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Domestic Violence and the Politics of Self-Help

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DOMESTIC VIOLENCE AND THE POLITICS OF SELF-HELP

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Self-help programs are conceptualized as alternatives to attorney representation that can help both courts and unrepresented litigants.[1] The rhetoric of self-help also typically includes empowering unrepresented individuals to help themselves.[2] But how do self-help programs respond to litigants' efforts at self-advocacy? This Article reports findings from a study of courthouse self-help programs assisting unrepresented litigants applying for protection orders. The central finding is that self-help staff members were not neutral in the provision of services despite a professed ethic of neutrality. Using the sociological concept of demeanor, this Article shows that staff members rewarded protection order applicants who conformed to stereotypes about domestic violence victims and responded negatively to litigants who raised questions or sought assistance outside the scope of narrowly defined services. Staff members also failed to provide assistance with important economic remedies and de-prioritized safety planning and referrals to vital antiviolence services. In these and other ways, staff members influenced what relief was sought and by whom. This finding is especially troubling given the overarching goals of domestic violence protection orders to increase safety and empower low-income

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1. 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 [http://perma.cc/2GQ5-9UM9].

2. NAT'L CTR. FOR STATE COURTS, SELF REPRESENTATION RESOURCE GUIDE, http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/Resource-Guide.aspx [http://perma.cc/N9AS-LZDC].

women, and has broad implications for studying access to justice and law and social movements. This Article also contributes to the analysis of demeanor by expanding previous typologies with the addition of two new categories: token supportive demeanor, and apathetic demeanor. These additions further account for how authority is displayed in legal settings, and how law is implemented through everyday interactions as well as formal decision-making.

INTRODUCTION

Self-help services[3] have been proliferating as a way to address what is sometimes characterized as a crisis of self-representation in the courts.[4] Going to court without a lawyer is especially common in family law cases, where eighty percent or more of litigants appear in court unrepresented in some jurisdictions.[5] In this context, courts

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3. I use the term self-help to refer to legal services that expressly do not involve an attorney-client relationship, regardless of whether or not the services are provided or supervised by attorneys or by non-attorneys. Self-help services under this definition may involve one-on-one assistance with completing and filing forms, as well as electronic and software-based services. *See* GREACEN, *supra* note 1, at 3 (summarizing information resources provided to self-represented litigants by courts); NAT'L CTR. FOR STATE COURTS, *supra* note 2 (listing examples of self-help resources offered by courts). Some of these services may closely resemble services that involve a limited form of attorney representation, such as brief advice sessions or ghost writing. The scope of potential self-help services overlaps with that of unbundled or limited scope legal services provided by attorneys, and is often part of a triage or multipronged approach to service delivery that may include representation (e.g., at a subsequent hearing or other aspect of the case). *See* Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL'Y 453, 466–70 (2011) (discussing forms of unbundled legal services and limited scope representation).

4. *See* Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 1987 (1999) (describing the "variety of assistance programs, developed by bar associations, legal services offices, and the courts themselves, [that] have sprung up in many settings in response to the 'pro se crisis'"); *see also* Benjamin H. Barton, *Against Civil* Gideon *(And for Pro Se Court Reform)*, 62 FLA. L. REV. 1227, 1274 (2010) (discussing the rise in pro se litigation); Richard W. Painter, *Pro Se Litigation in Times of Financial Hardship—A Legal Crisis and its Solutions*, 45 FAM. L.Q. 45, 45–46 (2011) (reporting judges' perceptions that increasing numbers of people are representing themselves in foreclosure, family law, housing, and consumer cases, and that unrepresented parties experience worse outcomes, and are burdening the courts); U.S. BANKR. COURT, C.D. CAL., ACCESS TO JUSTICE IN CRISIS: SELF-REPRESENTED PARTIES AND THE COURT (2011), http://ecf-ciao.cacb.uscourts.gov/Communications/prose/annualreport/2011/ProSeAnnual%20Report2011.pdf [http://perma.cc/UEU2-E5MZ] (identifying serving pro se litigants as one of the bankruptcy court's "key strategic issues"); JONA GOLDSCHMIDT ET AL., MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS 49 (1998) ("Court managers believe that the volume of cases involving self-represented litigants has increased substantially in recent years."); Dave Stafford, *Dickson: Trial Courts Face 'Crisis' of Unrepresented Litigants*, THE INDIANA LAWYER (Oct. 23, 2013), http://www.theindianalawyer.com/dickson-trial-courts-face-crisis-of-unrepresented-litigants/PARAMS/article/32635 [http://perma.cc/TE7F-SKX7].

5. *See* JOHN M. GREACEN, SELF REPRESENTED LITIGANTS AND COURT AND LEGAL SERVICES RESPONSES TO THEIR NEEDS: WHAT WE KNOW 3–6 (2002), http://www.courts.ca.gov/partners/documents/SRLwhatweknow [http://perma.cc/CT6W-K87W]. Several states have researched self-represented litigants. In many instances, both parties to the case are without counsel. *See* JUDICIAL COUNCIL OF CALIFORNIA TASK FORCE ON SELF-REPRESENTED LITIGANTS, STATEWIDE ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS 2 (2004) [hereinafter CALIFORNIA ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS], http://www.courts.ca.gov/documents/selfreplitsrept.pdf [http://perma.cc/39TC-YL8U] (reporting up to 72% of family law litigants in California courts are unrepresented

around the country have been maintaining or increasing self-help services even as overall operating budgets are shrinking,[6] often in partnership with nongovernmental organizations.[7] Self-help clinics or centers assisting unrepresented litigants are increasingly promoted as a way to empower individuals to help themselves, and help courts to manage crowded dockets and improve trust and confidence in the courts.[8] Despite how these services are expanding, there has been next to no empirical research on self-help.[9] This Article addresses this gap by presenting and discussing findings from a study focusing on interactions between staff and protection order applicants at self-help programs located in county courthouses in two western states.[10] This is the first comparative and evaluative research project to examine courthouse self-help centers assisting self-represented litigants with civil domestic violence claims.

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at filing; up to 96% of paternity cases are unrepresented at disposition); OFF. OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUST. INITIATIVES, SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS 1 (2005) [hereinafter NEW YORK CITY: RESULTS OF TWO SURVEYS] (reporting that 75% of litigants appearing in New York City Family Court were unrepresented); *see also* Jane C. Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 BYU J. PUB. L. 123, 124–25 (1993) (reporting the results of a District of Columbia study finding 93% of defendants in child support enforcement cases, where potential sanctions include incarceration, were unrepresented).

6. CALIFORNIA ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS, *supra* note 5, at 1 (Court-based staffed self-help centers, supervised by attorneys, are the optimum way for courts to facilitate the timely and cost-effective processing of cases involving self-represented litigants, to increase access to the courts and improve delivery of justice to the public.); *see* ADMIN. OFF. OF THE CTS., CTR. FOR FAMILIES, CHILD. & THE CTS., CALIFORNIA COURTS SELF-HELP CENTERS: REPORT TO THE CALIFORNIA LEGISLATURE 1–2 (2007) [hereinafter REPORT TO THE CALIFORNIA LEGISLATURE], http://www.courts.ca.gov/documents/rpt_leg_self_help.pdf [http://perma.cc/CF5W-YYPE] (reporting increased budget allocations to support development of self-help centers). *But see* Tim Cory, *California Courts' New Funding Formula: The Workload Allocation Funding Methodology*, CAL. COMMON SENSE (Sept. 5, 2014), http://cacs.org/research/california-courts-wafm-assessment [http://perma.cc/DE4A-ZSPM] (reporting that San Francisco's county court system cut civil self-help services by 50% due to funding cuts).

7. *See* REPORT TO THE CALIFORNIA LEGISLATURE, *supra* note 6, at 5–8 (reporting on results of efforts to encourage court-community partnerships and collaborations to provide self-help services).

8. *See* NAT'L CTR. FOR ST. CTS., A DIRECTORY OF COURT-BASED SELF HELP PROGRAMS 2 (2006), http://ncsc.contentdm.oclc.org/cdm/ref/collection/accessfair/id/321 [http://perma.cc/P463-KHJP] (listing a directory of approximately 150 self-help programs in the United States).

9. *See* Laura K. Abel, *Evidence-Based Access to Justice*, 13 U. PA. J.L. & SOC. CHANGE 295, 297 (2010); Sande L. Buhai, *Access to Justice for Unrepresented Litigants: A Comparative Perspective*, 42 LOY. L.A. L. REV. 979, 993 (2009); DEBORAH L. RHODE, ACCESS TO JUSTICE 120–21 (2004).

10. *See infra* Part I discussing protection order remedies. Protection orders are sometimes referred to as restraining orders by scholars and in legislation; the term protection order is used throughout this Article for the purpose of consistency.

A. Domestic Violence Self-Help Centers

Domestic violence self-help centers are an important location for study for several reasons. First, they are a critical intervention in domestic violence cases. Civil protection orders are one of the most commonly used legal remedies for domestic violence, second only to calling 911.[11] This is often a time of crisis for survivors, and may be the survivor's first encounter with the court system.[12] Past research has found that encounters with the legal system in this context are pivotal in the development of a subjective understanding of oneself as a rights bearing individual who can invoke or enlist the power of the state for protective intervention.[13] Self-help centers are at the front lines of unrepresented survivors' interactions with the legal system. The results of this interaction have implications for survivors' long-term safety, and also for the evolution of social movements dedicated to anti-domestic violence work.[14]

Second, many self-help centers serve populations that are especially vulnerable to violence due to marginalization on multiple intersecting grounds, including race and/or ethnicity, gender, class, education, and language.[15] While women are much more likely than

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11. Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1489 (2008); *see* Susan Keilitz, *Improving Judicial System Responses to Domestic Violence: The Promises and Risks of Integrated Case Management and Technology Solutions*, *in* HANDBOOK OF DOMESTIC VIOLENCE INTERVENTION STRATEGIES: POLICIES, PROGRAMS, AND LEGAL REMEDIES 147, 149 (Albert R. Roberts ed., 2002) (reporting that survivors use civil protection orders more often than the criminal justice system to address domestic violence); PATRICIA TJADEN & NANCY THOENNES, NAT'L INST. OF JUSTICE, NCJ 181867, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 52, 55 (2000) (determining that each year, approximately 17% of the 1.5 million female survivors of domestic violence obtain civil protection orders).

12. *See* THE EMPIRICAL RESEARCH GROUP: UCLA SCHOOL OF LAW, EVALUATION OF THE VAN NUYS LEGAL SELF-HELP CENTER FINAL REPORT 3 (2001) [hereinafter VAN NUYS FINAL REPORT], http://courts.ca.gov/partners/documents/Final_Evaluation_Van_Nuys_SHC2001.doc [http://perma.cc/525M-6NNP] (reporting that most people using the self-help center were first-time visitors with no prior court experience).

13. *See* Sally Engle Merry, *Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence*, 25 HUM. RTS. Q. 343, 345 (2003).

14. *See id.* at 346; *see also infra* Part I.A (discussing the historical roots of protection order legislation in the battered women's movement).

15. For example, a study of self-help centers provided through court-community partnerships in California found that almost two-thirds (63%) of partnership project customers are women and at least 58% were minorities, with Hispanic individuals comprising 39% of the total served. ADMIN. OFF. OF THE CTS., CTR. FOR FAMILIES, CHID. & THE CTS., EQUAL ACCESS FUND: A REPORT TO THE CALIFORNIA LEGISLATURE 54 (2005), http://www.courts.ca.gov/documents/Equal-Access-Fund-March-2005.pdf [http://perma.cc/MSD5-Q4PH]. A survey of unrepresented family court litigants in New York City found slightly less than half of respondents were women (45%), but 84% were minorities (48% African American and 31% Hispanic), 39% had only a high school-level education, and 53% earned

men to be victims of domestic violence,[16] not all women have the same exposure to violence. Black women experience intimate partner violence at a rate thirty-five percent higher than that of white females, and about two and one half times the rate of women of other races.[17] Higher rates of domestic abuse are also found among more recent and undocumented immigrants.[18] Unauthorized immigrants are especially at risk for victimization; cultural pressures relating to the immigration experience also render women in some communities more at risk for abuse than others.[19] Poverty is also associated with higher rates of violence in economically marginalized communities served by self-help centers.[20] Poor women are much more likely to experience

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less than $20,000 per year. NEW YORK CITY RESULTS OF TWO SURVEYS, *supra* note 5, at 4. *See* GREACEN, *supra* note 5 (reporting studies of self-help service populations, many (but not all) of which fit this profile); *infra* Part II (reporting data from the self-help programs in the current study, which shows most protection order applicants using the programs were low income women of color with little educational attainment, and many spoke a language other than English as their first language).

16. *See* NAT'L CTR. FOR INJ. PREVENTION & CONTROL, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 18 (2003) (estimating 5.3 million intimate partner assaults against women in the United States each year); PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY iv (2000), http://www.ncjrs.gov/pdffiles1/nij/183781.pdf [http://perma.cc/KMJ3-NC8U] (reporting that approximately 1.3 million women are physically assaulted by an intimate partner annually in the United States, as compared to 835,000 men). Domestic violence made up 20% of all nonfatal violent crime experienced by women in 2001, and just 3% of the nonfatal violence against men. Further, in 2000, 1,247 women were killed by an intimate partner, as compared to 440 men. CALLIE MARIE RENNISON, U.S. DEP'T OF JUST., BUREAU OF JUSTICE STATISTICS, CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993–2001 1 (2003), http://www.bjs.gov/content/pub/pdf/ipv01.pdf [http://perma.cc/3A7S-QLP2] (also reporting that an intimate partner killed approximately 33% of female murder victims, but only 4% of male murder victims).

17. CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: INTIMATE PARTNER VIOLENCE 4 (2002), http://www.popcenter.org/problems/domestic_violence/PDFs/Rennison%26Welchans_2000.pdf [http://perma.cc/TD7F-SE7D].

18. Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 250 (2000) (reporting that 48% of Latinas responding to a survey experienced increased violence from their partners after immigrating to the United States); *see* N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, FEMICIDE IN NEW YORK CITY: 1995–2002 5 (2004), http://www.nyc.gov/html/doh/downloads/pdf/ip/femicide1995-2002_report.pdf [http://perma.cc/K8NE-LTX5] (reporting that 51% of intimate partner homicide victims in New York City were foreign-born).

