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## Unmet Legal Needs as Health Injustice

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# KEYNOTE

## UNMET LEGAL NEEDS AS HEALTH INJUSTICE

*Yael Cannon* \*

### INTRODUCTION

In 2021, Attorney General Merrick Garland issued a call to action to the legal community.<sup>1</sup> The Supreme Court had recently invalidated the nationwide eviction moratorium that was issued by the U.S. Centers for Disease Control and Prevention (“CDC”) in connection with the COVID-19 pandemic,<sup>2</sup> and concerns were mounting about an impending tsunami of evictions.<sup>3</sup> The Attorney General emphasized that evictions were expected to spike to double the prepandemic levels.<sup>4</sup> Six million Americans reported being

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1. *See generally* Letter from Merrick Garland, Att’y Gen., U.S. Dep’t of Just., to Members of the Legal Cmty. (Aug. 30, 2021), <https://www.justice.gov/ag/page/file/1428626/download> [<https://perma.cc/UPR8-TBJC>].

2. *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485, 2486 (2021).

3. *See* Garland, *supra* note 1, at 1. The Eviction Lab at Princeton University reports that emergency rental relief assistance and other short-term efforts have helped to prevent many evictions, but as these programs stop taking applications and run out of funding and as other pandemic-related financial assistance and public benefits programs expire, the pace of eviction filings is likely to increase, and many communities are fearful of an imminent eviction crisis. Jacob Haas, Jasmine Rangel, Juan Pablo Garnham & Peter Hepburn, *Preliminary Analysis: Eviction Filing Trends After the CDC Moratorium Expiration*, EVICTION LAB (Dec. 9, 2021), <https://evictionlab.org/updates/research/eviction-filing-trends-after-cdc-moratorium> [<https://perma.cc/S4KE-W78N>].

4. Garland, *supra* note 1, at 1.

behind on rental payments, and three million expected to be evicted in the coming months.<sup>5</sup> Noting the critical role of lawyers in helping people understand their rights and receiving legal representation in eviction cases, Garland issued a call to action.<sup>6</sup> He asked legal services attorneys, private attorneys engaging in pro bono work, and law schools across the country to mobilize and engage in eviction prevention and mitigation efforts on behalf of low-income tenants.<sup>7</sup> In support of the Attorney General's call to action, pledges of support and commitments to mobilize the legal community were made by the President of the American Bar Association ("ABA"),<sup>8</sup> dozens of law school deans across the country,<sup>9</sup> and the Legal Services Corporation.<sup>10</sup>

The eviction crisis unfolding in this country demands such a mobilization of attorneys not only because it is a crisis of justice but also because it is a public health crisis. Matthew Desmond, author of the critically acclaimed book *Evicted*, recently wrote about the deep connections between eviction and health.<sup>11</sup> Those who are evicted face the prospects of a panoply of poor health and mental health outcomes. In children, evictions have been connected to low birth weight, premature birth, and infant mortality.<sup>12</sup> In adults, evictions have been linked to a number of health complications

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5. *Id.*

6. *Id.*

7. *See id.* at 2–3.

8. Reginald M. Turner, President, Am. Bar Ass'n, Statement Re: ABA Appeals to Legal Community on Eviction Crisis (Sept. 28, 2021), <https://www.americanbar.org/news/abanews/aba-news-archives/2021/08/aba-president-statement-re-eviction-crisis> [https://perma.cc/N8SN-WX6L].

9. *Georgetown Law Commits to Fighting the Looming Eviction Crisis*, GEO. L. (Aug. 30, 2021), <https://www.law.georgetown.edu/news/georgetown-law-commits-to-fighting-the-looming-eviction-crisis> [https://perma.cc/6EVC-JGG2].

10. Press Release, Legal Servs. Corp., LSC Applauds Attorney General Merrick Garland's Call for Members of the Legal Community to Address Looming Housing and Evictions Crisis (Aug. 30, 2021), <https://www.lsc.gov/press-release/lsc-applauds-attorney-general-merrick-garlands-call-members-legal-community-address-looming-housing> [https://perma.cc/4QLJ-QE5V].

11. Matthew Desmond, *The Moratorium Saved Us. It Really Did.*, N.Y. TIMES (Sept. 30, 2021), <https://www.nytimes.com/2021/09/30/opinion/sunday/eviction-covid-pandemic-housing.html> [https://perma.cc/LD3Z-BF6G]; *see generally* MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016) (following eight Milwaukee families in the process of eviction).

12. *E.g.*, Gracie Himmelstein & Matthew Desmond, *Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic*, HEALTH AFFS., Apr. 1, 2021, at 2 [hereinafter *Eviction & Health*], <https://doi.org/10.1377/hpb20210315.747908> [https://perma.cc/7U3H-67SN]; Gracie Himmelstein & Matthew Desmond, *Association of Eviction with Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, 175 JAMA PEDIATRICS 494, 497–98 (2021), <https://doi.org/10.1001/jamapediatrics.2020.6550> [https://perma.cc/A5P4-J4ER]; Desmond, *supra* note 11.

including increased rates of suicide,<sup>13</sup> hospitalizations,<sup>14</sup> drug use and relapse,<sup>15</sup> and all-cause mortality.<sup>16</sup> The CDC has identified stable housing as critical to better health outcomes, noting that evictions damage public health.<sup>17</sup> During this pandemic, a tsunami of evictions would signify a public health crisis layered on top of an ongoing public health crisis.

The connections between housing security and health are representative of the role of housing as an important social determinant of health (“SDOH”). A growing body of research recognizes that our health is driven less by our biology and the care we receive at the doctor’s office. Instead, as much as 80% of a person’s health is driven by SDOH, which are the social conditions in which we live, eat, work, learn, and age.<sup>18</sup>

The COVID-19 pandemic has only sharpened our understanding of housing as a SDOH and the connections between housing stability and health. Local moratoria on evictions decreased cumulative deaths by 11% and moratoria on utility disconnections decreased

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13. See Katherine A. Fowler, R. Matthew Gladden, Kevin J. Vagi, Jamar Barnes & Leroy Frazier, *Increase in Suicides Associated with Home Eviction and Foreclosure During the U.S. Housing Crisis: Findings From 16 National Violent Death Reporting System States, 2005–2010*, 105 AM. J. PUB. HEALTH 311, 312 (2015), <https://doi.org/10.2105/AJPH.2014.301945> [<https://perma.cc/TM6P-ZJFC>].

14. See Robert Collinson & David Reed, *The Effects of Evictions on Low-Income Households* (Dec. 2018) (unpublished manuscript), [https://www.law.nyu.edu/sites/default/files/up\\_load\\_documents/evictions\\_collinson\\_reed.pdf](https://www.law.nyu.edu/sites/default/files/up_load_documents/evictions_collinson_reed.pdf) [<https://perma.cc/DL3Q-E48J>].

15. See William Damon, Ryan McNeil, M-J Milloy, Ekaterina Nosova, Thomas Kerr & Kanna Hayashi, *Residential Eviction Predicts Initiation of or Relapse into Crystal Methamphetamine Use Among People Who Inject Drugs: A Prospective Cohort Study*, 41 J. PUB. HEALTH 36, 36 (2019), <https://doi.org/10.1093/pubmed.fdx187> [<https://perma.cc/U3LH-2HRF>].

16. See *Eviction & Health*, *supra* note 12, at 2; Yerko Rojas, *Evictions and Short-Term All-Cause Mortality: A 3-Year Follow-Up Study of a Middle-Aged Swedish Population*, 62 INT’L J. PUB. HEALTH 343, 343 (2017), <https://doi.org/10.1007/s00038-016-0931-8> [<https://perma.cc/BQS6-UTPY>].

17. See Bram Sable-Smith, Martha Bebinger & Darian Benson, *Evictions Damage Public Health. The CDC Aims to Curb Them — For Now*, NPR (Sept. 29, 2020, 1:01 AM), <https://www.npr.org/sections/health-shots/2020/09/29/916972891/evictions-damage-public-health-which-is-why-the-cdc-has-banned-them-for-now> [<https://perma.cc/QM36-TAEV>].

18. See Lauren A. Taylor, *Housing and Health: An Overview of the Literature*, HEALTH AFFS., June 7, 2018, at 2, <https://doi.org/10.1377/hpb20180313.396577> [<https://perma.cc/V87Y-X3BJ>]; Emily A. Benfer, Seema Mohapatra, Lindsay F. Wiley & Ruqaiyah Yearby, *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, 19 YALE J. HEALTH POL’Y L. & ETHICS 122, 145–50 (2020); Ana V. Diez Roux, *Investigating Neighborhood and Area Effects on Health*, 91 AM. J. PUB. HEALTH 1783, 1783 (2001), <https://doi.org/10.2105/AJPH.91.11.1783> [<https://perma.cc/C7D4-FS8A>]; Yael Cannon, *Injustice Is an Underlying Condition*, 6 U. PA. J.L. & PUB. AFFS. 201, 201–04, 239–46 (2020).

cumulative deaths by 7.4%.<sup>19</sup> A study by the American Journal of Epidemiology found that states that ended their eviction moratoria before the federal moratorium began experienced twice the incidence of COVID-19 and a five-fold increase in mortality compared to states that maintained their moratoria.<sup>20</sup> The study estimates 433,700 excess cases and 10,700 deaths nationally due to state terminations of eviction moratoria.<sup>21</sup> These data underscore that housing security is critical to health.

Both the eviction crisis and the pandemic have not exacted their tolls with equity; Black individuals<sup>22</sup> are more likely to face eviction<sup>23</sup> and have suffered disproportionate outcomes during the pandemic, with higher rates of infection, hospitalization, intensive care unit treatment, and death.<sup>24</sup> Other communities of color, such as indigenous communities, have also suffered disproportionately from the impacts of COVID-19.<sup>25</sup> These connected crises of evictions and the COVID-19 pandemic are therefore not only broad public health crises; they are crises of health inequity.

19. Kay Jowers, Christopher Timmins, Nrupen Bhavsar, Quihui Hu & Julia Marshall, *Housing Precarity & the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties* 1, 11 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28394, 2021), <https://www.nber.org/papers/w28394> [<https://perma.cc/FH6F-3NW5>].

20. Kathryn M. Leifheit, Sabriya L. Linton, Julia Raifman, Gabriel L. Schwartz, Emily A. Benfer, Frederick J. Zimmerman & Craig Evan Pollack, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 190 AM. J. EPIDEMIOLOGY 2563, 2563 (2021), <https://doi.org/10.1093/aje/kwab196> [<https://perma.cc/7END-MKR7>].

21. *Id.*

22. This Article uses the terms “Black,” “African American,” “Latino,” and “Hispanic” as used in the underlying sources. The Article also capitalizes “Black.” See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (“I shall use ‘African-American’ and ‘Black’ interchangeably. When using ‘Black,’ I shall use an upper-case ‘B’ to reflect my view that Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.”).

23. See BRIAN J. MCCABE & EVA ROSEN, GEO U., *EVICTION IN WASHINGTON, DC: RACIAL AND GEOGRAPHIC DISPARITIES IN HOUSING INSTABILITY* 11, 15, 16 (2020), <https://georgetown.app.box.com/s/df0d4mruf59wevqm6cqo9a8pyu8ukeuk> [<https://perma.cc/EH3Z-PD57>].

24. Nambi Ndugga & Samantha Artiga, *Disparities in Health and Health Care: 5 Key Questions and Answers*, KFF (May 11, 2021), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/disparities-in-health-and-health-care-5-key-question-and-answers> [<https://perma.cc/QK6E-4H2L>]; Emily Benfer, James Bhandary-Alexander, Yael Cannon, Medha Makhlof & Tomar Pierson-Brown, *Setting the Health Justice Agenda: Addressing Health Inequity & Injustice in the Post-Pandemic Clinic*, 28 CLINICAL L. REV. 45, 48–51 (2021); Yael Cannon, *Closing the Health Justice Gap: Access to Justice in Furtherance of Health Equity*, 53 COLUM. HUM. RTS. L. REV. 519, 534 (2022).

25. David Beavers, *Mayors, Governor Call Out Racial Health Disparities Highlighted by Coronavirus*, POLITICO (Apr. 12, 2020, 2:23 PM), <https://www.politico.com/news/2020/04/12/dc-mayor-coronavirus-african-american-health-disparities-180890> [<https://perma.cc/4ZDZ-AGYN>]; Cannon, *supra* note 18, at 204–05.

The Attorney General's call to mobilize attorneys to prevent evictions comes amidst attention to the civil justice gap, a phenomenon in which many Americans have unmet civil legal needs, not only in housing but other areas of law.<sup>26</sup> Research shows that 86% of civil legal problems reported by low- and moderate-income people receive inadequate or no legal help.<sup>27</sup>

Recent calls for access to justice to address the legal needs of low-income litigants who cannot afford counsel go well beyond Attorney General Garland's call to action. For example, President Biden recently issued a memorandum reconvening the Department of Justice's Access-to-Justice Function and reinvigorating the White House Legal Aid Interagency Roundtable to examine the impacts on justice in the civil and criminal legal systems.<sup>28</sup> These entities came together and reported on "Access to Justice in the Age of COVID," finding numerous civil legal issues critical and emphasizing the urgency of access to justice efforts to help low-income Americans access legal assistance, resources, and courts.<sup>29</sup>

The pandemic has exacerbated unmet civil legal needs, but calls for access to justice are not new. In a seminal report in 2006, the American Bar Association recognized that millions of low-income Americans have civil legal issues that go unaddressed, jeopardizing their basic human needs for shelter, sustenance, safety, family stability, and access to health care.<sup>30</sup> In that report and an accompanying resolution, the ABA went so far as to call for a civil *right* to counsel when such fundamental needs are at stake.<sup>31</sup> In recent years, three states and several cities have established a right to counsel for tenants facing eviction, and other legislative efforts have expanded the right to counsel or access to counsel in other

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26. See AM. ACAD. OF ARTS & SCI., CIVIL JUSTICE FOR ALL: A NEW REPORT AND RECOMMENDATIONS FROM THE MAKING JUSTICE ACCESSIBLE INITIATIVE 1–5 (2020); see also LEWIS CREEKMORE, RONKÉ HUGHES, LYNN JENNINGS, SARAH JOHN, JANET LABELLA, C. ARTURO MANJARREZ, MICHELLE OH, ZOE OSTERMAN & MARTA WOLDU, THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9 (2017) (measuring and detailing the justice gap among low-income Americans in 2017).

27. LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN THE AGE OF COVID-19: A ROUNDTABLE REPORT 1, 13 (2021).

28. *Id.* at 3.

29. *Id.* at 23.

30. AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES 112A, at 1, 5 (Aug. 7, 2006), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lis\\_sclaid\\_06A112A.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_06A112A.authcheckdam.pdf) [<https://perma.cc/Z8XQ-9ZMS>].

31. *Id.* at 1, 13.

civil cases that implicate fundamental areas of human need.<sup>32</sup> Like evictions, all of the areas of fundamental human need identified by the ABA affect health and drive racial and socioeconomic health inequities.<sup>33</sup> When rights in these areas go unenforced for Americans marginalized by poverty and race, their health can suffer, compounding health inequities.

A burgeoning framework known as “health justice” seeks to leverage law and policy to eliminate health inequities experienced by communities marginalized and subordinated by virtue of their race, poverty, and other forms of oppression,<sup>34</sup> in pursuit of health

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32. *Major Developments*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS., [http://civilrightto.counsel.org/major\\_developments](http://civilrightto.counsel.org/major_developments) [perma.cc/X6ZS-KMFX]. In December 2021, Kansas City became the thirteenth city to adopt a right to counsel in eviction cases, in addition to three states that have adopted similar laws. Bek Shackelford-Nwanganga, *Kansas City Renters Will Soon Get Free Legal Help in Eviction Court, in a Win for KC Tenants*, NPR (Dec. 9, 2021, 6:01 PM), <https://www.kcur.org/housing-development-section/2021-12-09/kansas-city-renters-will-soon-get-free-legal-help-in-eviction-court-in-a-win-for-kc-tenants> [https://perma.cc/6WKK-JD7F].

33. Rather than using the term “health disparities,” unless maintaining fidelity to a cited source, this Article instead uses the term “health *inequities*” to recognize that these differences are a result of the systematic and unjust distribution of critical social conditions per the CDC’s distinction between these two terms. “Differences in the incidence and prevalence of health conditions and health status between groups are commonly referred to as health disparities . . . . Most health disparities affect groups marginalized because of socioeconomic status, race/ethnicity, sexual orientation, gender, disability status, geographic location, or some combination of these. People in such groups not only experience worse health but also tend to have less access to the social determinants or conditions . . . that support health . . . . Health disparities are referred to as health inequities when they are the result of the systematic and unjust distribution of these critical conditions.” Laura K. Brennan Ramirez, Elizabeth A. Baker & Marilyn Metzler, *Promoting Health Equity: A Resource to Help Communities Address Social Determinants of Health*, CTRS. FOR DISEASE CONTROL & PREVENTION 1, 6 (2008), <https://www.cdc.gov/nccdphp/dch/programs/healthycommunities-program/tools/pdf/SDOH-workbook.pdf> [https://perma.cc/CZR7-9D35].

34. ELIZABETH TOBIN-TYLER & JOEL B. TEITELBAUM, *ESSENTIALS OF HEALTH JUSTICE: A PRIMER* ix (2018); Cannon, *supra* note 18, at 205; Emily A. Benfer & Lindsay F. Wiley, *Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic*, HEALTH AFFS. (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/focfront.20200319.757883/full> [https://perma.cc/5CCP-YYR]. This Article refers to individuals from “marginalized communities” to encompass communities that have been historically and currently oppressed, with a focus on communities of color and those who are low-income. The term recognizes that individuals and experiences can be marginalized by power structures for more than one reason, and that people of color who are also low-income face a “double burden” associated with health disparities. Edith Chen, Andrew D. Martin & Karen A. Matthews, *Understanding Health Disparities: The Role of Race and Socioeconomic Status in Children’s Health*, 96 AM. J. PUB. HEALTH 702, 702 (2006). While public health literature frequently characterizes people and communities as vulnerable, this Article uses the term “marginalized” to focus on the marginalization and subordination that have facilitated health disparities. See Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. REV. 758, 773 (2020). (“These population-based health disparities are the result of subordination, not accident, genetics, or individual choice. In the public health literature, the social groups disproportionately burdened by health disparities are often referred to as ‘vulnerable populations.’”)

equity.<sup>35</sup> Building on public health's vision of health equity, which is the equal opportunity for all people to achieve health, the term "justice" centers the role of law both as a driver of health inequities and in its potential to promote health equity.<sup>36</sup>

In prior work, I have argued that the health justice and access to justice scholarship and movements are gaining momentum, are deeply connected, and need to be in dialogue to ensure that access to justice efforts advance health equity, which is critical to justice.<sup>37</sup> Building on that work, this Article identifies key areas of law for which unmet legal needs serve as determinants of health and health inequity and envisions a role for lawyers in addressing health injustice through a "clients-to-policy" approach. This Article focuses on fundamental civil legal needs of low-income individuals and argues that they impact health and must be addressed in order to ensure health equity. This is because health equity will remain elusive so long as the fundamental human needs of people subordinated by racism and poverty go unmet. Applying a health lens to fundamental civil legal needs is necessary to show the very high stakes of neglecting those needs, as the health of this nation will suffer and particularly the health of people with low income and people of color. Just as the access to justice movement can benefit from health justice principles,<sup>38</sup> health justice requires the examination and mitigation of unmet legal needs that impact health. Access to justice in fundamental areas of human need must be a core component of the developing health justice framework, as scholars and activists work to build it out. As legal issues in all of the major areas of fundamental need impact health and drive health inequity, there can be no health justice without shelter, sustenance, safety, family stability, and access to health care. And there can be no health justice when the law stands in the way of those fundamental needs being addressed.

To address such needs, the health justice framework needs to go beyond broader explorations of the impact of law and policy and

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These groups, however, are vulnerable to poor health and premature death not for biological reasons, but for political and social ones. They have been, as one article puts it, 'wounded by social forces placing them at a disadvantage for their health.'").

35. Harris & Pamukcu, *supra* note 34, at 807; Cannon, *supra* note 24, at 547; Benfer & Wiley, *supra* note 34.

36. See Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275, 277–78 (2015); Cannon, *supra* note 18, at 205.

37. Cannon, *supra* note 24, at 526–27.

38. *Id.* at 527.



define the role of lawyers in advancing health justice. What is the responsibility of lawyers to promote health justice? How can lawyers representing individuals from communities impacted by health inequities advance the pursuit of health justice? Lawyers can play a critical role and must be mobilized to provide free and low-cost legal representation to low-income individuals in fundamental areas of law that serve as social determinants of health. Access to justice initiatives involve a range of approaches, such as the provision of information about rights, dispute resolution mechanisms, access to courts,<sup>39</sup> the unbundling of legal services, technology to assist and support litigants, the simplification of court processes for pro se litigants, and the development of non-lawyer roles, such as legal navigators, along with access to counsel, to satisfy the unmet legal demand.<sup>40</sup> This Article focuses in particular on the role and importance of lawyers providing full and direct legal representation for low-income litigants in addressing fundamental human needs and ensuring that people are healthy.

Especially as the health justice framework has emphasized the need for major structural reforms to most powerfully and meaningfully advance health justice,<sup>41</sup> legal representation in individual cases cannot be the only solution and lawyers cannot endeavor towards health justice alone. But the legal profession does have a responsibility for health justice when so many Americans face unmet civil legal needs that harm their health and contribute to socioeconomic and racial health inequities. Engaging with critiques of lawyers as the solution, this Article affirms the importance of direct legal representation to advance health justice and proposes a clients-to-policy approach through which lawyers can use their representation of clients as a platform for structural reforms in pursuit of health equity.

In Part I, this Article examines the health justice framework through which laws are understood as determinants of health equity. In Part II, this Article argues that when unaddressed for low-income individuals, legal needs serve as social determinants of health. Applying the health justice framework, the Article

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39. Robin L. Nobleman, *Addressing Access to Justice as a Social Determinant of Health*, 21 HEALTH L.J. 49, 51 (2014).

40. See Gaurav Sen, *Beyond the JD: How Eliminating the Legal Profession's Monopoly on Legal Services Can Address the Access-to-Justice Crisis*, 22 U. PA. J.L. & SOC. CHANGE 121, 147 (2019); Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 287–88 (2018) (examining the simplification of court processes and arguing that the protection of rights should not be sacrificed in furtherance of efficiency and simplification).

41. Cannon, *supra* note 18, at 207.

examines the major domains of SDOH and identifies areas of law for which unmet legal needs contribute to poor health and health inequity. Specifically, it analyzes how the five major domains of SDOH of the Healthy People 2030 paradigm of the U.S. Department of Health and Human Services (“HHS”) implicate legal issues in the fundamental area of human need identified as critical for access to counsel by the ABA. This Part explores the exacerbation and urgency of these challenges created by the pandemic and examines racial inequities driven by structural racism that create a compounding burden of health disparities for people who are both low-income and people of color.<sup>42</sup> In line with the health justice framework’s exploration of how law can be leveraged to mitigate inequities, Part II concludes by examining how legal representation can address fundamental legal needs that affect health, providing support for access to counsel in these areas.

Finally, in Part III, this Article engages with potential critiques of an emphasis on individual legal representation as a downstream and overly individualistic approach to health justice. This Part addresses these critiques and argues that individual legal representation to enforce extant laws is required for health justice to address the immediate, health-harming legal issues affecting individuals from marginalized communities and improve their health and well-being. However, even though such individual legal advocacy is necessary, it is insufficient. Instead, legal representation should be used as a platform for advocacy in pursuit of structural change through law, policy, and systems reform. This Article proposes a multitiered, integrated clients-to-policy approach for lawyers to facilitate health justice to improve the health of individuals and pursue structural reform to address health equity upstream.

## I. USING LAW TO ADVANCE HEALTH EQUITY

Law has the potential to promote health equity. Health justice is a developing framework for leveraging law in that pursuit. Health equity has been defined as all individuals having a

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42. Chen et al., *supra* note 34, at 702. This Article examines disparities and injustices affecting people who are low-income, as well as those affecting people of color (acknowledging that people of color have disproportionate rates of lower income and poverty as a result of structural racism and also that structural racism leads to racial health inequities that persist regardless of socioeconomic status). This Article also acknowledges the compounding burden faced by low-income people who are also people of color, who face multiple layers of compounding disparities and injustices by virtue of this intersectionality.

legitimate and equal opportunity to reach their full health potential without disadvantage due to social circumstances.<sup>43</sup> The health justice framework adds to this vision by centering the role of law through the use of the term “justice.”<sup>44</sup> It focuses on the function of law in “persistent political, economic, and social inequities and injustices that affect all the sectors that serve our communities and have a disproportionate impact on the health of marginalized communities.”<sup>45</sup>

Health justice involves “a broad conceptualization of health law as concerned with all of the social determinants of health.”<sup>46</sup> Research shows that SDOH, or the social, economic, and political conditions that affect where and how we live, work, learn, eat, and age<sup>47</sup> account for as much as 80% of a person’s health,<sup>48</sup> “irrespective of whether a person ever sees the inside of a doctor’s office.”<sup>49</sup> SDOH demonstrate that “[o]ur health is not just an individual matter; it is deeply influenced by institutional and structural forces that shape who has access to the opportunities and resources needed to thrive.”<sup>50</sup> Achieving health equity through measuring and addressing SDOH has been the focus of the HHS’s Healthy People initiative for the past forty years.<sup>51</sup> This initiative takes a federal public health approach to providing data and objectives for states and localities to measure their progress toward a common goal of improving the health and well-being of all people.<sup>52</sup> Each

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43. *Health Equity*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/chronicdisease/healthequity/index.htm> [<https://perma.cc/UW8C-JS2V>].

