

Demand Side Justice

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The civil justice gap is well-known, well-documented, and widening. Although judges, practitioners, and scholars have attempted for more than fifty years to increase the supply of civil legal services available to those in need, demand continues to dramatically outstrip supply. This article argues that given the static (or worsening) state of the civil justice gap, and the millions of Americans who do not even seek legal help for problems that otherwise might fall within that gap, legal literacy is paramount. The public health profession uses health literacy to help prevent health problems and temper demand for health services, and in fact, high levels of health literacy lead to fewer emergency room visits and better health outcomes. Health literacy is regularly included in public K-12 education. This article contends that the legal profession should try a similar approach for legal literacy. Legal literacy has the potential to prevent justice problems from needing formal legal intervention. It also can empower individuals to take advantage of existing legal protections on their own or make informed decisions regardless of the ultimate outcome. Increased legal literacy might also mean that Americans come to legal aid organizations before problems are too far gone and with more realistic expectations about results and remedies. After decades of chasing after supply-side solutions, it is time to look at demand.

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I. INTRODUCTION

“The advancement and diffusion of knowledge is the only guardian of true liberty.”

–James Madison

The civil justice gap is “the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.”¹ The Legal Services Corporation (LSC) started tracking the justice gap nearly twenty years ago, and unfortunately, the finding then – that for every qualified legal aid applicant, another is turned away – has not changed.² There simply are neither sufficient resources to serve those in need nor particularly efficient legal service delivery systems thanks to heavy restrictions placed on legal aid funding and the sheer complexity and diversity of the fifty-one legal systems in which low-income persons may find themselves.³

Since the 1960s, many articles, and countless more national, state, and local judicial and bar association task forces, non-profits, and private philanthropy have devoted themselves to increasing the supply of legal services to try to narrow the justice gap.⁴ Supply-side solutions have included increased legal aid, pro bono, self-help support, technology, non-traditional models of representation, and the

1. LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 6 (2017), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report> [hereinafter 2017 JUSTICE GAP REPORT].

2. *See infra* Part II.

3. *See, e.g.*, Liza Q. Wirtz, *The Ethical Bar and the LSC: Wrestling with Restrictions on Federally Funded Legal Services*, 59 *VAND. L. REV.* 971, 972–74 (2006) (describing the increasingly draconian restrictions and regulations governing LSC grantees as compounding the access to justice problem “... by limiting the ways in which legal services can be offered to income-eligible persons and by eliminating from eligibility entire groups of people who need help and would be entitled to it on income grounds.”).

4. “The past quarter century has spawned a cottage industry of recommendations by commissions, conferences, committees, and task forces. But what has not emerged is any consensus around manageable reforms or a substantial constituency demanding them.” Deborah L. Rhode, *Access to Justice*, 69 *FORDHAM L. REV.* 1785, 1815 (2001). *See also* Elizabeth Chambliss et. al., *Introduction: What We Know and Need to Know About the State of “Access to Justice” Research*, 67 *S.C. L. REV.* 193, 199 (2016) (“Incumbent providers—many of whom have spent their careers leveraging scarce legal resources in the service of disadvantaged communities—tend to focus on supply-side strategies for addressing the needs they confront; that is, increasing access to lawyers and other resources for individual legal assistance.”).

unbundling of legal services.⁵ While this important supply-side work must continue, the demand side of the equation has largely been neglected.⁶

The demand side of the justice gap refers to the civil legal needs of low-income Americans.⁷ Scholars generally divide these issues into two buckets: (1) those for which formal legal services are sought, and (2) those that, for a variety of reasons, are never brought to the legal system.⁸ As to the first bucket, narrowing the justice gap from the demand side would mean decreasing the number of legal issues that are brought to the legal system for resolution, either by reducing them in absolute terms or by making it so that fewer issues require formal legal intervention.⁹

As to the second bucket, which captures those justice problems that never make their way to the legal system, addressing the demand side looks different.¹⁰ Assuming that there is not a widespread desire to bring all justice problems into the legal system lest it be even more overrun than it already is, addressing the demand side would mean both decreasing legal issues in absolute terms and empowering individuals to realize obtain results outside the legal system that are similar to those offered within it:

When the relevant substantive and procedural norms govern resolution, that resolution is lawful and we have access to justice, whether or not lawyers are involved in the resolution and whether or not the problem comes into contact with any kind of dispute-resolving forum.¹¹

For both buckets, prevention is a useful objective. Prevention of legal problems has the potential to decrease actual “expressed” demand for civil legal services and also reduce the “unexpressed” demand that civil justice problems create when they are not resolved in accordance with legal norms or are not resolved at all. Yet prevention of individual legal problems has not received the attention it deserves.¹²

5. See e.g., JEANNE CHARN & RICHARD ZORZA, CIVIL LEGAL ASSISTANCE FOR ALL AMERICANS 11-13 (2005), <http://www.garybellow.org/Text.pdf>.

6. See Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 CONN. L. REV. 741 (2015) (proposing judicial reforms to reduce demand for legal services); Emily A. Spieler, *The Paradox of Access to Civil Justice: The “Glut” of New Lawyers and the Persistence of Unmet Need*, 44 UNIV. TOL. L. REV. 365, 384 (2013) (“Resources are severely limited. It is obvious that we need broader and more creative discussions—and solutions. This is not a new revelation.”).

7. 2017 JUSTICE GAP REPORT, *supra* note 1, at 6.

8. Emily S. Taylor Poppe, *Institutional Design for Access to Justice*, 11 U.C. IRVINE L. REV. 781, 793-94 (2021).

9. *Id.* at 795 (“Examples of early access to justice interventions range from education, legal capability building, and more general information distribution to supported information provision, advice, and dispute resolution services.”).

10. Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS 49, 49–50 (2019) (“The distinction between a justice problem and a legal need turns out to be crucial, for these two ideas reflect fundamentally different understandings of the problem to be solved. If the problem is people’s unmet legal needs, the solution is more legal services. If the problem is unresolved justice problems, a wider range of options opens up.”).

11. *Id.* at 51, 53. (“Practically speaking, it would be impossible for the nation’s existing courts, administrative agencies, and other forums that resolve disputes to process the estimated more than one hundred million justice problems that Americans experience every year. There is no reason to want them to. The rule of law means that most people can rely on most others to be basically compliant with legal norms most of the time, with a fair and accessible legal system as backup.”).

12. See Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L. J. 129, 133 (2010) (calling the lack

The public health sector came around some time ago to the value of prevention.¹³ One recognized tool for prevention—both of poor health outcomes and avoidable interactions with the health services system—is increased health literacy. Health literacy is an individual’s ability to use health-related information to make informed decisions.¹⁴ These decisions might include whether to smoke, get a flu shot, or wear a mask to protect against a deadly virus. Higher health literacy actually results in better health and fewer trips to the emergency room and hospital.¹⁵

Given the immense upside to high levels of health literacy, nationwide health literacy initiatives came onto the scene in the mid-1990s, along with broadly teaching health literacy in K–12 schools.¹⁶ This article proposes a similar initiative for law. As many legal aid lawyers know well, some civil justice problems truly are preventable with knowledge. A job lost because an employee “spoke their mind,” not realizing that the right to free speech does not extend to a private employer; a divorce complicated because the spouses did not know that community property and debt continued to accrue even though they had been separated for decades; an apartment repair ignored because a tenant did not know that she had to ask for the repair in writing.

This is not to say that if more Americans simply knew about or exercised their legal rights, civil legal problems would drastically decline. There are many other important ways that the demand for legal services could be lessened and justice better delivered. Systemic overhauls related to the causes and effects of poverty, race, gender, inequality, and policies that perpetuate unfair power dynamics are long overdue and have the potential to impact the justice gap in big ways.¹⁷ Nor does this article suggest that legal literacy can or should be a substitute for representation by counsel when that is warranted. But introducing legal literacy to the bundle of access to justice tools has the potential to make a dent in the gap.

of ex ante legal services for ordinary citizens a “systemic failure”). See also *Top 10 A2J Research Priorities #10: Ex Ante Law for Human Beings*, A2J LAB (Nov. 8, 2017), <http://a2jlab.org/top-10-a2j-research-priorities-10-ex-ante-law-for-human-beings/> (“Ex ante law for human beings...doesn’t exist ... but certainly it needs to be well researched because there is the potential for a great deal of problem avoidance and legal system congestion avoidance...”).

13. Ellen M. Lawton & Megan Sandel, Investing in Legal Prevention: Connecting Access to Civil Justice and Healthcare Through Medical-Legal Partnership, 35 J. LEGAL MED. 29, 37–38 (2014); Mallory Curran, *Preventive Law: Interdisciplinary Lessons from Medical-Legal Partnership*, 38 N.Y.U. REV. L. & SOC. CHANGE 595, 603 (2014).

14. *What Is Health Literacy?*, CDC, <https://www.cdc.gov/healthliteracy/learn/index.html> (last visited May 5, 2021).

15. *Health Literacy*, NETWORK OF NAT’L LIB. OF MED., <https://nnlm.gov/initiatives/topics/health-literacy> (last visited May 5, 2021); AGENCY FOR HEALTHCARE RSCH. & QUALITY, HEALTH LITERACY INTERVENTIONS AND OUTCOMES: AN UPDATED SYSTEMATIC REVIEW 27 (2011), <https://www.ahrq.gov/downloads/pub/evidence/pdf/literacy/literacyup.pdf>.

16. See *infra* Part III-A, B.

17. Hadfield, *supra* note 12, at 156 (“The problem we face in the American legal system is not a problem of how to increase pro bono or legal aid (although we should do that too), which are ultimately mere drops in the bucket on the order of a few percentage points of total legal effort and resources. Rather, the problem is one of urgent need for structural reform in the regulatory and policy/funding system responsible for the critical infrastructure of market democracy, particularly one that draws as heavily as the American system does on law and legalism to structure economic, political, and social relationships.”).