19. *See, e.g.*, Elizabeth L. MacDowell, *When Reading Between the Lines Is Not Enough: Lessons from Media Coverage of a Domestic Violence Homicide-Suicide*, 17 AM. U. J. GENDER SOC. POL'Y & L. 269, 286–88 (2009) [hereinafter MacDowell, *When Reading Between the Lines Is Not Enough*] (describing the complex role of culture and Indian nationalism in high rates of domestic violence experienced by South Asian immigrant women in the United States).

20. Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities*, 11 VIOLENCE AGAINST WOMEN 38, 48 (2005);

victimization by intimate partners than women who are better off financially, because of the stress economic insecurity causes on families, and because it makes it more difficult to escape a violent relationship.[21] Additionally, the interplay of race and gender and access to justice may explain higher rates of domestic violence experienced by some women.[22] It is critical to understand whether self-help centers are meeting the needs of those most at risk for violence.

Third, low-income survivors of color who make it to court are especially vulnerable to the potentially negative impacts of engaging the justice system, which includes facing family court judges and others who are hostile to their claims, exposure to unwanted state interventions, and problems of over—and under—enforcement of orders.[23] These vulnerabilities are due in part to the operation of powerful tropes about both victims and perpetrators of domestic violence that infuse the system and subject women and men of color, poor people, sexual minorities, and gender nonconforming individuals to disadvantage.[24] While feminist-informed advocacy has played a central role in helping survivors (particularly women) navigate the perils of the legal system, self-help is modeled on an ethic of neutrality, rather than partiality for survivors' needs.[25] Yet, the effect on low-income survivors of color of partnerships between nongovernmental advocacy organizations and the courts to provide self-help services is largely unexplored. This Article begins that exploration through the lens of demeanor, which has been used by scholars to analyze interactions

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see ANANNYA BHATTACHARJEE, WHOSE SAFETY? WOMEN OF COLOR AND THE VIOLENCE OF LAW ENFORCEMENT 18 (2001), https://afsc.org/sites/afsc.civicactions.net/files/documents/whose%20safety.pdf [http://perma.cc/Z9KB-YFGW] (unpublished Justice Visions working paper) (citing CHRISTIAN PARENTI, LOCKDOWN AMERICA: POLICE AND PRISONS IN THE AGE OF CRISIS 239 (1999)) (explaining that African Americans and Hispanics represent 22.8% of the population, but make up 47.8% of those living in poverty).

21. TJADEN & THOENNES, *supra* note 11, at 26; *see* MICHAEL L. BENSON & GREER LITTON FOX, NAT'L INST. OF JUST., NCJ 205004, WHEN VIOLENCE HITS HOME: HOW ECONOMICS AND NEIGHBORHOOD PLAY A ROLE 2–3 (2004) (reporting data showing that women are at greater risk of domestic violence when their partners are unemployed or experiencing financial strain).

22. *See* CAROLINE BETTINGER-LOPEZ ET AL., DOMESTIC VIOLENCE IN THE UNITED STATES: A PRELIMINARY REPORT PREPARED FOR RASHIDA MANJOO, U.N. SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN 7 (2011), http://www.reproductiverights.org/sites/crr.civicactions.net/files/newsletter/DV%20in%20the%20US_Br%20Paper%20to%20SR%20on%20VAW.pdf [http://perma.cc/WC4T-NQUJ] ("American Indian and Alaska Native women face unique access to justice because determining which government (federal, state, or tribal) is responsible for the investigation and prosecution of violent crimes on Indian lands depends on the race of the perpetrator and the race of the victim.").

23. *See infra* Part I (describing structural and systemic barriers faced by applicants for protection orders trying to access the courts and utilize protection order remedies).

24. *See infra* Part I (describing stereotypes of the "perfect victim" and the "perceivable perpetrator").

25. *See infra* Part I (describing differences between traditional lay victim advocacy and self-help).

between litigants and judges and other court personnel within court systems and processes.[26]

B. Demeanor

Demeanor is shorthand for a complex set of social behaviors that relate to what sociologist Erving Goffman describes as ceremonial rules of conduct.[27] Despite the implications of the term "ceremonial," these rules are not extraordinary; rather, they are ingrained in everyday behavior such that individuals usually perform them unconsciously and become aware of them only when expectations of another's performance are not met.[28] Ceremonial rules of conduct are distinguished from substantive conduct, or conduct that has meaning independent of its implications for the character of the person performing the action or the recipient.[29] For example, if a judge grants an order, it has meaning independent of whether the order is granted begrudgingly or in a manner that reinforces its validity and import.[30] Granting the order involves substantive conduct; the manner in which it is granted is ceremonial.[31] Put another way, ceremonial conduct is the "how" of an act, as opposed to the "what."[32] It is expressed through multiple dimensions: linguistic (e.g., the language chosen for an exchange), spatial (e.g., physical distance and regard of personal space), and is embedded in the performance of tasks.[33]

The rules of ceremonial conduct vary depending on an individual's social role or position within a given social setting and may be symmetrical (e.g., the recipient of the conduct is similarly obligated to the actor) or asymmetrical in nature, depending on expectations of reciprocity.[34] Such rules are complex, interactive, and communicative; they help to constitute both the individual and the group.[35] Within

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26. *See* JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES 133–34 (1999) (reporting findings of a study of judicial demeanor toward protection order applicants and defendants); *see also* Maureen Mileski, *Courtroom Encounters: An Observation Study of a Lower Criminal Court*, 5 LAW & SOC'Y REV. 473, 521–31 (1971) (discussing the ways in which judges use demeanor to "situationally sanction[ ]" defendants found guilty of lesser crimes).

27. *See* Erving Goffman, *The Nature of Deference and Demeanor*, 58 AM. ANTHROPOLOGIST 473, 476 (1956).

28. *Id.* at 474 ("[M]ost actions which are guided by rules of conduct are performed unthinkingly . . . .").

29. *Id.* at 476.

30. PTACEK, *supra* note 26, at 94 (relating this concept to judicial actions in protection order hearings).

31. *Id.* at 93–94.

32. *Id.* at 94–95.

33. Goffman, *supra* note 27, at 477.

34. *Id.* at 476.

35. *See id.* at 475 (describing how rules of conduct relate to individuals in social action).

this more complex understanding, the term demeanor references how an individual handles herself within a given set of expectations,[36] for example, whether an individual takes on a task willingly or in a manner indicating resentment. The complement to demeanor is deference, which references the social nature of the interaction, and the individual's place within social hierarchy.[37] Deference is visible "in the little salutations, compliments, and apologies which punctuate social intercourse, and may be referred to as 'status rituals' or 'interpersonal rituals.'"[38] Deference includes rules about what should be avoided (e.g., invading another's personal space and privacy) and rules about what should be done (e.g., salutations, invitations, and compliments).[39] Demeanor and deference are complementary and overlapping; together they relate to the social construction of individuals as "a product of joint ceremonial labor."[40]

The essential point of this Article is that the study of demeanor, broadly understood as encompassing deference and other interrelated codes of conduct, is most meaningful when conducted with reference to its social context and function. In the case of self-help services for domestic violence protection order applicants, that includes considering its relationship to the goals of remedies resulting from a social movement informed by feminist principles,[41] and the needs of the largely low-income women of color seeking access to these remedies in family courts.[42] It also requires examining the ways in which self-help works to either challenge or reinforce relationships of power and privilege in the context of domestic violence.[43] By critically assessing these issues, this Article expands on prior accounts of demeanor in legal settings and contributes to new ways of understanding and evaluating self-help interventions for domestic violence and for studying self-help more generally. This Article details the ways in which staff members' demeanor shapes the protection order process. A second article will examine how the organization of work within self-help centers constrains demeanor and structure the delivery of services.

Part I provides background on protection order remedies, including their roots in advocacy by feminist activists and poverty lawyers

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36. *Id.* at 492.
37. *Id.*
38. *Id.* at 478.
39. Goffman, *supra* note 27, at 481–86.
40. *Id.* at 493.
41. *See infra* Part I (discussing the origins of protection order legislation).
42. *See infra* Part II (discussing the contextualized and advocacy-based standpoint of institutional ethnography).
43. *See infra* Part III (analyzing the ways in which self-help staff members regulate protection order applicants).

advocating for battered women. It also discusses the goals of protection order legislation and provides an overview of the types of relief available. Additionally, this Part describes the challenges faced by protection order applicants in the court system, including pervasive stereotypes about victims and perpetrators that affect access to remedies and services. This Part also discusses the traditional role of lay advocates in helping women access protection orders and contrasts the traditional (if idealized) lay advocacy role with the purported neutrality of self-help assistance.

Part II discusses approaches to research about self-help services and describes the present study. This Part explains key features of the research sites, and it provides an overview of services provided at the two programs that were studied. This Part also discusses the research methods used in the study and describes how data was analyzed.

Part III details findings about interactions between self-help center staff and protection order applicants. To begin, this Part establishes self-help staff as engaged in emotional labor, of which the presentation of demeanor is a central part. Part III then presents staff-applicant interactions within a new seven-point typology of demeanor that expands on prior studies of demeanor in protection order hearings and advocacy settings.

Part IV challenges the concept of neutrality in self-help services. This Part describes the regulatory function of demeanor in self-help centers, where staff members use demeanor to reward or punish litigants based on their performance within narrowly construed roles and expectations, and to control an emotionally volatile environment for which staff members are often ill-prepared. This Part also shows how self-help staff members limit the types of relief sought by applicants and the narratives presented to the court about domestic violence. The Article concludes with a summary of the implications of these findings for future access to justice initiatives and research that takes the political nature of self-help services into account.

I. PROTECTION ORDERS AND ACCESS TO JUSTICE

A. Protection Order Remedies

1. Historical Background

Protection order remedies are the product of an advocacy movement for battered women by activists and poverty lawyers who sought ways to address domestic violence outside both the criminal justice

system and civil divorce proceedings.[44] While the battered women's movement is often criticized for failing to take the needs of women of color sufficiently into account, the pursuit of protection order legislation centered their concerns.[45] Civil protection orders were seen as a way for women of color to obtain relief from abuse without subjecting abusive partners to racist law enforcement practices and the criminal justice system.[46] Unlike criminal orders, civil protection orders could be enforced through contempt proceedings in family court and do not require engagement with the criminal system.[47] Civil protection orders could also improve upon then-existing civil remedies,[48] and they provide a host of remedies normally available only after divorce proceedings, including orders for custody of children, possession of property, and child and spousal support.[49]

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44. *See* SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 162–65 (1982) (describing early civil legal reforms for battered women); Margaret Klaw & Mary Scherf, *Feminist Advocacy: The Evolution of Pennsylvania's Protection from Abuse Act*, 1 U. PA. J.L. & SOC. CHANGE 21, 21 (1993) (describing "collaboration among grassroots women's advocates, legal services attorneys and sensitive legislators"); *see also* Elizabeth L. MacDowell, *VAWA @ 20: Improving Civil Legal Assistance for Ending Gender Violence*, CUNY L. REV. (Nov. 21, 2014) [hereinafter MacDowell, *Improving Civil Legal Assistance*], http://www.cunylawreview.org/vawa-20-improving-civil-legal-assistance-for-ending-gender-violence-by-elizabeth-macdowell [http://perma.cc/XSW5-Z9L5] (describing the background of protection order legislation). Pennsylvania is generally credited with passing the first domestic violence protection order legislation, as part of the Protection from Abuse Act, now codified at 23 PA. STAT AND CONS. STAT. ANN. §§ 6101–6122 (West 2015).

45. Interview with Barbara Hart, Director of Strategic Justice Initiatives and Director of Law and Policy, Violence Against Women Initiatives, Muskie School of Public Service, Cutler Institute for Health and Social Policy, University of Southern Maine (Nov. 21, 2013) [hereinafter Hart Interview] (notes on file with author) (describing motives for protection order initiatives brought by legal aid attorneys and activists).

46. *Id.*; *see* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1257 (1991) (asserting a general unwillingness of people of color to subject their private lives to intrusion by a frequently hostile state); Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1048–49 (2000) (observing that the risk of an undocumented partner being deported, as well as a fear of being deported herself if she is undocumented, may lead a survivor to fear calling the police for help); MacDowell, *When Reading Between the Lines Is Not Enough*, *supra* note 19, at 286–88 (discussing why revealing domestic abuse may be perceived as a betrayal of culture by South Asian survivors and their communities).

47. SCHECHTER, *supra* note 44, at 163–64.

48. These included "peace bond[s], which could be issued . . . in any situation involving a disturbance of the peace . . . [but] were essentially unenforceable." Klaw & Scherf, *supra* note 44, at 21 (internal quotation marks omitted). Judges could also issue injunctive relief in divorce cases aimed at preventing abuse. *See* SCHECHTER, *supra* note 44, at 162 ("As of 1981, twelve states still granted such injunctions pending only divorce, separation, or custody proceedings.").

49. *See* SCHECHTER, *supra* note 44, at 162 (noting that many women only want the abuse to stop, not to separate from their husbands). Protection orders were also designed to extend relief to unmarried women. *See* SCHECHTER, *supra* note 44, at 163 (noting unmarried women were relegated to criminal remedies); Hart Interview, *supra* note 45.

Activists wanted battered women to have more access, agency and control over remedies for domestic violence than those available through criminal responses.[50] They also hoped that more readily available orders for the custody and protection of children would help prevent child protective services agencies from removing children from battered women's custody, a problem more commonly experienced by low-income women of color and which continues today, as discussed below.[51]

2. Current Status

Today, civil protection orders for domestic violence are available in every state and the District of Columbia.[52] Qualifying relationships commonly include an array of intimate or personal relationships, such as current or former marital or dating partners, family members, people with children in common, and individuals who live together, including roommates.[53] Qualifying acts of domestic violence may include abuse that is not recognized as a crime, such as some forms of emotional and economic abuse, as well behavior that is also criminalized.[54] In addition to orders for custody of children, possession of property, and child and spousal support, available remedies commonly include orders that the adverse party stay away from and not

50. SCHECHTER, *supra* note 44, at 162; Klaw & Scherf, *supra* note 44, at 33 ("Filing a civil suit differs fundamentally from pursuing criminal prosecution in that the woman herself is the plaintiff and is in control of how the case is litigated or settled."); Elizabeth L. MacDowell, *When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism*, 20 TEX. J. WOMEN & L. 95, 107–10 (2011) [hereinafter MacDowell, *When Courts Collide*] (comparing and contrasting civil and criminal remedies for domestic violence); Hart Interview, *supra* note 45.