44. See TOBIN-TYLER & TEITELBAUM, *supra* note 34, at ix; P. Braveman, E. Arkin, T. Orleans, D. Proctor & A. Plough, *What Is Health Equity?* ROBERT WOOD JOHNSON FOUND. (May 1, 2017), <https://www.rwjf.org/en/library/research/2017/05/what-is-health-equity-.html> [<https://perma.cc/LLW6-UWGA>]; see also Cannon, *supra* note 18, at 207.

45. *Who We Are and What We Do*, ASS’N OF AM. MED. COLLS. CTR. FOR HEALTH JUST., <https://www.aamchealthjustice.org/who-we-are-and-what-we-do> [<https://perma.cc/JSV5-58E3>].

46. Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J.L. & PUB. POL’Y 47, 87 (2014).

47. *Social Determinants of Health*, HEALTHY PEOPLE 2030, <https://health.gov/healthy-people/objectives-and-data/social-determinants-health> [<https://perma.cc/7ZAW-5R5P>].

48. Sanne Magnan, *Social Determinants of Health 101 for Health Care: Five Plus Five*, NAT’L ACAD. OF MED. (Oct. 9, 2017), <https://nam.edu/social-determinants-of-health-101-for-health-care-five-plus-five> [<https://perma.cc/6PYQ-2JEB>].

49. TOBIN-TYLER & TEITELBAUM, *supra* note 34, at xii.

50. Harris & Pamukcu, *supra* note 34, at 762.

51. Cynthia A. Gómez, Dushanka V. Kleinman, Nico Pronk, Glenda L. Wrenn Gordon, Emeline Ochiai, Carter Blakey, Ayanna Johnson & Karen H. Brewer, *Addressing Health Equity and Social Determinants of Health Through Healthy People 2030*, 27 J. PUB. HEALTH MGMT. & PRAC. S249, S249 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8478299> [<https://perma.cc/HS88-3G7X>].

52. *Id.*

decade, the initiative analyzes the strides made towards increasing a healthy U.S. population and re-envisioning the goals for the next decade.<sup>53</sup> In line with the health justice framework, Healthy People 2030 provides guideposts for progress towards health equity, along with tools, data, and resources for health policy agendas, linking “a constellation of connected priorities to practical guidance on applying multisectoral policies to achieve health equity and enhance social determinants of health.”<sup>54</sup>

Health justice requires a foundational understanding of the role of law in these SDOH and their impact on health and health inequity.<sup>55</sup> For people living in poverty and people of color in this country, health inequities long predated COVID-19<sup>56</sup> and have been both exacerbated and spotlighted during the pandemic.<sup>57</sup> Low-income people report worse health status than those with higher income.<sup>58</sup> Independent of socioeconomic status, people of color experience worse health outcomes. For example, recent pre-pandemic data show that “people of color fared worse compared to their white counterparts across a range of health measures, including infant mortality, pregnancy-related deaths, prevalence of chronic conditions, and overall physical and mental health status.”<sup>59</sup> In 2018, life expectancy was four years lower among Black people than white people, with Black men experiencing the lowest life expectancy.<sup>60</sup> During the pandemic, indigenous, Black, and Latinx people experienced higher rates of infection, hospitalization, and death.<sup>61</sup> These disproportionate outcomes are closely connected to SDOH, reflecting increased exposure risks due to social conditions, such as greater reliance on public transportation and essential worker status, underlying health conditions driven by social determinants that contribute to higher risk of serious illness from

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53. *Id.*

54. *Id.* at S249, S256.

55. Benfer, *supra* note 36, at 276; Cannon, *supra* note 24, at 549; Cannon, *supra* note 18, at 205.

56. Sheila Foster, Yael Cannon & Gregg Bloche, *Health Justice is Racial Justice: A Legal Action Agenda for Health Disparities*, HEALTH AFFS. (July 2, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200701.242395/full> [<https://perma.cc/WC3Q-ZK9S>].

57. Ndugga & Artiga, *supra* note 24.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

COVID-19, and barriers to testing and treatment stemming from inequities in healthcare.<sup>62</sup>

Health justice requires an analysis of the role of law and policy in driving such inequities and shaping the SDOH at their root.<sup>63</sup> This includes identification of extant laws that are underenforced, causing harm to the health and well-being of marginalized individuals.<sup>64</sup> It also necessitates an analysis of laws, policies, and systems that are in need of structural reform if health equity is to be achieved.<sup>65</sup>

As part of this identification and evaluation of problems with law and policy, health justice requires naming and examining structural racism as a force behind laws and policies that create and reinforce health inequities.<sup>66</sup> For example, redlining, restrictive covenants, and zoning laws driven by structural racism have forced people of color into neighborhoods with substandard housing conditions and environmental hazards that lead to poor health and contribute to health inequity.<sup>67</sup> Health justice also recognizes that racism in and of itself is a significant stressor and driver of poor health.<sup>68</sup> The framework centers racial justice<sup>69</sup> and includes an explicit anti-subordination agenda.<sup>70</sup>

But health justice is not just about identification, examination, and analysis of these problems; it is, and must be, about action that can promote health equity through law and policy. Health justice demands the enforcement of extant laws to address health-harming legal needs faced by individuals who are marginalized by race,

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62. *Id.*

63. See Harris & Pamukcu, *supra* note 34, at 765–66; CHANGELAB SOLS., EXECUTIVE SUMMARY, A BLUEPRINT FOR CHANGEMAKERS: ACHIEVING HEALTH EQUITY THROUGH LAW & POLICY 3–8 (2019), <https://www.changelabsolutions.org/product/blueprint-changemakers> [<https://perma.cc/5N43-8BMS>]; see also Cannon, *supra* note 18, at 207–08.

64. Benfer, *supra* note 36, at 306–07; Cannon, *supra* note 18, at 216.

65. Benfer, *supra* note 36, at 338.

66. See Harris & Pamukcu, *supra* note 34, at 769.

67. Foster et al., *supra* note 56.

68. See, e.g., Martha E. Lang & Chloe E. Bird, *Understanding and Addressing the Common Roots of Racial Health Disparities: The Case of Cardiovascular Disease & HIV/AIDS in African Americans*, 25 HEALTH MATRIX 109, 115 (2015); David R. Williams, *Stress and the Mental Health of Populations of Color: Advancing Our Understanding of Race-Related Stressors*, 59 J. HEALTH & SOC. BEHAV. 466, 466 (2018).

69. Dina Shek, *Centering Race at the Medical-Legal Partnership in Hawai'i*, 10 U. MIAMI RACE & SOC. JUST. L. REV. 109, 116 (2019); Foster et al., *supra* note 56; Lang & Bird, *supra* note 68, at 115.

70. Harris & Pamukcu, *supra* note 34, at 782–84.

poverty, and/or are experiencing other forms of subordination.<sup>71</sup> It also requires the pursuit of structural change through law, policy, and systems reform to dismantle structures that drive inequities.<sup>72</sup> In line with the health justice framework, Healthy People 2030 goes beyond the health equity notion of *access* to opportunity for health and well-being and demands action to remove barriers to health, such as discrimination and poverty.<sup>73</sup>

Importantly, health justice also necessitates the engagement and elevation of power of affected communities in driving the health justice agenda.<sup>74</sup> The framework focuses on increasing the power of historically marginalized groups to address both structural and systemic barriers to health<sup>75</sup> and highlights the need to elevate the power of these communities to develop and implement solutions.<sup>76</sup>

With a strong emphasis on the role of law as a social determinant of health, health justice centers both an individual's lived circumstances and the broader community context and balances the individual and collective interests of community members rather than preferring one set of interests over another.<sup>77</sup>

## II. AREAS OF FUNDAMENTAL HUMAN NEED AS DETERMINANTS OF HEALTH JUSTICE

In the Healthy People 2030 framework, HHS identified five core domains of SDOH around which the nation should take action to address health inequity: economic stability, education access and quality, health care quality and access, neighborhood and built environment, and social and community context.<sup>78</sup>

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71. JENNIFER TROTT & MARSHA REGENSTEIN, NAT'L CTR. FOR MED.-LEGAL P'SHIP, SCREENING FOR HEALTH-HARMING LEGAL NEEDS 1 (2016), <https://medical-legalpartnership.org/wp-content/uploads/2016/12/Screening-for-Health-Harming-Legal-Needs.pdf> [https://perma.cc/E6SE-8CEP]; see also Cannon, *supra* note 18, at 218.

72. Benfer, *supra* note 36, at 338.

73. See Gómez et al., *supra* note 51, at S251.

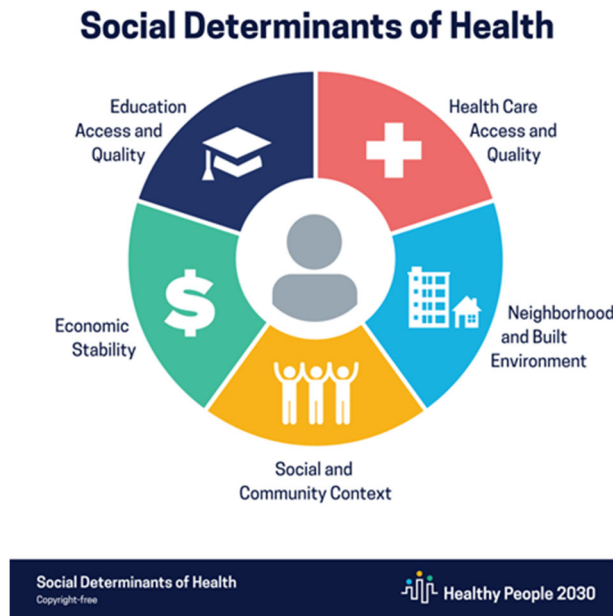
74. Benfer, *supra* note 36, at 338; Wiley, *supra* note 46, at 87; Benfer et al., *supra* note 18, at 128–29.

75. Benfer et al., *supra* note 24, at 47.

76. Benfer et al., *supra* note 18, at 128–29.

77. Medha D. Makhoul, *Health Justice for Immigrants*, 4 U. PA. J.L. & PUB. AFFS. 235, 277 (2019); Wiley, *supra* note 46, at 55; Amitai Etzioni, *On a Communitarian Approach to Bioethics*, 32 THEORETICAL MED. & BIOETHICS 363, 364 (2011).

78. Gómez et al., *supra* note 51, at S253; *Social Determinants of Health*, *supra* note 47.

Figure 1: Social Determinants of Health<sup>79</sup>

Healthy People 2030 has an explicit emphasis on eliminating health disparities as a result of income gaps, lack of resources, and inequitable distributions of power that affect people’s health outcomes,<sup>80</sup> all of which are factors when people’s legal needs are unaddressed. The health equity envisioned by Healthy People 2030 can be advanced by examining its five core domains of SDOH, and within each, the related unmet legal needs of low-income people, the ways they particularly harm people of color, and opportunities for legal advocacy to address those needs to more equitably facilitate health and justice.

In applying the health justice framework to identify unmet legal needs that must be addressed, it becomes clear that all five of the SDOH domains prioritized by Healthy People 2030 and captured in the graphic above are implicated by the areas of fundamental human need that the ABA has identified as critical for legal representation. A 2006 report from the ABA advocating for a right to civil counsel identified five areas where the most basic human needs are at stake and which involve “interests so fundamental and critical as to require governments to supply lawyers to low

79. *Social Determinants of Health*, *supra* note 47.

80. Gómez et al., *supra* note 51, at S251.

income persons who otherwise cannot obtain counsel.”<sup>81</sup> Access to justice is critical in all areas of civil law but particularly in those areas affecting basic human needs.

The five areas that the ABA identified as basic human needs include “shelter, sustenance, safety, health, and child custody.”<sup>82</sup> The ABA primarily refers to these areas of human need as “basic,” and sometimes describes them as “fundamental.” For purposes of this Article, I primarily use the term “fundamental,” to emphasize that these areas are essential, vital, and crucial to well-being and because the term “basic” might be construed by its other meaning, related to needs that are simple or rudimentary. I will refer at times to legal issues in these areas of fundamental human needs in shorthand as “fundamental legal needs.”

In fact, unmet fundamental legal needs in all of the areas identified by the ABA can harm a person’s health. When rights in these areas go unenforced for low-income Americans, their health can suffer, meaning that legal needs in these five areas are actually health-harming legal needs that demonstrate law’s force as a SDOH. Consequently, these legal issues create health inequities for low-income or marginalized Americans and further inequities for people of color who face compounding impacts as a result of both racism and poverty.<sup>83</sup> Therefore, these fundamental human needs offer a paradigm within which we can begin to understand the health harms of unaddressed legal issues. There can be no health justice without shelter, sustenance, safety, family stability, and access to health care. This Part maps these areas of fundamental legal need identified by the ABA onto the core domains of SDOH and unpacks them as a means for identifying legal issues that necessitate legal intervention in order to ensure health justice. Lawyers can advance individual health, as well as more collective health equity, through their advocacy.

Viewing these unmet legal needs through the lens of health and health equity is particularly timely and urgent during a pandemic that has disproportionately impacted people of color and those who are lower-income. Against that backdrop, the “basic human needs” paradigm was also adopted by members of Congress in 2020 in proposed legislation that would establish a civil right to counsel. Although not yet acted upon, that proposed legislation seized upon the

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81. AM. BAR ASS’N, *supra* note 30, at 12.

82. *Id.* at 13.

83. Chen et al., *supra* note 34, at 702.



urgency of the pandemic to try to address the especially harmful impacts of these unmet legal needs during such a significant public health crisis.<sup>84</sup>

The civil right to counsel movement is gaining momentum across state and local legislatures, particularly for tenants facing eviction,<sup>85</sup> alongside other access to justice efforts by Congress and the federal executive branch.<sup>86</sup> Whether the impetus is an established guarantee or other efforts to broaden access to counsel for low-income clients, this moment, when so many unmet legal needs are harming health, driving inequity, and have special urgency during this pandemic, demands the mobilization of lawyers to provide access to counsel in these areas and the articulation of a vision for the role of lawyers in advancing health justice.

The ABA paradigm provides a useful approach for applying a health lens to unmet civil legal needs to identify those issues which are so fundamental and harmful to health that they necessitate legal representation for marginalized individuals to improve their health and well-being, whether through an established right or through efforts to increase access. It also provides a vision for the role lawyers can play in addressing those needs to advance health and health equity.

While the eviction crisis in particular presents with special urgency, the call from the highest branches of government and national organizations for the mobilization of lawyers should go

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84. Recognizing the Right to Counsel in Civil Proceedings, H.R. Res. 960, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-resolution/960/text> [<https://perma.cc/XAK4-DBGU>]; AM. BAR ASS'N, *supra* note 30, at 12–15. Some scholars have critiqued the growing efforts to establish a civil right to counsel, a topic outside the scope of this Article. See generally Benjamin H. Barton, *Against Civil Gideon (And for Pro Se Court Reform)*, 62 FLA. L. REV. 1227 (2010); Russell Engler, *Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?*, 9 SEATTLE J. FOR SOC. JUST. 97 (2010). However, it can serve as an important vehicle for the mobilization of lawyers to leverage law in pursuit of health justice, especially where there is a power imbalance among the parties, such as eviction cases where low-income tenants are frequently unrepresented and cases in which indigent litigants are asserting their rights vis-a-vis the government, corporations, or other players with more resources or power. The National Coalition for a Civil Right to Counsel has compiled extensive information and resources about this issue and tracks legislation advancing both right to counsel and access to counsel in different areas of civil legal need. See NAT'L COAL. FOR A CIV. RIGHT TO COUNS., <http://civilrighttocounsel.org> [<https://perma.cc/N5PL-YJE5>].

85. *Major Developments*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS., [http://civilrighttocounsel.org/major\\_developments](http://civilrighttocounsel.org/major_developments) [<https://perma.cc/4HTV-J8YE>]. In December 2021, Kansas City became the thirteenth city to adopt a right to counsel in eviction cases, in addition to three states that have adopted similar laws. See Shackelford-Nwanganga, *supra* note 32.

86. See Cannon, *supra* note 24, at 540–43.

beyond evictions to extend to advocacy in all five areas of fundamental human need. In a time of unprecedented applications to law schools,<sup>87</sup> the legal profession should be poised to heed this call and expand access to counsel to address these health-harming legal needs and advance health justice.

The discussion below applies the health justice framework to map these areas of fundamental human need onto the core SDOH domains to analyze the role of law in driving poor health and inequities and identify opportunities for lawyers to play a role in addressing health-harming legal issues for low-income individuals.

A. *“Neighborhood and Built Environment” and Fundamental Legal Needs Implicating Health Justice*

Where and in what environment people live is closely tied to health outcomes and the well-being of residents.<sup>88</sup> Healthy People 2030 includes “neighborhood and built environment” as a core SDOH. The initiative tracks a number of related metrics, such as access to internet, water safety, air pollution and asthma rates, housing costs, the accessibility of homes to people with disabilities, and public transportation use.<sup>89</sup> The focus of these metrics is to create safe and healthy communities where people spend most of their time living, working, learning, and playing.<sup>90</sup> A healthy neighborhood requires that people have safe, consistent places to live.<sup>91</sup> The ABA has similarly identified “shelter” as a fundamental area of human need for which legal issues necessitate access to counsel, defining that category as involving issues related to “a person’s or family’s access to or ability to remain in a dwelling, and the habitability of that dwelling.”<sup>92</sup> Shelter encompasses numerous legal issues, such as eviction, access to shelter and housing

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87. Karen Sloan, *Law School Applicants Surge 13%, Biggest Increase Since Dot-Com Bubble*, REUTERS (Aug. 3, 2021, 2:58 PM), <https://www.reuters.com/legal/legalindustry/law-school-applicants-surge-13-biggest-increase-since-dot-com-bubble-2021-08-03> [<https://perma.cc/E34P-RVP6>].

88. *Neighborhood and Built Environment*, HEALTHY PEOPLE 2030, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment> [<https://perma.cc/F27Y-PDYE>].

89. *Id.*

90. *Id.*

91. *See id.*

92. AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES no. 104 § 2(B)(i) (Aug. 6, 2010), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lis\\_sclaid\\_104\\_revised\\_final\\_aug\\_2010.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_104_revised_final_aug_2010.authcheckdam.pdf) [<https://perma.cc/KA4X-G6FV>].

assistance, substandard housing conditions, and utility shutoffs,<sup>93</sup> all of which impact health.<sup>94</sup> Legal issues in all of these areas must be addressed for low-income Americans and communities of color who face health inequities in order to ensure the access to healthy neighborhoods and built environments that health justice demands.

In particular, eviction is one of the most well-documented determinants of health. Eviction has been connected to anxiety, depression, bodily injury, asthma, and respiratory infections; even the threat of eviction can worsen health.<sup>95</sup> In displacing families, eviction can lead to homelessness or “downward” moves into overcrowded living environments<sup>96</sup> and poor housing conditions,<sup>97</sup> which are also situations that harm health.<sup>98</sup> Homelessness is linked to shortened life expectancy and a number of health conditions.<sup>99</sup>

Substandard housing conditions such as rodents, pests, mold, and dust, are also associated with a wide range of physical and mental health issues including anxiety, depression, asthma, bodily injury, and respiratory infection.<sup>100</sup> Sitting water, dampness, interior and exterior leaks, pest infestations, old carpeting, exposure to toxic substances, and sporadic deviation of indoor temperature contribute to a range of chronic illnesses.<sup>101</sup> Residents in substandard housing are also far more likely to suffer from lead poisoning

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93. *Id.*; *How Legal Services Help the Health Care System Address Social Needs*, NAT'L CTR. FOR MED.-LEGAL P'SHIP, <https://medical-legalpartnership.org/response/i-help> [<https://perma.cc/C2MC-5FA5>].

94. Taylor, *supra* note 18, at 6; Cannon, *supra* note 18, at 239.

95. See Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J.C.R. & C.L. 63, 68–69 (2020); James Krieger & Donna L. Higgins, *Housing and Health: Time Again for Public Health Action*, 92 AM. J. PUB. HEALTH, 758, 758 (2002); Cannon, *supra* note 18, at 240–42, 244.

96. Emily A. Benfer, David Vlahov, Marissa Y. Long, Evan Walker-Wells, J. L. Pottenger, Jr., Gregg Gonsalves & Danya E. Keene, *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URB. HEALTH 1, 2, 5 (2021).

97. *Id.* at 4.

98. PAULA BRAVEMAN, MERCEDES DEKKER, SUSAN EGERTER, TABASHIR SADEGH-NOBARI & CRAIG POLLACK, *EXPLORING THE SOCIAL DETERMINANTS OF HEALTH: HOUSING AND HEALTH 2* (ROBERT WOOD JOHNSON FOUND., 2011), <https://www.rwjf.org/en/library/research/2011/05/housing-and-health.html> [<https://perma.cc/99QY-JAXF>] (click “Read the issue brief (PDF)”).

99. Petersen, *supra* note 95, at 67; Cannon, *supra* note 18, at 240.

100. BRAVEMAN et al., *supra* note 98, at 2, 5.

101. Krieger & Higgins, *supra* note 95, at 758–59.

and to experience serious injury or death in the event of a fire in their home.<sup>102</sup>

Utilities are also critical to good health, and lack of access to utilities can manifest as unsafe drinking water, lack of hot water for cleaning, inadequate food storage, ineffective waste disposal, and the presence of disease vectors such as insects and rats.<sup>103</sup> These features of substandard housing make residents more vulnerable to the transmission and exacerbation of infectious diseases.<sup>104</sup> Consistent access to utilities, including water, heat, air conditioning, gas, and electricity are critical for preserving food and medication, and for certain medical treatment plans.<sup>105</sup>

While eviction proceedings, housing insecurity, and substandard housing impact many low-income tenants, tenants of color are harmed by additional inequities. For example, Black tenants receive a disproportionate share of eviction filings and experience the highest rates of eviction judgments.<sup>106</sup> Substandard housing conditions, including “pest infestation, lead paint, faulty plumbing, and overcrowding disproportionately affect [B]lack families and lead to health problems . . . . Black[] [people] are 1.7 times more likely than the rest of the population to occupy homes with severe physical problems.”<sup>107</sup> Tenants of color and tenants who are low-income are disproportionately affected by housing insecurity, substandard housing conditions, and the health hazards that accompany them.<sup>108</sup>

The pandemic has both exacerbated longstanding inequities and created an urgency around health-harming legal needs related to shelter. With federal, state, and local moratoria on residential

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102. *Id.* at 759.

103. *See id.* at 758–59.

104. BRAVEMAN ET AL., *supra* note 98, at 2.

105. *See* KATE MARPLE, NAT’L CTR. FOR MED.-LEGAL P’SHIP, FRAMING LEGAL CARE AS HEALTH CARE 3 (2015), <https://medical-legalpartnership.org/wp-content/uploads/2015/01/Framing-Legal-Care-as-Health-Care-Messaging-Guide.pdf> [<https://perma.cc/XZT7-8F9E>]; Cannon, *supra* note 18, at 241, 260–61.

106. Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 653 (2020).

107. Dayna Bowen Matthew, Edward Rodrigue & Richard V. Reeves, *Time for Justice: Tackling Race Inequalities in Health and Housing*, BROOKINGS (Oct. 19, 2016), <https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing> [<https://perma.cc/D7N6-J4T8>].

108. Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. ON POVERTY L. & POLY 59, 68, 69, 72 (2016); Samiya A. Bashir, *Home Is Where the Harm Is: Inadequate Housing as a Public Health Crisis*, 92 AM. J. PUB. HEALTH 733, 733 (2002).

evictions lifting, an estimated thirty to forty million people are at risk of being evicted from their homes due to their inability to make rent.<sup>109</sup> Because eviction disproportionately affects people of color, those communities will bear the brunt of the health consequences.<sup>110</sup> Data show that higher eviction rates correspond to higher rates of COVID-19 transmission and infection; racial inequities in eviction rates will likely breed further racial inequities in COVID-19 infection and associated health outcomes.<sup>111</sup> Moreover, housing insecure tenants are more likely to live in overcrowded living environments<sup>112</sup> where maintaining social distancing and good hygiene are more challenging,<sup>113</sup> creating higher risk of infection and severe illness.

According to the Legal Services Corporation, at least 29% of households living in a rented home experience a housing-related civil legal problem each year.<sup>114</sup> Attorneys can address health-harming legal needs for individuals from marginalized communities in a number of ways. First, lawyers can help tenants avoid eviction and homelessness—and the health consequences that accompany them—by representing them in eviction proceedings.<sup>115</sup> Civil legal aid has been shown to reduce evictions and, consequently, to save public money.<sup>116</sup> A number of studies indicate that legal representation drastically improves outcomes for tenants in housing cases,<sup>117</sup> resulting in fewer evictions, fewer judgements for landlords, more tenant-friendly settlements, more frequent improvements to substandard conditions, and longer overall occupancy for tenants.<sup>118</sup> Attorneys can also help clients avoid a

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109. Emily Benfer, David Bloom Robinson, Stacy Butler, Lavar Edmonds, Sam Gilman, Katherine Lucas McKay, Lisa Owens, Neil Steinkamp, Diane Yentel & Zach Neumann, *The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk> [https://perma.cc/J2UB-QE7B].