The idea of legal literacy is not new,¹⁸ but it has yet to take hold. Law-related education was briefly popular in the early 1970s, but since that time, it has become essentially indistinguishable from traditional civics instruction, which focuses on teaching about our system of government and increasing democratic participation. In other words, legal literacy as something distinct from civics is not currently being taught. This article argues that it should be, because, as is true for health literacy, legal literacy can decrease demand for legal services and lead those who do not seek legal intervention to resolve their justice problems from a better-informed position. Given just how many deserving people are turned away from legal aid because it is not possible to serve everyone, and what a monumental task they face when their legal problem does not disappear on its own, it is incumbent upon us to try.

Part II of this article discusses the civil justice gap and highlights how millions of low-income Americans must confront complex legal problems on their own, even though they oftentimes lack even a basic understanding of the law. Part III looks at health literacy and its role in prevention and demand within the health sector. Part IV examines the current state of legal literacy and K-12 civics instruction in the United States. Part V then makes the case for increased legal literacy as a prevention and triage tool for legal aid—proposing empirical research to see if it works. Part VI concludes by suggesting that the legal profession follow the lead of public health professionals in creating legal literacy curricula and measurements for K-12 education in an effort to confront the growing demand for legal aid.

II. THE JUSTICE GAP: SUPPLY AND DEMAND

A. Expressed Demand

Access to justice for civil legal problems is a continual, vexing problem for the legal profession and the American public. LSC was established by Congress in 1974 to provide legal representation to those unable to afford it.¹⁹ By providing grants to 132 agencies with over 800 offices that span every state in the country, LSC is the single largest funder of civil legal aid for low-income Americans.²⁰ Using a combination of professional public surveys and intake reports from its grantees, LSC has been tracking the justice gap²¹ since 2005.²² Before that, in the

18. See Milan Markovic, *Juking Access to Justice to Deregulate the Legal Market*, 29 GEO. J. LEGAL ETHICS 63, 95–96 (2016) (arguing that increasing the volume of legal service providers will not serve low- and middle-income Americans as much as increased access to legal information); Renee Newman Knake, *Democratizing Legal Education*, 45 CONN. L. REV. 1281, 1302-03, 1313 (2013) (proposing a public information campaign to inform individuals of their rights and how to access quality legal services, similar to those for health promotion and disease prevention).

19. Legal Services Corporation Act, 42 U.S.C. § 2996 (1974).

20. *About LSC*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc> (last visited May 5, 2021).

21. 2017 JUSTICE GAP REPORT, *supra* note 1, at 6.

22. *Id.* at 10; LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA (2009), https://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf [hereinafter 2009 LSC JUSTICE GAP REPORT]; LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA (2d ed. 2007) <https://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf> [hereinafter 2005 LSC JUSTICE GAP REPORT].

1970s, 80s, and 90s, the American Bar Association did its own surveys about the legal needs of the poor, albeit without assessing whether legal aid was able to help.²³ Unfortunately, little has changed in the last four decades.

In 1989, the American Bar Association published the results of a pilot study²⁴ about the legal problems of households with incomes at or below 125% of the Federal Poverty Guidelines.²⁵ Of 500 households surveyed, almost 40% reported having more than one civil legal problem for which they did not have legal assistance.²⁶ Using then-available Census data, the report determined that low-income Americans received legal help for around 20% of their legal problems, leaving approximately 80% of civil legal problems untouched by lawyers or the legal system.²⁷

In 1994, the American Bar Association published the results of its Comprehensive Legal Needs Study—a large-scale national survey of civil legal needs focusing on America’s poor and expanding on the work of the 1989 pilot study.²⁸ The study found that 47% of low-income households (again, those at or below 125% of the Federal Poverty Guidelines) reported at least one civil legal need.²⁹ These households’ first line of defense was to try to resolve that problem on their own, with no action at all as the next most frequent approach.³⁰ Individuals turned to the legal system for only 29% of their civil legal problems.³¹

In 2005, LSC issued its first civil Justice Gap Report. The 2005 Report was the first national data set to follow the ABA’s 1994 study.³² The 2005 Report found that for every client helped by an LSC-funded program, another eligible client was turned away for lack of resources.³³ According to the Report, to provide the

23. AM. BAR ASS’N CONSORTIUM ON LEGAL SERVS. & PUB., LEGAL NEEDS AND CIVIL JUSTICE A SURVEY OF AMERICANS: MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY (1994) [hereinafter 1994 ABA STUDY],

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/downloads/legalneedsstudy.pdf; Spangenberg Grp., Inc., *National Survey of the Civil Legal Needs of the Poor*, in AM. BAR ASS’N CONSORTIUM ON LEGAL SERVS. & PUB., TWO NATIONWIDE SURVEYS: 1989 PILOT ASSESSMENTS OF THE UNMET LEGAL NEEDS OF THE POOR AND THE PUBLIC GENERALLY 3–38 (1989), <https://legalaidresearchnlada.files.wordpress.com/2020/03/aba-1989-pilot-assessments-of-unmet-legal-needs.pdf> [hereinafter 1989 ABA STUDY]. Prior to the 1989 study, the American Bar Foundation surveyed a random sample of adults about their legal problems and the help they sought from the legal system, if any. See Barbara A. Curran, *The Legal Needs of the Public: The Final Report of a National Survey*, CHICAGO AM. BAR FOUND. xxvii–xxviii (1977). The study did not focus on the legal needs of low-income Americans and did not assess their access issues.

24. 1989 ABA STUDY, *supra* note 23, at 3–5.

25. LSC has long-used a “125 percent of poverty” cut-off to determine eligibility for legal services. *Id.* at 8 (noting the 125% of poverty income ceiling in 1989); 45 C.F.R. § 1611.3 (e-CFR current as of June 18, 2019) (mandating that LSC funding recipients set an income ceiling for client eligibility at 125% of the Federal Poverty Guidelines).

26. 1989 ABA STUDY, *supra* note 23, at 18–19.

27. *Id.* at 4, 38.

28. 1994 ABA STUDY, *supra* note 23, at *Foreword*.

29. *Id.* at Number of Legal Needs Reported.

30. *Id.* at Overview of Actions Taken.

31. *Id.*

32. 2005 LSC JUSTICE GAP REPORT, *supra* note 22, at 2.

33. Helaine M. Barnett, *Preface* in 2005 Justice Gap Report (stating that “[i]f anything, this finding is an understatement. Many who are eligible for help never seek it—they do not know they have a legal problem, do not know help is available, or do not know where to go for help.”). See also 2005 LSC JUSTICE GAP REPORT, *supra* note 22, at 3–4 (describing the three methodologies used to reach this conclusion).

amount of civil legal assistance necessary to eliminate the justice gap, capacity (i.e., supply) would have to increase fivefold.³⁴

Just four years later, in 2009, LSC issued another civil justice gap report.³⁵ The 2009 Report found that the gap had not narrowed since 2005; in fact, the Report cited the same central figure: “that for every client served by an LSC-funded program, one person who seeks help is turned down because of insufficient resources.”³⁶ The 2009 Report actually sounded the alarm of a widening justice gap.³⁷ The 2008 economic downturn increased the number of Americans living below 125% of poverty and thus eligible for legal aid.³⁸ State legal aid funding that had previously come from revenue on Interest on Lawyers’ Trust Accounts (IOLTA) – the bank accounts universally required for lawyers to hold client funds and retainers – shrank precipitously when interest rates on those accounts fell to zero.³⁹ Natural disasters, including Hurricane Katrina, then added to the legal burdens of affected low-income Americans at the time.⁴⁰

Importantly, the 2009 Report also acknowledged that even those individuals who were counted in the Report as “served” by an LSC-funded program often did not receive the level of assistance that their cases required:

LSC programs frequently provide advice and counsel to people when they cannot provide full representation. These cases do not appear as denials of service because the client has actually received a service (Advice and Counsel or Limited Action).⁴¹

The significance of this information should not be lost on those unfamiliar with legal aid operations. Legal aid non-profits keep track of the level of service provided in every case that they handle.⁴² There are eight levels of service, with “Counsel and Advice” as the lowest level of service on the one hand, and variations

34. *Id.* at 4.

35. 2009 LSC JUSTICE GAP REPORT, *supra* note 22, at 1.

36. *Id.* at 1, 9 (“This conclusion is almost identical to the ‘Unable to Serve’ finding of the 2005 study.”).

37. *Id.* at 5–6.

38. *Id.*

39. *Id.* at 6. The falling interest rates on IOLTA accounts had a direct impact on the organization that I oversaw in Houston. Before 2008, IOLTA revenues in Texas annually provided over \$20 million of funding for legal aid. As of 2012, it brought in only \$4.4 million a year, a more than 80 percent decline. Robert J. Derocher, *The IOLTA Crash: Fallout for Foundations*, 37 AM. BAR ASS’N (2012), https://www.americanbar.org/groups/bar_services/publications/bar_leader/2012_13/september_october/iolta_crash_fallout_foundations/. See also *Texas Capital Bank Joins Prime Partner Program Program Boosts Funding for Legal Aid in Texas*, TEX. ACCESS TO JUST. FOUND. (June 10, 2019), <http://www.teajf.org/news/releases/TexasCapitalBank-Becomes-PrimePartner.aspx> (“Because of low interest rates, the Texas Access to Justice Foundation has seen a 53% decline in IOLTA revenue since 2007. As a result, nearly \$152 million in funding for free legal services for low-income and disadvantaged Texans has been lost.”).

40. 2009 LSC JUSTICE GAP REPORT, *supra* note 22, at 6.

41. *Id.* at 9–10. The Report stated that 82,500 cases in a two-month period were cases in which the level of service provided did not fully serve the client’s legal issue. *Id.* at 10 n.8.