51. Hart Interview, *supra* note 45. Child protection agencies commonly removed children of abused women under the theory that they failed to protect the children from exposure to the abuse perpetrated against them. *See* Suzanne A. Kim, *Reconstructing Family Privacy*, 57 HASTINGS L.J. 557, 557–59 (2006) (describing such policies in New York state). Such removals are disproportionately made in cases involving low-income women of color. *Id.* For further discussion on the effects of race on child removals, see DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002).

52. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 810 (1993). For a comprehensive list of remedies available under civil protective orders in various states, *see id.* at 910–1006.

53. *See* Klein & Orloff, *supra* note 52, at 814–42 (describing qualifying relationships in various jurisdictions).

54. *See* Mary M. Cheh, *Constitutional Limits on Using Civil Remedies To Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction*, 42 HASTINGS L.J. 1325, 1406 (1991) (observing that civil protection orders can prohibit noncriminal conduct even though such orders may be enforceable with criminal penalties). *But see* Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1138 (2009) (explaining that only one-third of states provide a civil remedy for abuse absent a threat of physical violence).

engage in further acts of violence against the protected party and other specified persons; requiring the adverse party to surrender firearms; and excluding him or her from a shared residence.[55] At least ten states and the District of Columbia also allow orders concerning pets to be included on protective orders.[56] Additionally, courts can order the adverse party to attend a batterer treatment program, reimburse the protected party for costs associated with the abuse, and pay the protected party's attorney fees.[57] These remedies are generally available through an expedited process, and temporary orders may be issued without notice to the adverse party.[58]

Despite the expansion of relief available, however, the goals of anti-domestic violence advocates have not been fully realized. Survivors of abuse may be excluded from civil protection order remedies because they cannot meet relationship criteria for such relief, especially if the abuse occurred within a same-sex relationship.[59] Survivors may also be excluded from civil remedies if the abuse is not yet physical or does not amount to a criminal act.[60] Some states also fail to provide important economic relief such as child support through

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55. Klein & Orloff, *supra* note 52, at 910–42. In some states civil protective orders may remain in effect longer than criminal orders, as well. For example, civil protective orders issued under California's Domestic Violence Prevention Act can be renewed permanently upon request after an initial term of up to five years. CAL. FAM. CODE § 6345(a) (West 2009 & Supp. 2011); *see* Klein & Orloff, *supra* note 52, at 1085–88 (describing the duration of various states' civil protective orders, from a period of one year to an indefinite duration).

56. States permitting protection of pets include California, Colorado, Connecticut, Illinois, Louisiana, Maine, Nevada, Tennessee, and Vermont. PHIL ARKOW & TRACY COPPOLA, EXPANDING PROTECTIVE ORDERS TO INCLUDE COMPANION ANIMALS 2, http://www.americanhumane.org/assets/pdfs/interaction/hab-link-ppo-companion-animals.pdf [http://perma.cc/6HLB-AGGT]. For a more detailed discussion of the relationship between domestic violence and animal abuse, see Frank R. Ascione et al., *Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women*, 13 VIOLENCE AGAINST WOMEN 354 (2007).

57. *See* Klein & Orloff, *supra* note 52, at 1031–42.

58. *Id.* at 1031–42; *see, e.g.*, CAL. FAM. CODE §§ 240–246 (West 2004).

59. Several states do not allow or guarantee access to protection orders for couples in same-sex relationships. *See* AM. BAR ASS'N, COMM'N ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOS) BY STATE OVERVIEW OF CPO PROTECTIONS FOR LGBT VICTIMS OF DOMESTIC VIOLENCE (2008), http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/CPO_Protections_for_LGBT_Victims_7_08.authcheckdam.pdf [http://perma.cc/T6WP-JXUR]; *see also* Sarah E. Warne, Note, *Rocks, Hard Places, and Unconventional Domestic Violence Victims: Expanding Availability of Civil Orders of Protection in New York*, 52 N.Y. L. SCH. L. REV. 279, 291–300 (2007–2008) (describing problems associated with excluding LGBT survivors from protection order remedies).

60. Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1138 (2009); *see* Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between "The Truly National and the Truly Local,"* 42 B.C. L. REV. 1081, 1124–25 (2001) (describing that even when statutes allow relief for claims based on threats of violence, judges may apply procedural rules in ways that deny relief to women who have not experienced recent physical violence).

the protection order process.[61] Survivors seeking help for domestic violence in civil courts also face numerous structural obstacles to obtaining relief, including gender and racial bias on the part of judges and other court personnel, and exposure to punitive state systems.[62] The next section details these problems, and discusses why protection orders nonetheless remain an important resource.

B. Structural and Systemic Problems Facing Applicants

1. Stereotypes About Victims and Perpetrators

The problem of bias in family courts, especially against women claiming domestic violence, is well established.[63] Studies indicate that some family court judges do not understand the dynamics of domestic violence and blame women for being victimized,[64] are generally unsympathetic to their claims,[65] and prioritize men's privacy rights over women's safety.[66] Poor outcomes for domestic violence survivors have been attributed to what I have referred to elsewhere as the "delegalized" culture of family courts, which favors informal processes and privileges the non-legal perspectives of social workers and child custody evaluators.[67] Scholars also point to the vagueness of custody

61. *See* AM. BAR ASS'N, COMM'N ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (2014), http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/DV_CPO_Chart_8_2008.authcheckdam.pdf [http://perma.cc/N75C-56H8] (summarizing state laws).

62. SCHECHTER, *supra* note 44, at 162–65; Jeannette F. Swent, *Gender Bias at the Heart of Justice: An Empirical Study of State Task Forces*, 6 S. CAL. REV. L. & WOMEN'S STUD. 1, 55–58 (1996).

63. *See, e.g.*, Swent, *supra* note 62, at 55–58 (summarizing results from gender bias task force studies conducted across the United States); *see also* SCHECHTER, *supra* note 44, at 162–63 (discussing bias experienced by battered women in family courts); Elizabeth L. MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. OF GENDER, RACE & JUST. 531, 539 nn.28 & 29 (2013) [hereinafter MacDowell, *Theorizing from Particularity*] (discussing outcomes in custody and visitation cases involving domestic violence claims).

64. *See* Laura L. Crites, *Wife Abuse: The Judicial Record*, *in* 11 WOMEN, THE COURTS, AND EQUALITY 42 (Laura L. Crites & Winifred L. Hepperle, eds., 1987).

65. DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 241 (1989); Jane K. Stoever, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 360–63 (2011) [hereinafter Stoever, *Freedom from Violence*] (describing the routine victim-blaming perpetrated by family court judges).

66. *See* Crites, *supra* note 64, at 41–42. *But see* PTACEK, *supra* note 26, at 150 (reporting results of a study in which 67% of the judges were described as supportive by women appearing in front of them). *See also* M. Chaudhuri & K. Daly, *Do Restraining Orders Help? Battered Women's Experiences with Male Violence and the Legal Process*, *in* DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE 246 (E.S. Buzawa & C.G. Buzawa, eds., 1992) (finding women were pleased with the protection order process).

67. Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. ON POVERTY L. & POL'Y 473, 478 (2015) [hereinafter MacDowell, *Reimagining*

standards,[68] and judges' reluctance to restrict batterers' access to children as creating barriers to relief.[69] Battered women's emotional responses to abuse may also hurt their credibility with judges, however unfairly.[70] The theory of intersectionality helps to explain how race and gender stereotypes interact, such that some individuals in this hostile landscape are more readily recognized as victims than others.[71]

In particular, the ideal of the perfect victim—a woman who is white, middle class, heterosexual, and passive—infuses domestic violence law and policy.[72] Survivors who diverge from that norm are less likely to be recognized as deserving protection. Women of color may also have to overcome stereotypes that negate their victimization and suggest they are unworthy of protection.[73]

Additionally, the identity of the perpetrator influences who is recognized as a victim.[74] Like the perfect victim trope, the "perceivable perpetrator" identity is hinged on often-unconscious assumptions that relate to race, sexuality and class.[75] These tropes tend to cast men of color as perpetrators and to favor white men.[76] Thus, an individual seeking protection from the court must not only comport with the criteria for the perfect victim, but also supply a perceivable perpetrator. Moreover, even survivors who succeed in obtaining a protection order may experience other, unwanted interventions into their families

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Access to Justice] (laying out the defining characteristics of delegalization in family courts); *see* MacDowell, *When Courts Collide*, *supra* note 50, at 121 (discussing how survivors' access to civil court remedies for domestic violence is constrained by court culture); *see also* Martha Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 HARV. L. REV. 727, 731–33 (1988) (describing mediators and social workers as supplanting legal actors in the family courts).

68. *See* Fineman, *supra* note 67, at 770 (arguing the best interest of the child standard for determining parental custody must be replaced with a standard that is more determinate and less susceptible to moral rather than legal judgments).

69. *See* Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL'Y & L. 657, 676–77 (2003) (describing the belief of judges in domestic violence cases that it is unfair to consider the perpetrator's violence against the other parent when addressing child custody issues).

70. *Id.* at 691–92 (explaining how battered women's anger at the abuse and the effects of PTSD may negatively impact their case).

71. *See* Crenshaw, *supra* note 46, at 1245–51; *see also* MacDowell, *Theorizing from Particularity*, *supra* note 63, at 546–58 (applying intersectionality to perpetrators).

72. *See* Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving From White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1078–80 (2006).

73. MacDowell, *Theorizing from Particularity*, *supra* note 63, at 533 (discussing stereotypes).

74. *Id.* at 546–49.

75. *Id.*

76. *Id.* at 547.

due to encounters with punitive state systems as they seek a protection order.[77]

2. Intersecting State Systems

Applicants for protection orders increasingly face intersecting civil, criminal and child welfare systems that challenge their ability to determine what sorts of state intervention will occur. Unwanted state interventions are more likely when systems that serve different functions (e.g., punitive and supportive) are combined.[78] However, the blurring of system boundaries through this combining of different functions increasingly occurs under the guise of benefiting abuse survivors by concentrating services, for example in integrated domestic violence courts,[79] and in so-called "family justice centers."[80] In these instances, the interests of the state may eclipse those of survivors, leaving the goals of reformers unrealized.

Integrated courts combining civil and criminal domestic violence cases may actually reduce the level of choice that would otherwise be available to survivors about what services they need and whether to make a criminal complaint.[81] Law professor Deborah Epstein warns, "a woman who enters a comprehensive Intake Center seeking only a civil protection order is likely to also be automatically routed to a prosecution advocate to initiate criminal charges without being asked whether she wishes to do so."[82] Thus, Epstein observes, survivors' ability to decline services they do not want may be reduced.[83]

77. MacDowell, *When Courts Collide*, *supra* note 50, at 105–06, 115.

78. *See id.* at 106–07 (discussing problems for survivors when criminal and civil remedies are combined within specialized, integrated domestic violence courts); Leah Hill, *Do You See What I See? Reflections on How Bias Infiltrates the New York City Family Court—The Case of the Court Ordered Investigation*, 40 COLUM. J.L. & SOC. PROBS. 527, 540–43 (2007) (discussing problems that arise for poor parents in family courts utilizing child welfare workers, trained to investigate parental abuse or neglect, to investigate private custody claims).

79. *See* MacDowell, *When Courts Collide*, *supra* note 50, at 115–17 (describing justifications for domestic violence services that offer "one-stop shopping").

80. *See* FAMILY JUSTICE CENTER ALLIANCE, *History: History of the Family Justice Center Movement*, http://www.familyjusticecenter.org/index.php/history.html [http://perma.cc/3D52-PCFE] (describing the development of the Family Justice Center model, which combines civil legal assistance and other services for survivors in one location with specialized law enforcement and prosecutorial teams).

81. *See* Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 38 (1999).

82. *Id.*

83. *Id.*; *see* Rebecca Fialk & Tamara Mitchel, *Jurisprudence: Due Process Concerns for the Underrepresented Domestic Violence Victim*, 13 BUFF. WOMEN'S L.J. 171, 180–83 (2004) (identifying potential conflicts between survivors and advocates in domestic violence court).

Survivors using integrated courts and other mixed-system service centers, like family justice centers, may also be exposed to heightened risk of being reported to child protective services should they decide not to pursue criminal charges or a civil protection order.[84] Exposure to intersecting systems increases the chance that victims will be accused of failing to protect their children from the perpetrator's abuse.[85] The threat of intervention by child protection agencies and exposure to failure-to-protect charges curtails survivors' choices, including by limiting their ability to choose whether to go forward with a civil protection order after the temporary order expires, and encouraging them to accept unwanted services suggested by social workers.[86] Fear of intervention by child protection agencies may also discourage survivors from utilizing the court and accessing legal remedies. Integrated systems therefore present a barrier to protection orders for some survivors.

The ability of survivors to bypass the criminal justice system may also be overstated. Although protection orders ostensibly provide an alternative to the criminal justice system, violation of these orders is a crime in every state.[87] While a protected party can theoretically enforce the order by filing for contempt in civil court if the order is violated, bringing a contempt motion may be prohibitively complex for those without an attorney.[88] Also, as detailed above, family court judges are often hostile to domestic violence claimants, undermining the goal of rigorous enforcement through the contempt process. Thus, as a practical matter, survivors may still be reliant on the criminal justice system to enforce a civil protection order. Law enforcement policies may lead to either under or over enforcement, depending on the jurisdiction.[89]

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84. *See* Jane Stoever, *Mirandizing Family Justice Centers*, 39 HARV. J.L. & GENDER 16–23 (forthcoming 2015) (unpublished manuscript) (on file with author).

85. *See* Epstein, *supra* note 81, at 34–35 (acknowledging increased risk of survivors being reported to child protection agencies when using an integrated domestic violence court); Fialk & Mitchel, *supra* note 83, at 183 (describing risks to survivors from exposure to mandated child abuse reporters in domestic violence court); see also MacDowell, *When Courts Collide*, *supra* note 50, at 118 ("The heightened risk of failure-to-protect charges faced by [survivors] in integrated courts has been attributed to their exposure to government attorneys and others with differing professional and institutional interests within the integrated court environment.").

86. *See* MacDowell, *When Courts Collide*, *supra* note 50, at 117.

87. Klein & Orloff, *supra* note 52, at 810.

88. *See* Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, *in* DO ARRESTS AND RESTRAINING ORDERS WORK? 240 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (reporting the finding that many women do not understand the protection order process or the options available to them). Civil contempt is confusing and not well understood by many attorneys and judges, much less lay people. *See id.* at 240–41.