110. Benfer et al., *supra* note 96, at 2. See Emily Benfer, Gregg Gonsalves & Danya Keene, *The Coming Wave of Evictions Will Significantly Worsen America's COVID-19 Crisis*, APPEAL (Dec. 7, 2020), <https://theappeal.org/the-coming-wave-of-evictions-will-significantly-worsen-americas-covid-19-crisis> [https://perma.cc/V5YS-8DYW].

111. See Benfer et al., *supra* note 96, at 2.

112. *Id.*

113. *Id.*

114. CREEKMORE et al., *supra* note 26, at 22.

115. Gold, *supra* note 108, at 84.

116. LAURA K. ABEL, NAT'L CENT. FOR ACCESS TO J., ECONOMIC BENEFITS OF CIVIL LEGAL AID 1 (2012), <https://ncforaj.files.wordpress.com/2012/09/final-economic-benefits-of-legal-aid-9-5-2012.pdf> [https://perma.cc/43DH-A4KL].

117. Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881, 901–02 (2016).

118. *Id.*

panoply of collateral consequences of eviction,<sup>119</sup> such as drops in credit score, loss of furniture and belongings, and school transfer and enrollment challenges.<sup>120</sup>

Attorneys can address substandard living conditions through advocacy to enforce tenants' rights, Fair Housing Act litigation, and housing ordinance enforcement,<sup>121</sup> which can help prevent "building related illnesses" such as asthma, elevated lead levels, injury, infectious disease, and developmental or behavioral issues.<sup>122</sup> People with low income and people of color are more likely to experience fraud and discrimination within the rental housing market.<sup>123</sup> Attorneys can enforce fair housing laws<sup>124</sup> and ensure that their clients are not denied their rights to safe housing and have the ability to find affordable housing.<sup>125</sup> To promote housing security, lawyers can also help people access and maintain housing assistance, such as housing choice vouchers.<sup>126</sup>

Moreover, attorneys can help tenants address utility shut-offs by litigating against utility companies and navigating federal utility-assistance programs like the Low-Income Home Energy Assistance Program<sup>127</sup> to ensure that tenants have access to clean water, electricity, heat, and gas.<sup>128</sup>

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119. Maha Jweied & Karen A. Lash, *Civil Justice Needs Federal Leadership*, CTR. FOR AM. PROGRESS, 1, 7–8 (Sept. 16, 2019), <https://cdn.americanprogress.org/content/uploads/2019/09/13112327/CivilJusticeNeedsFederalLeadership-Brief-3.pdf?ga=2.218094739.449659918.1606314253-2108523.1606314253> [<https://perma.cc/NM3R-TJFR>].

120. *Id.* at 7.

121. *See, e.g.*, Frank Griffin, *Improving Health Outcomes and Lowering Costs: Attorneys as Proactive, Paid Providers Treating Social Determinants of Health*, 71 RUTGERS L. REV. 795, 828 (2019); *see also* 42 U.S.C. §§ 3601, 3619.

122. Andrew F. Beck, Melissa D. Klein, Joshua K. Schaffzin, Virginia Tallent, Marcheta Gillam & Robert S. Kahn, *Identifying and Treating a Substandard Housing Cluster Using a Medical-Legal Partnership*, 130 PEDIATRICS 831, 832 (2012), <https://doi.org/10.1542/peds.2012-0769> [<https://perma.cc/7F9N-FK9E>]; Mary M. O'Sullivan, Julie Brandfield, Sumedh S. Hoskote, Shir N. Segal, Luis Chug, Ariel Modrykamien & Edward Eden, *Environmental Improvements Brought by the Legal Interventions in the Homes of Poorly Controlled Inner-City Adult Asthmatic Patients: A Proof-of-Concept Study*, 49 J. ASTHMA 911, 911 (2012), <https://doi.org/10.3109/02770903.2012.724131> [<https://perma.cc/5CGN-SJV7>].

123. Pamela Cardullo Ortiz, *How a Civil Right to Counsel Can Help Dismantle Concentrated Poverty in America's Inner Cities*, 25 STAN. L. REV. 163, 178 (2014).

124. *Id.* at 177.

125. *Id.* at 182.

126. Petersen, *supra* note 95, at 98–106.

127. *See* Griffin, *supra* note 121, at 831; *Low Income Home Energy Assistance Program*, U.S. DEP'T OF HEALTH & HUM. SERVS.: OFF. OF CMTY. SERVS., <https://www.acf.hhs.gov/ocs/programs/liheap> [<https://perma.cc/VG8A-353E353E>].

128. *E.g.*, Griffin, *supra* note 121, at 831.

B. *“Economic Stability” and “Education Access and Quality” and Fundamental Legal Needs Implicating Health Justice*

“Economic stability” and “education access and quality” are both critical to health and are included as two core and related domains of SDOH in the Healthy People 2030 initiative.<sup>129</sup> Economic stability directly affects a person’s ability to care for their health needs, including those related to healthy food, health care, housing, and education.<sup>130</sup> A child’s educational access and quality in turn impacts his or her access to economic stability because education level directly correlates with safe, high-paying jobs, and because education itself is a well-documented driver of health.<sup>131</sup>

Healthy People 2030 employs a number of metrics for both of these SDOH, such as employment rates, work-related injuries, physical disabilities precluding employment, food access, graduation rates, and literacy and math skill levels.<sup>132</sup> These two SDOH can work together to improve quality of life and the resulting health outcomes as a consequence of their relationship to people’s ability to provide material needs for healthy living.<sup>133</sup>

Both of these SDOH domains are implicated in the ABA’s category of fundamental legal needs related to “sustenance.”<sup>134</sup> Sustenance encompasses legal issues that impact “a person’s or family’s ability to preserve and maintain assets, income, or financial support, whether derived from employment, court-ordered payments based on support obligations, government assistance including monetary payments or ‘in kind’ benefits (e.g. food stamps) or from other sources.”<sup>135</sup> A range of legal needs affect sustenance for low-income individuals, such as those related to employment, consumer law, public benefits, and education law, all of which impact health.<sup>136</sup> Legal issues in all of these areas must be addressed to

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129. *Economic Stability*, HEALTHY PEOPLE 2030, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/economic-stability> [<https://perma.cc/7EM3-DW3U>]; *Education Access and Quality*, HEALTHY PEOPLE 2030, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/education-access-and-quality> [<https://perma.cc/XVL6-97DG>].

130. *Economic Stability*, *supra* note 129.

131. *Education Access and Quality*, *supra* note 129.

132. *Id.*, *Economic Stability*, *supra* note 129.

133. *See Economic Stability*, *supra* note 129; *Education Access and Quality*, *supra* note 129.

134. AM. BAR ASS’N, *supra* note 92, § 2(B)(ii).

135. *Id.*

136. *See* Elizabeth Sweet, Arijit Nandi, Emma K. Adam & Thomas W. McDade, *The High Price of Debt: Household Financial Debt and Its Impact on Mental and Physical Health*, 91

promote the social determinants of economic stability and access and quality education and to eliminate inequities in these areas in furtherance of health justice. This section will explore a few of those legal issues to demonstrate the implications of those areas of legal need for health justice.

## 1. Employment

Employment status, which is closely connected to economic stability, is a driver of health. One study found overwhelming evidence of the negative health impacts of unemployment,<sup>137</sup> and a related metanalysis examining the relationship between employment status and mental health found that unemployment and job loss are associated with higher rates of psychological distress, depression, anxiety, suicidal ideation, and substance abuse.<sup>138</sup>

Unemployment and its associated poor health outcomes are more likely to affect Black workers, who are *twice* as likely to be unemployed as white workers.<sup>139</sup> Inequities also exist in the context of pay. For example, on average, Black men earn eighty-seven cents for every dollar earned by a white man doing the same job.<sup>140</sup>

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SOC. SCI. & MED. 94, 97–99 (2013), <https://doi.org/10.1016/j.socscimed.2013.05.009> [<https://perma.cc/6S8U-MF3C>] (finding that high household financial debt was associated with higher rates of stress and depression, worse self-reported health, and higher blood pressure); Thomas Richardson, Peter Elliot & Ronald Roberts, *The Relationship Between Personal Unsecured Debt and Mental and Physical Health: A Systematic Review and Meta-Analysis*, 33 CLINICAL PSYCH. REV. 1148, 1150–55 (2013), <https://doi.org/10.1016/j.cpr.2013.08.009> [<https://perma.cc/UD8L-3BV3>]; Fenaba R. Addo, *Seeking Relief: Bankruptcy and Health Outcomes of Adult Women*, 3 SSM – POPULATION HEALTH 326, 329–31 (2017), <https://doi.org/10.1016/j.ssmph.2017.03.005> [<https://perma.cc/3SHP-QJAS>] (finding that women who filed for Chapter 7 bankruptcy or debt liquidation experienced diminished physical and mental health); Scott D. Ramsey, Aasthaa Bansal, Catherine R. Fedorenko, David K. Blough, Karen A. Overstreet, Veena Shankaran & Polly Newcomb, *Financial Insolvency as a Risk Factor for Early Mortality Among Patients with Cancer*, 34 J. CLINICAL ONCOLOGY 980, 980 (2016), <https://doi.org/10.1200/JCO.2015.64.6620> [<https://perma.cc/B4QK-SKLLH>] (finding that filing for bankruptcy was associated with an 80% increase in the likelihood of early mortality among cancer patients).

137. Kenneth C. Hergenrather, Robert J. Zeglin, Maureen McGuire-Kuletz & Scott D. Rhodes, *Employment as a Social Determinant of Health: A Systematic Review of Longitudinal Studies Exploring the Relationship Between Employment Status and Physical Health*, 29 REHAB. RSCH. POL'Y & EDUC. 2, 6–11 (2015).

138. *Id.* at 13–14.

139. Jhacova Williams & Valerie Wilson, *Black Workers Endure Persistent Racial Disparities in Employment Outcomes*, ECON. POL'Y INST. (Aug. 27, 2019), <https://www.epi.org/publication/labor-day-2019-racial-disparities-in-employment> [<https://perma.cc/2XBE-57SW>].

140. Stephen Miller, *Black Workers Still Earn Less Than Their White Counterparts*, SOC'Y FOR HUM. RES. MGMT. (June 11, 2020), <https://www.shrm.org/resourcesandtools/hr->



The pandemic has exacerbated these challenges and created urgency around legal issues related to employment. Unemployment skyrocketed during COVID-19; the Pew Research Center estimates that about 15% of American adults lost their jobs, either permanently or temporarily, due to the pandemic.<sup>141</sup> Communities of color have suffered disparate employment-related harms due to COVID-19. Workers of color were denied membership in unions for a significant period of time, which prevented them from getting equal access to benefits and protections that are critical during a pandemic.<sup>142</sup> Now, many essential workers of color lack basic protections for paid sick leave and, by virtue of their positions, have been forced to continue working during the pandemic.<sup>143</sup>

Attorneys can help employees understand the terms of their employment contracts, obtain unemployment insurance benefits, litigate wage and hour cases, leverage federal and state laws to assert clients' rights to different forms of leave, and help clients with disabilities obtain workplace accommodations.<sup>144</sup> There is also significant evidence that legal representation improves employee success rates in employment discrimination cases.<sup>145</sup>

## 2. Consumer Rights

Consumer law issues also affect economic stability as well as long-term health. This area of law includes issues related to debt and creditors, financial scams and exploitation, and bankruptcy. Consumer law impacts individuals' finances and assets, including

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topics/compensation/pages/racial-wage-gaps-persistence-poses-challenge.aspx [https://perma.cc/3GBH-8ZPQ].

141. Kim Parker, Rachel Minkin & Jesse Bennett, *Economic Fallout From COVID-19 Continues to Hit Lower-Income Americans the Hardest*, PEW RSCH. CTR. (Sept. 24, 2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest> [https://perma.cc/EWK8-PKSB]; see also Felix Richter, *Covid-19 Has Caused a Huge Amount of Lost Working Hours*, WORLD ECON. F. (Feb. 4, 2021), <https://www.weforum.org/agenda/2021/02/covid-employment-global-job-loss> [https://perma.cc/5J3R-Q32J].

142. Ruqaiyah Yearby & Seema Mohapatra, *Law, Structural Racism, and the COVID-19 Pandemic*, J.L. & BIOSCIS., 1, 4–5 (2020).

143. *Id.* at 5–7.

144. *E.g.*, Griffin, *supra* note 121, at 833.

145. Poppe & Rachlinski, *supra* note 117, at 919–21; see also Wendy Parker, *Lessons in Losing: Race Discrimination in Employment*, 81 NOTRE DAME L. REV. 889, 915, 947 (2006) (finding that unrepresented employment discrimination plaintiffs in federal district court were less than half as likely as represented plaintiffs to receive favorable rulings on dispositive pretrial motions).

how they manage them and whether they can retain them.<sup>146</sup> Various studies link household financial debt to mental disorders, depression, suicide attempts, substance abuse, long-term illness, and other health conditions.<sup>147</sup> There is also evidence that falling victim to financial exploitation and bankruptcy can harm both physical and mental health.<sup>148</sup>

While the ABA has recognized that unmet legal needs in these areas abound for low-income individuals, people of color are also affected by additional inequities in areas of consumer law, even when controlling for socioeconomic status. For example, Black people are generally much more likely to file for bankruptcy, regardless of income, due in part to the disparate levels of financial vulnerability and instability that Black families experience compared to white families.<sup>149</sup> Furthermore, debt collectors are more likely to enforce consumer debt collection practices against borrowers of color than white borrowers,<sup>150</sup> and communities of color are disproportionately victimized by financial scams and exploitation.<sup>151</sup>

The financial instability that COVID-19 has caused for many has had a significant impact on consumer law issues and created urgency around related legal needs. As the United States emerges from the pandemic, the millions of people who are “newly jobless

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146. *How Legal Services Help the Health Care System Address Social Needs*, *supra* note 93.

147. See Sweet et al., *supra* note 136, at 94–95; Richardson et al., *supra* note 136, at 1149.

148. See Jason Burnett, Shelly L. Jackson, Arup K. Sinha, Andrew R. Aschenbrenner, Kathleen Pace Murphy, Rui Xia & Pamela M. Diamond, *Five-Year All-Cause Mortality Rates Across Five Types of Substantiated Elder Abuse Occurring in the Community*, 28 J. ELDER ABUSE & NEGLECT 59, 59 (2016), <https://doi.org/10.1080/08946566.2016.1142920> [<https://perma.cc/S8XJ-X9BP>]; XinQi Dong & Melissa Simon, *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, 173 JAMA INTERNAL MED. 911, 913 (2013) <https://doi.org/10.1001/jamainternmed.2013.238> [<https://perma.cc/8EEH-LTZG>]; Linda Ganzini, Bentson H. McFarland & David Cutler, *Prevalence of Mental Disorders After Catastrophic Financial Loss*, 178 J. NERVOUS & MENTAL DISEASE 680, 680 (1990), <https://doi.org/10.1097/00005053-199011000-00002> [<https://perma.cc/WSN5-TEWV>]; Addo, *supra* note 136, at 329 (finding that women who filed for Chapter 7 bankruptcy or debt liquidation experienced diminished physical and mental health as a result).

149. Paul Kiel & Hannah Fresques, *Data Analysis: Bankruptcy and Race in America*, PROPUBLICA (Sept. 27, 2017), <https://projects.propublica.org/graphics/bankruptcy-data-analysis#National> [<https://perma.cc/BP2L-R6EL>].

150. See FINANCIAL INDUSTRY REGULATORY AUTHORITY: INVESTOR EDUCATION FOUNDATION, FINANCIAL CAPABILITY IN THE UNITED STATES 27 (2016), [https://gflec.org/wp-content/uploads/2016/07/NFCS\\_2015\\_Report\\_Natl\\_Findings.pdf](https://gflec.org/wp-content/uploads/2016/07/NFCS_2015_Report_Natl_Findings.pdf) [<https://perma.cc/7HKH-W2S2>] (finding higher than average debt collection from African Americans).

151. See, e.g., Michelle Singletary, *Structural Racism Helps Schemers Attract Blacks to Fake ‘Sou-Sou’ Scams*, WASH. POST (Aug. 14, 2020), <https://www.washingtonpost.com/business/2020/08/14/fake-sou-sou-lure-blacks> [<http://perma.cc/2EUC-L6T4>].

and poor; facing eviction, hungry creditors, and soon-to-be-denied benefits” will necessitate a greater emphasis on legal representation in consumer law issues.<sup>152</sup> And while financial hardship due to the pandemic is well-documented, researchers found that small businesses and non-homeowners are not filing for bankruptcy, even though they need to, because they face financial, physical, and technological barriers to doing so.<sup>153</sup> Many experts anticipate a historic surge in bankruptcy filings in 2022 if the pandemic is under control and social distancing measures are phased out of society,<sup>154</sup> a phenomenon that will likely only exacerbate racial disparities in bankruptcy outcomes.<sup>155</sup>

Attorneys can aid clients in consumer law cases in myriad ways, such as helping them structure loans and navigate regulatory schemes surrounding loan eligibility,<sup>156</sup> identifying and prosecuting exploitative practices,<sup>157</sup> reducing and eliminating unfair debts, and simplifying and improving outcomes in the bankruptcy process.<sup>158</sup> Legal aid is a critical tool for addressing consumer fraud scams and other consumer law issues. The American University School of Public Affairs has found that civil legal aid “helps combat fraud through public education, helping consumers assert their rights when lenders and debt collectors don’t follow the law, and correct the harms caused by scammers.”<sup>159</sup> Attorneys are especially important for low-income individuals at any proceeding in which incarceration could be a consequence of nonpayment of fees or

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152. Kathryn Joyce, *No Money, No Lawyer, No Justice*, NEW REPUBLIC (June 22, 2020), <https://newrepublic.com/article/158095/civil-legal-system-no-money-no-lawyer-no-justice> [<https://perma.cc/H9MH-7MU2>].

153. Jialan Wang, Jeyul Yang, Benjamin Iverson & Raymond Kluender, *Bankruptcy and the COVID-19 Crisis* 10–13 (Harv. Bus. Sch., Working Paper No. 21-041, 2020), [https://www.hbs.edu/ris/Publication%20Files/21-041\\_a9e75f26-6e50-4eb7-84d8-89da3614a6f9.pdf](https://www.hbs.edu/ris/Publication%20Files/21-041_a9e75f26-6e50-4eb7-84d8-89da3614a6f9.pdf) [<https://perma.cc/ZGF3-DM3L>].

154. Mark Henricks & Daphne Foreman, *After the Covid-19 Deluge, a Bankruptcy Tidal Wave?*, FORBES (Sept. 23, 2020, 9:16 AM), <https://www.forbes.com/sites/advisor/2020/09/23/after-the-covid-19-deluge-a-bankruptcy-tidal-wave/?sh=38ca838e4aba> [<https://perma.cc/5WLW-K49L>].

155. Leslie A. Pappas, *Bankruptcy Racial Disparities Poised to Add to Pandemic Pain*, BLOOMBERG L. (Aug. 31, 2020, 6:30 AM), <https://news.bloomberglaw.com/bankruptcy-law/bankruptcys-racial-disparities-poised-to-add-to-pandemics-pain> [<https://perma.cc/J3MA-SBJ6>].

156. Griffin, *supra* note 121, at 822–23.

157. 15 U.S.C. § 1681(2), (4).

158. Angela Littwin, *The Affordability Paradox: How Consumer Bankruptcy’s Greatest Weakness May Account for its Surprising Successes*, 52 WM. & MARY L. REV. 1933, 1971–72, 1974 (2011) (finding that represented debtors were 9.5 times more likely to have their debt discharged than unrepresented debtors).

159. *Legal Aid Results*, AM. U. SCH. OF PUB. AFFS., <https://www.american.edu/spa/jpo/jgp-legal-aid-results.cfm#consumers> [<https://perma.cc/97SE-77BH>].

fines.<sup>160</sup> Lawyers can protect consumers as a means of ensuring the economic security of individuals<sup>161</sup> and preventing and mitigating the health-harming impacts of financial insecurity.

### 3. Public Benefits

Public benefits legal issues can impact economic stability and implicate health. Public benefits affect beneficiaries' health both directly and indirectly—by providing access to health care and nutrition, and by improving beneficiaries' overall financial and social stability. The Supplemental Nutrition Assistance Program (“SNAP”), the largest and most important public benefits program addressing food insecurity, has been empirically proven to improve nutritional and health care outcomes and lower health care costs for enrolled beneficiaries.<sup>162</sup>

Racial disparities affect both access to and utilization of public benefits programs like SNAP. For example, significantly more African Americans live below the poverty line in comparison to their share of the general population.<sup>163</sup> As a result, African Americans made up more than 30% of SNAP participants in 2016, despite only accounting for 13.4% of the total U.S. population.<sup>164</sup>

The COVID-19 pandemic and the subsequent increase in poverty rates have increased the prevalence of legal issues surrounding public benefits programs, both for communities of color and the general population.<sup>165</sup> Reliance on public benefits programs for

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160. See AM. BAR ASS'N PRESIDENTIAL TASK FORCE ON BUILDING PUB. TRUST IN THE AM. JUST. SYS., TEN GUIDELINES ON COURT FINES AND FEES (2018), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_ind\\_10\\_guidelines\\_court\\_fines.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ind_10_guidelines_court_fines.pdf) [<https://perma.cc/EBU2-PFRN>]; AM. CIV. LIBERTIES UNION, A POUND OF FLESH: THE CRIMINALIZATION OF PRIVATE DEBT 7, 24 (2018), [https://www.aclu.org/sites/default/files/field\\_document/022118-debtreport.pdf](https://www.aclu.org/sites/default/files/field_document/022118-debtreport.pdf) [<https://perma.cc/DB67-MG5X>] (arguing for debtor right to counsel when physical liberty is at stake).

161. U.S. DEPT OF JUST., CIVIL LEGAL AID 101 (2020), <https://www.justice.gov/lair/file/828346/download> [<https://perma.cc/5QNC-MRYU>].

162. Steven Carlson & Brynne Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 17, 2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care> [<https://perma.cc/G5LW-2XKU>].

163. CTR. ON BUDGET & POL'Y PRIORITIES, *SNAP HELPS MILLIONS OF AFRICAN AMERICANS* (Feb. 26, 2018), <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-african-americans> [<https://perma.cc/E59U-YP7P>].

164. *Id.*

165. Cannon, *supra* note 18, at 223–25.

both minorities and the general population skyrocketed.<sup>166</sup> By the end of 2021, SNAP enrollment increased in many states; for example, Maryland saw a 27.5% increase.<sup>167</sup>

Attorneys can help address malnutrition and income insecurity by alerting potential beneficiaries to their eligibility for SNAP<sup>168</sup> and protecting their rights by challenging erroneous reductions, denials, and terminations of SNAP and other benefits.<sup>169</sup> Scholars have called for improved access to attorneys in these circumstances.<sup>170</sup>

#### 4. Education

Education law can impact the SDOH domains of education access and quality, as well as economic stability and the fundamental human need for sustenance. Education directly affects income and asset accumulation in the long run, as lifetime earnings are dependent on educational attainment.<sup>171</sup> As a key social determinant of health, education is a “strong predictor of chronic disease, social and economic instability, incarceration . . . and even life expectancy.”<sup>172</sup>

Structural racism has long been pervasive in public and private American education; on average, students of color go to schools with fewer resources, larger class sizes, fewer teachers, less-qualified teachers, and lower-quality curricula.<sup>173</sup> In 2016, the U.S. Department of Education reported that several minoritized groups

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166. Anagha Srikanth, *America's Poverty Rising at Fastest Rate Ever*, CHANGING AM. (Nov. 17, 2020), <https://thehill.com/changing-america/respect/poverty/530702-americas-poverty-rising-at-fastest-rate-ever-with-almost-8>; see Cannon, *supra* note 18, at 221, 223–25.

167. U.S. DEP'T. OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: NUMBER OF HOUSEHOLDS PARTICIPATING, SNAP DATA TABLES (Jan. 7, 2022), <https://fns-prod.az.ureedge.net/sites/default/files/resource-files/30SNAPcurrHH-1.pdf> [<https://perma.cc/W4JJ-SAC5>].

168. See Griffin, *supra* note 121, at 832.

169. See *id.*; see also Cannon, *supra* note 18, at 232–33.

170. See TOBIN-TYLER & TEITELBAUM, *supra* note 34, at 107–08; Cannon, *supra* note 18, at 232–33.

171. See *How Legal Services Help the Health Care System Address Social Needs*, *supra* note 93.

172. Thalia González, Alexis Etow & Cesar De La Vega, *School Discipline Is a Public Health Crisis*, BILL OF HEALTH (Oct. 6, 2020), <https://blog.petrieflom.law.harvard.edu/2020/10/06/school-discipline-is-a-public-health-crisis> [<https://perma.cc/WN74-27ZS>].

173. Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS (Mar. 1, 1998), <https://www.brookings.edu/articles/unequal-opportunity-race-and-education> [<https://perma.cc/JJN5-T6XA>].

had lower percentages of high school completion among adults over the age of twenty-five, compared to whites.<sup>174</sup> Research shows that lower educational attainment is associated with health disparities as people age.<sup>175</sup> Moreover, exclusionary disciplinary practices like expulsion and suspension are disproportionately used against students of color.<sup>176</sup> Students subject to repeated exclusionary punishments are less likely to reach the educational milestones that are associated with improved health, perpetuating disparities in both education and health.<sup>177</sup>

The COVID-19 pandemic has upended the traditional model of in-person education—only 25% of students attended school in-person every day in fall 2020.<sup>178</sup> Virtual learning only exacerbated pre-existing educational disparities based on income, race, and geography.<sup>179</sup> A 2020 study found that more than fifteen million children live in homes that lack an internet connection, a device that can adequately support virtual learning, or both.<sup>180</sup> For those

174. CRISTOBAL DE BREY, LAUREN MUSU, JOEL MCFARLAND, SIDNEY WILKENS-FLICKER, MELISSA DILIBERTI, ANLAN ZHANG, CLAIRE BRANSTETTER & XIAOLEI WANG, U.S. DEP'T. OF EDUC., STATUS AND TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 2018, at 1, 160 (2019), <https://nces.ed.gov/pubs2019/2019038.pdf> [<https://perma.cc/3NZ7-2Q8Z>] (“The percentage of adults age 25 and older who had not completed high school was lower in 2016 than 2010 for those who were white (8 and 9 percent, respectively), Black (15 and 18 percent, respectively), Hispanic (33 and 38 percent, respectively), Asian (13 and 14 percent, respectively), American Indian/Alaska Native (17 and 20 percent, respectively), and of two or more races (9 and 12 percent, respectively).”).

175. See Yu-Tzu Wu et al., *Education and Wealth Inequalities in Healthy Ageing in Eight Harmonised Cohorts in the ATHLOS Consortium: A Population-Based Study*, 5 LANCET PUB. HEALTH e386, e386 (2020), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930077-3> [<https://perma.cc/7EX5-3J89>]; see generally Editorial, *Education: A Neglected Social Determinant of Health*, 5 LANCET PUB. HEALTH e361, e361 (2020), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930144-4> [<https://perma.cc/VJK6-YKQU>] (noting a strong association between healthy aging and higher education and wealth).

176. González et al., *supra* note 172; Thalia González, Alexis Etow & Cesar De La Vega, *Health Equity, School Discipline Reform, and Restorative Justice*, J.L. MED. & ETHICS (SPECIAL SUPPLEMENT) 47, 48 (2019), <https://doi.org/10.1177/1073110519857316> [<https://perma.cc/9Z79-PTN3>].

177. González et al., *supra* note 176, at 47–48.

178. Steve Liesman, *Half of U.S. Elementary and High School Students Will Study Virtually Only This Fall, Study Shows*, CNBC (Aug. 11, 2020, 9:03 AM), <https://www.cnbc.com/2020/08/11/half-of-us-elementary-and-high-school-students-will-study-virtually-only-this-fall-study-shows.html> [<https://perma.cc/GG3S-JERY>].

179. Michelle Fox, *Coronavirus Has Upended School Plans. It Will Also Worsen Racial and Economic Inequalities, Experts Warn*, CNBC (Aug. 12, 2020, 12:28 PM), <https://www.cnbc.com/2020/08/12/impact-of-covid-19-on-schools-will-worsen-racial-inequity-experts-say.html> [<https://perma.cc/U6Z5-BN2S>]; see also *Education: a Neglected Social Determinant of Health*, *supra* note 175, at e361.

180. SUMIT CHANG, AMY CHANG, LAUREN DAY, AMINA FAZULLAH, JACK LIU, LANE MCBRIDE, THISAL MUDALIGE & DANNY WEISS, COMMON SENSE & BOS. CONSULTING GRP., CLOSING THE K–12 DIGITAL DIVIDE IN THE AGE OF DISTANCE LEARNING 3, 5–6 (2020),

children—many of whom are children of color—the move to virtual learning kept them from accessing their education and caused them to fall even further behind their white, wealthier classmates.<sup>181</sup> These harms were particularly acute for children with disabilities, many of whom went without needed special education services.<sup>182</sup>

Attorneys can fight school suspensions and expulsions through disciplinary proceedings,<sup>183</sup> secure alternative educational programs for students excluded from school,<sup>184</sup> advocate for appropriate special education services and accommodations to help students with disabilities make academic progress,<sup>185</sup> and protect the rights of students who are homeless under federal law to access their education and have school stability.<sup>186</sup> Legal representation can help to ensure children have access to quality and safe education<sup>187</sup> and mitigate the related impacts on health and health inequity.

### C. “Social and Community Context” and Fundamental Legal Needs Implicating Health Justice

Healthy People 2030 specifically emphasizes the role of community connection in providing the social support necessary to live healthy and safe lives in a SDOH domain entitled “social and

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[https://www.commonsemmedia.org/sites/default/files/uploads/pdfs/common\\_sense\\_media\\_report\\_final\\_7\\_1\\_3pm\\_web.pdf](https://www.commonsemmedia.org/sites/default/files/uploads/pdfs/common_sense_media_report_final_7_1_3pm_web.pdf) [<https://perma.cc/5A25-85TW>].

181. *Id.* at 5–7.

182. See OFF. OF THE N.Y. STATE COMPTROLLER, DISRUPTION TO SPECIAL EDUCATION SERVICES: CLOSING THE GAP ON LEARNING LOSS FROM COVID-19, at 6 (Sept. 2021), <https://www.osc.state.ny.us/files/reports/pdf/special-education-report.pdf> [<https://perma.cc/53NM-CCTH>]; Cory Turner & Rebecca Klein, *After Months of Special Education Turmoil, Families Say Schools Owe Them*, NPR (June 16, 2021, 5:00 AM), <https://www.npr.org/2021/06/16/994587239/after-months-of-special-education-turmoil-families-say-schools-owe-them> [<https://perma.cc/3GR4-6WHM>].

183. Derek W. Black, *Reforming School Discipline*, 111 NW. L. REV. 1, 11 (2016); see also González et al., *supra* note 176, at 47–50.

184. See *King ex rel. Harvey-Barrow v. Beaufort Cnty. Bd. of Educ.*, 704 S.E.2d 259, 260–61 (N.C. 2010).

185. See Black, *supra* note 183, at 14–15; see generally Karen Bonuck & Leah Aileen Hill, *Special Education Disparities Are Social Determinants of Health: A Role for Medical-Legal Partnerships*, 14 PROGRESS IN CMTY. HEALTH P'SHIPS: RSCH., EDUC., & ACTION 251 (2020), <https://doi.org/10.1353/cpr.2020.0028> [<https://perma.cc/KV38-DS7C>] (highlighting inequities in special education services and their links to poverty and outlining the accomplishments of a medical-legal partnership focused on special education).

186. 42 U.S.C. § 11431.

187. See, e.g., WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, CASE STUDY: KEEP CHILDREN IN SCHOOLS 1–2 (2014), <https://www.justice.gov/lair/file/826536/download> [<https://perma.cc/UKH9-3WDY>].

community context.”<sup>188</sup> There are a range of Healthy People 2030 metrics for this SDOH, such as mental health status for family caregivers of family members with disabilities, rates of children with incarcerated parents, foster care enrollment for older children, bullying of transgender children, and mentorship between children and parents or adult figures.<sup>189</sup>

SDOH around social and community context include legal issues related to two areas of fundamental legal need identified by the ABA: safety and child custody.<sup>190</sup> The ABA defines legal issues related to safety as those that impact “a person’s ability to obtain legal remedies affording protection from the threat of serious bodily injury or harm, including proceedings to obtain or enforce protection orders because of alleged actual or threatened violence, and other proceedings to address threats to physical well-being.”<sup>191</sup> The role of safety is critical in the social and community context SDOH domain.<sup>192</sup>

The mitigation of safety challenges and risks and opportunities for protection when safety is threatened are critical to health. When an individual’s safety is compromised, the resulting harms can include severe health-harming injuries or death, other health and mental health impacts, and loss of income and related health implications. Domestic violence and immigration both involve legal issues related to safety that implicate social and community context and are known drivers of health and health inequity.

The ABA also identifies “child custody” as a fundamental human need necessitating counsel in proceedings in which:

- (i) the parental rights of a party are at risk of being terminated, whether in a private action or as a result of proceedings initiated or intervened in by the state for the purposes of child protective intervention, (ii) a parent’s right to residential custody of a child or the parent’s visitation rights are at risk of being terminated, severely limited, or subject to a supervision requirement, or (iii) a party seeks sole legal authority to make major decisions affecting the child.<sup>193</sup>

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188. *Social and Community Context*, HEALTHY PEOPLE 2030, <https://health.gov/healthy-people/objectives-and-data/browse-objectives/social-and-community-context> [https://perma.cc/TZ59-NL89].

189. *Id.*

190. *Id.*

191. AM. BAR ASS’N, *supra* note 92, § 2(B)(iii).

192. *See Social and Community Context*, *supra* note 188.

193. AM. BAR ASS’N, *supra* note 92, § 2(B)(v).



These types of cases implicate family stability and family preservation,<sup>194</sup> which are necessary for strong social and community context and health.

### 1. Domestic Violence

Survivors of domestic violence and their children are at extreme risk of physical injury and resulting health effects, as well as psychological trauma, depression, and anxiety.<sup>195</sup> There is also significant evidence that domestic violence affects the health and mental health of children. Prenatal domestic violence reduces average birth weight by 163 grams.<sup>196</sup> Children who live in homes where domestic violence occurs are also far more likely to suffer from a wide range of mental health disorders<sup>197</sup> and experience stress that can adversely affect cognitive functioning and brain development, resulting in behavioral changes, emotional distress, sleep disorders, separation anxiety, and delayed language development.<sup>198</sup>

Cases of domestic violence and their health effects fall disproportionately on low-income people and people of color.<sup>199</sup> Nationwide, Black women experience intimate partner violence at a rate 35% higher than that of white females.<sup>200</sup> Other groups of women of color—including Asian Americans, Latinas, and Native Americans—also experience significantly higher rates of intimate partner violence than white women.<sup>201</sup> Inequities are also linked to

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194. See *How Legal Services Help the Health Care System Address Social Needs*, *supra* note 93.

195. EMMA WILLIAMSON, *DOMESTIC VIOLENCE AND HEALTH: THE RESPONSE OF THE MEDICAL PROFESSION 107–16* (Bristol Univ. Press, 2000); see CAL. IPV & HEALTH POL'Y LEADERSHIP COHORT, *ADDRESSING INTIMATE PARTNER VIOLENCE AS A SOCIAL DETERMINANT OF HEALTH IN CLINICAL SETTINGS* (2018), [https://www.cpedv.org/sites/main/files/webform/addressing\\_ipv\\_as\\_an\\_sdoh\\_in\\_clinical\\_settings.pdf](https://www.cpedv.org/sites/main/files/webform/addressing_ipv_as_an_sdoh_in_clinical_settings.pdf) [<https://perma.cc/Y38P-UJGW>].

196. Anna Aizer, *Poverty, Violence, and Health: The Impact of Domestic Violence During Pregnancy on Newborn Health*, 46 J. HUM. RES. 518, 519 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4019993/pdf/nihms515445.pdf> [<https://perma.cc/8CKD-GNRT>].

197. See Joy D. Osofsky, *Commentary: Understanding the Impact of Domestic Violence on Children, Recognizing Strengths, and Promoting Resilience: Reflections on Harold and Sellers (2018)*, 59 J. CHILD PSYCHOL. & PSYCHIATRY 403, 403–04 (2018), <https://doi.org/10.1111/jcpp.12902> [<https://perma.cc/J3MW-FBV9>].

198. See Olivia Harrison, *Statistically Speaking: The Long-Term Effects of Domestic Violence on Children*, 41 CHILD.'S LEGAL RTS. J. 63, 63–64 (2021).

199. Aizer, *supra* note 196, at 522.

200. *Domestic Violence: Facts and Stats Collection*, WOMEN OF COLOR NETWORK 1, 2 (June 2006), [http://www.ctcadv.org/files/4013/8385/8238/WOC\\_domestic-violence1.pdf](http://www.ctcadv.org/files/4013/8385/8238/WOC_domestic-violence1.pdf) [<https://perma.cc/6YZS-RNFJ>].

201. *Id.* at 2–4, 6.

morbidity, as homicides of adult women associated with intimate partner violence are also more prevalent among women of color than they are among white women.<sup>202</sup> As a result of domestic violence, women of color are also more likely than white women to suffer physical health impacts such as severe injury, disordered eating patterns, unintended pregnancy, sexually-transmitted infection, and HIV infection,<sup>203</sup> as well as mental health impacts including depression, anxiety, and post-traumatic stress disorder.<sup>204</sup>

The COVID-19 pandemic has generated a dramatic spike in domestic disturbances and intimate partner violence.<sup>205</sup> In addition to straining relationships between family members, COVID-19 has also made domestic violence avoidance, prevention, and intervention far more difficult.<sup>206</sup> Due to financial strain from the economic recession, survivors of domestic violence may now lack the financial capacity to leave their abusive situations.<sup>207</sup> Further, there is evidence that social distancing and quarantine orders have prevented survivors from reporting abusers to domestic violence hotlines or the police.<sup>208</sup>

Attorneys can help survivors of domestic violence by obtaining, renewing, and enforcing protective orders, securing divorces and child custody orders to help parents or children legally and safely remove themselves from abusive situations, and by helping clients develop their own sources of financial stability in order to freely

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202. Emiko Petrosky, Janet M. Blair, Carter J. Betz, Katherine A. Fowler, Shane P.D. Jack & Bridget H. Lyons, *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence—United States, 2003-2014*, 66 *CTRS. FOR DISEASE CONTROL & PREVENTION* 741, 743–44 (2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6628a1.pdf> [<https://perma.cc/G5JG-T6LM>].

203. Jamila K. Stockman, Hitomi Hayashi & Jacquelyn C. Campbell, *Intimate Partner Violence and Its Health Impact on Disproportionately Affected Populations, Including Minorities and Impoverished Groups*, 24 *J. WOMEN'S HEALTH* 62, 63 (2015), <https://doi.org/10.1089/jwh.2014.4879> [<https://perma.cc/Z645-ZVYM>]; see *Domestic Violence: Facts and Stats Collection*, *supra* note 200, at 2–6.

204. Stockman et al., *supra* note 203, at 63.

205. Eve Valera, *When Lockdown Is Not Actually Safer: Intimate Partner Violence During COVID-19*, *HARV. HEALTH BLOG* (July 7, 2020), <https://www.health.harvard.edu/blog/when-lockdown-is-not-actually-safer-intimate-partner-violence-during-covid-19-2020070720529> [<https://perma.cc/6A62-HRES>].

206. Megan L. Evans, Margo Lindauer & Maureen E. Farrell, *Perspective: A Pandemic Within a Pandemic—Intimate Partner Violence During COVID-19*, 383 *NEW ENG. J. MED.* 2302, 2302 (Sept. 16, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2024046> [<https://perma.cc/L4YH-ZTQP>].

207. *Id.*

208. *Id.*

remove themselves from their abusers.<sup>209</sup> The provision of legal assistance is associated with an increased likelihood of these outcomes when clients pursue them.<sup>210</sup> Attorneys can also engage in advocacy to support their clients' sustenance through employment, public benefits, and consumer law cases that can help survivors become economically self-sufficient.<sup>211</sup>

There is substantial evidence that legal representation significantly reduces reoccurrences of domestic violence by helping people leave abusive situations and obtain child custody and child support.<sup>212</sup> There is even evidence that the mere accessibility of legal services may decrease the likelihood of domestic violence ever occurring.<sup>213</sup> Legal services organizations are statistically more likely to deter domestic violence than most other types of organizations that help survivors, including shelters, hot-lines, and counseling programs.<sup>214</sup>

## 2. Immigration

Immigration law issues arguably fall under the gambit of the ABA's category of "safety" because representation in this area can help people obtain legal remedies that offer protection from potential harm or violence. Many immigrants attempting to enter the United States are asylum seekers—those formally requesting entry because they fear violence, persecution, or other harm in their home countries.<sup>215</sup> As of October 2019, more than 476,000 asylum cases were pending with the Department of Homeland Security and the Executive Office of Immigration Review, accounting for 48% of all pending immigration cases.<sup>216</sup> According to that data,

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209. *How Legal Aid Helps Domestic Violence Survivors*, LEGAL SERVS. CORP., <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/how-legal-aid-helps-domestic-violence> [<https://perma.cc/Y6YT-LZUG>].

210. AM. U. JUST. IN GOV'T PROJECT, KEY STUDIES AND DATA ABOUT HOW LEGAL AID ASSISTS DOMESTIC VIOLENCE SURVIVORS 2 (2021), <https://www.american.edu/spa/jpo/toolkit/upload/domestic-violence-7-30-19.pdf> [<https://perma.cc/TK5W-S497>].

211. *See id.*

212. Abel, *supra* note 116, at 1–2.

213. Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMP. ECON. POL'Y 158, 164 (2003), <https://doi.org/10.1093/cep/byg002> [<https://perma.cc/HN2P-5PFZ>].

214. AM. U. JUST. IN GOV'T PROJECT, *supra* note 210, at 1, 15.

215. AM. IMMIGR. COUNCIL, ASYLUM IN THE UNITED STATES (2020), <https://www.americanimmigrationcouncil.org/research/asylum-united-states> [<https://perma.cc/TQ4L-EMR6>].

216. Andrew R. Arthur, *Statistics Reveal the Scope of the Asylum Backlog*, CTR. FOR IMMIGR. STUD. (Nov. 25, 2019), <https://cis.org/Arthur/Statistics-Reveal-Scope-Asylum-Backlog> [<https://perma.cc/M2J7-BJSV>].

nearly half of all immigration cases in the United States involve petitioners who believe that they will suffer significant bodily injury or harm if they are returned to their home countries.<sup>217</sup> Many immigrants also face deportation and/or detention, both situations which not only constitute threats to their own safety but harm the health and mental health of their families.<sup>218</sup>

Immigration status has been found to exert direct, statistically-significant effects on access to health care and, consequently, health.<sup>219</sup> Studies have found that the further away from citizenship individuals are, the less likely they are to have access to health care or to be insured.<sup>220</sup> Policies that affect immigration status impact the mental health of undocumented immigrants and have been tied to depression, anxiety, and post-traumatic stress disorder.<sup>221</sup> Studies have shown that restrictive immigration policies that cause a “climate of fear and uncertainty” are associated with increased rates of premature deliveries of newborns, malnutrition, and suicide.<sup>222</sup> Immigrants disproportionately work in jobs that involve greater risk of injury and fatality, such as jobs in construction and agriculture.<sup>223</sup> Children in immigrant families face severely constrained access to health care and are less likely to

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217. *See id.*

218. Samantha Artiga & Barbara Lyons, *Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being*, KFF (Sept. 18, 2020), <https://www.kff.org/report-section/family-consequences-of-detention-deportation-effects-on-finances-health-and-well-being-issue-brief> [<https://perma.cc/NTL8-LVPH>].

219. *See, e.g.*, Julia C. Prentice, Anne R. Pebley & Narayan Sastry, *Immigration Status and Health Insurance Coverage: Who Gains? Who Loses?*, 95 AM. J. PUB. HEALTH 109, 111–15 (2005), <https://doi.org/10.2105/AJPH.2003.028514> [<https://perma.cc/FE2E-UGXJ>]; *see generally* NAT'L CTR. FOR HEALTH STATS., VITAL AND HEALTH STATISTICS: THE ASSESSMENT OF IMMIGRATION STATUS IN HEALTH RESEARCH (Sept. 1999) (recommending methods to better meet the health and welfare needs of immigrant populations).

220. Prentice et al., *supra* note 219, at 113.

221. Omar Martinez, Elwin Wu, Theo Sandfort, Brian Dodge, Alex Carballo-Dieguez, Rogeiro Pinto, Scott D. Rhodes, Eva Moya & Silvia Chavez-Baray, *Evaluating the Impact of Immigration Policies on Health Status Among Undocumented Immigrants: A Systematic Review*, 17 J. IMMIGR. & MINORITY HEALTH 1, 9 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4074451/pdf/nihms-552369.pdf> [<https://perma.cc/A3EF-F76E>].

222. Julie M. Linton, Nusheen Ameenuddin & Olanrewaju Falusi, *Pediatricians Awakened: Addressing Family Immigration Status as a Critical and Intersectional Social Determinant of Health*, AM. J. BIOETHICS, Apr. 2019, at 69, 70–71, <https://doi.org/10.1080/15265161.2019.1577643> [<https://perma.cc/JX3D-R3ZL>].

223. Pia M. Orrenius & Madeline Zavodny, *Do Immigrants Work in Riskier Jobs?*, 46 DEMOGRAPHY 535, 536 (2009), <https://doi.org/10.1353/dem.0.0064> [<https://perma.cc/G7Q8-GYBF>].

receive medical care for common childhood ailments, including basic physical and dental issues.<sup>224</sup>

The immigration system is steeped in structural racism.<sup>225</sup> Restrictive immigration policies exact harsher consequences on communities of color;<sup>226</sup> for example, “even though about 57% of immigrants are Hispanic, consistently well over 90% of those deported are Latino.”<sup>227</sup> Similarly, lack of access to health care connected to immigration status disproportionately affects Latinx communities.<sup>228</sup>

The COVID-19 pandemic has impacted immigrants in a number of ways. The United States has implemented a variety of increased restrictions on immigration during the pandemic.<sup>229</sup> The entry of many types of legal immigrants has been suspended, and removals and expulsions from the country have increased significantly.<sup>230</sup> Immigrant communities in the United States have higher COVID-19 infection and mortality rates.<sup>231</sup> Immigrants are also more likely to live in poverty and experience employment instability and therefore may rely on financial assistance programs and community resources that have been negatively impacted by the pandemic.<sup>232</sup>

Attorneys can represent individuals in a variety of different types of immigration cases and at different stages of proceedings. Generally, legal representation is associated with improved

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224. Julie Gelatt, *Immigration Status and the Healthcare Access and Health of Children of Immigrants*, 97 SOC. SCI. Q. 540, 545–52 (2016), <https://doi.org/10.1111/ssqu.12261> [<https://perma.cc/C9EC-XKWU>].

225. Charles Kamasaki, *US Immigration Policy: A Classic Unappreciated Example of Structural Racism*, BROOKINGS (Mar. 26, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/03/26/us-immigration-policy-a-classic-unappreciated-example-of-structural-racism> [<https://perma.cc/2M26-47F5>].

226. *Id.*

227. *Id.*

228. Gelatt, *supra* note 224, at 542; *see also* Prentice et al., *supra* note 219, at 109, 111.

229. JORGE LOWEREE, AARON REICHLIN-MELNICK & WALTER EWING, AM. IMMIGR. COUNCIL, *THE IMPACT OF COVID-19 ON NONCITIZENS AND ACROSS THE U.S. IMMIGRATION SYSTEM* (2020), <https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system> [<https://perma.cc/5DTL-T6AX>].

230. *Id.*; JESSICA BOLTER, EMMA ISRAEL & SARAH PIERCE, MIGRATION POL’Y. INST., *FOUR YEARS OF PROFOUND CHANGE: IMMIGRATION POLICY DURING THE TRUMP PRESIDENCY 16* (2022), <https://www.migrationpolicy.org/sites/default/files/publications/mpi-trump-at-4-report-final.pdf> [<https://perma.cc/B8N8-WVGT>].

231. Eva Clark, Karla Fredricks, Laila Woc-Colburn, Elena Bottazzi & Jill Weatherhead, *Disproportionate Impact of the COVID-19 Pandemic on Immigrant Communities in the United States*, PLOS NEGLECTED TROPICAL DISEASES, July 13, 2020, at 1, 1–4, <https://doi.org/10.1371/journal.pntd.0008484> [<https://perma.cc/XKP3-MEB9>].

232. *Id.*

outcomes at every stage of a potential immigration proceeding.<sup>233</sup> Represented immigrants are more likely to seek relief, more likely to receive relief, less likely to be detained or removed, and more likely to have their cases terminated than unrepresented immigrants.<sup>234</sup> A comprehensive study of statistical trends in asylum proceedings found that asylum-seekers with legal representation were granted asylum 29.3% more often than those without representation.<sup>235</sup> Respondents with counsel in appellate proceedings are also much more successful if they are represented.<sup>236</sup>

### 3. Family Stability and Preservation

Legal issues related to custody can involve private actions or intervention by state child welfare systems. This section will focus primarily on state action through the child welfare system, which can result in the removal of children from their parents and placement into foster care, an area around which there have been efforts to promote states' provision of the right to counsel for parents.<sup>237</sup> Poverty is a leading reason that children end up in foster care, with studies showing that families with "incomes below the poverty line are 22 times more likely to be involved in the child protective system than families with incomes slightly above it."<sup>238</sup> Research also shows that the majority of children in foster care could remain safely at home if low-income families received sufficient societal

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233. Poppe & Rachlinski, *supra* note 117, at 914–15.

234. *Id.* at 911–12, 914–15; Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 49–54 (2015).

235. See Jaya Ramji-Nogales, Andrew I. Schoenholtz & Phillip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 341 (2007).