42. LSC defines a “case” as “the provision of LSC-permissible legal assistance (defined below) to an eligible client with a legal problem, or a set of closely related legal problems, accepted for assistance in accordance with the requirements of the LSC Act, appropriations acts, regulations, and other applicable law.” LEGAL SERVS. CORP., CASE SERVICE REPORT HANDBOOK 2017 § 2.1 (2017), https://www.lsc.gov/csr-handbook-2017#_Toc469667726. Legal aid organizations that are not funded directly by LSC also typically follow this same reporting method to make statistics in the field more uniform.

of “Extended Service” on the other.⁴³ Very often, eligible clients come to legal aid with a contentious legal problem for which Extended Service would be ideal, such as a child custody dispute or an imminent eviction hearing, but the only help the legal aid organization can provide is Counsel and Advice.

This happens for a variety of reasons. Sometimes the client comes in too late—two days before a full merits trial or after the court has lost plenary power. Sometimes the client’s legal position is relatively hopeless, and the legal aid organization determines that its scarce resources will not have a significant impact on the outcome. Sometimes the legal aid lawyers are simply maxed out on existing client cases. All of these reasons for providing services short of full representation, however, are because demand simply outweighs supply. Nevertheless, in the official Justice Gap reports, these abbreviated services are part of the demand that is *met*.

LSC published its most recent report on the justice gap in June of 2017. That report concluded that 86% of the civil legal problems reported by low-income Americans in 2016 received inadequate or no legal help.⁴⁴ As with the 2005 and 2009 Reports, the 2017 Report found that of those problems for which help was sought from an LSC-funded legal aid organization, more than half received only limited or no legal help “because of a lack of resources.”⁴⁵ The ability of legal aid to serve less than half of the clients asking and eligible for help persists.⁴⁶ The coronavirus (COVID-19) pandemic is not only highlighting this gap but also worsening it, with reports noting a 17.9% increase in the number of eligible legal aid clients due to the pandemic.⁴⁷

B. Unexpressed Demand

As described above, LSC-funded organizations have, for the last several decades, been able to assist approximately half of the eligible clients who walk through their doors. But most Americans do not even try.

Americans seek professional legal help for only 20% of their civil legal problems.⁴⁸ They turn to legal aid organizations (as opposed to other providers) for only 30% of the problems for which they seek such help.⁴⁹ Taken together, this means that Americans seek help from legal aid organizations 6% of the time.⁵⁰

Although there are many reasons that Americans do not turn to lawyers for help resolving legal problems, cost is not the primary reason.⁵¹ Rather, Americans

43. *Id.* §§ 8.2–8.3.

44. 2017 JUSTICE GAP REPORT, *supra* note 1, at 6.

45. *Id.*

46. *Id.* at 7.

47. Raleigh D. Kalbfleisch, *The Impact of the Covid-19 Pandemic on Legal Services*, 33 DCBA BRIEF 14, 17 (2020).

48. 2017 JUSTICE GAP REPORT, *supra* note 1 at 40.

49. *Id.*

50. *Id.* Nearly fifteen years earlier, the ABA’s 1994 Study found that “nearly three-fourths of the needs of low-income households and two-thirds of needs of moderate-income households were never taken to the civil justice system.” Spieler, *supra* note 6 at 373.

51. Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, AM. BAR ASS’N 3 (2014), <https://richardzorza.files.wordpress.com/2014/08/sandefur-accessing-justice-in-the-contemporary-usa-final.pdf>.

most often believe that there simply is no need to seek assistance, or that there is nothing to be done about their situation.⁵² As sociologist Rebecca Sandefur puts it, Americans do not take most of their justice situations to lawyers or courts because “they do not understand these situations to be legal.”⁵³

Much more commonly, individuals described situations in ways that suggested that they felt at least somewhat resigned to them: 56% of situations were described as “bad luck/ part of life” or as “part of God’s plan.” People understood a substantial minority of situations in ways that made involving outside third parties seem inappropriate: 21% were described as either private or as matters properly dealt with within the family or community.⁵⁴

There is nothing inherently wrong with resolving civil justice problems outside the legal system.⁵⁵ Indeed, staying outside the formal legal system may be ideal in certain situations, especially when personal relationships are at stake.⁵⁶

Practically speaking, it would be impossible for the nation’s existing courts, administrative agencies, and other forums that resolve disputes to process the estimated more than one hundred million justice problems that Americans experience every year. There is no reason to want them to. The rule of law means that most people can rely on most others to be basically compliant with legal norms most of the time, with a fair and accessible legal system as backup.⁵⁷

If individuals who resolve civil justice disputes outside the legal system assess their situation inaccurately, unaware of their legal rights, the outcomes may not comport with legal norms, and justice may not be served.⁵⁸ Even so, more lawyers is not necessarily the answer. Other solutions abound.⁵⁹ Counterparts in public health have turned to prevention as a possible solution, and the legal field can learn from their experience.

III. HEALTH LITERACY: A POTENTIAL BLUEPRINT

Legal aid is not always the best solution for narrowing the justice gap, as legal aid typically helps only one individual at a time.⁶⁰ Like legal aid, medicine suffers from the same systemic-problem-individual-solution approach, and yet the health sector is “decades ahead of the legal profession in terms of thinking about prevention” as a way to narrow the gap:

A helpful analogy likens surgery to litigation—both call for the intensive, yet inefficient, allocation of resources focused on a single individual. Both surgery and litigation always will be necessary in some cases, but prevention can ensure that reliance on surgery or litigation is lessened by

52. *Id.* at 12-13.

53. *Id.* at 13.

54. *Id.* at 14.

55. Sandefur, *supra* note 10 at 51-52.

56. *Id.*

57. *Id.* at 53.

58. *Id.* at 52.

59. *Id.* at 52-54.

60. Ben Barton, *A Comparison Between the American Markets for Medical and Legal Services*, 67 HASTINGS L.J. 1331, 1351 (2016).

reallocating resources toward prevention activities. . . . While it appears that the legal community is reaching consensus that the practice of individual representation for vulnerable populations is too intensive, inefficient, and costly, it has not yet coalesced around a set of prevention strategies. The public health field holds substantial experience in documenting the impact of prevention, as well as in shifting professional and community culture toward prevention.⁶¹

One prevention strategy championed and tested by our public health counterparts is health literacy.

The Department of Health & Human Services defines “personal health literacy” as “the degree to which individuals have the ability to find, understand, and use information and services to inform health-related decisions and actions for themselves and others.”⁶² This definition – unveiled as part of HHS’s Healthy People 2030 Initiative – has evolved since the mid-1990s.⁶³ Where early definitions focused on literacy to accomplish concrete health-related tasks, such as a person’s ability to understand a prescription drug label or consent to a medical procedure, the Healthy People 2030 definition seeks to incorporate the idea that for health purposes the ability to actually *use* information to affect one’s behavior is key.⁶⁴

The 2030 HHS definition also is careful not to judge what that ultimate behavior is. For the 2010 and 2020 Healthy People initiatives, the definition of health literacy included the goal of helping individuals to make “appropriate” health-related decisions, whereas the 2030 definition leaves it at “well-informed”⁶⁵ to achieve individual empowerment.

Importantly, health literacy and basic literacy are not the same.⁶⁶ “General literacy gives us some but not all the skills to understand and communicate health information and concerns.”⁶⁷ Similarly, educational attainment is not a proxy for health literacy, although education level does help increase health literacy.⁶⁸ This matters because regardless of education level, health literacy can be learned and applied. The goal of the public health community is to increase personal health

61. Lawton & Sandel, *supra* note 13 at 37–38.

62. *What Is Health Literacy?*, *supra* note 14 (differentiating between “personal health literacy” and “organizational health literacy”).

63. Healthy People 2030 sets “data-driven national objectives to improve health and well-being” of the American public by the year 2030. HEALTHY PEOPLE 2030, <https://health.gov/healthypeople> (last visited May 5, 2021); See Andrew Pleasant, *Advancing Health Literacy Measurement: A Pathway to Better Health and Health System Performance*, 19 J. HEALTH EDUC. 1481, 1483-86 (2014) (describing the various definitions of health literacy).

64. The current HHS definition of health literacy appears to be based in part on the Calgary Charter, which shifts the focus of the definition of health literacy to behavior and usage and away from static knowledge. Pleasant, *supra* note 63 at 1485, 1490-91 (praising the definition of “health literacy” included in the Calgary Charter on Health Literacy as a measurable model for affecting behavior).

65. *What Is Health Literacy?*, *supra* note 14.

66. U.S. DEP’T OF HEALTH & HUM. SERVS., NATIONAL ACTION PLAN TO IMPROVE HEALTH LITERACY 5 (2010), https://health.gov/sites/default/files/2019-09/Health_Literacy_Action_Plan.pdf [hereinafter NATIONAL ACTION PLAN TO IMPROVE HEALTH LITERACY].

67. *Id.*

68. Young Ik Cho et. al., *Effects of Health Literacy on Health Status and Health Service Utilization amongst the Elderly*, 66 SOC. SCI. & MED. 1809, 1814 (2008) (testing health literacy by measuring health-related reading fluency).

literacy because health literacy translates not only to healthier and longer lives, but also to decreased demand for health services.

