

THE LADIES' HEALTH PROTECTIVE ASSOCIATION: LAY LAWYERS AND URBAN CAUSE LAWYERING

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I. INTRODUCTION: SOMETHING IS HAPPENING HERE

The legal history of women and gender is a crucial and radical project that seeks to rewrite the dominant legal narratives that we tell about the development of law and the role that law has played. It is in part about how law shapes culture and society and how society and culture shape law. Crucial to any understanding of law, culture, and

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society is how gender functions. Yet gender is a slippery term that is at once historically contingent, malleable, shifting, and unstable. This indeterminacy makes gender such a rich mode of analysis.¹ Creating a women's or gendered legal history is not just a matter of adding women to legal history and stirring. Rather the very presence of women and an analysis of gender, changes the story itself – how we imagine, characterize and even locate law, rights, citizenship, property, the family, the state, the individual, and of course the gendered connections between these already complex terms.²

As a legal historian, I attempt to put women's history and legal history in dialogue with each other and this Article is an example of such a project.³ The Ladies Health Protective Association (LHPA), established in the late-nineteenth century and the topic of this Article, was an early example of what historians traditionally would characterize as a "women's club."⁴ In the past two decades, historians of women have written about how these clubs often engaged in important reform activities from temperance and suffrage work to the creation of kindergartens and playgrounds.⁵ Although research on the topic of women's clubs has produced a large and extraordinarily significant body of scholarship, much of the literature on women's clubs does not consciously consider the important role that law played in constituting these organizations, how these organizations strategically employed the law, or how they shaped the law. On the other hand, legal historians, with rare exception, have paid little attention to such women's

1. See, e.g., Joan W. Scott, *Gender: A Useful Category of Analysis*, 91 AMER. HISTORICAL REV. 1053 (1986) (defining gender as signifying relations of hierarchy and power).

2. See Felice Batlan, *Engendering Legal History*, 30 LAW & SOCIAL INQUIRY 823 (2005). Barbara Y. Welke writes, "Law has been as central in gender and racial formation as gender and race have been in shaping law." Barbara Y. Welke, *Willard Hurst and the Archipelago of American Legal Historiography*, 18 LAW & HIST. REV. 197, 202 (2000).

3. See Welke, *supra* note 2, at 197-98 (discussing the disciplinary divide between legal history and women's history).

4. See, e.g., KAREN J. BLAIR, *THE CLUBWOMAN AS FEMINIST: TRUE WOMANHOOD REDEFINED, 1868-1914* (1980).

5. The literature on women's clubs is enormous. A few examples include: Anne Firor Scott, *Most Invisible of All: Black Women's Voluntary Associations*, 56 J.S. HIST. 3 (1990); ANNE BOYLAN, *THE ORIGINS OF WOMEN'S ACTIVISM: NEW YORK AND BOSTON, 1797-1840* (2002); NANCY SCHROM DYE, *AS EQUALS AND AS SISTERS: FEMINISM, UNIONISM, AND THE WOMEN'S TRADE UNION LEAGUE OF NEW YORK* (1980); ELLEN FITZPATRICK, *ENDLESS CRUSADE: WOMEN SOCIAL SCIENTISTS AND PROGRESSIVE REFORM* (1990); MAUREEN FLANAGAN, *SEEING WITH THEIR HEART: CHICAGO WOMEN AND THE VISION OF THE GOOD CITY* (2002); S. Sara Monoson, *The Lady and the Tiger: Women's Electoral Activism in New York City Before Suffrage*, 2 J. OF WOMEN'S HISTORY 100 (1990); ROBYN MUNCY, *CREATING A FEMALE DOMINION IN AMERICAN REFORM, 1890-1935* (1991); SANDRA HAARSAGER, *ORGANIZED WOMANHOOD: CULTURAL POLITICS IN THE PACIFIC NORTHWEST, 1840-1920* (1997).

organizations. From the perspective of traditional legal history, such organizations are relegated to the sphere of culture, emphatically situated as unrelated to the law.⁶

Yet Willard Hurst, the grandfather of legal history, saw nineteenth century voluntary organizations of men and male communal action as crucial to law, the very project of nation building, and what he labeled “the release of creative human energy.”⁷ Hurst understood law, in part, as originating on the ground in the interactions between people and their environment. Hurst further sought to explore how law was shaped by everyday people and how people were shaped by law.⁸ A man of his time, however, “people” did not necessarily include women or women’s organizations.⁹ As Anne Firor Scott, a renowned women’s historian has written, “[P]eople see most easily things they are prepared to see and overlook those they do not expect to encounter.”¹⁰ This may explain the absence of women’s organizations from both Hurst’s writings and more broadly traditional legal history. By examining the LHPA, this Article seeks, however modestly, to extend the Hurstian project. The Article argues that the LHPA, composed of a group of middle-class women interacting with their environment, neighbors, the courts, private businesses, and city and state officials, on a deeply local and quotidian basis, had a significant impact in shaping a multitude of New York City laws and law had a profound affect in creating and molding the work and identity of the organization.

In fact, late nineteenth century middle-class women’s

6. For another article in which I seek to integrate legal history and women’s history see Felice Batlan, *Law and the Fabric of the Everyday: The Settlement Houses, Sociological Jurisprudence, and the Gendering of Urban Legal Culture*, 15 S. CAL. INTERDISC. L. J. 235, 235-36 (2006).

7. JAMES WILLARD HURST, *LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH CENTURY UNITED STATES* 5-7 (1956). See also William Novak, *Law, Capitalism, and the Liberal State: The Historical Sociology of James Willard Hurst*, 18 LAW & HIST. REV. 97 (2000) (discussing Hurst as founder of American legal history).

8. Robert W. Gordon, *Hurst Recaptured*, 18 LAW & HIST. REV. 167, 169 (2000) (noting that Hurst “was concerned . . . to emphasize the everyday rather than the exceptional in legal history, the practical, local, mundane motives . . .”).

9. Interestingly, however, Hurst was greatly influenced by the work of progressive historians Mary Ritter Beard and Charles Beard. Mary Ritter Beard often wrote about women’s organizations and their role in municipal reform. See MARY RITTER BEARD, *WOMAN’S WORK IN MUNICIPALITIES* 47 (D. Appleton and Co., 1915). Thus, Hurst certainly had the material on hand for such an analysis. See Carl Landauer, *Social Science on a Lawyer’s Bookshelf: Willard Hurst’s Law and the Conditions of Freedom in Nineteenth-Century United States*, 18 LAW & HIST. REV. 59, 60-61 (2000) (discussing the Beards’ influence on Hurst). See also Welke, *supra* note 2, at 200-01 (discussing the absence of women in Hurst’s scholarship).

10. Anne Firor Scott, *On Seeing and Not Seeing: A Case of Historical Invisibility*, 71 J. AM. HIST. 7, 7 (1984).

organizations' use of law and legal process may have been a particularly potent strategy. Although institutional legal spaces such as courtrooms and legislatures were male spaces, middle-class white women and law shared a number of characteristics. A separate spheres ideology viewed the home as women's natural and appropriate sphere and the home and women became associated with virtue and purity. This was contrasted with a male sphere of the market and politics which was understood as being infused with self-interest and potential corruption. Women, however, with their base in the home, their moral nature, and their inability to vote, were viewed as able to rise above politics, the market, and self interest.¹¹ Thus the idealized white woman was like an idealized understanding of law—virtuous, moral, and unsullied by self-interest. As will be seen, the LHPA astutely drew upon such tropes.

II. SEARCHING FOR CAUSE LAWYERING

Beyond demonstrating the many ways in which the LHPA employed law and legal process, this Article make an even broader claim – one that is perhaps quite controversial. It argues that the women of the Ladies Health Protective Association, all without formal legal training, essentially functioned as cause lawyers. This claim is important for a number of reasons. First, there is essentially no history of cause lawyering or its origins. Thus this Article begins to formulate the claim that cause lawyering was not a new invention of the twentieth century but rather was already coming to fruition in the late nineteenth century city. Second, women and structures of gender profoundly influenced the development of cause lawyering. Third, by positing that women without formal legal training participated in cause lawyering, this Article destabilizes our understanding of what constituted the practice of law and also requires us to re-think who we imagine lawyers to be and what we imagine the process of lawyering to entail. Indeed in the late nineteenth century, before bar associations had fully monopolized the profession of law, and when many lawyers had not attended law school but rather clerked in law offices, the boundary of what constituted the practice of law were extraordinarily malleable.¹² At times, women,

11. Paula Baker, *The Domestication of Politics: Women and American Political Society, 1780-1920*, 89 AM. HIST. REV. 620 (1984). See also REBECCA EDWARDS, *ANGELS IN THE MACHINERY: GENDER IN AMERICAN PARTY POLITICS FROM THE CIVIL WAR TO THE PROGRESSIVE ERA* (1997) (discussing post-bellum construction of women as politically impartial and how they used their impartiality to enter politics).

12. On the development of bar associations and the legal profession, see MICHAEL J. POWELL, *FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR*

unable to gain bar admission because of their sex, were able to exploit such gaps.¹³ Finally, uncovering this sphere of what we might call “lay cause lawyering,” creates a richer and more heterodox understanding of late-nineteenth century legal culture.