236. EXEC. OFF. FOR IMMIGR. REV., A TEN-YEAR REVIEW OF THE BIA PRO BONO PROJECT: 2002–2011, at 12 (2014), [http://www.justice.gov/sites/default/files/eoir/legacy/2014/02/27/BIA\\_PBP\\_Eval\\_2012-2-20-14-FINAL.pdf](http://www.justice.gov/sites/default/files/eoir/legacy/2014/02/27/BIA_PBP_Eval_2012-2-20-14-FINAL.pdf) [https://perma.cc/V2YN-YRF8]; BD. OF IMMIGR. APPEALS, THE BIA PRO BONO PROJECT IS SUCCESSFUL 12 (2004), <https://www.justice.gov/sites/default/files/eoir/legacy/2005/02/01/BIAProBonoProjectEvaluation.pdf> [https://perma.cc/5WYS-AC48].

237. VIVEK SANKARAN & JOHN POLLOCK, A NATIONAL SURVEY ON A PARENT'S RIGHT TO COUNSEL IN STATE-INITIATED DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES 1 (2016), [https://civilrighttocounsel.org/uploaded\\_files/219/Table\\_of\\_parents\\_RTC\\_in\\_dependency\\_and\\_TPR\\_cases\\_FINAL.pdf](https://civilrighttocounsel.org/uploaded_files/219/Table_of_parents_RTC_in_dependency_and_TPR_cases_FINAL.pdf) [https://perma.cc/H28R-SD55]; AM. BAR ASS'N CTR. ON CHILD. & THE L., LEGAL REPRESENTATION IN CHILD WELFARE PROCEEDINGS 1–2 (2018), [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/cwrepinfographic.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/cwrepinfographic.pdf) [https://perma.cc/W9MX-EETN].

238. Martin Guggenheim, *The Role of Counsel in Representing Parents*, AM. BAR ASS'N (Feb. 1, 2016), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-35/february-2016/the-role-of-counsel-in-representing-parents](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/february-2016/the-role-of-counsel-in-representing-parents) [https://perma.cc/VK4X-KR4F].

support to be able to raise their children at home.<sup>239</sup> States are required to make reasonable and active efforts to prevent the removal of children from their families through such supports and services,<sup>240</sup> but states often fail to meet this mandate.<sup>241</sup>

Removal of children from their families by the child welfare system disrupts a family's social and community context and causes numerous health harms.<sup>242</sup> Children in the child welfare system experience separation and attachment disorders, trauma and grief from the act of removal and separation, and separate trauma and abuse within their foster placements, which is sometimes worse than any neglect they may have experienced before.<sup>243</sup> Children in foster care have worse health and mental health outcomes in the long-term.<sup>244</sup> Such removal harms parents as well; "evidence of the harms caused by custody loss is strong—including increased maternal drug use, re-traumatization, [and] hopelessness."<sup>245</sup>

Women—and especially Black women—are harmed most profoundly by legal needs related to family stability and preservation, including those that involve private disputes and those that involve state action related to custody. Women are far more likely to assume primary custody of minor children, "and with fewer resources to shoulder the costs and responsibilities."<sup>246</sup> As a result, their rights are disproportionately affected by child custody

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239. *Id.*

240. AM. BAR ASS'N. CTR. ON CHILD. & THE L., *Reasonable and Active Efforts: A Tool to Prevent Removal and Reunify Families*, 1, 1–2 (2021), [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/reasonable-efforts-tipsheet.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/reasonable-efforts-tipsheet.pdf) [<https://perma.cc/5R6J-9KEP>].

241. Raymond C. O'Brien, *Reasonable Efforts and Parent-Child Reunification*, 1030 MICH. ST. L. REV. 1029, 1059–60 (2013).

242. Shanta Trivedi, *The Harm of Child Removal*, 524 N.Y.U. REV. L. & SOC. CHANGE 523, 527–28, 531–32, 541–42 (2019).

243. *Id.*

244. Kym R. Ahrens, Michelle M. Garrison & Mark E. Courtney, *Health Outcomes in Young Adults from Foster Care and Economically Diverse Backgrounds*, 134 PEDIATRICS 1067, 1067 (2014), <https://doi.org/10.1542/peds.2014-1150> [<https://perma.cc/2N2G-2R86>]; Trivedi, *supra* note 242, at 547–48.

245. Sara E. Wakeman, Ayana Jordan & Leo Beletsky, *When Reimagining Systems of Safety, Take a Closer Look at the Child Welfare System*, HEALTH AFFS. (Oct. 7, 2020) <https://www.healthaffairs.org/doi/10.1377/hblog20201002.72121/full> [<https://perma.cc/6FKJ-KXJG>].

246. Katherine Sabbeth & Jessica Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. 1, 17 (forthcoming 2022).

battles, child welfare actions, and parental rights termination actions.<sup>247</sup>

The child welfare system disproportionately harms Black families. It has been described as the “family regulation system” designed for social control and marginalization of low-income and Black families.<sup>248</sup> Rather than addressing root causes of poverty, it has been characterized by legal scholar Dorothy Roberts as a tool to surveille and forcibly remove children whose families disproportionately are low-income and Black from their homes.<sup>249</sup> Black women in particular are highly overrepresented in child welfare proceedings, and they are underrepresented by legal counsel.<sup>250</sup>

During the COVID-19 pandemic, financial strain, school closures, and lack of childcare have generated increased stress in many homes, and the requirements of virtual employment and virtual learning have created tensions and strained resources.<sup>251</sup> “Research shows that large-scale economic crises can lead to financial loss, stress, and general hardship, which are risk factors for child maltreatment.”<sup>252</sup> Mandatory reporters such as teachers, child care providers, and health care professionals had much fewer in-person interactions with children and families<sup>253</sup> and fewer opportunities to identify and report potential abuse.<sup>254</sup> With the return to in-person schooling and out-of-home childcare, reports to child protective services are likely to increase, and there is risk that the financial instability experienced by many families could be conflated with neglect by child welfare systems.<sup>255</sup>

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247. *Id.* at 10, 17, 55.

248. Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, IMPRINT (June 16, 2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> [<https://perma.cc/S3CJ-N6D9>].

249. *See id.*

250. Sabbeth & Steinberg, *supra* note 246, at 16.

251. *See generally* Valera, *supra* note 205 (describing how the COVID-19 pandemic’s effects, including financial difficulties, social distancing, and isolation, are linked to increased rates of intimate partner violence and relational tension).

252. DANA WEINER, LEANNE HEATON, MIKE STIEHL, BRIAN CHOR, KILJOONG KIM, KURT HEISLER, RICHARD FOLTZ & AMBER FARRELL, COVID-19 AND CHILD WELFARE: USING DATA TO UNDERSTAND TRENDS IN MALTREATMENT AND RESPONSE 1 (Chapin Hall 2020) <https://www.chapinhall.org/wp-content/uploads/Covid-and-Child-Welfare-brief.pdf> [<https://perma.cc/28FE-JD8L>].

253. Evans et al., *supra* note 206, at 2302.

254. *Id.*

255. In fact, “[i]nadequacy of income, more than any other factor, constitutes the reason that children are removed.” Trivedi, *supra* note 242, at 536 (quoting DUNCAN LINDSEY, *THE WELFARE OF CHILDREN* 175 (2d ed. 2004)).



The Legal Services Corporation reports that at least 17% of all low-income households experience problems related to family law.<sup>256</sup> Further, 27% of households with parents or guardians of minors have experienced a civil legal problem related to children or child custody in the past year.<sup>257</sup> Those problems include issues stemming from investigations by Child Protective Services and enforcement of custody and visitation arrangements.<sup>258</sup>

Legal representation in child welfare proceedings and custody proceedings between private parties has a profound impact. In child welfare proceedings:

[P]arents' attorneys prevent the state from overreaching to unjustly remove children from their homes. In situations where temporary removal may be warranted, advocacy by attorneys can expedite the safe reunification of the family by ensuring the prompt delivery of appropriate services to the family . . . If the parent simply cannot care for the child properly, a parent's lawyer can serve the client by arranging for another temporary or permanent legal placement, such as a guardianship or an adoption, that will advance the entire family's interests."<sup>259</sup>

Legal advocacy—both on behalf of parents and on behalf of children—to address issues that implicate financial stability, such as those related to shelter and sustenance, can help prevent the intervention of the child welfare system and a loss of custody through that system because the system often conflates poverty with neglect.<sup>260</sup> Legislation that has been introduced in the Senate would guarantee legal representation of children and parents in child welfare proceedings, recognizing the important role of attorneys in protecting critical rights of those parties.<sup>261</sup>

Legal representation can also have an important impact in custody disputes between parents or other caregivers that do not involve state intervention. In custody battles in which only one parent was represented by counsel, studies show that the represented parent was far more likely to receive sole custody of the child if

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256. CREEKMORE et al., *supra* note 26, at 24.

257. *Id.* at 23.

258. *Id.*

259. FRANK E. VANDERVORT & VIVEK S. SANKARAN, PROTOCOL FOR ATTORNEYS REPRESENTING PARENTS IN CHILD PROTECTIVE PROCEEDINGS 1–3 (2008), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1059&context=other> [<https://perma.cc/DY45-7S9H>].

260. Trivedi, *supra* note 242, at 536.

261. *See* CAPTA Reauthorization Act of 2021, S. 1927, 117th Cong.

they pursued it.<sup>262</sup> Other studies have generated similar findings regarding custody issues, including that joint custody agreements and mediation are more likely when one or both parents are represented.<sup>263</sup>

D. *“Health Care Access and Quality” and Fundamental Legal Needs Implicating Health Justice*

Healthy People 2030 centers “health care access and quality” as a domain of SDOH critical to a healthy, high quality life.<sup>264</sup> Access to health care is affected by one’s ability to obtain insurance coverage and access providers.<sup>265</sup> There are fifty metrics related to health care access tracked by Healthy People 2030.<sup>266</sup> They include, in part, the number of insured Americans, rates of preventative health care visits and screenings, substance abuse treatment, availability of emergency and regular medical care, communication and understanding between patient and provider, access to medical records, prenatal and family planning services, recovery from traumatic brain injuries, and early intervention for infants with sensory issues.<sup>267</sup>

The ABA similarly identified “health” as a fundamental human need, implicating legal issues related to “access to health care for treatment of significant health problems, whether the health care at issue would be financed by government programs (e.g., Medicare, Medicaid, [Veterans Affairs benefits], etc.), financed through private insurance, provided as an employee benefit, or otherwise.”<sup>268</sup> Beyond access to health insurance and necessary

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262. THE WOMEN’S L. CTR. OF MD., INC., FAMILIES IN TRANSITION: A FOLLOW-UP STUDY EXPLORING FAMILY LAW ISSUES IN MARYLAND 46–48 (2006), <http://www.wlcmd.org/wp-content/uploads/2013/06/Families-in-Transition.pdf> [<https://perma.cc/4DD8-N3G7>].

263. ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY 108 (1992); Jill W. Ellis, *Plans, Protections, and Professional Intervention: Innovations in Divorce Custody Reform and the Role of Legal Professionals*, 24 U. MICH. J.L. REFORM 65, 124–25 (1990). *But see* Bruce D. Sales, Connie J. Beck & Richard K. Haan, *Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?*, 37 ST. LOUIS U. L.J. 553, 573–74 (1993) (finding that represented divorce litigants were not more likely to change their opinions and compromise regarding child custody, child visitation, and the division of personal property).

264. *Health Care Access and Quality*, HEALTHY PEOPLE 2030, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/health-care-access-and-quality> [<https://perma.cc/TT77-6VZQ>].

265. *Id.*

266. *Id.*

267. *Id.*

268. MODEL ACCESS ACT § 2(B)(iv) (AM. BAR ASS’N 2010).

treatment, this category also should include legal issues related to estate planning, end-of-life care, power of attorney, and advance directives, as well as guardianship, conservatorship, and involuntary institutionalization proceedings that affect a person's control over health and mental health care.

Access to health care is perhaps the most obvious of all social determinants of health; a wide body of research connects health care and health outcomes.<sup>269</sup> Access to a regular source of health care promotes health outcomes because it facilitates continuity of care and improves utilization of appropriate preventative services and treatment.<sup>270</sup>

It is well-established that health insurance coverage drastically improves access to health care.<sup>271</sup> Medicaid coverage, for example, has long been associated with increased access to health care, improved self-reported health status, higher rates of preventive health screens, lower likelihood of delaying care, decreased hospital and emergency department utilization, and decreased mortality rates among children, infants, and adults.<sup>272</sup> In the wake of the Affordable Care Act's expansion of Medicaid, disparities between expansion states and nonexpansion states have only underscored the impact of coverage on better health outcomes.<sup>273</sup>

Inequities abound in the United States regarding access to health care and health care utilization. People of color experience limited access to quality health care by way of express interpersonal discrimination, economic disenfranchisement, institutional barriers, and structural racism.<sup>274</sup> Racial disparities exist in access to health insurance coverage, as Black and Latinx people are significantly more likely to be uninsured than their white

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269. INST. OF MED., CARE WITHOUT COVERAGE: TOO LITTLE, TOO LATE 46 (2002).

270. *Id.* Access to healthcare directly improves health outcomes because it facilitates disease screening and early detection, effective management of chronic illness, and the treatment of acute conditions that require emergency care. *Id.*

271. *See, e.g.*, RACHEL GARFIELD, KENDAL ORGERA & ANTHONY DAMICO, THE UNINSURED AND THE ACA: A PRIMER 13–14 (KFF 2019), <https://files.kff.org/attachment/The-Uninsured-and-the-ACA-A-Primer-Key-Facts-about-Health-Insurance-and-the-Uninsured-amidst-Changes-to-the-Affordable-Care-Act> [<https://perma.cc/8GC7-WN45>].

272. MANATT HEALTH, MEDICAID'S IMPACT ON HEALTH CARE ACCESS, OUTCOMES, AND STATE ECONOMIES 1 (Robert Wood Johnson Found. 2019), <https://www.rwjf.org/en/library/research/2019/02/medicaid-s-impact-on-health-care-access-outcomes-and-state-economies.html> [<https://perma.cc/YMZ5-CNDU>].

273. MADELINE GUTH, RACHEL GARFIELD & ROBIN RUDOWITZ, THE EFFECTS OF MEDICAID EXPANSION UNDER THE ACA: UPDATED FINDINGS FROM A LITERATURE REVIEW 2–3, 6, 11 (KFF 2020).

274. *See* Benfer et al., *supra* note 18, at 130, 132–34, 141.

counterparts.<sup>275</sup> There are also significant disparities in service utilization, even among insured people.<sup>276</sup> For example, studies have shown that Black Medicaid beneficiaries enrolled in managed care are significantly less likely to use or have access to inpatient services than white beneficiaries enrolled in managed care.<sup>277</sup> There is also evidence of disparities in regards to involuntary treatment; in New York, for example, research shows that Black individuals are more likely than white individuals to be involuntarily administered outpatient psychiatric care.<sup>278</sup>

There are several devices that facilitate planning related to health care and end-of-life care, such as estate planning, power of attorney, and advance care planning.<sup>279</sup> For example, end-of-life care for patients who are unable to make decisions for themselves can be executed according to an advance care directive.<sup>280</sup> These directives are legally binding and allow the patient to express their wishes for their end-of-life care, should they become incapacitated or otherwise unable to make their own decisions.<sup>281</sup> The existence and execution of these directives is significantly associated with end-of-life quality along a few important vectors, “including dying at home rather than in a hospital and receiving hospice care before death.”<sup>282</sup>

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275. Samantha Artiga, Latoya Hill, Kendal Orgera & Anthony Damico, *Health Coverage by Race and Ethnicity, 2010-2019*, KFF (July 16, 2021), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity> [https://perma.cc/9B46-WHHZ]. Between 2010 and 2016, the passage of the Affordable Care Act (“ACA”) decreased the uninsured rate of Black Americans from 19.9% to 10.7%, and Latinx Americans uninsured rate fell from 32.6% to 19.1%, compared to white people whose uninsured rate fell from 13.1% to 7.1%. These disparities increased after 2016 due to the Trump administration’s restrictions on access to ACA and continue to persist. *Id.*

276. Ming Tai-Seale, Deborah Freund & Anthony LoSasso, *Racial Disparities in Service Use among Medicaid Beneficiaries after Mandatory Enrollment in Managed Care: A Difference-in-Differences Approach*, 38 INQUIRY 49, 56–57 (2001), [https://doi.org/10.5034/inquiryjrnl\\_38.1.49](https://doi.org/10.5034/inquiryjrnl_38.1.49) [https://perma.cc/QXG5-TGKJ].

277. *Id.* at 55–56.

278. Jeffrey Swanson, Marvin Swartz, Richard A. Van Dorn, John Monahan, Thomas G. McGuire, Henry J. Steadman & Pamela Clark Robbins, *Racial Disparities in Involuntary Outpatient Commitment: Are They Real?*, 28 HEALTH AFFS. 816 (2009), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.28.3.816> [https://perma.cc/YK6E-QT8Q].

279. Catheryn S. Koss & Tamara A. Baker, *Where There’s a Will: The Link Between Estate Planning and Disparities in Advance Care Planning by White and Black Older Adults*, 40 RSCH. ON AGING 281, 286–87 (2018), <https://doi.org/10.1177/0164027517697116> [https://perma.cc/S53K-EJTF].

280. *Id.* at 282–83.

281. *Id.* at 283.

282. *Id.* at 282.

There are inequities in the use of advance directives and other devices that can help determine end-of-life care.<sup>283</sup> Studies have found that white patients have advance directives 44% of the time, while Black patients have them only 24% of the time, and Hispanic patients have them only 29% of the time.<sup>284</sup> While these disparities are attributable to other factors statistically associated with race, such as internet access,<sup>285</sup> researchers have found that being Black is an independent predictor for advance directive possession, regardless of a patient's other attributes,<sup>286</sup> which can impact end-of-life care.

During the COVID-19 pandemic, racial disparities in advance directives have become more significant and more impactful.<sup>287</sup> Black Americans have been dying of COVID-19 at disproportionately high rates, and their decreased likelihood of advance directive possession has had a significant impact on the ends of their lives.<sup>288</sup> These issues have prompted calls from some scholars and commentators for physicians to “ensure parity in conversations about end-of-life care and honoring patients’ wishes,” even during the complex and difficult circumstances generated by the pandemic.<sup>289</sup>

Racial discrimination in healthcare is gaining more attention, with growing evidence that providers exhibit racial bias against patients of color that affect their treatment decisions and their opinions of their patients.<sup>290</sup> For example, there is evidence that African Americans seeking testing or treatment for COVID-19 have been turned away by health care providers more often than white people, even when the Black patient and the white patient report similar symptoms and risk factors.<sup>291</sup> There have also been

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283. See generally Ivy A. Huang, John M. Neuhaus & Winston Chiong, *Racial and Ethnic Differences in Advance Directive Possession: Role of Demographic Factors, Religious Affiliation, and Personal Health Values in a National Survey of Older Adults*, 19 J. PALLIATIVE MED. 149 (2016), <https://doi.org/10.1089/jpm.2015.0326> [<https://perma.cc/4AHZ-9LMJ>] (finding that Black and Hispanic older Americans are less likely than white older Americans to have advance directives).

284. *Id.* at 152.

285. *Id.* at 150, 152.

286. Koss & Baker, *supra* note 279, at 295.

287. Stephen P. Wood, *COVID-19 Underscores Racial Disparity in Advance Directives*, BILL OF HEALTH (June 15, 2020), <https://blog.petrieflom.law.harvard.edu/2020/06/15/covid19-racial-disparities-advance-directives> [<https://perma.cc/PSW3-FG8D>].

288. *Id.*

289. *Id.*

290. See Benfer et al., *supra* note 18, at 142.

291. *Id.* at 143–44.

numerous reports of Black individuals being turned away from free testing sites despite meeting the explicit criteria for testing eligibility.<sup>292</sup>

Taken together, the issues in this category constitute the single greatest civil legal need facing Americans; the Legal Services Corporation reports that 41% of all households experienced a civil legal need related to health and health care in the past year and that another 9% experienced civil legal problems related to wills and estates.<sup>293</sup>

Under the purview of health care, there are a “range of claims, remedies sought, and roles for the attorney.”<sup>294</sup> For example, attorneys can help people facilitate health care and end-of-life planning, such as helping people draft and execute wills, medical directives, and other legal instruments important for such planning.<sup>295</sup> Attorneys can also help people eligible for Medicaid to appeal denials and terminations of coverage, given that individuals are entitled to a hearing to appeal any decision that impacts eligibility to be enrolled in Medicaid or impacts receipt of specific services covered by Medicaid and can be represented by legal counsel in those proceedings.<sup>296</sup> While the appeals process “is multi-layered and can be complex to navigate,” relatively few individuals are represented by counsel throughout this process.<sup>297</sup> In contrast, state agencies that are already familiar with the appeals process are typically represented by state attorneys or private law firms.<sup>298</sup> This indicates an inherent power imbalance in the process, making attorney assistance particularly helpful.

Legal representation can also help people access health care benefits under their health insurance. For example, attorneys can help bring claims that arise over whether a person’s insurance covers a

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292. *Id.* at 144.

293. CREEKMORE et al., *supra* note 26, at 23–24.

294. Kia C. Franklin, *Advocacy in Health Proceedings in New York State*, 25 *TOURO L. REV.* 437, 443 (2009).

295. Mallory Falk, *As Coronavirus Surges, Legal Experts Urge Texans To Do Estate Planning*, *KERA* (Nov. 24, 2020, 7:00 AM), <https://www.keranews.org/news/2020-11-24/as-coronavirus-surges-legal-experts-urge-texans-to-do-estate-planning> [<https://perma.cc/BV9S-QEJB>]; TEX. RIOGRANDE LEGAL AID, *Covid-19 Surge Is Grim Reminder of Need for Wills, Medical Directives, Powers of Attorney for Low-Income Texans* (Nov. 10, 2020), <https://www.trla.org/press-releases-1/covid-19-surge-is-grim-reminder-of-the-need-for-wills-medical-directives-and-powers-of-attorney-for-low-income-texans> [<https://perma.cc/A9J5-3J4F>].

296. MARYBETH MUSUMECI, KAISER COMM’N ON MEDICAID & THE UNINSURED, *A GUIDE TO THE MEDICAID APPEALS PROCESS 1–2* (KFF 2012).

297. *Id.* at 25.

298. *Id.*

particular procedure or treatment.<sup>299</sup> Representation for these types of claims for low-income individuals is crucial because they often lack access to other health care options and often cannot afford to pay for their own counsel.<sup>300</sup> Therefore, successfully resolving these legal disputes may be the only way to guarantee that these individuals ultimately gain access to necessary health care resources and treatments.<sup>301</sup> Attorneys can also assist clients with accessing coverage under Emergency Medicaid, a mechanism that reimburses states that provide emergency medical treatment to uninsured noncitizens who are ineligible for Medicaid, as a vehicle for access to health care.<sup>302</sup>

Moreover, attorneys can assist people in bringing claims of discrimination in health care.<sup>303</sup> For example, the National Health Law Program assists clients with claims of discrimination within the Medicaid program, racial classifications in data collection, and insurance drug pricing practices discouraging people with HIV/AIDS from seeking insurance.<sup>304</sup> Attorneys can also enforce a range of rights related to institutionalization and guardianship, such as prevention of unnecessary guardianship, hospitalization, and institutionalization,<sup>305</sup> ensuring informed consent for treatment, protection from abuse, neglect, and discrimination in hospitalization and institutionalization and other forms of treatment, and obtaining access to necessary medical and mental health treatment.<sup>306</sup>

### III. LAWYERING FOR THE INDIVIDUAL AND THE COLLECTIVE THROUGH A CLIENTS-TO-POLICY HEALTH JUSTICE APPROACH

Lawyers must play a role in advancing health justice. But how can lawyers representing clients who face fundamental health-harming legal needs maximize their impact? Lawyers must use a

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299. Franklin, *supra* note 294, at 444.

300. *Id.* at 447–48.

301. *See id.*

302. Benfer et al., *supra* note 24, at 67.

303. *See Pervasive Inequality in the Health Care System Sustains Discrimination and Poor Health Outcomes*, NAT'L HEALTH L. PROGRAM, <https://healthlaw.org/our-work/policy/civil-rights-and-health-equity> [<https://perma.cc/G5N8-3HV9>].

304. *Id.*

305. SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *EVALUATION OF THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS (PAIMI) PROGRAM, PHASE III: EVALUATION REPORT 10–11* (2011).

306. *Id.* at 6, 14, 22–23.

multitiered approach to address both individual legal needs that affect health and the structures that drive health inequity.

A range of critiques have been directed at legal services representation of low-income individuals, including the limited impact that attorneys representing individuals can have in attacking the systemic roots of injustice. Despite these arguments, the deployment of lawyers to enforce extant laws that implicate health is necessary to achieve health for individuals from marginalized communities—but it is also an insufficient approach. Health justice requires the mobilization of lawyers both to advocate on behalf of individuals to address health-harming legal needs *and* to pursue structural change through reform of laws, policies, and systems that impact health equity more collectively. Drawing on the medical-legal partnership model’s “patients-to-policy” approach and the “political lawyering” approach advocated by legal scholar and American Civil Liberties Union President Deborah Archer,<sup>307</sup> I propose that lawyers mobilize for the individual and the collective through a clients-to-policy approach to advance health justice.

