-without-will-what-happens-6cc4674b [https://perma.cc/D3PU-68GJ].

289. *See, e.g.*, David A. Hyman, Mohammad Rahmati, Bernard S. Black & Charles Silver, *Medical Malpractice Litigation and the Market for Plaintiff-Side Representation: Evidence from Illinois*, 13 J. Empirical Legal Stud. 603, 604, 611 (2016) (finding in the medical-malpractice context that "[h]aving a lawyer has a large impact on both the likelihood of 'winning' (i.e., receiving a positive recovery) and the amount recovered, conditional on success"). We say that lawyers are frequently needed because *some* assistance is needed—and nonlawyer legal assistance is (typically) illegal.

290. *USAO Attorney's Fees Matrix—2015-2021*, U.S. Dep't Just. 1, https://www.justice.gov/file/1461316/download [https://perma.cc/BB6B-67R4] (showing that even lawyers fresh out of law school frequently charge on the order of $333 per hour).

291. *See* Press Release, Legal Servs. Corp., LSC Requests $1.5 Billion to Confront Widening Justice Gap Amid Pandemic Hardships (Mar. 9, 2023), https://www.lsc.gov/press-release/lsc-requests-15-billion-confront-widening-justice-gap-amid-pandemic-hardships [https://perma.cc/YKP6-ZR9R] ("LSC's grantees must turn away 50% of eligible clients who seek civil legal services due to a lack of necessary resources.").

292. *See, e.g.*, Stephen Daniels & Joanne Martin, *The Strange Success of Tort Reform*, 53 Emory L.J. 1225, 1256 & tbl.8 (2004).

293. *See* Robert W. Gordon, *Lawyers, the Legal Profession, & Access to Justice in the United States: A Brief History*, 103 Judicature, no. 3, 2019, at 34, 39 (discussing the fact that many would-be tort claimants with small claims cannot find counsel). For further discussions of the serious—but frequently overlooked—access-to-justice problem in the personal-injury sphere, see Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. Rev. 805, 831-32 (2011) [hereinafter Engstrom, *Sunlight*]; and Nora Freeman Engstrom, *Bridging the Gap in the Justice Gap Literature*, Jotwell (May 6, 2013), https://torts.jotwell.com/bridging-the-gap-in-the-justice-gap-literature [https://perma.cc/8DTG-AWX4].

For criminal defendants, the outlook is similar.[294] True, thanks to *Gideon v. Wainwright*, indigent criminal defendants have a nominal right to counsel, at least for trial and direct appeal.[295] But *Gideon* only guarantees counsel to indigent individuals *who face time in custody*; if a person is met with only a fine, he is out of luck.[296]

Then, *however* the client seeks to pay, and *whatever* service an individual needs, finding a good lawyer is extraordinarily difficult. Lawyer quality matters, and it also varies significantly. But almost no objective information that would bear on attorney quality is publicly available.[297] Peering into this informational void, people either choose a lawyer randomly or — quite frequently — simply go it alone.[298]

Against this dismal backdrop, auto clubs and their contemporary counterparts offer a glimpse of what could have been a radically different structure for the provision of legal services. Auto clubs, after all, accepted even very low-dollar claims and defended members charged with even minor infractions; in so doing, they offered representation to those who, these days,

294. Gordon, *supra* note 293, at 40 ("Now, 55 years after *Gideon v. Wainwright*, criminal defense remains in a state of crisis.").

295. 372 U.S. 335, 344-45 (1963). There is no right to help beyond the direct appeal. *See* Shinn v. Ramirez, 596 U.S. 366, 383 (2022). The quality of that counsel is, of course, sometimes woefully inadequate. *See, e.g.*, Richard A. Oppel Jr. & Jugal K. Patel, *One Lawyer, 194 Felony Cases, and No Time*, N.Y. TIMES (Jan. 31, 2019), https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html [https://perma.cc/YR6N-LXKA]. Even when a misdemeanor defendant enjoys the (formal) right to counsel, he does not always get it; as of 2002, about thirty percent of indigent misdemeanor defendants never actually got a lawyer. Erica Hashimoto, *The Problem with Misdemeanor Representation*, 70 WASH. & LEE L. REV. 1019, 1024 (2013) (citing a Bureau of Justice Statistics study).

296. *See* Alabama v. Shelton, 535 U.S. 654, 661 (2002) (discussing relevant limits). While such "minor" infractions (including traffic citations) might be written off as inconsequential, even seemingly trivial run-ins can snowball. Thus, for instance, the failure to pay a speeding ticket can lead to license suspension and even prison time, by which point even if an appointed lawyer can swoop in, it will be cold comfort. *See, e.g.*, CAL. VEH. CODE § 40508(a) (West 2024) (making the failure to appear in court for a traffic citation a misdemeanor); Ted Alcorn, *Handcuffed and Arrested for Not Paying a Traffic Ticket*, N.Y. TIMES (May 8, 2019), https://www.nytimes.com/2019/05/08/nyregion/suspending-licenses-minor-offense-money.html [https://perma.cc/NGW8-SMEL] ("Nearly two-thirds of all license suspensions are for failure to pay tickets or failure to appear in court, according to D.M.V. data.").

297. BARLOW F. CHRISTENSEN, LAWYERS FOR PEOPLE OF MODERATE MEANS: SOME PROBLEMS OF AVAILABILITY OF LEGAL SERVICES 35-38 (1970) (discussing the difficulty of lawyer selection); Engstrom, *Sunlight*, *supra* note 293, at 860-65 (reporting that, even in the internet age, an individual in search of high-quality counsel faces nearly insurmountable challenges).