Yet defining what “cause lawyering” actually means is difficult and there is little consensus among scholars. Austin Sarat and Stuart Scheingold write that “[w]hile cause lawyering is significant in the way it both serves and challenges legal professionalism, providing a single, cross-culturally valid definition of the concept is impossible.”¹⁴ This is especially true when trying to discuss cause lawyering in historical context. With such caveats, Sarat and Scheingold identify radical cause lawyering as the desire to significantly redistribute political power.¹⁵ They further point out that cause lawyers’ “primary loyalty is [often] not to clients, to constitutional rights, nor to legal process but to a vision of the good society. . . .”¹⁶ Carrie Menkel-Meadow finds altruism and shared or mutual experiences of suffering as motivating some to engage in cause lawyering.¹⁷ Importantly she posits that feminist lawyers often engage in cause lawyering because of exclusion from other types of lawyering and the desire to use their expertise to help women.¹⁸ One might also view cause lawyering as occupying a particularly complicated space between politics and law and as having the intent to enact significant social reform.¹⁹

ASSOCIATION (1988); Robert W. Gordon, *The Ideal and the Actual in the Law*, in *THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA* 56 (Gerard W. Gawalt ed., 1984); JERROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976).

13. On women practicing law in the nineteenth century, see e.g., KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT* (1986); VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* (1998); VIRGINIA G. DRACHMAN, *WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA* (1993) [hereinafter *WOMEN LAWYERS*]. On women who were unable to gain bar admission but who practiced law and held themselves out as lawyers, see Letter from Leila Josephine Robinson to Equity Club (Apr. 9, 1887), in *WOMEN LAWYERS*, *supra*, at 64, 119 (1993) (stating that, pursuant to Massachusetts law, Robinson could have appeared in court even without admission if a client provided her with express permission to do so and a power of attorney, and that she could do office work before being admitted).

14. Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority: An Introduction*, in *POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 5 (Austin Sarat & Stuart Scheingold eds., 1998).

15. *Id.* at 7.

16. *Id.*

17. Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in *POLITICAL COMMITMENTS*, *supra* note 14, at 31.

18. *Id.* at 47.

19. Sarat & Scheingold, *supra* note 14, at 8.

Some scholars see a structural divide in cause lawyering between lawyers who provide services to the poor and mobilization lawyers who work on community organizing and structural changes outside of litigation.²⁰ Thus we must understand cause lawyering as a contested, broad, and flexible concept that, like gender, continually reinvents itself. This Article makes this terrain even more unstable as it argues that late nineteenth century middle-class women, without formal legal training, were engaged in cause lawyering.

In whatever manner cause lawyering might be defined either presently or historically, numerous scholars propose that an ideal model of cause lawyering would encompass de-centralized litigation, grassroots organizing, legislative lobbying, and public education.²¹ What is most remarkable is that the LHPA used all of these tools and strategies. The Association successfully combined legislative lobbying for new laws, often drafted by the Association, work through the municipality, advocacy for the enforcement of existing laws, use of the courts when necessary, and a brilliant public education campaign that strategically utilized the press. Like professional lawyers, they also claimed a stance of expertise, neutrality, and objectivity that served to disguise their own interests and bids for power.

III. "THE LADIES HAD BETTER TAKE THE MATTER UP:" NOXIOUS ODORS AND THE FOUNDING OF THE LHPA²²

In 1884, Manhattan's Beekman Place was a neighborhood that we would now label as being gentrified.²³ In this small area, which reached from the upper forties to the low fifties between First Avenue and the East River, lived the rich and the poor, the immigrant and the long-time resident, dwelling side-by-side, in luxurious townhouses, middle-class brownstones, and dilapidated tenements.²⁴ Beekman Place, sitting on a high bluff with views of the East River and cool breezes in the summer had much to recommend it.²⁵ Yet, it also was located next to New York's abattoir district, which included slaughterhouses, related

20. Michael McCann & Helena Silverstein, *Rethinking Law's 'Allurements': A Relational Analysis of Social Movement Lawyers in the United States*, in *POLITICAL COMMITMENTS*, *supra* note 14, at 261.

21. *Id.* See also Sarat & Scheingold, *supra* note 14, at 9, 16-19.

22. *East Side Odors*, N.Y. HERALD, Nov. 18, 1884, at 9.

23. See THE WPA GUIDE TO NEW YORK CITY 226-28 (New Press 1992) (1939).

24. *Id.*

25. *Id.*

businesses, and a large manure dump.²⁶ As the winds shifted, Beekman Place residents experienced horrendous odors that permeated the neighborhood.²⁷ In November of 1884, for reason that would provoke disagreement, these odors became, at least for some residents, increasingly more noxious.²⁸

In that month, eleven women who lived on Beekman Place gathered in a living room to discuss the smells that were making their lives miserable, preventing them from opening their windows, and causing concern that the air their families inhaled was impure and unhealthy.²⁹ Some blamed their and their families' illnesses—headaches, nausea, lack of appetite—on the odors and feared that cholera and typhoid germs were entering their homes.³⁰ As they later narrated the history of the Association, within days, the women began to inspect the neighborhood in an attempt to locate the source of the smell, which they eventually tracked to an enormous pile of manure weighing approximately 20,000 tons, spanning two city blocks, and which was 30 feet high in some places.³¹ Upon further investigation, they learned that the pile was owned by Michael Kane, the brother-in-law of a senator in Albany.³² Kane was in the lucrative business of collecting manure from stables and then selling it to farmers.³³

As the women completed their tour of the neighborhood, they declared that the manure pile was unhealthful and constituted a nuisance. To determine their course of action, they consulted with reformer Felix Adler, founder of the Ethical Culture movement and son of the former head rabbi at New York's Temple Emmanuel Congregation.³⁴

26. *Id.* at 227.

27. *See id.* at 226-28; Mary E. Trautmann, *Women's Health Protective Association*, 2 MUNICIPAL AFFAIRS 439 (1898). *See also* CLAY McSHANE & JOEL TARR, *THE HORSE IN THE CITY: LIVING MACHINES IN THE NINETEENTH CENTURY* 26 (2007) (discussing odors from manure piles).

28. Trautmann, *supra* note 27, at 439.

29. *Id.*

30. *East Side Odors*, *supra* note 22.

31. Trautmann, *supra* note 27, at 439.

32. *Id.*

33. *Id.*

34. *East Side Manure Yards Still Complained Of – Relief Demanded*, Nov. 1884, *microformed on* D.A. Scrapbooks, New York Municipal Archives (NYMA), Reel 1A [hereinafter *East Side Manure*]. Although it is difficult to determine the background of members of the Association and its composition did change over time, from federal census information, along with other sources, one can discern that the founding members were more diverse than one might expect. As one newspaper reported, at least a number of the women who founded the Association were Jewish. *See Kane Offends the Ladies*, STAR, Dec. 19, 1884, *microformed on* D.A. Scrapbooks, NYMA, Reel 1A [hereinafter *Kane Offends*]. In addition, the founding members' husbands were engaged in diverse professions -- some were lawyers, one a dry goods merchant, another a wine

Proclaiming the women to be “courageous,” Adler declared: “The ladies had yet to learn . . . the power that they controlled . . . and that the movement in opposition to nuisances of all sorts should be made permanent.”³⁵ The decision to consult with Adler may point to the women’s secular German Jewish membership and the Association’s desire to situate itself as a legitimate reform organization.³⁶ Already, the women’s use of the word “nuisance” placed the issue within a legal realm in which the law could provide redress. With Adler’s blessing, the women immediately formed the Ladies Health Protective Association to “protect the people living in the neighborhood.”³⁷

The Association then pressed the New York district attorney to bring a nuisance suit against Kane. He advised the women that they needed to prepare a strong case.³⁸ Thus, the district attorney invited the women into an urban public legal sphere. They, not his office, were to

importer. A number of women had emigrated from various parts of Germany and their ages ranged from twenty to fifty. Most of the officers of the Association were married and had at least one child. Furthermore, at a time when elite New Yorkers would have employed live-in servants, the officers of the Association did not. This perhaps points to the deeply middle-class rather than elite status of the Association’s members. At least some of the women who founded and would lead the Association over the next decade fell into the category of club women. A number of women, such as Esther Hermann, would become members of the women’s organization Sorosis. The Association’s long-time officer, Mary E. Trautmann, also a member of Sorosis, would later be appointed to the Lady Board of Managers of the Columbian Exposition where she headed the New York State delegation. Although little is known about Trautmann, others who served with her at the Fair considered her an excellent speaker but commented that she was not appropriately refined nor part of New York’s high society. Trautmann was also criticized for her tendency to immediately go out to investigate issues such as factory conditions rather than hold discussions with other women of society. Clearly, such a methodology had developed from her years with the Association. See JEANNE MADELINE WEIMANN, *THE FAIR WOMEN* 185-86 (1981). Another member of the Association, Laura Palmer, served on one of the executive committees of the General Federation of Women’s Clubs. These women’s membership in the Ladies’ Health Protective Association, in many cases, preceded their other work. Much of the information about the background of the women who were members of the Association was obtained from the U.S. Federal Census of 1880, 1890, and 1900, membership lists of other clubs, New York City directories, news articles, and obituaries. See e.g., *Ralph Trautmann’s Death*, *New York Times* (Nov. 14, 1904), 7; Mr. Wendt May Get Office, *New York Times* (May 31, 1885), 7. The 1880 Census is available at www.familysearch.org.