A. The Effects of Low Health Literacy

Low levels of health literacy have been associated with increased use of emergency room visits and hospitalizations.⁶⁹ Low health literacy has also been linked to lower use of health screenings (e.g., mammograms and colonoscopies) and lower odds of receiving an influenza vaccine.⁷⁰ Higher health literacy translates to more frequent exercise, more frequent seat belt use, and lower tobacco use.⁷¹

Health literacy also impacts individual health care expense and societal economic cost. Research indicates that people with limited health literacy skills have higher medical costs and use an inefficient mix of services.⁷² One study estimates the cost of limited health literacy to the Nation's economy to be between \$106 and \$236 billion dollars annually.⁷³ When one accounts for the future costs that result from current actions (or lack of action), the real, present day cost of limited health literacy might be closer to \$1.6–3.6 trillion dollars.⁷⁴

When it comes to health outcomes (as opposed to preventive behaviors and utilization of health services), low health literacy is “clearly” linked to higher mortality rates in seniors, and low health literacy also negatively affects one's ability to take medications properly, and interpret labels and health messages.⁷⁵ Conversely, health literacy can mediate the effect of education, income, and urbanicity.⁷⁶

The COVID-19 pandemic has brought front and center the need for increased health literacy.⁷⁷ According to the General Director of the World Health Organization, “We're not just fighting an epidemic; we're fighting an infodemic.”⁷⁸ In the age of high-speed information during a concurrently evolving dangerous public health crisis, “individuals need to know how to assess critically

69. See *Health Literacy*, *supra* note 15.

70. *Id.* at 28-29. According to the 2011 comprehensive literature review of health literacy and health outcomes, there did not appear to be a significant difference in influenza vaccination rates between those with marginal health literacy and adequate health literacy. *But see* DONALD RUBIN, A HEALTH LITERACY REPORT: ANALYSIS OF 2016 BRFSS HEALTH LITERACY DATA 25 (2016), <https://www.cdc.gov/healthliteracy/pdf/Report-on-2016-BRFSS-Health-Literacy-Data-For-Web.pdf> (reporting that “Those who did receive a flu shot in the last year were 40% more likely to be above the median in health literacy, relative to those who did not receive the vaccination.”).

71. RUBIN, *supra* note 70 at 45-46.

72. NATIONAL ACTION PLAN TO IMPROVE HEALTH LITERACY, *supra* note 66, at 10.

73. *Id.*

74. *Id.*

75. *Health Literacy*, *supra* note 15, at 39.

76. *Id.* See also Sheila Cyril, John C. Oldroyd, & Andre Renzaho, *Urbanisation, Urbanicity, and Health: A Systematic Review of the Reliability and Validity of Urbanicity Scales*, 13 BMC PUB. HEALTH 513 (2013) (noting consistent findings of adverse health outcomes associated with greater urbanization).

77. Leena Paakkari, *COVID-19: Health Literacy is an Underestimated Problem*, 5 LANCET 249, 249 (2020).

78. John Zarocostas, *How to Fight an Infodemic*, 395 LANCET 676, 676 (2020).

the information with which they are overwhelmed.”⁷⁹ The ongoing pandemic demonstrates the importance of health literacy in real time. The ability to use not simply health knowledge but health *literacy* to discern fact from fiction, reliable source from rumor, is a matter of life and death when it comes to a rapidly spreading infectious disease.

In August 2020, *HLRP: Health Literacy Research and Practice* reported on two national surveys about the American public’s awareness of and intent to comply with infectious disease experts’ recommendations to socially distance and wear masks in public.⁸⁰ The first survey, of mostly White respondents, found that 86% to 90% of respondents “most certainly” intended to comply with distancing and mask recommendations.⁸¹ By contrast, a second survey, of mostly African-American respondents, showed that between 67% and 72% of respondents reported “always” following the recommendations.⁸² Of the White respondents, 81% had attained a college or graduate/professional degree.⁸³ Of the African American respondents, 27% had attained a college or graduate/professional degree.⁸⁴ While the *HLRP* authors noted that other factors are at play when it comes to distancing and mask compliance—including income levels, public health messaging, long-term public distrust, and the politicization of science—they ask whether health literacy might also play a role (which they expected to correlate at least somewhat with educational attainment), as neither survey sought to measure it.⁸⁵

If low health literacy leads to poor health outcomes and more visits to the emergency room and hospital, it makes sense to have increased health literacy as a goal. Increasing health literacy can be tackled on several fronts. There are those who work on making written materials more readable and easier to understand; there are others who work on improving interactions with patients in clinical settings, fostering trust and open dialogue to ensure that patients ask questions when they do not understand and get answers to those questions such that their health choices are fully their own. Because the focus of this article, however, is prevention of civil legal problems, it seems fitting to focus on how those in the public health arena increase health literacy before patients get sick.

79. Thomas Abel & David McQueen, *Critical Health Literacy and the COVID-19 Crisis*, 35 HEALTH PROMOTION INT’L 1612, 1612 (2020).

80. Barry D. Weiss & Michael K. Paasche-Orlow, *Disparities in Adherence to COVID-19 Public Health Recommendations*, 4 HEALTH LITERACY RSCH. & PRAC. 171, 171 (2020).

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

B. Teaching Health Literacy

One critical path to health literacy has been K-12 education.⁸⁶ The education system offers a primary point of intervention to improve health literacy.⁸⁷ “Because schools have direct contact with more than 95 percent of our nation’s young people aged 5-17 years, they play a critical role in promoting the health and safety of young people and helping them establish lifelong healthy behavior patterns.”⁸⁸ Although the health literacy of children as applied in a healthcare setting is very much dependent on the health literacy of their parents and caregivers, there is emerging consensus that, because all children begin with zero health literacy, formal education may be the best way to improve children’s health literacy and form a more health-literate future adult cohort.⁸⁹

1. Standards and Recommendations

In the early 1990s, the American Public Health Association, American School Health Association, and American Association for Health Education came together with support from the American Cancer Society to form a Joint Committee on National Health Education Standards.⁹⁰ The Joint Committee developed the National Health Education Standards (NHES), which it first published in 1995.⁹¹ “The NHES are written expectations for what students should know and be able to do by grades 2, 5, 8, and 12 to promote personal, family, and community health.”⁹²

The National Health Education Standards were revised in 2007 to reflect best practices learned in the first decade of the Standards’ existence.⁹³ These updated

86. In mid-2020, the Department of Health and Human Services released its Healthy People 2030 plan. One of the plan’s stated objectives is to increase the population’s health literacy, and research is ongoing as to the best intervention to achieve that goal. *Increase the Health Literacy of the Population — HC/HIT-R01*, U.S. DEP’T OF HEALTH & HUM. SERV., <https://health.gov/healthypeople/objectives-and-data/browse-objectives/health-communication/increase-health-literacy-population-hchit-r01> (last visited Mar. 22, 2021).

87. LYNN NIELSEN-BOHLMAN, ALLISON M. PANZER, & DAVID A. KINDIG, INST. OF MED., HEALTH LITERACY: A PRESCRIPTION TO END CONFUSION 142 (2004), <https://doi.org/10.17226/10883>. Broadly speaking, for purposes of health literacy, the U.S. education system includes K-12, adult education, and education for health professionals. *Id.* Adult education covers a broad spectrum of interventions: calls for plain language in communications, targeted one-on-one clinical interactions, public awareness campaigns, and formal adult education classes (e.g., GEDs classes or English language learning classes). This article looks at K-12 health education initiatives as a corollary for K-12 legal literacy education, but adult legal literacy education is certainly an avenue for future research.

88. CDC, SCHOOL HEALTH POLICIES AND PRACTICES STUDY RESULTS FROM THE SCHOOL HEALTH POLICIES & PRACTICES STUDY 1 (2016), https://www.cdc.gov/healthyyouth/data/shpps/pdf/shpps-results_2016.pdf.

89. See Mary Ann Abrams, Perri Klass, & Benard P. Dreyer, *Health Literacy and Children: Introduction*, 124 PEDIATRICS 262, 263-64 (2009); KRISTINE SØRENSEN & ORKAN OKAN, HEALTH LITERACY: HEALTH LITERACY OF CHILDREN AND ADOLESCENTS IN SCHOOL SETTINGS 5 (2020), https://pub.uni-bielefeld.de/download/2942282/2942293/sorensen_okan_Health%20literacy%20of%20children%20and%20adolescents%20in%20school%20settings_2020.pdf.

90. *National Health Education Standards*, CDC <https://www.cdc.gov/healthyschools/sher/standards/index.htm> (last visited May 5, 2021).

91. *Id.*

92. *Id.*

93. *School Health Education Standards*, SHAPE AM. (last visited May 5, 2021), <https://www.shapeamerica.org/standards/health/>.

Standards reflect the evolving definition of health literacy, in that they set goals for K-12 students to demonstrate the ability to access and use valid health information and decision-making skills to enhance health and reduce health risks.⁹⁴ There are eight standards, and students are expected to achieve them as they move through the K-12 system.⁹⁵

The importance of improving health literacy in the K-12 system has only grown since the initial development of the National Health Education Standards. In its 2004 report on health literacy, the Institute of Medicine noted that the most effective way to improve health literacy is to include health as part of the curriculum at all levels of education.⁹⁶ In 2010, the Department of Health and Human Services released a National Action Plan to Improve Health Literacy, which included K-12 education.⁹⁷ In 2015, the CDC and the Association for Supervision and Curriculum Development released the Whole School, Whole Community, Whole Child framework to better integrate health into school curricula.⁹⁸

In 2015, the Every Student Succeeds Act (ESSA) was passed to replace No Child Left Behind; it recognized health education as a distinct discipline for the first time and designated it as a “well-rounded education” subject.⁹⁹ Under ESSA, states must submit written plans to the Department of Education in which each state identifies indicators for school quality and success.¹⁰⁰ In their written plan, states must choose at least one “nonacademic indicator to measure school quality or success, such as health education.”¹⁰¹ ESSA also provides funding for in-service instruction for teachers in well-rounded education subjects like health education.¹⁰²

“In 2019, representatives of the National Committee on the Future of School Health Education . . . published a dozen recommendations for strengthening school health education.”¹⁰³ These include calling for the adoption of “standardized measures of health literacy in children,” including health literacy in state education accountability systems, “and ongoing professional development in health education for teachers at both the elementary and secondary levels.”¹⁰⁴ The Committee is now developing action steps to address these recommendations, and in the wake of the COVID-19 pandemic, there is reason to believe that health literacy will rise in national educational priority.¹⁰⁵

94. *Id.*

95. *National Health Education Standards*, *supra* note 90.

96. Lloyd J. Kolbe, *School Health As A Strategy To Improve Both Public Health & Education*, 40 ANNUAL R. PUB. HEALTH 443, 447 (Apr. 2019).