298. *See Up to 25 Million Americans Went Without Legal Counsel Over the Last Two Years Because They Didn't Know How to Choose the Right Lawyer*, IPSOS (June 5, 2007), https://www.ipsos.com/en-us/25-million-americans-went-without-legal-counsel-over-last-two-years-because-they-didnt-know-how [https://perma.cc/R72Q-EF6X].

frequently go without.[299] They also mitigated the awareness problem by publicizing that some problems were legal and that some rights could be vindicated.[300] They solved the problem of lawyer selection, too; vetted lawyers were available, no research required. By specializing in a narrow area of practice and then developing systems to promote efficiency, they kept the cost per unit down.[301] And, because individuals paid annual dues for the entitlement to free legal services, the clubs operated as a kind of legal insurance—while also elegantly minimizing the moral-hazard problems that otherwise inhibit such offerings.[302]

As it was, the bar won; group-legal-service providers lost; and legal services were, at once, unbundled and bundled. Today's legal services are *bundled*, as very few individuals have anyone to call to get immediate, expert answers to one-off legal questions. Instead, these days, attorney representation is frequently offered on something like a soup-to-nuts basis, or not at all.[303] At the same time, legal services these days are *unbundled* in that individuals must typically find—and

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299. *See supra* notes 78, 121 and accompanying text; *infra* note 324 and accompanying text.

300. *See* Murry L. Schwartz, *Foreword: Group Legal Services in Perspective*, 12 UCLA L. Rev. 279, 286 (1965) ("One function of group legal services is the function of public awareness: apprising members of the group that their problems should be handled by lawyers or that they have legal rights which should be vindicated by lawyers."); NAACP Brief, *supra* note 25, at 15 (explaining that group-legal-service providers "inform[] the members of the group that some of their problems may be legal ones").

301. NAACP Brief, *supra* note 25, at 15 (explaining that group-legal-service providers "raise[] the volume of a particular kind of work that the attorney performs, thus lowering the unit cost of the work").

302. Generally, moral hazard is a significant problem when it comes to legal insurance because unlike, say, health insurance, an individual has more control concerning when she needs legal services. *See* Engstrom, *supra* note 76 (manuscript at 44-52) (describing how the moral-hazard problem afflicts and inhibits legal insurance). The basic notion is that a person frequently cannot control when she will get sick, but a person could theoretically "save up" her legal problems, secure legal insurance for one year, and, over the course of that year, choose to file for divorce, write a will, and file for bankruptcy. *See id.* (manuscript at 45-46). Auto clubs mitigated this moral-hazard problem because they specialized in problems that could not be "saved up." Like an illness, an auto collision or arrest hits suddenly. *Cf. In re* Maclub of Am., Inc., 3 N.E.2d 272, 274 (Mass. 1936) (faulting an auto club for operating like legal insurance); NAACP Brief, *supra* note 25, at 21-22 (explaining the insurance concept and noting that, like insurance, the plan run by the United Mine Workers "spreads the risk of legal fees among all its members").

303. For auto clubs' provision of unbundled prospective advice, see *supra* Section I.B.2.a. For current limits on the "scope of representation," see Model Rules of Pro. Conduct r. 1.2(c) (Am. Bar Ass'n 1983).

compensate—a new lawyer for each and every legal problem they encounter.[304] There is no such thing as a one-stop-shop for all problems auto, any more than there is a one-stop-shop for all problems financial or for all problems work.

The other critical takeaway is that the current bundled and unbundled structure of legal-service delivery, which fails adequately to serve so many individuals, did not just *happen*. It is not the product of inertia or accident. It is, rather, the fruit of the bar's active and concerted 1930s-era campaign—a campaign that not only created but also *froze* this sorry situation by constructing a court-centric regulatory structure that, in most states, has proved remarkably resistant to reform.

B. A World Without Rule 5.4

Second, the rise and fall of American auto clubs contributes direct evidence to a consequential—and live—debate concerning whether states ought to relax or retain Model Rule 5.4(d), the current incarnation of the prohibition on corporate law practice initially enshrined in Canon 35.[305]

Rule 5.4(d) essentially bars lawyers from working for for-profit "intermediaries," whether the relationship is viewed as one that involves corporate law practice, group legal services, MDPs, or NLOs.[306] In recent years, whether to relax or retain the restriction has become one of the hottest issues in legal ethics. Two states' supreme courts—Utah and Arizona—have recently relaxed Rule 5.4 on the theory that it stymies innovation, stunts specialization, raises the cost of legal services, and forces clients to grope in the dark for a lawyer

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304. For further discussion of unbundled legal service, see Carol A. Needham, *Permitting Lawyers to Participate in Multidisciplinary Practices: Business as Usual or the End of the Profession as We Know It?*, 84 MINN. L. REV. 1315, 1334-37 (2000).

305. Recall that Model Rule 5.4(d) is, well, a model. Individual state supreme courts adopt the rule and are free to amend it. *See* Ricca & Clarke, *supra* note 256, at 5 (describing the regulatory framework).

306. Titled "Professional Independence of a Lawyer," Rule 5.4(d) provides:

> (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
>
> > (1) a nonlawyer owns any interest therein . . . ;
> > (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
> > (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

MODEL RULES OF PRO. CONDUCT r. 5.4(d) (AM. BAR ASS'N 1983). For the definition of MDPs and group-legal-service plans, see *supra* note 145.

rather than approach a familiar firm to seek aid.[307] And the Texas Supreme Court is actively considering following suit.[308] Yet others are unconvinced and, echoing arguments made by the bar of yesteryear, support the restriction's retention, insisting that, if lawyers are permitted to be employed by nonlawyers, all sorts of mischief will follow. Unable to maintain their professional independence, lawyers will "sell out their clients, divulge client confidences, represent clients ineptly, violate solicitation rules, and disregard their public obligations."[309]

The debate made news just last year when the ABA's House of Delegates passed a resolution doubling down on its commitment to Rule 5.4. Garnering overwhelming support, that resolution reiterated that, "[a]s officers of the court, lawyers must be independent and free from the influence of those who would compromise our ethics and the client interest," and that "[n]on-lawyer involvement" in law practice would invariably "negatively influence this independence and control."[310] This current chapter mimics a similar debate in 1999, when an ABA Commission issued a report recommending that the profession relax Rule 5.4,[311] but just as the Commission's recommendation was gathering steam, the ABA's House of Delegates unceremoniously rejected it.[312]

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307. For the activities in Utah and Arizona, see *supra* notes 13, 18. For an explanation of these arguments, see Bradley G. Johnson, Note, *Ready or Not, Here They Come: Why the ABA Should Amend the Model Rules to Accommodate Multidisciplinary Practices*, 57 Wash. & Lee L. Rev. 951, 995-97 (2000); *In re* Petition to Amend Rules 31, 32, 41, 42 (ERs 1.0-5.7), 46-51, 54-58, 60, 75 and 76, Ariz. R. Sup. Ct., and Adopt New Rule 33.1, *supra* note 14, at 2-5.

