



SYMPOSIUM ESSAY

**Civil Justice at the Crossroads: Should  
Courts Authorize Nonlawyers to Practice  
Law?**

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This essay describes how a 1917 misdemeanor case charted the course of civil justice in America for over a century and urges state judiciaries to change course.

**Introduction**

The crime scene was a commercial space on the ground floor of a four-floor wood house occupied by Henry Alfani and his family in Brooklyn, New York.<sup>1</sup>

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1. The facts recounted in this essay regarding *People v. Alfani*, 125 N.E. 671 (N.Y. 1919), including quotations from legal briefs, are from the record in that case.

A sign over the entrance read:



**Figure 1: Photograph of Henry Alfani's storefront, reading "Agency of the Great Eastern Casualty Co. of New York | Notary Public Redaction of all Legal Papers | Real Estate Operator Loan Insurance Broker Established 1888"<sup>2</sup>**

That was where Alfani conducted business, undisturbed by law enforcement authorities for almost three decades.

Alfani's life changed on December 27, 1917, when two undercover investigators came to his business establishment pretending to need legal documents for the sale of a soda shop and its merchandise. The purported buyer was to pay the purchase price in installments and pay off the balance of the seller's mortgage. For a \$4 fee, Alfani created the documents that the men needed for the deal, including a Bill of Sale and two copies of a Mortgage on Goods and Chattels. Before leaving, the investigators signed them and Alfani notarized them, cautioning the seller not to transfer the Bill of Sale until the buyer made the first \$50 payment.

The Brooklyn District Attorney accused Alfani of violating Section 270 of the penal law, a misdemeanor provision titled "Practicing or appearing as attorney without being admitted and registered."<sup>3</sup> This offense is now known as

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2. *People v. Alfani*, 125 N.E. 671 (N.Y. 1919); Transcript of Record at 41.

3. Section 270 of the New York Penal Law provided in pertinent part: "It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for another in a court of record in this state or in any court in the city of New York, or to make it a business to practice as an attorney-at-law or as an attorney and counselor-at-law for another in any of said courts, . . . or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law . . . or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns

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the unauthorized practice of law—UPL for short. New York’s UPL law, dating to 1898, initially targeted nonlawyers who either represented parties in state courts of record or fraudulently held themselves out as lawyers.<sup>4</sup> By 1917, the state legislature had broadened the provision, most notably by forbidding corporations from practicing law by hiring out lawyers.<sup>5</sup>

Alfani’s trial was quick. An undercover investigator testified for the prosecution, Alfani for the defense. Alfani was found guilty, received a suspended sentence, and appealed to the intermediate appellate court, which overturned his conviction.<sup>6</sup> The State appealed to the state’s high court, the court of appeals, setting the stage for the decision in *People v. Alfani*.<sup>7</sup>

## I. The 1919 Decision That Charted the Course of Civil Justice

### A. How a Misdemeanor Prosecution Created a Civil-Justice Test Case

The district attorney, likely prompted by the local bar, may have been encouraged to make a test case of Alfani by a recent decision that applied New York’s UPL statute in the corporate context. Less than two weeks before Alfani’s arrest, New York’s intermediate appellate court upheld a corporation’s conviction in Brooklyn for charging a fee to prepare a bill of sale and a chattel

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conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state.” N.Y. PENAL LAW § 270 (Consol. 1918).

