Self-Help, Reimagined*

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We will never have enough lawyers to serve the civil legal needs of all low- and moderate-income (LMI) individuals who must navigate civil legal problems. A significant part of the access-to-justice toolkit must include self-help materials. That much is not new; indeed, the legal aid community has been actively developing pro se guides and forms for decades. But the community has hamstrung its creations in two major ways: first, by focusing these materials almost exclusively on educating LMI individuals about formal law, and second, by considering the task complete once the materials have been made available to self-represented individuals. In particular, modern self-help materials fail to address many psychological and cognitive barriers that prevent LMI individuals from successfully deploying the substance of the materials. In this Article we make two contributions. First, we develop a theory of the obstacles LMI individuals face when attempting to deploy professional legal knowledge. Second, we apply learning from fields as varied as psychology, public health, education, artificial intelligence, and marketing to develop a framework for how courts, legal aid organizations, law school clinics, and others might reconceptualize the design and delivery of civil legal materials for unrepresented individuals. We illustrate our framework with examples of reimagined civil legal materials.

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INTRODUCTION

By any measure, the overwhelming majority of human beings (as opposed to corporations, labor unions, or other incorporeal entities) who face legal problems in the United States do so without a traditional attorney-client relationship and indeed, without any form of professional legal assistance.[1] Meanwhile, an enormous amount

1. STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR ASS'N, AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE PRO SE LITIGANTS 4 (2009), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_prose_white_paper.authcheckdam.pdf [https://perma.cc/RXB9-SUCA] ("When going to state court, most people proceed *pro se* most of the time. High volume state courts, including traffic, housing and small claims, are dominated by *pro se* litigants." (italics in original) (footnote omitted)). Studies generally find that approximately eighty percent of the civil legal needs of low-income people go unmet. Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 LOY. L.A. L. REV. 869, 869 (2009) ("[A]n estimated four-fifths of the individual legal needs of the poor, and a majority of the needs of middle-income Americans, remain unmet."). For major studies covering the nation as a whole, see, for example, Helaine M. Barnett, *Preface* to LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf [https://perma.cc/U85P-RDQP], saying, "[F]or every person helped by LSC-funded legal aid programs, another is turned away. That

of legal scholarship in the United States is focused on elite, particularly wealthy, individuals and, more to the point, on corporations, labor unions, partnerships, and the other incorporeal entities that consume legal services in quantity and who therefore can hire attorneys to represent them. This Article is about how human beings in the United States who choose to attempt to address[2] their legal problems actually do so, or could be empowered to do so. More specifically, it is about assisted self-help, and how to think about the "assisted" part.

Currently the dominant form of assistance received by low-income individuals seeking help with legal matters is the provision of self-help materials, sometimes coupled with limited advice from a legal professional.[3] Self-help or pro se legal materials are actively distributed by courts, legal aid organizations, public libraries, bar associations, neighborhood advocacy centers, internet-based networks, law schools, pro bono groups, and even for-profit companies, among others.[4]

Given the prominent, perhaps even dominant, role that self-help materials play in the United States' response to the justice gap and their long history in the United States, one might expect that those interested in access to civil justice would have

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was the primary finding in 2005 and LSC's collection of data from LSC-funded programs across the country in 2009 reaffirms that finding." *See also* Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 750 (2015) ("In landlord-tenant matters, for instance, it is typical for ninety percent of tenants to appear pro se while ninety percent of landlords appear with counsel." (footnote omitted)).

2. Many individuals do not attempt to address legal problems, even problems they recognize that they have and that they recognize as legal. Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and the Importance of Inaction*, *in* TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 126–27 (Pascoe Pleasence, Alexy Buck & Nigel J. Balmer eds., 2007) (reviewing the reasons that many individuals do nothing in response to legal problems).

3. Herbert M. Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 LAW & SOC'Y REV. 713, 745–47 (1999); *see* Steinberg, *supra* note 1.

4. RICHARD ZORZA, ZORZA ASSOCS., THE SUSTAINABLE 21ST CENTURY LAW LIBRARY: VISION, DEPLOYMENT, AND ASSESSMENT FOR ACCESS TO JUSTICE (2012), www.zorza.net/LawLibrary.pdf [https://perma.cc/J9L8-GVJK]; *About Pro Bono Net*, PRO BONO NET, www.probono.net/about/ [https://perma.cc/PMS3-PRZP]; *Court Forms*, ST. OF ME. JUD. BRANCH, www.courts.maine.gov/fees_forms/forms/ [https://perma.cc/3GQB-CE28]; *Helpful Legal Information for the Public*, DEL. COUNTY B. ASS'N, www.delcobar.org/?page=publiclegalinfo [https://perma.cc/9PGJ-CCG9]; *Know Your Rights—Defending Creditor Lawsuits*, NEW ECON. PROJECT, www.neweconomynyc.org/resource/lawsuits [https://perma.cc/DW99-53JT]; LEGALZOOM, www.legalzoom.com [https://perma.cc/K8CN-G8RH]; *Pro Bono Forms*, N. DISTRICT OF N.Y. FED. CT. B. ASS'N, www.ndnyfcba.org/probonoforms [https://perma.cc/4G5A-RPDY]; RICHARD ZORZA'S ACCESS TO JUSTICE BLOG, accesstojustice.net [https://perma.cc/Z6VL-FRER]; *Small Claims Actions: Maine Court Forms*, PINE TREE LEGAL ASSISTANCE, www.ptla.org/small-claims-action-maine-court-forms [https://perma.cc/F66U-5KXC]; Larry Upshaw, *Divorce Forms Could Endanger Property Rights, Says Texas Family Law Council*, ENHANCED ONLINE NEWS (Nov. 19, 2012, 1:41 PM), http://eon.businesswire.com/news/eon/20121119006521/en/pro-bono-lawyers/legal-services/probono [https://perma.cc/A8BL-QUZ5]. This form of unbundling of legal services aims to help the unrepresented litigant navigate the morass of procedures required to have their side heard in court.

developed theories of what works, and why, in guided self-help. One might also expect that those theories would have been tested in at least some of the dizzying variety of legal settings in which litigants currently proceed without lawyers, including eviction proceedings, government benefits hearings, and family law contests. Such is not the case. Indeed, it appears that there has been little analysis of, and no rigorous testing of, self-help materials in the legal context.

In this Article, we begin the construction of a dialogue about assisted self-help. In choosing to study this topic, we make the following assumption: there will never be sufficient funding or in-kind donations to provide an attorney-client relationship, or any kind of professional legal assistance (limited, unbundled, or otherwise), to meet the United States' well-documented civil justice gap.[5] Lawyers are expensive. It is unlikely that there will be sufficient public and private funding to provide free or low-cost civil legal services to the poor via the traditional method of an individual attorney-client relationship.[6] Other market-based solutions, such as limited license legal technician[7] (or, more generally, nonlawyer assistance) and unbundled legal

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5. *See* CONSORTIUM ON LEGAL SERVS. & THE PUB., AM. BAR ASS'N, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS (1994), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/downloads/legalneedstudy.authcheckdam.pdf [https://perma.cc/GDR7-36R8]; LEGAL SERVS. CORP., *supra* note 1. Numerous studies have been conducted within individual states documenting the shortage of available legal assistance relative to demand or need. The following is a sample of reports released since 2000: CRISTINA LLOP, ADDRESSING THE NEEDS OF SELF-REPRESENTED LITIGANTS IN ALABAMA STATE COURTS (2009), http://alabamaatj.org/wp-content/uploads/2013/08/Alabama-Final-Report-SRL-Services.pdf [https://perma.cc/P98G-5FUE]; A.L. BURRUSS INST. OF PUB. SERV. & RESEARCH, KENNESAW STATE UNIV. & D. MICHAEL DALE, CIVIL LEGAL NEEDS OF LOW AND MODERATE INCOME HOUSEHOLDS IN GEORGIA (2009), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_GA_clns_2008.authcheckdam.pdf [https://perma.cc/3SA2-6KN6]; IND. LEGAL SERVS., INC., IND. BAR FOUND. & IND. STATE BAR ASS'N., UNEQUAL ACCESS TO JUSTICE: A COMPREHENSIVE STUDY OF THE CIVIL LEGAL NEEDS OF THE POOR IN INDIANA (2009), http://www.indianalegalservices.org/files/ilsi-unequal-access-2008-full.pdf [https://perma.cc/TG4H-TPHL]; POVERTY RESEARCH INST., LEGAL SERVS. OF N.J., UNEQUAL ACCESS TO JUSTICE: MANY LEGAL NEEDS, TOO LITTLE LEGAL ASSISTANCE, THE CONTINUING CIVIL JUSTICE GAP FOR LOWER-INCOME NEW JERSEYANS (2009), http://poverty.lsnj.org/sites/PovertyReports/Pages/LegalNeeds2009.pdf [https://perma.cc/AH8F-BLFE]; S.C. ACCESS TO JUSTICE COMM., 2008 PUBLIC HEARINGS OF THE SOUTH CAROLINA ACCESS TO JUSTICE COMMISSION: EXECUTIVE SUMMARY (2009), http://www.scatj.org/assets/Executive%20Summary%20April2009.pdf [https://perma.cc/37T5-GY2Z]. For a more general discussion, see Rhode, *supra* note 1, at 869; Henry J. Scudder, *Hearings Shed Light on Unmet Needs*, N.Y. L.J. (Jan. 24, 2011), http://www.newyorklawjournal.com/id=1202478938491/Hearings-Shed-Light-on-Unmet-Needs, *available at* http://www.nycourts.gov/courts/ad4/clerk/Notice-PR/PJ-hearing.pdf [https://perma.cc/W734-Q7MC].

6. Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice Through the (Un)corporate Practice of Law*, 38 INT'L REV. L. & ECON. 43, 46 (2014) ("If every American lawyer in the country did an additional 100 h[ours] per year, that would be enough to secure less than 30 min[utes] per dispute-related problem per household." (citation omitted)); Steinberg, *supra* note 1, at 764–74 (describing the practical impediments to providing legal services to the poor in the most extreme civil cases).

7. Washington State has recently authorized nonlawyer representation in litigation. *See* Order, *In re* Adoption of New APR 28—Limited Practice Rule for Limited License Legal

services,[8] are an important part of a comprehensive solution to the civil justice gap. Adjudicatory-system reform is similarly essential.[9] But these markets are accessible only to those with income and assets sufficient to pay for the services offered, and adjudicatory-system reform depends on the idea that lay individuals will find and be able to use the information needed to navigate reformed, but still alien and probably alienating, tribunals.

Studying self-help is critical in two senses. First, self-help must be a central component of any serious discussion about addressing the justice gap in the United States. And second, self-help must occupy a central role in any serious description of the way in which legal institutions directly affect the lives of corporeal persons.

Self-help materials cannot be successful unless two conditions are met: (1) the lay would-be user can find materials in a timely manner (are self-help materials *accessible*?), and once found, (2) the lay would-be user can successfully use the materials to advance his or her cause (are the self-help materials *deployable*?).[10]

Until now, the primary focus of the bench, the bar, and the academy has been on access. Currently, many types of self-help materials are readily available to those who seek them. Practically every state court system and legal aid organization has websites providing forms or other information to unrepresented litigants.[11] Efforts

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Technicians, No. 25700-A-1005 (Wash. June 15, 2012), http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf [https://perma.cc/2K2M-TSV8] (order was not included in the Washington Register due to page count limitations); Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 MISS. L.J. 75 (2013). Administrative agencies have long allowed nonlawyer practice. *See* EXEC. OFFICE FOR IMMIGRATION REVIEW, U.S. DEP'T OF JUSTICE, FORM EOIR-31, REQUEST FOR RECOGNITION OF A NON-PROFIT RELIGIOUS, CHARITABLE, SOCIAL SERVICE, OR SIMILAR ORGANIZATION (2015) (form required for a nonlawyer representative in immigration cases).

8. For a review of the literature and use of unbundling in representation, see Molly M. Jennings & D. James Greiner, *The Evolution of Unbundling in Litigation Matters: Three Case Studies and a Literature Review*, 89 DENV. U. L. REV. 825 (2012).

9. Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1926 (1999) (arguing that clinics' success depends upon how willing courts are to modify the system to make it more user-friendly); Jona Goldschmidt, *The Pro Se Litigant's Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance*, 40 FAM. CT. REV. 36, 43 (2002) (arguing that court staff and judges should provide basic legal information to pro se litigants and that judges should make greater use of pretrial conferences); Paula L. Hannaford-Agor, *Helping the Pro Se Litigant: A Changing Landscape*, CT. REV., Winter 2003, at 8, 11–12, 14 ("[A] large proportion of cases . . . seem to languish indefinitely because litigants do not know how to move to the next stage of the litigation process after they have filed the initial pleadings."); Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845 (2013) (discussing simplification of procedural rules).

10. We will discuss these concepts in an article we are continuing to research that we will call "Thinking Like a Non-Lawyer."

11. *Self-Representation: State Links; Court Forms*, NAT'L CTR. FOR ST. CTS., http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/State-Links.aspx?cat=Court%20Forms [https://perma.cc/26EA-6FEP].

have also been made to write these materials in "plain language."[12] These are all laudable, but they share a common shortcoming: none that we have found seriously considers whether and how lay recipients can *deploy* the professional legal knowledge they provide.[13]

While scholarship teaches us that "[f]inding information and knowing how to use it are two different things,"[14] attention to lay deployment of professional legal knowledge has been sparse. Anecdotes from the field however, suggest that lay deployment challenges in law-related contexts are serious.[15] An example from almost two decades ago provides a telling illustration.[16] A pro se tenant, as a result of fully accessible self-help legal materials and limited advice, came to her eviction hearing armed with damning photographic evidence of her apartment's uninhabitability as well as knowledge of favorable law. But at a mediation in her case, she failed to produce the evidence she had in hand or to raise legal defenses.[17] The tenant's explanation: "it didn't come up."[18] Access to professional legal knowledge was not a problem for this tenant. The problem was *deployment*, particularly a lack of self-agency,[19] a lack of knowledge of how to negotiate, and (we hypothesize) a struggle against debilitating emotions such as fear, shame, guilt, or hopelessness.[20]

This Article explores the impediments to lay deployment of the professional legal knowledge in self-help materials. Based in part on our observations of small claims courts and semistructured cognitive interviews with small claims defendants, we

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12. *See, e.g.*, Richard Zorza, Self-Represented Litigation Network, *Module 6: Developing and Deploying Plain Language Forms and Instructions*, COURT LEADERSHIP AND SELF-REPRESENTED LITIGATION: SOLUTIONS FOR ACCESS, EFFECTIVENESS, AND EFFICIENCY 4 (2008), http://www.ncsc.org/microsites/access-to-justice/home/Topics/~/media/Microsites/Files/access/06-Plain%20Language-Con.ashx [https://perma.cc/WXG5-79RZ]; *see also* Joseph Kimble, *Answering the Critics of Plain Language*, 5 SCRIBES J. LEGAL WRITING 51 (1994–1995); Ruth Sullivan, *The Promise of Plain Language Drafting*, 47 MCGILL L.J. 97 (2001); *What Is Plain Language?*, PLAINLANGUAGE.GOV, http://www.plainlanguage.gov/whatisPL [https://perma.cc/U686-RHK7].

13. *See* JOHN M. GREACEN, RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE "STATE OF THE ART" (2011), http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf [https://perma.cc/Q3DK-N5BQ] (mentioning "deploy" only once, on page 21, in the context of the possibility that creators of forms will leave and render the forms obsolete).

14. Kritzer, *supra* note 3, at 745.

15. *See infra* Part II.

16. Erica L. Fox, Note, *Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation*, 1 HARV. NEGOT. L. REV. 85, 85 (1996).

17. "Instead, after negotiating in the hallway with the landlord's lawyer, she . . . agreed to pay outstanding rent and to vacate the apartment within three months." *Id.*

18. *Id.*

19. We borrow Fox's terminology here; in this context, self-agency means the ability of an individual to act as her own agent, to represent her best interest in the negotiation. *Id.* at 86.

20. *Cf.* Steinberg, *supra* note 1, at 755 (describing the maze of rules and procedures a self-represented litigant must overcome and concluding that it is not surprising "that unrepresented litigants feel nervous, bewildered, and emotionally overwhelmed in charting their course through the court system").

identify a series of obstacles that we posit are preventing individuals subject to compulsory legal process from deploying professional knowledge.

In brief, we hypothesize that lay-deployment problems stem from a variety of cognitive, emotional, and behavioral challenges, ranging from immobilizing feelings of shame, guilt, or hopelessness to lack of self-agency[21] as well as failures in plan making and plan implementation.[22] After a review of available, lay legal materials, we further posit that the way information is currently presented to self-represented individuals—without visual imagery, with unnecessary details, and without attention to layout and organization—can thwart its effective deployment.[23] Thus, our aim in this Article is twofold: (1) to identify the barriers that LMI individuals face in attempting to navigate legal and quasi-legal spheres without professional assistance and (2) to propose ways in which self-help materials might be re-imagined to address these barriers.

Part I builds a theory of barriers to effective deployment by joining together a variety of literatures—particularly public health, education, and cognitive psychology—that speak to analogous problems in other contexts. We also rely on findings from semistructured interviews with individuals in financial distress. In Part II, we draw from these literatures to reimagine self-help materials that address the hurdles faced by lay individuals attempting to navigate the legal system without full representation. We provide examples from materials we have been developing for a research study on consumers in financial distress. We contend, however, that we cannot simply arbitrage the findings of other literatures to the legal context, even if those other literatures include theory-driven hypotheses evaluated by strong research designs. The legal context may not be as different as legal professionals would have the world believe, but it is different. New self-help materials need to be subjected to the testing so stunningly absent in the context of old self-help materials. Part III surveys the literature on testing of educational materials and discusses our experiences in testing. The Article concludes by discussing next steps.

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21. Fox, *supra* note 16.

22. Sandefur, *supra* note 2.

23. For example, in a study examining information presented to medical patients, the researchers found that illustrated booklets were more effective in communicating concepts than those without illustrations. *See* J.M.H. Moll, *Doctor-Patient Communication in Rheumatology: Studies of Visual and Verbal Perception Using Educational Booklets and Other Graphic Material*, 45 ANNALS RHEUMATIC DISEASES 198, 205–07 (1986); *see also* Peter S. Houts, Cecilia C. Doak, Leonard G. Doak & Matthew J. Loscalzo, *The Role of Pictures in Improving Health Communication: A Review of Research on Attention, Comprehension, Recall, and Adherence*, 61 PATIENT EDUC. & COUNSELING 173 (2006) (reviewing studies that found that the inclusion of pictures to written and spoken language increases patients' "attention, comprehension, recall and adherence"). In a study examining information presented to medical patients, the researchers found that illustrated booklets were more effective in communicating concepts than those without illustrations. *Id.*

I. BARRIERS TO EFFECTIVE DEPLOYMENT

In this Part, we analyze obstacles that, we hypothesize, thwart the ability of a layperson to deploy professional legal knowledge contained in already-accessed self-help materials. We divide these impediments into two categories: barriers to action and barriers to understanding. We restrict our analysis to situations in which there are easily found self-help legal-assistance materials tailored to the particular legal problem the individual faces.