308. *Texas Report*, *supra* note 14, at 1 (proposing that Texas "[c]reate a pilot program . . . that permits non-attorney ownership under an exception to Texas Disciplinary Rule of Professional Conduct 5.04 for entities that demonstrate a business model that provides services to low-income Texans and includes infrastructure to protect clients and ensure attorney independence"). Not surprisingly, lawyers are fighting this reform with a vengeance—and, in the face of overwhelming opposition, the reform idea may be dead on arrival. *See* Lynn LaRowe, *Texas Non-Atty Ownership Plan Fizzles as Justice Gap Fix*, Law360 (Jan. 19, 2024), https://www.law360.com/pulse/articles/1787802/texas-non-atty-ownership-plan-fizzles-as-justice-gap-fix [https://perma.cc/B5TL-WGBH] (describing lawyers' opposition to the Texas proposal to relax Rule 5.4—and quoting one lawyer as dismissing it as a "cataclysmically bad idea").

309. *See* Green, *supra* note 221, at 1117 (summarizing, though critiquing, this argument); *Resolution 402*, *supra* note 22, at 5 (declaring that nonlawyer involvement in law practice would "compromise" lawyers' professional independence).

310. *Resolution 402*, *supra* note 22, at 5.

311. Comm'n on Multidisciplinary Prac., *supra* note 145, at 1.

312. *See* Laurel S. Terry, *The Work of the ABA Commission on Multidisciplinary Practice*, *in* Multidisciplinary Practices and Partnerships: Lawyers, Consultants and Clients 2-1, 2-4 (Stephen J. McGarry ed., 2002). The following year, in an equally lopsided vote, the ABA's House of Delegates reiterated its opposition, declaring that "[j]urisdictions should retain and enforce laws that generally bar the practice of law by entities other than law firms." *Id.* at 2-6.

Part of why the ABA says it resists Rule 5.4's relaxation relates to information—and, specifically, a lack thereof. The ABA insists that reformers bear the burden of proof and that the Rule should not be relaxed until reformers compile sufficient evidence that that move won't cause harm. Reformers need to show, in other words, that the liberalization of Rule 5.4 "will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients."[313] Echoing this theme, in 2021, the Florida Bar Board of Governors rejected a proposal to relax rules barring nonlawyer ownership, citing "the lack of data from any jurisdiction which has allowed nonlawyer ownership demonstrating that it improves or expands the delivery of legal services."[314]

Yet, even tabling the question of whether the burden is appropriately placed on those who favor Rule 5.4's relaxation (rather than on those who support the status quo), opponents' ask is deceptively difficult—and, indeed, creates a catch-22. Reformers cannot convince the ABA to relax the restriction on nonlawyer ownership without showing what good things happen when the restriction is relaxed. But Rule 5.4(d) (or a predecessor, including Canon 35, which dates back to 1928) has been in effect in the vast majority of states for nearly a century, meaning that the factual record for reformers to draw upon is inescapably thin.

Recently, there has been progress on the question because, as noted, Utah and Arizona have authorized some nonlawyer ownership, and a 2022 study canvassed what happened in those states in the wake of reform.[315] Generally, the study paints a positive picture, finding, among other things, that newly "authorized entities do not appear to draw a substantially higher number of consumer complaints, as compared to their [more conventional] counterparts."[316] But, of course, the study's limited geographic scope stunts its generalizability, while its short time horizon (the relevant reforms only began in 2020) makes it impossible to know whether observed results are durable.[317]

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313. House of Delegates, *The Florida Bar (Report No. 10B)*, Am. Bar. Ass'n [1] (Aug. 9-10, 1999), https://www.americanbar.org/content/dam/aba/directories/policy/annual-1999/1999_am_10b.pdf [https://perma.cc/X5WE-SZGQ] (adopting a resolution to make no change to the Model Rules of Professional Conduct until such evidence is provided). For a recent articulation of the notion that (1) reformers bear the burden of proof, and (2) reformers should come forward with "demonstrated proof" of these practices' social utility, see Younger, *supra* note 22, at 275, 288-89.

314. Tanner Letter, *supra* note 23, at 3.

315. Engstrom et al., *supra* note 18, at 9 (explaining that the study offers "a first-of-its-kind, grounded, and data-driven analysis of what regulatory reforms might achieve in the U.S. legal context").

316. *Id.* at 7.

317. *See id.* at 47 (offering these caveats).

Against that backdrop, this Feature's auto-club story adds an important additional (and confirmatory) note. To be sure, evidence from auto clubs is not on all fours. Most auto clubs were nonprofits, and, if state courts were to relax their iterations of Rule 5.4(d), most newly minted MDPs or NLOs probably would not be.[318] And, of course, auto clubs flourished in a radically different social, cultural, economic, informational, and technological environment.[319]

Still, with those important caveats, America's auto-club experiment shows that, for a short time, tens of thousands of Americans were assisted by lawyers employed by nonlawyer-owned entities. And, although we certainly cannot say that every motorist was represented by their auto-club lawyer with skill, loyalty, and fidelity, we can say the following:

(1) In rounds of litigation, the organized bar had every reason to surface instances of consumer harm, and, to the best we can tell, it never did.[320]

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318. *See supra* note 273 and accompanying text. That said, the Texas proposal, which has generated such heated opposition, would only repeal the prohibition for entities seeking to "expand access to justice for low-income Texans." *Texas Report*, *supra* note 14, at 53. For the fierce opposition this plan has generated, see *supra* note 308.