97. NATIONAL ACTION PLAN TO IMPROVE HEALTH LITERACY, *supra* note 66, at 32-34.

98. *CDC Healthy Schools: Whole School, Whole Community, Whole Child (WSCC)*, CDC <https://www.cdc.gov/healthyschools/wsc/index.htm> (last visited May 5, 2021).

99. M. Elaine Auld et al., *Discussion Paper: Health Literacy and Health Education in Schools: Collaboration for Action*, NAT'L ACAD. MED. 5 (Jul. 20, 2020), <https://nam.edu/wp-content/uploads/2020/07/Health-Literacy-and-Health-Education-in-Schools.pdf>.

100. *Id.* at 5-6.

101. *Id.* at 6.

102. *Id.* at 6.

103. *Id.* at 6.

104. *Id.* at 6.

105. *Id.* (calling for action on prior recommendations for increasing health literacy in schools in light of the pandemic); *see also* April Joy Damian & Joseph J. Gallo, *Promoting Health Literacy During*

2. Effective Implementation

Research indicates that for health literacy education to affect behavior, content knowledge alone is not enough; rather, abstract decision-making skills have a greater impact on the long-term reach of health literacy education.

[M]uch of the content knowledge learned today will be meaningless when the elementary students are adults. Hence, a health-literate school focuses on teaching students how to learn about their health, how to use skills that are applicable across many facets of life, and why these are important in their life (attitudes).¹⁰⁶

Ellen Peters, the former Director of the Cognitive and Affective Influences in Decision Making Lab (CAIDe Lab) at Ohio State University,¹⁰⁷ explains why knowledge may not always be enough. For example, everyone knows that smoking is bad and that exercise is good, and yet that knowledge does not always affect one's behavior.¹⁰⁸ Instead, "[e]ducation interventions that build adult capacity may better allow decision makers to bring knowledge to bear on decisions, think probabilistically, use heuristic processing less, and consider alternative scenarios."¹⁰⁹

In field studies in rural Ghana and Peru, Dr. Peters tested a "schooling-decision-making model," positing that formal education would provide individuals with cognitive and decision-making competencies that would lead to better health-related behaviors when it came to HIV/AIDS.¹¹⁰ As hypothesized, those with more years of formal education made more protective health choices, and structural-equation-modeling analysis showed that it was the "education-enhanced abilities," not simply knowledge of facts about HIV/AIDS, that mattered.¹¹¹ In other words, critical thinking mattered more than facts alone.

Experience with health literacy within the U.S. education system bears this out. In the 1980s, schools across America started to implement the D.A.R.E. program in an effort to teach school children to "just say no" to drugs.¹¹² The original program invited local police officers to come to schools to explain the

the COVID-19 Pandemic: A Call to Action for Healthcare Professionals, HARV. KENNEDY SCH. MISINFORMATION REV. (June 15, 2020), <https://misinforeview.hks.harvard.edu/article/promoting-health-literacy-during-the-covid-19-pandemic-a-call-to-action-for-healthcare-professionals/> (calling for increased health literacy overall in the wake of COVID-19).

106. SØRENSEN & OKAN, *supra* note 89 at 18.

107. *CAIDe Research Lab*, OHIO STATE U., <https://u.osu.edu/caidelab/> (last visited May 5, 2021) ("Dr. Peters is now the Philip H. Knight Chair and Director of the Media Center for Science and Technology in the School of Journalism and Communication at the University of Oregon[.]").

108. Ellen Peters, *Educating Good Decisions*, BEHAV. PUB. POL'Y 162–76 (Nov. 2017).

109. *Id.* Notably, the study subjects in this study were adults.

110. *Id.*

111. *Id.* In fact, numeracy (as opposed to literacy) might play a particularly important role in helping individuals to assess risk and take action to mitigate risk. *Id.* (citing Ellen Peters, *Beyond Comprehension: The Role of Numeracy in Judgments and Decisions*, 21 CURRENT DIRECTIONS IN PSYCH. SCI. 31-35 (2012)).

112. Scott O. Lilienfeld & Hal Arkowitz, *Why "Just Say No" Doesn't Work*, SCI. AM. (Jan. 1, 2014), <https://www.scientificamerican.com/article/why-just-say-no-doesnt-work/>.

dangers of drug and alcohol use, coming once a week for a period of months.¹¹³ It didn't work. Educators explain that educational programs that are more lecture-like than interactive are ineffective:

Merely telling participants to “just say no” to drugs is unlikely to produce lasting effects because many may lack the needed interpersonal skills. Programs led exclusively by adults, with little or no involvement of students as peer leaders—another common feature of D.A.R.E.—seem relatively unsuccessful, again probably because students get little practice saying no to other kids.¹¹⁴

Renowned Brazilian educator Paulo Freire explains this as a difference between a “banking” model of education and a “problem-posing” model of education.¹¹⁵ In the banking model, “[t]eachers act as independent authoritarians in the classroom, lecturing and “depositing” information into their students.”¹¹⁶ The problem-posing model rejects this dichotomy, favoring instead dialogue and interactive work such that the student “while being taught also teaches.”¹¹⁷

In the mid-2000s, prevention scientists helped revise the D.A.R.E. curriculum.¹¹⁸ They replaced lectures with eight-minute lessons followed by ample time for students to role-play with their peers, practicing communication and decision-making skills.¹¹⁹ Whereas the original D.A.R.E. program showed no statistical difference between program participants and other adolescents in using drugs and alcohol,¹²⁰ studies of the revised D.A.R.E. curriculum show a 72% reduction in substance abuse between program participants and a control group.¹²¹ In other words, *how* health literacy is taught matters.

Though health literacy education is not perfect,¹²² it is recognized as a piece of the solution puzzle. Certainly, it is lightyears ahead of legal literacy education. In fact, it is not clear that we educate American children with a goal of legal literacy at all.

113. *Id.*

114. *Id.* See also Donald R. Lynam et al., *Project DARE: No Effects At 10-Year Follow-Up*, 67 J. OF CONSULTING AND CLINICAL PSYCH. 590–93 (1999).

115. Brandi M. Lupo, *Legal Rights, Real-World Consequences: The Ethics of Know Your Rights Efforts and Towards Improved Community Legal Education*, 17 NW. J. HUM RTS. 1, 16–19 (2019) (citing PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (1972)).

116. *Id.*

117. *Id.*

118. Amy Nordrum, *The New D.A.R.E. Program – This One Works*, SCI. AM., (Sept. 10, 2014), <https://www.scientificamerican.com/article/the-new-d-a-r-e-program-this-one-works/>.

119. *Id.*

120. Lilienfeld & Arkowitz, *supra* note 112.

121. Nordrum, *supra* note 118; see also BOHLMAN, PANZER, & KINDIG, *supra* note 87 at 149-50 (advocating for health literacy instruction that includes roleplay and embedment with other subjects).

122. According to the CDC's 2018 School Health Profiles report, the percentage of schools that required health education instruction for students in any of grades six through twelve ranged from 67.6 percent to 99.4 percent across different states, although the median was 93.7 percent. CTR. FOR DISEASE CONTROL, *SCHOOL HEALTH PROFILES: CHARACTERISTICS OF HEALTH PROGRAMS AMONG SECONDARY SCHOOLS* 13 (2018), <https://www.cdc.gov/healthyyouth/data/profiles/pdf/2018/CDC-Profiles-2018.pdf>. See also Auld et al., *supra* note 99 at 32-34 (calling on schools to use the National Health Education Standards more uniformly).

IV. LEGAL LITERACY

A. What is Legal Literacy?

In contrast to decades of health literacy standards, collaborations, curricula, and report cards, there is currently no agreed-upon vision for legal literacy as a corollary to health literacy. Some scholars have attempted to define legal literacy, but no prevailing definition has emerged.¹²³

Canadian law professor Archie Zariski identifies two approaches to the various proffered definitions for legal literacy: the first sees legal literacy as a “capacity spread along a continuum, with lawyers and judges at one end and relatively incapable non-lawyers (‘laypersons’) at the other.”¹²⁴ University of Michigan Professor James Boyd White described the continuum idea in 1983, defining legal literacy as “that degree of competence in legal discourse required for meaningful and active life in our increasingly legalistic and litigious culture.”¹²⁵ He explains:

The citizen who was ideally literate in this sense would not be expected to know how to draft deeds and wills or to try cases or to manage the bureaucratic maze, but he would know when and how to call up on the specialists who can do these things. More important, in the rest of his life he would be able to protect and advance his own interests: for example, in dealing with a landlord or a tenant, or in his interactions with the policy, with the zoning commission, or with the Social Security Administration.¹²⁶

The second approach identified by Professor Zariski views legal literacy as suggesting “a system of language to be mastered, knowledge gained and understanding achieved,” akin to mastering a foreign language in order to operate effectively within a foreign society.¹²⁷ Suzanne Bolton offers the following definition more like this “mastery” idea:

Legal literacy could be defined as the background information stored in one’s mind that enables them to take up a legal document, read an article in the newspaper on a law-related event, with an adequate level of comprehension, getting the point, grasping the implications, relating what they read to the unstated context which alone gives meaning to what they read.¹²⁸

The American Bar Association once offered its own definition of legal literacy, describing it as “[t]he ability to make critical judgments about the substance of the law, the legal process, and available legal resources, and to effectively utilize the

123. Laura J. Ax-Fultz, *Igniting the Conversation: Embracing Legal Literacy as the Heart of the Profession*, 107 LAW LIBR. J. 421, 427-430 (2015) (advocating for a definition of legal literacy useful to law librarians that acknowledges varying skill levels of law library clientele).

124. ARCHIE ZARISKI, LEGAL LITERACY: AN INTRODUCTION TO LEGAL STUDIES 21 (Connor Houlihan 2014).

125. *Id.*; James Boyd White, *The Invisible Discourse of the Law: Reflections on Legal Literacy and General Education*, 54 U. COLO. L. REV. 143, 144 (1983).