35. *East Side Manure*, *supra* note 34. The D.A. Scrapbooks are scrapbooks created by the New York District Attorney’s office. They consist of newspaper clippings. For some of these clippings, the compilers identified the source and date of the newspaper articles. For other articles, this information is missing. The scrapbooks have been microfilmed and are located in the New York Municipal Archive in Manhattan. At times, the quality of the microfilm is quite bad. Footnotes that cite the D.A. Scrapbooks contain as much information as to date or source as is provided in the Scrapbook.

36. See *Kane Offends*, *supra* note 34 (stating that the women are “of the Hebrew persuasion”).

37. REPORT OF THE LADIES’ HEALTH PROTECTIVE ASSOCIATION OF NEW YORK: 1885 AND 1886 3 [hereinafter 1885-1886 REPORT].

38. *Plague Spots on the East Side*, *N.Y. TIMES*, Nov. 22, 1884.

take the lead role. In its numerous publications, the Association presented its history not as a usurpation of male legal power but rather as an invitation to participate in this very public role as quasi-attorneys.

There is reason, however, to doubt the Association's story of its first foray into public legal life.³⁹ First, the Kane manure pile was in place for over a decade, and it was common knowledge that the business was at least one source of the odors that blanketed the neighborhood. Second, in November 1884, newspapers began to widely report on the stench emanating from the yard speculating that the manure pile bred cholera germs.⁴⁰ Third, Kane had been indicted on a number of occasions for maintaining a nuisance but managed to avoid trial. The Department of Health appears to have turned a blind eye to his activities. Residents knew that Kane's brother-in-law was a state senator and suspected that he protected Kane. Mr. Wendt, the husband of LHPA founder Matilde, had also written a letter to the Board of Health complaining of the odors. When the Board failed to respond to the letter, he published it in a newspaper.⁴¹ Thus, the Association's complaints were directed as much against the Board of Health as Kane, for the Board was widely perceived as being negligent and perhaps even corrupt.⁴²

Instead of a spontaneous, naïve, and innocent apolitical act, the women met knowing the source of the odors and with the full intent of circumventing, even attacking, the Department of Health, attracting publicity, and taking legal action. One early and seemingly candid newspaper report quoted Mathilde Wendt (who would become the first president of the Association) as follows:

My husband . . . and many other gentlemen in the neighborhood are so taken up with politics that they do not care to interfere in the business, as I understand the owner of the yard has a strong political backing.

39. Contemporaneous newspaper accounts offer different and conflicting details regarding the founding of the LHPA and its first actions. In some, the Association is founded before the women tour the neighborhood. Others have the women touring the manure yard as well as the slaughterhouses. See, e.g., *East Side Odors*, *supra* note 22; *The Typhoid Nest*, N.Y. HERALD, Nov. 20, 1884; *Plague Spots on the East Side*, *supra* note 38.

40. *East Side Odors*, *supra* note 22.

41. *Plague Spots on the East Side*, *supra* note 38.

42. Transcript of Grand Jury Proceedings at 3, *New York v. Doe* (Nov. 20, 1884), *microformed on NYMA*, Box 156, folder 1604 [hereinafter *N.Y. v. Doe Transcript*]; *The East-Side Nuisances* (Nov. 1884), *microformed on D.A. Scrapbooks*, NYMA, Reel 1A (stating "when a concern with plenty of money wants an accommodation or a privilege at the expense of the people, it generally succeeds in obtaining it from the Board of Health.").

They quietly tell their wives that the ladies had better take the matter up. Not a very savory business for ladies, you will allow.⁴³

Such a statement is telling, for it indicates that the issues surrounding the yard were deeply political and the women understood this. Furthermore, it already engages in a discourse that contrasted the filth of the yard and politics, both male spaces, with the delicacy of the ladies of Beekman Place. Despite the need for the ladies to foray into male territory (both literally and figuratively), the job of eradicating the dump became the responsibility of women. As true ladies, well-versed in household sanitation, yet disenfranchised, they literally had the ability to cleanse filth and rise above politics, something that their husbands supposedly recognized and encouraged.⁴⁴ Rather than violating the rules of what a middle-class woman should do, the women of the Association claimed that it was their duty, however unpleasant, to do it.

Not only did Kane's manure pile raise issues of politics but it also pitted multiple economic interests against each other. Livery stables required the removal of manure, and when manure was not quickly removed it created enormous stench and discomfort in stables and the areas that surrounded them.⁴⁵ Farmers needed the fertilizer from manure but complained that people like Kane were mere speculators who sold at unfair prices.⁴⁶ Further, various tenement dwellers in the vicinity of Kane's dump seemed not to suffer from the odors, and Kane's business was a source of employment as approximately 150 men worked at the dump.⁴⁷

In addition, the Board of Health was in its own battle against the New York State legislature. The legislature had passed a bill stating that the Board was authorized to issue permits in the city for the storage of manure.⁴⁸ Kane had applied for such a permit but the Board refused to issue one to him or anyone else.⁴⁹ By not issuing permits, the Board believed that it might be in violation of the legislation and that its failure to act could be unconstitutional.⁵⁰ With such questions pending, the Board of Health somewhat disingenuously claimed that it was unable to

43. *East Side Odors*, *supra* note 22.

44. See SUELLEN HOY, *CHASING DIRT: THE AMERICAN PURSUIT OF CLEANLINESS* (1995) (discussing nineteenth century housekeeping standards).

45. *Manure Yards in the City: Ladies from Beekman Hill Testify Against Michael Kane*, N.Y. Herald, Dec. 20, 1884 [hereinafter *Manure Yards in the City*].

46. *Id.*

47. *Id.*

48. N.Y. v. Doe Transcript, *supra* note 42, at 15-17.

49. *Id.* at 15.

50. *Id.*

bring nuisance suits for fear that this larger question of permits would be raised.⁵¹

New York real estate prices may have also prompted the sudden concern over odors from the manure yard. One founding member of the Association stated to the press that the odor had reduced real estate prices by half.⁵² Furthermore, it may have been that the manure yard simply did not fit into a neighborhood (or perhaps anywhere in the city) that was becoming increasingly residential and middle class.⁵³

Thus politics, law, economic interests, and modern visions of the city operated on multiple levels and often conflicted. In this mire, the women of the LHPA asserted their ability to transcend masculine self interest. As the women of the Association wrote about Kane and themselves: “[H]e had several indictments holding over him, which had always been pigeon-holed, and he thought this one would travel the same road. But it was his first experience with women, and he did not realize what that meant.”⁵⁴ The Association’s statement pointed to the women’s assumed objectivity and their capacity to represent and advocate for what they understood to be the general public good.

As if this were not enough, the Association’s agenda from its founding was extraordinarily ambitious and encompassed a great deal more than closing Kane’s business. As one Association officer stated shortly after the formation of the Association, “We intend to concentrate our complaints just now . . . on Contractor Kane’s nuisance. After that we will see what can be done with the others. By getting relief from one at a time we shall hope eventually to make a clean sweep.”⁵⁵ While such a statement points to the long term and strategic plans of the Association, its articles of incorporation indicate that the Association viewed legal action as the centerpiece of its strategy. The certificate stated that the Association was formed for the:

protection of the health of the people of the city of New York by taking such action . . . as may secure the enforcement of existing sanitary laws and regulations, by calling the attention of the proper authorities to any violations thereof, and to procure the amendment of

51. *Id.* at 17.

52. *Id.* at 28.

53. See Hendrik Hartog, *Pigs and Positivism*, 1985 WISC. L. REV. 899 (1985) (discussing desire in the nineteenth century to demarcate the city from the countryside).

54. Trautmann, *supra* note 27, at 439-40.

55. *Plague Spots on the East Side*, *supra* note 38.

said laws and regulations. . . .⁵⁶

Thus, we must understand the organization as specifically formed to pressure public officials to enforce the law and to advocate for new laws when necessary. From this early date, the Association already imagined itself as a public guardian of the law, ensuring its implementation and efficacy.

As such, the women, cloaked in the respectability of true middle-class womanhood, claimed a place in the masculine legal sphere at a time when women could not be admitted to the New York State bar.⁵⁷ Quickly, the Association made contact with New York City's district attorney Peter Olney who agreed to present the women's nuisance complaint against Kane to the grand jury.⁵⁸ As this occurred, one paper claimed that the Association had "invaded" the district attorney's office.⁵⁹ Such language points to the force of the Association while perhaps emphasizing the unwelcome and unsettling presence of the women in this male professional space.

IV. THE "LADIES' PAPER": THE ASSOCIATION AND THE GRAND JURY⁶⁰

Although it would be absurd to say that women were absent from late nineteenth-century courtrooms, seldom did women appear in court, for entirely respectable reasons. For example, they appeared to obtain divorces, as prostitutes, as witnesses to or victims of crimes, as sensational criminal defendants, or as suffrage radicals.⁶¹ Yet here, in a flood of publicity, the women of the Association gladly made themselves the star witnesses and active agents in the nuisance suit brought against Kane.