319. Thus, we are stopping far short of saying that the resurrection of auto clubs or other 1920s-era corporate providers of legal services would somehow magically solve the current access-to-justice crisis. Indeed, while we think it is possible that, today, some corporate ownership could be beneficial, the evidence is far from conclusive, particularly since, in medicine (law's "sister profession"), early evidence indicates that private-equity ownership has negatively affected the quality of care. *See, e.g.*, Sneha Kannan, Joseph Dov Bruch & Zirui Song, *Changes in Hospital Adverse Events and Patient Outcomes Associated with Private Equity Ownership*, 330 JAMA 2365, 2374 (2023) ("Private equity acquisition was associated with increased hospital-acquired adverse events . . . ."); Erin C. Fuse Brown & Mark A. Hall, *Private Equity and the Corporatization of Health Care*, 76 STAN. L. REV. 527, 531 (2024) ("[I]nvestors in health services often find and exploit market vulnerabilities in a manner that raises significant public policy concerns.").

320. In most states, including Illinois, the bar did not even try. *See supra* text accompanying note 230; *accord* Weihofen, *supra* note 242, at 126 ("There is no complaint that the motor clubs are not handling these cases efficiently and to the satisfaction of the public."). In this respect, auto clubs were not alone. Even in cases that shut down corporate law practices, proof of consumer harm was conspicuously absent. *See supra* text accompanying notes 263-264 (regarding *United Mine Workers*); Hildebrand v. State Bar, 225 P.2d 508, 519 (Cal. 1950) (Traynor, J., dissenting) (stating that it was "conceded" that, through the BRT's legal-service program, "the members of the Brotherhood have . . . been able to secure adequate legal assistance"); *In re* O'Neill, 5 F. Supp. 465, 466 (E.D.N.Y. 1933) (per curiam) (censuring a lawyer for his relationship with the BRT even while stating that "[a]s to so much of the union's activity, this court is prepared to believe that the organization was performing a valuable service to its members"); *In re* Otterness, 232 N.W. 318, 320 (Minn. 1930) (per curiam) (censuring a lawyer for engaging in corporate law practice, even while emphasizing that the lawyer "is a man of good reputation" and "[n]o complaint is made of any misconduct towards his clients"); Zimroth, *supra* note 219, at 968 (stating, more broadly, that "no one challenges the utility" of group legal services—only their "legality").

(2) At the time some auto clubs' legal departments were shuttered, the clubs' memberships were surging, suggesting that the motoring public was satisfied with the services it received.[321]

(3) Auto-club lawyers were specialists.[322] Decades of empirical evidence suggests that specialists tend to offer higher-quality legal services than their generalist counterparts.[323]

(4) It was largely undisputed that, at the time the auto clubs' legal departments were shut down, they were handling thousands of claims each year that other (nonclub) lawyers were unwilling or unable to handle.[324]

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321. Williams et al., *supra* note 8, at 27 (discussing the "mushroom growth of these organizations [that is, auto clubs] thruout the State" of California); Charles Leviton, *Automobile Club Activities: The Problem from the Standpoint of the Bar*, 5 LAW & CONTEMP. PROBS. 11, 11 (1938) (stating that, prior to the bar crackdowns, "for many years the scope of the activities of the motor clubs had been growing and expanding in services, as well as in membership"); *cf.* Llewellyn, *supra* note 149, at 113 (observing, of the era's group legal services, that "the steady drift of business is too steady, it recurs in too many fields, to permit the conclusion that the lay agencies, over the long haul, are not giving satisfaction"); Shinn, *supra* note 147, at 98-99 (stating that, in the 1920s, corporate law practices were growing because the American public preferred them).

322. *See, e.g.*, *Our Legal Department and How It Operates*, KEYSTONE MOTORIST, Mar. 1926, at 13, 13 ("This Department is made up of a corps of attorneys who are specialists in the laws governing the automobile and the motorist.").

323. *See* Andrew D. Bradt & D. Theodore Rave, *It's Good to Have the "Haves" on Your Side: A Defense of Repeat Players in Multidistrict Litigation*, 108 GEO. L.J. 73, 94 nn.134-39 (2019) (collecting evidence).

324. *See, e.g.*, Kelso, *supra* note 59, at 196; Reply Brief of Appellant, *supra* note 212, at 4-5 (noting that the average amount collected on members' claims was $6 and that "[c]ertainly the average lawyer would not care to handle claims involving such insignificant amounts and a person having a small claim of this type would not be justified in going to the expense of employing counsel"); *see also* Chicago Motor Club Brief, *supra* note 7, at 21 ("In his report the commissioner found that during the year 1931 the lawyers employed by respondent handled a total of 8,640 separate property damage claims, and that the average amount of each claim was $12.39. . . . These statistics speak very forcibly. What lawyer, whether he be a member of a large law firm or practicing alone, can afford to handle a claim for property damage where the average amount is less than $15.00?" (citation omitted)). The only argument to the contrary—that is, that these cases were potentially remunerative to lawyers—came softly from the Chicago Bar Association, which wrote: "As to such contention . . . such issue is at best immaterial and irrelevant and . . . the facts are otherwise, it appearing that attorneys outside of Chicago, who are employed by the club, are willing to accept an average fee of $15.00 a case." Brief and Argument for Relator, *supra* note 188, at 18-19. But as the Chicago Motor Club pointed out, whether attorneys were willing to accept a $15.00 flat fee to take a case is different than whether (a) those same lawyers would take property-damage cases (presumably on

(5) We have uncovered one study from the era that endeavored to assess client satisfaction. It found that respondents reported greater satisfaction with the advice and assistance they received from nonlawyers and entities (including the AAA) than from lawyers.[325]

In sum: Given changes afoot, the race is on to show what would predictably happen if more states relaxed longstanding restrictions on nonlawyer ownership. The American auto-club experience contributes much-needed evidence to that live and consequential debate. In so doing, it enriches reformers' efforts to rethink the structure of legal-services regulation so as to "harness market forces in productive rather than protective ways."[326]

C. UPL's Rotten Roots

Lastly, the auto-club story—and, more accurately, the bar's triumphant campaign against America's auto clubs—provides the most complete evidence so far assembled regarding the rotten roots of the enduring ban on the unauthorized practice of law.