126. *Id.*

127. ZARISKI, *supra* note 124 at 21.

128. Ax-Fultz, *supra* note 123 at 427 (noting, however, that Bolton later in the same article referred to legal literacy “also known as law-related education”).

legal system and articulate strategies to improve it.”¹²⁹ This definition was published in 1989, in connection with a legal literacy survey performed by the ABA’s Commission on Public Understanding About the Law.¹³⁰ The ABA no longer conducts that survey. Instead, the ABA Commission on Public Understanding About the Law is now part of the ABA’s Division for Public Education,¹³¹ and the Division surveys the American public about “civic literacy,” which asks survey participants about the Constitution and separation of powers.¹³²

Although the ABA no longer measures legal literacy within the United States, the ABA does continue to use (but does not define) the term “legal literacy” in connection with access to justice initiatives abroad.¹³³ Indeed, in the international space, legal literacy is at the heart of most legal empowerment projects, including many led by Americans.¹³⁴ This is in keeping with the theory that the American legal profession is anathema to the legal empowerment of laypersons within the United States while relaying a different message abroad – a fascinating topic not unrelated to this article but outside its scope.¹³⁵

B. Teaching Legal Literacy

Whatever the definition, Americans are not very literate in law. One in four Americans cannot name the three branches of government.¹³⁶ Nearly 70% of Americans have a limited understanding of the Constitution.¹³⁷ “Two-thirds of us can identify an American Idol judge, but only fourteen percent can name the Chief Justice of the United States.”¹³⁸ Civics and law-related education are areas of study that have the potential to lead to greater legal literacy, just as health education gives rise to greater personal health literacy. To date, however, civics and law-related

129. ZARISKI, *supra* note 124 at 22 n. 7 (citing LEGAL LITERACY SURVEY SUMMARY, AM. BAR ASS’N 5 (1989)).

130. *Id.*

131. *About Us*, AM. BAR ASS’N, https://www.americanbar.org/groups/public_education/about_us/ (last visited May 5, 2021).

132. AM. BAR ASS’N, ABA 2020 REPORT OF CIVIC LITERACY (2020), https://www.americanbar.org/content/dam/aba/administrative/public_education/2020-survey-civ-lit-full-report.pdf.

133. ABA RULE OF LAW INITIATIVE, ACCESS TO JUSTICE ASSESSMENT TOOL 11, 12 (2012), https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_access_to_justice_assessment_manual_2012.pdf.

134. *See e.g.*, Laura Goodwin & Vivek Maru, *What Do We Know about Legal Empowerment? Mapping the Evidence*, 9 HAGUE J. RULE LAW 157, 169 (2017) (identifying “legal literacy” as the most frequently studied legal empowerment approach, in 113 of 199 interventions reviewed). *See also generally* STEPHEN GOLUB, THE LEGAL EMPOWERMENT ALTERNATIVE, PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE 161 (Thomas Carothers ed., 2006).

135. *See* Bridgette Dunlap, *Anyone Can “Think Like A Lawyer”: How the Lawyers’ Monopoly on Legal Understanding Undermines Democracy and the Rule of Law in the United States*, 82 FORDHAM L. REV. 2817, 2818-20 (2014).

136. Rebecca Winthrop, *The Need for Civic Education in 21st Century Schools*, BROOKINGS INST. (June 4, 2020), <https://www.brookings.edu/policy2020/bigideas/the-need-for-civic-education-in-21st-century-schools/>.

137. Charles J. Crimmins, *Teaching the Constitution: An American Tradition*, 90 DENV. U. L. REV. 1003, 1014-15 (2013).

138. The Honorable Wallace B. Jefferson, *Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights*, 88 N.Y.U. L. REV. 1953, 1954 (2013).

education in the United States have focused on increasing participation in democratic society rather than individual empowerment.

1. Civics

Teaching civics is an American tradition.¹³⁹ Civics involves the study of government, democracy, and power structures.¹⁴⁰ Research shows that students who receive an effective civic education are more likely to vote, discuss politics at home, and volunteer in their communities.¹⁴¹ Nevertheless, there has been a continuous decline in America's commitment to civic education over the past fifty years.¹⁴²

Many attribute this decline to the same shifting national educational priorities that affected health education in the early 2000s. With the passage of No Child Left Behind in 2002, civics fell behind math and reading as favored subjects.¹⁴³ When the Common Core State Standards were developed in 2009, civics was left out entirely.¹⁴⁴

Justice Sandra Day O'Connor, a long-time champion of robust civics education and founder of iCivics,¹⁴⁵ explained it this way:

[C]ivic illiteracy is a self-inflicted wound. For decades, America's schools have neglected civic education; today, many young people receive virtually no instruction about America's system of government. Predictably, these young people grow into adults who know little about the law of the land. The path towards restoring our national civic literacy thus starts in our schools.¹⁴⁶

When ESSA was passed in 2015, there was some movement toward reinvigorating civics education. Like health, under ESSA, civics is now considered part of a well-rounded education.¹⁴⁷

The political turmoil of the Trump administration, however, resulted in still louder calls for improved civics instruction in schools.¹⁴⁸ In November 2019, the

139. Tom Donnelly, *Popular Constitutionalism, Civic Education, and the Stories We Tell Our Children*, 118 YALE L. J. 948, 964–65 (2009).

140. MICHAEL HANSEN, ELIZABETH MANN LEVESQUE, JON VALANT, & DIANA QUINTERO, BROWN CTR. ON EDUC. POL'Y AT BROOKINGS INST., *THE 2018 BROWN CENTER REPORT ON AMERICAN EDUCATION: HOW WELL ARE AMERICAN STUDENTS LEARNING?* 16 (2018), <https://www.brookings.edu/multi-chapter-report/the-2018-brown-center-report-on-american-education/>.

141. Laura McNabb, *Civic Outreach Programs: Common Models, Shared Challenges, and Strategic Recommendations*, 90 DENV. U. L. REV. 871, 880 (2013).

142. *Id.* at 873.

143. Dunlap, *supra* note 135, at 2831.

144. Valerie Strauss, *Why the Common Core Flunks on Civics Education*, WASH. POST (Mar. 12, 2014, 6:00 AM), <https://www.washingtonpost.com/news/answer-sheet/wp/2014/03/12/why-the-common-core-flunks-on-civic-education/?noredirect=on>; see also *Search Results for: Civics*, COMMON CORE STATE STANDARDS INITIATIVE, <http://www.corestandards.org/search/?f=all&t=civics> (last visited May 5, 2021) (finding “no results” when searching the word “civics” on the official Common Core website).

145. *Who We Are*, ICIVICS, <https://www.icivics.org/who-we-are> (last visited May 5, 2021).

146. Sandra Day O'Connor, *Forward: The Rule of Law and Civic Education Foreword*, 67 SMU L. REV. 693, 694 (2014).

147. JAY BRENNAN, EDUC. COMM'N OF THE STATES, *EDUCATION TRENDS: ESSA: MAPPING OPPORTUNITIES FOR CIVIC EDUCATION 2* (2017), <https://files.eric.ed.gov/fulltext/ED574090.pdf>.

148. Andrea Gabor, *Democracy Needs to Be Taught in School*, BLOOMBERG (Jan. 14, 2021, 10:00 AM), <https://www.bloomberg.com/opinion/articles/2021-01-14/classroom-civics-revival-can-help-heal->

National Endowment for the Humanities, in partnership with the Department of Education, funded iCivics to create a roadmap for excellence in civic and history education as part of its “Educating for Democracy” project – a partnership between Harvard University, Arizona State University, Tufts University, and iCivics.¹⁴⁹ In December 2020, Congress introduced bipartisan legislation of the same name – the Educating for Democracy Act (now called the Civics Secures Democracy Act) – to provide \$1 billion annually for six years to expand civics and history education.¹⁵⁰ The Act also mandated that the National Assessments of Education Progress in civic and history education be administered every two years in grades four, eight, and twelve.¹⁵¹ While the Civics Secures Democracy Act has not yet come up for a vote,¹⁵² on March 2, 2021, the Educating for Democracy project released its Roadmap report.¹⁵³

“The EAD Roadmap is an inquiry-based content framework for excellence in civic and history education It offers a vision for the integration of history and civic education throughout grades K-12.”¹⁵⁴ The Roadmap is not a curriculum, but rather a starting point to design state, tribal, and local standards, curricula, resources, and lessons.¹⁵⁵ The Roadmap is the result of more than a year of focused work by prominent scholars and seasoned educators across the country, and it

u-s-democracy; *but see* Dale Chu, *What the Capitol Riot Means for Civics Education*, FORDHAM INST. (Jan. 21, 2021), <https://fordhaminstitute.org/national/commentary/what-capitol-riot-means-civics-education> (questioning whether a return to Enlightenment teachings would be more effective than civics in a counter-factual world).

149. Press Release, Nat’l Endowment for the Humanities, NEH and Department of Education Award \$650,000 to iCivics (Nov. 1, 2019), <https://www.neh.gov/news/neh-and-department-education-award-650000-icivics>; ICIVICS, EDUCATING FOR AMERICAN DEMOCRACY: EXCELLENCE IN HISTORY AND CIVICS FOR ALL LEARNERS 11-13 (2021), <https://www.educatingforamericandemocracy.org/wp-content/uploads/2021/02/Educating-for-American-Democracy-Report-Excellence-in-History-and-Civics-for-All-Learners.pdf> [hereinafter EDUCATING FOR AMERICAN DEMOCRACY].

150. Press Release, U.S. Representative Rosa DeLauro, DeLauro, Cole Introduce the Educating for Democracy Act, Historic Investment in Civic Education (Sept. 17, 2020), <https://delauro.house.gov/media-center/press-releases/delauro-cole-introduce-educating-democracy-act-historic-investments>; Press Release, Chris Coons, Sens. Coons, Cornyn Introduce Landmark Legislation to Invest \$1B Annually in Civics Education (Dec. 1, 2020), <https://www.coons.senate.gov/news/press-releases/sens-coons-cornyn-introduce-landmark-legislation-to-invest-1b-annually-in-civics-education>; Press Release, Chris Coons, The Civics Secures Democracy Act (Mar. 11, 2021), <https://www.coons.senate.gov/imo/media/doc/210311%20Civics%20Secures%20Democracy%20one-pager%20vINTRO.pdf>.