56. See *Health Matters*, 9 SCIENCE 525, 530 (1887) (quoting from the LHPA's articles of incorporation).

57. For a discussion of women's admittance to the New York State Bar, see Judith S. Kaye, *How to Accomplish Success: The Example of Kate Stoneman*, 57 ALB. L. REV. 961 (1994).

58. Grand Jury Petition, *People v. Kane* (Nov. 28, 1884), *microformed on D.A. Proceedings*, NYMA, Box 156, folder 1604 [hereinafter Grand Jury Petition].

59. *Ladies' Day: The Grand Jury Gives a Hearing to a Delegation of the Fair Sex*, SUN, Nov. 25, 1884, *microformed on D.A. Scrapbooks*, NYMA, Reel 1A [hereinafter *Ladies' Day*].

60. *Plague Spots on the East Side*, *supra* note 38.

61. See, e.g., NORMA BASCH, *FRAMING AMERICAN DIVORCE: FROM THE REVOLUTIONARY GENERATION TO THE VICTORIANS* (1999) (discussing sensational divorce trials); HENDRIK HARTOG, *MAN AND WIFE IN AMERICA* (2000) (discussing divorce cases); REGINA MORANTZ-SANCHEZ, *CONDUCT UNBECOMING A WOMAN: MEDICINE ON TRIAL IN TURN-OF-THE CENTURY BROOKLYN* (1999) (discussing women doctors on trial for malpractice); LISA DUGGAN, *SAPPHIC SLASHERS: SEX, VIOLENCE, AND AMERICAN MODERNITY* (2000) (discussing sensational lesbian murder trial); BARBARA YOUNG WELKE, *RECASTING AMERICAN LIBERTY: GENDER, RACE, LAW AND THE RAILROAD REVOLUTION, 1865-1920* (2001) (discussing women tort victims of railroad accidents).

As the grand jury met to indict Kane, thirteen members of the Association attended court and at least three testified as to the effect of the manure pile on the neighborhood.⁶² One member declared to the grand jury that such odors were “perfectly frightful” and “simply unendurable.”⁶³ She complained that the manure pile was a “dreadful, frightful suffering.”⁶⁴ Continuing, she relayed to the grand jury that upon her inspection she found “an immense heap of manure . . . steaming and fermenting in the sun.”⁶⁵ The pile caused “very disagreeable odors” in her home that had caused her “personal sickness.”⁶⁶ She further stated that Mrs. Trautmann’s children had been sick from the odors, as had the families of other neighbors.⁶⁷ Each member identified the manure heap as the source of the odors and stated that they could clearly distinguish the smell that emanated from it.⁶⁸ One member told the grand jury about the Association’s mission and presented the foreman with its written reports, documenting their observations of the manure pile.⁶⁹ Thus the women appeared not just as witnesses but as experts. One newspaper emphasized that the Association presented its written documents wrapped in a “lovely bow.”⁷⁰ Such reporting further emphasized the contrast between the delicacy and femininity of the women and the filth of the issue.⁷¹

Where the women recounted their own sensory experiences of odors and illness that emanated from the dump, male witnesses were more ambivalent. A clergyman testified that residents had become accustomed to the odors and that more despicable smells came from the slaughterhouses, various places where water stagnated, and an assortment of shanties.⁷² There was further testimony that the dump was not a danger in the case of an epidemic, that Kane’s employees appeared to be healthy, and that manure was not detrimental to health.⁷³ A representative of the Health Department testified that the pile was not a

62. *Ladies’ Day*, *supra* note 59.

63. *N.Y. v. Doe* Transcript, *supra* note 42, at 27-28. Unfortunately, the transcript is incomplete and the court reporter misidentified some of the Association’s witnesses.

64. *Id.* at 28.

65. *Id.* at 27.

66. *Id.* at 29.

67. *Id.* at 31.

68. *Id.* at 28-30.

69. *Ladies’ Day*, *supra* note 59.

70. *Id.*

71. *Id.*

72. *New York v. Doe* Transcript, *supra* note 42, at 1-3.

73. *Id.* at 1-11.

nuisance during the winter months.⁷⁴ During the summer, the Department required Kane to remove the manure quickly.⁷⁵ He continued, that his boyhood was spent in the country where the family kept a manure heap by the dining room and that the odor of manure did not offend him.⁷⁶

The Association, however, did not rely solely upon its own testimony; it provided the grand jury with petitions signed by hundreds of women from the neighborhood demanding the removal of the heap. Such petitions marked the proceedings and the cause as feminized, and, through their petitions, the Association claimed a female voice to counter the male professionalized voice of the Department of Health. One article referred to the petitions as the “ladies’ paper.”⁷⁷ Each petition, signed by a dozen or more women, was directed to the grand jury and stated that the manure dump was a nuisance that must be abated.⁷⁸ Again, the use of legal language is telling. The Association had spent the week before the proceeding collecting signatures. In groups, the members went house to house, calling upon the woman of the home. As they did so, they undoubtedly also spread news of the newly formed Association.⁷⁹ As the women collected the signatures, their sense of power and organizational strength grew. Mrs. Wendt was sure that such petitions would “convince the Grand Jury that the odors we complain of are rather widespread.”⁸⁰ She continued, “We shall hold another meeting soon and express our opinions of the nuisance very forcibly.”⁸¹ Thus the Association used a two prong strategy—one which rested upon pressing the legal case and the other on publicizing its cause and garnering public support.

The Association’s testimony and petitions were effective, for the Grand Jury indicted Kane for maintaining a public nuisance.⁸² In fact, the Association’s involvement in building the Grand Jury case was so impressive that one newspaper wrote the following:

We thought the Grand Jury would take hold of this matter vigorously

74. *Id.* at 14.

75. *Id.* at 15.

76. *Id.* at 21.

77. *Plague Spots on the East Side*, *supra* note 38.

78. Grand Jury Petition, *supra* note 58.

79. On collecting signatures for the petitions, see *Plague Spots on the East Side*, *supra* note 38; *Fighting Bad Odors*, N.Y. TIMES, Dec. 20, 1884, at 8; *The Typhoid Nest*, *supra* note 39, at 9.

80. *The Typhoid Nest*, *supra* note 39, at 9.

81. *Id.*

82. Grand Jury Indictment, *New York v. Kane* (Nov. 1, 1884), *microformed on D.A. Proceedings*, NYMA, Box 156, folder 1604.

after it had been shrewdly put into the hands of the handsomest and most talkative ladies . . . [W]henever a presentment is desired from the Grand Jury, the parties . . . will do well to discard lawyers and intrust [sic] their cases to ladies with pretty faces and sharp tongues.⁸³

Here was an explicit, if somewhat jocular, acknowledgement that the Association was essentially performing legal work.

V. "SYMPHONIES IN BROWN AND YELLOW:" KANE'S TRIAL⁸⁴

Between the Grand Jury indictment and trial, the Association grew to almost 300 members and the Association used its time to construct a case against Kane.⁸⁵ In doing so, the women divided themselves into committees with each responsible for observing the pile and the actions of Kane and his employees on a daily basis. The committees, some which attempted to avoid detection by using a telescope, reported that Kane's manure pile grew larger by the day. They even noted that when Kane appeared he held a handkerchief to his nose.⁸⁶ As they observed the dump, they compiled careful notes.⁸⁷

As Kane's case went to trial, it drew tremendous attention, taking on the aura of a spectacle in which the women of the Association constituted the observed and the observer. New York papers paid close attention to what these women wore to court and their general appearance, remarking upon their warm wraps, silk dresses, sealskin dolmans, velvet bonnets, brilliant eyes, small feet, and pretty faces.⁸⁸ One report described the women as "Symphonies in brown and yellow and glorious harmonies in green and gold. . ."⁸⁹ Such articles implicitly contrasted the women's delicacy and refinement with the drab and dusty background of the courtroom.

As such reports focused upon these women's appearance, which signified their class and emphasized their femininity, they also sought to make the women active agents in a way that both celebrated and subverted their efficacy. Newspaper articles labeled them a

83. *The East-Side Nuisances*, *supra* note 42.

84. *Manure Yards in the City*, *supra* note 45.

85. *Beekman Hill Ladies Meet*, STAR, Dec. 17, 1884, *microformed on* D.A. Scrapbooks, NYMA, Reel 1A.

86. *Id.*

87. *Id.*

88. *Kane Offends*, *supra* note 34; *Kane Pronounced Guilty*, STAR, Dec. 24, 1884, *microformed on* D.A. Scrapbooks, NYMA, Reel 1A.

89. *Manure Yards in the City*, *supra* note 45.

“revolution,” and a “feminine crusade.”⁹⁰ One article explicitly stated that the case had been brought by the Association and implicitly rendered secondary the role of the District Attorney’s office. The article further described the women as vehemently unhappy with the District Attorney’s dismissal of certain potential jurors.⁹¹ Newspaper descriptions thus created conflicting narratives for they highlighted how the women decked in finery were out of place in the male domain of the courtroom while recognizing that the Association possessed both legal knowledge and a degree of power.