4. Act of Mar. 29, 1898, ch. 165, § 4, 1898 N.Y. Laws 309, 310 (codified at N.Y. PENAL LAW § 270 (Consol. 1909)). Section 270 did not prohibit nonlawyer advocacy in inferior courts, such as municipal courts, that were not “courts of record,” with one exception: it forbade nonlawyer advocacy in all New York City courts, including those that were not courts of record. N.Y. PENAL LAW § 270 (Consol. 1918). Thus, a nonlawyer could advocate in a municipal court in Buffalo but not in New York City. For a history of UPL laws, see Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 8-9 (1981). See generally Laurel A. Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law*, 37 QUINNIPIAC L. REV. 97 (2018).
5. New York first adopted a penal law forbidding corporations from practicing law in 1909. Act of May 23, 1909, ch. 483, 1909 N.Y. Laws 1170 (codified at N.Y. PENAL LAW § 280 (Consol. 1909)); see Bruce A. Green, *The Disciplinary Restrictions on Multidisciplinary Practice: Their Derivation, Their Development, and Some Implications for the Core Values Debate*, 84 MINN. L. REV. 1115, 1118-33 (discussing the law’s adoption and the state high court’s earliest decision interpreting it). Until that time, “it was apparently a hornbook principle of agency law that corporations could employ lawyers to represent third parties in litigation.” *Id.* at 1119-20.
6. See *People v. Alfani*, 174 N.Y.S. 527, 529 (N.Y. App. Div. 1919), *rev’d*, 125 N.E. 671 (N.Y. 1919).
7. See *People v. Alfani*, 125 N.E. 671 (N.Y. 1919).

mortgage.<sup>8</sup> The relevant penal law provision, Section 280, forbade corporations from practicing law by employing lawyers to provide legal services to clients or by furnishing lawyers to clients for a fee.<sup>9</sup> Its intent was to prevent profit-driven corporations from influencing lawyers' independent judgment.<sup>10</sup> However, the decision assumed that unlicensed individuals could charge for similar work. The appellate court observed that "it was not illegal for natural persons to perform all acts usually intrusted to lawyers except to represent clients before judicial tribunals. . . . [E]specially in rural districts, wills, deeds and instruments creating legal obligations are commonly drawn by draftsmen who are not members of the bar."<sup>11</sup> The court also noted that lawyers' work varied in complexity, and that some document preparation could be "done by the use of printed blanks which can be bought at a stationery shop."<sup>12</sup> A dissenting judge, who thought that anyone—corporations and individual nonlawyers alike—could prepare transactional documents, emphasized that "the acts of making out deeds, mortgages and conveyances . . . are done, and have long been done, by men not admitted to the bar."<sup>13</sup>

The Brooklyn District Attorney charged Alfani under a related Penal Law provision, Section 270.<sup>14</sup> He accused Alfani of advertising himself as a lawyer, "to convey the impression that he [was] a legal practitioner of law."<sup>15</sup> At trial, the prosecution pointed to the sign outside Alfani's storefront offering "redaction of all legal papers," which both sides agreed meant *preparation* of legal papers, and to Alfani's advice to the undercover investigators about how to protect the

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8. See *People v. Title Guar. & Tr. Co.*, 168 N.Y.S. 278, 279, 282-83 (N.Y. App. Div. 1917), *rev'd*, 125 N.E. 666 (N.Y. 1919). In this case, the Brooklyn Bar Association sent an undercover detective and another man, posing as a buyer and seller, to pay for the preparation of the legal documents. *Id.* at 279.

9. For example, one early twentieth-century corporation offered "subscribers 'advice upon all questions of law' for an annual fee of \$10, and, if the services of counsel become necessary, 'efficient services for a moderate fee.'" Green, *supra* note 5, at 1131 (quoting Samuel Marsh, *In re Rendition of Legal Services and Practices of the Law by Business Corporations* (1909), in Brief on Behalf of Attorney General, *In re Co-operative Law Co.*, 92 N.E. 15 (N.Y. 1910)).

10. For a history of the UPL law's application to corporations, see Green, *supra* note 5, at 1118-33; Rigertas, *supra* note 4, at 139-155. Some courts have permitted corporations such as title companies to prepare legal documents for customers "incidentally" to other services that the corporations provide. See, e.g., *Wollitzer v. Nat'l Title Guar. Co.*, 266 N.Y.S. 184, 187 (N.Y. Sup. Ct. 1933), *aff'd*, 270 N.Y.S. 968 (N.Y. App. Div. 1934).

11. *Title Guar. & Tr. Co.*, 168 N.Y.S. at 280.

12. *Id.* at 281.