The prohibition on unauthorized practice, which prevents even skilled nonlawyers from furnishing legal advice to needy Americans, undeniably limits access to legal services.[327] Partly for that reason, as noted, several states have recently relaxed UPL restrictions.[328] In other states, including Michigan, North Carolina, and Texas, reforms are under active consideration.[329] And in three states—New York, North Carolina, and South Carolina—litigants have recently challenged UPL restrictions as incompatible with the First Amendment.[330]

In the face of this action and agitation, the bar has remained mostly unmoved. It has continued to insist that the prohibition on unauthorized practice is justified to ensure the "integrity and competence of those who

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contingency) with an average of $12.39 at stake; and (b) whether anyone with such claims (or facing civil or criminal liability in the $2.45-$12.39 range) would pay $15.00 for a lawyer to defend them. Chicago Motor Club Brief, *supra* note 7, at 21.

325. Charles E. Clark & Emma Corstvet, *The Lawyer and the Public: An A.A.L.S. Survey*, 47 YALE L.J. 1272, 1281 (1938); *see also The Law Business Needs Reorganizing*, *supra* note 247, at 10 (writing in 1928 that the public preferred group legal services over those offered by traditional providers).

326. Dana A. Remus, *Reconstructing Professionalism*, 51 GA. L. REV. 807, 814 (2017).

327. Indeed, many believe that "[b]reaking up th[e] monopoly on the provision of legal services is the most important reform to address the crisis in access to justice." HOWARTH, *supra* note 12, at 12.

328. *See supra* notes 17, 19 and accompanying text.

329. *See supra* note 20.

330. *See supra* note 21 and accompanying text.

undertake to render legal services"[331] and to protect vulnerable individuals from predation by "unqualified and unscrupulous" actors.[332] And it voices these motifs in the shadow of the ABA Model Rules, which warn that "[t]he profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar."[333]

Yet, notwithstanding the lofty rhetoric, there have long been hints, murmurs, assertions, and claims that current prohibitions on the provision of legal services sound less in altruism and more in self-interest.[334] And as has long been recognized, self-interest is not a valid basis for such restrictions under the law. In the recent words of the U.S. Department of Justice's Antitrust Division, in order to withstand scrutiny, "justifications for restraints on the delivery of legal services must be rooted in the protection of the public and not in the protection of lawyers from competition."[335]

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331. MODEL CODE OF PRO. RESP. EC 3-1 (AM. BAR ASS'N 1980); *see also* People v. Alfani, 125 N.E. 671, 673 (N.Y. 1919) (explaining that UPL restrictions exist "to protect the public from ignorance, inexperience, and unscrupulousness").

332. Brief for Appellant at 2-3, Upsolve, Inc. v. James, No. 22-1345 (2d Cir. Oct. 5, 2022) [hereinafter AG Upsolve Brief] (defending New York's UPL law on this basis); *see* Sudeall, *supra* note 143, at 642 ("[C]ourts and bar associations continue to rely heavily on protection of the public as the reason for the existence and enforcement of unauthorized-practice provisions."). The New York Attorney General's briefing in *Upsolve* goes so far as to claim that "no measure short of prohibition would adequately protect" the "powerful and uncontroverted interests in protecting the public" from "a corps of unidentified and unvetted nonlawyer advocates." AG Upsolve Brief, *supra*, at 59, 70-71.

333. MODEL RULES OF PRO. CONDUCT pmbl. ¶ 12 (AM. BAR ASS'N 2023).

334. *See, e.g.*, Hadfield & Rhode, *supra* note 14, at 1194 (contending that the "professional regulatory model" rests, in part, on "sheer protectionism"); Green, *supra* note 221, at 618-19 (discussing Robert W. Gordon's letter to the ABA, which stated, inter alia, "that the organized bar's resistance to new modes of practice, though often clothed in the high-minded rhetoric of protecting the ethical standards and independent judgment of the legal profession, has been to a considerable extent motivated by far less elevated desires to protect the incomes of lawyers from economic competition or their status from erosion by groups perceived as interlopers" (quoting Letter from Robert W. Gordon, Professor, Yale L. Sch., to Sherwin P. Simmons, Chair, Am. Bar Ass'n Comm'n on Multidisciplinary Practice (May 21, 1999) (on file with authors))); Rhode, *supra* note 272, at 6-9 (discussing the suspicious Depression-era timing of the bar's UPL campaign); Brief of Responsive Law as Amicus Curiae in Support of Appellees and Affirmance at 6-10, *Upsolve, Inc.*, No. 22-1345 (2d Cir. Jan. 11, 2023) [hereinafter Responsive Law Brief] (arguing that the legal profession expanded and enshrined UPL laws for its own self-protection).

335. Letter from Maggie Goodlander, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Just., to N.C. Gen. Assembly 2 (Feb. 14, 2023), https://www.justice.gov/atr/page/file/1587436/download [https://perma.cc/9DTP-TSSK]; *see also* AG Upsolve Brief, *supra* note 332, at 28, 70-71 (defending New York's UPL law against a First Amendment challenge on the ground that the law is necessary to protect "vulnerable New Yorkers" from predation).