151. The Civics Secures Democracy Act, S.879 117th Cong. (2021) (sponsored by Senator Chris Coons).

152. *See* Alan D. Solomont, *Our Democracy Demands an Investment in Civic Education*, FULCRUM (Jan. 22, 2021), <https://thefulcrum.us/civic-ed/how-to-improve-civics-education> (imploring Congress to pass the Educating for Democracy Act: “It is one thing to teach that there are three branches of government and what each one does. It is more ambitious to expect every young American to know how to select good information, to reason with people who may disagree about complex problems, to influence a range of institutions effectively — and to uphold the core values of our republic. But that is what our constitutional democracy demands.”).

153. EDUCATING FOR AMERICAN DEMOCRACY, *supra* note 149. It is worth noting that the authors of the Roadmap released it after the inauguration of Joseph R. Biden as president; a quote from the poem written and read by Amanda Gorman at the Inauguration appears on page 3.

154. *Id.* at 13.

155. *Id.* at 12 -13 (clarifying that the Roadmap is not a set of standards either).

reflects the best-known methods for developing critical thinking about civic virtues and participation.¹⁵⁶

The Roadmap offers seven content themes, six pedagogical principles, and five design challenges.¹⁵⁷ The content themes and pedagogical principles are cutting edge. Among other things, the Roadmap encourages educators to use inquiry as the primary process for learning (similar to the Socratic method), to cultivate student self-knowledge, and to create opportunities for students to engage “in real-world events and problem-solving about issues in their communities.”¹⁵⁸

Civics is important. But there is no known link between civics instruction and an individual’s ability to navigate his or her own legal needs, nor is that a stated goal of teaching civics.¹⁵⁹ “[A]n understanding of governmental institutions and the separation of powers is not enough to provide a threshold awareness of the content of the law that governs daily life.”¹⁶⁰ Does law-related education fill that gap?

2. Law-Related Education

Law-related education was developed in the 1970s as an alternative to traditional civics instruction – focusing on individual rights and common legal situations rather than history and institutions:

There was a belief that the Constitution and Bill of Rights needed to be revitalized with their significance brought to life. There was the belief that LRE would assist students with understanding the law, while helping with specific legal questions they would likely encounter in the future.¹⁶¹

As originally envisioned, law-related education had the potential to create a generation of legally literate adults. Over time, however, law-related education has become nearly indistinguishable from civics.

In 1971, the ABA formed the Special Committee on Youth Education for Citizenship.¹⁶² Leon Jaworski, then president of the ABA, explained that the purpose of the program was “to teach the child at a receptive age why any free society must rely upon law and its institutions and the nature of the duties that a free society imposes upon its members.”¹⁶³ With the creation of the Special Committee, state and local bar associations helped introduce into public schools programs like mock trials, written materials for lesson planning, and conferences to provide professional development for teachers.¹⁶⁴ The Committee soon

156. *Id.* at 11-12.

157. *Id.* at 14-17. The seven content themes are: Civic Participation, Challenging Landscapes, “We The People,” A New Government and Constitution, Institutional and Social Transformation, A People in the World, and A People with Contemporary Debates and Possibilities. *Id.*

158. *Id.* at 16.

159. *See generally id.* at 9 (“When civic education succeeds, all people are prepared and motivated to participate freely in civic life.”).

160. Dunlap, *supra* note 135, at 2832–33.

161. SHERRY FEINSTEIN & ROBERT W. WOOD, SCH. OF EDUC., UNIV. OF S. DAKOTA, HIST. OF LAW-RELATED EDUC. 2, 5 (May 1995), <https://files.eric.ed.gov/fulltext/ED401163.pdf>.

162. *About Us*, AM. BAR ASS’N, https://www.americanbar.org/groups/public_education/about_us/ (last visited May 5, 2021).

163. FEINSTEIN & WOOD, *supra* note 161, at 13.

164. Justin A. Stanley, *President’s Page*, 63 ABA J. 287 (1977).

recognized, however, that to really reach K-12 students, the laboring oar would have to fall to teachers rather than state and local bar associations. “While lawyers, judges and law enforcement officials can help by making occasional classroom visits,” the Committee explained, “only teachers can be expected to bear the instructional burden and implement the goals of law-related education.”¹⁶⁵

In 1978, Congress caught on. Partly as a result of recognizing the limitation of sporadic lessons taught by outside guests, and partly in reaction to the turbulence of the Watergate era, Congress passed the Law Related Education Act.¹⁶⁶ The Act was actually an amendment to the Elementary and Secondary Education Act; importantly, however, it did not come with any funding.¹⁶⁷ The Act symbolically reinforced the idea that law-related education should be taught in public schools. It also clearly defined law-related education as “education to equip non-lawyers with knowledge and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based.”¹⁶⁸ This definition persists today.¹⁶⁹

At the K-12 level, law-related education most often takes the form of bar associations or legal non-profits providing training for school teachers or helping with elective classes.¹⁷⁰ The ABA Division for Public Education hosts a celebration of Law Day on May 1 each year, a summer institute for social studies teachers, curricular support for law-related instruction to middle and high schoolers by outside lawyers, judges, or civic leaders,¹⁷¹ and a biannual National Law-Related Education Conference to help bring social studies educators and legal experts together “to reform social studies and civics education.”¹⁷² There are similar law-related education programs at state and local levels.¹⁷³ They are a far cry, however, from being an integral part of a K-12 curriculum.

The program that comes closest to law-related education as it was originally envisioned is Street Law. Street Law started in 1972 as an experiment by a small

165. FEINSTEIN & WOOD, *supra* note 161, at 17-18.

166. *Id.* at 27.

167. *Id.*

168. *Id.* at 28. See also AM. BAR ASS’N DIV. PUB. EDUC., ESSENTIALS OF LAW-RELATED EDUC. (1995), <https://www.miciviced.org/wp-content/uploads/2018/10/LRE-Essentials.pdf> [hereinafter ESSENTIALS OF LAW-RELATED EDUC.]

168. *How Did U.S. Students Perform on the Most Recent Assessments?*, NATION’S REP. CARD, <https://www.nationsreportcard.gov> (last visited May 5, 2021).

169. ESSENTIALS OF LAW-RELATED EDUC., *supra* note 168. But see ABA Division of Public Educ., www.americanbar.org/search (repeatedly uses the term “law-related education” but does not define it (last visited May 5, 2021)).

170. Dunlap, *supra* note 135, at 2839.

171. *Local Civics and Law Academies*, AM. BAR ASS’N (March 30, 2020), https://www.americanbar.org/groups/public_education/programs/ncla/civics_and_law_academy/.

172. *National Law-Related Education Conference*, AM. BAR ASS’N, https://www.americanbar.org/groups/public_education/programs/national-law-related-education-conference/ (last visited May 5, 2021). The Conference – which was established in 1920 – features a star-studded cast of presenters (e.g., Chelsea Clinton and Ken Burns in 2020) and attracts approximately 4,000 social studies educators from the United States and around the world. See *Past Conference Programs*, AM. BAR ASS’N (Jan. 29, 2020), https://www.americanbar.org/groups/public_education/programs/national-law-related-education-conference/past_conference_programs/.

173. *Civics and LRE Directory*, AM. BAR ASS’N, https://www.americanbar.org/groups/public_education/clearinghouse/ (last visited May 5, 2021).

group of Georgetown law students to teach D.C. high school students about law and the legal system.¹⁷⁴ Although Street Law has broadened its mission over the last forty years,¹⁷⁵ it maintains a robust “Legal Community Partnership Program” that uses lawyers and law students to teach young people about law.¹⁷⁶ Many law schools now also have their own street law programs, with curricula that vary from featuring topics more akin to civics, to those looking in depth at family or criminal law likely to affect the students’ daily lives.¹⁷⁷

Street law programs have real potential to foster legal literacy and empowerment. As with more traditional civics instruction, however, research on the impact of Street Law has looked at the effect of Street Law classes on students’ civic engagement, voting patterns, and juvenile delinquency.¹⁷⁸ Whether participation in a street law-type program ultimately affects students’ legal literacy, much less their interactions with the civil legal system, has not been studied.¹⁷⁹

V. LEGAL LITERACY AS PREVENTION

Individual empowerment through legal literacy is not a current goal of American civics or law-related education. This article contends that it should be, and that, as with health literacy, legal literacy should be taught at the K-12 level and its effects on the demand for legal aid evaluated – not only in the purely quantitative sense but also as to the mix of services sought and outcomes attained both with and without legal assistance.

First, as explained above, the American legal community has not yet coalesced around a singular definition for legal literacy. Although many previously offered definitions are similar in nature, this article proposes starting with the definition

174. *History*, STREET LAW, <https://www.streetlaw.org/who-we-are/history> (last visited May 5, 2021).

175. *About Us*, STREET LAW, <https://www.streetlaw.org/who-we-are/offices> (last visited May 5, 2021).

176. *Legal Community Partnership Programs*, STREET LAW, <https://www.streetlaw.org/programs/?catid=126> (last visited May 5, 2021).

177. *See e.g.*, Ann Bergman, *Law Students Bring Legal Literacy to Local Schools*, UNIV. OF S. CALI., <https://communities.usc.edu/law-students-bring-legal-literacy-to-local-schools/> (last visited May 5, 2021).