The question of how to categorize the women of the Association and precisely what they were doing in court was further highlighted by the courtroom seating arrangement. As the women sought seats, they were ushered into that section usually reserved for attorneys. This forced a number of attorneys already in attendance to leave the courtroom for lack of seats.⁹² These issues involving space represented the unsettled nature of who these women were and what function they were to perform. Where did women who were using the law as a vehicle for reform, in the name of the public interest, belong? Were they observers, experts, witnesses, or perhaps even lawyers? Furthermore such descriptions may have stuck a particular note with readers. In the 1870s and 1880s, numerous states were debating whether to admit women to the bar and it would only be two years until the New York State legislature passed legislation allowing for women’s admittance.⁹³ Likewise there was tremendous conflict regarding women’s admission to law school during this period.⁹⁴ The newspaper articles discussing the Association’s work and appearance in court perhaps gestured to an underlying anxiety that women would replace male lawyers.

Returning to Kane’s trial, in attendance in the courtroom on that December day were Senator J.J. Cullen (Kane’s brother in law), men and women from tenement houses whose presence was meant to support

90. *Kane Pronounced Guilty*, *supra* note 88.

91. *Kane Offends*, *supra* note 34.

92. *Id.*

93. In *Bradwell*, the Supreme Court found that there was no constitutional violation when a state refused to admit a woman to the bar. *Bradwell v. Illinois*, 83 U.S. 130 (1873). On women’s bar admissions, see Kaye, *supra* note 57 (discussing Kate Stoneman, who was the first woman to be admitted to the New York State Bar in 1886); JILL NORGREN, *BELVA LOCKWOOD: THE WOMAN WHO WOULD BE PRESIDENT* 40-52, 67-83 (2007) (discussing Belva Lockwood’s efforts to be admitted to the D.C. Bar and the Supreme Court Bar).

94. See Phyllis Eckhaus, *Restless Women: The Pioneering Alumnae of New York University School of Law*, 66 N.Y.U. L. REV. 1996 (1991) (discussing NYU Law School admitting women in the 1890s); NORGREN, *supra* note 93, at 43-51 (discussing women’s admission in the 1870s to D.C. area law schools).

Kane, and attorneys and judges who had gathered to watch the spectacle of such a large number of ladies testifying.⁹⁵ Approximately ten women from the Association took the stand, and spoke of the nauseating odors that arose from the manure dump and how Kane allowed the pile to stand and rot.⁹⁶ Kane's attorney, Algernon S. Sullivan of Sullivan and Cromwell, argued that Kane's business was protected by law, that it did not pose a danger to public health, and that manure dumps were a necessary and unavoidable circumstance of city life.⁹⁷ He asserted, "The only complaints against Kane . . . are the ladies of Beekman Hill."⁹⁸ Adding an additional flourish, Sullivan continued that the Association was composed of women with "dainty noses" and that they had mistaken the source of the odors.⁹⁹ Kane, Sullivan argued, had acted in strict compliance with the law "as viewed by all men of common sense."¹⁰⁰ Clearly part of the defense's strategy was to discredit the women's work by labeling them finicky and positioning them as unreasonable, wealthy women who stood outside the legal standard of the reasonable man.

Surprisingly, the law of nuisance in late-nineteenth century New York was remarkably unsettled. Could a nuisance consist of that which was merely offensive and interfered with some segment of the public's use or enjoyment of their property, or did it need to rise to that which was actually detrimental to public health? Further, who constituted the public? Did an entire neighborhood need to find something a nuisance or just one segment of the neighborhood? Would nuisance standards differ in the city and the countryside? As the New York Court of Appeals had already articulated, "If one lives in the city he must expect to suffer the dirt, smoke, noisome odors, noise and confusion incident to city life."¹⁰¹ Yet was a manure dump part of city life or did it more appropriately belong in the country?

In fact, the only element upon which the courts were clear was that a uniform standard of what constituted a nuisance did not exist. Rather, the standard differed as to locale and required that the average and reasonable man of a particular community find the condition complained of to be a nuisance. One New York court wrote, "The

95. *Manure Yards in the City*, *supra* note 45; *Kane Pronounced Guilty*, *supra* note 88.

96. *Manure Yards in the City*, *supra* note 45.

97. *Fighting Bad Odors*, *supra* note 79.

98. *Kane Pronounced Guilty*, *supra* note 88; *Fighting Bad Odors*, *supra* note 79, at 3.

99. *Kane Pronounced Guilty*, *supra* note 88.

100. *Manure Yards in the City*, *supra* note 45. For reports on the trial and those in attendance, see *Kane Offends*, *supra* note 34; *Kane Pronounced Guilty*, *supra* note 88. See also *Fighting Bad Odors*, *supra* note 79, at 3.

101. *Campbell v. Seaman*, 63 N.Y. 568, 577 (N.Y. 1876).

locality, the condition of property, and the habits and tastes of those residing there, divested of any fanciful notions, or such as are dictated by 'dainty modes of habits of living' is the test to apply. . . ."¹⁰² Another New York court opined that when a nuisance suit was brought for keeping articles in common use in a community, it must present a real danger to life and property. The court continued, "The fears of mankind will not alone create a nuisance without the presence of real danger."¹⁰³ Mankind was here specifically defined as masculine. The standard was whether the condition would "alarm men of steady nerves and reasonable courage. . . ."¹⁰⁴ Where in this masculine world of courage and nerve did the Association's women fit in? Could they function as the barometer for a neighborhood? Were they the embodiment of reasonableness in determining the extent to which odors interfered with the health and enjoyment of a home? In contrast, as the defendant's counsel suggested, did such middle-class women inherently possess the very type of "daintiness" that removed them from the realm of reasonableness?

Despite counsel's ploy to discredit the women, the jury found Kane guilty and the judge ordered the removal of the manure pile within thirty days or Kane would be imprisoned. Kane's loss of his manure pile had significant material consequences. Kane's business purportedly earned \$300,000 a year.¹⁰⁵ As one paper reported, "In defending his case in the court he was defending his property The victory for health was achieved over property in this instance."¹⁰⁶

The question of whether Kane had complied with the judge's order to remove the manure was no less contentious than the trial.¹⁰⁷ Kane asserted that he had removed the manure, and Health Department inspectors assigned to the case agreed.¹⁰⁸ In contrast, the LHPA claimed that a large part of the pile remained and three women of the Association submitted affidavits to the court averring that the pile was still four to

102. *Gilford v. Babies Hospital of the City of New York*, 1 N.Y.S. 448, 449 (N.Y. Sup. Ct. 1888) (quoting HORACE G. WOOD, A PRACTICAL TREATISE ON THE LAW OF NUISANCES (1883)).

103. *Lee v. Vacuum Oil Co.*, 7 N.Y.S. 426, 429 (N.Y. Sup. Ct. 1889). *But see* *Filson v. Crawford*, 5 N.Y.S. 882 (N.Y. Sup. Ct. 1889) (finding that a stable constituted a nuisance when it destroyed the "comfort" of those on adjoining premises).

104. *Lee*, 7 N.Y.S. at 429. *But see* *Filson*, 5 N.Y.S. 882.

105. *Deadly Blood-Dust: An Invitation to the Cholera Scourge*, Jan. 1885, microformed on D.A. Scrapbooks, NYMA, Reel 1A [hereinafter *Deadly Blood-Dust*].

106. *Id.*

107. *Widely Different Opinions*, N.Y. TIMES, Feb. 3, 1885, at 8.

108. Affidavit of Cornelius Van Zandt, *New York v. Kane* (Dec. 29, 1884), microformed on D.A. Proceedings, NYMA, Box 156, folder 1604.

five feet high.¹⁰⁹ Faced with these contradictory conclusions, the judge appointed the Association to inspect the pile again and produce a report for the court.¹¹⁰ Thus, the court essentially deputized this voluntary organization of women, treating them as the eyes of the court and holding their opinion above that of the Department of Health. Here we see the court and the realm of law serving as a particularly hospitable environment for this association of middle-class women. Like the vision of white women as theoretically above politics and the market, virtuous, impartial and concerned only with justice, the courts and the law supposedly shared such characteristics. Unlike either Kane's attorney or the Department of Health, the judge depended upon women to provide an impartial report.

The Association took its appointment seriously and designated various members to monitor Kane's premises continually. Groups of women "inspectors" dubbed themselves "vigilance committees."¹¹¹ In performing these public duties, the women inspectors presented numerous affidavits to the court documenting Kane's progress, or lack thereof, and his on-going failure to cooperate with the Association.¹¹²

VI. "WE NEVER MISREPRESENT:" LEGAL EXPERTISE AND THE PUBLIC INTEREST¹¹³

After the eventual removal of Kane's pile, the Association began to pressure the Board of Health to deny all permits for manure dumping, and the Board eventually passed a blanket resolution refusing permits.¹¹⁴ In doing so, the Board defied the New York state legislature's intent that permits be issued. Eventually a new bill came before the legislature, supposedly introduced by Kane's brother-in-law, which specifically required the Board of Health to issue a permit for the establishment of a manure dump on First Avenue between Ninety-Fifth and Ninety-Seventh Streets.¹¹⁵ The Association immediately sent a delegation to Albany, lobbying various legislators to vote against the bill, and urging the governor to oppose it. Eventually the bill was defeated, and the

109. *Widely Different Opinions*, *supra* note 107.

110. *Id.*

111. 1885-1886 REPORT, *supra* note 37, at 4.