This all means that as practice restrictions are challenged on First Amendment grounds (and as they are subjected to the First Amendment's concomitant tiers of scrutiny), the restrictions may live or die on the strength of the bar's justifications for them. It also means that the bar's *motivations* for expanding and enforcing these restrictions are of vital, and urgent, importance. Those motivations, of course, have long been questioned. But until now, on-the-ground proof of an ulterior motive has remained elusive. Thus, some have proceeded on the basis that restrictions on law practice are "rooted in . . . economic protectionism"—but they have mostly accepted that fact as a matter of faith.[336]

The auto-club story, we suggest, supplies that direct and concrete—but heretofore missing—evidence. Above, we show that the bar's crackdown on auto clubs—part of the bar's first sustained foray into UPL enforcement—was not precipitated by revelations of consumer harm.[337] Indeed, all available evidence suggests that auto-club members were satisfied with the services that they received.[338]

Instead, the bar acted (1) in the midst of the Great Depression, which dampened consumers' demand for legal services,[339] (2) soon after the enactment of workers' compensation—a move that one bar leader complained did away with "practically all the personal injury cases,"[340] and (3) at a time when "corporate" legal-service providers were rapidly expanding and "encroach[ing]"

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336. *See* Responsive Law Brief, *supra* note 334, at 7-8, (arguing that while UPL restrictions were rooted in protectionism, they "were not always stated so explicitly," and largely relying instead on "a large body of historical, economic, and sociological literature . . . [that] suggests that the primary motivation for professional licensing laws is economic self-interest" (quoting Robert Kry, *The "Watchman for Truth": Professional Licensing and the First Amendment*, 23 SEATTLE U. L. REV. 885, 888 (2000))).

337. *See supra* note 320 and accompanying text.

338. *See supra* notes 247, 321-322 and accompanying text.

339. Young B. Smith, *The Overcrowding of the Bar and What Can Be Done About It*, 7 AM. L. SCH. REV. 565, 570 (1932) ("No one can deny that, due to the abnormal economic conditions which prevail at this time, there are more lawyers than are needed to meet the abnormally low demand for legal services to-day."); *see also* Francis Martin, *The Overcrowding of the Bar*, 72 U.S. L. REV. 139, 146 (1938) ("There is not sufficient legal work available today to require the services of the thousands of lawyers who are members of our bar.").

340. Merrick, *supra* note 243, at 30. As an empirical matter, Merrick's characterization exaggerated the effect of workers' compensation on the era's personal-injury ecosystem. *See* Lawrence M. Friedman & Thomas D. Russell, *More Civil Wrongs: Personal Injury Litigation, 1901-1910*, 34 AM. J. LEGAL HIST. 295, 300-03 (1990) (offering statistics by claim type).

on traditional lawyer territory.[341] This particular timing in itself suggests that the bar was motivated less by altruism and more by protectionism.[342]

But beyond the curious timing, further direct evidence indicates that the bar—while marching under the banner of UPL—cracked down on auto clubs not because the bar was worried about unsuspecting motorists but rather, in some large measure, because members of the bar were worried about the profession's bottom line.[343] Notably, the California Bar Association attacked auto clubs while noting in the same breath that the bar was in a "difficult economic period"[344] and that the clubs posed "a serious threat" to lawyers' "well-being."[345] In 1931, the Chairman of the Cuyahoga County Bar Association Committee on the Practice of Law rallied his troops to help "eradicat[e] . . . the existing evil which actually threatens to eradicate the legal profession as a profession."[346] The same year, Jack B. Dworken, also of Ohio, who personally initiated several suits against auto clubs and the clubs' corporate counterparts, explained that he was waging the campaign for the "benefit" of new lawyers coming into the profession who needed work, as well as for "the thousands of men and women who will come into the profession in the future."[347] In 1934, Sol Weiss, a member of the Committee on Unauthorized Practice, explained that the bar needed to act, lest the lawyer be driven "from the banquet table at which for centuries he

341. John R. Snively, *Review of Recent Activities to Eliminate Lay Encroachments*, 19 A.B.A. J. 177, 177 (1933).

342. James Willard Hurst, The Growth of American Law: The Law Makers 328 (1950) ("The bar became concerned with lay competition, largely under the spur of lawyers' economic distress; it then busied itself with attempts to suppress its lay competitors . . . ."); Huber, *supra* note 138, at 587 ("Unauthorized practice committees were born in a time of economic hardship to ensure that the profession did not lose business."); Rigertas, *supra* note 241, at 107 ("The economic times of the 1930s . . . caused a renewed discussion among the organized bar about services that nonlawyers and corporations were providing to the public."). A fair reading of the history suggests that the bar was worried about more than just its economic security. The bar also felt that its professional identity was imperiled (although, of course, it was arguably self-interest all the same). For an early articulation of the latter concern, see *infra* notes 348-349 and accompanying text.

343. As noted previously, while today, UPL restrictions and the ban on corporate law practice (or on NLO) are often seen as distinct, in the 1930s, the two blurred, as the bar of yesteryear did not distinguish between these two flavors of unauthorized practice. *See supra* notes 156, 163 and accompanying text. Indeed, the bar argued—and courts frequently accepted—that corporations that employed lawyers to deliver legal services *were* engaging in UPL because the corporations were unlicensed to practice law and yet delivering legal services, and ergo, UPL. *See supra* notes 157, 190, 214 and accompanying text.

344. *An Economic Survey of the Bar*, 7 St. Bar J. 74, 74 (1932).