We draw on and quote from cognitive semi-structured interviews with LMI individuals in financial distress in courts in Maine, Massachusetts, and Connecticut. We asked test subjects to read self-help materials in front of a research-team member and encouraged readers to think out loud in order to describe thought processes as they read.[24] At opportune times, the research member asked open-ended follow-up questions, such as, "What do you think of this phrase/illustration?" Our team interviewed individuals in severe financial distress, as evidenced by a pending debt collection lawsuit, but we hypothesize that our findings on deployment barriers are applicable to a wide range of legal and quasi-legal situations.[25]

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24. We conducted these interviews as part of the Financial Distress Research Project, a randomized-control trial testing the effectiveness of interventions that might help individuals in financial distress. We first described this study in an article in 2013 which focused on the randomized-control trial aspect of the project. *See* Dalié Jiménez, D. James Greiner, Lois R. Lupica & Rebecca L. Sandefur, *Improving the Lives of Individuals in Financial Distress Using a Randomized Control Trial: A Research and Clinical Approach*, 20 GEO. J. ON POVERTY L. & POL'Y 449 (2013). As part of this project, we have spent the past two years developing and testing the effectiveness of self-help legal materials to help rehabilitate individuals in financial distress. The materials span a variety of circumstances: (1) responding to and challenging a debt collection lawsuit in small claims court; (2) negotiating with creditors outside of that lawsuit (with specific modules targeted at medical, utility, and student loan debt); (3) obtaining and correcting the individual's credit report; and (4) filing a no-asset chapter 7 bankruptcy, if appropriate. Over sixty law students from the Maine, Harvard, and UConn law schools have participated in the creation of these materials.

25. Nationally, a high fraction of individuals who have been sued fail to respond to the summons, to file answers, or to appear at court hearings. This is particularly true in debt collection cases. Default is yet another instance of inaction in the face of a justiciable problem, and it was prevalent in the courts from which we recruited our interview subjects. Two student reports are telling. As one student interviewer put it:

> I have now been to three separate small claims dockets in two different Maine courts . . . . Quick observations are as follows:
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> The biggest barrier to justice in small claims when it comes to these credit card cases is the default judgment. I watched one session where the attorney for the collection company stood up right before the judge came out and called out a dozen names to see if any of the defendants were there. No one responded, and he walked away with a dozen default judgments. I know we've talked about encouraging pro se defendants to show up, but it was interesting to see how truly

This Part proceeds in two steps. In Part I.A, we discuss barriers to action. In Part I.B, we discuss barriers to understanding. In Part II, we discuss overcoming these barriers.

A. Barriers to Action

Solving justiciable problems typically requires action. The needed action may be responding to a lawsuit, coming to court on a hearing date, or, when in court, advocating for oneself. We hypothesize that failures to take action are in part a function

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prevalent the practice was.

Memorandum from Peter Lacy to Access to Justice Team (Feb. 14, 2013) (on file with authors).

> There were about thirty-three credit card debt collection cases on the docket. Of those, only about five people showed up to court. The debt collection cases had the same attorney. He carried a small briefcase with him to court. If challenged, it is likely that he wouldn't have had all the required documentation to prevail on the debt. However, the court granted him about twenty-eight default judgments because defendants failed to appear in the court.

Rachel Deschuytner, Motion for Summary Judgment: Minority (Apr. 11, 2013) (unpublished observations from small claims court in Portland, Me.) (on file with authors).

The literature on small claims courts and in other court systems reinforces the student observations. *See*, *e.g.*, D. James Greiner & Andrea J. Matthews, The Problem of Default, Part I (June 16, 2015) (unpublished manuscript), https://ssrn.com/abstract=2622140. On small claims courts, see Richard M. Alderman, *Imprisonment for Debt: Default Judgments, the Contempt Power & the Effectiveness of Notice Provisions in the State of New York*, 24 SYRACUSE L. REV. 1217 (1973); Archibald S. Alexander, *Small Claims Courts in Montana: A Statistical Study*, 44 MONT. L. REV. 227 (1983); Barkley Clark, *Default, Repossession, Foreclosure, and Deficiency: A Journey to the Underworld and a Proposed Salvation*, 51 OR. L. REV. 302 (1972); Suzanne E. Elwell & Christopher D. Carlson, Contemporary Studies Project, *The Iowa Small Claims Court: An Empirical Analysis*, 75 IOWA L. REV. 433 (1990); Craig A. McEwen & Richard J. Maiman, *Small Claims Mediation in Maine: An Empirical Assessment*, 33 ME. L. REV. 237 (1981); Hillard M. Sterling & Philip G. Schrag, *Default Judgments Against Consumers: Has the System Failed?*, 67 DENV. U. L. REV. 357 (1990); Beatrice A. Moulton, Note, *The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California*, 21 STAN. L. REV. 1657 (1969). *But see* William C. Whitford, *The Small-Case Procedure of the United States Tax Court: A Small Claims Court That Works*, 1984 AM. B. FOUND. RES. J. 797 (1984). On default in courts outside the small claims court system, see, for example, Stephen L. Dreyfuss, *Due Process Denied: Consumer Default Judgments in New York City*, 10 COLUM. J.L. & SOC. PROBS. 370 (1974); Nanette K. Laughrey, *Default Judgments in Missouri*, 50 MO. L. REV. 841 (1985); Michael A. Pohl & David Hittner, *Judgments by Default in Texas*, 37 SW. L.J. 421 (1983); Norman E. Risjord & June M. Austin, *The Problem of the Financially Irresponsible Motorist*, 24 U. KAN. CITY L. REV. 82 (1955–1956).

The upshot of all this is that when we observed deployment barriers even among those litigants who *did* find the gumption to attend court to contest their debt collection lawsuits, we were probably observing the tip of a sizeable iceberg. While hypotheses vary about why debt collection defendants default, *see* Greiner & Matthews, *supra*, our guess is that our interview subjects were an unrepresentative sample of all debt collection defendants in that they were more likely to have resisted, partially, the debilitating psychological states associated with pro se litigants.

of the psychological and mental state a lay individual finds herself in when faced with a justiciable problem: overtaxed, anxious, unfamiliar with legal mundanity.

1. Overtaxed Bandwidth

Recent research on scarcity—of time or money, for example—reveals scarcity's far-reaching implications for the poor.[26] Sendhil Mullainathan and Eldar Shafir's study of this issue exposes how the poor spend an inordinate amount of energy, attention, and mental bandwidth dealing with their impoverished state.[27] The need to focus on navigating the attendant issues of poverty—finding and keeping food, shelter, and employment—requires an intense use of mental capacity. This focus on the scarcity—referred to as tunneling—leaves limited room for consideration and attention to other issues.[28] Decision-making quality suffers, making coping with poverty ever harder.[29]

Drawing on this research, we hypothesize that LMI individuals, like the poor in Mullainathan and Shafir's study, "are not just short on cash. They are also short on [available] bandwidth."[30] More specifically, "an overtaxed bandwidth means a greater propensity to forget. . . . [T]hings that fall under what psychologists call prospective memory—memory for things that you had planned to remember, like calling the doctor or paying a bill by the due date."[31]

We hypothesize that successfully addressing a justiciable problem requires a heavy investment of prospective memory. Many of the legal and quasi-legal tasks required of lay individuals who engage with the legal system involve goal identification, goal pursuit, persistence, plan making, plan-implementation strategies, and self-control.[32] In the case of debt collection defendants, for example, these tasks include preparing a response to the lawsuit; rearranging one's schedule and securing transportation to court; and collecting evidence, such as receipts, documents, or photographs. If the individual reaches an agreement outside of court, she may need to follow up, perhaps multiple times, with the other party to receive evidence of the agreement, and perhaps later of payment, in writing.

Thus, overtaxed bandwidth and little excess prospective memory challenge an individual's ability to deploy even the best and most accessible self-help materials,

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26. *See generally* SENDHIL MULLAINATHAN & ELDAR SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH (2013).

27. *See id.*

28. *Id.* at 29 ("The term *tunneling* is meant to evoke tunnel vision . . . ." (italics in original)).

29. *See generally id.*

30. *Id.* at 157.

31. *Id.*; *see also* Kathleen D. Vohs & Todd F. Heatherton, *Self-Regulatory Failure: A Resource-Depletion Approach*, 11 PSYCHOL. SCI. 249 (2000).

32. Low bandwidth "means that you have fewer mental resources to assert self-control." MULLAINATHAN & SHAFIR, *supra* note 26, at 158. Psychologists have shown that self-control resembles a muscle, noting, "The resource needed for self-control is a limited, consumable strength, much like a muscle's ability to work." Mark Muraven & Roy F. Baumeister, *Self-Regulation and Depletion of Limited Resources: Does Self-Control Resemble a Muscle?*, 126 PSYCHOL. BULL. 247, 248 (2000).

unless perhaps those materials include appropriate antidotes.

2. Anxiety and Feelings of Threat

Consider the mental state of a layperson in severe financial distress who is stopped by a sheriff and given a summons to appear in small claims court to respond to a debt collection lawsuit.[33] We posit that most of us would find this situation both scary and threatening.

Cognitive interviews of persons sued in debt collection actions confirm our intuition:

> [Q:] How did you feel when you were first notified of the lawsuit in the summons and complaint?
> [A:] Awful. [Speaking about when she was served . . .] I was at work and I had to go outside the building to talk to the sheriff. It was embarrassing.[34]

In answering a similar question, another debt collection defendant puts it this way: "I felt nervous because this is my first time. It feels like you are being scolded. I'm pretty sure if we had money, we wouldn't be here."[35]

Anxiety, as well as feelings of threat and impending disaster, are commonly cited in many of our interviews.[36] We hypothesize that these emotions were more paralyzing among defendants who failed to appear.[37]

Thus, we hypothesize that materials designed to help a LMI debt collection defendant, or any lay LMI individual facing a justiciable problem, must address the

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33. As we explain below, the delivery of such a summons is the starting point for enrollment of study subjects in our study.

34. Memorandum from Sarah Hodges to the A2J Group 2 (Dec. 12, 2013) (on file with authors) (last alteration in original) (interview in Portland, Me. using Bad Evidence *Pro Se* Packet).

35. Memorandum from Hilary Higgins to Professor Jim Greiner 2 (Mar. 10, 2014) (on file with authors) (memorandum two of three using Bad Evidence Script 3 *Pro Se* Packet).

36. More than one subject we interviewed thought that, upon receiving the summons, she would be incarcerated. *E.g.*, Jim Greiner, Feb 14th Maine Court Visit and Cognitive Interviews on Draft Pro Se Forms (Feb. 14, 2013) (unpublished write-up of result of interview in Maine Small Claims Court using Statute of Limitations Script) (on file with authors). Another cognitive interview revealed the following:

> [Q:] How did you feel when you were first notified of the lawsuit in the summons and complaint?
> [A:] Nervous.
> [Q:] How do you think others feel who are less smart or knowledgeable than you?
> [A:] More scared.
> [Q:] How did you feel when you came to court this morning?
> [A:] Anxious . . . I wanted to get this done and get out of here.

Memorandum from Sarah Hodges to the A2J Group, 3 (Oct. 31, 2013) (on file with authors) (interview in Portland, Me. using Statute of Limitation *Pro Se* Packet); *see also* Sandefur, *supra* note 2, at 112 (suggesting that "shame, a sense of insufficient power, fear, gratitude, and frustrated resignation" contributed to inaction).

37. *See* Sandefur, *supra* note 2.

broad range of negative emotions experienced by these individuals, in addition to providing legal information. For self-help materials to be mobilizing and deployable, they must address individuals' performance-minimizing and solution-inhibiting mental states.[38]

3. Unfamiliarity with Legal Mundanity

An individual overcoming these barriers and, say, attending her first court hearing will face another challenge: the emotional effect of not knowing the mundane details of how the formal legal system works. In a small claims court debt collection hearing for example, such details might include the mechanics of the initial calendar call, the negotiation/mediation process, or the small claims court trial. To clarify, we speak here not of the rules of evidence or procedure; nor of the inner workings of the court system and the habits of its human personnel, secrets with which repeat players become familiar;[39] nor of the danger that judges, mediators, or other court personnel may react differently to the same argument depending on whether it appears in legal trappings.[40] Rather, we refer to legal mundanity, details such as where to sit, who will speak when, and what will occur next. And we hypothesize that the lay litigant's problem is not so much (say) sitting in the wrong seat, a mistake that can be remedied by a polite tap on the shoulder and a point in the right direction. Rather, the problem is the embarrassment and confidence-shattering effect such a tap and point might have, coupled with the increased cognitive load as she attempts to concentrate simultaneously on finding the right seat and on remembering how to deploy unfamiliar legal arguments. We have found few lay legal materials that address legal mundanity, and none that integrate the mundane with substantive legal knowledge.

In focusing on the emotional state of the individual who lacks repeat-player knowledge of the debt collection tribunal's unwritten rules, consider the individual's trust in a self-help legal pamphlet she might have access to that fails to tell her (say) where to sit. Such an individual might reason, "If the pamphlet failed me on the small things, such as where to sit, why should I trust it on the big things, such as what to say to the lawyer in a negotiation?"

B. Barriers to Understanding: The Self-Help Materials Themselves

We next turn to the question of how the design and presentation of many types of self-help materials fail to facilitate understanding and internalization of the professional legal knowledge lay individuals require. We draw principally from the

38. *See, e.g.*, Michael Browning, Timothy E. Behrens, Gerhard Jocham, Jill X. O'Reilly & Sonia J. Bishop, *Anxious Individuals Have Difficulty Learning the Causal Statistics of Aversive Environments*, 18 NATURE NEUROSCIENCE 590 (2015).

39. Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974); Herbert M. Kritzer & Susan S. Silbey, *Introduction* to IN LITIGATION: DO THE "HAVES" STILL COME OUT AHEAD? 3, 3–6 (Herbert M. Kritzer & Susan S. Silbey eds., 2003).

40. *See, e.g.*, Steinberg, *supra* note 1, at 756 (discussing the "expressive challenges" self-represented litigants encounter in court and citing a study that concludes that "judges and other court players routinely disregard the narrative-style testimony of unrepresented litigants").

education literature, supplemented by insights from cognitive psychology and artificial intelligence.

1. Excessive Focus on Conceptual Understanding

We begin with a distinction, fundamental to artificial intelligence, cognitive psychology, and education scholars, between *procedural* knowledge and *conceptual* knowledge.[41] Students have *procedural* knowledge when they know how to follow a set of sequential steps but do not necessarily know the reasons for the steps or how to apply those steps to markedly new situations; procedural understanding is the knowledge of algorithm.

In contrast, *conceptual* understanding occurs when students know what to do, why to do it, and how to do it (or something like it) in a markedly new situation. Conceptual understanding is a webbed framework that links and supplies relationships across pieces of information. One finds this distinction in many strands of the education literature.[42]

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41. These concepts were pioneered by Allen Newell and Herbert Simon in the artificial-intelligence literature. *See* ALLEN NEWELL & HERBERT A. SIMON, HUMAN PROBLEM SOLVING (1972). The language has been adopted more broadly in the cognitive psychology field. *See, e.g.*, JOHN R. ANDERSON, THE ARCHITECTURE OF COGNITION, at viii (1983) ("There is a fundamental distinction between declarative knowledge, which refers to facts we know, and procedural knowledge, which refers to skills we know how to perform.").

42. James Hiebert & Patricia Lefevre, *Conceptual and Procedural Knowledge in Mathematics: An Introductory Analysis*, *in* CONCEPTUAL AND PROCEDURAL KNOWLEDGE: THE CASE OF MATHEMATICS 1 (James Hiebert ed., 1986); Bethany Rittle-Johnson & Robert S. Siegler, *The Relation Between Conceptual and Procedural Knowledge in Learning Mathematics: A Review*, *in* THE DEVELOPMENT OF MATHEMATICAL SKILLS 75 (Chris Donlan ed., 1998); RICHARD R. SKEMP, THE PSYCHOLOGY OF LEARNING MATHEMATICS 152–63 (expanded American ed. 1987); Arthur J. Baroody, Yingying Feil & Amanda R. Johnson, *An Alternative Reconceptualization of Procedural and Conceptual Knowledge*, 38 J. FOR RES. MATHEMATICS EDUC. 115 (2007); Karen C. Fuson, *Conceptual Structures for Multiunit Numbers: Implications for Learning and Teaching Multidigit Addition, Subtraction, and Place Value*, 7 COGNITION & INSTRUCTION 343 (1990); James Hiebert & Diana Wearne, *Instruction, Understanding, and Skill in Multidigit Addition and Subtraction*, 14 COGNITION & INSTRUCTION 251 (1996); Stellan Ohlsson & Ernest Rees, *The Function of Conceptual Understanding in the Learning of Arithmetic Procedures*, 8 COGNITION & INSTRUCTION 103 (1991); Bethany Rittle-Johnson & Martha Wagner Alibali, *Conceptual and Procedural Knowledge of Mathematics: Does One Lead to the Other?*, 91 J. EDUC. PSYCHOL. 175 (1999); Bethany Rittle-Johnson, Robert S. Siegler & Martha Wagner Alibali, *Developing Conceptual Understanding and Procedural Skill in Mathematics: An Iterative Process*, 93 J. EDUC. PSYCHOL. 346 (2001); Jon R. Star, *Foregrounding Procedural Knowledge*, 38 J. FOR RES. MATHEMATICS EDUC. 132 (2007); Jon R. Star, *Reconceptualizing Procedural Knowledge*, 36 J. FOR RES. MATHEMATICS EDUC. 404 (2005).