112. Affidavits of Cecilia Fendler, Eliza J. Sparks, Francis Steibel, Mathilde F. Wendt, and Mary R. Norris, *New York v. Kane* (Feb. 4, 1885), *microformed on D.A. Proceedings*, NYMA, Box 156, folder 1604; 1885-1886 REPORT, *supra* note 37, at 4.

113. *The Gas Works Odors*, N.Y. TIMES, May 18, 1887, at 5.

114. *The Manure Dumps Must Go*, SUN, Mar. 6, 1885, *microformed on D.A. Scrapbooks*, NYMA, Reel 2.

115. 1885-1886 REPORT, *supra* note 37, at 10.

Association asserted that the defeat was in “large measure through their influence and *disinterested* efforts.”¹¹⁶

Although the women of the Association and contemporary newspaper articles depicted the Association as removed from and above politics, the Association was deeply ensconced in both politics and law. As discussed, the nuisance action was as much about the Department of Health as it was about the manure pile, and the Association waged a two-front battle by pressuring the Board of Health to aggressively bring nuisance suits while pursuing the specific case against Kane. What could be more effective than an association of women succeeding where the Department had failed? As one member later wrote, “[A]s this was the first time women had attempted to interfere with any of [the Health Department’s] duties, they looked upon our action with great disfavor and met us with antagonism at every step.”¹¹⁷ One inspector specifically told the Association that they “were interfering in matters that did not concern” them.¹¹⁸ Yet in the end, the Association claimed victory over both Kane and the Board of Health. The Association thus began its career as experts on nuisances and legal watchdogs overseeing municipal officials.

Others too recognized the Association’s self-defined expertise, power, and legal acumen. In March 1885, a committee of men (a number of whom were lawyers) from New Jersey’s Hudson County Citizens’ Association approached the Association for its assistance in removing numerous garbage dumps which they claimed consisted of the “accumulation of filth, and the sickening stench from swill, garbage, offal, dead and putrid animals, including dead babies.”¹¹⁹ The garbage allegedly came from New York City and a court had supposedly already found the dump owners guilty of maintaining a nuisance.¹²⁰ The Hudson Association requested the LHPA’s help in lobbying Albany for a bill which would prevent the exporting of New York garbage to New Jersey. Instead the LHPA chose to use the courts. Immediately the Association contacted the judge who had tried the dump owners. He suggested that the LHPA contact the county prosecutor’s office which

116. *Id.* at 10-11 (emphasis added). The following year a similar bill came before the legislature and the Association engaged in a successful letter writing campaign to various assemblymen and legislators. *Opposing a Nuisance*, N.Y. TIMES, Mar. 3, 1887; *Fighting a Nuisance*, N.Y. TIMES, Mar. 9, 1887, at 9.

117. Trautmann, *supra* note 27, at 440.

118. *Id.*

119. Resolution from Hudson County Citizens’ Association to Ladies’ Health Protective Association (Mar. 31, 1885), in 1885-1886 REPORT, *supra* note 37, at 5.

120. *Id.* at 5-6.

they then did. By May, the Hudson County Association wrote to the LHPA that the LHPA's "communication with Justice McGill and Prosecutor Winfield, produced a marked and immediate result. The case most difficult to deal with on account of political influence, was tried immediately, and a conviction secured. . . ." ¹²¹ The LHPA's work in New Jersey evidences its ability to influence courts to effectuate reform. Further, it points to the common understanding that the LHPA could propel court officials to rise above politics, restoring efficacy to the legal system.

The Association's actions against the manure dump and its foray into New Jersey nuisances may seem small and deeply quotidian, they are, however, a stunning example of the interactions between gender and lay cause lawyering. As women situated in the domestic sphere, denied suffrage, yet embodying morality, they could and did position themselves as standing above politics and as able to mobilize law and public protest. ¹²² Repeatedly the LHPA claimed to be ideal advocates for the public interest. As Mary Trautmann, a long-time officer of the Association wrote, "We carefully avoid taking any note of politics in our work; and are entirely and absolutely non-partisan, both as to officials and party." ¹²³ Indeed the Association claimed access to an objective and transparent reality unmarred by their own class interests. As one member proclaimed, "We never misrepresent." ¹²⁴

The women consistently maintained that their motivation was solely concern "for the health and comfort of the whole city." ¹²⁵ The Association imagined a holistic city united by general rules of hygiene and sensory bodily comfort which could be enacted through law. Those who would violate such rules were driven by individual interests, politics, and greed rather than protecting the well-being and health of city residents. Like mothers, these women situated themselves as looking over the health of the family—here formulated as the entire city.

It was this astute performance of middle-class womanhood that allowed the women of the Association to enter male institutional legal space. Thus, much like the cause lawyer, the members of the Association were poised as both insiders and outsiders. Their class made them insiders while their gender made them outsiders to politics

121. Letter from P. O'Connor to Mrs. M. E. Trautmann (May 19, 1885), in 1885-1886 REPORT, *supra* note 37, at 6-7.

122. See Baker, *supra* note 11 (on middle-class women transcending politics).

123. Trautmann, *supra* note 27, at 446.

124. *The Gas Works Odors*, *supra* note 113.

125. 1885-1886 REPORT, *supra* note 37, at 13.

and the legal system. Their status as outsiders, however, simultaneously allowed them to claim a superior stance of morality and objectivity. Using this trope of impartiality, maternal concern, and a supposed ability to transcend the political, the Association became deeply involved in state and municipal politics as it used law to advocate for a public interest that they understood themselves as embodying.

Further, we must recognize the ways in which law was crucial and constitutive of the organization's work and identity. The Association was formed for the purpose of persuading the district attorney to bring nuisance suits and to pressure city officials to enforce existing laws. The LHPA's annual reports excitedly detailed the women's appearance before the grand jury, their testimony at trial, their appointment as "inspectors," their first foray to Albany, and how the New Jersey men called upon their expertise. Further, in the Association's narratives, the Association, and not the district attorney, performed as Kane's prosecutors, and the court became an arena for their grievances and a location in which they derived power. Such narrations reveal the Association's sense of accomplishment and understanding that through collective action they could compel the state to act, and even take on the mantle of state power themselves. In the process, the women transformed themselves into quasi-attorneys and participated in creating the realm of urban cause lawyering.

VII. "WE'LL ALL DIE OF THE CHOLERA:" THE SLAUGHTERHOUSE INSPECTIONS¹²⁶

When current-day legal scholars read the word "slaughterhouse," they immediately think of the famed *Slaughterhouse Cases* that have become shorthand for the theoretically new property regime of *laissez faire* that the U.S. Supreme Court constructed in the post-bellum period.¹²⁷ Abstracted in such a way, the actual slaughterhouses of butchers, carcasses, meat, and offal evaporate. Here this Article explores the Ladies Health Protective Association's on-the-ground efforts to regulate and police such establishments. Through the Association, New York's slaughterhouses became one location of cause lawyering while also marking the slaughterhouse issue as deeply

126. *A Tour by the Ladies of the Health Protective Association*, N.Y. TIMES, Jan. 27, 1885, at 8.

127. *Slaughter-House Cases*, 83 U.S. 36 (1873). A vast literature discusses the *Slaughterhouse Cases*. For one of the more recent works that contextualizes the case see ROBERT LABBE & JONATHAN LURIE, *THE SLAUGHTERHOUSE CASES: REGULATION, RECONSTRUCTION, AND THE FOURTEENTH AMENDMENT* (2003).

gendered.

Galvanized by their victory against Kane, the Association quickly shifted its attention to the slaughterhouses near Beekman Place. The Association's strategy was to provide municipal officials with evidence that the slaughterhouses were a nuisance which consistently violated Department of Health regulations. Where their immediate goal was to pressure the Department to enforce its own laws regarding slaughterhouses, their long-term goal was to prohibit slaughterhouses in New York City altogether.¹²⁸ In a blaze of publicity, the Association began inspections of the forty-four slaughterhouses in the neighborhood, along with the numerous establishments that used the refuse from the slaughterhouses to produce fertilizer, oleomargarine, and other byproducts.¹²⁹

Unlike Kane's manure pile, which was openly visible to their inspection, the Association's slaughterhouse inspections required that the women enter privately owned enterprises. At least one owner of a business that the Association wished to inspect threatened to have them arrested for trespassing. He, however, consented to their entry when a policeman who became embroiled in the controversy exclaimed, "You're not the man to object to a visit from ladies."¹³⁰ Here, the women were presented as innocuous ladies. In the officer's statement, he played on the masculinity of the owner, implying that as a true man, he could not deny the women entry for what was transformed from an inspection into an ordinary social visit. Perplexed owners acquiesced to the women's demands for entry, uncertain who they were and what purpose they had. In engaging in such inspections, these women blurred the line between a state inspection and a private tour. Importantly, the continual presence of a policeman not only protected the women as they forayed into male spaces but also further confused the line between the state—the official inspection—and the trifling curiosity of a private group of women.

The women found the condition of the slaughterhouses "appalling." They described animals living in small pens, clambering over each other for air. Blood and guts covered walls and floors; meat hung outdoors on hooks, attracting swarms of flies; and bones, skins, and offal lay rotting in piles. Wooden sawdust covered floors were soaked in blood without connections to drains and sewers.¹³¹ During some of these inspections,

128. *Deadly Blood-Dust*, *supra* note 105; 1885-1886 REPORT, *supra* note 37, at 4, 11-12.