89. Despite more aggressive police practices, including the adoption of mandatory arrest and prosecution laws in many states, there are ongoing problems of underenforcement

More generally, the efficacy of protection orders in stopping violence is debatable.[90] Nonetheless, some studies of women who have obtained protection orders indicate that they view them as effective, in part because of the threat of criminal sanctions entailed by the order, and in part because of the agency they exercised in obtaining the order and resisting abuse.[91] Moreover, perhaps in part due to the lack of other options, protection orders continue to play an important role in survivors' safety strategies, especially for low-income women.[92] In this context, lay advocates have played an important role in helping survivors to access the court system.

C. Lay Advocacy and Self-Help

While self-help and other alternatives to traditional legal representation have received greater attention in recent years, non-attorney advocates have traditionally played an important role in access to justice for protection order applicants.[93] Most applicants are unrepresented by counsel.[94] Lay victim advocates have filled this void by performing both "care work" and "legal work" for survivors.[95] Care work includes "listening patiently to clients, giving them control over

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of domestic violence laws. *See* Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1697–98 (reporting low proportions of domestic violence arrests and high proportions of arrests that are not prosecuted, even in cities with mandatory arrest and no-drop prosecution policies). Conversely, in some jurisdictions, violations of protective orders are prosecuted despite the objection of protected parties (e.g., when they have reconciled with the party subject to the order), and in some states have become a shortcut to convictions for other crimes, such as burglary. *See* JEANNIE SUK, AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY 25–27 (2009).

90. *See* Robert C. Davis & Barbara Smith, *Domestic Violence Reforms: Empty Promises or Fulfilled Expectations?*, 41 CRIME & DELINQUENCY 541, 541–53 (1995) (reviewing studies about the efficacy of major reforms aimed at countering domestic violence, including protection orders); Caroline N. Ko, Note, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of "Efficacy,"* 11 S. CAL. INTERDISC. L.J. 361, 371–76 (2002) (reviewing studies examining the effectiveness of temporary protection orders).

91. *See* PTACEK, *supra* note 26, at 167.

92. *See* Goldfarb, *supra* note 11, at 1541.

93. *See* Arlene N. Weisz, *Legal Advocacy for Domestic Violence Survivors: The Power of an Informative Relationship*, 80 FAMS. IN SOC'Y 138, 139–40 (1999); *see also* Megan Allen et al., *Voices from the Field: Civil Legal Advocacy at Stand-Alone Sexual Assault Programs*, CONNECTIONS, Fall 2012, at 17 (discussing the benefits of civil legal advocacy).

94. *See* Stoever, *Freedom from Violence*, *supra* note 65, at 347 (discussing the need for advocates where "[a]lmost all [domestic violence protection orders] petitioners enter the system pro se, and only a fortunate few are able to obtain counsel after filing their cases").

95. *See* Kenneth H. Kolb, *Victim Advocates' Perceptions of Legal Work*, 17 VIOLENCE AGAINST WOMEN 1559, 1562 (2011).

the conversation, and empathizing with them when appropriate."[96] Legal work consists of "informing clients about how to exercise their legal options," accompanying applicants to their court hearings, and providing information and support to them in civil proceedings.[97] In addition, lay advocates can help to increase survivors' safety by assisting them with safety planning.[98] This assistance is imperative because survivors face heightened danger when separating from abusers and exercising legal options such as filing for a protective order.[99] Empowerment is also a core component of traditional feminist lay victim advocacy, conceptualized as helping survivors gain a sense of personal agency and taking an active stance in fighting the conditions of their oppression.[100]

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96. *Id.*

97. *See id.* (explaining that, in practice, victim advocates shift back and forth between care and legal work); *see also* Weisz, *supra* note 93, at 141 (reporting that most interactions between advocates and survivors involve advocates providing "information within the context of an emotionally supportive relationship").

98. *See* JILL DAVIES & ELEANOR LYON, DOMESTIC VIOLENCE ADVOCACY: COMPLEX LIVES/DIFFICULT CHOICES 3–4 (2d ed. 2014) (describing advocacy as a partnership with the survivor in which safety planning is a central part).

99. *See* Stoever, *Freedom from Violence*, *supra* note 65, at 335 ("Leaving or attempting to break free from an abuser's control, such as through seeking a protection order, is the most dangerous point in time for someone who has experienced domestic violence. It is now well understood that there is a high likelihood of 'separation assault,' that leaving is a major risk factor for homicide, and that women have a well-grounded fear of increased violence to themselves and their children if they attempt to leave. Moreover, fear may cause a woman to leave but also to return to an abusive partner.") (internal footnotes omitted); *see also* Goldfarb, *supra* note 11, at 1537–38 (observing that an abuser may perceive legal action as a loss of power and escalate the violence in response).

100. *See, e.g.*, M. Joan McDermott & James Garofalo, *When Advocacy for Domestic Violence Victims Backfires: Types and Sources of Victim Disempowerment*, 10 VIOLENCE AGAINST WOMEN 1245, 1248 (2004). Client-centered lay advocates operate to empower clients to reach their self-determined goals. *See* Joanne Belknap & Hillary Potter, *The Trials of Measuring the "Success" of Domestic Violence Policies*, 4 CRIMINOLOGY & PUB. POL'Y 559, 561 (2005); Andrea J. Nichols, *Meaning-Making and Domestic Violence Victim Advocacy: An Examination of Feminist Identities, Ideologies, and Practices*, 8 FEMINIST CRIMINOLOGY 177, 187–89 (2013); Stoever, *Freedom From Violence*, *supra* note 65, at 349; *see also* WASH. ADMIN. CODE § 388-61A-0145 (2009) ("Advocacy-based counseling means the involvement of a client with an advocate counselor in an individual, family, or group session with the primary focus on safety planning and on empowerment of the client through reinforcing the client's autonomy and self-determination.") (repealed 2010).

Although client-centered, empowerment-focused advocacy is associated with feminism, not all lay advocates in the early battered women's movement identified as feminists. *See* Ellen Pence, *Advocacy on Behalf of Battered Women*, *in* SOURCEBOOK ON VIOLENCE AGAINST WOMEN 329, 332 (Claire M. Renzetti et al., eds, 2001) (noting that advocates shared a common commitment to battered women but not necessarily a shared ideology). However, a recent study suggests that advocates who do not identify as feminists are less likely to see the need for structural change to address gender violence and lack an understanding of how identity relates to their client's victimization. *See* Nichols, *supra* note 100, at 192.

Lay advocates' ability to provide valuable legal information together with emotional support is viewed as essential to their success in working with survivors, and as contributing to survivors' increased participation in the legal system.[101] Lay victim advocates also traditionally engage in social change practices, as well as individualized advocacy, seeking "to expand support services to abused women and to bring the problem of domestic violence to public and political attention."[102] This includes intersectional advocacy practices aimed at improving outreach, and the accessibility and quality of services.[103] Lay advocates' partiality to survivors' needs and concerns, and the expertise that informs it, makes them uniquely positioned to represent the interests of survivors within legal and other state systems.[104] Thus, conditions that undermine this partiality should be of concern. Scholars and activists note an erosion of advocates' understanding of, and commitment to, survivors' needs and interests following the professionalization and bureaucratization of advocacy services.[105] These shifts tend to distance advocates from the perspectives of survivors, and from a critical analysis of gender violence and the change-oriented aspects of advocacy work.[106] Additionally, as advocates have increasingly come under the auspices of state institutions like law enforcement, prosecutors' offices, and the courts, their work is driven

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101. For example, a study of civil sexual assault protection order hearings found that when lay advocates provided survivors seeking protection orders with legal advocacy in court,

> [t]here was an 80% success rate in getting the order granted, compared with a 34% success rate for petitioners without an advocate. [The difference in outcomes was attributed] . . . to advocates keeping petitioners engaged in the process, conveying what to expect at court, and determining whether a [protection order] is the appropriate remedy.

Laura Jones, *Court Monitoring as Advocacy*, CONNECTIONS, Fall 2012, at 8.

102. Nichols, *supra* note 100, at 181 (internal citation omitted); *see* Pence, *supra* note 100, at 329 (distinguishing individual case advocacy from systems or institutional advocacy).

103. Pence, *supra* note 100, at 340–41.

104. *See* Elizabeth Ben-Ishai, *The Autonomy-Fostering State: "Coordinated Fragmentation" and Domestic Violence Services*, 17 J. POL. PHIL. 307, 323 (2009) (arguing that coordinated community responses to domestic violence "support the perpetual questioning of 'impartial' decisions and procedures undertaken by the criminal justice and legal system" by embedding advocates for battered women within impartiality-oriented institutions).

105. *See, e.g.*, Nichols, *supra* note 100, at 182 (describing how professionalization and bureaucratization of lay advocacy services has led to the diminution of feminist advocacy strategies); KRISTIN BUMILLER, IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE 70 (2008) ("Currently, as part of the process of making battered women's shelters more professional, a mandate exists for changing the primary methods by which shelters work—requiring them to move away from encouraging women's transformation through consciousness raising to a more service-oriented model that involves administrating clients' needs.").

106. *See* Pence, *supra* note 100, at 341–42 (discussing the impacts on advocates of coordinated community response models that marginalized their expertise).

by institutional and system goals and objectives rather than the needs and interests of survivors.[107]

Self-help differs from the feminist lay advocacy model from the outset in several respects. Unlike the feminist-based practice of lay victim advocacy, self-help programs are not based on a theory of feminist (or other) advocacy; rather, self-help is conceptualized as an alternative to legal representation by an attorney.[108] Self-help also lacks the independence associated with effective lay advocacy, in that it often takes place in partnership with courts, and typically serves the dual goals of aiding the court as well as assisting unrepresented litigants. As discussed further below, self-help programs may adopt the term "advocate" while distancing themselves from the advocacy function. Moreover, we know almost nothing about what self-help models mean for protection order applicants or other unrepresented litigants.[109]

II. STUDYING SELF-HELP

A. Research on Self-Help Services

There are only three published studies examining self-help or similar, unbundled legal services provided in the United States.[110] Of these, only two compare outcomes in cases receiving self-help type assistance with cases receiving no, or different, assistance; neither study

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107. *See id.* at 342; Ben-Ishai, *supra* note 104, at 323 (noting the need for advocates to maintain independence from state systems in order to retain partiality to survivor needs).

108. This is reflected in controversies about the unauthorized practice of law that dominate discussions of self-help and unbundled legal services. *See* Steinberg, *supra* note 3, at 467.

109. *Id.* at 497.

110. *See id.* at 480–82 (reporting a comparison of outcomes for unlawful detainer defendants receiving either unbundled legal services from Legal Aid attorneys, full representation from Stanford clinical law students, or no assistance); VAN NUYS FINAL REPORT, *supra* note 12, at 10 (evaluating services for unrepresented litigants in unlawful detainer and family law matters provided by the Van Nuys Self-Help Center in Van Nuys, California); Michael Millemann et al., *Rethinking the Full-Service Legal Representational Model: A Maryland Experiment*, 30 CLEARINGHOUSE REV. 1178, 1185–86 (1997) (reporting on a study of litigant satisfaction with one-time advice sessions on family law matters with clinical law students from the University of Maryland and the University of Baltimore); *see also* Steinberg, *supra* note 3, at 472–73 (discussing previous studies). Outside the United States, some initial forays into researching self-help services in Australia have also been conducted. *See, e.g.*, Jeff Giddings & Michael Robertson, *Self-Help Legal Aid: Abandoning the Disadvantaged?*, 12 CONSUMER POL'Y REV. 127, 128–31 (2002) (reporting findings from a focus group with self-help service providers). For the purpose of this discussion, I am not including studies of services not characterized as self-help, e.g., legal assistance provided by lay advocates for their clients in shelters, or by institutional advocates working with district attorneys or law enforcement outside of a court partnership.

shows that self-help makes a substantive difference to case outcomes, or that it is as effective as full representation.[111] The single study comparing outcomes for litigants receiving unbundled services, full representation, and no representation, found that only full representation resulted in better substantive outcomes.[112] Notably, the third study, which examined litigant satisfaction with brief family law advice sessions and assistance with forms, found that litigants' satisfaction declined with the complexity of the case—which would presumably benefit from more substantial attorney engagement.[113]

These primarily descriptive, qualitative studies are invaluable, especially given how little we know about this subject and the importance—indeed, urgency—of exploratory research in this field. A different approach may be needed, however. In particular, studying case outcomes has significant normative and conceptual limitations.[114] A focus on case outcomes begs the question, what is an outcome? Steinberg's study points out important differences between procedural justice outcomes (e.g., making it past default), and substantive justice (getting a better end result).[115] There is also a related issue of what constitutes a successful outcome. Clients may have multiple goals (e.g., being heard, pressing a cause), and winning might not be the top priority.[116] Additionally, there may be important questions about what orders are granted or denied, even in a case that appears

111. Steinberg's study found that unbundled services, which included ghostwritten answers and one-time assistance with settlement negotiations, improved only defendants' default rates, not their substantive outcomes. Steinberg, *supra* note 3, at 482. Litigants "lost their homes just as often, faced just as few days to move out, and made payments to their landlords with the same frequency, and in similar amounts." *Id.* Even those receiving negotiation assistance fared no better than those proceeding without assistance. *Id.* Similarly, the Van Nuys Report finds no difference between settlement outcomes for litigants receiving assistance versus those receiving no assistance. VAN NUYS FINAL REPORT, *supra* note 12, at 12 (finding that assisted litigants settled their cases with landlords at about the same rate and on similar terms as unrepresented defendants who did not go to the self-help center, went to trial as often, and had similar rates of non-appearance).

112. Steinberg, *supra* note 3, at 482.

113. Millemann et al., *supra* note 110, at 1186 (noting this may reflect the need for greater attorney involvement in the process for those cases); *see* VAN NUYS FINAL REPORT, *supra* note 12, at 14 (finding that litigants receiving unbundled services reported feeling less prepared for court than those who had no representation at all, which the report interprets as a result of having higher expectations).

114. *See* Jane H. Aiken & Stephen Wizner, *Measuring Justice*, 2013 WIS. L. REV. 79, 80 (2013) (elaborating the challenges of measuring outcomes in ways that capture the many desirable elements of justice); Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 105 (2013) (advocating for an expansive, theory-based research agenda for access to justice).

115. *See* Steinberg, *supra* note 3, at 481.

116. Aiken & Wizner, *supra* note 114, at 81 (arguing that many clients are concerned with a variety of factors in determining success, beyond "'winning' or 'losing' cases in the formal sense").