In cognitive psychology and artificial intelligence, an analogous distinction (one fundamental to several different classes of proposed cognitive architectures) exists between *declarative knowledge* and (alas) *procedural knowledge* in the former as well as a distinction between between *procedural*, *semantic*, and *episodic* memories in the latter. *See* JOHN R. ANDERSON, COGNITIVE PSYCHOLOGY AND ITS IMPLICATIONS (Worth Publishers 8th ed. 2015); JOHN R. ANDERSON, RULES OF THE MIND (1993); ANDERSON, *supra* note 41; John E. Laird,

The importance of this distinction lies in the realization that procedural knowledge can be easier to teach and learn. If the aim of the instruction is to allow a student to produce correct responses on a narrowly defined range of problems, then procedural knowledge is probably sufficient. As one mathematics educator has explained, "If what is wanted is a page of right answers, [procedural knowledge] can provide this more quickly and easily."[43]

Undoubtedly, some complex justiciable problems can only be addressed through deployment of conceptual knowledge.[44] The ability to apply abstract principles to new fact patterns is the hallmark of the traditional professional,[45] and it is this skill that legal educators attempt to engender in their students.[46] We hypothesize, however, that not every aspect of every legal problem requires that the lay individual understand the context, background, and nuances of potential defenses. In some cases, we hypothesize that lay individuals can, or can be induced to, deploy professional legal knowledge by following a set of step-by-step instructions, such as that provided in a script or a check-the-box form. Fundamentally, we believe that many aspects of law can be usefully commoditized, a theme to which we will return.[47]

Our hypothesis is apparently contrary to the prevailing wisdom among those who produce lay legal education materials today.[48] These materials typically begin by

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Extending the Soar Cognitive Architecture, *in* ARTIFICIAL GENERAL INTELLIGENCE 2008: PROCEEDINGS OF THE FIRST AGI CONFERENCE 224 (Frontiers in Artificial Intelligence & Applications Vol. No. 171, Pei Wang, Ben Goertzel & Stan Franklin eds., 2008); Hui-Qing Chong, Ah-Hwee Tan & Gee-Wah Ng, *Integrated Cognitive Architectures: A Survey*, 28 ARTIFICIAL INTELLIGENCE REV. 103, 106–07 (2007) (using the classifications of "procedural, semantic and episodic memories" with "[s]emantic memory . . . considered as declarative knowledge"); David J. Jilk, Christian Lebiere, Randall C. O'Reilly & John R. Anderson, *SAL: An Explicitly Pluralistic Cognitive Architecture*, 20 J. EXPERIMENTAL & THEORETICAL ARTIFICIAL INTELLIGENCE 197 (2008); Paul S. Rosenbloom, *Combining Procedural and Declarative Knowledge in a Graphical Architecture*, 10 PROC. INT'L CONF. ON COGNITIVE MODELING 205 (2010). For the cognitive psychologist, declarative knowledge refers to dominance of a basic set of facts or a set of rote sequential steps to reach a given goal; this knowledge is easier to learn. For the cognitive psychologist, procedural knowledge refers to a deeper internalization of how and why to do things. ANDERSON, *supra* note 41, at 215. To avoid confusion, we stick to the education literature's usage of terms.

43. SKEMP, *supra* note 42, at 158.

44. Indeed, some literature suggests it can be helpful to provide simple but clear explanations of why instructional materials suggest some courses of action and avoidance of others. Börje Holmberg, *Guided Didactic Conversation in Distance Education*, *in* DISTANCE EDUCATION: INTERNATIONAL PERSPECTIVES 114 (David Sewart, Desmond Keegan & Börje Holmberg eds., 1983).

45. *See* Talcott Parsons, *The Professions and Social Structure*, 17 SOC. FORCES 457, 460 (1939).

46. *See* BARRY FRIEDMAN & JOHN C.P. GOLDBERG, OPEN BOOK: SUCCEEDING ON EXAMS FROM THE FIRST DAY OF LAW SCHOOL (2011); Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995).

47. *See, e.g.*, *infra* Parts II.B.5 and III.

48. We reviewed a vast amount of lay legal educational and self-help materials in preparation for the development of our materials. *See, e.g.*, *The Basics of Defending Creditor Lawsuits*, NEW ECONOMY PROJECT, http://www.neweconomynyc.org/the-basics-of-defending-creditor-lawsuits/ [http://perma.cc/7WFC-8NL2].

defining legal vocabulary, and subsequently explain abstract legal concepts.[49] The expectation appears to be that a lay individual must learn a great deal about the law relating to her case in order to represent herself effectively.[50] Legal process and procedure are eventually explained, but generally in a way that requires the lay individual to have previously grasped the legal concepts and, worse yet, the jargon. The result is self-help materials that impose what may be unnecessary burdens on the user. The lawyer-author instinct to educate, as opposed to direct, interferes with the layperson's effective deployment of information.[51]

2. Lack of Analogies and Visual Images

The education and psychology literatures have many lessons on how to induce internalization of whatever a layperson does need to learn, be it procedural or conceptual. Authors of legal-assistance materials have, apparently, learned few of these lessons. For illustrative purposes, we focus on two examples here: analogy and visual images.

With respect to analogies, for those areas in which conceptual (as opposed to procedural) understanding is needed, analogy can be a powerful tool. One of the lessons of the scholarship on expertise and professional knowledge generally is that many hard concepts are best taught not by direct, abstract statements but rather by analogy,[52] preferably by multiple analogies.[53] But analogies are rarely, if ever, found in civil legal materials for lay individuals.[54]

Moreover, despite the overwhelming consensus among education scholars that visual depictions improve learning,[55] we found few instances of the use of

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49. *See, e.g.*, SELF-HELP LEGAL ACCESS CTR., SUPERIOR COURT OF VENTURA CTY., DEFENDING LAWSUITS FOR BREACH OF CONTRACT OR COLLECTION OF MONEY (COMMON COUNT): LEGAL REASONS WHY I SHOULD NOT HAVE TO PAY THE MONEY 8, http://www.courts.ca.gov/partners/documents/kanspart2a.pdf [https://perma.cc/YSV5-F7GU] (citing specific statutes that individuals can look up for more information).

50. RICHARD ZORZA, THE SELF-HELP FRIENDLY COURT 63 (2002), http://www.zorza.net/Res_ProSe_SelfHelpCtPub.pdf [https://perma.cc/T558-ML5K] ("For example, an eviction defense template would first detail all the possible defenses and counterclaims (which presumably have been explored first in an answer template, in any event), and then for each of the defenses, lay out the elements of the defense and some of the ways that these facts could be shown.").

51. Part III discusses how some sorts of legal information might be commoditized into checklists and scripts.

52. Blasi, *supra* note 46, at 355–61.

53. *See* Mary L. Gick & Keith J. Holyoak, *Analogical Problem Solving*, 12 COGNITIVE PSYCHOL. 306 (1980); Mary L. Gick & Keith J. Holyoak, *Schema Induction and Analogical Transfer*, 15 COGNITIVE PSYCHOL. 1 (1983) [hereinafter Gick & Holyoak, *Schema Induction*].

54. For one of the few examples we found, see the interactive self-help forms at *Hawaii Self-Help Interactive Forms*, LAWHELP.ORG, http://www.lawhelp.org/hi/self-help [https://perma.cc/RT5B-C72K] (analogizing the process of "access to justice" as a graphical path to the court house).

55. *See, e.g.*, Russell N. Carney & Joel R. Levin, *Pictorial Illustrations* Still *Improve Students' Learning from Text*, 14 EDUC. PSYCHOL. REV. 5 (2002); Russell N. Carney & Joel R.

illustrations or images (other than occasional clip art)[56] to communicate civil legal concepts to LMI individuals. This absence is striking given the many studies showing that images can serve multiple purposes, including easing anxiety,[57] entertaining so as to motivate,[58] facilitating understanding,[59] and serving as mnemonic devices (e.g., a drawing of an ear to aid in the memory of "hearsay").[60]

The absence of analogies and illustrations serves to hinder deployment of such materials. In Part II we discuss how these two tools, among others, might be adapted to self-help materials.

3. Language, Presentation Style, and Organization

In our review of existing self-help materials, we were struck by how often the sequence and arrangement of information was inconsistent with the research on how to best communicate written information. Legibility and format affect reading speed, comprehension, and recall of information.[61] The psychology, marketing, education, and health fields address these issues at the level of the page, the sentence, and the word.

Levin, *Promoting Higher-Order Learning Benefits by Building Lower-Order Mnemonic Connections*, 17 APPLIED COGNITIVE PSYCHOL. 563 (2003) [hereinafter Carney & Levin, *Promoting Higher-Order Learning Benefits*]; Prabu David, *News Concreteness and Visual-Verbal Association: Do News Pictures Narrow the Recall Gap Between Concrete and Abstract News?*, 25 HUM. COMM. RES. 180 (1998); Chris Delp & Jeffrey Jones, *Communicating Information to Patients: The Use of Cartoon Illustrations To Improve Comprehension of Instructions*, 3 ACAD. EMERGENCY MED. 264 (1996); Houts et al., *supra* note 23; W. Howard Levie & Richard Lentz, *Effects of Text Illustrations: A Review of Research*, 30 EDUC. COMM. TECH. J. 195 (1982); Moll, *supra* note 23; Chua Yan Piaw, *Using Content-Based Humorous Cartoons in Learning Materials To Improve Students' Reading Rate, Comprehension and Motivation: It Is a Wrong Technique?*, 64 PROCEDIA - SOC. & BEHAV. SCI. 352 (2012); John E. Readence & David W. Moore, *A Meta-Analytic Review of the Effect of Adjunct Pictures on Reading Comprehension,* 18 PSYCHOL. SCHS. 218 (1981); Eunmo Sung & Richard E. Mayer, *When Graphics Improve Liking but Not Learning from Online Lessons*, 28 COMPUTERS HUM. BEHAV. 1618 (2012); Erlijn van Genuchten, Katharina Scheiter & Anne Schüler, *Examining Learning from Text and Pictures for Different Task Types: Does the Multimedia Effect Differ for Conceptual, Causal, and Procedural Tasks?*, 28 COMPUTERS HUM. BEHAV. 2209 (2012).

56. *See How To Start a Contested Case*, ALASKA CT. SYS. (Sept. 2011), http://www.courts.alaska.gov/shc/family/docs/shc-181n.pdf [https://perma.cc/62HS-TURC].

57. Moll, *supra* note 23, at 207 (describing how illustrations may "assuage[e] anxiety in 'trivialising' the significance of rheumatic ailments").

58. Joel R. Levin, Gary J. Anglin & Russell N. Carney, *On Empirically Validating Functions of Pictures in Prose*, *in* 1 THE PSYCHOLOGY OF ILLUSTRATION 51, 53–55 (Dale M. Willows & Harvey A. Houghton eds., 1987) (noting that motivation is an aspect of a decorative function as "when illustrations are provided to increase students' interest in the material"). *But see* Joel R. Levin, *On Functions of Pictures in Prose*, *in* NEUROPHYSIOLOGICAL & COGNITIVE PROCESSES IN READING 203, at 212–13 (Francis J. Pirozzolo & Merlin C. Wittrock eds., 1981) (suggesting that the motivational role of illustrations has little effect on learning except "perhaps with extremely dull passages" where the reader needs help staying awake).

59. Readence & Moore, *supra* note 55, at 222.

60. *See* Carney & Levin, *Promoting Higher-Order Learning Benefits*, *supra* note 55; Levin et al., *supra* note 58, at 61–63; Levin, *supra* note 58, at 221–25.

61. *See* Maria dos Santos Lonsdale, Mary C. Dyson & Linda Reynolds, *Reading in*

For example, research shows that "the use of all capital letters in a heading . . . actually dramatically decreases speed of reading."[62] In multiple studies, "[t]he average reader took about 12-13% more time to read all caps[;] . . . 38 words/minute slower than using sentence case."[63] Many readers are likely to skip all-caps sentences.[64] Nonetheless, many court forms and materials designed for self-represented litigants include important messages entirely in uppercase.[65]

Unsurprisingly, sentence structure and length, the amount of jargon, paragraph complexity, the use of passive voice, and other familiar writing concepts all matter.[66] The education literature recommends the use of short sentences. Very short. Perhaps so short that they lack subjects and verbs. Some that are not grammatically correct. Write the way the intended user speaks and thinks. Write as though you are competing for the time and attention of busy and stressed individuals. Because you are.

II. RE-CONCEPTUALIZING SELF-HELP MATERIALS AND FORMS

We have developed a catalog of suggestions for how courts, legal-services providers, law-school clinics, and anyone else creating civil legal materials for lay individuals might reimagine those materials in ways that address the barriers hypothesized in Part I. The approaches we describe are low cost. Many of the suggestions we have borrowed from other literatures are based on helping low-literacy individuals learn health or other information. We have chosen to use these

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Examination-Type Situations: The Effects of Text Layout on Performance, 29 J. RES. READING 433 (2006). The authors tested subjects' speed and accuracy in a testing setting, cautioning the possibility that the "results of this study are specific to the reading task of searching for particular information in the text under time pressure." *Id.* at 448.

62. Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ASS'N LEGAL WRITING DIRECTORS 108, 115 (2004).

63. *Id.* (citing the seminal article, Miles A. Tinker & Donald G. Paterson, *Influence of Type Form on Speed of Reading*, 12 J. APPLIED PSYCHOL. 359 (1928)).

64. *See id.* at 116.

65. *See, e.g.*, SMALL CLAIMS, VT. SUPERIOR COURT, SMALL CLAIMS INFORMATION AND INSTRUCTIONS FOR THE DEFENDANT 2, https://www.vermontjudiciary.org/eforms/100-00259.pdf [https://perma.cc/VNQ6-HWPB] ("IF YOU FAIL TO ANSWER THE SUMMONS AND COMPLAINT WITHIN 30 DAYS OF THE DATE THAT IT WAS MAILED TO YOU, THE PLAINTIFF MAY PROCEED TO HAVE YOU PERSONALLY SERVED BY A SHERIFF OR CONSTABLE, AND THE COST MAY BE ADDED TO ANY JUDGMENT ISSUED AGAINST YOU.").

66. Access to justice commissions, legal aid organizations, and others seeking to help unrepresented individuals have rightly urged a focus on using "plain language" so that clients and other lay readers can better understand the content of the documents. Kimble, *supra* note 12, at 62–65; Sullivan, *supra* note 12; *see* Mark Adler, *Bamboozling the Public*, 9 SCRIBES J. LEGAL WRITING 167 (2003–2004); sources cited *supra* note 12. *But see, e.g.*, SELF-HELP LEGAL ACCESS CTR., *supra* note 49, at 3 ("Every lawsuit must be brought within a certain time frame that the law provides depending on the **cause of action**, or legal theory being sued upon. For example, lawsuits for breach of a written contract must be brought within 4 years from the date of the breach. Lawsuits for breach of an oral contract must be brought within 2 years from the date of the breach." (emphasis in original)).

suggestions not because LMI individuals necessarily have low literacy skills, but because we hypothesize that tunneling and low mental bandwidth affect an individual's ability to focus on complex language and concepts.

To be clear, we do not yet know whether any of our proposals in fact improve the deployability of legal self-help materials, or if they do, whether greater deployability leads to more favorable adjudicatory outputs or solved legal problems. In parallel projects, we are testing the effectiveness of self-help materials constructed with our hypotheses in mind.[67] The examples we provide in this Part come from materials we have developed for individuals in financial distress. We have tested many of these materials through cognitive interviews with a financially distressed population and we describe some of what we have learned in this preliminary testing below.[68] But further work is needed.

A. Overcoming Situational Barriers

1. Motivating and Engaging Through Illustrations and Cartoons

In Part I, we identified emotional, behavioral, and cognitive barriers that may inhibit LMI individuals from taking action. We hypothesized that some of these obstacles stemmed from the compulsory nature of the process; others from LMI individuals' limited cognitive bandwidth. To address these barriers, we propose that self-help materials include illustrations, more specifically, cartoons and stick figures.

As noted above, the education, psychology, and public health literatures suggest that graphics and illustrations can motivate, engage, and improve learning outcomes.[69] These literatures also rank types of illustrations according to their effectiveness: stick figure drawings and cartoons are superior to photographs or highly detailed drawings.[70] Why? We hypothesize that learners generally lack the ability to distinguish important features in photographs (or highly detailed drawings) from irrelevant details, and the resulting distractions and higher cognitive loads prevent effective interaction. The solution is to remove the irrelevant details and include only the important features, something cartoons and stick figure drawings facilitate. Cartoons facilitate learning via other mechanisms as well. In the medical context, for example, scholars have posited that cartoons might help by "assuaging anxiety," at the slight risk of "trivialising" the subject being considered.[71]

Other literature advises that an image's placement (on the page) can be as important as its content.[72] Cognitive theory, verified by experiments, suggests that if an illustration cannot be placed immediately beside the text it accompanies, it should

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67. *See, e.g.*, Jiménez et al., *supra* note 24; *supra* note 25.
68. *See infra* Part III.
69. *See supra* note 55; *see also* LARRY GONICK, THE CARTOON GUIDE TO ALGEBRA (2015).
70. *See* Moll, *supra* note 23, at 202–03.
71. *Id.* at 207.
72. Richard E. Mayer & Roxana Moreno, *Aids to Computer-Based Multimedia Learning*, 12 LEARNING & INSTRUCTION 107 (2002) (comparing various aids to multimedia presentation of words with pictures, namely "contiguity," "coherence," "modality," and "redundancy" aids); Peter C. Whalley & Richard W. Fleming, *An Experiment with a Simple Recorder of Reading Behavior*, 12 PROGRAMMED LEARNING & EDUC. TECH. 120 (1975).

precede that text.[73] Learners also perform better when they do not have to split their attention between text and diagram, so to the extent possible, textual explanations should be incorporated into diagrams and pictures.[74] These explanations must be concise, or they risk increasing cognitive load.[75]

A few more lessons from the literature: graphics that are merely decorative are distracting and should not be used.[76] Neither should images that depict actions one does not want an individual to take (such as a graphic of a pregnant woman smoking in a health pamphlet).[77]

We posit, therefore, that simply drawn cartoons placed next to or before relevant text can serve as both learning aids and motivational tools.[78] As an example, we have duplicated an image we call "Blob" on the right.[79] We have tested materials using Blob and other simply drawn cartoons in the debt collection context via semistructured cognitive interviews with debt collection defendants in small claims courts in Maine, Connecticut, and Massachusetts. Responses have been positive, with only a small minority of the over fifty defendants we have interviewed expressing a negative reaction.[80]

For example, when asked whether the respondent thought the cartoon was distracting, one interviewee stated, "I like the cartoon. It's cute and it makes words at the end seem less scary. I don't understand the official

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73. *See* Wolfgang Schnotz, *Integrated Model of Text and Picture Comprehension*, *in* THE CAMBRIDGE HANDBOOK OF MULTIMEDIA LEARNING 72 (Richard E. Mayer ed., 2d ed. 2014); *see also* Roxana Moreno & Richard E. Mayer, *A Learner-Centered Approach to Multimedia Explanations: Deriving Instructional Design Principles from Cognitive Theory*, INTERACTIVE MULTIMEDIA ELECTRONIC J. COMPUTER-ENHANCED LEARNING (October 2000), http://imej.wfu.edu/articles/2000/2/05/index.asp [http://web.archive.org/web/20160223084032/http://imej.wfu.edu/articles/2000/2/05/index.asp] (finding that learning outcomes increase when text and graphics "are physically integrated rather than separated" and when they are "temporally synchronized rather than separated in time"); *cf.* Houts et al., *supra* note 23, at 188 (describing how captions can help explain the meaning of pictures).

74. Rohani Ahmad Tarmizi & John Sweller, *Guidance During Mathematical Problem Solving*, 80 J. EDUC. PSYCHOL. 424 (1988).

75. Moreno & Mayer, *supra* note 73 ("[P]resenting the whole animation preceded or followed by the whole narration successively . . . can overload working memory . . . .").