345. Ewell D. Moore, *The Trust Companies and the Bar Associations*, 6 St. Bar J. 58, 58 (1931).

346. Stern, *supra* note 147, at 333.

347. Jack B. Dworken, *An Open Letter*, 35 Ohio L. Rep. 2, 4 (1931).

has held a distinguished place."[348] In 1934, the head of the Tampa Bar warned that, absent decisive action, "the layman will soon be handling all legal matters and the profession will sink into innocuous desuetude."[349] In 1937, the Chair of the Junior Bar Conference lamented that "the average lawyer in New York City nets less than $3,000 a year," while "every year laymen are taking millions of dollars from the lawyers"—and that these "encroachments" should "be stamped out by sheer force, if necessary."[350] And, that same year, an Illinois Bar leader announced that the state's UPL efforts existed "(a) for the protection of the public, and (b) for the improvement of the situation of the lawyers."[351]

But assuming the bar *was* motivated to improve the situation of lawyers, why did the bar's fury extend to corporate (and not just lay) practice? After all, unlike lay representation (where lawyers were clearly losing out to their nonlawyer counterparts), corporate practice involved corporations' employment of, well, *lawyers*. Indeed, it is puzzling that a self-interested bar would, in service of protectionism, target its own. Direct evidence, however, fills in the missing pieces and points to at least five reasons for the bar's self-cannibalizing tack.

First, the bar lumped nonlawyer and corporate practice together, viewing both as "competing with the legal profession" without distinguishing between the two threats. Illustrating this tendency, in a 1936 address to the bar, one judge lamented: "Lay agencies and laymen are competing with the legal profession; trust companies, title and insurance companies, automobile clubs, banks, insurance adjusters, tax experts, accountants, collection agencies, notaries, real estate agents and the like . . . have encroached on the lawyers' rights."[352]

Second, the corporate practice of law undoubtedly affected lawyers' self-perception. As one scholar lamented in 1912: "Corporations have discovered that the practice of law is good business and in their effort to grasp it and conduct it upon business lines, have demoralized it as a profession."[353] The New York County Lawyers' Association likewise warned: "The attorneys employed to

348. Weiss, *supra* note 147, at 19.

349. *Tampa Bar Moves Against Unauthorized Practice of Law*, *supra* note 204, at 136.

350. Joseph D. Stecher, *Unauthorized Practice and the Public Relations of the Bar*, 23 A.B.A. J. 606, 608 (1937); *accord* Ashley, *supra* note 146, at 559 (admitting that "perhaps . . . some of our own arguments against this corporate invasion" are economically motivated).

351. William R. Matheny, *A Program for the Elimination of Unauthorized Practice of the Law*, 26 Ill. Bar J. 10, 10 (1937).

352. Kephart, *supra* note 142, at 227.

353. George W. Bristol, *The Passing of the Legal Profession*, 22 Yale L.J. 590, 594 (1913).

transact the business of these bodies lose all their official individuality and force and become nothing but trained clerks."[354]

Third, as we explain above, corporate law practices specialized—and in so doing, were able to practice law at scale. Employed by an auto club, one lawyer could settle hundreds or even thousands of cases each year—and suck up a disproportionate share of business from fellow practitioners. The bar's opposition thus became rooted in the fact that corporate law practice "concentrat[ed] . . . service in [the] hands of fewer lawyers."[355]

Fourth, and relatedly, when corporations practiced law, the benefits of law practice did not just flow to ever-fewer lawyers; some also flowed to the corporation—diluting lawyers' *exclusive* right to profit from law practice. As the D.C. Bar's Richard L. Merrick bluntly explained: "Organizations, such as [the District of Columbia Motor Club,] encroach upon the domain of the lawyer . . . and reap the rewards of the performance of functions belonging to the lawyer."[356] Or, as a contemporaneous commentator put it: "The court, in condemning practice of law by corporations, acts not only for the protection of clients but in aid of worthy members of its own bar who would otherwise be compelled to compete with these illicit lay organizations."[357]

Fifth and finally, lawyers worried that they were on the edge of a precipice—and, if they did not put a stop to corporate law practice, corporations

> will continue to get bigger and better, and the lawyers who work for them will continue to prosper at the expense of their less fortunate brethren

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354. N.Y. Cnty. Laws.' Ass'n, Year Book 131 (1909). The ABA evinced a similar fear decades later while opposing closed-panel legal-insurance plans. Mimicking a modern-day health-maintenance organization, these closed-panel plans satisfied insureds' legal issues using in-house counsel or a set roster of lawyers. *See* Engstrom, *supra* note 76 (manuscript at 55-58). "[A]fraid that closed-panel plans would concentrate potential business in the hands of a few practitioners," lawyers—and especially lawyers who practiced alone or in very small law firms—fought these closed-panel plans tooth and nail. Susan T. Mackenzie, Group Legal Services 38 (1975).

355. Drinker, *supra* note 162, at 167 (stating that the bar's opposition is "believed to be" traceable to scaling legal aid and the concomitant loss of income); *see also* N.Y. Cnty. Laws.' Ass'n, *supra* note 354, at 131 (warning that "[a] few corporations have . . . usurped and annihilated the business of many hundred lawyers"); *see also* Preble Stolz, *Insurance for Legal Services: A Preliminary Study of Feasibility*, 35 U. Chi. L. Rev. 417, 422 (1968) ("Some of the professional hostility towards group legal services is doubtless rooted in fear of the competitive consequences if group legal services become common. The bulk of the bar is in individual or small firm practice, and if large blocks of the public had their legal problems channeled to group service lawyers, the competitive consequences might be devastating.").