13. *Id.* at 284 (Putnam, J., dissenting). See also *id.* ("Restrict[ing] such work to the legal profession . . . would in effect declare that our system of written transactions had grown too complex for the ordinary man – a reproach which our Legislature is seeking to remove by establishing short forms of conveyancing.")

14. N.Y. PENAL LAW § 270 (Consol. 1918).

15. *People v. Alfani*, 174 N.Y.S. 527, 527 (N.Y. App. Div. 1919), *rev'd*, 125 N.E. 671 (N.Y. 1919).

parties' legal interests and effectuate their agreement, including which documents to execute.<sup>16</sup> The defense responded that Alfani never claimed to be a lawyer but prepared the transactional documents and gave advice as a notary public.<sup>17</sup> But even if so, the prosecution argued, Alfani charged for work reserved exclusively to lawyers, implying to customers that he was a trained attorney.<sup>18</sup> Unpersuaded, the intermediate appellate court overturned Alfani's conviction, recounting how notaries had drawn up commercial documents since Roman times and still did so in present-day Europe. "Alfani's acts are those of a notary public, or a conveyancer," the court concluded, not exclusively those of a lawyer.<sup>19</sup>

In the court of appeals, the question was superficially one of statutory interpretation to be governed by legislative intent, but the court had considerable leeway, both because the statute was susceptible to alternative interpretations and because it addressed the practice of law, a subject on which a court might regard itself as having particular expertise and, perhaps, some latitude to disregard ill-expressed legislative intent. In most states, regulation of the practice of law is principally, if not exclusively, a job for state courts.<sup>20</sup> In New York, as elsewhere, the judiciary exercises regulatory power over the practice of law, whether as a matter of state constitutional authority or by legislative delegation.<sup>21</sup> The court exercises this regulatory power when

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16. *Id.* at 527-28; Transcript of Record at 16-25, *People v. Alfani*, 186 A.D. 468 (1919).
  17. *See Alfani*, 174 N.Y.S. at 427-28; Transcript of Record at 22, 24-25, *People v. Alfani*, 186 A.D. 468 (1919); Appellants' Brief at 16, *People v. Alfani*, 125 N.E. 671 (N.Y. 1919) (acknowledging Alfani's argument that he held himself out as a notary public).
  18. *See* Appellants' Brief at 15, *Alfani*, 125 N.E. 671 (asserting that in undertaking "to prepare for others, as a business, legal papers of every description," Alfani necessarily "represent[ed] to the public that he possessed the necessary legal knowledge and qualifications," thereby holding "himself out to the public as being entitled to practice law").
  19. *Alfani*, 174 N.Y.S. at 529.
  20. *See* Thomas M. Alpert, *The Inherent Power of the Courts to Regulate the Practice of Law: An Historical Analysis*, 32 BUFF. L. REV. 525, 536-40 (1983); Charles W. Wolfram, *Lawyer Turf and Lawyer Regulation—The Role of the Inherent-Powers Doctrine*, 12 U. ARK. LITTLE ROCK L.J. 1 (1989-90).
  21. *See, e.g., People ex rel. Karlin v. Culkin*, 162 N.E. 487, 492 (N.Y. 1928) (Cardozo, C.J.) (observing that the legislature had confirmed state courts' constitutional authority to regulate the practice of law); *Banales v. Jackson*, 601 S.W.2d 508, 510-11, 511 n.3 (Tex. Civ. App. 1980) (observing that in Texas and other states, courts have inherent authority to regulate the legal profession). In many states, according to Charles Wolfram, state courts' inherent constitutional authority to regulate law practice is relatively exclusive—that is, state legislatures themselves have limited authority to regulate the practice of law. Charles W. Wolfram, *Inherent Powers in the Crucible of Lawyer Self-Protection: Reflections on the LLP Campaign*, 39 S. TEX. L. REV. 359, 362 (1998); Wolfram, *supra* note 20, at 4-5. For a discussion of the comparative merits of judicial vs. legislative regulation of the bar, see generally Benjamin H. Barton, *An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation—Courts, Legislatures or the Market?*, 37 GA. L. REV. 1167 (2003).

defining the “practice of law” and deciding whom to authorize to practice law. In *Alfani*, the court of appeals had the opportunity to implement its own view of sound regulatory policy. As an opinion of New York’s high court, a respected court in a large state with many lawyers, those policy decisions would likely influence the bench and bar nationally.