76. Susan B. Bastable, Gina M. Myers & Leigh Bastable Poitevent, *Literacy in the Adult Client Population*, *in* NURSE AS EDUCATOR: PRINCIPLES OF TEACHING AND LEARNING FOR NURSING PRACTICE 255, 295 (4th ed. Susan B. Bastable ed., 2014).

77. *Id.*

78. *See* Houts et al., *supra* note 23, at 188 (recommending using the simplest drawings possible).

79. For an extended discussion of Blob's origins, see Greiner & Matthews, *supra* note 25.

80. Memorandum from Hilary Higgins to Professor Jim Greiner, 2 (Mar. 10, 2014) (on file with authors) (memorandum three of three using Bad Evidence Script 3 *Pro Se* Packet to interview an anonymous defendant) ("They helped me understand, but I don't like cartoons. . . . I'm not a cartoon person."); Memorandum from Alvin Li to Professor Greiner, 3 (Mar. 20, 2014) (on file with authors) (interview with anonymous debt collection defendant, in Boston, Mass. using Court Action, What Happens Script) ("She personally did not like the cartoons, but she thought that it was a good way to get less smart people to follow along.").

wording so the cartoons help."[81] Another interviewee noted that a cartoon helped her understand the text and noted that it served as "a good memory tool and [is] less intimidating than just text. I'd rather read a long picture book than a short book with no pictures."[82]

2. Reducing Emotional and Cognitive Challenges with Self-Affirmation and Positive Affect Theories

Most individual debt collection defendants fail to appear in court and thus default.[83] If this failure to engage were addressed, it is possible that a sizeable number of cases filed against these defendants would be dismissed.[84] The slightest objection or defense raised may reveal a lack of proof of essential aspects of each allegedly delinquent account, including the amount of principal owed, the applicable interest rate, permissible charges and fees, dates of delinquency, and the proper state law

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81. Memorandum from Rachel Deschuytner to A2J Group, 2 (Mar. 27, 2014) (on file with authors) (interview with anonymous debt collection defendant, in Portland, Me. using Bad Evidence Script 3).

82. Memorandum from Hanne Olsen to A2J Group, 2 (Apr. 17, 2014) (on file with authors) (interview with anonymous debt collection defendant, in Boston, Mass. Court Action Interest and Fees Script). Another interviewee "liked the cartoon and didn't think it was too childlike because the blobs seemed ageless (almost like ghosts) so it didn't seem like a kids cartoon." Memorandum from Kavya Naini to A2J Group, 2 (Mar. 27, 2014) (on file with authors) (interview with anonymous debt collection defendant, in Boston, Mass. using Court Action What Happens Script).

Various literatures include other lessons. For example, illustrations which depict *un*desired behavior (such as a pregnant woman smoking) should not be used. Bastable et al., *supra* note 76, at 295; *see supra* text accompanying note 76. And experiments in the deployment of medical and other types of information have found that the use of pictures and illustrations differs by age groups. *See, e.g.*, Beverly J. Dretzke, *Effects of Pictorial Mnemonic Strategy Usage on Prose Recall of Young, Middle-Aged and Older Adults*, 19 EDUC. GERONTOLOGY 489 (1993) (focusing on mnemonic images); Roger W. Morrell, Denise C. Park & Leonard W. Poon, *Effects of Labeling Techniques on Memory and Comprehension of Prescription Information in Young and Old Adults*, 45 J. GERONTOLOGY P166 (1990) (studying prescription drug labels); *see also* Chiung-ju Liu, Susan Kemper & Joan McDowd, *The Use of Illustration To Improve Older Adults' Comprehension of Health-Related Information: Is It Helpful?*, 76 PATIENT EDUC. & COUNSELING 283 (2009); Julia C.M. van Weert, Guda van Noort, Nadine Bol, Liset van Dijk, Kiek Tates & Jesse Jansen, *Tailored Information for Cancer Patients on the Internet: Effects of Visual Cues and Language Complexity on Information Recall and Satisfaction*, 84 PATIENT EDUC. & COUNSELING 368 (2011).

83. Estimates vary, but according to some sources, at least eighty percent of the consumers sued fail to appear in court and consequently have default judgments entered against them. Judgments in hand, debt buyers' attorneys then obtain payment through compulsory collection processes enforced by overburdened courts, such as wage garnishment, bank-account seizure, and even arrest (to compel debtors' court appearances). Greiner & Matthews, *supra* note 25; *see also* Sandefur, *supra* note 2 (discussing inaction in response to legal problems more generally).

84. *See, e.g.*, Mary Spector & Ann Baddour, *Collection Texas-Style: An Analysis of Consumer Collection Practices in and out of the Courts*, 67 HASTINGS L.J. 1427, 1449 (2016).

governing the original debt contract.[85] How might we increase the engagement level of debt collection defendants in order to improve the function and fairness of the adjudicatory process?

Self-affirmation theory from cognitive psychology might provide an explanation—and potential solution—to engaging consumers. Self-affirmation theory "posits that people are motivated to sustain 'self-integrity,' or perceptions that they are moral, consistent, and dependable."[86] When encountering a message that threatens their self-integrity, individuals may "denigrate the message" as a way to restore their self-image.[87] For example, studies have shown that among smokers, those at the highest risk for negative health outcomes "are the least likely to accept or respond" to a message about the negative health consequences of smoking.[88] "The implication is that any health message that is perceived as threatening to the individual will be unsuccessful in changing behavior unless this type of defensive processing can be overcome."[89] Self-affirmation exercises aim to shortcut this type of defensive processing by reminding individuals of positive values about themselves before they encounter the threatening information.[90]

Self-affirmation theory posits that when people affirmatively acknowledge their self-worth (such as by recalling past acts of kindness), the need to respond defensively to threatening messages is reduced.[91] Once an individual lowers her natural defensiveness, she can process a message of behavioral change and may be more able to conform behavior accordingly.

In the legal context, we hypothesize that exercises affirming the positive aspects of the individual's world as well as her sense of self can help address the debilitating and paralyzing mental states of the self-represented LMI individual.[92] For example, completing a self-affirming exercise may make people less likely to discredit a

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85. *See* Greiner & Matthews, *supra* note 25; Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 50 HARV. J. ON LEGIS. 41, 63–64 (2015).

86. William M.P. Klein & Peter R. Harris, *Self-Affirmation Enhances Attentional Bias Toward Threatening Components of a Persuasive Message*, 20 PSYCHOL. SCI. 1463, 1463 (2009).

87. *Id.*

88. Christopher J. Armitage, Peter R. Harris, Gareth Hepton & Lucy Napper, *Self-Affirmation Increases Acceptance of Health-Risk Information Among UK Adult Smokers with Low Socioeconomic Status*, 22 PSYCHOL. ADDICTIVE BEHAVS. 88, 88 (2008).

89. *Id.*

90. *See, e.g.*, Peter R. Harris, Kathryn Mayle, Lucy Mabbott & Lucy Napper, *Self-Affirmation Reduces Smokers' Defensiveness to Graphic On-Pack Cigarette Warning Labels*, 26 HEALTH PSYCHOL. 437 (2007).

91. *See* Zachary Hill & D. James Greiner, *The Possibilities of Self-Affirmation Theory in Civil Justice*, 48 CLEARINGHOUSE REV. 178, 180 (2014).

92. *See* Christine Logel & Geoffrey L. Cohen, *The Role of the Self in Physical Health: Testing the Effect of a Values-Affirmation Intervention on Weight Loss*, 23 PSYCHOL. SCI. 53, 53 (2012), http://pss.sagepub.com/content/23/1/53 [https://perma.cc/VKC2-LKJQ] ("By reminding people of what is really important, affirmation also buffers people against mundane stressors that might otherwise sap mental resources, which are needed for self-regulation and effective coping").

difficult message (the need to face a lawsuit) and more likely to take steps to respond (show up to court).[93]

Considerable research in nonlegal contexts supports our hypothesis.[94] Public health researchers have used written self-affirmation exercises to spur individuals to take action on diet, exercise, or cleanliness.[95] Many of these studies are randomized control trials,[96] the gold standard in evaluating interventions. One study, examining the effect of self-affirmation theory on alcohol consumption, tested whether a self-affirmation exercise enabled processing of the "threatening message" to reduce drinking.[97] The research concluded that self-affirmation was effective in reducing alcohol intake "by facilitating the processing of health risk information."[98] Similar studies in the context of education found that identity-based threats to performance among racial minorities and women and girls in STEM (science, technology, engineering, and math) subjects were blunted by the subjects' engagement in self-affirmation exercises.[99]

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93. *See id.*

94. *E.g.*, Christopher J. Armitage, Peter R. Harris & Madelynne A. Arden, *Evidence that Self-Affirmation Reduces Alcohol Consumption: Randomized Exploratory Trial with a New, Brief Means of Self-Affirming*, 30 HEALTH PSYCHOL. 633 (2011); Andy Martens, Michael Johns, Jeff Greenberg & Jeff Schimel, *Combating Stereotype Threat: The Effect of Self-Affirmation on Women's Intellectual Performance*, 42 J. EXPERIMENTAL SOC. PSYCHOL. 236 (2006); Lucy Napper, Peter R. Harris & Tracy Epton, *Developing and Testing a Self-Affirmation Manipulation*, 8 SELF & IDENTITY 45 (2009); David A.K. Sherman, Leif D. Nelson & Claude M. Steele, *Do Messages About Health Risks Threaten the Self? Increasing the Acceptance of Threatening Health Messages via Self-Affirmation*, 26 PERSONALITY & SOC. PSYCHOL. BULL. 1046 (2000); *see also* Amy McQueen & William M.P. Klein, *Experimental Manipulations of Self-Affirmation: A Systematic Review*, 5 SELF & IDENTITY 289 (2006) (reviewing the methodological approaches of experiments involving self-affirmation). *But see* Rachel B. Fry & Steven Prentice-Dunn, *Effects of Coping Information and Value Affirmation on Responses to a Perceived Health Threat*, 17 HEALTH COMM. 133, 144–45 (2005) (finding that affirmation manipulation did not have a statistically significant effect on defensive reactions except maybe when interacting with exposure).

95. Self-affirmation theory is credited to Claude M. Steele. See, in particular, CLAUDE M. STEELE, *The Psychology of Self-Affirmation: Sustaining the Integrity of the Self*, *in* 21 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 261 (Leonard Berkowitz ed., 1988). For a review of positive-affect theory, see Alice M. Isen, *A Role for Neuropsychology in Understanding the Facilitating Influence of Positive Affect on Social Behavior and Cognitive Processes*, *in* OXFORD HANDBOOK OF POSITIVE PSYCHOLOGY 503 (C.R. Snyder & Shane J. Lopez eds., 2d ed. 2009).

96. *See, e.g.*, Armitage et al., *supra* note 94; Mary E. Charlson, Carla Boutin-Foster, Carol A. Mancuso, Janey C. Peterson, Gbenga Ogedegbe, William M. Briggs, Laura Robbins, Alice M. Isen & John P. Allegrante, *Randomized Controlled Trials of Positive Affect and Self-Affirmation to Facilitate Healthy Behaviors in Patients with Cardiopulmonary Diseases: Rationale, Trial Design, and Methods*, 28 CONTEMP. CLINICAL TRIALS 748 (2007); *see also* D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2121 (2012).

97. Armitage et al., *supra* note 94, at 633.

98. *Id.* at 639.

99. These threats were measured by tests at a variety of ages, across a variety of specific

Similarly, a weight-loss study found that those who completed a values-affirmation exercise were more successful than a comparable group of subjects who were not similarly treated.[100] The researchers summarized research suggesting that "affirming people's values helps them maintain self-control in difficult situations or buffers them against life stressors."[101] They further noted that self-affirmations "may have interrupted a feedback loop in which failure to achieve health goals worsen[ed] psychological functioning, which in turn increase[d] the risk of further failure in a repeating cycle."[102] Other studies have confirmed that self-affirmation exercises can reduce stress,[103] help individuals cope with layoffs,[104] reduce students' tendency to

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classroom subjects, and across a variety of group identities. *E.g.*, Joshua Aronson & Michael Inzlicht, *The Ups and Downs of Attributional Ambiguity: Stereotype Vulnerability and the Academic Self-Knowledge of African American College Students*, 15 PSYCHOL. SCI. 829 (2004); Geoffrey L. Cohen, Julio Garcia, Valerie Purdie-Vaughns, Nancy Apfel & Patricia Brzustoski, *Recursive Processes in Self-Affirmation: Intervening To Close the Minority Achievement Gap*, 324 SCIENCE 400 (2009); Geoffrey L. Cohen, Julio Garcia, Nancy Apfel & Allison Master, *Reducing the Racial Achievement Gap: A Social-Psychological Intervention* 313 SCIENCE 1307 (2006); Akira Miyake, Lauren E. Kost-Smith, Noah D. Finkelstein, Steven J. Pollock, Geoffrey L. Cohen & Tiffany A. Ito, *Reducing the Gender Achievement Gap in College Science: A Classroom Study of Values Affirmation*, 330 SCIENCE 1234 (2010); Toni Schmader, Michael Johns & Marchelle Barquissau, *The Costs of Accepting Gender Differences: The Role of Stereotype Endorsement in Women's Experience in the Math Domain*, 50 SEX ROLES 835 (2004); Steven J. Spencer, Claude M. Steele & Diane M. Quinn, *Stereotype Threat and Women's Math Performance*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 4 (1999).

100. All of these study subjects reported dissatisfaction with their weight. "Maintaining a healthy body mass index (BMI) requires two things: the ability to cope with stress, which increases caloric consumption, and the ability to maintain self-control . . . ." Logel & Cohen, *supra* note 92, at 53 (citation omitted).

101. *Id.* at 54 (citations omitted). The researchers hypothesized that overweight individuals may react negatively to information on the benefits of exercise because of the implicit message that being targeted to receive such information implies that they are overweight (with all of the accompanying social stigma and subtext). Following the study, the researchers summarized other research showing that "brief interventions [can] have long-term effects" because "brief interventions can interrupt recursive cycles that would otherwise produce cumulative costs." *Id.* at 54 (citations omitted).

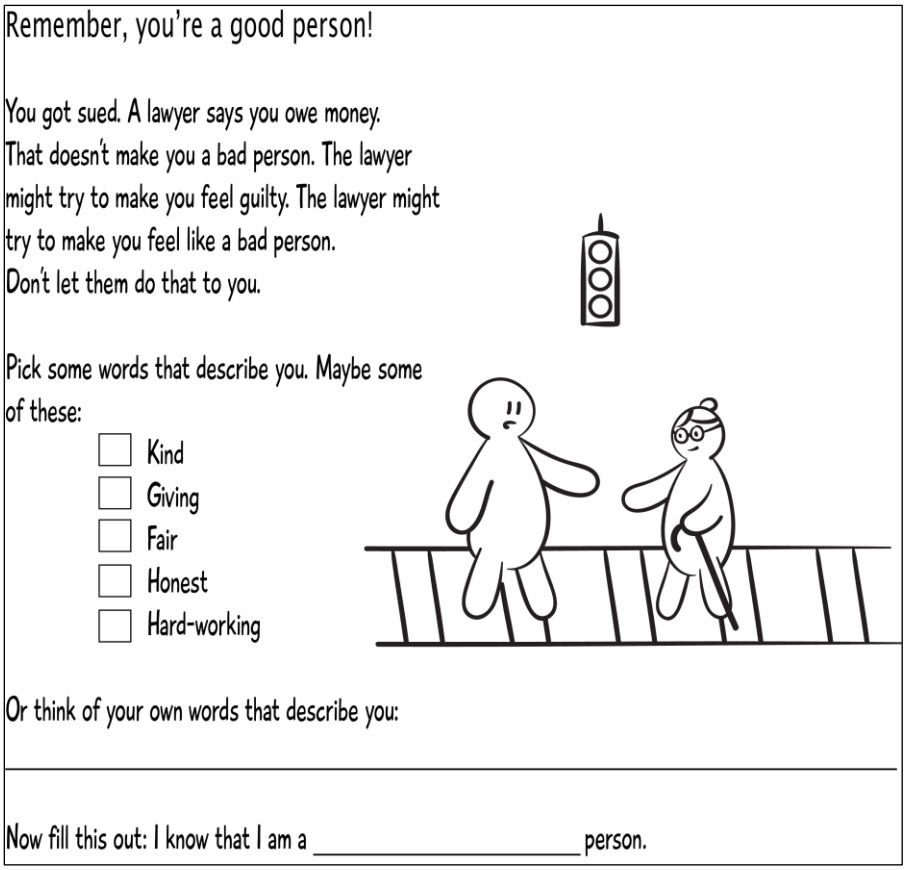
102. *Id.* at 54–55 (citation omitted). The literature on these points is extensive. *See, e.g.*, Armitage et al., *supra* note 88; Charlson et al., *supra* note 96; Tracy Epton & Peter R. Harris, *Self-Affirmation Promotes Health Behavior Change*, 27 HEALTH PSYCHOL. 746 (2008); Logel & Cohen, *supra* note 92; Janey Peterson, Mary E. Charlson, Zachary Hoffman, Martin T. Wells, Shing-Chiu Wong, James P. Hollenberg, Jared B. Jobe, Kathryn A. Boschert, Alice M. Isen & John P Allegrante, *A Randomized Control Trial of Positive-Affect Induction To Promote Physical Activity After Percutaneous Coronary Intervention*, 172 ARCHIVES INTERNAL MED. 329 (2012).

103. J. David Creswell, William T. Welch, Shelley E. Taylor, David K. Sherman, Tara L. Gruenewald & Traci Mann, *Affirmation of Personal Values Buffers Neuroendocrine and Psychological Stress Responses*, 16 PSYCHOL. SCI. 846 (2005); David K. Sherman, Debra P. Bunyan, J. David Creswell & Lisa M. Jaremka, *Psychological Vulnerability and Stress: The Effects of Self-Affirmation on Sympathetic Nervous System Responses to Naturalistic Stressors*, 28 HEALTH PSYCHOL. 554 (2009).

104. Barbara J. Petzall, Gerald E. Parker & Philipp A. Stoeberl, *Another Side to Downsizing: Survivors' Behavior and Self-Affirmation*, 14 J. BUS. & PSYCHOL. 593 (2000); Batia M.

self-handicap before a test,[105] boost self-control after internal energy resources have been depleted,[106] and help act as a buffer for self-esteem in victims of domestic violence.[107]

We can apply these lessons to the legal context. Self-help legal materials can include self-affirming exercises before the presentation of particularly challenging information or tasks. The image that follows is a snapshot from a self-help packet designed for individuals preparing to go to court on a debt collection matter. The page following the self-affirmation exercise provides advice on how to talk to the debt collector's attorney.



Wiesenfeld, Joel Brockner & Christopher Martin, *A Self-Affirmation Analysis of Survivors' Reactions to Unfair Organizational Downsizings*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 441 (1999); Batia M. Wiesenfeld, Joel Brockner, Barbara Petzall, Richard Wolf & James Bailey, *Stress and Coping Among Layoff Survivors: A Self-Affirmation Analysis*, 14 ANXIETY, STRESS & COPING 15 (2001).