#### A. *Limitations of an Individual Legal Representation Model of Lawyering for Health Justice*

There are numerous critiques of direct legal services models that reveal the limitations of a model of lawyering for health justice that emphasizes only representation of individuals from marginalized communities to enforce extant laws that implicate health, such as those discussed above. Even with broad mobilization of legal services attorneys, pro bono attorneys, and law schools, like that for which Attorney General Garland called, there is no question that there are insufficient numbers of attorneys to meet the need. Low-income individuals are only able to obtain a lawyer’s assistance for less than one-fifth of their legal problems.<sup>308</sup> One Washington, D.C., study found that as many as 77% of family court plaintiffs, 97% of tenants in housing court, and 98% of petitioners and respondents in civil domestic violence cases lack representation.<sup>309</sup> The Justice Index 2020 report advocated for ten legal aid lawyers

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307. See generally Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399 (2019) (describing a practice of political lawyering through which lawyers can “tackle both new and chronic issues of injustice through a broad array of advocacy strategies”).

308. Rebecca Sharpless, *More than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347, 352 (2012).

309. *Id.* at 352–53.



per 10,000 people below 200% of the poverty line,<sup>310</sup> but twenty-seven states and Puerto Rico had less than one legal aid attorney, and only six states and Washington, D.C., had more than two legal aid attorneys per 10,000 people below 200% of the poverty line.<sup>311</sup> Funding for legal services attorneys is immensely insufficient for the need, and pro bono services from private attorneys are also inadequate to meet the high demand.<sup>312</sup>

Pathways to increase access to justice are outside of the scope of this Article, which is focused on the role lawyers can play in health justice. But there is no question that to achieve health justice, access to justice initiatives, such as the growing body of state and local legislation establishing a right to counsel in eviction and other types of civil cases,<sup>313</sup> must be vastly expanded to fund legal representation for low-income litigants in areas of fundamental human need that implicate health. Regardless of the success of such efforts, the need is so large and the systems undergirding these fundamental areas of human need are so structurally deficient that health justice will require efforts to reduce the necessity for lawyers in the first instance by advancing structural change.

Beyond the lack of capacity of the current legal services workforce, direct legal services lawyering has been criticized for working within and upholding unjust systems. William Quigley has argued:

Plenty of lawyers protect and guide people and institutions engaged in the injustices of our social, economic and political systems, which are steeped in racism, militarism and materialism. . . . If we are going to transform our world, we need lawyers willing to work with others to dismantle and radically restructure our current legally protected systems. . . . Lawyers can be revolutionaries. . . . Revolutionaries are called not just to test the limits of the current legal system or to reform the current law, but also to join in the destruction of unjust structures

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310. *Attorney Access*, NAT'L CTR. FOR ACCESS TO JUST. (2020), <https://ncaj.org/state-rankings/2020/attorney-access> [<https://perma.cc/54NG-A7Y3>].

311. *Id.*

312. *See LSC and COVID-19*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/lsc-and-covid-19> [<https://perma.cc/G89B-ZAUW>]; *see also* Deborah L. Rhode, *Whatever Happened to Access to Justice*, 42 LOY. L.A. L. REV. 869, 907–11 (2009); Cannon, *supra* note 24, at 531–33.

313. *2021/2022 Federal/State Civil Right to Counsel Bills*, NAT'L COAL. FOR CIV. RIGHT TO COUNS., [https://civilrighttocounsel.org/legislative\\_developments/20212022\\_bills](https://civilrighttocounsel.org/legislative_developments/20212022_bills) [<https://perma.cc/HVL9-N8JM>].

and systems and to tear them up by their roots . . . to replace them with new systems based on fairness and justice.<sup>314</sup>

Historically and today, the legal system has helped some people—namely, those who are wealthy, white, and male—more than others.<sup>315</sup>

The health justice approach similarly emphasizes a more revolutionary approach, including collective and antisubordination action aimed at structural reform.<sup>316</sup> The health justice framework recognizes that “prevention strategies that focus on the high-risk individuals (including individual clients) may have a less substantial impact on the health of a large population than do strategies that address more broadly based social forces.”<sup>317</sup> While individually focused approaches are necessary to address an individual’s legal needs in the moment, they are inadequate to propel broad systemic change.<sup>318</sup>

Therefore, in order to achieve health justice, some scholars argue that lawyers should focus their energies on changing systems and institutions through legislation, regulation, and impact litigation to have a long-lasting impact.<sup>319</sup> Many health justice scholars have emphasized the need for more structural, upstream change.<sup>320</sup> Strategies that include systemic advocacy and invest in communities are a better way to reduce social inequities and improve community health as a whole.<sup>321</sup>

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314. William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL’Y 101, 102–03 (2006) (citing Martin Luther King, Jr., *A Time to Break Silence*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 231, 240–41 (James M. Washington ed., Harper Collins 1991) (1986)).

315. Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. J. ON POVERTY L. & POL’Y 97, 122–24 (2019) (“[A]nalyzing housing as a contracted-for commodity fails to capture the reality of housing as a place to live. A safe and secure home may actually be more important for a poor tenant than a wealthier one, given the difference in their ability to find a replacement, but the current approach of assessing contract damages seems to assume the reverse. . . . Under the common law of torts, both economic and non-economic damage calculations are proportional to class status.”).

316. See generally Harris & Pamukcu, *supra* note 34, at 831.

317. Wendy E. Parmet, Lauren A. Smith & Meredith A. Benedict, *Social Determinants, Health Disparities and the Role of Law*, in POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP 27 (Elizabeth Tobin Tyler, Ellen Lawton, Kathleen Conroy, Megan Sandel & Barry Zuckerman eds., Carolina Acad. Press 2011); see also Geoffrey Rose, *Sick Individuals and Sick Populations*, 30 INT’L J. EPIDEMIOLOGY 427, 430 (2001), <https://doi.org/10.1093/ije/30.3.427> [<https://perma.cc/7DY6-BFZQ>].

318. Parmet et al., *supra* note 317, at 27.

319. *E.g.*, *id.*

320. *E.g.*, *id.* at 25.

321. Benfer, *supra* note 36, at 347.

Legal advocacy that focuses only on individual client representation will also fail to fix inequities deeply embedded in law and policy and inextricably driven by structural racism.<sup>322</sup> Critics of legal services approaches assert that the legal system upholds “settler colonialism, white supremacy, capitalism” and by only addressing the individual needs of clients, these deeper issues go unaddressed and therefore are perpetuated by limiting the work to direct legal services.<sup>323</sup> There is no question that traditional “access to justice” approaches alone will not inherently resolve the issues of racial inequity that impact the communities that legal services, pro bono, and law student attorneys serve.<sup>324</sup> If focused only on clients and their individual needs, lawyers fail to address such underlying structural issues.<sup>325</sup>

Critics argue that by focusing on the individual cases, lawyers are not meeting client and community needs in the long-term,<sup>326</sup> providing legitimacy to the status quo.<sup>327</sup> For example, assisting individual clients with accessing housing vouchers to which they may have a legally enforceable right does not address the underlying community need for an expansion of affordable housing. Such tensions can also occur in the criminal justice context, where defense lawyers may feel that in order to advocate for their clients, they are operating within and perpetuating harmful systems they would want to see abolished in order to address root inequities.<sup>328</sup> The traditional legal practice that focuses on solving individual legal issues in the vacuum of the legal system through one-on-one, attorney-client relationships may fall short of recognizing and

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322. See Parmet et al., *supra* note 317, at 27.

323. See Dean Spade, *For Those Considering Law School*, 6 UNBOUND 111, 111–12, 117–18 (2010).

324. Shek, *supra* note 69, at 128.

325. See JUST LEAD WASH., BUILDING LEGAL-COMMUNITY PARTNERSHIPS 2 (2020), <https://justleadwa.org/wp-content/uploads/2020/09/JustLead-Community-Guide-Summer-2020-1.pdf> [<https://perma.cc/P2TZ-LZFFQ>]; see also Spade, *supra* note 323, at 112.

326. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 471–72 (1976); Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970); Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY J. PUB. INT. L. 375, 380 (2013) (describing lawyers advising the continuous flow of clients with similar circumstances rarely addressing systemic issues with lasting change).

327. Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987, 1988 (2017).

328. See Nicole Smith Futrell, *The Practice and Pedagogy of Carceral Abolition*, 45 N.Y.U. REV. L. & SOC. CHANGE 159, 161 (2021); Bell, *supra* note 326, at 505–06 (describing the different competing interests in civil rights cases including a minority of class action plaintiffs bringing a case that is binding on everyone).

addressing issues arising out of systemic barriers and poverty.<sup>329</sup> The legal services model risks siloing our collective idea of what change is possible to only changes made in the courtroom.<sup>330</sup> Over-reliance on outcomes in individual legal cases may fail to transform the daily experiences of low-income people and those most impacted by the legal system.<sup>331</sup>

And without more structural change, individual lawyering has been critiqued for cultivating a system in which low-income individuals must depend on lawyers to solve problems rather than working to resolve the problems that cause low-income individuals to have persisting legal troubles in the first place.<sup>332</sup> There is concern that traditional models of lawyering can create perpetual clients instead of supporting and elevating the power of communities to resolve the problems that are causing individuals to need legal services.<sup>333</sup>

In the five areas of fundamental human need identified by the ABA, scholars and advocates have called for a panoply of structural changes that could facilitate health justice and eliminate health disparities through a more systemic, upstream, collectivist approach. In the area of shelter, scholars and activists have called for law and policy reform to facilitate the creation and expansion of affordable housing, housing assistance, housing-first programs, support for homeownership and pathways from tenancy to homeownership, proactive and preventive housing inspection measures, robust eviction diversion programs, an end to utility shutoffs that jeopardize health and safety, and most recently, the provision of more immediate emergency rental assistance and enactment of rent cancellation initiatives to combat the forthcoming wave of pandemic-related evictions.<sup>334</sup>

To ensure sustenance, reforms have been put forth to promote quality and equitable education, a true living wage, universal basic

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329. Wexler, *supra* note 326, at 1053.

330. Elsesser, *supra* note 326, at 382–83.

331. Shek, *supra* note 69, at 125–26.

332. Wexler, *supra* note 326, at 1053–54.

333. Shek, *supra* note 69, at 124–25.

334. See *Cancel Rent*, OUR HOMES, OUR HEALTH, <https://ourhomesourhealth.org/cancel-rent-reclaim-homes> [<https://perma.cc/9JB7-M7ZS>]; Emily A. Benfer, *Coronavirus Rent Freezes Are Ending—And a Wave of Evictions Will Sweep America*, NBC NEWS (June 22, 2020, 4:30 AM), <https://www.nbcnews.com/think/opinion/coronavirus-rent-freezes-are-ending-wave-evictions-will-sweep-america-ncna1230916> [<https://perma.cc/WN7T-LMX4>]; Benfer & Wiley, *supra* note 34; Cannon, *supra* note 18, at 241, 260.

income, workforce development, access to adequate, healthy, and fresh foods, and robust consumer protections.<sup>335</sup>

Under the umbrella of safety, scholars and advocates argue that law and policy reforms should be premised on a recognition of domestic and sexual violence as social determinants of health<sup>336</sup> and as deeply connected to gender and racial equality, education, employment, economic wellbeing, and social supports.<sup>337</sup> Health justice advocates have called for reforms to a range of immigration policies that address SDOH, such as pathways to employment and citizenship and expansion of access to health care for immigrants.<sup>338</sup>

To advance health justice through family stability, scholars have called for law and policy reforms to child protective, investigative, and judicial proceedings to emphasize the value of family preservation,<sup>339</sup> the abolition of the child welfare system entirely,<sup>340</sup> and the establishment of a system of family-based support entirely separate from the child welfare system modeled after those that have been tested at the local level, which would offer “strengths-based care, case management, peer support, parenting resources, linkage to effective substance use treatment when needed, and concrete social service navigation.”<sup>341</sup>

To ensure access to health care, scholars and advocates have called for a panoply of law and policy reforms, such as those that would promote universal healthcare coverage, engage historically marginalized communities in systemic solutions, address language

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335. Yearby & Mohapatra, *supra* note 142, at 18. *See also* Benfer et al., *supra* note 18, at 168–70 (applying the health justice framework to the issue of employment inequity); Benfer et al., *supra* note 24, at 48–50 (noting the inequitable access to resources and necessities, such as education, food, and employment, for historically marginalized groups); Cannon, *supra* note 18, at 239 (discussing the lack of accessibility to food).

336. *See, e.g.*, Press Release, Jeanne Shaheen, U.S. Sen., Shaheen, Kuster Introduce Legislation to Study the Harmful Effects of Intimate Partner Violence on Maternal Health (Aug. 3, 2021), <https://www.shaheen.senate.gov/news/press/shaheen-kuster-introduce-legislation-to-study-the-harmful-effects-of-intimate-partner-violence-on-maternal-health> [<https://perma.cc/JDV2-M654>].

337. Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L.Q. 353, 362 (2008).

338. Makhoul, *supra* note 77, at 245–47; Geraldine Dallek, *Health Care for Undocumented Immigrants: A Story of Neglect*, 14 CLEARINGHOUSE REV. 407, 409 (1980).

339. Trivedi, *supra* note 242, at 572–77.

340. Roberts, *supra* note 248.

341. Wakeman et al., *supra* note 245.

and cultural differences and medical discrimination in health care, and increase access to health care facilities.<sup>342</sup>

If lawyers are to ultimately have a profound impact on health justice, they will need to leverage law and policy not only to address the health-harming legal needs of individuals as they arise through direct legal representation, but through more collectivist, upstream, systemic law and policy reform efforts in pursuit of these types of structural changes.

B. *Lawyering for Health Justice Through a Multitiered Strategy: Improving Individual Health and Pursuing Structural Change Through a Clients-to-Policy Approach*

While critiques of direct service lawyering have framed individual legal representation and broader activism for social change as in tension, both are critical, and the former can serve as a gateway for the latter. The two need not operate as mutually exclusive; health justice in fact demands of lawyers a multitiered, integrated approach.

Lawyering on behalf of individual clients that improves their health and well-being can serve as a portal to advancing broader structural change. In other words, as lawyers engage in direct legal representation of low-income individuals to enforce extant laws to improve their health and well-being, they can use such legal representation as a gateway to structural reform in furtherance of health equity. This section discusses the value of individual legal representation to address health-harming legal needs and proposes a “clients-to-policy” approach through which lawyers can pursue more collectivist, upstream, and structural changes in law and policy in order to facilitate health justice.

To demonstrate this multitiered approach, it is useful to examine the story of a family impacted by health-harming legal needs. A four-year-old girl named Mia<sup>343</sup> went to the doctor’s office in Washington, D.C. for a check-up. This visit to the pediatrician led

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342. See Benfer, *supra* note 18, at 141–47 (examining health care disparity during COVID-19); see also Benfer et al., *supra* note 24, at 47 (explaining the benefits of a using a health justice framework in legal education); Harris & Pamukcu, *supra* note 34, at 782–83 (discussing subordination as driver of public health disparities); Makhoul, *supra* note 77, at 239 (discussing disparities in immigrant access to health care).

343. This story is based on a client family of the Georgetown University Health Justice Alliance Law Clinic. Names and some key facts have been changed to protect the identity of the family.

to the discovery that the child had been lead poisoned in her home.<sup>344</sup> That home had previously passed a required housing inspection before the family could move in using their housing voucher. The pediatrician was very concerned because lead in a young child's blood can have irreversible lifelong impacts, such as significant developmental delays and damage to brain development.<sup>345</sup> The pediatrician knew that it was urgent that any lead in Mia's home be remediated before she or her siblings were further exposed.

Although it was not within the pediatrician's power to ensure the lead was remediated, she had a partner who could help—a legal team to whom she could refer the parent for legal representation. The work of that legal team will be discussed below to demonstrate the clients-to-policy approach.

1. Value of Legal Representation to Address the Health-Harming Legal Needs of Individuals from Marginalized Communities

Legal representation in areas of fundamental legal need is critical for many reasons. As discussed above, legal advocacy can enforce extant laws to address legal issues that serve as determinants of health in all of the areas of fundamental need identified by the ABA, including shelter, sustenance, access to healthcare, safety, and family stability.<sup>346</sup> Studies of medical-legal partnerships show that such civil legal advocacy by attorneys has improved health outcomes for people with asthma,<sup>347</sup>

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344. Yael Cannon, *Equipping the Next Generation of Health Justice Leaders*, BILL OF HEALTH (Sept. 20, 2021), <https://blog.petrieflom.law.harvard.edu/2021/09/20/health-justice-leaders> [<https://perma.cc/3RN7-9HD9>].

345. Emily Benfer & Allyson Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL'Y REV. ONLINE S1, S4–S5 (2017).

346. Hazel Genn, *When Law is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice*, 72 CURRENT LEGAL PROBS. 159, 160–61 (2019) (explaining how “legal problems create or exacerbate ill health and that ill health creates problems for which the law provides solutions”).

347. O'Sullivan et al., *supra* note 122, at 911.

diabetes,<sup>348</sup> and mental health disorders,<sup>349</sup> lowered hospitalization rates for children,<sup>350</sup> led people to report improved general health and feeling more empowered,<sup>351</sup> and helped to reduce stress.<sup>352</sup> For example, according to a 2006 study jointly conducted by LegalHealth and St. Luke's-Roosevelt Hospital, asthma patients who received legal interventions, such as advocacy to remediate poor housing conditions, experienced "significant improvements in the severity of their conditions, and fewer emergency room visits than patients who did not receive legal assistance."<sup>353</sup> Individual advocacy ensures that laws and policies that can protect

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348. Faisal S. Malik, Joyce P. Yi-Frazier, Craig E. Taplin, Christian L. Roth, Kathryn B. Whitlock, Waylon Howard & Catherine Pihoker, *Improving the Care of Youth with Type 1 Diabetes With a Novel Medical-Legal Community Intervention: The Diabetes Community Care Ambassador Program*, 44 SCI. DIABETES SELF-MGMT. & CARE 168, 168–69 (2018), <https://doi.org/10.1177/0145721717750346> [<https://perma.cc/P35E-67Y6>].

349. Jack Tsai, Margaret Middleton, Jennifer Villegas, Cindy Johnson, Randy Retkin, Alison Seidman, Scott Sherman & Robert A. Rosenheck, *Medical-Legal Partnerships at Veterans Affairs Medical Centers Improved Housing and Psychological Outcomes for Vets*, 36 HEALTH AFFS. 2195, 2201–02 (2017), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0759> [<https://perma.cc/4VHF-E5HS>].

350. See generally Andrew F. Beck, Adrienne W. Henize, TingTing Qiu, Bin Huang, Yin Zhang, Melissa D. Klein, Donita Parrish, Elaine E. Fink & Robert S. Kahn, *Reductions in Hospitalizations Among Children Referred to a Primary Care-Based Medical-Legal Partnership*, HEALTH AFFS. (Mar. 2022), <https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2021.00905> [<https://perma.cc/FU6Q-BDBT>].

351. Ellen Lawton, Megan Sandel, Samantha Morton, Leanne Ta, Chen Kenyon & Barry Zuckerman, *Medical-Legal Partnership: A New Standard of Care for Vulnerable Populations*, in POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP 81–82 (Elizabeth Tobin Tyler, Ellen Lawton, Kathleen Conroy, Megan Sandel & Barry Zuckerman eds., Carolina Acad. Press 2011); see also *Impact*, NAT'L CTR. FOR MED.-LEGAL P'SHIP, <https://medical-legalpartnership.org/impact> [<https://perma.cc/4JCQ-LWNY>]; Anne Ryan, Presentation at the Medical-Legal Partnership National Summit: Connecting the Dots: Stress, Health Disparities and Legal Interventions (Mar. 25, 2010); Diana Hernandez, "I'm Gonna Call My Lawyer:" *Shifting Legal Consciousness at the Intersection of Inequality*, 51 STUD. L. POL. & SOC'Y (SPECIAL ISSUE) 95, 97–98 (2010) ("For study participants who used legal services (through [a medical-legal partnership] and otherwise), the increased exposure to the law and legal representation resulted in the development of legal consciousness and the use of legal strategies that positively impacted mothers' sense of empowerment and self-efficacy."). See generally Dana Weintraub, Melissa A. Rodgers, Luba Botcheva, Anna Loeb, Rachael Knight, Karina Ortega, Brooke Heymach, Megan Sandel & Lynne Huffman, *Pilot Study of Medical-Legal Partnership to Address Social and Legal Needs of Patients*, 21 J. HEALTH CARE FOR POOR & UNDERSERVED 157, 165 (2010), <https://muse.jhu.edu/article/380464/pdf> [<https://perma.cc/T9CQ-J2H6>] (suggesting adding an attorney to pediatric medical teams increases awareness of and access to legal services).

352. Jennifer N. Rosen Valverde, Jeffrey Backstrand, Laurie Hills & Hanan Tanuos, *Medical-Legal Partnership Impact on Parents Perceived Stress: A Pilot Study*, 45 BEHAV. MED. 70, 75 (2019), <https://doi.org/10.1080/08964289.2018.1481011> [<https://perma.cc/B5QY-HZDK>].

353. See Randy Retkin & Julie Brandfield, *Medical-Legal Partnerships: A Key Strategy for Mitigating the Negative Health Impacts of the Recession*, 22 HEALTH L. 29, 32 (2009); Parmet et al., *supra* note 317, at 26; see generally *Impact*, *supra* note 351 (explaining the impact of medical legal partnerships).



the health of marginalized populations are actually being enforced.<sup>354</sup>

Discrimination can also have serious negative health consequences.<sup>355</sup> Therefore, lawyers' work to help individuals fight discrimination, such as discrimination in employment, housing, or education, can have positive health impacts. Being entangled in legal problems, especially without the support of counsel, can create more stress and negative health impacts for litigants.<sup>356</sup>

Legal representation to enforce extant laws for marginalized individuals<sup>357</sup> is urgent because their health and well-being require immediate action. Especially in a time of legislative inertia,<sup>358</sup> "a client facing an immediate health crisis can seldom wait for systemic change."<sup>359</sup> The provision of legal assistance in a direct and quick manner has been shown to greatly improve the health of patients.<sup>360</sup> Furthermore, systemic advocacy, such as large-scale litigation or legislative advocacy—can require substantial financial and time investment, both of which are things that low-income

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354. James S. Marks, *Foreword: Making the Case for Health*, in POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP xvii (Elizabeth Tobin Tyler, Ellen Lawton, Kathleen Conroy, Megan Sandel & Barry Zuckerman eds., C. Acad. Press 2011); NAT'L CTR. FOR MED.-LEGAL P'SHIP, *Health Center-Based Medical-Legal Partnerships: Where They Are, How They Work, and How They Are Funded* 7 (2018), <https://medical-legalpartnership.org/wp-content/uploads/2017/12/Health-Center-based-Medical-Legal-Partnerships.pdf> [<https://perma.cc/9H9E-FFK3>] ("These include legal clinics for patients to inform them of their legal rights and strategies to advocate for themselves, collaboration with state or local agencies to facilitate systems or process improvements to benefit patients, and state or local policy change to strengthen public health priorities for low-income and vulnerable populations.").

355. Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 55, 107 (2018) ("Discrimination . . . results in physical, psychological, and intellectual harms. These include anxiety, depression, headaches, difficulty sleeping, and exacerbation of other ailments. Communities that experience stressors like discrimination disproportionately suffer from hypertension, diabetes, and heart failure.").

356. Larry H. Strasburger, *The Litigant-Patient: Mental Health Consequences of Civil Litigation*, 27 J. AM. ACAD. PSYCHIATRY L. 203 (1999) (finding that civil litigation often has "profound psychological consequences for plaintiffs and defendants").

357. JENNIFER TROTT & MARSHA REGENSTEIN, NAT'L CTR. FOR MED.-LEGAL P'SHIP, SCREENING FOR HEALTH-HARMING LEGAL NEEDS (2016), <https://medical-legalpartnership.org/wp-content/uploads/2016/12/Screening-for-Health-Harming-Legal-Needs.pdf> [<https://perma.cc/E6SE-8CEP>]; Cannon, *supra* note 18, at 218.

358. Yael Cannon, *The Kids Are Not Alright: Leveraging Existing Health Law to Attack the Opioid Crisis Upstream*, 71 FLA. L. REV. 765, 769 (2019); CHANGLAB SOLUTIONS, *supra* note 63, at 2–3; *see also* Cannon, *supra* note 18, at 263.

359. Parmet et al., *supra* note 317, at 25.

360. *Id.* at 26; *Medical-Legal Partnerships*, CNTY. HEALTH RANKINGS & ROADMAPS (Jan. 25, 2019), <https://www.countyhealthrankings.org/take-action-to-improve-health/what-wor-ks-for-health/policies/medical-legal-partnerships> [<https://perma.cc/S52Y-XNMS>].

individuals lack.<sup>361</sup> If we only focus health justice action on structural change, the present-day circumstances and immediate needs of individuals would go unmet, and preventable, imminent harm to health and well-being would go unmitigated.<sup>362</sup> Along with fights for structural reform, lawyers can and should also work to address the immediate health-harming legal needs of individuals.