"successful" on the merits. For example, protection orders provide multiple types of potential relief.[117] Do services help litigants understand all available remedies and request all relief to which they are entitled? Outcomes also include impacts on legal consciousness (e.g., how litigants come to understand their legal rights and obligations), which differs from consumer satisfaction with services, and has not yet been studied in this context.[118]

More generally, studies thus far have centered on individual cases and litigants, rather than the systemic impacts of services.[119] Legal service providers can act as points of access, and also as gatekeepers, by determining who is eligible to enter the system.[120] They also help shape litigants' stories into the types of narratives demanded by courts.[121] As observed by linguist Shonna Trinch in her study of interactions between paralegals at a district attorney's office and Latina protection order applicants, "domestic violence narratives told in sociolegal settings are joint productions, constructions produced collaboratively" by survivors and the institutional actors assigned to help them.[122] How do self-help staff members perform this function? Do they differ from other service providers? If so, how and why? Additionally, to the extent that self-help programs absorb or displace prior models for assisting abuse survivors, what are the impacts on survivors, advocates, advocacy organizations, and systemic advocacy?[123] These questions suggest the importance of critically evaluating self-help services in ways designed to identify and assess the manner in which those services are provided, and the structural dynamics of power between self-help legal services, survivors, and the legal systems to which survivors seek access.[124]

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117. *See supra* Part I.A (discussing protection order remedies).

118. This relates to what Albiston and Sandefur call "demand side access to justice." *See* Albiston & Sandefur, *supra* note 114, at 117 ("[W]e have only a very rudimentary understanding of how people come to think about and act on their potentially justiciable experiences and of the consequences of these experiences for them and for society.").

119. *See* Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474, 577 (1985).

120. *See id.* (identifying legal aid attorneys as gatekeepers); *see also* Shonna L. Trinch, *The Advocate as Gatekeeper: The Limits of Politeness in Protective Order Interviews With Latina Survivors of Domestic Abuse*, 5 J. SOCIOLINGUISTICS 475, 476–77 (2001) (discussing the gatekeeping function of advocates who are also institutional service providers).

121. *See* Shonna L. Trinch & Susan Berk-Seligson, *Narrating in Protective Order Interviews: A Source of Interactional Trouble*, 31 LANGUAGE IN SOC'Y 383, 385 (2002) (discussing the legal system's preference for linear narratives).

122. *Id.* at 412; *see* Trinch, *supra* note 120, at 23 (noting that advocates and survivors co-construct the abuse account presented to the court).

123. *See* Albiston & Sandefur, *supra* note 114, at 114–16 (describing aspects of a "supply side" theory of access to justice).

124. *See* Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323, 358–59 (2005) (advocating for a more socially situated, critical approach to the study of legal consciousness).

B. The Present Research: Bellow Scholar Study (2014)

1. Research Locations

Data for this study was collected from two self-help programs run as partnerships between nongovernmental organizations and county courts in two western states. I will refer to these as Program A and Program B.[125] Both programs operate in courthouses located in densely populated metropolitan areas and serve primarily women of color.[126] Additionally, data from Program A shows that most litigants had little education, and spoke a language other than English.[127]

Program A operates several self-help center locations as a partnership between the county courts and a local legal aid organization (LAO); the county provides space for the centers, which are managed exclusively by the LAO. Staff members include volunteers, paid interns, LAO attorneys (who review completed applications), and a full time program director who oversees and manages the centers. This program, which has been in its current form since 2006, serves more than 4,000 individuals annually.[128]

Program B consists of a single self-help center run as a partnership between the county and a local domestic violence services organization (DVSO). In addition to providing space and equipment, the county staffs Program B with a director and four other full time employees, and three part time staff members. The DVSO provides funding for two additional full-time staff members.[129] The program was founded in 1995, and presently serves more than 5,000 people per year.[130]

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125. The programs and persons who participated in this study are not identified in order to maintain their confidentiality. Elizabeth L. MacDowell, *Bellow Scholar Study* (2014) (data on file with author) [hereinafter MacDowell, *Bellow Scholar Study*].

126. *Id.* In 2009, an average of 78% of people who filed a protection order after receiving services at Program A were women; 86.5% were racial/ethnic minorities. Data collected at Program B in 2012 showed that protection order applicants were more than four times as likely to be women than men; less than half were white. *Id.*

127. *Id.* In 2009, 86.5% of protection order applicants helped at Program A were racial/ethnic minorities, 53% spoke a language other than English as a preferred language, and only 26% had attended some college; less than 13% had a college degree. Given the links between educational attainment and income disparity, a relatively low average income in this group can be assumed. *Id.*; *see, e.g.*, Steven Strauss, *The Connection Between Education, Income Inequality, and Unemployment*, HUFFINGTON POST (Jan. 2, 2012, 5:12 AM), http://www.huffingtonpost.com/steven-strauss/the-connection-between-ed_b_1066401.html [http://perma.cc/6QJX-MH2P]. Similar data was not available for Program B.

128. MacDowell, *Bellow Scholar Study, supra* note 125. This information is based on 2009 data drawn from new protection order cases filed at each program location during four one-week periods. *Id.*

129. *Id.* After the data collection period, this was reduced to one staff member due to budgeting constraints. *Id.*

130. *Id.* This information is based on 2012 data. *Id.*

2. Overview of Services

In each program location, applicants begin the legal process by filing ex parte for a temporary protection order, which may be granted, denied outright, or denied and set for an evidentiary hearing. Pursuant to state law, applicants may request orders that the adverse party stay away from the applicant, refrain from specified conduct, and for exclusive use of property, child support, spousal support, restitution, and attorneys fees. Adverse parties may also be ordered to surrender guns. If the court sets the matter for hearing, the applicant may seek an order for a longer time.[131] In both programs, non-attorney staff members provide assistance to applicants with the process of preparing and filing applications. Staff members may also provide applicants with printed information. At Program A, this includes information about the legal process, including how to file and serve the application, and how to prepare for the evidentiary hearing. At Program B, staff members reviewing the application provide the applicant with an information sheet that includes contact information for the DVSO, and that lists considerations for safety planning.[132] Beyond that, there are several differences in the provision of services.

Most notably, staff members at Program A provide one-on-one assistance for applicants in completing the application. A staff member sits with the applicant and asks prompting questions based on the application form about what orders the applicant wants and what happened; the staff member also fills out the application forms on a computer or by hand. Additionally, an attorney reviews each application completed by a non-attorney staff member before it is filed.[133] At Program B, there is no attorney supervision or review. Moreover, applicants at Program B complete the application forms themselves before meeting with a staff member. The completed form is then reviewed by one of the two staff members from the DVSO; if it is very busy, county-employed staff review applications as well. During this process, staff members may ask the applicant clarifying questions and add additional details and facts (such as dates) as a supplement to the applicants' declaration.

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131. MacDowell, *Bellow Scholar Study supra* note 125. In the jurisdiction served by Program A, the judge can grant a permanent order after a hearing, or continue a temporary order for a longer period of time. State law at Program B requires the applicant to request an extension of the temporary order on or subsequent to her application. The temporary order can be extended for a maximum of six months after the hearing. *Id.*

132. I will analyze these documents in a separate article.

133. MacDowell, *Bellow Scholar Study, supra* note 125. The attorney is usually offsite. Staff members email or fax completed applications to the attorney for review. Applications completed by applicants without a staff member's help, and then reviewed by a staff member, are not reviewed by an attorney. *Id.*

The programs also differ in how completed applications are processed. At Program A, the applicant is responsible for filing the completed application, delivering a file-stamped copy to the courtroom for review by the judge, and then taking any orders that result to the sheriff's window for service on the adverse party. In contrast, Program B manages these administrative aspects of the application process. Applicants leave the completed application at the program office, and return there to pick up their order. However, the process takes longer at this location. While applicants generally receive a temporary order the same day they apply at Program A, it typically takes two or more days to receive an order at Program B.

Additionally, the programs differ as to the delegation of labor among staff members, and the terminology used to describe the roles that staff members perform. At Program A, all staff members do the same work in assisting applicants—except attorneys, who are usually not on site and whose sole role is reviewing applications—and are referred to in program materials as advocates. At Program B, there is a different division of labor. Front desk staff members at Program B interact with all applicants and answer the phones. These staff members answer applicants' questions, conduct initial screening, and redirect people as deemed necessary; they also hand out the application and provide instructions on filling it out. Staff members in the back office review applications. Further, only the two DVSO employees are called advocates, and are identified as such by a placard on each of their desks.

3. Methodology

This study uses qualitative, ethnographic methods intended to situate courthouse self-help program activities within the larger service systems of which they are a part, and in a larger sociopolitical frame. To this end, the study employs traditional methods for grounded, exploratory ethnographic research, including nonparticipant observation of courthouse self-help services, activities, and interactions (e.g., between litigants, staff members, and judges), and informal, semi-structured interviews with everyday actors in the field (e.g., staff members, legal aid attorneys, and survivor advocates in the community).[134] Additionally, these methods are augmented by

134. *See* ANSELM STRAUSS & JULIET CORBIN, BASICS OF QUALITATIVE RESEARCH: TECHNIQUES AND PROCEDURES FOR DEVELOPING GROUNDED THEORY 12–13 (2007) ("'[G]rounded theory' . . . [is] derived from data, systematically gathered and analyzed through the research process. In this method, data collection, analysis, and eventual theory stand in close relationship to one another."); *see also id.* at 11–12 (describing the variety of sources from which qualitative data can be derived for grounded theory).

review of secondary materials, such as informational pamphlets and other documents distributed to litigants at Programs A and B, court records, publicly available self-help service site evaluations, and archival and legislative research on the history and current status of civil protection order laws. Archival research and interviews with participants in the movement for protection order legislation were also conducted on the connection between law reform, self-help, and social movements for battered women and access to justice.

Insofar as the study focuses on a situated analysis of interactive work processes within self-help programs, conducted for the purpose of understanding impacts on survivors of domestic violence, the study fits into what has been termed institutional ethnography.[135] Institutional ethnographers examine "work processes and study . . . how they are coordinated, typically though texts and discourses of various sorts."[136] The researcher's focus is "on institutional case management processes and the logic, thinking, and assumptions that support them" rather than on individuals.[137] The goal is to "discover systemic problems and produce recommendations for longer lasting change."[138] In the desire to create change, this method is advocacy based, and politically situated.[139] Institutional ethnographers "take[] a standpoint in the everyday world and of people whose lives are subordinated to ruling practices."[140] Here, the standpoint is that of survivors of domestic violence, "and the ways in which their needs and interests are subordinate to those of intervening institutions and entities."[141] Accordingly, this study examines the power dynamics and relationships within courthouse self-help programs and their bearing on

135. *See* Marjorie L. DeVault, *Introduction: What is Institutional Ethnography?*, 53 SOC. PROBS. 294, 294–95 (describing the field of institutional ethnography and providing examples of research projects that use this methodology); ELIZABETH TOWNSEND, GOOD INTENTIONS OVERRULED: A CRITIQUE OF EMPOWERMENT IN THE ROUTINE ORGANIZATION OF MENTAL HEALTH SERVICES 17–29 (1998) (describing the key processes of institutional ethnography). As this project applies this inquiry to multiple locations, it can also be viewed as a multi-sited ethnography. *See* George E. Marcus, *Ethnography In/Of the World System: The Emergence of Multi-Sited Ethnography*, 24 ANN. REV. ANTHROPOLOGY 95 (1995) (describing a multi-sited approach to ethnographic inquiry).

136. DeVault, *supra* note 135, at 294.

137. Jane M. Sadusky et al., *The Praxis Safety and Accountability Audit: Practicing a "Sociology for People,"* 16 VIOLENCE AGAINST WOMEN 1031, 1034; *see* DeVault, *supra* note 135 (noting that the analytic goal of institutional ethnographers is "explication rather than theory building").

138. *See* Sadusky et al., *supra* note 137, at 1034.

139. *Id.*

140. MARIE CAMPBELL & FRANCES GREGOR, MAPPING SOCIAL RELATIONS: A PRIMER IN DOING INSTITUTIONAL ETHNOGRAPHY 124 (2004).; *see* TOWNSEND, *supra* note 135, at 18 (noting that institutional ethnographers do not attempt to be objective outsiders or to interpret "subjective feelings, meanings and perceptions of human experience").

141. Sadusky, *supra* note 137, at 1035.

access to justice for survivors trying to access the courts. The goal is to listen to and observe "experiences of tension as a starting point for tracing the actual activities and conditions of the everyday world to the organizational processes that invisibly rule that experience."[142]

In this Article, I focus primarily on an analysis of the interactions between staff and applicants, as studied through observations conducted by research team members at the two programs.[143] Observations were recorded in field notes.[144] Field notes were then analyzed through an inductive process of open coding that identified recurring themes, patterns, and topics; these became core categories for further analysis.[145] Additionally, notes concerning staff-applicant interactions were analyzed and coded based on an initial typology of demeanor developed by Ptacek, discussed below.[146] A holistic analysis of the data was used to verify the analysis and make sure demeanor was analyzed in context, and to relate demeanor to specific types of interactions as distilled into core categories.[147] Three research team members participated in analyzing and checking the data in order to confirm or

142. TOWNSEND, *supra* note 135, at 18.

143. MacDowell, *Bellow Scholar Study, supra* note 125. Observations of program staff took place at Program A over several months in 2009 and 2010, and at Program B from December 2013 to August 2014. A total of 84 hours of staff observation data were transcribed from these preliminary collections; over 150 hours of observation at other courthouse locations (e.g., the protection order courtroom, and lobby areas outside the courtroom) were collected and transcribed as well. Staff observations were conducted to the point of saturation at Program B, in that no new variations (of demeanor types) or contradictions were being observed. This data was consistent with comparative data from Program A. *Id.*

144. *Id.* Field notes consisted of two main types: logs of notes recorded simultaneously or contemporaneously with observations in the field, and notes recorded surreptitiously at opportune moments, so as not to influence or disturb what was being observed. The former technique was used when observing front desk staff at Program B, while the latter technique was used primarily when observing advocates interacting with applicants. Notes jotted in the field were augmented with detail after leaving the field. *Id.*; *see* W. LAWRENCE NEUMAN, SOCIAL RESEARCH METHODS: QUALITATIVE AND QUANTITATIVE APPROACHES 398–402 (6th ed. 2006) (regarding techniques for recording notes in and out of the field); JOHN LOFLAND ET AL., ANALYZING SOCIAL SETTINGS: A GUIDE TO QUALITATIVE OBSERVATION AND ANALYSIS 108–16 (4th ed. 2006) (also on techniques for recording notes in and out of the field).

145. *See* BARNEY G. GLASER & ANSELM L. STRAUSS, THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH 105–13 (1967); *see also* Patricia A. Adler & Peter Adler, *Of Rhetoric and Representation: The Four Faces of Ethnography*, 49 SOC. Q. 1, 12 (2008) (describing the use of inductive analysis in ethnography).