105. Charles E. Kimble, Emily A. Kimble & Nan A. Croy, *Development of Self-Handicapping Tendencies*, 138 J. SOC. PSYCHOL. 524 (1998).

106. Brandon J. Schmeichel & Kathleen Vohs, *Self-Affirmation and Self-Control: Affirming Core Values Counteracts Ego Depletion*, 96 J. PERSONALITY & SOC. PSYCHOL. 770 (2009).

107. Shannon M. Lynch & Sandra A. Graham-Bermann, *Woman Abuse and Self-Affirmation: Influences on Women's Self-Esteem*, 6 VIOLENCE AGAINST WOMEN 178 (2000).

3. Increasing Self-Agency Through Information, Role Playing, and Visualization

Part of a professional's role in representing an individual is to act as the client's spokesperson, to assert the client's position, and to persuade, push, or cajole others in the client's interests. Attorneys acting on behalf of clients represent that they use specialized knowledge in their advocacy, and they may do so. But, certainly, a major element of what attorneys do is relieve the client of the need to speak, to assert, or to persuade, push, and cajole for herself.

In contrast, the pro se individual must act as her own agent. To do so successfully—to have what Erica Fox has termed "self-agency"—she must (1) internalize that her interests are legitimate, (2) believe that it is legitimate to pursue those interests, and (3) have the capacity (the self-confidence and the assertiveness) to pursue them.[108] "Ineffective self-representation in negotiation can result from a deficiency in any one of these three elements."[109]

Consider the unrepresented litigant who is asked by the clerk or judge to step into the hallway to try to negotiate an agreement with her adversary, or, rather, an attorney representing her adversary. It turns out that "many [individuals] are better at standing up for the interests of others than they are for their own interests."[110] We hypothesize that self-help materials that ignore this problem are less likely to succeed.

We propose that low-cost interventions may be able to address all three elements of self-agency. To help the individual recognize that her interests are legitimate, self-help materials should instill hope and confidence while explaining to the individual her rights.[111] In the debt collection context, our self-help materials might point out that courts have found that debt collection plaintiffs sometimes have no intention of continuing with lawsuits when they meet determined opposition.[112] Such materials might also disclose that courts and regulators have found that debt collection

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108. Fox, *supra* note 16, at 94.

109. *Id.*

110. Jonathan R. Cohen, *When People Are the Means: Negotiating with Respect*, 14 GEO. J. LEGAL ETHICS 739, 777 (2001).

111. *See* Nicole Loorbach, Joyce Karreman & Michaël Steehouder, *Adding Motivational Elements to an Instruction Manual for Seniors: Effects on Usability and Motivation*, 54 TECHNICAL COMM. 343 (2007).

112. Many courts have found as much. *See, e.g.*, Miller v. Javitch, Block & Rathbone, 561 F.3d 588, 596 (6th Cir. 2009) (commenting that consumer debtors tend to be unsophisticated and therefore unlikely to dispute creditor practices); *see also* Order at 6, Consumer Fin. Prot. Bureau v. Frederick J. Hanna & Assocs., P.C., No. 1:14-CV-2211-AT (N.D. Ga. July 14, 2015), http://files.consumerfinance.gov/f/201512_cfpb_order-frederick-j-hanna.pdf [https://perma.cc/8A5K-P696] ("[I]n those few cases where the consumer responded to the lawsuit, the Firm routinely dismissed the cases."); Jessica Mendoza, Kelsey Luing, Alexa Mills & Walter V. Robinson, *Collection Claims Abuses Move Up to Higher Courts*, BOS. GLOBE (Mar. 28, 2015), https://www.bostonglobe.com/metro/2015/03/28/new-restrictions-debt-collectors-district-court/sIMWIBGAjooNXc1QomaNpM/story.html [https://perma.cc/NYP8-9UB9] (noting that "courts routinely dismiss lawsuits").

plaintiffs frequently do not know whether they are suing the right person, on the right debt or credit card, or for the correct dollar amount.[113]

The message is that fighting a lawsuit is not breaking a promise or reneging on an obligation. To the contrary, fighting a lawsuit could be a way of refusing to pay a debt not actually owed or to pay the wrong amount to the wrong person. Our theory is that lay people will contest lawsuits better, or at all, when they feel good about doing so. More generally, we hypothesize that how one feels about deploying specialized knowledge affects whether and how one deploys such knowledge.

We further hypothesize that role-playing exercises can help the unrepresented individual with Fox's third element, having the capacity to pursue her interests. For example, we have adapted a technique regularly used by the Harvard Program on Negotiation: asking a study subject to pretend to be someone else while practicing a negotiation (with a friend or in front of a mirror). That someone else might be a fictional lawyer from a television program, a relative, a historical figure, or anyone the study subject thinks of as strong, confident, and unafraid.[114]

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113. *See, e.g.*, Royal Fin. Grp. v. Perkins, 414 S.W.3d 501, 502 (Mo. Ct. App. 2013); *see also* Consent Order at 4–5, *In re* JPMorgan Chase Bank, N.A. (Comptroller of the Currency, U.S. Dep't of the Treasury Sept. 18, 2013) (No. AA-EC-13-76) (finding that the bank engaged in "unsafe or unsound practices" such as allowing claims to be filed which had errors or were not based on personal knowledge), https://www.occ.gov/static/enforcement-actions/ea2013-138.pdf [https://perma.cc/GNB2-8Q5R].

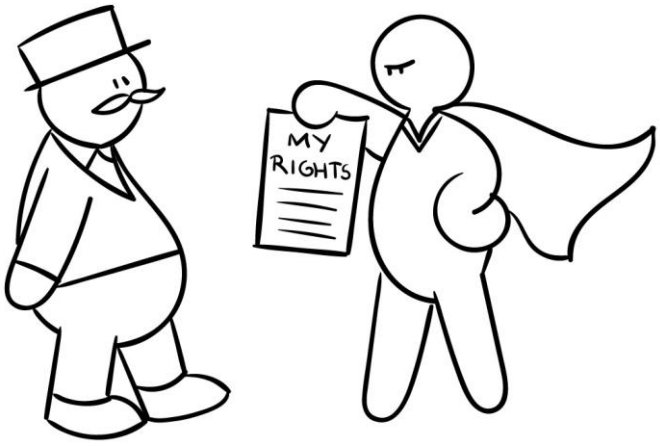
114. In-person conversation with Robert Bordone, Director, Harvard Negotiation and Mediation Clinic, in Cambridge, Mass. (2013).

Below is an illustration of how this negotiation preparation technique might be used in self-help materials to empower a consumer in an upcoming negotiation.

Don't know how to talk to bullies?
Think of someone who does. Someone confident.
They can be someone you know, someone on TV, or someone in a movie.

Write that person's name here: _____.

Now think about how that person would act around a bully.



Now think about how that person would talk to a bully.

Finally, we hypothesize that visualization techniques in preparation for a negotiation might also increase the individual's capability. This may involve presenting potential setbacks individuals may encounter when trying to represent themselves and requesting that they visualize what they will do in response. The example below prepares individuals to stick to their guns when they do not immediately encounter a helpful person on the phone.

The loan company representative or debt collector might not be very nice. They might tell you that you can't have certain options. They might tell you there's nothing they can do for you. Practice how you will respond. For example, you might say this:

"What you are asking me to pay is impossible. I want to speak to your supervisor."

The visualization exercises may also suggest that the individual practice stepping back (literally or figuratively) from a situation when they feel they are losing control of it.

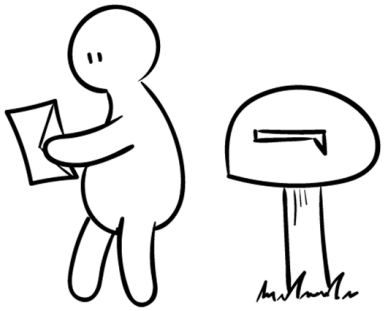
4. Demystifying Legal Mundanity

Earlier, we posited that a lack of knowledge of legal mundanity hinders lay individuals' self-confidence and trust in self-help materials.[115] To counter this, civil legal

115. *See supra* Part I.A.3.

materials could include what would appear to a lawyer to be trivial logistical information about the legal process: where an individual should go, what she will see when she arrives in court, when to raise her hand to show that she is present. As suggested earlier, the purpose of providing this information is twofold: (1) to inform lay individuals of what they actually need to know to deploy professional legal knowledge effectively and (2) to instill confidence in the other parts of the materials, the parts that contain what for lawyers is "substantive" information.

The next few pages show selections from a packet our students and we have created on how to respond to a debt collection lawsuit.[116] Its target audience is debt collection defendants in Maine, where one of our studies is taking place.

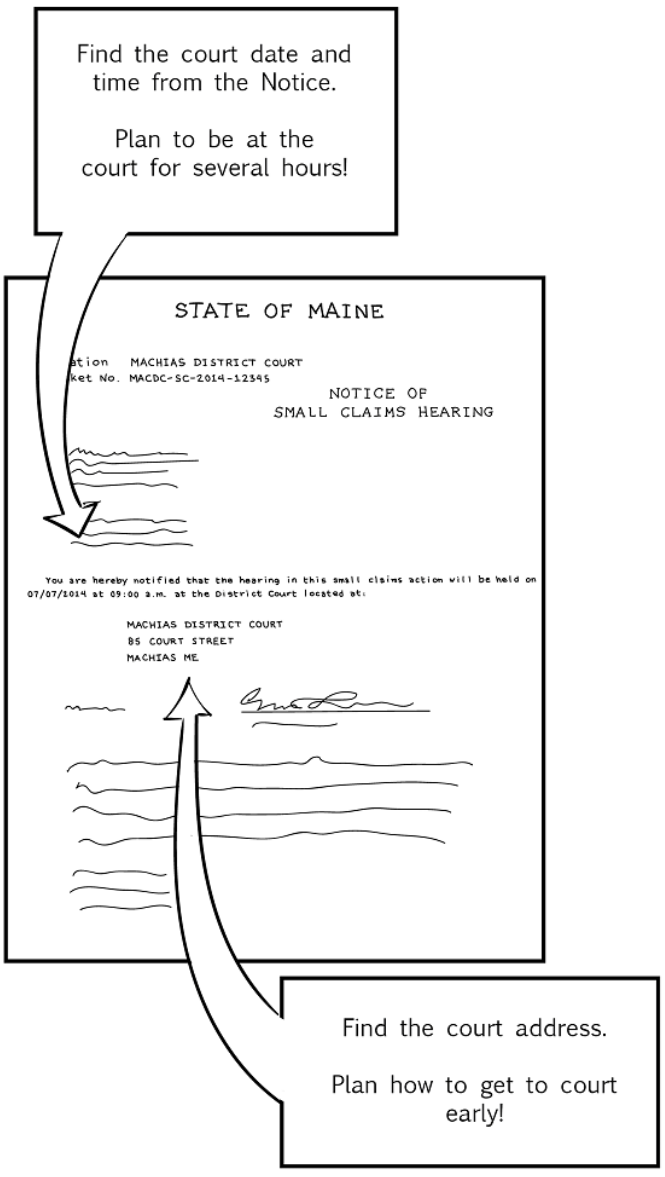


When do you go to court? The court will mail you a letter telling you when to go.

First, check the papers you got from the court. Is your address right? If it isn't right, call the court and let them know. If you have trouble finding the court's number, ask a librarian at a public library to help you. This is important. The court needs to know where to send you things.

116. Images are from draft self-help files. CA Debt Buyer SOL Full Draft Part 1 20150719 & CA Debt Buyer SOL Full Draft Part 3 20150719 (on file with Indiana Law Journal). Fonts for these images are not yet optimized in accordance with the principles described later in this Article.

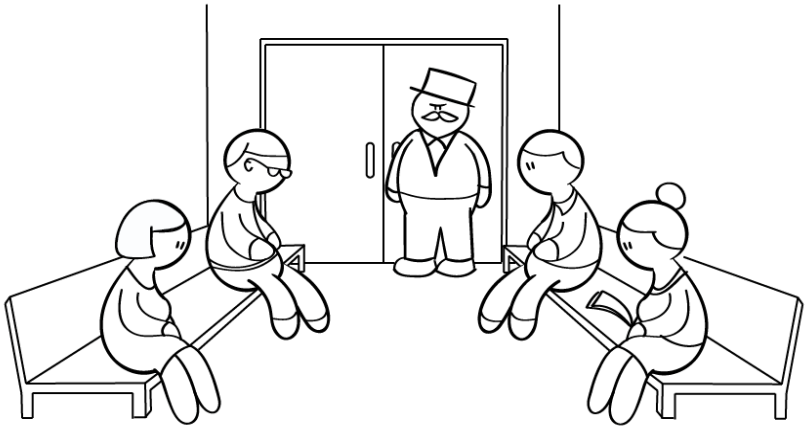
1) When you get the paper that says "Notice of Small Claims Hearing":



The preceding images address what the individual will see before coming to court. What about court itself? Court is an unfamiliar and intimidating place. In fact, courts are designed to be intimidating; they may have to be intimidating to induce litigant compliance with their rulings. But, as we have suggested,[117] most people cannot fight feelings of intimidation and perform unfamiliar and complex tasks well at the same time. Thus, we created the following images from our self-help packet. Note the level of detail, which is designed to inform and to instill trust.

1. What To Expect When You First Get to Court

When you get inside the court, it may look like this:



It might be crowded. Don't worry! Go find your courtroom. Make sure it is the **small claims court**. If you are not sure, ask someone to double check. If none of the papers you have tells you which courtroom, ask a security guard or court worker where **small claims court** is.

We hypothesize that self-help materials should discuss as much as possible of the process as the individual is likely to encounter. For example, if most defendants in a particular type of case are sent to mediation, the materials should explain this and provide details about what to expect during the mediation process. We hypothesize that providing this detail will increase the individual's confidence and comfort in an unfamiliar situation.

5. Aiding with Plan Making and Implementation Strategies

Lay individuals addressing justiciable problems need to plan and execute a number of complex tasks. These might involve responding to a lawsuit within a short time period, keeping track of notices to know when to come to court, or arranging

117. *See supra* Part I.A.2.

transportation or leave from work to attend a court hearing. The behavioral economics, psychology, and public health literatures have insights that could aid LMI individuals in plan making and plan execution.[118]

Research from these fields on how people can achieve their goals tells us first that if the goals are specific,[119] proximate,[120] and characterized as learning exercises rather than as performance, they are most likely to be met.[121] The framing of the goals also matters; goal attainment is more likely if the goal is framed positively (losing weight will give me more energy) rather than negatively (being obese will lead to heart disease).[122]

Similarly, simple prompts increase follow-through on achieving goals.[123] In the public health context, something as simple as the inclusion of a sticky note with the language: "Don't forget! Colonoscopy appointment with: ____ on: _____," attached to a reminder to undergo a colonoscopy, significantly increased patient compliance.[124] The sticky note worked by addressing three different barriers to intention implementation: (1) a cognitive barrier, by associating a future cue (the date) with a plan of action (the appointment), (2) a logistical barrier, by providing a solution to the practical challenge of remembering the date and time of the appointment, and (3) a material barrier, by offering a visual reminder of the appointment.[125] Political scientists have used similar measures to promote voting.[126]

Research from these fields also suggests that implementation intentions can aid the follow-through on achievement of goals.[127] Implementation intentions, structured as "[w]hen situation x happens, I will perform response y," facilitate a commitment to responding to a specific circumstance in a particular way.[128] When an individual

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118. For a review of implementation intentions that work, see Todd Rogers, Katherine L. Milkman, Leslie K. John & Michael I. Norton, *Beyond Good Intentions: Prompting People To Make Plans Improves Follow-Through on Important Tasks*, BEHAV. SCI. & POL'Y, Dec. 2015, at 33.

119. EDWIN A. LOCKE & GARY P. LATHAM, A THEORY OF GOAL SETTING & TASK PERFORMANCE 29 (1990).

120. Albert Bandura & Dale H. Schunk, *Cultivating Competence, Self-Efficacy, and Intrinsic Interest Through Proximal Self-Motivation*, 41 J. PERSONALITY & SOC. PSYCHOL. 586, 595 (1981).

121. Carol S. Dweck, *Implicit Theories as Organizers of Goals and Behavior*, *in* THE PSYCHOLOGY OF ACTION: LINKING COGNITION AND MOTIVATION TO BEHAVIOR 69, 72 (Peter M. Gollwitzer & John A Bargh eds., 1996).

122. Peter M. Gollwitzer, *Implementation Intentions: Strong Effects of Simple Plans*, 54 AM. PSYCHOLOGIST 493, 493–94 (1999).

123. *See* Katherine L. Milkman, John Beshears, James J. Choi, David Laibson & Brigitte C. Madrian, *Following Through on Good Intentions: The Power of Planning Prompts* 2 (Harvard Kennedy Sch. Faculty Research Working Paper Series No. 12-024, 2012) http://nrs.harvard.edu/urn-3:HUL.InstRepos:8830778 [https://perma.cc/2VAN-7BBW] (describing an experiment "testing the efficacy of a 'nudge'").

124. *Id.* at 2.

125. *See id.* at 3–4.

126. David W. Nickerson & Todd Rogers, *Do You Have a Voting Plan?: Implementation Intentions, Voter Turnout, and Organic Plan Making*, 21 PSYCHOL. SCI. 194 (2010).

127. "I intend to reach x!" is how a goal intention is phrased. Gollwitzer, *supra* note 122, at 494.

128. *Id.* at 494–95.

identifies a potential situation or circumstance and preidentifies an action in response, that action becomes mentally accessible and easier to act on.[129] The preplanned response requires less conscious intent. The implementation intention places the achievement of a goal under the direct control of "situational cues," partially removing the action from "conscious and effortful control."[130]

We can apply these lessons to the legal context, then test to see if they work. For example, a self-help assistance packet or a notice can include sticky notes to be placed on refrigerators or wall calendars.[131] Legal materials can include blank lines for recipients to write down the dates, times, and locations of court hearings.[132] If information is to be delivered electronically—via an app or the web, for example—the individual can be prompted to sign up for reminders through either e-mail or text.

B. Overcoming Barriers to Understanding

The legal system is complex, replete with procedural and substantive decision trees that professionals, after formal training and practice, gain facility in navigating. Reducing this complexity in effective self-help materials is not easy. Research in the fields of education and psychology, however, offers some insights and suggests tools that we posit can be effective in addressing barriers to effective deployment. In this section, we arbitrage these insights.

1. Previewing Content and Context: Content Overviews and Advance Organizers

Studies from other fields have found that roadmaps or summaries help readers to understand relationships among concepts.[133] The education literature identifies two specific strategies to do this: content overviews and advance organizers. The literature is mixed on which of these approaches are most effective, and the answer likely depends on the purpose of the material. Both tools may be helpful if included in civil legal materials for the lay individual.

Content overviews consist of concise outlines that provide the reader with a map of the content in the text.[134] They help prepare the learner for the task ahead and are

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129. *Id.*

130. *Id.* at 495.