## B. Expanding the Professional Monopoly

The State contended that preparing transactional documents was “the practice of law” reserved exclusively to legal professionals authorized to perform that service. It relied on judicial decisions and treatises saying that lawyers preparing transactional documents were engaged in the practice of law.<sup>22</sup> But the State was reading too much into the prior writings. The point of those earlier decisions was not that lawyers alone could perform this work, but that when lawyers performed this work, they did so as lawyers subject to the fiduciary obligations and processes governing lawyers.<sup>23</sup> It did not necessarily follow that nonlawyers performing the same work did something that only lawyers may do. On the contrary, others could do most of what lawyers regularly did, other than advocating in certain courts. For example, when lawyers held and invested clients’ money, they were practicing law subject to the professional obligations rooted in agency law that lawyers owe to clients, such as the duties of loyalty and confidentiality.<sup>24</sup> But agents other than lawyers (including financial institutions) could hold or invest clients’ money,<sup>25</sup> and they were not practicing law when they did so.

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22. Appellants’ Brief at 21-24, *Alfani*, 125 N.E. 671 (“[T]he courts of this and other states have recognized that the practice of law involves many activities wholly disconnected with litigation . . .”).

23. Similarly, decisions cited by the State established that when suspended or disbarred lawyers performed tasks that lawyers customarily performed, they were violating the terms of their suspension or disbarment, notwithstanding that nonlawyers could lawfully perform these tasks. *See, e.g., In re Lizotte*, 79 A. 960, 961-62 (R.I. 1911) (finding that although “persons not members of the bar collect claims, give advice upon legal matters, draw deeds and other legal documents, search and certify titles, and solicit legal business, which they turn over to attorneys when proceedings in court become necessary,” a disbarred lawyer could not do without violating the court’s disciplinary order).

24. *See Grant v. Chester*, 17 How. Pr. 260, 261-62 (N.Y. Sup. Ct. 1858) (observing that “[a]ttorneys are frequently employed to invest money for their clients” and can “receive money in their professional character”).

25. *See, e.g., Jackson v. Jackson*, 86 So. 510, 512 (Fla. 1920); *Griffin v. Neelis*, 125 So. 888, 890 (La. Ct. App. 1930); *Norton v. Blinn*, 39 Ohio St. 145, 148-49 (1883).

The State conceded that nonlawyers in rural communities often drafted transactional documents for others,<sup>26</sup> but it called for a more restrictive rule in New York City:

In rural districts non-professional persons who draw such instruments are usually engaged in other businesses as well. The drawing of legal instruments is incidental and occasional. Friendship or neighborliness frequently constitutes a part of the *quid pro quo*. An entirely different situation is presented in a case like this, where in a large city with its polyglot population, the defendant undertook to draw *all legal documents for others, as a business for pay, and advertised and held himself out generally as able and willing to do so*. A sanction of this sort of thing will lead to abuses of the gravest character.<sup>27</sup>

The State did not explain why nonlawyers who drew legal instruments incidental to another business, or who did so partly out of friendship or neighborliness, might be more capable or less abusive than notaries or conveyancers who, because drawing legal instruments was their regular business, were experienced and motivated to perform well.