129. *See, e.g., A Tour by the Ladies of the Health Protective Association*, *supra* note 126.

130. *Ladies as Health Inspectors*, N.Y. TIMES, Apr. 25, 1885, at 8.

131. *A Tour by the Ladies of the Health Protective Association*, *supra* note 126.

the Association confronted the slaughterhouses' foremen and read aloud the various health code provisions that were being violated. Once more, the Association flaunted their knowledge of law and their ability to confront men with legal authority.¹³²

The LHPA's various investigations did not go unopposed. As the women walked through the neighborhood, at times, groups of boys threw garbage and stones at them. At other times, "children and loafers" followed the women, giving them "ugly looks and muttering slang."¹³³ Later, the Association asserted that the "ladies were attacked by a mob."¹³⁴ We might interpret the boys' and men's actions as an attempt to claim the streets as their own—masculine and working class—and as an expression of the desire of workingmen to protect their own jobs. Further, such action may have indicated their hostility to being the subject of middle-class women's surveillance.

At the conclusion of their inspections, the LHPA determined that the slaughterhouses regularly violated almost all of the applicable regulations of the Board of Health.¹³⁵ Such conditions, the Association claimed, endangered all residents of the neighborhood, including children. As Mrs. Wendt, the president of the LHPA, stated: if the Association did not insist on the slaughterhouses complying with the law, "we'll all die of the cholera."¹³⁶ The Association also claimed that the noxious odors created a bad working and living environment for their own families and for the poor and working class families who lived in the neighborhood. Such conditions, they imagined, caused both the poor and middle-class to suffer equally. In making such claims, they once again held themselves out as representing the public interest. Yet, the Association never sought to actively involve working class women or men in its campaigns. One must wonder whether their interests would have aligned, especially if the neighborhood's male tenement dwellers were also employed in the businesses that the Association sought to remove.

132. *Id.*

133. *Slaughter Houses Visited by Ladies*, TRIBUNE, Apr. 25, 1885, microformed on D.A. Scrapbooks, NYMA, Reel 2; *Ladies' Sanitary Work*, N.Y. TIMES, Nov. 14, 1885.

134. 1885-1886 REPORT, *supra* note 37, at 4.

135. These conditions were not unique to New York City, but also occurred in other cities with slaughterhouse districts including Chicago and New Orleans. See LABBE & LURIE, *supra* note 127, at 44.

136. *A Tour by the Ladies of the Health Protective Association*, *supra* note 126.

VIII. ELIMINATING THE SLAUGHTERHOUSE NUISANCE

As the Association continued its investigation, members created a map indicating the location of each slaughterhouse, and how it violated regulations.¹³⁷ They also studied the laws and practices that governed slaughtering in European cities, corresponding with consulate officials and sanitary engineers in Berlin, Rome, Spain, London, and Portugal.¹³⁸ One again, the LHPA understood and emphasized the importance of law. Using these cities as models, they claimed that New York City should prohibit slaughtering except in establishments that fully complied with regulations and which received a municipal permit.¹³⁹ As the Association viewed the issue, the need for wholesome meat and a healthy environment required intense government regulation, and they claimed that any “disinterested” person would support such a plan.¹⁴⁰

In marshalling arguments for the necessity of such reforms, the Association bridged concepts of production and consumption, the public and private. It further situated the reform of slaughterhouses within the sphere of women’s concern and pointed towards the Association’s vision of an urban and urbane modernity that could be enacted through law. The Association asserted that the foul conditions of the slaughterhouses resulted in contaminated meat that was then consumed by the residents of New York. As the Association wrote of meat intended for daily consumption: “[T]he meat when slaughtered, was hung on large hooks over the curbstone, there to swarm with flies and catch all the dust and dirt of the neighborhood.”¹⁴¹ Equally disturbing was the close proximity of the slaughterhouses to stables with their heaps of manure. Thus, the conditions of the production of meat had significant and material

137. 1885-1886 REPORT, *supra* note 37, at 4.

138. LADIES’ HEALTH PROTECTIVE ASSOCIATION OF NEW YORK, SLAUGHTER HOUSES IN THE CITY OF NEW YORK 6 (1885) [hereinafter SLAUGHTER HOUSES]. The Association boasted that an 1896 report of the Association was translated into German and French. REPORT OF THE WOMEN’S HEALTH PROTECTIVE ASSOCIATION: 1896 TO 1900 21 [hereinafter 1896 TO 1900 REPORT]. On slaughterhouses in London and London reformers’ efforts to modernize slaughterhouses see Christopher Otter, *Cleansing and Clarifying: Technology and Perception in Nineteenth Century London*, 43 J. BRIT. STUD. 4 (2004).

139. SLAUGHTER HOUSES, *supra* 138, at 7. New York City seems to have had the first centralized slaughterhouse in the original colonies. LABBE & LURIE, *supra* note 127, at 45-46. In 1676, the city entered into an agreement with a private slaughterhouse to provide it with a city franchise. *Id.* All slaughtering in the city was to take place therein. After the Revolution, the system of centralized slaughtering appears to have disappeared. *Id.* The Association does not seem to have been aware of this earlier history.

140. SLAUGHTER HOUSES, *supra* 138, at 7.

141. REPORT OF THE LADIES’ HEALTH PROTECTIVE ASSOCIATION OF NEW YORK: 1894 TO 1896 24 [hereinafter 1894 TO 1896 REPORT].

ramifications for the consumption of meat that occurred in the home. Further domesticating the regulation of slaughterhouses, the Association analogized the filthy slaughterhouse to a woman's kitchen full of grease-encrusted pots and pans that she failed to clean.¹⁴² Thus, like the good housekeepers that respectable middle-class women were assumed to be, the Association claimed the legal regulation of slaughterhouses to be within their domain of a now extended domesticity.

The Association also asserted that slaughterhouse conditions had broad moral consequences. Part of the "crying evil" of the slaughterhouses was their "open cruelty" and their effect on the working-class children of the neighborhood.¹⁴³ The Association asserted that slaughterhouses were exposed to the street, where children from the tenements observed animals fighting for their lives. They wrote that witnessing such events was "As demoralizing surely as a Mexican bull-fight or cockpit!"¹⁴⁴ By children witnessing such slaughter, the Association proclaimed that they became so "utterly demoralized, that the sight of blood was no more to them than so much running water."¹⁴⁵ Due to such conditions, the old-style slaughterhouse simply did not belong in the modern city. The Association's language made clear that such practices were un-American and uncivilized. It also pointed to the Association's desire to create a city that was "radically separated from the countryside," a project that had begun in the early nineteenth century.¹⁴⁶ The Association further had a particular vision of an appropriate American urban childhood that was unmarked by violence and severed from the realities of farm life, which laws could usher into place.¹⁴⁷ Such rhetoric also served other purposes. By bringing children and the home consumption of meat into their argument, the Association marked the question of slaughterhouse reform and the laws and regulations surrounding it as being deeply feminized.

With their report on slaughterhouses in hand, the Association met with the Board of Health and in a series of meetings outlined how the slaughterhouses violated multiple regulations.¹⁴⁸ Again, the Association

142. Melusina F. Peirce, Letter to the Editor, *The East Side Odors; Their Cause and Remedy--A Model Abattoir and Some Otherwise*, N.Y. TIMES, Aug. 12, 1887.

143. SLAUGHTER HOUSES, *supra* note 138, at 5.

144. *Id.*

145. 1894 TO 1896 REPORT, *supra* note 141, at 23.

146. Hartog, *supra* note 53, at 911.

147. As Christopher Otter writes in connection with London slaughterhouses, "displays of pain and punishment were seen as being incompatible with civil and urban spectatorship." Otter, *supra* note 138, at 45.

148. *Slaughter House Districts*, N.Y. TIMES, Feb. 11, 1885, at 8.

sought to demonstrate that the Board had failed to enforce its own laws. The Association demanded that the Board take immediate legal action. The Board was less than impressed with the women's work and countered that the slaughterhouses might be an eyesore but not a health threat.¹⁴⁹ The LHPA then demanded a meeting with the mayor and alerted newspapers of the Board's lack of cooperation, its failure to enforce the law, and their upcoming meeting with the mayor.¹⁵⁰

Little of substance came from discussions with the mayor, and the Association turned to the state legislature. It threw its support behind a bill which would have prohibited the slaughtering of animals in Manhattan, except in licensed premises that had to meet numerous requirements. Lurking in the background was also the idea that slaughterhouses should be prohibited in the city altogether. The LHPA thus attempted to gain popular support for the bill's passage while continuing to pressure the mayor and the Board of Health to take legal action against the slaughterhouses.¹⁵¹

At the end of March 1885, the Association staged a mass meeting over which Judge Noah Davis presided.¹⁵² The presence of Davis, a well-known and respected jurist, is further evidence that the Association understood that they were functioning in the realm of law. Davis proclaimed that "He would be glad . . . if the laws were wise enough in this State to put such subjects [public health issues and laws] largely in the hands of women."¹⁵³ Thus, Davis praised the Association's legal work and acknowledged it as such. Other speakers included none other than Algernon Sullivan, Kane's defense attorney, who now lauded the Association's efforts.¹⁵⁴ Again, the setting for the evening was telling. The officers of the Association sat on stage along with other speakers and legal luminaries. They thus were active participants, not a passive audience.¹⁵⁵

IX. COMPROMISE: TO RESPECT AND FEAR ¹⁵⁶

As the slaughterhouse bill languished in Albany, in 1886, the

149. *Id.*

150. *City and Suburban News*, N.Y. TIMES, Feb. 20, 1885, at 8; *The East Side Slaughter Houses*, N.Y. TIMES, Feb. 25, 1885.