131. *See* Rogers et al., *supra* note 118, at 37.

132. *See* Katherine L. Milkman, John Beshears, James J. Choi, David Laibson & Brigitte C. Madrian, *Using Implementation Intentions Prompts To Enhance Influenza Vaccination Rates*, 108 PROC. NAT'L ACAD. SCI. 10415 (2011).

133. "Both signals and advance organizers help provide the reader with the hierarchical structure of the materials. Ultimately, this contributes to better recall because the reader better understands the relationship among subtopics." Robbins, *supra* note 62, at 124 (citing Robert F. Lorch, Jr., Elizabeth Pugzles Lorch & W. Elliot Inman, *Effects of Signaling Topic Structure on Text Recall*, 85 J. EDUC. PSYCHOL. 281, 287 (1993)). "Advance organizers such as roadmaps or summaries create a learning base that the reader can call upon as pre-learned material when later introduced to the material in more depth." *Id.* at 124.

134. Percy W. Marland & Ronald E. Store, *Some Instructional Strategies for Improved Learning from Distance Teaching Materials*, *in* DISTANCE EDUCATION: NEW PERSPECTIVES 137, 145 (Keith Harry, Magnus John & Desmond Keegan eds., 1993).

especially helpful when the learners have lower ability levels and when students must learn facts or concepts, two conditions that are likely to be in the context of legal self-help materials.[135] Overviews are useful when material can be broken up into different units and can be structured either in prose or outline form. They are only successful to the extent they are simple and precise.[136] Research suggests that having each new section contain a small content overview before it begins is superior to producing a single, large overview at the beginning of the material.[137]

Below is an example of a brief content overview used in a packet of materials aimed at the unrepresented litigant defending herself in a debt collection lawsuit:[138]

> **Part Two: Know Your Rights**
>
> You now know that you should **go to court.** There are good reasons why you might not have to pay anything. And there are good reasons why you might not have to pay as much as the company says. You have rights. Here, you will learn more about your rights. You will learn more about the good reasons you might not have to pay. That way, you can stand up for yourself when you get to court.
>
> You don't need to write any of this down. This will be easy to understand. We'll tell you what to say in court later. For now, just read this to understand your rights.

Advance organizers provide context (instead of content) for the lesson and may relate the topic to what the learner already knows.[139] Research suggests that advance

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135. *See* GARY R. MORRISON, STEVEN M. ROSS, HOWARD K. KALMAN & JERROLD E. KEMP, DESIGNING EFFECTIVE INSTRUCTION 164–65 (7th ed. 2013); James Hartley & Ivor K. Davies, *Preinstructional Strategies: The Role of Pretests, Behavioral Objectives, Overviews and Advance Organizers*, 46 REV. EDUC. RES. 239, 246 (1976) (noting that content overviews "prepare" and advance organizers "clarify"). Content overviews are also helpful for "holist" learners, individuals who prefer a subject overview before filling in the details. John J. Sparkes, *Matching Teaching Methods to Educational Aims in Distance Education*, *in* THEORETICAL PRINCIPLES OF DISTANCE EDUCATION 135, 139 (Desmond Keegan ed., 1993).

136. *See* Hartley & Davies, *supra* note 135, at 244 ("A great deal of their success is thought to lie in the manner in which they emphasize salient points, as well as select and condense material.").

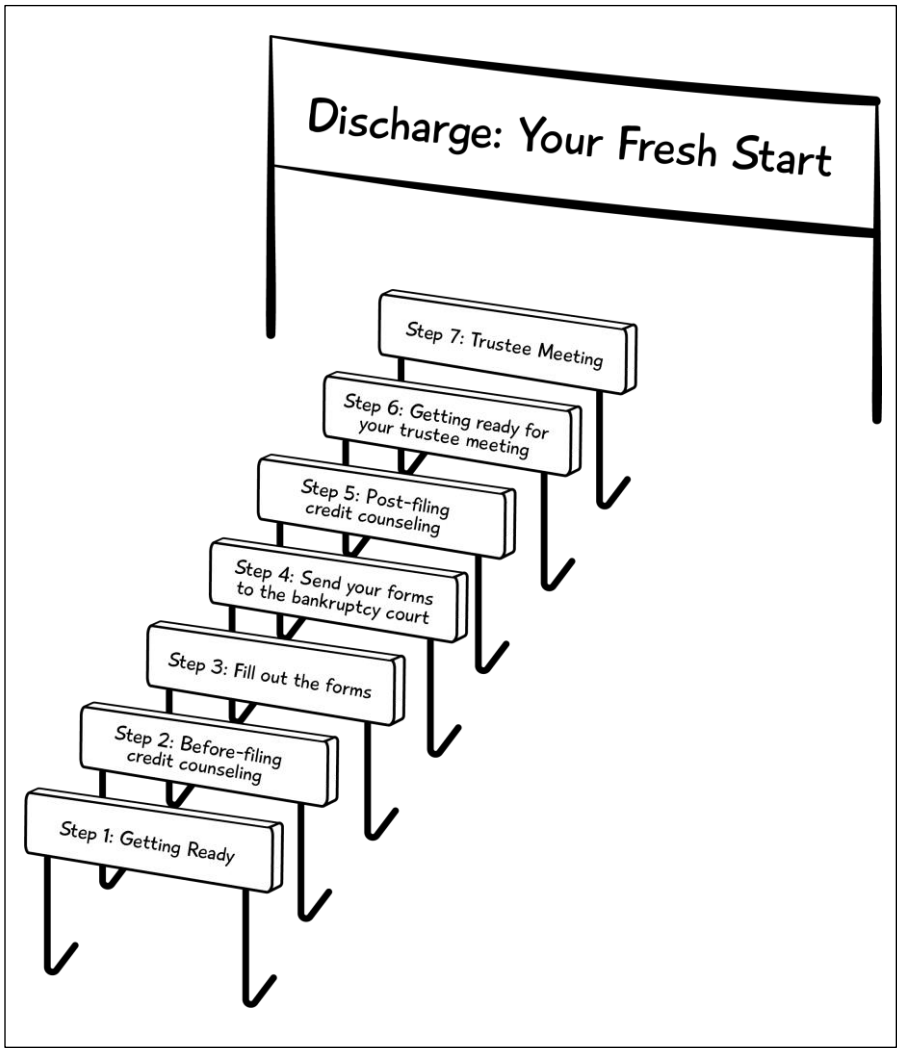
137. *Id.* at 252–53.

138. Note that this passage is written at a less than second-grade level in the Flesch-Kincaid scale. *See Measure Text Readability*, READIBILITY SCORE, https://readability-score.com/text/ [https://perma.cc/HS7V-338T] (last updated 2017).

139. Hartley & Davies, *supra* note 135, at 244–45. David Ausubel is credited with being the first to introduce the concept of the advance organizer. *See generally* DAVID P. AUSUBEL, THE PSYCHOLOGY OF MEANINGFUL VERBAL LEARNING (1963). According to Ausubel, students are able to learn new material only if they can subsume that material within relevant existing concepts or knowledge. *Id.* at 85. Therefore, when students encounter advance organizers, they should be able to learn and recall new information with less difficulty. *See id.* at 86. The organizer allows the learner to hierarchically organize the new information as a subset or subconcept of existing information. David P. Ausubel, *The Use of Advance Organizers in the Learning and Retention of Meaningful Verbal Learning*, 51 J. EDUC. PSYCHOL. 267, 267 (1960). The literature on the effectiveness of advance organizers is mixed, but many studies

organizers are most useful when the material works hierarchically, from more inclusive to less inclusive.[140] For example, to help an individual defend herself in a lawsuit, an organizer might make a general statement about how required tasks in litigation fit together, such as the following: Any legal proceeding in court can be broken down into a number of smaller parts. With each task that is performed successfully, you move closer to winning the case. These statements could be accompanied by a flowchart showing the sequence of steps subjects are likely to encounter in the courtroom.

In our materials helping individuals file their own Chapter 7 bankruptcies, we use the following advance organizer in the beginning of the materials. The "hurdles" repeat throughout the materials.



point to an improvement in learner performance. *See* Hartley & Davies, *supra* note 135, at 255–56.

140. Marland & Store, *supra* note 134, at 143–44.

Some researchers have found that advance organizers that highlighted the ease of use of the material and that noted that no prior knowledge was necessary to perform the tasks increased study subjects' confidence in their abilities and reduced anxiety.[141] Subjects who received materials with these types of organizers demonstrated better learning outcomes and were less likely to be discouraged and walk away from a task.[142]

2. Organizing and Structuring Content

Content and context cues like overviews and organizers are helpful only to the extent individuals can identify the structure they provide. The education literature discusses several strategies that can improve students' understanding of the structure of new instructional material. Moving from the more general to the specific, these include providing an outline of the material, using headings, and properly grouping and sequencing different types of information.

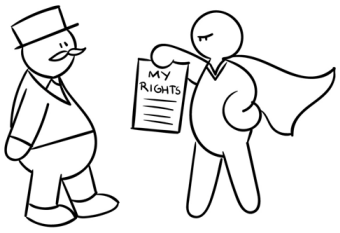
Providing an outline at the beginning of the text can help readers see the structure of the text and enables them to read the text nonlinearly if they choose.[143] Below is an example of the first page of a packet designed to help an unrepresented individual defend herself in court:

You Can Stand Up For Yourself in Court!

This packet is here to help you get through the court process. Pine Tree Legal Assistance can't assign you a lawyer. There just aren't enough lawyers to go around. But, **you can make it through court without a lawyer**. This packet will show you how. It's organized in four parts:

Part One is called, "Go To Court." It explains why you should go to court.

Part Two is called, "Know Your Rights." It tells you why you might not have to pay any money, or as much money as the company suing you says you owe.



141. *See* Loorbach et al., *supra* note 111, at 345, 350.

142. *Id.* at 350, 352.

143. James Hartley, *Designing Instructional and Informational Text*, *in* HANDBOOK OF RESEARCH ON EDUCATIONAL COMMUNICATIONS AND TECHNOLOGY 917, 925 (David H. Jonassen ed., 2d ed. 2004).

The literature suggests that the use of headings is helpful when introducing the reader to a new topic.[144] This is unsurprising, but we found few examples of a thoughtful use of headings in existing self-help materials. Research suggests that the use of headings increases the recall of ideas by signaling that the topic is distinct and by providing the reader with context and a structure to follow.[145] The premise is that transitions between sections place a heavy processing demand on readers.[146] Readers must suppress the topic of the section that has just finished and must then identify the new topic of the next subsection and fit it within the context of the text structure.[147] Topic headings reduce the burden of these transitions.

Research also suggests the best order in which to present information. For example, information ordinarily should be presented chronologically, as this will make it easier for readers to follow.[148] When possible, threatening information should be presented first, followed by subject-specific information that will help the individual cope with the threat.[149] Studies have found that this order of presentation energizes the reader, whereas the reverse leaves them feeling "alarmed and overwhelmed."[150] Based on this research, self-help materials might present the consequences of, for example, not coming to court first, followed by an explanation that the information packet contains information that will help the individual avoid those consequences.

At the paragraph level, a prominent education scholar recommends the use of signal words to develop the conceptual structure of the passage. Some words ("on the other hand") signal comparisons; others ("first," "second," "reasons for this are") signal the structure of the argument; still others ("therefore," "as a result") signal causal relationships.[151] This recommendation is not universal,[152] there is research suggesting that the age of the reader may impact the effectiveness of certain content

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144. Robbins, *supra* note 62, at 124–25.

145. *Id.* at 125–26; Jukka Hyönä & Robert F. Lorch, *Effects of Topic Headings on Text Processing: Evidence from Adult Readers' Eye Fixation Patterns*, 14 LEARNING & INSTRUCTION 131, 133–34 (2004). Headings also produce a slight decrease in recall of familiar topics, Robert F. Lorch, Jr. & Elizabeth Pugzles Lorch, *Effects of Headings on Text Recall and Summarization*, 21 CONTEMP. EDUC. PSYCHOL. 261, 268 (1996), but this is unlikely to be an issue in the case of legal materials for a lay audience. When undergraduate readers are presented information without headings, they rely on length as a cue for determining what is important and what is not; when they are presented with headings, however, they do not rely on length as a cue. *Id.* at 273. If choosing not to use headings in parts of self-help materials, designers should be mindful of the fact that the length of the presentation of the topics might influence the level of importance readers assign to the topics.

146. Hyönä & Lorch, *supra* note 145, at 133.

147. *Id.*

148. *See* Hartley, *supra* note 143, at 926.

149. Steven Prentice-Dunn, Donna L. Floyd & James M. Flournoy, *Effects of Persuasive Message Order on Coping with Breast Cancer Information*, 16 HEALTH EDUC. RES. 81, 84 (2001). It should be noted, however, that this study only measured initial attitudes, not later behavior in response to the information.

150. *Id.*

151. Hartley, *supra* note 143, at 927.

152. *See, e.g.*, Bastable et al., *supra* note 76, at 293 (recommending that one limit the use of transition phrases because they lengthen sentences and make them harder to read).

organization and structure tools.[153] One way to reconcile the disagreement in the studies is to note that it signaling words seem to be particularly helpful in the absence of headings.[154]

At the sentence level, thematic grouping of items in lists may be helpful when there are a large number of instructions.[155] Such groupings can help provide structure and organization. In a list, the most important information can be placed first and last, as this is where readers are most likely to look.[156] Finally, lists should be separated from the main text using bullets or numbers and arranged vertically instead of embedded within a paragraph.[157]

3. Fulfilling the Promise of Plain Language

We have noted that the current best practices for self-help materials and court forms highlights the importance of using plain language. But whether a writing is sufficiently "plain" is hard to ascertain. As the federal government's website on the topic notes, "plain language is defined by results—it is easy to read, understand, and use."[158] A results-based definition makes it impossible to know whether something is written in plain language; whether the claims about plain language are true can

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153. *See* James Hartley, *What Does It Say? Text Design, Medical Information, and Older Readers*, *in* PROCESSING OF MEDICAL INFORMATION IN AGING PATIENTS 233, 239 (Denise C. Park, Roger W. Morrell & Kim Shifren eds., 1999). We note that there is considerable evidence that age influences the processing of information. Experiments in the deployment of medical information have found that the use of pictures and illustrations differs by age groups. *See, e.g.*, Morrell et al., *supra* note 82, at 166 (studying prescription drug labels); *see also* Liu et al., *supra* note 82; van Weert et al., *supra* note 82. A note of caution, therefore, seems appropriate. Individuals above the age of sixty may process professional legal information differently from younger individuals. Materials may need to address different populations differently. *See* NAT'L INST. ON AGING & NAT'L LIBRARY OF MED., MAKING YOUR WEBSITE SENIOR FRIENDLY: A CHECKLIST, http://www.nlm.nih.gov/pubs/checklist.pdf [https://perma.cc/XU3K-DHXS]; James Hartley, Peter Burnhill & Lindsey Davis, *The Effects of Line Length and Paragraph Denotation on the Retrieval of Information from Prose Text*, 12 VISIBLE LANGUAGE 183 (1978); Ronald B. Larson, *Enhancing the Recall of Presented Material*, 53 COMPUTERS & EDUC. 1278 (2009); Daniel Morrow & Von O. Leirer, *Designing Medication Instructions for Older Adults*, *in* PROCESSING OF MEDICAL INFORMATION IN AGING PATIENTS *supra*, at 249; Daniel Morrow, Von Leirer & Patsy Altieri, *List Formats Improve Medication Instructions for Older Adults*, 21 EDUC. GERONTOLOGY 151 (1995) [hereinafter Morrow et al., *List Formats*]; Daniel G. Morrow, Von O. Leirer, Jill M. Andrassy, Catherine M. Hier & William E. Menard, *The Influence of List Format and Category Headers on Age Differences in Understanding Medication Instructions*, 24 EXPERIMENTAL AGING RES. 231 (1998); Prentice-Dunn et al., *supra* note 149.

154. Jan H. Spyridakis, *Signaling Effects: Increased Content Retention and New Answers—Part II*, 19 J. TECHNICAL WRITING & COMM. 395, 408 (1989).

155. *See* Morrow et al., *List Formats*, *supra* note 153, at 163.

156. Bastable et al., *supra* note 76, at 290. Psychologists term this the "serial position effect." *See* Saul McLeod, *Serial Position Effect*, SIMPLYPSYCHOLOGY (2008), http://www.simplypsychology.org/primacy-recency.html [https://perma.cc/Q8PY-HLTV].

157. Hartley, *supra* note 143, at 926.

158. *What Is Plain Language?*, *supra* note 12.

only be ascertained empirically. Its success is also necessarily contextual; what matters is whether the target audience finds the material easy to read, understand, and use. Consequently, testing the material with the target audience must be a critical component of any plain-language writing. We discuss testing further in Part III. In this Part, we turn to some of the best guidance and research on writing language that will be accessible to the lay individual.

We begin with some "don'ts" that are particularly relevant to lawyers. Some of this research comes from the study of jury instructions: language written by lawyers for lay individuals. Charrow and Charrow provide what is perhaps the most rigorous accounting of specific conventions in legal writing that thwart comprehension.[159] First, they find that lay people have difficulty processing nominalizations (e.g., words ending in *–tion* and *–ment*), prepositional phrases (such as "as to"), double and triple negatives, passive construction (especially in subordinate clauses), and sentences with multiple subordinate clauses.[160] In addition, other scholars caution against using compound and abbreviated words.[161]

Many of these admonitions are familiar to most lawyers, and indeed, to most writers. But familiarity has not resulted in observance.

In a less intuitive suggestion, Charrow and Charrow warn against what they term "'whiz' deletions," places where the clarifying phrase "which is"—as in any statement of counsel *which is* made during trial—is deleted.[162] Unfortunately, their study design cannot definitively tell us whether reinstating the deleted whizes alone would lead to a marked improvement in lay understanding of the content.[163] But their findings do suggest that this might be true, in particular if one avoids whiz deletions and passive construction.[164] We note also that comprehension in this study improved when the text included words such as "should" and "must"; the authors hypothesized that the readers' attention was drawn to these strongly worded phrases.[165]

Studying how to improve jury instructions, Smith and Haney recommend including specific hypothetical examples that could surface in the trial.[166] Further, they suggest offering details that create a mental model of the situation, such as creating a protagonist in a "story," referring to a judge by name, or providing the motivations of the key participants.[167] Other researchers recommend a simulated successful

159. Robert P. Charrow & Veda R. Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*, 79 COLUM. L. REV. 1306 (1979).

160. *Id.* at 1321–27.

161. Bastable et al., *supra* note 76, at 292.

162. Charrow & Charrow, *supra* note 159, at 1323.

163. *See id.* at 1323, 1338.

164. *See id.* at 1338.

165. *Id.* at 1324.

166. Amy E. Smith & Craig Haney, *Getting to the Point: Attempting To Improve Juror Comprehension of Capital Penalty Phase Instructions*, 35 LAW & HUM. BEHAV. 339, 343 (2011) (referring to this as concreteness).