146. MacDowell, *Bellow Scholar Study, supra* note 125. Data collected from observations of front desk staff at Program B made up the bulk of this analysis. However, this data was checked against results of advocate observations at both programs to ensure consistency of findings. As noted, no significant discrepancies in the data were found based on location or staff type. *Id.*

147. Amy Lehrner & Nicole E. Allen, *Still a Movement After All These Years?: Current Tensions in the Domestic Violence Movement*, 15 VIOLENCE AGAINST WOMEN 656, 660 (2009) (describing a holistic approach to analyzing data).

disconfirm the analysis. This process resulted in several adjustments to the demeanor scale (and corresponding revisions to coded transcripts) to achieve a more finely graded and consistent analysis.

Ultimately, all coded data was accounted for and incorporated into the analysis of demeanor presented below.[148]

III. DEMEANOR AND SELF-HELP ASSISTANCE

A. Self-Help Assistance as Emotional Labor

The self-help center is a place of intense and sometimes volatile emotions. Litigants come to the center speaking in the language of needs, relationships, and emotions, and are met with varying degrees of receptivity, care, and assistance. In this sense, the demeanor of self-help staff is part of an emotional exchange, and the work of self-help staff can be viewed as a form of emotional labor.[149] In the sociology of emotions, individuals are deemed to be engaged in emotional labor when they have direct interactions with the public, create an emotional state in others (e.g. gratitude or fear) through their interactions, and the emotional dimensions of their work are regulated (e.g., in the case of lawyers and judges, through rules of professional conduct).[150] Self-help staff members obviously engage with the public, and perform their work in the emotionally volatile environment of the family court. The very position of domestic violence advocate is defined statutorily in terms of the emotional dimensions of their work as support persons.[151] The emotional presentation of self-help staff members is also regulated.[152] For example, staff members are evaluated in terms of their emotional presentation and impact on applicants.[153]

Additionally, the emotional presentation of self-help staff members conveys an authority that derives from their relationship to the court. In his study of the judges in protection order hearings, James

148. MacDowell, *Bellow Scholar Study*, *supra* note 125. Future articles will focus on the work processes and relationships that shape demeanor.

149. *See* ARLIE RUSSELL HOCHSCHILD, THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING 147 (1983) (defining emotional labor).

150. *See* PTACEK, *supra* note 26, at 96 (applying the concept of emotional labor to judges).

151. *See* AM. BAR ASS'N, COMM'N ON DOMESTIC & SEXUAL VIOLENCE, DOMESTIC VIOLENCE/SEXUAL ASSAULT ADVOCATE CONFIDENTIALITY LAWS (2014), http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/statutorysummarycharts/2014%20Advocate%20Confidentiality%20Chart.authcheckdam.pdf [http://perma.cc/VJK7-JMFG] (compiling state laws defining advocates and advocate privilege).

152. *See* VAN NUYS FINAL REPORT, *supra* note 12, at 7.

153. *See, e.g.*, *id.* at 14.

Ptacek characterized judicial demeanor as the "emotional presentation of authority."[154] In Ptacek's analysis, judges are inescapably cloaked in the trappings of authority, such that their most casual interactions in the courtroom are laden with significance.[155] While self-help staff members do not have the same symbolic power (or related decision-making authority) as judges, they nonetheless represent the legal system by virtue of their location in the courthouse and their role in providing a gateway to the judicial decision maker. In this way, the demeanor of self-help staff in their interactions with litigants is imbued with particular significance.[156] The next section analyzes the presentation of authority by self-help staff through the study and categorization of demeanor.

B. Demeanor Typology for Self-Help Assistance

Drawing on work by sociologist Maureen Mileski,[157] Ptacek's study of judicial demeanor utilized a typology of five demeanor categories: good-natured, bureaucratic, condescending, firm or formal, and harsh.[158] Subsequently, researcher Angela Moe Wan applied Ptacek's typology in her analysis of the demeanor of lay advocates helping women with protection order applications in a mid-western domestic violence services program, and found that the last three categories tended to co-occur.[159] Upon analyzing the data from the current study, it became apparent that some modification of the categories used by Ptacek and Wan, and the addition of two new categories, was necessary in order to capture the range of demeanors present and to provide an adequately powerful lens with which to evaluate self-help program services. This resulted in a typology of seven demeanor categories: good-natured/supportive, token supportive, bureaucratic, apathetic, firm or formal, harsh, and patronizing/condescending—a demeanor type that typically, but not necessarily, co-occurs with

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154. PTACEK, *supra* note 26, at 95 (emphasis omitted).

155. *Id.*

156. For example, in response to surveys, litigants using self-help centers in California have reported that they believe center staff are knowledgeable, and also that they feel more informed after using the center than they did previously. REPORT TO THE CALIFORNIA LEGISLATURE, *supra* note 6, at 2. Given their unfamiliarity with the legal system however, unrepresented litigants have no point of comparison and little ability to evaluate the services they receive. Thus, these results might mean little more than that litigants responding to the survey liked self-help staff.

157. *See* Mileski, *supra* note 26.

158. PTACEK, *supra* note 26, at 98.

159. Angela Moe Wan, *Battered Women in the Restraining Order Process: Observations on a Court Advocacy Program*, 6 VIOLENCE AGAINST WOMEN 606, 621–25 (2000).

other demeanor categories. Figure 1 compares my typology with those established by Ptacek and Wan. My findings regarding each type are described in turn below.

FIGURE 1

PTACEK	WAN	MACDOWELL
1. Good-Natured/ Supportive 2. Bureaucratic 3. Firm or Formal 4. Harsh 5. Condescending	1. Good-Natured/ Supportive 2. Bureaucratic 3. Firm or Formal/ Harsh/ Condescending	1. Good-Natured/ Supportive 2. Token Supportive 3. Bureaucratic 4. Apathetic 5. Firm or Formal 6. Harsh 7. Patronizing/ Condescending

1. Good-Natured / Supportive

Individuals demonstrating good-natured/supportive demeanor provide meaningful emotional and material support to applicants.[160] Ptacek describes good-natured demeanor by judges toward battered women seeking protection orders as, "us[ing] their authority to make women feel welcome in the court, to express concern for their suffering, and to mobilize resources on their behalf."[161] These judges minimized social distance and put applicants at ease by using a pleasant tone of voice, maintaining eye contact, and encouraging applicants to stand close to them.[162] They showed empathy by acknowledging the difficulty applicants faced in speaking about their abuse in court, and took their time with each case; they acknowledged applicant's concerns, demonstrated concern for their safety, and made sure they understood their criminal as well as civil options under the law.[163]

160. *See* PTACEK, *supra* note 26, at 99.
161. *Id.*
162. *Id.*
163. *Id.* at 99–100; *see* Wan, *supra* note 159, at 615–17 (describing the demeanor of court commissioners in protection order hearings, and making similar findings).

Similarly, in her study of advocates assisting battered women with applications for protection orders, Wan describes good-natured advocates as helping women feel welcome in their offices, and comfortable throughout the application process.[164] Good-natured advocates also helped women understand their options, such as alternative ways to protect themselves outside the legal process, and respected their decisions about how to proceed.[165] Wan reports that taking time with applicants and exhibiting patience were the most common ways that advocates exhibited good-natured demeanor.[166] For example, Wan observed that advocates often worked through their lunch breaks and stayed after hours to help women in need, and assisted women by providing them referrals to shelters and other services.[167] Good-natured advocates were also emotionally supportive—offering kind words, hugs, and tissues.[168] Good-natured demeanor was the most frequently exhibited judicial demeanor in Ptacek's study, and Wan notes that many advocates exhibited good-natured demeanor as well.[169] Because the distinguishing feature of this category is its supportive quality, rather than mere friendliness or pleasantness, I have renamed it "good-natured/supportive" in order to distinguish it from those less substantive qualities.

As in Ptacek and Wan's studies, good-natured/supportive self-help staff members at Programs A and B often exhibited this demeanor through their patience and persistence in understanding the relevant facts, explaining the protection order process, or otherwise helping litigants understand how to use information or what to do. The manner in which this demeanor manifested depended to some degree on the nature of the staff member's position. In general, however, the extent of conduct meeting these criteria was meager at both program locations, especially as compared to Ptacek and Wan's descriptions.

For example, like the advocates observed by Wan,[170] advocates at Programs A and B sometimes demonstrated good-natured/supportive demeanor by exhibiting patience when interviewing applicants or reviewing applications. These advocates took the time necessary to

164. Wan, *supra* note 159, at 617–18.

165. *Id.*

166. *Id.* at 618.

167. *Id.*

168. *Id.* at 619. Among other examples, Wan describes advocates babysitting their client's children so they could attend court, offering to translate at hearings for Spanish-speaking clients so that they would not have to reschedule their hearing for when a court translator was available, and providing assistance with legal forms outside the protection order process when it was necessary. *Id.*

169. While Wan didn't quantify her findings, Ptacek found that 56% (10 of 18) of judges observed exhibited good nature at least some of the time. PTACEK, *supra* note 26, at 100–01.

170. *See* Wan, *supra* note 159, at 617–18.

tease out the relevant facts in order to support a request for relief, or to understand the significance of an applicant's concerns when it was not immediately apparent. Advocates also demonstrated good-natured/supportive demeanor when they addressed applicant's questions about the legal process, and helped them understand their options. Front desk staff members at Program B also demonstrated good-natured/supportive demeanor by helping applicants understand the significance of information about their case when they researched case histories online.[171] Front desk staff members also occasionally offered to get more information from a supervisor to answer an individual applicant's questions, rather than merely treating the matter as beyond their ken, or offered encouraging words to applicants.[172] In these instances, staff members seemed genuinely concerned about helping people who were using the court.

However, unlike in Wan's study, even staff members demonstrating good-natured/supportive demeanor at these programs did not go out of their way to help applicants.[173] They did not stay after hours or do additional work to locate resources. They did not hug applicants or demonstrate physical affection or support. Indeed, as will be discussed further below, they frequently turned applicants away without assistance or referrals. Moreover, far more common than good-natured/supportive demeanor was what I term "token supportive" demeanor.

2. Token Supportive

Staff members in this study demonstrated token supportive demeanor—a category not considered by Ptacek or Wan—by simply "being nice." These staff members were often very pleasant and superficially supportive. Their tone was warm, they made eye contact, and sometimes minimized spatial distance by leaning forward toward

171. MacDowell, *Bellow Scholar Study, supra* note 125. For example, a front desk staff person who was asked by an applicant to look up whether the adverse party had been served with a permanent order noticed when reviewing the case history that both parties had been present at the hearing where the order was issued. This staff person explained to the applicant that even though the adverse party had not been served with the order, service would be deemed completed and no additional service was necessary. Because the staff member went beyond a rote answer to the question (e.g., responding that the adverse party had not been served), the response is deemed to exhibit good-natured supportive demeanor. *Id.*

172. *Id.* For instance, on one occasion a staff member encouraged a woman who was frustrated with the court process to go to her hearing, telling her, "don't give up; they will get him," even though the woman had a child support case, not a domestic violence case, and had come into the wrong office. *Id.*

173. *See* Wan, *supra* note 159, at 618–19.

the litigant while they spoke. Sometimes staff members exhibiting this demeanor also lowered their voices while speaking to a litigant, engendering a conspiratorial or more intimate tone that suggested a special rapport or an offering of extra support. Staff members sometimes also offered token support by making minimally supportive comments to applicants, such as stating, cheerfully, "good job" upon receiving a completed form. However, no substantively useful information was provided during these exchanges, nor gained for the litigant's benefit. In this way, token supportive demeanor did not meaningfully extend beyond the staff member's affect, and therefore did not reach the level of demeanor that was good-natured/supportive. It might also be considered patronizing or condescending at times, which is discussed more below. This form of demeanor is nonetheless distinguished from bureaucratic demeanor, discussed next, in the level of warmth, courteousness or pleasantness typically demonstrated in the exchange, rendering it relatively personable, albeit superficial, in nature.

3. Bureaucratic

By far the most common demeanor observed at both Programs A and B was what Ptacek and Wan term bureaucratic demeanor.[174] Ptacek describes bureaucratic judges as passive and detached from the women who appeared before them seeking protection orders.[175] While these judges might be courteous, they remained "emotionally flat" by displaying little empathy, and sometimes appearing "impatient, rushed, or bored."[176] Bureaucratic judges appeared focused on completing tasks efficiently.[177] Similarly, Wan reports that bureaucratic advocates were focused on efficient processing of protection order requests and remained distanced from women's concerns.[178] They spoke in a quick, rehearsed manner, demonstrated impatience with applicant's questions, frequently turned away applicants who arrived only a few minutes late, and failed to offer referrals.[179]

Consistent with these findings, bureaucratic staff members at Programs A and B provided generic, perfunctory responses to litigants' concerns and questions. As one of my research assistants described these staff members, "a machine could replace them."[180] At

174. *See* PTACEK, *supra* note 26, at 101; Wan, *supra* note 159, at 619.
175. PTACEK, *supra* note 26, at 101.
176. *Id.*
177. *Id.*
178. Wan, *supra* note 159, at 620–21.
179. *Id.*
180. MacDowell, *Bellow Scholar Study, supra* note 125.

Program A, staff members exhibiting bureaucratic demeanor seldom deviated from the prompts in the software as they completed application forms; they did not offer any explanation for legal terms (e.g., distinguishing legal and physical custody), or ask clarifying questions of the applicant. Similarly, at Program B, bureaucratic front desk staff members gave applicants routinized instructions without regard to individual circumstances.

For example, bureaucratic staff members at Program B routinely redirected applicants to a separate, emergency protection order process when the adverse party was identified as being in jail, without attempting to ascertain if that was the best process for the applicant. This was significant because while an emergency order (which in that jurisdiction is only available when the adverse party is in custody) can be obtained in an expedited manner, it is only available for ten days, during which time the applicant will have to make arrangements to return to court to request an extension, as well as for the hearing on the extension, which may be onerous.[181] These staff members also routinely instructed litigants completing applications to describe the abuse in reverse chronological order, and to focus only on recent events, although this instruction might not serve survivors of stalking or other conduct that was not obviously abusive without providing greater context.[182]

Bureaucratic self-help staff at both programs also frequently turned away applicants without assistance or referrals. This could occur because the applicant was deemed ineligible for services (e.g., the applicant did not have the requisite relationship with the adverse party, or domestic violence had not occurred),[183] or because staff members had stopped taking applications for the day. At Program B, for example, staff members stopped allowing new applications two hours before closing time, regardless of how many applicants were waiting to see an advocate at that time. Applicants were routinely turned away from the center when they came only fifteen or twenty minutes after staff members stopped taking new applications. On several of those occasions applicants were visibly frightened or expressed

181. *Id.* According to the DVSO Program Director, this practice also burdened the DVSO, which managed the emergency order process, by taking up staff time with non-emergency matters. *Id.*

182. *See infra* Part IV.B.2 (providing an example of how this approach can discourage claims).