As an exercise of statutory interpretation, the State's argument was far from compelling. The simplest and most obvious reading would have been that nonlawyers were excluded only from advocacy in certain courts (principally courts of record) and that they could perform other law-related services—namely, drafting and advising—if they did not pretend to be lawyers. Moreover, since the court of appeals was interpreting a penal law, the rule of lenity supported the narrower reading, as the dissenting judge noted.<sup>28</sup> But besides being an appellate court, the court of appeals was a regulatory body with a responsibility to supervise law practice for the protection of people with legal problems, and it placed weight on its view of sound regulatory policy. A majority of the court concluded that Section 270 must sweep more broadly “to protect the public from ignorance, inexperience and unscrupulousness.”<sup>29</sup> It reasoned that “danger” does not lie only “in court or in legal proceedings,” finding that the danger is even greater when nonlawyers draft legal documents because there is no judge available to undo the damage.<sup>30</sup> At the same time, it

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26. See Appellants' Brief at 31, *Alfani*, 125 N.E. 671 (“In sparsely settled districts, where lawyers are few, a custom has long existed, out of the necessity, of permitting the performance of legal services, such as drafting legal instruments and appearance for others in local courts.”).

27. *Id.* at 32.

28. See *Alfani*, 125 N.E. at 675 (McLaughlin, J., dissenting). The rule of lenity is the principle of statutory interpretation that ambiguities in penal statutes should be resolved in favor of the accused. See *Ex parte Davis*, 7 F. Cas. 45, 49 (N.D.N.Y. 1851); Zachary Price, *The Rule of Lenity as a Rule of Structure*, 72 FORDHAM L. REV. 885, 940-41 (2004) (“By requiring specificity in criminal statutes, the rule of lenity enhances the accountability of both lawmaking and enforcement in criminal law . . .”).

29. *Alfani*, 125 N.E. at 673.

30. *Id.*

hinted at a possible limitation on the law's reach, observing that what the law forbade was "the drawing of legal instruments *as a business*,"<sup>31</sup> whereas a friend or neighbor could probably provide similar help.<sup>32</sup> Later decisions have ignored this dictum, however.<sup>33</sup>

### C. Unifying the Legal Profession

Even if the *Alfani* court was right that drafting certain transactional documents might require a skilled professional's hand, it did not follow that only lawyers could do this work. Other professionals with different training from courtroom advocates might prepare legal documents as well. The intermediate appellate court recognized that, outside the United States, other professionals, including notaries throughout Europe and scribes in England, drafted legal documents. New York law, in its view, allowed notaries to do what they did in other countries. If special qualifications were needed to do this work, the court said, the state legislature should "set up a standard of . . . qualifications for notaries," like those established for lawyers, rather than declaring that "notaries when drawing papers are [unlawfully] engaged in the 'practice of law.'"<sup>34</sup>

In the court of appeals, the State conceded that in England, legal instruments could be drawn not only by notaries public but by "barristers, certificated solicitors, scribes, . . . special pleaders and draftsmen in equity."<sup>35</sup> But it argued that notaries in the United States were unlike notaries in England, where multiple categories of legal professionals performed discrete tasks. "[A]n English notary," it explained, must receive relevant legal training and "is a lawyer in

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31. *Id.* (emphasis added).

32. *See id.* at 674 ("[A] man may plead his own case in court, or draft his own will or legal papers. Probably he may ask a friend or neighbor to assist him.").

33. In a recent lawsuit pending appeal, *Upsolve, Inc. v. James*, 604 F. Supp. 3d 97 (S.D.N.Y. 2022), New York's Attorney General, who enforces the state's UPL law and issues interpretive opinions, declined the opportunity to acknowledge that friends and neighbors may provide certain uncompensated assistance with legal problems outside the courtroom. With the benefit of a not-for-profit organization's training, a reverend in the South Bronx sought to assist members of his community facing debt-collection lawsuits. The reverend proposed simply to advise on how to fill out and file court-approved answer forms. Recognizing that the state's UPL law may forbid even this modest assistance, the organization and the reverend brought a federal court action to enjoin New York's application of its UPL law to their planned activity, arguing that the First Amendment rights of free speech and free association permitted the proposed advice. The Attorney General could have avoided the lawsuit simply by acknowledging that the UPL law allows the reverend to give uncompensated help to his neighbors in filling out legal forms, but she declined to do so and has defended the UPL law's application instead. *See generally* Bruce A. Green, *Why State Courts Should Authorize Nonlawyers to Practice Law*, 91 *FORDHAM L. REV.* 1249 (2023) (discussing the *Upsolve* lawsuit).