Attorneys are especially important when there is an imbalance of power. In landlord-tenant disputes and many other legal proceedings that impact low-income people, when “there is an imbalance of power between the parties . . . there may be no good substitute for representation.”<sup>363</sup> For example, even if housing court proceedings were simplified to facilitate access for the pro se tenant, the tenant would still be at a disadvantage as long as the landlord was represented, and especially as long as the landlord and his attorney were “repeat players” who knew the judge and justice system well.<sup>364</sup> Given that some “[j]udges in housing courts have long allowed landlords to obtain judgments without showing any admissible evidence and silenced tenants who have attempted to articulate arguments in their own defense,”<sup>365</sup> attorneys can have a critical impact in such situations when the other party is represented to ensure the fairness and accuracy of such proceedings,<sup>366</sup> with important health and health equity impacts.

Direct representation of individuals also helps to more broadly hold accountable systems and actors with power, such as landlords who house low-income people, government agencies, and corporations that employ low-wage workers. Attorneys can “vindicate important public values through private enforcement”<sup>367</sup> and deter

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361. Parmet et al., *supra* note 317, at 29; see also L.S. Mullenix, *Abandoning the Federal Class Action Ship: Is There Smoother Sailing For Class Actions in Gulf Waters?*, 74 TULANE L. REV. 1709, 1774 (2000); E. A. Purcell Jr., *The Class Action Fairness Act in Perspective: The Old and the New in Federal Jurisdiction Reform*, 156 U. PA. L. REV. 1823, 1824 (2008) (describing the Class Action Fairness Act).

362. Sharpless, *supra* note 308, at 372.

363. Ortiz, *supra* note 123, at 185.

364. See Petersen, *supra* note 95, at 76; Bahaar Hamzehzadeh, *Repeat Player vs. One-Shotter: Is Victory All that Obvious*, 6 HASTINGS BUS. L.J. 239, 243 (2010) (explaining Galanter’s theory that “repeat players,” defined as “parties who are constantly involved in litigation over similar issues” have the highest rates of success in courts because the different elements in the legal system, including the judges, interact primarily with that side).

365. Sabbeth, *supra* note 40, at 298.

366. Sabbeth, *supra* note 355, at 70.

367. See Catherine R. Albiston & Laura Beth Nielsen, *Funding the Cause: How Public Interest Law Organizations Fund Their Activities and Why It Matters for Social Change*, 39 L. & SOC. INQUIRY 62, 69 (2014).

behavior that laws are intended to prevent.<sup>368</sup> Specifically, knowing that a low-income litigant will have representation can deter a bad actor from harmful behavior or from bringing a frivolous suit in the first place, especially as litigation will often be lengthier and costlier when both sides are represented.<sup>369</sup> For example, if eviction courts were flooded with tenant lawyers, landlords might abstain from filing frivolous cases,<sup>370</sup> and landlord attorneys would be less successful at forcing tenants into signing “unfavorable and informal settlement[s].”<sup>371</sup> Similarly, judges might be held accountable and be more likely to follow the law or apply it accurately to the facts of each distinct case.<sup>372</sup> The cost of lawyers could potentially create incentives for adoption of more fundamental “solutions to the underlying social problems,”<sup>373</sup> which could help to eliminate health inequities caused by health-harming legal needs.

Individual lawyering is also critical to developing the law in the direction of health justice.<sup>374</sup> The law may fail to develop, or to develop favorably, if low-income litigants do not have counsel.<sup>375</sup> As access to justice and housing law scholar Kathryn Sabbeth argues, “[m]any nooks and crannies of poverty law have not been litigated precisely because of the under-availability of lawyers representing the side of the poor.”<sup>376</sup> Litigation is often necessary in a precedent-based system to build out the law, and “neglect of a category of

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368. See Kathryn A. Sabbeth & David C. Vladeck, *Contracting (Out) Rights*, 36 FORDHAM URB. L.J. 803, 830–31 (2009) (arguing that litigation can fulfil “a number of social functions” that arbitration cannot).

369. See *id.* at 831.

370. Neil Steinkamp, *Right to Counsel: The Nationwide Movement to Fight the Eviction Crisis*, STOUT (Oct. 14, 2019), <https://www.stout.com/en/insights/article/right-to-counsel-nationwide-movement-fight-eviction-crisis> [<https://perma.cc/3338-3XD8>] (quoting John Pollock, Public Justice Center Attorney and Coordinator for the National Coalition for a Civil Right to Counsel: “When landlords know that low-income tenants are highly unlikely to have counsel, they are more emboldened to file frivolous cases. But when those same actors know for certain that the defendants will be represented by counsel, they likely will not file these types of cases in the first place—are incentivized to work out the issue with the defendants in a less adversarial manner.”).

371. *Id.* (quoting Judith Goldiner, Attorney in Charge for the Civil Law Reform Unit of the New York Legal Aid Society).

372. See Michele Cotton, *When Judges Don't Follow the Law: Research and Recommendations*, 19 CUNY L. REV. 57, 59 (2015) (discussing how pro se tenants attempting to enforce the warranty of habitability have a low success rate and suggesting that some courts “fail to follow the law and to provide equal justice”).

373. Sabbeth, *supra* note 40, at 291–92.

374. See *id.* at 290–91 (explaining possible democratic benefits of public adjudication).

375. Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Can a Little Representation Be a Dangerous Thing?*, 67 HASTINGS L.J. 1367, 1376–77 (2016) (describing how law reform activities that may atrophy without representation).

376. Sabbeth, *supra* note 40, at 302.

cases results in the underdevelopment and distortion of law.”<sup>377</sup> However, advocacy within a legal case can have consequences that ripple out beyond that individual client. Once an attorney begins work on a case, she may identify opportunities to influence precedent, opportunities that may be hard to spot before the attorney is deep into her work untangling what turns out to be a more complex issue.<sup>378</sup>

If cases seem simple “because lawyers have not handled them frequently enough to develop a complex body of case law,” and then those issues are deemed “unworthy of appointment of counsel because of the lack of complexity, the underdevelopment of law on behalf of the poor recreates itself in an unfortunate feedback loop.”<sup>379</sup> For example, while tenants may be awarded monetary damages for landlords’ violation of the warranty of habitability, courts “have historically awarded relatively little compensation for such violations.”<sup>380</sup> Advocacy by skilled lawyers could help judges understand the impact on health and the harms that tenants living in poor housing conditions experience, and “[w]e can only imagine how the law and court culture might look if both parties had enjoyed decades of equality of representation.”<sup>381</sup> It would contradict the values of health justice “if the law evolves in response to some individuals’ experiences and not others—particularly where such outcomes are largely driven by inequality of income and access.”<sup>382</sup>

Systematic, widespread representation could make significant differences in how civil courts and bureaucracies that serve low-income people function. Where access to counsel is robust, such as in the growing number of jurisdictions where there is a right to counsel in eviction proceedings, legal systems may start to operate differently, leading to more accountability and the possibility of more structural change. With lawyers, enough individuals might

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377. Sabbeth, *supra* note 315, at 135–36 (citing Michele Cotton, *When Judges Don’t Follow the Law: Research and Recommendations*, 19 CUNY L. REV. 57, 85 (2015)).

378. Sabbeth, *supra* note 40, at 302.

379. *Id.*

380. Sabbeth, *supra* note 315, at 135–36 (“Because poor people are particularly likely to experience substandard housing and particularly unlikely to hire counsel, the problems of substandard housing receive little legal analysis. Private lawyers do not devote time and attention to raising, researching, or advocating for applicability of the laws enforcing tenants’ right to safe housing. They do not press judges to refine the doctrine with respect to these legal violations and the specific harms that flow from them. They do not appeal to higher courts and therefore miss out on opportunities to strengthen existing doctrine and create precedent.”).

381. *Id.* at 136.

382. Shanahan et al., *supra* note 375, at 1376.

be able to exercise their rights in a way that could “crash” fundamentally unfair systems.<sup>383</sup> In the housing context, for instance, “[i]f every low-income person in every jurisdiction truly understood her legal rights when it comes to the landlord-tenant relationship, and if all of them made educated decisions about whether or not to exercise those rights in the court, the civil legal system as it exists today could utterly collapse.”<sup>384</sup> And having lawyers systematically representing people, rather than randomly helping the lucky litigants who happen to find a pro bono project or law school clinic, can help create a “cohesive delivery system” that would be easier for litigants to navigate than today’s “complex, fragmented, and overlapping delivery system.”<sup>385</sup>

Finally, individual level advocacy is powerful because it allows lawyers to build trust with their clients and helps clients understand, assert, and enforce their own rights. Lawyers can arm clients with tools they can use in self-advocacy in the long-term if lawyers “educate clients about ways to advocate on their own behalf with administrative agencies, employers, and in private disputes (such as with landlords) before a problem escalates into a crisis.”<sup>386</sup> If lawyers can help clients elevate their own power to advocate with efficacy, clients can play a role in enforcement of extant laws outside of, after, and beyond the attorney-client relationship and in ways that could have ripple effects in their families and communities if they have the tools to help others elevate their own power as well.<sup>387</sup>

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383. Matthew P. Main, *Making Change Together: The Multi-Pronged, Systems Theory Approach to Law and Organizing That Fueled a Housing Justice Movement for Three-Quarter House Tenants in New York City*, 27 GEO. J. ON POVERTY L. & POL’Y 31, 79 (2019) (quoting Michelle Alexander, *Go to Trial: Crash the Justice System*, N.Y. TIMES (Mar. 10, 2012), <https://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html> [<https://perma.cc/8JXJ-BKKK>]).

384. Katherine S. Wallat, *Reconceptualizing Access to Justice*, 103 MARQ. L. REV. 581, 612, n.239 (2019) (quoting Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS 49, 53 n. 239 (2019), [https://doi.org/10.1162/daed\\_a\\_00534](https://doi.org/10.1162/daed_a_00534) [<https://perma.cc/9HHY-4RYS>] (“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.”)

385. Latonia Haney Keith, *Poverty, the Great Unequalizer: Improving the Delivery System for Civil Legal Aid*, 66 CATH. U. L. REV. 55, 57, 96, 98 (2016).

386. Lawton et al., *supra* note 351, at 83.

387. Samantha Morton, *Legal Information and Rights Education as an Element of Care: A Promising Health Justice Strategy*, HEALTH AFFS. (June 7, 2021), <https://www.healthaffairs.org/doi/10.1377/hblog20210603.174251/full> [<https://perma.cc/F468-VCKD>]; Cannon, *supra* note 24, at 566–67.

In Mia's case, her pediatrician referred her family through a medical-legal partnership to the Georgetown University Health Justice Alliance Law Clinic. The law students and attorneys representing the child's mother were able to address her health-harming legal needs to get the lead remediated in the home and ensure that the family had safe housing.<sup>388</sup> The legal team also brought to the attention of officials concerns with the housing inspection that failed to identify lead risks, in order to hold systems accountable and ensure better fidelity to policies on the books to prevent other families with housing vouchers from experiencing lead exposure.

They also identified other adjacent needs that went beyond shelter. Mia's Medicaid had been terminated, which would serve as a barrier to her receiving necessary treatment for the impacts of her lead exposure. The legal team advocated with the Medicaid agency to reinstate her Medicaid coverage, and she began receiving the behavioral health treatment she required.<sup>389</sup>

Mia was also struggling in school due to the developmental delays she experienced as a result of her lead poisoning. The legal team advocated to enforce special education law to ensure that Mia had the services and accommodations she required to make meaningful academic progress.<sup>390</sup>

Recognizing that a health justice approach requires not only legal fixes, but the elevation of the power of affected individuals to assert their own rights,<sup>391</sup> the legal team helped Mia's mother understand her legal rights in the areas of housing, Medicaid, and special education law.<sup>392</sup> Throughout the case, the legal team gave Mia's mother opportunities to detail the violations she experienced and use her own words to advocate for the remedies to which she was entitled, with support from the legal team in understanding how to advocate most persuasively to protect her rights. They provided her with tools to assert her own rights in these systems after the conclusion of the representation, educating her on how to document and make a record of violations, who to contact for assistance, and how to enforce her rights if various issues arose.

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388. See Cannon, *supra* note 344 (describing medical-legal partnerships to address the needs of a lead poisoned child and her family).

389. *Id.*

390. *Id.*

391. Harris & Pamukcu, *supra* note 34, at 806–11; Cannon, *supra* note 24, at 565.

392. Cannon, *supra* note 344.

In Mia's case, legal advocacy served to address health-harming legal needs in the fundamental areas of shelter, access to healthcare, and sustenance, leveraging extant laws in furtherance of health justice and holding agencies accountable to the fullest extent of the law. The legal team's education of Mia's mother helped to equip her to protect her own rights, which not only gave her stewardship over her legal case, but promoted her own power to advocate, hold systems accountable, and prevent future legal issues.

## 2. A Clients-to-Policy Approach to Health Justice

Attorneys can have a multitiered impact, advancing health justice through individual legal advocacy and law and policy reform. Lawyers can use a "clients-to-policy" strategy modeled after the medical-legal partnership "patients-to-policy" approach in order to use their individual legal representation as a platform for engaging in advocacy for structural change to achieve health justice. Medical-legal partnership ("MLP") is a health care delivery model that incorporates lawyers into health care settings to address health-harming social needs with civil law remedies.<sup>393</sup> Lawyers within MLPs have embraced a "patients-to-policy" approach, using their unique positionality in representing clients who have health-harming legal needs to determine the gaps prevalent within laws and policies, propose remedies, and engage in law and policy reform advocacy to bridge these gaps.<sup>394</sup> This approach involves the provision by lawyers of "direct assistance to vulnerable, individual patients and families . . . identifying ineffective policies that have unintended health consequences . . . [and] then design[ing] and

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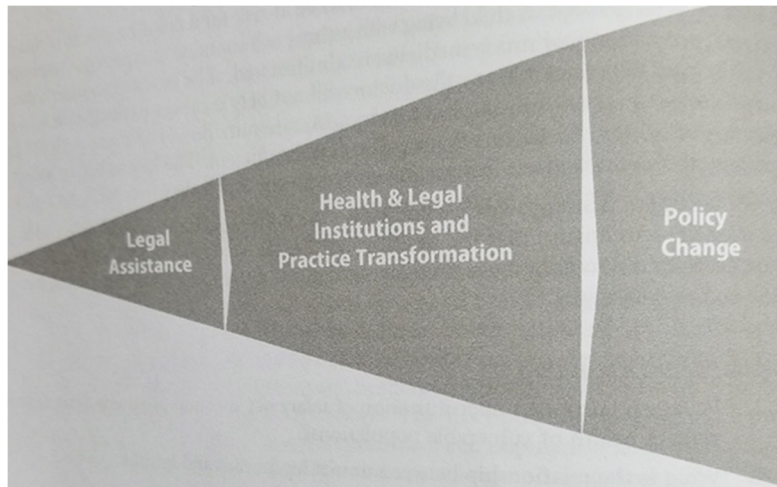
393. Elizabeth Tobin Tyler & Joel B. Teitelbaum, *Medical-Legal Partnership: A Powerful Tool for Public Health and Health Justice*, 134 PUB. HEALTH REP. 201, 201 (2019); see also Dayna Bowen Matthew, *Medical-Legal Partnerships and Mental Health: Qualitative Evidence That Integrating Legal Services and Health Care Improves Family Well-Being*, 17 HOUS. J. HEALTH L. & POL'Y 343, 344–45 (2017).

394. See Megan Sandel, David Keller, Ellen Lawton, Leanne Ta & Kevin Kappel, *Medical-Legal Partnership: Strategies for Policy Change*, in POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP 585 (Elizabeth Tobin Tyler, Ellen Lawton, Kathleen Conroy, Megan Sandel & Barry Zuckerman eds., Carolina Acad. Press 2011) [hereinafter *Strategies for Policy Change*]; Megan Sandel, Mark Hansen, Robert Kahn, Ellen Lawton, Edward Paul, Victoria Baker, Samantha Morton & Barry Zuckerman, *Medical-Legal Partnerships: Transforming Primary Care by Addressing the Legal Needs of Vulnerable Populations*, 29 HEALTH AFFS. 1697, 1700 (2010) [hereinafter *Transforming Primary Care*]. See generally *Story Series Features Teams that Took SDOH Problem-Solving from Patients-to-Policy*, NAT'L CTR. FOR MED.-LEGAL P'SHIP (May 2, 2018) [hereinafter *Patients to Policy*], <https://medical-legalpartnership.org/patients-to-policy> [<https://perma.cc/NZ3W-2Y F2>].

advocat[ing] for policy solutions to avoid negative health impacts, thus enabling the MLP intervention to improve the lives of many more vulnerable people.”<sup>395</sup>

As demonstrated in the graphic below, MLPs use a patients-to-policy approach to address health-harming legal needs to improve individual health while creating long-lasting systemic change to improve population health and health equity.<sup>396</sup>

Figure 2: MLP Core Components<sup>397</sup>



As depicted in the graphic above, at the core of the MLP approach is the impact of individual patient-level advocacy in both transforming health and legal institutions through a new model of holistic, collaborative, inter-disciplinary approaches and creating long-lasting, sustainable change for marginalized populations at large.<sup>398</sup> This approach is possible because, through advocacy on

395. *Strategies for Policy Change*, *supra* note 394, at 583.

396. See Parmet et al., *supra* note 317, at 27. See generally *Patients to Policy*, *supra* note 394.

397. Lawton et al., *supra* note 351, at 74.

398. *Id.* (“Although MLP programs vary in many ways, all engage in the following activities: providing (on-site) legal assistance in the healthcare setting, transforming health and legal institutions and practices and influencing public policy.”); see also TISHRA BEESON, BRITTANY DAWN MCALLISTER & MARSHA REGENSTEIN, NAT’L CTR. FOR MED.-LEGAL P’SHP, MAKING THE CASE FOR MEDICAL-LEGAL PARTNERSHIPS: A REVIEW OF THE EVIDENCE 3–4 (2013), <https://medical-legalpartnership.org/wp-content/uploads/2014/03/Medical-Legal-Partnership-Literature-Review-February-2013.pdf> [<https://perma.cc/L8NE-YXPV>] (highlighting MLP literature on how policy change is inherent in the “patient-to-policy” approach adopted by MLPs); ALANNA WILLIAMSON, JENNIFER TROTT & MARSHA REGENSTEIN, NAT’L CTR. FOR MED.-LEGAL P’SHP, HEALTH CENTER-BASED MEDICAL-LEGAL PARTNERSHIPS: WHERE THEY ARE, HOW THEY WORK, AND HOW THEY ARE FUNDED 7 (2018), <https://medical-legalpartnership.org/wp-content/uploads/2017/12/Health-Center-based-Medical-Legal-Part>



behalf of clients, attorneys “have a front row view of how institutional policies, laws, and regulations affect individuals and families.”<sup>399</sup> By enforcing legal rights for individual patients while also identifying systemic issues at the community level, MLPs simultaneously provide immediate aid and help ascertain areas toward which policymakers should target longer-term, systemic solutions.<sup>400</sup> This linking of patients to policy<sup>401</sup> positions MLP lawyers to pursue structural changes aimed at promoting health justice.

Well beyond the MLP context, lawyers representing low-income litigants in civil proceedings that implicate health can use a “clients-to-policy” approach similar to the “patients-to-policy” practice employed by many MLP attorneys. Lawyers can use their experiences working with and on behalf of clients to identify the need and advocate for legislative and policy reforms that advance health justice.

Deborah Archer similarly argues that attorneys should use “political lawyering” as a means of advocacy on behalf of marginalized communities,<sup>402</sup> which she describes as employing “a systemic reform lens in case selection, advocacy strategy, and lawyering process, with a focus on legal work done in service to both individual and collective goals.”<sup>403</sup> She advocates for “the transformational potential of integrated advocacy—strategic litigation, community organizing, direct action, [and] media strategies” to create social change.<sup>404</sup> Archer posits that the Civil Rights Movement’s “blended advocacy” exemplifies such political lawyering:

Visionary leaders helped give voice to the frustrations and demands of the community, while other leaders acted as tacticians to devise, plan, and coordinate the strategy. There were sustained and strategic protests to draw public attention to injustices, demand change, and

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nerships.pdf [https://perma.cc/EU5H-XV3E] (“These include legal clinics for patients to inform them of their legal rights and strategies to advocate for themselves, collaboration with state or local agencies to facilitate systems or process improvements to benefit patients, and state or local policy change to strengthen public health priorities for low-income and vulnerable populations.”).

399. See *Strategies for Policy Change*, *supra* note 394, at 585; *Transforming Primary Care*, *supra* note 394, at 1697–98. See generally *Patients to Policy*, *supra* note 394.

400. Elizabeth Tobin Tyler, *Aligning Public Health, Health Care, Law and Policy: Medical-Legal Partnership as a Multilevel Response to the Social Determinants of Health*, 8 J. HEALTH & BIOMEDICAL L. 211, 213 (2012).

401. Elizabeth Tobin Tyler, *Medical-Legal Partnership in Primary Care: Moving Upstream in the Clinic*, 13 AM. J. LIFESTYLE MED. 282, 285 (2019).

402. Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 401 (2019).

403. *Id.* at 401–02.

404. *Id.* at 402.

apply political pressure. The strategic use of litigation led gradually to the establishment of the building blocks for systemic change. Finally, civil rights lawyers worked to enshrine litigation victories in legislation.<sup>405</sup>

Similarly, to pursue health justice, attorneys who represent individuals from marginalized communities can employ a clients-to-policy approach that embraces the integrated advocacy strategies championed by the MLP movement and by Archer to improve individual health and advance more collective, structural reforms in pursuit of health equity.

a. Lawyers Can Identify Gaps, Patterns, and Problems with the Law

Unfortunately, “institutional and structural discrimination remain embedded in housing patterns”<sup>406</sup> and other areas of fundamental human need in the United States. Lawyers can help call attention to structural racism, health disparities, and problems within the law that drive inequities. Lawyers are well-positioned to make such connections, given that legal issues facing low-income people are often the result of broader socioeconomic inequities necessitating structural reform: “the imposition of costs draws attention to otherwise neglected social problems . . . [for example,] failures to comply with property law, such as to pay rent due, reflect a broader set of political and economic circumstances, including the growing gap between wages and housing expenses.”<sup>407</sup>

In addition to providing the valuable service of “ensur[ing] that existing laws and policies are being fully applied to those in great need,”<sup>408</sup> individual client-level advocacy gives lawyers an opportunity to advance systemic change by spotting patterns of disparities and gaps and problems with the law that can be addressed through systemic reform efforts.<sup>409</sup> While lawyers identify and address legal problems in the moment, they can identify patterns of problems in the functionality and operationalization of the law, and see opportunities for structural change through law and policy

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405. *Id.* at 412 n. 65 (citing Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. § 10101 (2018)); Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 1971, 2000a (2018))).

406. Ortiz, *supra* note 123, at 179.

407. Sabbeth, *supra* note 40, at 291.

408. Marks, *supra* note 354, at xvii.

409. *Strategies for Policy Change*, *supra* note 394, at 597 (highlighting various examples from MLP network on external systems change).

reform and impact litigation that can result in prevention of legal issues and health disparities.<sup>410</sup>

The process of litigating individual cases itself can unravel these patterns.<sup>411</sup> For instance, lawyers representing individuals in housing matters can recognize a common theme or pattern that ties these cases together, and in turn, advocate for stronger regulations or changes in the law.<sup>412</sup> MLP lawyers have utilized the patterns they identify on an individual level to advance policy change implicating a wide range of laws, policies, and systems that were harming the health of marginalized individuals and driving health disparities.<sup>413</sup>

In Mia's case, her legal team identified gaps and problems with the law from her individual case,<sup>414</sup> which squared with patterns they had learned about through advocacy by other legal services organizations.<sup>415</sup> For example, the team came to recognize that

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410. Ellen Cohen, Danya Fortress Fullerton, Randye Retkin, Dana Weintraub, Pamela Tames, Julie Brandfield & Megan Sandel, *Medical-Legal Partnership: Collaborating with Lawyers to Identify and Address Health Disparities*, 25 J. GEN. INTERNAL MED. 136, 136 (2010); see also Barry Zuckerman, *Why Pediatricians Need Lawyers to Keep Children Healthy*, 114 PEDIATRICS 224 (2004); Lawton et al., *supra* note 351, at 76; WILLIAMSON ET AL., *supra* note 398, at 7 (“These include legal clinics for patients to inform them of their legal rights and strategies to advocate for themselves, collaboration with state or local agencies to facilitate systems or process improvements to benefit patients, and state or local policy change to strengthen public health priorities for low-income and vulnerable populations.”).

411. See Parmet et al., *supra* note 317, at 27.

412. *Id.*; NAT'L CTR. FOR MED.-LEGAL P'SHIP, APPLYING THE MEDICAL-LEGAL PARTNERSHIP APPROACH TO POPULATION HEALTH, PAIN POINTS, AND PAYMENT REFORM 6 (2016), <https://medical-legalpartnership.org/wp-content/uploads/2016/10/Applying-the-MLP-Approach-to-Population-Health-October-2016.pdf> [<https://perma.cc/T7TF-J65M>] (“Some MLPs also engage in broad-scale policy work in which they consider patterns of social determinants in a population, and advocate for policy changes that have an impact on population health. For example, MLPs may advocate for stricter housing code regulations or tougher protections for tenants in housing disputes.”); see also Johnna S. Murphy, Ellen M. Lawton & Megan Sandel, *Legal Care as Part of Health Care: The Benefits of Medical-Legal Partnership*, 62 PEDIATRIC CLINICS N. AM. 1263, 1265 (2015).