183. MacDowell, *Bellow Scholar Study, supra* note 125. Theoretically, the programs did not screen for eligibility, but helped all who wanted to apply. However, researchers observed routine screening of applicants for eligibility at both locations. *Id.*; *see infra* Part IV.B.1 (discussing how staff members shape protection order applications, including by discouraging claims).

concern about their safety. Although the staff have the telephone number to the local domestic violence services hotline—indeed, they routinely redirect applicants to this number to apply for emergency orders—not one of these individuals was referred to the hotline. Applicants at Program A were also routinely turned away without referrals when advocates determined they could not assist more applicants before closing time. Sometimes applicants had already waited for a lengthy period of time (e.g., on one occasion, ninety minutes), which visibly added to their sense of frustration and distress. When applicants expressed concern about their safety in the meantime, they were told, "well, that's the process"[184] or "that's all we offer here"[185] and were not given referrals to shelters, police, or other services.

While Wan observed bureaucratic advocates looking down or feigning work or being busy in order to deflect applicants' questions or concerns,[186] bureaucratic self-help staff members more often used the legal system and legal hierarchy to deflect applicants' questions and distance themselves from the process. For example, a self-help staff member told an applicant that she did not know why a request for a protection order was denied, "because I'm not the judge."[187] When asked by an applicant why she couldn't be seen by a judge that day, another staff member answered, "this is a legal process and we have to take the requisite steps."[188] Bureaucratic staff members sometimes created social distance by being curt. For example, one staff member told an applicant who asked if the process was free, "we prefer to say there is no charge for a protection order."[189] In general, at both locations, bureaucratic staff members most often responded to litigants' inquiries by telling them what they could *not* do for them (e.g., "I cannot offer legal advice," "I cannot discuss these issues with you," and "we don't call anyone on your behalf"), but did not offer suggestions for where litigants might go for legal or other assistance.[190] These staff members implied they were constrained by protocol as they put up barriers for litigants without offering alternatives.

4. Apathetic

Self-help staff members also occasionally exhibited apathetic demeanor—another addition to the categories used by Ptacek or Wan.

184. MacDowell, *Bellow Scholar Study, supra* note 125.
185. *Id.*
186. Wan, *supra* note 159, at 621.
187. MacDowell, *Bellow Scholar Study, supra* note 125.
188. *Id.*
189. *Id.*
190. *Id.*

Given the lack of empathy exhibited by bureaucratic staff members, the distinction between bureaucratic and apathetic demeanor is subtle. Yet, unlike bureaucratic staff members, those demonstrating apathy did not reference legal hierarchies to justify their response, or suggest a deflected request was contrary to some protocol. In this way, while bureaucratic demeanor is impersonal and routine, apathetic demeanor is distinguished by a seemingly *personal* lack of interest in helping a litigant. For example, one front desk staff member at Program B exhibited apathy when he repeatedly told an anxious applicant in the office that he would be with her "in one minute," while staying on the phone with someone else and making no visible attempt to end the call or get other help from another staff member as the woman in front of him began to pace and fret agitatedly.[191] On another occasion, a staff member at the same location lost interest in trying to resolve a litigant's issue and told the litigant dismissively, "do what you want."[192] Similarly, an advocate at Program B demonstrated disinterest in resolving a litigant's problem with a court scheduling conflict (he had agreed to a return date set during his hearing, and then remembered a conflicting commitment) when she told him flatly, "there's nothing I can offer you."[193] As the exchange continued, it became clear that this was not precisely true; rather, she did not want to exert the trouble to find the answer to a rather complex procedural issue that was outside the normal range of questions. The more personal character of apathetic demeanor sometimes segued into firm or formal demeanor.

5. Firm or Formal

Firm or formal demeanor tends to involve "a tone of moral authority," and to emphasize social distance or hierarchy between the parties—specifically, the superior social position of the individual exhibiting this demeanor over another.[194] As Ptacek describes, "[u]nlike the passivity of bureaucratic demeanor, judges assuming a firm or formal tone take an active stance and accentuate their power."[195] These judges are impatient, strict, and express an expectation of deference from the protection order applicants appearing before them.[196] Similarly, Wan describes firm or formal advocates as asserting the superiority of their legal knowledge over applicants, and

191. *Id.*
192. MacDowell, *Bellow Scholar Study, supra* note 125.
193. *Id.*
194. PTACEK, *supra* note 26, at 102.
195. *Id.*
196. *Id.*

becoming short tempered or impatient with applicants who need more help or question the advocate's instructions or advice.[197]

Self-help staff members tended to exhibit firm or formal demeanor when they were responding to litigant requests that they thought were inappropriate or that they did not want or know how to answer. For example, returning to the exchange regarding the scheduling conflict recounted above, the advocate's tone grew more annoyed as the applicant pressed to change his hearing date. She admonished him, "you stood there and told the judge you would be there that day."[198] When the applicant protested that the judge had seemed understanding at the hearing and perhaps could accommodate the change, she retorted by invoking the formal (and impliedly binding) significance of the courtroom exchange: "It was not just you and the judge having coffee talking about it, it was you standing in a courtroom stating on camera that you would be available that day."[199] Ultimately she explained that the applicant could file a motion to request a different hearing date, but emphasized that the judge might not grant it. She implied that the applicant was making trouble for the court, stating, "now you want to see about changing the court date you just agreed to; it's not easy for the court to just accommodate everything that comes up."[200]

On another occasion, two advocates at Program A grew firm or formal in their demeanor when an applicant returned to ask if she could modify her application to ask for restitution of damages caused by the abuser—a form of relief that was available in this jurisdiction, but which the self-help center did not inform applicants about as part of the application process. The applicant had learned about this relief after submitting her application form, and wanted to amend her application to add a claim. When the advocates responded that she could not amend the form, the applicant grew upset and challenged them, asserting, "Why can't it be amended? Most things can be changed."[201] The advocates argued that obtaining damages is not what protection orders are "about."[202] Protection orders are for protecting people, they opined: that is their main purpose and why they were granted and what the judge cares about. In this context, the advocates reasoned, it was only appropriate to seek money needed "for basic survival, for

197. Wan, *supra* note 159, at 624. Wan considers this category together with condescending and harsh demeanor, and refers to the combined category as "firm or condescending." *Id.* at 621.

198. MacDowell, *Bellow Scholar Study, supra* note 125.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

people who do not have money to eat."[203] The implication was that seeking any money beyond bare necessity in a protection order was greedy and suggested one did not deserve protection.

Staff members also assumed a firm or formal demeanor with applicants whom they later reported to researchers they believed were abusers masquerading as victims. On these occasions advocates grew cold in tone, impatient, and dismissive. Sometimes they actively discouraged the applicant from filing the protection order. For example, when an adverse party to a protection order came into Program B and asked about getting a protection order against the applicant, whom he said persisted in calling him on the phone, the staff member at the front desk responded that he should simply erase his messages or change his number. "The protection order is about protection," she asserted, "not just the person saying they don't like someone or you got a phone call you don't like."[204]

On other occasions, staff members turned what might be a routine, bureaucratic response into one infused with firm or formal demeanor through tone. For example, front desk staff members at Program B sometimes described the application process in a manner that emphasized its potentially laborious, lengthily, and uncertain nature. As one staff member told an applicant, "you have to fill out a nine or ten page form, and then in two or three days you will find out if the judge granted it. Until the judge decides and the adverse party is served, everything is the same as before."[205] By delivering this discouraging soliloquy in an impatient and snippy tone to an applicant who had expressed worry and fear while inquiring if she could get an order the same day, the staff member's demeanor was, in this instance, firm or formal.

6. Harsh

As the term implies, harsh demeanor goes beyond a firm or formal demeanor to become abrasive and nasty, intimidating, and/or punishing. Ptacek and Wan found that harsh demeanor toward applicants was exhibited infrequently.[206] Ptacek observed only one incident in this category, in which the judge raised his voice and exhibited anger and disdain for the applicant.[207] Wan categorized incidents in

203. *Id.*
204. *Id.*
205. *Id.*
206. *See* PTACEK, *supra* note 26, at 104; Wan, *supra* note 159, at 626.
207. PTACEK, *supra* note 26, at 104.

which advocates expressed obvious frustration with women seeking their help, while also expressing condescension, as harsh.[208]

As in Ptacek and Wan's studies, harsh demeanor was observed with relative infrequency in this study. Even though the message delivered in some exchanges might be viewed as harsh, the manner in which it was delivered was more often bureaucratic or firm or formal. However, staff members exhibiting bureaucratic, or firm or formal, demeanor sometimes escalated into harsh demeanor. One example comes from another instance of an applicant asking whether a judge could see her the same day. When the front desk staff member told her that was impossible, the applicant protested, "My kids and I are scared to death that he is going to kill us; we need something now!"[209] At first the staff member responded in a bureaucratic manner, referring to the need for compliance with the "legal process."[210] Then, referring to an informational sheet provided to the applicant with the application forms, the staff member's tone shifted to contempt and annoyance as she added, "if you had read this, you would know that you were not going to be speaking to a judge today, alright?"[211] On another occasion, a staff member at the same location exhibited harsh demeanor to an applicant who was confused about the process and had questions about how to complete service of his temporary protection order. As the applicant left, looking frustrated, the staff member stated angrily, "If you don't want to listen to me, you can go help yourself!"[212] Overall, however, only a total of four incidents of escalation into harsh demeanor by a staff member were observed at the two programs.

7. Patronizing/Condescending

Ptacek identified condescending demeanor as a separate category, involving paternalistic "joking," and trivializing and patronizing demeanor toward applicants.[213] Condescending judges encouraged women seeking protection orders to "smile" or minimized the seriousness of the abuse (e.g., asking a crying applicant if she and her abusive husband might get back together, while noting that she took out the protection order on Valentine's Day).[214] While Ptacek analyzed condescending demeanor separately, Wan found that condescending

208. *See* Wan, *supra* note 159, at 624–25.
209. MacDowell, *Bellow Scholar Study, supra* note 125.
210. *Id.*
211. *Id.*
212. *Id.*
213. PTACEK, *supra* note 26, at 103.
214. *Id.*

demeanor tended to occur together with firm or formal and harsh demeanor among the advocates she observed, and did not provide an example of demeanor that was specifically condescending.[215]

In a somewhat different finding, staff members in this study tended to exhibit condescending demeanor with other demeanors, but did not always do so. Moreover, while condescending demeanor sometimes accompanied firm or formal and harsh demeanor (one example being the staff member's admonishment to the applicant who wanted to be seen by the judge the same day, recounted above), it could accompany other demeanors as well. Further, when it accompanied demeanor that was otherwise friendly or at least minimally helpful, it was perhaps better described as patronizing. Given the close relationship between condescension and patronizing demeanor, I combine these into a single category of patronizing/condescending. Additionally, although this demeanor was only observed occurring with other categories of demeanor in this study, it is reasonable to suppose that—like the condescending judges in Ptacek's study—patronizing/condescending demeanor could predominate in an interaction such that a staff member's demeanor could be best characterized as patronizing/condescending.[216] Therefore, I maintain it as a distinct category, as depicted above in Figure 1.[217]

As in Ptacek's analysis of condescending demeanor, patronizing/condescending demeanor at Programs A and B tended to trivialize litigants' concerns and disregard their humanity.[218] For example, one staff member exhibited patronizing/condescending demeanor when she stated in front of an applicant speaking English with an accent that she needed help because she could not understand the applicant (who was perfectly understandable to the researcher observing). It also tended to assume the superiority of the staff member's knowledge and position. For example, various staff members stated that they would assist applicants while opining that they did not believe the applicants' requested order would be granted, thereby implying not only that they knew better than the applicant but were doing them a favor. From another perspective, the reward of more passive and accepting behavior from litigants with more courteous, good-natured, or even supportive demeanor is also patronizing. Individual litigants might not be aware of this, but the critical assessment

215. *See* Wan, *supra* note 159, at 624–25.

216. *See* PTACEK, *supra* note 26, at 103–04.

217. The capacity of this category to co-occur with other demeanor types is depicted in Figure 2, *infra*.

218. PTACEK, *supra* note 26, at 103.

of demeanor across multiple litigants helps bring the phenomenon to light.

IV. EXPOSING THE FAÇADE OF NEUTRALITY

A. Demeanor as Regulatory

Staff members and administrators at Programs A and B emphasized that the same services were provided to everyone. In particular, interviews and informal conversations with staff members and administrators at these programs revealed an ethic of neutrality; a belief that self-help services can and should be provided without a determination of who is and who is not a victim. As described by the program director of the DVSO partnering with the court at Program B, this meant that advocates at the self-help center did not determine whether an individual applicant was an actual survivor of domestic violence. This distinguished self-help advocates from other advocates for the DVSO, such as those who accompanied clients to court for their hearings and supported them through the court process, which I will call independent advocates. Independent advocates used their experience and training to determine whether or not a potential client was a survivor and therefore qualified to receive advocacy services. Sometimes this also entailed meeting with the director to discuss the case before making a determination.[219] In contrast, self-help center services were supposed to be provided to anyone who wanted to file an application, and nominally met the requirements of the statute.[220] Furthermore, although both programs appropriate the language of advocacy by referring to at least some staff members as advocates, they simultaneously distance themselves from the rhetoric of advocacy by emphasizing that staff members do not actually advocate on behalf of any litigant; instead, they claim to act as advocates in a general way by providing all applicants with information about the protection order process. The goal is one of treating litigants with sameness.

Yet, at least two important things become apparent as we proceed through the types of demeanor outlined above. First, a range of demeanors often appears within the span of a single interaction—sometimes simultaneously, as observed by Wan,[221] but also consecutively.

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219. The program director noted that she had tried to conduct trainings on criteria for determining victimization, but it was difficult to quantify and came down to intuition and experience. MacDowell, *Bellow Scholar Study, supra* note 125.

220. *Id.* The program director at Program A went further, telling me that the program was there to help anyone who wanted to file for a protection order. *Id.*

221. "Because so many of the interactions that exemplified one of the demeanors also exemplified the other two, it seemed appropriate to consider them simultaneously." Wan, *supra* note 159, at 621.