178. Seán G. Arthurs, *Street Law: Creating Tomorrow’s Citizens Today*, 19 LEWIS & CLARK L. REV. 925, 959 (2015) (proposing longitudinal study of the effect of street law clinics on future civic engagement); *see also* SOC SCI. EDUC. CONSORTIUM, A DESCRIPTIVE REVIEW OF RESEARCH ON LAW-RELATED EDUCATION (2001), <https://www.ojp.gov/pdffiles1/Digitization/187445NCJRS.pdf>; CALIBER ASSOCS., SAVE OUR STREETS OUTCOME EVALUATION REPORT (1998), https://www.streetlaw.org/assets/site_18/files/about/impact/1998%20sos%20outcome%20evaluation%20report.pdf (evaluating the effect on youth of a law-related education curriculum and conflict resolution skills on arrests and violent acts); YOUTH FOR JUST., LAW-RELATED EDUC. FOR JUVENILE JUSTICE SETTINGS (2003),

<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.115.4510&rep=rep1&type=pdf>; *Juvenile Justice and Delinquency Prevention Program Designed to Use Law-Related Education as a Deterrent to Youth Crime and Substance Abuse*, OFF. OF JUV. JUST. & DELINQUENCY PREVENTION (Aug. 28, 2006) <https://ojjdp.ojp.gov/funding/awards/2006-jl-fx-0292>; Verne L Speirs, *Law-Related Education: Making the Difference*, U.S. DEP’T OF JUST. (1885), <https://files.eric.ed.gov/fulltext/ED296945.pdf>.

179. *See* Richard Grimes, *Evaluating Legal Literacy Programmes – Aims, Challenges, Models and A Call to Action*, 2 INT’L J. OF PUB. LEGAL EDUC. 28 (2018) (calling for empirical research to study whether Street Law programs in Wales improve legal literacy); Knake, *supra* note 18, at 1305 (saying of Street Law and other LRE initiatives: “Although these initiatives fulfill critical public service objectives, they have not democratized legal education. A meaningful knowledge of law and legal services still remains largely unrealized for most of the public.”).

crafted by Professor White that legal literacy is the degree of competence necessary to navigate our legalistic society, with those legally literate able to handle many of their own law-related interactions (e.g., with a landlord or a government agency) and correctly identify when they need a lawyer.¹⁸⁰ Just as the definition of health literacy has evolved, this article encourages stakeholders across the legal community to further refine this definition with the benefit of diverse viewpoints both from within and outside the profession.

Next, attaining legal literacy must become a goal of K-12 education. As with health literacy, low legal literacy can have dire consequences. Consider a tenant who has lost a job during the COVID-19 pandemic and is unable to pay her rent. An eviction moratorium is in place under CDC mandate, but the tenant does not realize that she must sign a declaration and that she must – before signing the declaration – apply for government rental assistance and continue to pay as much rent as she can.¹⁸¹ She also does not realize that, having completed the prerequisites and signed the declaration, she must serve a copy of the declaration on her landlord and, if already in eviction proceedings, the court.¹⁸²

In fact, a mother of five recently became homeless precisely because she did not know how to claim protections under the eviction moratorium:

I didn't even know I could do that. I lost everything. I was in my apartment for 3 years. I lost all of my kid's stuff. I came here with nothing.¹⁸³

This is not an anomaly.

In a recent study looking at public understanding of family law, survey participants “completed a series of questions about their perceptions of the legal ramifications of marriage and divorce on debt and assets, on premarital agreements, and on the importance of various factors in choosing marriage timing.”¹⁸⁴ The researchers found that, even though some participants lived in community property states, while others lived in separate property states, their answers to questions about property disposition and asset seizure by third-party creditors were the same.¹⁸⁵ The study concluded that “people do not fully understand the consequences of marriage on their assets and debts. In fact, people’s responses suggest one uniform family law across the country, but nothing could be further from the truth.”¹⁸⁶ To remedy this misunderstanding, this article recommends offering “basic family law . . . alongside health and civics classes.”¹⁸⁷

As with health education, school is the most efficient way to reach large numbers of children, and creating legally literate adults is easier when the

180. White, *supra* note 125, at 144.

181. CDC, HHS/CDC TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID-19: FREQUENTLY ASKED QUESTIONS 2 <https://www.cdc.gov/coronavirus/2019-nCoV/downloads/eviction-moratoria-order-faqs.pdf> (last visited May 5, 2021).

182. *Id.* at 3.

183. Allison Walker, *Many Don't Understand How to File for CDC's Eviction Moratorium, Some End Up Homeless*, DAYTON 24/7 NOW (Feb. 6, 2021), <https://dayton247now.com/news/local/many-dont-understand-how-to-file-for-the-cdcs-eviction-moratorium-some-end-up-homeless>.

184. Helen Colby & Margaret Ryznar, *An Empirical Study of Family Law Understanding*, 58 U. LOUISVILLE L. REV. 79, 95 (2019).

185. *Id.* at 95-96.

186. *Id.* at 96-97.

187. *Id.* at 97.

educating starts early.¹⁸⁸ And just as the public health sector has done, the legal sector should articulate standards for what it means to become legally literate. The standards should include goals for certain content and goals for attaining that content at various points during a student's K-12 years.

Of course, this is easier said than done. Many important subjects compete for scarce resources in public education. Funds are limited; politics are at play; subjects wax and wane in priority with the influence of current events. But the just-released Roadmap for revamping civics and history education is a well-thought-out and sophisticated jumping off point. It offers in depth ideas for critically examining our legal system through all thirteen K-12 years. Some of these ideas already might translate into lessons that result in legal literacy.

For example, the Roadmap compares the traditional approach to teaching civics with the inquiry model that the Roadmap advocates, giving an example using the teaching of the Constitutional Convention.¹⁸⁹ Rather than teaching students about the Convention as a static event, the Roadmap would have teachers use Socratic discussion to explore the historical and present-day consequences of the compromises that came out of the Constitutional Convention.¹⁹⁰ If such a lesson were to cover the concept of federalism, then students might gain a better understanding of which everyday matters the federal government controls and which ones fall to the States. Using relatable examples, like the regulation of the Internet versus child custody determinations, students would likely emerge not only with an understanding of our dual system of government, but also with enhanced legal literacy. In other words, it may be worthwhile to weave legal literacy into the civics Roadmap instead of starting from scratch.¹⁹¹ The Roadmap is further along than any other current initiative in pushing civics instruction forward after years of stagnation, and legal literacy has a long way to go before it catches up to health literacy.

But if resources were unlimited, legal literacy might not only supplement existing subjects, it could also be taught on its own. Imagine a class like home economics (which also went by the wayside with the rise of STEM subjects and college-readiness pressures),¹⁹² in which high school students are taught how to read an apartment lease, the consequences of buying secured property, and what legal rights and obligations arise when two people have a child together. Bridgette

188. See Wanda Cassidy, *Don't Forget About the Law: A Case for Law-Related Education in Elementary Social Studies*, 39 CANADIAN SOC. STUD. 1, 3 (2004) (setting forth curricular goals and concrete ideas for teaching legal literacy to elementary students as part of social studies, without the need for lawyer or law students as teachers) ("If social studies education helps to prepare students for understanding the world in which we live, then it is also important that students understand that the law influences everything we do as people, even children of elementary school age.").

189. See EDUCATING FOR AMERICAN DEMOCRACY, *supra* note 149, at 15.

190. See EDUCATING FOR AM. DEMOCRACY, PEDAGOGY COMPANION TO THE EAD ROADMAP 12 (2021), <https://www.educatingforamericandemocracy.org/wp-content/uploads/2021/02/Pedagogy-Companion-to-the-EAD-Roadmap.pdf>.

191. See Cassidy, *supra* note 188 (setting forth curricular goals and concrete ideas for teaching legal literacy to elementary students as part of existing social studies courses, without the need for lawyer or law students as teachers).

192. See Tove Danovich, *Despite A Revamped Focus On Real-Life Skills, 'Home Ec' Classes Fade Away*, NPR (June 14, 2018, 8:02 AM), <https://www.npr.org/sections/thesalt/2018/06/14/618329461/despite-a-revamped-focus-on-real-life-skills-home-ec-classes-fade-away>.

Dunlap calls this a “universal basic legal education.”¹⁹³ Imagine if that was required to graduate high school.

Finally, more studies are needed on the effect that teaching legal literacy has on the demand side of the justice gap. Ideally, teaching legal literacy – whether as a byproduct of civics or as a stand-alone course – would have positive effects on students’ adult civil legal needs and justice problems, just as high levels of health literacy correlate with fewer emergency room visits. Ideally, legal literacy would also mean that Americans are better able to identify when their problems are legal in nature, would come to legal aid before a problem is too far gone to solve—and with more realistic expectations as to possible results, and would even be better able to represent themselves without a lawyer given the very real likelihood that they will have to.¹⁹⁴ Without empirical study, it is difficult to know.¹⁹⁵

VI. CONCLUSION

Legal literacy is an untapped resource in the fight against the persistent civil justice gap in America. While it is not a panacea, just as health literacy is not a guardian against all poor health outcomes or overrun emergency rooms, legal literacy has the potential to help tip the scales in favor of prevention and individual empowerment. By decreasing the demand for the legal equivalent of the emergency room, the downsides to increased legal literacy are few, and there is a new roadmap and political momentum for revamping (and funding) civics education right now. The opposite may still be true. Perhaps legal literacy has no measurable effect on one’s need for legal services or the resolution of justice problems outside the system. This article suggests, however, that given the breadth and depth of the civil justice gap, the legal profession should at least try.

193. Dunlap, *supra* note 135, at 2841.

194. Interestingly, legal literacy has the potential to affect more than just low-income Americans. See Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 108 (2013) (“We know that most people experiencing civil justice problems, whatever their income level – poor, rich, or middle income – do not go to lawyers and ask for assistance.”).

195. See generally *id.* See also D. James Greiner & Andrea Matthews, *Randomized Control Trials in the United States Legal Profession* (Harv. Pub. L. Working Paper No. 16-06 2016); Michael Abramowicz et. al., *Randomizing Law*, 159 U. PA. L. REV. 929, 1005 (2011) (calling for randomized control trials to test the effects of laws and government policies).