34. *People v. Alfani*, 174 N.Y.S 527, 529 (N.Y. App. Div. 1919), *rev'd*, 125 N.E. 671 (N.Y. 1919).

35. Appellants' Brief at 39, *Alfani*, 125 N.E. 671.



every sense although practicing in a limited field,” whereas a notary in this country receives no legal training.<sup>36</sup>

The court of appeals agreed, observing that the misdemeanor provision prohibited the “practice [of] law *in any manner* . . . to those not lawyers.”<sup>37</sup> The court also noted that outside the United States, scribes and notaries were required to be “trained and experienced.”<sup>38</sup> “Only in the name,” it asserted, “is there a correspondence to the continental official.”<sup>39</sup>

*Alfani* thereby rejected the English tradition in which different classes of legal professionals were trained to perform different legal tasks. From the court’s perspective, it was preferable to reserve all aspects of law practice exclusively to lawyers. While leaving open the possibility that friends, neighbors, and other businesspeople might occasionally or incidentally perform legal tasks, the court frowned on other professionals building a business around charging for legal work that lawyers regularly performed.

## II. Time to Change Course

In two respects, *Alfani* brought the New York court to the crossroads on questions of how to regulate the practice of law. One question was whether to expand legal professionals’ monopoly beyond courtroom advocacy to include law-related work conducted outside the courtroom. The other was whether to unify the legal profession by rejecting the English model of professional stratification. The court did both, holding that only legal professionals could practice law as a business in any respect, including by charging a fee to prepare routine commercial papers, and that only lawyers, not notaries, were authorized legal professionals. The decision set the UPL doctrine on course to impede access to meaningful legal assistance when people cannot handle their legal problems themselves but also cannot find a free or affordable lawyer.

For over a century, states largely followed the path blazed by New York’s high court.<sup>40</sup> The UPL restrictions expanded further, forbidding nonlawyers

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36. *Id.* at 34.

37. *Alfani*, 125 N.E. at 672.

38. *Id.* at 674.

39. *Id.*

40. See Rhode, *supra* note 4, at 10 (“[M]ost [UPL] enforcement focuses on laymen, especially those seeking to prepare documents of legal significance and to provide related advice. For example, among those triggering the most visible unauthorized practice controversy are real estate brokers who draw up documents or counsel parties in real property transfers, and uncontested divorce services that sell do-it-yourself kits, provide scrivener assistance, or answer questions about the mechanics of proceeding pro se. Other principal areas of bar concern include lay involvement in insurance, debt collection, bankruptcy, immigration, trust, and probate matters, as well as lay appearances before administrative agencies.”). See also Green, *supra* note 33, at 1253-57  
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not just from practicing law as a business but from advocating, preparing legal documents, and giving legal advice without compensation.<sup>41</sup> Perhaps in a business transaction, as in *Alfani*, where the parties can afford a lawyer, the restriction serves the public interest by making it more likely that legal work is performed competently. But the restriction hardly ensures that legal work is done competently when people must represent themselves.

In most civil legal matters—for example, in debt-collection, eviction and family law lawsuits—low-income people are unrepresented, in part, because lawyers are unaffordable and there are not enough government-funded legal services lawyers and pro bono lawyers.<sup>42</sup> Some people might competently represent themselves, but it is a given that most cannot, even with available legal information, simplified procedures, or help from court personnel. If, as UPL laws assume, notaries and other nonlawyers cannot perform legal tasks competently, it follows that low-income parties cannot navigate the law independently.

At the same time, the exceptions prove that the UPL rules are overbroad, because nonlawyer professionals and other nonlawyers *can* learn to do some discrete legal tasks competently.<sup>43</sup> Nonlawyers currently assist people in

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(discussing 1978 decision of the Supreme Court of Florida forbidding a secretary from assisting others in completing off-the-shelf forms for seeking divorces).