413. *Patients to Policy*, *supra* note 394; see generally *Strategies for Policy Change*, *supra* note 394 (highlighting examples of several policy changes through MLP lawyering); *Medical-Legal Partnerships*, *supra* note 360 (“MLPs may also result in policy changes”); NAT'L CTR. FOR MED.-LEGAL P'SHIP, WHOLE PERSON, WHOLE TEAM, WHOLE COMMUNITIES SUMMIT 8–10 (2019), <https://medical-legalpartnership.org/wp-content/uploads/2019/09/2019-NCMLP-Summit-Agenda-FINAL.pdf> [<https://perma.cc/T7TF-J65M>] (highlighting different projects focused on how patient stories have helped in furthering regulatory or legislative changes).

414. Cannon, *supra* note 344.

415. See generally Terrence McCoy, *Washington's Worst Case of Lead Poisoning in Decades Happened in a Home Sanctioned by Housing Officials*, WASH. POST (Jan. 30, 2017), <https://www.washingtonpost.com/local/social-issues/washingtons-worst-case-of-lead-poisoning-in-decades-happened-in-a-home-sanctioned-by-housing-officials/2017/01/30/f7a09aa6-d>

lead laws in D.C. are more reactive than preventive; they largely require interventions by D.C. agencies after a child has elevated blood lead levels and only when those levels reach heights well beyond the CDC and Environmental Protection Agency (“EPA”) guidelines for lead exposure. And inspections of rental units prior to tenancy, an important preventive measure available for tenants with housing vouchers, is falling short of preventing lead exposure to children because the inspections include only a visual component that looks for peeling paint as a lead paint hazard, rather than a field-based swipe test that would show whether there is lead dust in the unit that is not visually detectable.<sup>416</sup>

b. Lawyers Can Surface and Promote the Experiences and Voices of Marginalized Individuals

Direct legal representation can draw attention to underlying issues in need of systemic change and create an agenda for policy and legislative change. In other words, “[t]he causal arrow could go both ways: the rise in homelessness in gentrifying cities has created pressure to appoint housing defense lawyers; the work of housing lawyers and the expense of supplying them could also draw attention back to the social phenomena that make [affordable] housing difficult to maintain.”<sup>417</sup> In the criminal context, lawyers have seen successes from efforts to decriminalize certain conduct and to engage in criminal justice reform outside of the courtroom.<sup>418</sup> Enough civil lawyers, working together, could do the same if they identified and called attention to the need for broader reforms. For example, “if a perception develops that there are too many eviction cases and eviction defense is expensive, this might put pressure on governments to improve substantive housing laws to promote affordable housing.”<sup>419</sup> While advocacy for law and policy reform can be time- and resource-intensive for lawyers already stretched thin working to meet the high demand for civil legal assistance, lawyers can maximize their impact and streamline their

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cde-11e6-acdf-14da832ae861\_story.html [https://perma.cc/SU9M-HX9N] (describing severe lead poisoning in city program for the homeless).

416. *Id.*; Terrence McCoy, *Numerous Children Have Been Poisoned by Lead Homes Approved by DC Housing Inspectors*, WASH. POST (Aug. 15, 2018), [https://www.washingtonpost.com/local/social-issues/many-children-have-been-poisoned-by-lead-in-homes-approved-by-dc-housing-inspectors/2018/08/14/5633a144-9b24-11e8-8d5e-c6c594024954\\_story.html](https://www.washingtonpost.com/local/social-issues/many-children-have-been-poisoned-by-lead-in-homes-approved-by-dc-housing-inspectors/2018/08/14/5633a144-9b24-11e8-8d5e-c6c594024954_story.html) [https://perma.cc/E6WL-AZZE].

417. Sabbeth, *supra* note 40, at 292.

418. *Id.*

419. *Id.*

resources through collaborations with grassroots and policy organizations and professionals from other disciplines who may have shared interests in justice, such as physicians serving low-income communities.<sup>420</sup> Ultimately, successful law and policy reforms can often reduce or obviate the need for individual legal advocacy in the relevant area of law, allowing for those resources to be diverted elsewhere.

A clients-to-policy approach also helps to create an evidence base of patient stories and data that can be used to justify and support the need to invest in equitable policies, laws, and systemic changes.<sup>421</sup> In fact, the accumulation of legal interventions on behalf of individuals effectively serves as evidence of policy failure and “can [accordingly] contribute to the impetus for institutional policy change to address social determinants [of health]. Such an approach offers important opportunities . . . to ameliorate health inequalities.”<sup>422</sup>

Lawyers can also collaborate with their clients, community organizers, and grassroots coalitions to promote the experiences and voices of marginalized individuals in their structural reform advocacy. The close, client-centered focus of individual advocacy allows lawyers to amplify the lived experiences of their clients and provide them with both a stake and voice in the policy advocacy process.<sup>423</sup> A clients-to-policy approach that centers the leadership of affected individuals and communities will most powerfully embrace the goal of anti-subordination and ultimately be most effective at advancing health justice.

Lawyers can adopt practices of “rebellious lawyering,” an approach developed by legal scholar Gerald Lopez in which lawyers view their clients not as subordinate groups, but as co-eminent problem solvers whom they can work with and not for.<sup>424</sup> Lawyers collaborate with their clients and truly consider what their clients

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420. Cannon, *supra* note 24, at 571–72; *Strategies for Policy Change*, *supra* note 394, at 592–93.

421. See *Strategies for Policy Change*, *supra* note 394, at 585; *Transforming Primary Care*, *supra* note 394; see also *Patients to Policy*, *supra* note 394.

422. Genn, *supra* note 346, at 179.

423. See Parmet et al., *supra* note 317, at 26; WILLIAMSON, ET AL., *supra* note 398, at 7 (“These include legal clinics for patients to inform them of their legal rights and strategies to advocate for themselves, collaboration with state or local agencies to facilitate systems or process improvements to benefit patients, and state or local policy change to strengthen public health priorities for low-income and vulnerable populations.”).

424. Gerald P. Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1608, 1657 (1989).

are bringing to the interactions in terms of “experience, know-how, and strategic sense.”<sup>425</sup> The clients-to-policy approach should similarly embrace “movement lawyering,” giving lawyers a platform for viewing and engaging clients as individuals and as a group that can contribute positively to social justice movements<sup>426</sup> and community members as partners with whom lawyers can share leadership, knowledge, control, power, and decision-making.<sup>427</sup>

Interventions aimed at structural reforms that advance health justice should engage community members in developing their own strategies to address poor health in their communities,<sup>428</sup> which can ultimately reduce social inequity and improve community health.<sup>429</sup> When lawyers fail to consult with and engage impacted individuals and organizers in advocacy for structural change,<sup>430</sup> they can reinforce power inequality among racial and socio-economic groups.<sup>431</sup> Ultimately, organizing and elevating the voices of community members will be more effective at dismantling institutionalized racism and poverty than traditional lawyering approaches.<sup>432</sup> Using rebellious and movement lawyering practices to advance a clients-to-policy approach helps promote the voices, lived experiences, goals, and leadership of the clients and communities who have experienced health disparities and deserve health justice.

It is worth noting that lawyers who receive federal funding through the Legal Services Corporation (“LSC”) are prohibited by federal regulations from engaging in lobbying, political advocacy or organization, or class action litigation.<sup>433</sup> These restrictions have

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425. *Id.* at 1657.

426. See Sharpless, *supra* note 308, at 371–72.

427. Alexi Freeman & Lindsey Webb, *Yes, You Can Learn Movement Lawyering in Law School: Highlights from the Movement Lawyering Lab at Denver Law*, 5 HOW. HUM. & CIV. RTS. L. REV. 55, 61 (2020).

428. Emily A. Benfer & Allyson E. Gold, *There’s No Place like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL’Y REV. ONLINE S1, S48 (2017).

429. *Id.* at S49.

430. Freeman & Webb, *supra* note 427, at 62.

431. Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 488 (2001).

432. Shek, *supra* note 69, at 115.

433. *Statutory Restrictions on LSC-Funded Programs*, LEGAL SERVS. CORP., <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/statutory-restrictions-lsc-funded-programs> [<https://perma.cc/B4LA-C4MT>]; see Lincoln Caplan, *The Invisible Justice Problem*, 148 DAEDALUS 19, 26 (2019) (detailing the justifications of the LSC restrictions).

been critiqued by access to justice scholars as depriving “federally funded attorneys of their most effective methods of law reform and to prevent representation of poor and unpopular clients who most need help.”<sup>434</sup> Even with those restrictions though, LSC grantees are permitted to provide information about proposed government actions, such as how a proposed law or rule would work and the effects it would have, and about the clients they serve, and the needs of those clients, and their work, so long as they are not expressing a position about what the government should do.<sup>435</sup> For example, attorneys at Iowa Legal Aid have been using a clients-to-policy approach by collecting, analyzing, and surfacing data and client stories about evictions to support eviction prevention and tenant protection reforms.<sup>436</sup>

In Mia’s case, the legal team used a clients-to-policy approach to advocate for important structural reform of D.C.’s residential lead laws. The legal team, and their medical partners, testified before the D.C. Council in support of a bill that would require all landlords renting property built before 1978, the year in which lead paint was banned, to provide a clearance report showing that lead-dust swipe testing was completed and the property is safe.<sup>437</sup> It would also strengthen remediation steps, such as requiring certain repairs and providing funding to offset repair expenses for landlords so as not to diminish the supply of affordable housing.<sup>438</sup> They testified about the problems and gaps in current law that they saw through their casework and the ways in which the new law would fill those gaps.

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434. Rhode, *supra* note 312, at 881.

435. *2020 Prohibited Political and Lobbying Activities for LSC Grantees*, LEGAL SERVS. CORP. (Jan. 14, 2020), <https://live-lsc-d9.pantheonsite.io/about-lsc/laws-regulations-and-guidance/lsc-regulations/lobbying-and-political-activities/2020-prohibited-political-and-lobbying-activities-lsc-grantees> [<https://perma.cc/LKH6-9M9T>].

436. Amal Barre & Ericka Petersen, *Opinion: Eviction Data Can Support Local Efforts to Limit Housing Instability*, DES MOINES REG. (Nov. 1, 2021, 9:23 AM), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2021/11/01/eviction-data-can-help-limit-housing-instability-unevictia/6198518001> [<https://perma.cc/5TJZ-K9YP>]; *Mind the Map*, UNEVICT IA, <https://www.unevictia.com/events> [<https://perma.cc/QK78-3SJT>].

437. See *B23-0407 - Lead Hazard Prevention and Elimination Amendment Act of 2019*, COUNC. OF D.C., <https://lims.dccouncil.us/Legislation/B23-0407> [<https://perma.cc/6CF5-J2BY>]; Terrence McCoy, *D.C. Council Will Consider Law to Strengthen Prevention of Lead Poisoning in Homes*, WASH. POST (Sept. 27, 2018), [https://www.washingtonpost.com/local/social-issues/dc-council-will-consider-law-to-strengthen-prevention-of-lead-poisoning-in-homes/2018/09/27/df124d82-c1a6-11e8-97a5-ab1e46bb3bc7\\_story.html](https://www.washingtonpost.com/local/social-issues/dc-council-will-consider-law-to-strengthen-prevention-of-lead-poisoning-in-homes/2018/09/27/df124d82-c1a6-11e8-97a5-ab1e46bb3bc7_story.html) [<https://perma.cc/PN4F-S2CJ>].

438. McCoy, *supra* note 416.

Importantly, Mia's legal team also engaged her mother, their client, in this law reform advocacy. Mia's mother was intent on playing a role to ensure that no other children experienced what her daughter did. She wanted to get involved in advocacy to get this legislation passed. The legal team helped Mia's mother understand the legislative process, the power of her story, and the components of the legislation so she could decide which solutions she wanted to propose and prepared her to testify in the hearing. For the first time in her life, Mia's mother walked into the D.C. Council building, where she joined other parents in advocating for the solutions she wanted to see in her own community.

c. Individual Legal Representation Is Critical to the Implementation of Structural Change

Once structural changes such as law and policy reforms are attained, implementation and enforcement by lawyers are necessary to ensure that those changes have meaning and impact. To be successful, a clients-to-policy approach needs to be paired with ongoing direct representation so that the work continues with clients to assure any new laws or policies on the books are carried out in the lives of marginalized individuals and communities in furtherance of health justice.

Major structural changes in housing law during the pandemic provide a case study of how lawyers are needed to ensure significant reforms are actually implemented. For example, although there was a major change in federal, state, and local housing policies through a national moratorium on some evictions for a period of time and many state and local jurisdictions temporarily paused evictions,<sup>439</sup> coverage under those moratoria were sometimes hard to decipher or aver. For example, there was "no easy way for tenants to check whether" their landlord relied on any federal funding and therefore was covered by the CARES Act moratorium.<sup>440</sup> And

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439. See, e.g., NAT'L HOUS. L. PROJECT, STOPPING COVID-19 EVICTIONS SURVEY RESULTS 1 (July 2020), <https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf> [<https://perma.cc/ZWU3-7C5V>] ("Under the federal moratorium in the CARES Act and many state and local eviction moratoria, it is illegal to evict someone for not paying rent. The CARES Act moratorium expire[d] July 24th [2020]. . . . At the time of this survey, 78% of [local jurisdictions] had local or state moratoria in place; 12% had local or state moratoriums that already expired; 10% never had a state or local moratorium."); see also Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 16,731, 16,731–38 (Mar. 31, 2021).

440. Karen Yi, *NJ Could Face "Tidal Wave" of Evictions if Rent Relief Stalls*, GOTHAMIST (July 13, 2020), <https://gothamist.com/news/nj-could-face-tidal-wave-of-evictions-if-rent-re>



many landlords ignored those reforms, either by threatening to evict or engaging in constructive evictions,<sup>441</sup> which forced some tenants, unaware of their rights, to leave their units, or by actually illegally evicting tenants.

The National Housing Law Project surveyed legal services organizations in the summer of 2020 and found that illegal evictions and lockouts by landlords were rampant.<sup>442</sup> Over 90% of the attorneys that responded to the survey reported “illegal evictions in their area.”<sup>443</sup> The attorneys described landlord tactics such as illegal lockout and intimidation via cutting off utilities and refusing repairs, falsely asserting that properties were not covered by moratoria, and other strategies.<sup>444</sup> Maria Lopez Nuñez, an organizer with the Ironbound Community Corporation in New Jersey, described “landlords who turn off the water” in an effort to make tenants leave, and “landlords who are calling their tenants every single day and demanding that they be paid, putting enormous psychological stress on people.”<sup>445</sup>

In Houston, where less than 4% of renters facing eviction have legal representation, a reporter observed about 100 eviction cases during the CDC eviction moratorium, and just one tenant successfully used that moratorium to block eviction.<sup>446</sup> This means that 99% of renters either did not know how to comply with the moratorium or were unaware of the order completely, and judges were not likely to bring it up.<sup>447</sup> Observations by other scholars suggest Houston is not the only jurisdiction that failed to aid litigants in these courtroom situations. Across their observations, Anna E. Carpenter and coauthors found that judges use legal jargon and process control that maintains legal complexity in their courtrooms, rather than providing an information-serving function.<sup>448</sup>

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lief-stalls [<https://perma.cc/82XK-GA64>] (quoting Adam Gordon, executive director of Fair Share Housing Center).

441. Sabbeth, *supra* note 355, at 80, 112–13 (describing landlords’ greater ability to pursue litigation against tenants and landlords’ failure to maintain adequate housing); *see also* Cannon, *supra* note 24, at 557–58.

442. NAT’L HOUS. L. PROJECT, *supra* note 439, at 1–3.

443. *Id.*

444. *Id.*

445. Yi, *supra* note 440.

446. Chris Arnold, *Despite a New Federal Ban, Many Renters Are Still Getting Evicted*, NPR (Sept. 14, 2020, 5:00 AM), <https://www.npr.org/2020/09/14/911939055/despite-a-new-federal-ban-many-renters-are-still-getting-evicted> [<https://perma.cc/2QKB-M43F>].

447. *Id.*

448. Anna E. Carpenter, Colleen F. Shanahan, Jessica K. Steinberg & Alyx Mark, *Judges in Lawyerless Courts*, 110 GEO. L.J. — (forthcoming 2022).

Another example of the need for legal representation to ensure implementation in the wake of significant policy change involves the disbursement of the emergency rental assistance money that was allocated to respond to COVID-19. While Congress allocated a total of about forty-six billion dollars in emergency rental assistance, there have been significant roadblocks to effective access and use of these funds.<sup>449</sup> These barriers include administrative hurdles, lack of knowledge about the programs, resource constraints, and political pushback.<sup>450</sup> Such challenges to the implementation of this new program have led advocates to call for legal representation to be paired with the provision of rental assistance and other eviction prevention measures to ensure that laws and policies are implemented and enforced as intended.<sup>451</sup>

Hopefully, the legislation for which the legal team and Mia's mother advocated in the wake of her lead exposure will pass. If that happens, the Health Justice Alliance Law Clinic and other attorneys in the city will work to ensure that the prevention and accountability measures in the bill are implemented as intended. In the meantime, a bill did pass lowering the blood levels that trigger intervention by D.C. agencies and landlords to the levels recommended by the CDC and lowering paint lead levels to those recommended by the EPA,<sup>452</sup> and more children will now get the benefits of existing interventions following lead exposure. Attorneys who litigate housing conditions cases in D.C. will need to remain vigilant following this important legislative reform to ensure that implementation and enforcement happens as intended.

## CONCLUSION

Much of the health justice literature has focused on the values that should drive health justice and the structures that need to be dismantled to promote health equity. This Article adds to the health justice scholarship by providing a lens through which civil

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449. *Fact Sheet: Biden-Harris Administration Announces Initiatives to Promote Housing Stability by Supporting Vulnerable Tenants and Preventing Foreclosures*, WHITE HOUSE (June 24, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-biden-harris-administration-announces-initiatives-to-promote-housing-stability-by-supporting-vulnerable-tenants-and-preventing-foreclosures> [https://perma.cc/524U-FXJ4]; see also Michelle D. Layser, Edward W. De Barbieri, Andrew J. Greenlee, Tracy A. Kaye & Blaine G. Saito, *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445, 482 (2021).

450. Layser et al., *supra* note 449, at 482.

451. *Id.* at 515.

452. 68 D.C. Reg. 001227 (Jan. 22, 2021).

legal needs can be understood as social determinants that harm health and as drivers of health inequities. It supports the urgent need for legal representation for those impacted by such health injustice. It also contemplates the operationalization of these ideas through important roles for attorneys serving individuals subordinated by virtue of poverty and race, whether they are legal services attorneys, pro bono attorneys, solo practitioners, small firms providing low bono services or representation by court appointment, or law school clinics. The Article also echoes the call to action of Attorney General Garland for the legal community to prevent evictions and issues a call for lawyers to address health-harming legal issues in all of the areas of fundamental human need identified by the ABA as necessitating counsel. All of the SDOH domains included in Healthy People 2030—housing, economic stability, educational access and quality, social and community context, and access to quality health care—implicate legal issues in the ABA’s fundamental human needs paradigm. Health justice necessitates shelter, sustenance, safety, access to health care, and family stability and preservation, and legal needs in all of these areas are especially urgent in light of the impacts and inequities of the ongoing COVID-19 pandemic. Efforts by the ABA, LSC, the National Coalition for a Civil Right to Counsel, and other national organizations, as well as legislation introduced in Congress, state legislatures, and local legislatures to promote access to counsel in fundamental areas of civil legal need<sup>453</sup> are critical not only to access to justice, but to health justice, and can benefit from a health and health equity lens to support their importance.

While the health justice scholarship often emphasizes law and policy reform, lawyers play an important role through enforcement of extant laws to address the immediate and urgent needs of low-income clients—especially those who are also people of color facing a compounding burden of poverty and racism. Although large-scale reforms are the best way to address root causes of inequality and improve the health of populations, in the near term, individuals need help vindicating the rights they already have.

Legal representation is not only important because it helps people *while* the health justice movement works towards more collective, revolutionary, structural change that can take a long time. Instead, legal representation itself should be viewed as *a part of* that revolution, as it is critical to the identification of problems

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453. Cannon, *supra* note 24, at 540–44.

with law that necessitate reform and to the development of thoughtful, effective solutions informed by firsthand knowledge of the impacts of law on the ground and by the experiences and voices of affected individuals and communities.

There may appear to be a complex tension between pursuing large-scale structural reforms and focusing on enforcement of extant laws in the pursuit of health justice. But the relationship between individual legal representation and law reform is cyclical and mutually reinforcing. Individual legal representation can serve as the genesis of law reform, where lawyers discover the need for change, have the data, stories, and information to support that need, can use lessons from their casework to shape aspirations for structural change through law reform, and can elevate the power of their clients and affected communities to drive the health justice agenda. At the same time, structural reforms are only effective if they are enforced and implemented properly—even the best-written law will not help anyone if there is no one to enforce it. The COVID-19 pandemic has only underscored the need for such an integrated, multitiered approach; “because emergencies typically exacerbate long-standing and interconnected crises in socioeconomically disadvantaged communities, legal and policy responses must address root problems in addition to immediate needs.”<sup>454</sup>

That dual-track approach to health justice also has lessons for the role of healthcare in facilitating health justice. Scholars have advocated powerfully for the need for “just medicine,” including equity in the delivery of healthcare that can be shaped through law, policy, and systems transformation.<sup>455</sup> What is the role of health care and the field of medicine in addressing law and policy in other domains of SDOH, such as those explored in this Article, outside of the walls of a doctor’s office?

The health justice framework could benefit from additional contemplation of the role of providers and healthcare systems in systematically addressing “the many upstream factors that contribute to illness and poor health care outcomes.”<sup>456</sup> In light of the growing

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454. Benfer & Wiley, *supra* note 34.

455. See generally DAYNA BOWEN MATTHEW, *JUST MEDICINE: A CURE FOR RACIAL INEQUALITY IN AMERICAN HEALTH CARE* (2015) (outlining health disparities along racial lines and arguing that implicit bias is the most important determinant of health).

456. NAT’L ACADS. OF SCIS., ENG’G, & MED., *INTEGRATING SOCIAL CARE INTO THE DELIVERY OF HEALTH CARE: MOVING UPSTREAM TO IMPROVE THE NATION’S HEALTH* 19 (2019).

recognition that systemic issues cause adverse health impacts,<sup>457</sup> leading medical organizations like the American Association of Medical Colleges and the American Association of Family Physicians have called for health care professionals to center public, systemic health outcomes at both the individual and population health levels.<sup>458</sup> For example, on an individual patient level, physicians can work towards equity within the medical care they provide by incorporating a patient's social context into a diagnosis, understanding the role of law in the health of patients from marginalized communities, referring them to partners for community health and legal services, and collaborating with multidisciplinary partners to address health-harming legal needs.<sup>459</sup> However, "giving every community an equitable chance at being healthy means looking beyond medical care alone."<sup>460</sup> At the same time, physicians can serve as advocates for "population health" and use their experience serving individual patients to work towards broader health equity to address the social determinants and structural deficiencies that drive chronic illness and inequities in communities.<sup>461</sup>

Health justice requires examination of the role of multiple disciplines in leveraging law and policy in the direction of health equity. This Article seeks to advance the conversation about both the fundamental legal needs that must be addressed to achieve health justice and the position of lawyers, who must play a critical role in the enforcement of extant laws and the development and pursuit of law reforms that implicate health justice. Ultimately, professionals

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457. See generally Michele K. Evans, Lisa Rosenbaum, Debra Malina, Stephen Morrissey & Eric J. Rubin, *Diagnosing and Treating Systemic Racism*, 383 N. ENGL. J. MED. 274 (2020) (exploring systemic racism in healthcare and the role of the physician); see also Kevin B. O'Reilly, *AMA: Racism Is a Threat to Public Health*, AMA (Nov. 16, 2020), <https://www.ama-assn.org/delivering-care/health-equity/ama-racism-threat-public-health> [<https://perma.cc/5UYH-P7AK>]; Press Release, Gov. Gretchen Whitmer, Governor Whitmer Signs Executive Directive Recognizing and Addressing Racism as a Public Health Crisis, Creates the Black Leadership Advisory Council (Aug. 5, 2020), [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90640-535762--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-535762--,00.html) [<https://perma.cc/4R95-QCGB>]; Anne Andermann, *Taking Action on the Social Determinants of Health in Clinical Practice: A Framework for Health Professionals*, 188 CANADIAN MED. ASS'N J. E474, E474 (2016).

458. *Integration of Primary Care and Public Health*, AM. ACAD. OF FAM. PHYSICIANS (Dec. 2020), <https://www.aafp.org/about/policies/all/integration-primary-care.html> [<https://perma.cc/C8T3-6QRD>].

459. See Andermann, *supra* note 457, at E475.

460. *Who We Are and What We Do*, *supra* note 45.

461. Jennifer Bresnick, *How Do Population Health, Public Health, Community Health Differ?*, HEALTH IT ANALYTICS (July 19, 2017), <https://healthitanalytics.com/news/how-do-population-health-public-health-community-health-differ> [<https://perma.cc/QAC3-AK78>].

across disciplines must go beyond their silos to contemplate collaborative approaches not only with each other, but with the individuals and communities whose inequities health justice seeks to redress at the center.