151. *City and Suburban News*, *supra* note 150.

152. *To Prepare for Cholera*, N.Y. TIMES, Mar. 29, 1885, at 8.

153. *Id.*

154. *Id.*

155. *Id.*

156. 1885-1886 REPORT, *supra* note 37, at 9-10.

Association launched discussions with some of the larger butchers and slaughterhouses in the area to explore the possibility of voluntary reforms.¹⁵⁷ These owners stated that they were willing to undertake expensive and extensive remodeling but sought assurances from the LHPA that such enterprises could remain in the city.¹⁵⁸

Eventually the Association reached an agreement with some of the largest slaughterhouses for their merger and a complete renovation of their premises. The new slaughterhouse conglomerate went as far as allowing the Association to approve its building plans and make alterations. In return, the Association agreed not to take any legal action against it and to cease its efforts to prohibit slaughterhouses in Manhattan.¹⁵⁹ The Association astutely declared to the newspapers that it had no desire to allow Chicago butchers to gain a monopoly over the trade and that the poor of the city needed to be able to obtain inexpensive meat.¹⁶⁰

During negotiations with the slaughterhouses, the Association also attempted to require them to provide funds for a full-time slaughterhouse inspector to be employed by the city. Meeting some resistance, the Association instead agreed to perform this role voluntarily.¹⁶¹ Thus, by the Association entering into this agreement, they also negotiated and invented a public role for themselves. In the following decades, the Association would continue to visit and inspect slaughterhouses working closely with both owners and the Department of Health.¹⁶² In doing so, the Association once again took on the mantle of representing the public interest.

The question remains, however, as to why the Association decided to engage in private negotiations with the slaughterhouses. As demonstrated by the action against Kane, the women knew how to bring a nuisance suit. Yet, if they had done so, they would have had to bring separate suits against each of the individual slaughterhouses, requiring resources and time that this voluntary organization did not necessarily possess. The willingness of the slaughterhouses, however, to enter into negotiations with the Association indicates that they were concerned that

157. *Id.* at 11-13.

158. *Id.* at 11-12.

159. *Slaughter Houses Much Cleaner*, May 6, 1885, *microformed on* D.A. Scrapbooks, NYMA, Reel 2; REPORT OF THE WOMEN'S HEALTH PROTECTIVE ASSOCIATION OF NEW YORK: 1900-1904 21-22 [hereinafter 1900-1904 REPORT].

160. *Slaughter Houses Much Cleaner*, *supra* note 159.

161. *Id.*

162. *See, e.g.*, REPORT OF THE LADIES' HEALTH PROTECTIVE ASSOCIATION OF NEW YORK: 1893 25; 1894 TO 1896 REPORT, *supra* note 141, at 24-26.

the women either would bring suit against them or would succeed in their lobbying efforts to ban slaughterhouses entirely. Such an agreement is thus explicit evidence that the slaughterhouse operators recognized the power that the Association wielded and that they accepted the Association as a legitimate representative of the public. By entering into this private agreement, the Association once again functioned as lay cause lawyers, relying on the threat of state action (in the form of a lawsuit or legislation) to instigate reform and police industries. With the building of the new abattoir, the women reveled in their own power, writing that business owners “respected and feared the vigilance” of the Association.¹⁶³

As they publicized the sanitary perfection of the newly built abattoir, the LHPA also continued to exert considerable pressure on city hall to deny any new licenses for slaughterhouses or related enterprises. When lobbying the city the Association used a rights-based language. For example, when opposing the licensing of one fertilizer company, they claimed a right “to pure air which we are entitled to.”¹⁶⁴ In other situations, they combined the language of rights and citizenship, in one instance writing to the mayor, “It cannot be that you will ignore the petition of so many citizens who have the right to live, and have pure air and untainted food.”¹⁶⁵ With this expansive language of rights, the Association argued that municipal government had an affirmative obligation to protect its citizens and enforce its own laws. To the extent that the city failed, it would do so on its own.

X. MUNICIPAL HOUSEKEEPING AND THE LAW

During the 1890s and into the new century, the Association engaged in a myriad of progressive causes, including lobbying for the appointment of women police matrons, limiting the hours and regulating the conditions of women department store workers, the building of municipal bathhouses and playgrounds, tenement reform, school reform, and laws requiring pure food. As part of their campaign for pure food, the LHPA joined the coalition that lobbied for the regulation of the hours of bakers, which culminated in the infamous *Lochner* case. The Association wrote: “[W]hat we consume from day to day should be

163. 1885-1886 REPORT, *supra* note 37, at 9-10.

164. Letter from Mary E. Trautmann to Mayor Thomas Gilroy (Feb. 1894), *microformed on Mayor's Papers*, Thomas Gilroy, General Correspondence, NYMA, Box 1449, folder 113.

165. Letter from Ionia Bird to Mayor Thomas Gilroy (May 10, 1893), *microformed on Mayor's Papers*, Thomas Gilroy, General Correspondence, NYMA, Box 1447, folder 108.

handled and prepared in a cleanly manner, and not by over-worked, careless men.”¹⁶⁶ As in its analysis of the slaughterhouses, the Association understood baker’s legislation as encompassing the links between domestic consumption and commercial production.

The Association thus claimed a burgeoning swath of municipal issues, and the laws that surrounded them, to be within a woman’s purview of concern. In doing so, the Association constructed and justified its actions through the trope of municipal housekeeping. Lurking in such rhetoric was an understanding that middle-class women would represent the public interest. It proclaimed:

It is indeed an eminently proper thing for women to interest themselves in the care and destination of garbage, the cleanliness of the streets, the proper killing and handling of meats, the prevention (within the city limits) of the manufacturing of anything giving off noxious odors . . . the care of milk and Croton water, the public exposure of foods, and in fact everything which constitutes the City’s housekeeping.¹⁶⁷

The Association claimed a special expertise, interest, and even monopoly in such issues of urban reform. It asserted: “It is the right of women to undertake these matters, as they are brought into constant contact with the results of this housekeeping, and they are therefore well able to judge how it should be properly carried out.”¹⁶⁸

As demonstrated by the Association, municipal housekeeping carried a strong link to law and lay cause lawyering. It was women, they argued, who would become aggressive representatives of the public interest in creating new laws to reform and regulate the urban environment while policing government officials and private business. Respectable (middle class white) women literally would function as the eyes of both the municipality and the public, ensuring enactment and enforcement of laws governing nuisances and the health of the city.

At the turn of the century, the Association wrote:

Woman has become an important factor in Civics, municipal and sanitary problems, but she does not always know the laws compelling the abatement of nuisances or the method of putting law into effect. Therefore we appeal to the civic pride of every woman, and recommend that one of the first steps for women to take is to make a study of the laws governing the various nuisances in the community

166. 1900-1904 REPORT, *supra* note 159, at 31. *See also* 1896 TO 1900 REPORT, *supra* note 138, at 25; *War on Filthy Bakeries*, N.Y. TIMES, Apr. 8, 1896, at 6.

167. 1894 TO 1896 REPORT, *supra* note 141, at 17.

168. *Id.*

where she resides, and then secure the co-operation of those in authority to enforce the law.¹⁶⁹

The Association thus declared women's expertise in a housekeeping that extended from the domestic into the public with law at its center. Furthermore they claimed that nuisance law was specifically within a woman's sphere. Nuisances, which required continual inspections and individual attention, served the Association well, allowing them to become legal experts of the quotidian. In the process they participated in creating a model of urban cause lawyering. This model, which combined the study of municipal regulation, litigation, lobbying for new laws, and inspection for legal violations, would become one of the hallmarks of the Progressive era.

XI. CONCLUSION

This Article demonstrates that at a time when women often could not attend law school or be admitted to practice law, they actively participated in the legal sphere. Women's very disabilities to vote or fully participate in the market and an ideology that placed them in the home, afforded them the moral status to participate in the legal process. Like an ideal vision of law as fully dedicated to the public interest, the women of the Association called upon courts, state legislatures, and city officials, often understood as corrupt and mired in politics, to rise above politics and engage in blind justice. Indeed the LHPA asserted that they could and did embody the public interest and that their positions were cleansed of all self interest. As such, the LHPA claimed that they were the true representatives and advocates of the public.

The LHPA also placed law, in its myriad forms, at the center of its strategy to reform the urban environment and the Association gained strength from its members' study and knowledge of municipal law. By doing so, they made their own bid for power as they claimed urban nuisances to be within the special expertise of white middle-class women. As the LHPA claimed legal knowledge and began to participate in male legal institutions, they helped create a remarkably heterodox sphere of urban cause lawyering. This Article will hopefully compel other legal historians to examine how women's organizations used law and participated in the legal system. In the process, we will begin to create a history of cause lawyering while interrogating who we even understand to be lawyers.

169. 1900-1904 REPORT, *supra* note 159, at 18.