41. See, e.g., RULES GOVERNING THE WYO. STATE BAR AND THE AUTHORIZED PRAC. OF L. r. 7 (2021) (“Practice law’ means providing any legal service for any other person, firm or corporation, with or without compensation, or providing professional legal advice or services where there is a client relationship of trust or reliance, including appearing as an advocate in a representative capacity; drafting pleadings or other documents; or performing any act in a representative capacity in connection with a prospective or pending proceeding before any tribunal.”). However, some courts do allow nonlawyers to provide certain uncompensated legal services in contexts where providing the same services for compensation would constitute the unauthorized practice of law. See, e.g., Fla. Bar Re Advisory Opinion on Nonlawyer Representation in Sec. Arbitration, 696 So. 2d 1178 (Fla. 1997) (enjoining nonlawyers from assisting others in securities arbitrations for compensation but permitting uncompensated assistance).
42. See, e.g., Tyler Hubbard, Deno Himonas, Rebecca L. Sandefur, & Jim Sandman, *Getting to the Bottom of the Access-to-Justice Gap*, UTAH BAR J., Nov.-Dec. 2020, at 15, 15-19 (highlighting research indicating that a high proportion of individuals lack adequate legal assistance, including the many people who represent themselves or default in civil litigation and the high number turned away by legal services offices).
43. As an exception to UPL laws, laws or decisions might identify simple legal assistance that any individual is allowed to provide. See, e.g., 42 C.F.R. § 435.908(b) (2021) (permitting Medicaid applicants to be assisted by others). Or they might specify the legal assistance that nonlawyers with relevant experience may provide. See, e.g., 20 U.S.C. § 1415(h)(1) (allowing parents in special education hearings to be assisted by individuals “with special knowledge or training with respect to the problems of children with disabilities”). UPL exceptions may also provide for specified legal services to be rendered by paralegals who are trained and certified. See, e.g., ARIZ. CODE OF JUD. ADMIN. § 7-208 (2021) (providing for the certification of legal document preparers to provide legal documents to any unrepresented person or entity in a legal matter). UPL exceptions might also authorize

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obtaining orders of protection,<sup>44</sup> advocate for people seeking various federal benefits, represent others in federal patent and immigration proceedings, prepare certain legal documents, and advocate in certain court proceedings.<sup>45</sup> Those who oppose expanding nonlawyers' role in providing specified legal services have not documented abuses by nonlawyers who permissibly practice law, least of all by nonlawyers who do so after training and certification and are subject to professional obligations.<sup>46</sup> And, of course, a law license does not inoculate legal practitioners from incompetence and misconduct, as any attorney disciplinary authority could attest to.

Lawyers will never meet more than a fraction of low-income people's need for legal assistance in civil legal matters.<sup>47</sup> Private lawyers are unaffordable because they must recoup the cost of at least seven years of higher education, if

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specified legal assistance to be provided by members of other professions, such as social workers or librarians, perhaps with further training. *See generally* NAT'L CTR. FOR ACCESS TO JUST., "UNAUTHORIZED PRACTICE OF LAW" ENFORCEMENT IN CALIFORNIA: PROTECTION OR PROTECTIONISM? (2022), <https://perma.cc/2FUC-S277>; NAT'L CTR. FOR ACCESS TO JUST., "WORKING WITH YOUR HANDS TIED BEHIND YOUR BACK" NON-LAWYER PERSPECTIVES ON LEGAL EMPOWERMENT (2021), <https://perma.cc/XFA5-HXAC>.