356. D.C. Bar *Merrick* Brief, *supra* note 215, at 44.

357. Dowling, *supra* note 239, at 636-37.

> until the time will come when no lawyer can be accounted successful unless he works for one of these great business houses of the law.[358]

Vitally, though these entangled fears and anxieties all contributed to the bar's crusade, the most prevalent—especially as economic difficulties mounted in the 1930s—remained the protection of lawyers' livelihoods. In an essay, Merrick, who personally brought numerous UPL challenges, put a fine point on it:

> When our profession was not so overcrowded as it is now and there was plenty of work for the lawyers, little thought was given by them to these gradual encroachments upon their domain. Now, however, . . . this question of the practice of law by laymen and lay agencies is a serious menace . . . .
>
> What chance has the young lawyer to get a start in the practice of his profession when he has to compete with banks, real estate agents, accountants, title companies, collection agencies and the like?[359]

Nor was the bar's self-protective motivation lost on contemporaneous observers. On September 14, 1931, for instance, just as the bar's UPL campaign was kicking off, Frederick C. Hicks, a Yale law librarian and professor, observed: "Recently, however, the subject [of UPL] has been given a new importance by the activities of corporations. So formidable a rival has forced the bar to give heed, because lawyers [a]re being touched in their most vulnerable spot, the pocket."[360]

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358. Richard T. Catterall, *Virginia State Bar Association*, 1 UNAUTHORIZED PRAC. NEWS, Aug. 1935, at 9, 10; *accord* Gilb, *supra* note 155, at 246-47 ("What was really at stake, for the bar, was its independent professional status. . . . Leaders of the [California] State Bar movement were independent practitioners, determined that the status and ethics of the bar were not to be those of salaried clerks.").

359. Merrick, *supra* note 243, at 29. Others echoed this "overcrowding" complaint, which sometimes also encompassed the concern that admission to the profession (i.e., licensure requirements) had become too lax. *See, e.g.*, William K. Clute, *The Illegal Practice of Law by Lay Agencies*, 11 MICH. ST. BAR J. 263, 283 (1932) ("[T]he legitimate field of law practice is overcrowded and what is worse, it is over-run with lay intrusions having the effect of supplanting regularly licensed lawyers . . . ."); *see also supra* note 339 (collecting additional examples). With characteristic bluntness, K.N. Llewellyn retorted: "The Bar complains of 'over-crowding.' This means, in horse-sense terms, 'not enough income to go around comfortably.'" Llewellyn, *supra* note 149, at 109.

360. Frederick C. Hicks, *Practice of Law by Laymen and Lay Agencies*, 6 CONN. BAR J. 31, 31-32 (1932); *see also* DRINKER, *supra* note 162, at 167 (stating that the bar's hostility to corporate law practice is traceable to the bar's objection to "loss of income to the lawyers"); Comment, *The Legislative Monopolies Achieved by Small Business*, 48 YALE L.J. 847, 851 (1939) (observing that "[p]rofessional men deny that they engage in . . . restraints of trade," but that they do so under the guise of their "[c]hief legal weapon," "the prohibition of 'corporate practice'").

A 1932 "gentleman's agreement" between the California Bar Association and the state's biggest auto clubs further supports this self-protection hypothesis.[361] As part of that agreement, the California clubs agreed to drop personal-injury claims, advise all members of "the advisability of employing private counsel," and restrict their property-damage representation to claims that fell below "the maximum amount of the jurisdiction of the small claims court."[362] Criminal defense was no different: a club could only assist in "cases where the amount involved is so small that individuals will feel they would be forced to pay the fine rather than to employ an attorney."[363] In other words, as long as the California auto clubs did not take cases that would be profitable for lawyers to handle, the California State Bar had no concern.

CONCLUSION

In 1930, D.W. Burbank, a member of the California Bar Association's newly formed committee on the unauthorized practice of law, admitted that auto clubs "come into more intimate contact with a larger percentage of the public generally than do any of the other lay agencies under investigation."[364] The clubs' broad reach, he warned, counseled "great caution . . . since any action taken may react with the greater force, for good or evil, in the future relations of the bar and the public."[365]

As we have shown, Burbank's caution was neither widely held nor long felt. In the 1930s, displaying exceptional determination, the bar extinguished not just auto clubs, but also corporate legal-service providers of every stripe. And the bar did so while relying on an empty formalism—a syllogistic and counterintuitive conception of corporate UPL that was barely a decade old and was, astonishingly, supported by not a shred of evidence showing that the threatened harm the bar was so aggressively guarding against had ever actually materialized.

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361. *A Message from the President: The Unlawful Practice of Law*, 7 ST. BAR J. 274, 278 (1932).

362. *State Bar Agreements*, 41 J. ST. BAR CAL. 139, 141 (1966).

363. *Id.* at 142. Similarly suspicious is the fact that, throughout the period, the bar retained its carve-out for legal-aid societies. CANONS OF PRO. ETHICS Canon 35 (AM. BAR ASS'N 1937) (outlawing lawyer intermediaries while stating "[c]haritable societies rendering aid to the indigent are not deemed such intermediaries"). This hypocrisy was not lost on contemporary observers. *See, e.g.*, Henry Weihofen, Comment, *Practice of Law by Motor Clubs—Useful but Forbidden*, 3 U. CHI. L. REV. 296, 300 (1936) (noting the inconsistency of holding that legal-aid societies can employ lawyers to represent third parties but that motor clubs cannot).

364. Williams et al., *supra* note 8, at 26. The portion of the report quoted here was "prepared by" D.W. Burbank. *Id.*

365. *Id.*

More remarkable still, over the ensuing decades, this expansive conception of UPL, forged in — and out of — economic desperation, has more or less endured, consigning countless Americans with legal problems to address them alone or not at all. Indeed, this broad conception of UPL has taken such a firm hold that, beyond just limiting the availability of legal help to a scandalous degree, it has also limited our imaginations for the forms legal services can take. So impoverished is our conception that, in recent decades, few have stopped to ask a question that one scholar posed back in 1934: "Why is it that individuals may band together to provide themselves with cheaper insurance, cheaper groceries, higher wages, better prices, easier credit, lower taxes, better health — everything, except better or cheaper legal advice and aid?"[366]

Perhaps, inspired by the auto-club experiment — and fortified with fresh evidence concerning the value of group legal services and the antisocial origins of restrictions on unauthorized practice — it is time for scholars and policymakers to ask that question anew.

366. Weihofen, *supra* note 242, at 128.