167. *Id.* at 344, 347 (referring to these insights as "situation models" and "story model" that collectively make up "pinpoint" instructions). Sara Gordon also recommends the use of "worked examples"—step-by-step explanations of how to solve an example problem—as a way to help jurors overcome their incorrect preexisting patterns and create correct new ones. Sara Gordon, *Through the Eyes of Jurors: The Use of Schemas in the Application of "Plain-Language" Jury Instructions*, 64 HASTINGS L.J. 643, 671–72 (2013).

conversation; namely, a "guided didactic conversation,"[168] suggesting that the technique improves reader motivation.[169] As discussed above, our debt collection self-help materials include Blob as our protagonist character, which frequently allows readers to impute Blob's motivations. Finally, and perhaps unsurprisingly, research also suggests that presenting information in an informal style with personal and possessive pronouns aids comprehension.[170]

4. Using Typography Effectively

The look of a document affects its readability. Typography, "the art and technique of arranging type to make written language legible, readable and appealing," is a significant component of that look.[171] Typography consists of three factors: typeface, spacing, and layout.[172] Typeface characteristics involve the letters themselves and include attributes like style, size, x-height,[173] weight, and slant.[174] Spacing refers to the distance between letters (termed character spacing or tracking) and between lines of text (termed leading).[175] Layout encompasses line length, the number of text columns, text justification, and the like.[176] All three factors affect the legibility of a document as well as the reader's perception of the information.

A left-aligned[177] text layout that effectively and liberally uses white space[178] has been shown to enhance legibility.[179] Serif fonts,[180] such as Times New Roman in

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168. BÖRJE HOLMBERG, THEORY AND PRACTICE OF DISTANCE EDUCATION 47 (2d ed. 1995).

169. Börje Holmberg, *Testable Theory Based on Discourse and Empathy*, OPEN LEARNING, June 1991, at 44, 45.

170. Holmberg, *supra* note 44, at 117.

171. *Typography*, WIKIPEDIA (last modified Jan. 9, 2017, 4:42 PM), http://en.wikipedia.org/wiki/Typography [https://perma.cc/2CAP-F8TS].

172. Michael S. McCarthy & David L. Mothersbaugh, *Effects of Typographic Factors in Advertising-Based Persuasion: A General Model and Initial Empirical Tests*, 19 PSYCHOL. & MARKETING 663, 667 (2002).

173. *Id.* "[X]-height refers to the size of the lower-case letters that have no ascenders or descenders [such as a, c, e, n]." *Id.* at 676. The following letters have ascenders: l, d, f, t, b, h. The following letters have descenders: p, q, y.

174. *Id.* at 667.

175. MATTHEW BUTTERICK, TYPOGRAPHY FOR LAWYERS 92–94 (2d ed. 2015) (distinguishing letterspacing from "kerning" or "the adjustment of specific pairs of letters to improve spacing and fit"); McCarthy & Mothersbaugh, *supra* note 172, at 672.

176. *Id.* at 665–66.

177. Left-aligned text is easier to read. Robbins, *supra* note 62, at 130. Justified text has been found to adversely affect legibility. Full justification can create "rivers" (large gaps between words) on the page, or equal word space can make the text more approachable. KAREN A. SCHRIVER, DYNAMICS IN DOCUMENT DESIGN: CREATING TEXT FOR READERS 270 (1996). *But see* Hartley, *supra* note 143, at 923; Robbins, *supra* note 62, at 130–31.

178. A document is more legible when less than fifty percent of the page is devoted to print. *See* Robbins, *supra* note 62, at 124.

179. Text proximity (placing things closer together or using space to indicate a new idea) denotes relationships between concepts. Robbins, *supra* note 62, at 128.

180. "The popular view among graphic designers is to use serif fonts, like Times or Garamond, for large blocks of text. Those designers conclude that serif fonts read more easily in blocks of print text." *Id*. at 119–20.

eleven- or twelve-point size[181] that are proportionally spaced[182] should be used for large blocks of text.[183] Headings in contrasting fonts (sans serif, such as Verdana) and type (boldface, upper- and lowercase[184]) and a larger size (e.g., fourteen point)[185] provide important visual cues[186] that can enhance recall of material.[187]

Consistency of formatting—for example, all headings in the same typeface, size and boldness—establishing patterns within a document has been shown to increase legibility and commensurately decrease the stress level of readers.[188] But cuing devices (underlining, *italics*, **boldface**) can also signal topic structure and provide emphasis of important concepts.[189] However, when used within the text, these devices improve performance in situations where students only need to know the information being emphasized.[190]

To increase legibility, spacing should be ample and consistent,[191] and paragraphs should be separated by an extra line of space.[192] Text should take up at most fifty percent of a page.[193] Illustrations and white space in the margins should encompass the remaining half of the page.[194] Recommendations for line length vary between

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181. Eleven-point Roman is considered the most legible for the line length. *Id.* at 122. But note that larger type sizes, either twelve or fourteen point, are recommended for older readers. *See* MICHÈLE M. ASPREY, PLAIN LANGUAGE FOR LAWYERS 263 (4th ed. 2010) (pointing to literature suggesting that even larger type sizes, fourteen to twenty point, are better for elderly readers).

182. Robbins, *supra* note 62, at 121. Reading speed is slower for serif monospaced fonts like Courier. *Id.* Greater spacing between letters makes it harder to process individual words and to distinguish words from one another. McCarthy & Mothersbaugh, *supra* note 172, at 672.

183. Robbins, *supra* note 62, at 119–20. Researchers have also explored theories related to the how typeface can influence the impression created about the entity or product being communicated. *See* Pamela W. Henderson, Joan L. Giese & Joseph A. Cote, *Impression Management Using Typeface Design*, J. MARKETING, Oct. 2004, at 60.

184. *See* Robbins, *supra* note 62, at 115.

185. *Id.* at 122.

186. *See* van Weert et al., *supra* note 82.

187. *See generally* Larson, *supra* note 153.

188. Lonsdale et al., *supra* note 61, at 449 ("By considering the legibility of texts, the design of reading examinations can be improved and potential difficulties minimized (e.g., stress can be minimised).").

189. "[P]sychologists recommend boldface as the cueing device of choice when the writer wishes to add emphasis." Robbins, *supra* note 62, at 119 (citing MILES A. TINKER, LEGIBILITY OF PRINT 62 (1963)).

190. Jonathan G. Golding & Susan B. Fowler, *The Limited Facilitative Effect of Typographical Signals*, 17 CONTEMP. EDUC. PSYCHOL. 99 (1992). Students perform better on knowledge of signaled information when textual materials use typographical signals. *Id.*

191. *See* Hartley, *supra* note 143, 922–24; Robbins, *supra* note 62, at 123–24.

192. Compared to texts that did not skip a line between paragraphs and did not use an indent, texts that skipped a line were far more readable. Hartley et al., *supra* note 153, at 193. Although Hartley found that having an indent (on top of the additional line) did not affect readability, *id.*, Robbins asserts that indentation makes it more difficult to distinguish between paragraphs. Robbins, *supra* note 62, at 129.

193. *See* SCHRIVER, *supra* note 177, at 275; Robbins, *supra* note 62, at 124.

194. *See* Bastable et al., *supra* note 76, at 294.

thirty and seventy characters per line (approximately six to twelve words per line for a twelve-point font).[195]

When text contains illustrations or multiple headings, materials should use a one-column layout with wide margins.[196] If using minimal headings and illustrations, a two-column layout increases readability of the text.[197] Researchers have not found a difference in readability between landscape and portrait leaflets,[198] but the portrait version is more compact, making it easier to read at a glance.[199]

Taken together, these best practices from typography suggest that self-help materials should use eleven- or twelve-point serif font, such as Times New Roman, for text; include headings in a larger bolded font, such as Verdana fourteen point; have one-and-a-half- to two-inch margins; and use bold, italics, and underlining sparingly. Since we recommend the use of headings and, earlier, illustrations, a one-column layout in portrait mode is likely the best layout.

5. Commoditizing the Process: Maximizing Procedural Knowledge

Prior research has established that many legal issues faced by higher-income and educated individuals can be addressed by legal professionals with routinized responses. Some law can be commoditized.[200] Moreover, commoditized legal offerings can be faster, cheaper, and potentially less prone to error for many clients. Building on the distinction between conceptual and procedural knowledge discussed previously, we hypothesize that the same is true for the justiciable problems faced by LMI individuals.

Commoditized law is everywhere. Courts and legal-service providers use check-the-box and fill-in-the-blanks complaint and answer forms.[201] Document-assembly computer programs exist on the web.[202] We propose even more simplistic forms than those currently available, with some tailored to an individual's situation. Printed below is a portion of an answer form for a lay individual responding to a debt collection lawsuit. Following the plain English explanation, in italics, is language that expresses

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195. Bastable recommends no more than thirty to forty characters per line, *id.* while Schriver says no more than eight to twelve words, or forty to seventy characters, per line. SCHRIVER, *supra* note 177, at 263. Asprey also recommends between forty and seventy characters per line. ASPREY, *supra* note 181, at 265. For a twelve-point font, Robbins recommends that the line length be between 2.75 and 4 inches. Robbins, *supra* note 62, at 123.

196. Hartley et al., *supra* note 153, at 193–94; *see also* Lonsdale et al., *supra* note 61, at 448.

197. Hartley et al., *supra* note 153, at 193.

198. James Hartley & Matthew Johnson, *Portrait or Landscape?: Typographical Layouts for Patient Information Leaflets*, 34 VISIBLE LANGUAGE 296, 307 (2000).

199. *Id.* We hypothesize that lay individuals will be more likely to use printed materials in the courtroom when printed in portrait style.

200. *See* Kritzer, *supra* note 3, at 725–27; Jerry Van Hoy, *Selling and Processing Law: Legal Work at Franchise Law Firms*, 29 LAW & SOC'Y REV. 703, 715–22 (1995).

201. *See, e.g.*, STATE COURT ADMIN. OFFICE, MICH. COURTS, FORM NO. PCA301A, PETITION FOR DIRECT PLACEMENT ADOPTION: (2015), http://courts.mi.gov/Administration/SCAO/Forms/courtforms/adoptions/pca301a.pdf [http://perma.cc/B8CN-WPVJ].

202. *See, e.g.*, *Start Your Case in New Hampshire*, TURBO CT., https://turbocourt.com/go.jsp?act=actShowState&tmstp=1426554638745&id=29465829 [https://perma.cc/PM4U-A7L7] (New Hampshire small claims court initiation process).

the legal implications of the preceding sentence. The non-italics text is written at a fourth-grade level.[203] The language in italics, in contrast, is at a ninth-grade level.[204] The answer form invites the reader to pay no attention to the latter.

Figure 1. Example of an answer that uses procedural instead of conceptual knowledge.

ANSWER

I believe I have the following defenses that support my argument that I am not legally responsible to pay the Plaintiff:

Check <u>each</u> box that applies to you!
Don't worry about the italics. They're for the judge.

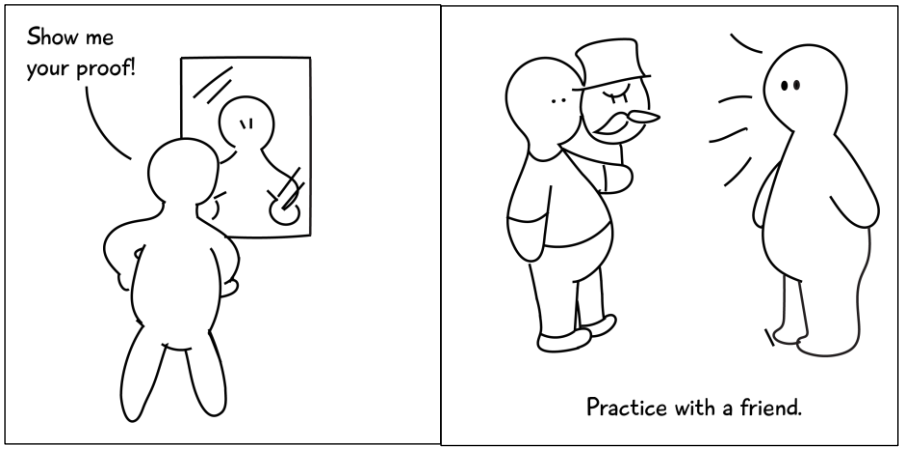
☐ I do not know the company suing me. I do not remember ever doing any business with this company. *Therefore, I deny that I owe this company any money.*

☐ Even if I did owe some money, I do not know if this amount is right. I do not know how they came up with this amount. *Therefore, I deny that I owe it.*

☐ I am not the person named in the papers I received about this lawsuit. *Therefore, I deny that I owe this company any money.*

203. *See Measure Text Readability*, *supra* note 138 (scored 3.6 on the Flesch-Kincaid scale).
204. *Id.* (scored 9.2 on the Flesch-Kincaid scale).

Scripts might also be a way to help the lay individual "say the right words" when in court. We hypothesize that having a simple script may instill confidence in the individual and make it more likely that she will speak up in court. In addition, reminding the self-represented litigant to practice the script in front of a mirror, or with a friend, as shown in the two cartoons below, can also help her to prepare for what she might face.



Finally, we hypothesize that visualizing what could happen in court when the lay individual speaks up will also help instill confidence.

An example of a script follows. The lay individual need not have a conceptual understanding of the rules of evidence or the law regarding chain of title to a debt. Rather, the individual need only say the right words (namely, these words) to the judge at the right time. This script is at a sixth-grade reading level on the Flesch-Kincaid scale.

When it's your turn to talk, you can read this to the judge!

Your Honor, there are three problems here:

First, the proof from the other side has to come from someone who knows what they are talking about. It doesn't matter if that proof comes from paper records or from something else. The person still has to know what they are talking about. Otherwise, those papers could just be made up! They need **"personal knowledge."**

Second, no one can talk about things someone else told them. For example, no one from the company can say, "John told me this person owes me $1000, so I know it's true." They can only talk about things they've seen or done themselves. They can't use **"hearsay."**

Third, the company has to prove the amount I owe. It has to show you papers or records showing why the amount it has in its paper is right. They have to "prove damages" and "produce business records." Now I know, Your Honor, that the rules of evidence don't apply 100% here. But you should still consider what I just said. Where's the real proof?

Also, Your Honor, if the lawyer is not an **"original creditor"**:

Please check that the lawyer's company has proved they've got the rights to my particular account. The lawyer has to produce a contract, with my account number on it, that shows that they bought my account. Otherwise, it's not enough. And again, please make sure that someone with "personal knowledge" signed any papers the lawyer has. Without "personal knowledge" about my particular account, with my account number, I don't know that this lawyer has the rights to my specific account.

6. Teaching Concepts by Analogy Where Conceptual Knowledge Is Needed

Legal professionals are trained as decision makers and problem solvers.[205] Effective decision making and problem solving grow out of a professional's ability to organize a vast body of knowledge and recognize patterns in factual circumstances and possible solutions.[206] According to researchers, professionals acquire this ability by induction (either through drawing on experiences in similar contexts or through repeated experiences with the topic in question) or by analogical reasoning.[207]

A layperson has no experiences to draw on, nor the knowledge base from which to organize information and recognize patterns. The absence of this foundation is a barrier to an individual understanding conceptual legal information when such an understanding is necessary to understand and thus address a problem. Conceptual knowledge may be needed, for example, when a layperson has to respond to a query outside the scope of a script.

In such circumstances, the literature suggests that teaching by use of analogy, preferably multiple analogies, can be more effective than abstract instruction.[208]

Below is an example of using multiple analogies, one visual and the other textual. Visually, the wrong amount is analogized to a piece of paper that is too long. Textually, the wrong amount in a debt collection context is analogized to the wrong amount in a grocery store.

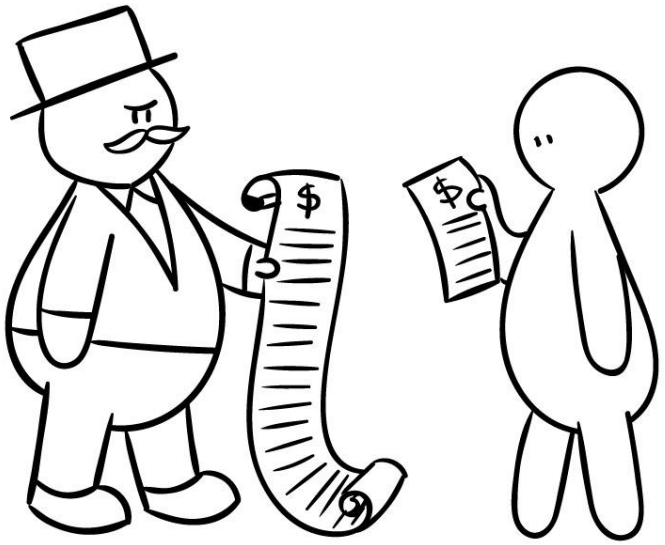
205. Blasi, *supra* note 46, at 327.

206. *Id.* at 332–42.

207. *Id.* at 356.

208. *See* ANDERSON, *supra* note 41, at 230; Blasi, *supra* note 46, at 359; Gick & Holyoak, *Schema Induction*, *supra* note 53, at 32.

Don't Pay if It's the Wrong Amount!



Don't give away your money!

Suppose you pick out $100 worth of food at the grocery store. But when you get to checkout, the cashier says, "You owe us $180." You wouldn't just pay $180. You would say, "Why the extra $80? Where did that come from?" Maybe that $80 extra charge isn't right. And if the cashier can't tell you where the $80 came from, you'd say, "I won't pay that. Not until you prove to me that I owe it."

It's the same way in court!

Some lawyer has said that you owe their company an amount of money. Do you remember that amount? Is that amount exactly how much you remember owing? If not, ask for the proof!

III. TESTING NEW MATERIALS: A CRUCIAL AND ITERATIVE PROCESS

Researchers in the education, psychology, public health, and other fields agree that testing is imperative. But how does one test? Interviewing individuals from the population likely to use the materials is a first step, but we in law can learn much more from other fields about how to test our materials more methodically. This Part suggests ways to test proposed self-help materials. It also describes some of what we have learned while testing our financial-distress materials.

A. The Literature on Testing

Research highlights the need to test distinct parts of materials, such as individual illustrations, as well as the whole.[209] Computer-based tests can be a good first step to ensuring the readability of instructional materials;[210] they are easy to use and helpful.[211] However, instructional texts should always undergo multiple kinds of testing, and some research suggests that computer readability scores can be suspect in the legal context.[212]

What can we learn from other fields about testing the effectiveness of legal texts on human subjects? To test comprehension of the material, cognitive psychologists suggest asking open-ended questions.[213] Specifically, scholars have developed four categories of comprehension questions that can be asked about a text: "text base macro, text base micro, situation model macro, and situation model micro questions."[214]

Text-base questions are ones whose answers are "stated literally in the text," either on the macro (global, or heading-level) or micro (local, or sentence-level) levels.[215] Answering these questions correctly means that the reader is able to recall portions of a text literally; that is, they have at least a superficial understanding of it.[216] For example, a text-base macro question about a set of materials on student loan

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209. Houts et al., *supra* note 23, at 189 (recommending systematic evaluation of pictures used in health-education materials).