44. *See* Margaret F. Brown, *Domestic Violence Advocates' Exposure to Liability for Engaging in the Unauthorized Practice of Law*, 34 COLUM. J.L. & SOC. PROBS. 279, 294-95 (2001) (describing assistance that nonlawyers may provide in domestic violence cases in Illinois, Maryland, and Minnesota).
45. *See* Alex J. Hurder, *Nonlawyer Legal Assistance and Access to Justice*, 67 FORDHAM L. REV. 2241, 2273 (1999) ("Many federal agencies, including the U.S. Department of Health and Human Services, the Immigration and Naturalization Service, the U.S. Department of Labor, and the Social Security Administration, permit nonlawyers to appear in cases before them. Patent agents assume the rights and obligations of lawyers in patent hearings."); *see generally* Richard Zorza & David Udell, *New Roles for Non-Lawyers to Increase Access to Justice*, 41 FORDHAM URB. L.J. 1259 (2014).
46. On the contrary, Arizona recently expanded the opportunities for certified paralegals following the success of its legal document preparers for close to two decades. *See* Green, *supra* note 33, at 1268. Empirical studies of nonlawyers' effectiveness are notably rare. *See* Anna E. Carpenter, Alyx Mark, & Colleen F. Shanahan, *Trial and Error: Lawyers and Nonlawyer Advocates*, 42 LAW & SOC. INQUIRY 1023, 1024 (2017). Perhaps the bench and bar's opposition to experimentation frustrates scholars' ability to undertake such study.
47. Public funding has expanded in some jurisdictions to provide counsel to indigent parties in civil litigation where lawyers are most desperately needed because basic human needs, such as housing, are at stake. *See* *Status Map*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS., <https://perma.cc/UZ6Z-W9V7> (archived Apr. 24, 2023) (tracking state laws providing government-funded provision of counsel in diverse civil legal matters in states across the country). However, it seems politically unfeasible to persuade all jurisdictions to afford lawyers to all low-income individuals in all civil matters. Therefore, the UPL laws will remain an impediment: no matter how successful the civil right to counsel movement may eventually become, many people will still be unrepresented and incapable of securing a fair process and achieving a fair outcome without competent assistance.

not through law practice, then in a nonlegal career.<sup>48</sup> There are not enough publicly or philanthropically funded lawyers, or lawyers offering free legal services, to address more than a fraction of the unmet legal need.<sup>49</sup> Laws and legal procedures cannot become simple enough or be made accessible enough by legal websites and other sources of legal information to eliminate people's need for personal legal assistance with their individual legal problems.

The best response is to let nonlawyers train less expensively and less extensively than lawyers so that they can competently perform discrete aspects of the work currently reserved to attorneys. That would create a corps of competent legal practitioners who can affordably assist low-income clients, whether at no charge or a reduced fee, whether incidental to their other work or as a business. This solution recognizes the obvious: low-income clients with civil legal problems will be far better served receiving help from trained nonlawyers than proceeding unassisted, as most do today.

Instead of impeding nonlawyers from helping unrepresented people with their legal problems, as courts have done for more than a century, courts should use their regulatory authority to let certified paralegals, social workers, and other nonlawyers train to do legal work that they can capably do. That would be a welcome and long-overdue course correction.

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48. See Bruce A. Green, *The Flood of US Lawyers: Natural Fluctuation or Professional Climate Change?*, 19 INT'L J. LEGAL PROF. 193, 197 (2012) ("Eliminating or liberalizing UPL restrictions would allow individuals to provide legal services without the necessity of an expensive, three-year legal education.") (citing CLIFFORD WINSTON, ROBERT W. CRANDALL & VIKRAM MAHESHRI, FIRST THING WE DO, LET'S DEREGULATE ALL THE LAWYERS 90 (2011)).

49. See LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2017), <https://perma.cc/A72Z-QERZ> (finding that low-income individuals received inadequate or no legal help with 86% of their civil legal problems). A 2020 study commissioned by the Institute for the Advancement of the American Legal System (IAALS) surveyed over 10,000 Americans nationally, finding that Americans experience over 250 million civil justice problems annually, of which 120 million are not fairly resolved. See INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. & HAGUE INST. FOR THE INNOVATION OF L., JUSTICE NEEDS AND SATISFACTION IN THE UNITED STATES OF AMERICA: LEGAL PROBLEMS IN DAILY LIFE 6, 18-19 (2021), <https://perma.cc/35CD-WZS4>.