210. Bastable et al., *supra* note 76, at 283–84. These tests may be useful but should be used with caution. For example, different types of word processing software—even different versions of the same software—encode the same readability measure in slightly different ways; thus one must use the same software version to process different texts. Hartley, *supra* note 143, at 932.

211. Computer-based formulas tend to reward short, choppy sentences; but if overdone, these can be difficult to read. *Id.* at 932–33. Formulas also disregard the order of words and sentences, something that can be critical to a person's understanding. *Id.*

212. *See, e.g.*, Charrow & Charrow, *supra* note 159, at 1341.

213. Marieke Kools, Margaretha W.J. van de Wiel, Robert A.C. Ruiter, Anica Crüts & Gerjo Kok, *The Effect of Graphic Organizers on Subjective and Objective Comprehension of a Health Education Text*, 33 HEALTH EDUC. & BEHAV. 760, 761, 769–70 (2006). Designers should limit the use of multiple-choice questions, as these do not tell us what the person does not understand. *Id.* at 770.

214. *Id.* at 763; *see also* Rijk Hofman & Herre van Oostendorp, *Cognitive Effects of a Structural Overview in a Hypertext*, 30 BRIT. J. EDUC. TECH. 129, 133 (1999).

215. Kools et al., *supra* note 213, at 763.

216. *Id.*

repayment options might ask what are the two repayment options available to federal student loan borrowers. A text-base micro question might ask what kinds of questions should you ask a student loan counselor about your loan.

Situational-model questions are designed to elicit whether the tester has acquired a deeper knowledge of the material and can generalize the knowledge she has acquired from the material to new situations.[217] As such, situational-model questions might be useful in contexts in which conceptual, as opposed to just procedural, knowledge is essential. Answering situational-model questions requires that the reader make inferences on the global and local levels.[218] For example, a situational-model macro question for a set of materials that discussed debts generally might ask, "If a defense to a credit card collection action is that the debt is too old to collect, would that defense be available to you if a hospital was suing you to collect a debt?" A situational-model micro question on the same materials might be, "What other defenses might be available to you when a creditor is suing you on a medical debt?"

The task for the researcher is threefold for each set of materials to be tested: create questions at these four levels, identify the correct answers, and construct a scoring system.[219] Researchers can then test different variations of potential materials with the aim of improving the scores thus obtained.

Other fields suggest other methods. James Stratman, a communication theorist writing for a legal audience, suggests the use of protocol analysis. In particular, he suggests tape-recording real-world subjects thinking out loud while they read the material being tested—termed a "concurrent protocol."[220] Stratman notes that the point here is "to find out what helps or hinders the readers in their effort to comprehend and use the text."[221] Although the purpose of this method is "not necessarily to have the readers criticize or evaluate what they read, . . . they may do so spontaneously at times."[222] The researcher does not interrupt in these cases; the tester goes through all of the material while speaking aloud. "Researchers later analyze her transcription to see what information she used or perhaps failed to use in the problem-solving process."[223]

Testers sometimes find it difficult to tell researchers that something is not clear about materials the researcher created. One technique that we have used is asking testers whether they think that someone else of lower intelligence would have trouble understanding the material, which elicits more honest feedback.[224] We asked testers to ask the question not just about the material as a whole, but also about specific words or sentences. The intuition is that test subjects are more forthcoming when answering a question about someone else instead of themselves.[225]

Another researcher suggests using a "cloze test": presenting a passage to readers

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217. *Id.*
218. *Id.*
219. *Id.* at 764–66.
220. James F. Stratman, *Teaching Lawyers To Revise for the Real World: A Role for Reader Protocols*, 1 J. LEGAL WRITING INST. 35, 41–42 (1991).
221. *Id.* at 42.
222. *Id.* at 42–43.
223. *Id.* at 42.
224. *See* Hartley, *supra* note 143, at 931.
225. *Id.*

with every nth word missing and asking readers to fill in the missing words.[226] The higher the performance on the "cloze test," the more comprehensible the material.[227] Still another way to test the material is to have readers circle sections, sentences, and words that they think would cause trouble for other readers of lesser ability.[228] Readers can also be asked to rate on a one-to-ten scale different layouts of text; in this scenario, researchers should provide one text as a baseline so that it is possible to make sense of what their ratings mean.[229]

B. Our Experiences

For the past three years, we have been iteratively developing and testing self-help materials for individuals in financial distress using some of the techniques just described. We have done so by visiting small claims courts in Massachusetts, Maine, and Connecticut on days in which debt collection cases are calendared. Part of our testing has been asking people about their understanding of different images used in our self-help materials to communicate legal concepts.

As mentioned previously, we have used semistructured cognitive interviews to evaluate our materials. The primary creators and testers of our materials have been students at our three law schools.[230] We began relying on law students for practical reasons, but we have since become convinced that law students should be involved in the creation of self-help materials wherever possible. Law students have an absolutely critical asset that most practitioners and law professors lack: inexperience. Law students encountering legal concepts for the first time are in the rare position of being able to understand the legal problem (by virtue of their legal training) while encountering it as new and unfamiliar.

We close with a few specific "lessons learned" from testing our reconceptualized materials. Our testing process has demonstrated that sometimes what we (as attorneys, legal academics, and law students) find obvious, clear, and intuitively appealing is not always what individuals in severe financial distress find helpful.[231] One example that one of us continues to have difficulty accepting appears below.

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226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.* at 931–32.

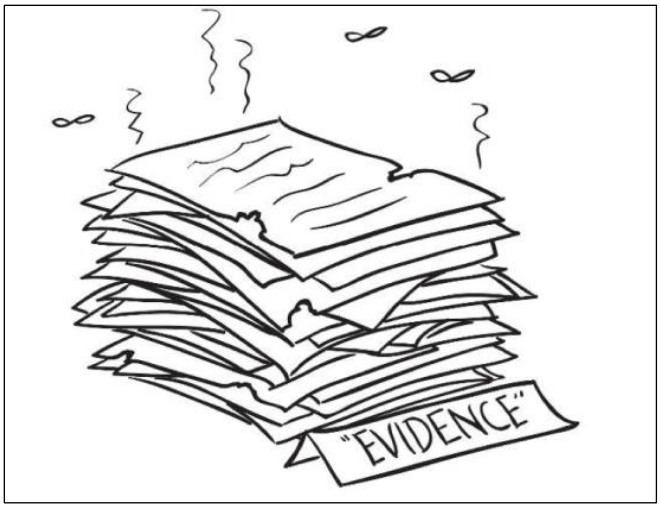
230. Organized in teams by subject matter, students have collaborated on creating all of our materials. We supervised, of course, but this has been predominantly a student-led effort. The students have also tested the bulk of our materials. After some training and shadowing, the students visited small claims courts on days in which debt collection matters were calendared. They brought current copies of materials as well as ten-dollar Dunkin Donuts gift cards to offer to testers. We did not request personal information about the testers, other than to inquire whether they were visiting court for a debt collection matter.

231. The reverse may also be true. As observed by a University of Connecticut Law School student during a cognitive interview of a pro se debt collection action defendant:

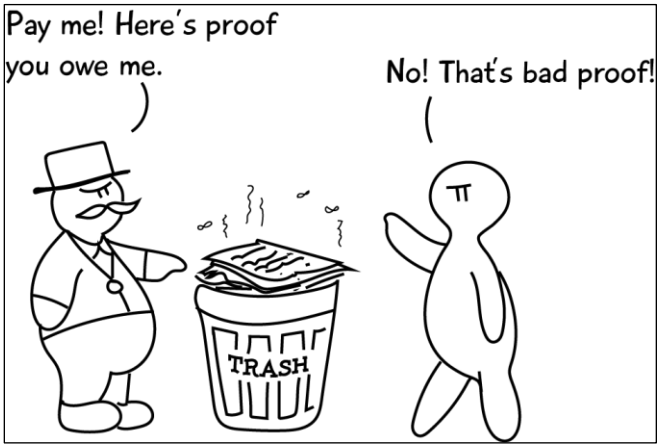
> One thing that stood out to me was captioning: "Your debt may be too old to collect!" I am always hesitant about the use of exclamation points. Perhaps I watched too many "Hogan's Heroes" episodes in my youth, but they always seem to convey authority: "Achtung!" I would also think that poor people might find

The goal in the following example was to communicate the idea that a debt buyer may lack the evidence needed to prove ownership of the sued-upon debt. We tested three versions of cartoons designed to illustrate this idea—a concept we referred to as "bad evidence."

Version #1



Version #2



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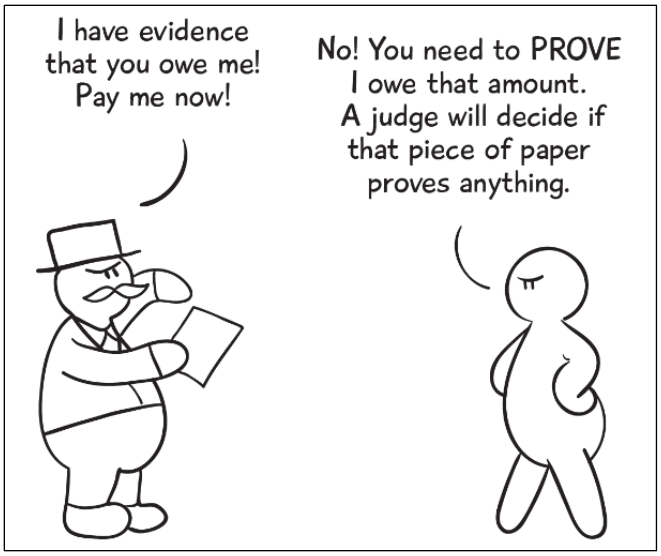
them condescending. In order to get your attention, the powers-that-be use exclamation points. None of my interviewees, however, had a problem with the captioning. Indeed, exclamation points seemed to rivet their attention on the subject matter of the form.

Brenda Thibault, Small Claims Court, Dorchester, Mass., 1 (Apr. 25, 2013) (unpublished write-up of result of interview using Statute of Limitations, Time-Barred Debt Script) (on file with authors).

Version #3



We initially thought that both Version #1 and Version #2 provided clear, simple illustrations of the idea that the evidence produced by the plaintiff in a debt collection case must meet admissibility standards. Interviewees did not have the same reaction.

In testing Version #1, one interview subject read the illustration as saying, "The evidence is stacked up against you."[232] Similarly, one interview subject thought the message in Version #2 was "threatening" and "harassing"[233] or simply confusing.[234] After much testing of these three versions, we ultimately determined that Version #3 was most helpful and least confusing.[235] It successfully communicated the simple

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232. Memorandum from Sarah Hodges to the A2J Group, 1 (Oct. 31, 2013) (on file with authors) (interview with anonymous debt collection defendant, in Portland, Me. using Bad Evidence script).

233. Memorandum from Sarah Hodges to the A2J Group, *supra* note 34, at 2.

234. *See* Memorandum from Rachel Deschuytner to the A2J Group (Feb. 13, 2014) (on file with authors) (interview with anonymous debt collection defendant, in Portland, Me. using Bad Evidence script).

235.

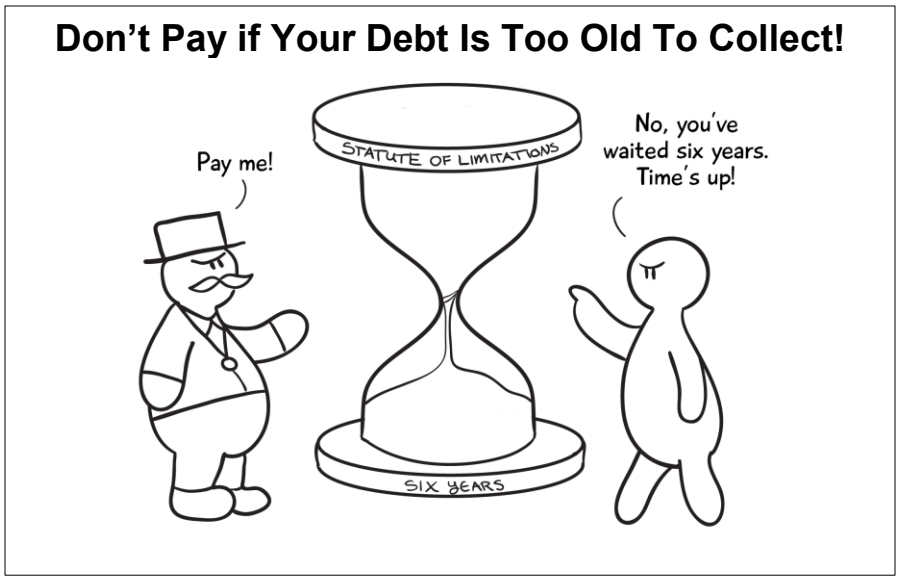
> [Q:] Suppose the cartoon is the only thing you looked at: what do you think it means?
>
> [A:] Like the monopoly man is going to push you around and make you give him money.
>
> . . .
>
> [Q:] Could you tell me in your own words what you think the lesson of the cartoon and the words around it is?
>
> [A:] They have to prove I owe the debt. I can make them prove it.

Memorandum from Rachel Deschuytner to the A2J Group, 2 (Feb. 27, 2014) (on file with authors) (interview with anonymous debt collection defendant, in Portland, Me. using Bad Evidence script) ; *see also* Memorandum from Hilary Higgins to Professor Jim Greiner, *supra*

message that the plaintiff in a debt collection suit has to "prove you owe them money."[236]

We have also explored using different analogies to explain the concept of out-of-statute debt. We first thought about drawing an egg timer with time running out, or asking study subjects to consider whether they would drink milk that is well past its expiration date. Neither of these concepts proved sufficient. The statute-of-limitations concept is not one that lay people understand easily.[237] In particular, the concept that there are magic words (e.g., "this debt is past the statute of limitations") that they could utter that would destroy an opposing attorney's case, is contrary to some lay individuals' conception of the law.[238]

After testing, we settled on the image below to represent the expiration of the statute of limitations:



note 35, at 2 ("Here, the defendant is giving a good statement, but the other person is attacking."); Memorandum from Hilary Higgins to Professor Jim Greiner (Mar. 10, 2014) (on file with authors) (memorandum one of three using Bad Evidence Script 3 *Pro Se* Packet to interview an anonymous defendant in Boston, Mass.).

236. Memorandum from Rachel Deschuytner to A2J Group, *supra* note 81, at 1.

237. The gentleman I spoke to was a service member (Army), who had come to court in his full dress uniform to challenge the credit card complaint. The form he was given was the statute of limitations form.

His initial reaction was surprise, since he did not know anything about there being a statute of limitations when it came to the claim against him and mentioned that that fact might actually help him in his case.

Peter Lacy, Court Visit Springvale 1 (Mar. 25, 2013) (unpublished write-up of interview with anonymous debt collection defendant, in Portland, Me.) (on file with authors).

238. On the statute of limitations issue, courts that have considered the issue, as well as the Federal Trade Commission, agree that lay individuals are unlikely to understand that the statute of limitations is a defense to a debt collection lawsuit. *See* Jiménez et al., *supra* note 24, at 461–64.

CONCLUSIONS AND NEXT STEPS

We close by emphasizing three points.

First, the ideas identified above require testing. In this Article, we have arbitraged research from other fields, research that seems to us to address problems structurally or cognitively analogous to problems in access to justice. But there are differences in getting to a polling location on election day, getting to a medical facility for a colonoscopy, and getting to court for a court hearing. Voting is, or can be, a social act, done with friends and family; voting can also be expressive. Colonoscopies are physically invasive. Attending a court hearing ordinarily bears none of these characteristics. In terms of the effectiveness of interventions designed to promote any of these activities, these distinctions may matter. Without testing, we will not know.

Second, in case there is some doubt on the issue, we do not contend that the ideas articulated here are the complete answer to the United States' access-to-justice problems. Our view is that adjudicatory system reform, unbundling, nonlawyer assistance, alternative legal business models, increased use of technology, and the elimination of state-level border restrictions on the practice of law, to name a few, all deserve careful study and the attention of those in power. Our point is that the volume of litigants who interact with the formal legal system without any form of professional assistance means that effective self-help materials must be part of any reasonable access-to-justice strategy.

Finally, we highlight the thought process that allowed us to articulate the hypotheses above. In essence: (1) identify a problem characterized as legal (e.g., defending a small claims court debt collection case); (2) break the problem into its constituent cognitive, psychological, and mental processing parts (e.g., overcoming fear and hopelessness, making and committing to a plan to appear in court, gathering and understanding information about what will happen, preparing mentally for what will happen, rehearsing legal arguments, and following through on all that has been committed to and rehearsed); (3) recognize that most of these cognitive challenges have little to do with formal law; (4) look for well-designed research from fields other than law that addresses the same or cognitively similar problems; and (5) apply the lessons of that research to the current setting.

For us, the key step in this process is the recognition that the relevant tasks have little to do with formal law. In fact, in the specific context of small claims court debt collection lawsuits, we hypothesize that many defendants may prevail despite knowing no law at all, so long as they have the faith and the gumption to read prewritten scripts with magic phrases the defendants need not understand, phrases like *burden of proof*, *best evidence rule*, *hearsay*, and *lack of proof of ownership over the debt*.

We call this overall thought process "thinking like a nonlawyer." We suspect that it is subversive of the existing United States legal order, which continues to justify itself on the idea (perhaps the fiction) that addressing legal problems requires professional judgment and, as such, the process cannot be reduced to addressing "mere details"[239] no matter how vast in quantity. Under this view, lawyers, as professionals, make irreducibly complex judgments to address their clients' legal problems;

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239. William J. Goode, *The Librarian: From Occupation to Profession?*, 31 LIBR. Q. 306, 308 (1961).

automation and routinization of law is impossible.[240]

In contrast, one premise of "thinking like a nonlawyer" is that the set of legal problems experienced by human beings (as opposed to incorporeal entities) requiring irreducibly complex judgments is small. A second premise is that the recipe for solving the legal problems of human beings has five-parts mundanity and four-parts psychology for every one-part formal law. A third premise is that even that one-part formal law can, in many settings involving human beings, be commoditized. The use of the word "recipe" immediately above is deliberately evocative. Gourmet cooks serve the rich and famous. The rest of us put dinner on the table by following written instructions on cookbooks, on the backs of cans and boxes, or by following habits. Our future work explores the nature and implications of thinking like a nonlawyer.

240. Sociologists have long recognized that the claim of an exclusive ability to make irreducibly complex judgments, a kind of problem solving that resists automation and routinization, is one of the hallmarks of a profession. *See, e.g.*, Harold L. Wilensky, *The Professionalization of Everyone?*, 70 AM. J. SOC. 137 (1964).