Second, a close observation of these encounters leads to the conclusion that demeanor in this setting has a regulatory function.[222] Specifically, demeanor becomes more distant or formal, and sometimes harsh, as litigants resist the limited range of acceptable expression of need and self-interest allotted to them—for example, by asking to change a hearing date or amend a previously submitted form. In this way, litigants are not treated in a neutral fashion; rather, more firm or harsh demeanor can be viewed as punishment for some.

1. Sanctioning Self-Advocacy

The regulatory function of demeanor relates to what Mileski calls "situational sanctions," which she observed when studying the demeanor of criminal court judges.[223] Judges imposing situational sanctions treated defendants in a harsh or severe manner, sometimes openly reprimanding defendants in the courtroom. Typically judges reserved this demeanor for defendants who disrupted the courtroom or showed disrespect to staff, and those who had committed lesser crimes.[224] With regard to the latter, judges more often showed firm demeanor to defendants in misdemeanor cases than felony cases, with situational sanctions increasing inversely to material penalties.[225] As Mileski reflects:

> Perhaps the judge can afford to be routine and impersonal in . . . [more serious] cases: the charges alone extend a good deal of moral authority and official condemnation. Accordingly, the judge can be impersonal, allowing the rules themselves to impart official morality. When the charge is not serious in the legal hierarchy of offenses, the judge more often attempts to impress upon the defendant the seriousness of the matter. Formal and informal authority mesh in such a way as to homogenize condemnation across the categories of offense.[226]

Unlike judges, self-help staff members are not expected to wield moral authority over litigants while performing their duties. However,

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222. *See* Goffman, *supra* note 27, at 473 (noting that the violation of rules of conduct can lead to social sanctions).

223. *See* Mileski, *supra* note 26, at 521–23 (distinguishing material sanctions from situational sanctions and noting that "[t]he judge traditionally has been a moral agent not only in his actions but also in his style").

224. *Id.* at 523, 525 (reporting that most judges behaved in a bureaucratic manner, remaining detached and affectively neutral).

225. *Id.* at 525. As Mileski notes, in these instances "the judge's demeanor does not *parallel* the gradations in the law; instead it seemingly *complements* these gradations." *Id.* (italics in original).

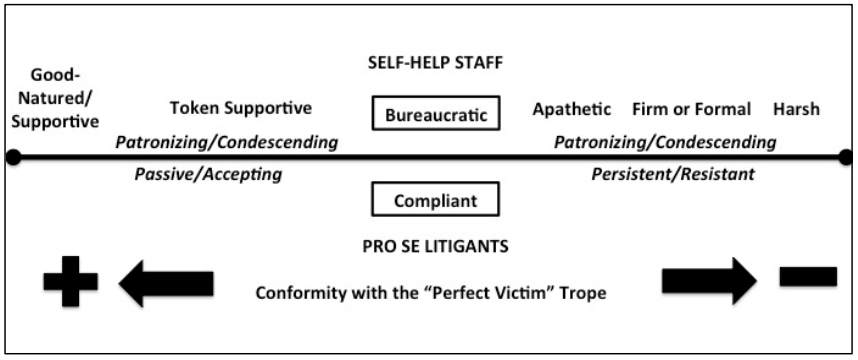
226. *Id.* at 525–26.

in the emotionally charged atmosphere of the self-help center, staff members did distinguish among applicants for protection orders in ways amounting to situational sanctions. Applicants who were subject to sanctions were often engaged in self-advocacy, and sanctions tended to escalate when applicants persisted with requests for assistance or information against staff members' instructions or advice. In contrast, applicants who were met with bureaucratic demeanor were most often passive or compliant with the self-help process; they did not "make waves" by asking for additional help, raising unusual issues, or showing excessive emotion. Passive or compliant applicants were sometimes also rewarded with the friendliness and camaraderie associated with token good-natured demeanor, or even with the enhanced assistance, explanations, and advice associated with good-natured/supportive demeanor.

2. Punishing Imperfect Victims

Staff members' responses also overlapped with stereotypes about domestic violence victims which identify deserving victims as passive rather than self-asserting. By rewarding more passive applicants and sanctioning those who fell outside the stereotype, staff members reinforced—whether intentionally or not—a dominant trope about appropriate behavior for victims under the guise of neutrality. This dynamic is illustrated by Figure 2, which depicts the range of staff member demeanor in relation to the range of applicant compliance with expectations of passivity within the perfect victim trope.

FIGURE 2



Additionally, men seeking assistance were sometimes treated with a suspicion that was not extended to most female applicants,

possibly because staff members perceived men as perpetrators rather than victims. Although too few interactions with men were observed to draw conclusions about the intersection of gender and racial and/or ethnic bias against men, the stereotype that men are not legitimate victims in need of protection may be more likely for men of color.[227] For example, a middle aged African American man seeking to file a protection order application at Program B was asked to show identification, and the staff member looked him up on the computer before assisting him, presumably checking to see if an order had been filed against him in the past. No other applicant was observed being asked for identification before filing an application.

More generally, staff members issuing situational sanctions often showed a startling lack of empathy for the circumstances routinely faced by applicants seeking help from the court. For example, an advocate at Program A withdrew emotionally and grew cold and aloof after a young female applicant asked if she could return to court to finish the process the next day because she had to leave to pick up her child from school. The following afternoon would be better, she explained, because she thought she could arrange for childcare. After the applicant left, the advocate said this was a "pet peeve" of hers, and described feeling annoyed with applicants whom she thought did not take the court process seriously enough.[228]

Staff members expressing such views appeared to identify more with the court than with the mostly low-income women coming to the center for help. The tenor of their complaints also suggested that these staff members felt personally unappreciated for their emotional labor. These feelings could have several causes. Similar to the applicants, advocates at these programs were racially diverse, and most were women.[229] However, some were young people who had been to college and were deciding what to do next with their lives or planning to attend graduate school; others were financially able to dedicate themselves to volunteer work. Thus, differences of identity, including the middle class status of some staff members, may have impacted interactions with applicants. On the other hand, some staff members were part-time workers earning just above the minimum wage. Perhaps these staff members felt unappreciated by the program as well as the litigants for their emotional labor. Staff members' attitudes may also reflect the pervasive stereotypes about victims discussed above,

227. *See* MacDowell, *Theorizing from Particularity*, *supra* note 63, at 7 (discussing stereotypes that apply to men of color in protection order hearings).

228. MacDowell, *Bellow Scholar Study, supra* note 125.

229. *Id.* Of approximately nine staff members observed at Program A, and ten at Program B, all were women except one; one staff person was African American, one Asian, three Latino/a, and the rest white. *Id.*

as well as culturally pervasive tropes that characterize the poor as unwilling to help themselves and underserving of assistance.[230]

The point here is not to establish a causal relationship between any single factor and staff member demeanor. Rather, these shifts in demeanor demonstrate the illusory nature of neutrality in self-help services. This lack of neutrality and its potential relationship to bias and stereotype should be of concern regardless of its cause. The lack of neutrality in providing self-help services is also demonstrated by the ways in which staff members shaped protection order applications, which is discussed in the next section. This discussion shows how ceremonial aspects of behavior relate to substantive conduct and material consequences.

B. Shaping the Protection Order Application

1. Excluding, Discouraging, and Withholding

One way that staff members shaped the remedies sought or obtained by applicants was by excluding assistance with certain types of relief, and discouraging applicants who sought disfavored relief. As noted above, advocates at Program A did not prompt applicants on whether they wanted to seek restitution, and actively discouraged an applicant from modifying her application to seek this relief. Staff members also routinely failed to ask applicants if they wanted to seek an order for attorney fees, which were also available through the protection order process. At Program B, where applicants complete the forms themselves, the application asks whether the applicant wants to seek restitution of wages as a result of the abuse, which is the only form of restitution available. However, the application does not mention attorney fees, which are also available, and none of the advocates that I spoke with informed applicants about this relief; rather, advocates chose to withhold this information.

Staff members and administrators voiced various explanations for not assisting with economic relief or fees. For example, when asked about this practice, several staff members associated with Program B expressed concern that if applicants requested attorney

230. *See* Goffman, *supra* note 27, at 473–74 (observing that rules of conduct consist of both obligations and expectations). For a discussion of the pervasiveness of stereotypes about the undeserving poor, including components of race and gender, see Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 245 (2014). For a detailed analysis of the ways in which the organization of work within self-help centers shapes demeanor, see Elizabeth L. MacDowell, *From Victims to Litigants*, 67 HASTINGS L.J. (forthcoming 2016) [hereinafter MacDowell, *From Victims to Litigants*].

fees then judges might encourage adverse parties to seek them as well, and might grant them to the adverse party if an applicant's protection order was denied.[231] Others expressed concern that applicants did not come prepared with supporting documentation required for economic remedies, or that such requests would take up too much time and strain already limited resources. However, the firm or formal demeanor of staff members in response to an applicant's efforts to obtain restitution suggests that such policies resonate with a belief that these efforts are inappropriate for victims to pursue.[232] Moreover, the lack of assistance with these remedies obviously effects the relief requested by applicants coming through these programs.

Self-help staff members sometimes also discouraged would-be applicants from applying for a protection order, thus influencing whether the protection order would be sought at all. For example, a front desk person at Program B was observed stating unequivocally to a would-be applicant, "I can guarantee you are not going to get a [protective order] for something that happened one year ago."[233] In fact, while most staff members expressed the view that stating an opinion on any applicant's case was outside of their job description, staff members frequently did give their opinions on the availability of protection orders in particular cases. Another advocate was observed telling an applicant, "I don't think they will grant the order but I will go ahead and submit the application."[234] Staff members sometimes stated their opinions forcefully, as in the prior examples, but the process of conveying an opinion on the viability of an order was often more subtle.

For example, applicants at Program A were screened using questions about the most recent incidents of abuse. In one such exchange, an applicant reported to the advocate interviewing her that the most recent incident involved her estranged husband standing outside her front door and not saying anything. The incident prior to that involved him refusing to take their young son for a prearranged visitation. The applicant also reported that he was texting her many times every day.

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231. MacDowell, *Bellow Scholar Study, supra* note 125. Some of these individuals were also involved in the statewide process of creating the protection order application. This might also explain why the availability of attorney fees was not indicated on the form. *Id.*

232. *Id.* This issue also arose in the context of requests for child and spousal support, which were available through the protection order process at both locations. While staff members at both programs did ask applicants if they wanted to apply for child or spousal support, they did not assist them with the additional financial disclosure paperwork required for these requests. As a result, applicants seeking child or spousal support routinely had their requests denied or had to return to court again so the matter could be considered after the paperwork was completed and served. *Id.*

233. MacDowell, *Bellow Scholar Study, supra* note 125.

234. *Id.*

In response, the advocate focused on identifying physical violence, repeatedly asking, "There hasn't been any violence? But what about physical violence?"[235] Her tone conveyed that she was dubious about the applicant's claims. While this applicant persevered and obtained assistance, another applicant might have grown discouraged and left.[236] Similarly, an advocate at Program B admitted that she discouraged people with what she perceived as weak facts from filing their applications, because she thought they would have a harder time getting an order in the future if it was denied now, even if a future incident warranted protection. Although she claimed to leave the decision of whether to file up to the applicant, her opinion would certainly be influential to someone unfamiliar with the process.

While providing informed opinion may be valuable to applicants, in these settings staff members' opinions were largely unaccounted for in self-help processes, not informed by established advocacy principles, and shared within an environment that was not focused on the best interests of applicants. Staff members also influenced the application process in ways that were invisible to applicants. In addition to wholesale exclusion of help with certain remedies, staff members withheld suggestions, opinions, and other assistance selectively from applicants they disfavored, while providing others with the substantive assistance characteristic of good-natured/supportive demeanor. Thus, for example, one applicant might receive greater assistance with identifying the relevant facts and including them in his or her application than another, based on criteria that may have nothing to do with the substance of his or her claims. It is probably unrealistic and perhaps undesirable to expect staff members to treat everyone uniformly. However, in the absence of rigorous training and other support, and mechanisms for accountability to the public, self-help center staff members react to an emotionally volatile environment in ways that may negatively impact survivors and limit access to the court.

2. Limiting Narratives

Interactions between self-help staff and applicants also shaped the narratives about abuse that applicants shared with the court in

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235. *Id.*

236. Ultimately, the applicant produced a police report documenting that her ex-husband had raped her two years before. The advocate exclaimed, "*That's* what I'm looking for!" and assisted the applicant in completing her forms. In the course of completing the application the applicant reported recent, persistent cyberharassment and stalking including 20 text messages a day from the adverse party asking to have sex with her. MacDowell, *Bellow Scholar Study, supra* note 125.

ways that might limit access to relief. For example, as illustrated by the story related above, staff members sometimes emphasized the importance of physical abuse in ways that discouraged applicants from revealing or communicating about other types of abuse for which relief was available.

Legal scholars have noted that most domestic violence survivors assume that only physical violence is relevant to their claims for relief.[237] This problem is exacerbated by the use of undefined terms that applicants might understand as referring to physical violence, rather than emotional, economic, or other types of cognizable abuse. In particular, staff members at both programs typically asked applicants to describe "incidents" or "events" of domestic violence, without defining those terms. These terms also suggested discrete events, and were unlikely to elicit information about patterns or other temporal details that might be necessary to contextualize the abuse.

Additionally, both programs encouraged applicants to start with the most recent incident and work their way backwards, focusing on recent events.[238] This may be an efficient and practical way to proceed in many cases. However, as illustrated by the story above, cases involving stalking behavior may be particularly difficult to elicit with a reverse chronology, and focusing on recent events may make it difficult to understand their significance. Excluding further background on the abuse can also negatively impact an applicant's case in family court, for example if she tries to raise earlier incidents of abuse to support a request for custody.[239] Lay advocates in the community served by Program B reported that applicants they accompanied to court were sometimes precluded from putting on evidence about incidents of abuse omitted from their protection order applications, and even if they were allowed to put on the evidence, they seemed to lose credibility with the judge.

Self-help staff also created barriers for applicant narratives about abuse with policies for reporting cases to child protective services. At Program B, advocates routinely reported cases where they believed

237. *See* Stoever, *Freedom from Violence*, *supra* note 65, at 348–49.

238. As recounted previously, staff members at Program B instructed applicants to complete their supporting declarations in this manner. One staff member told an applicant to only describe events that occurred within the last 30 days. Another explained, "two or three months ago, that's not recent. Two or three days ago, that's recent." MacDowell, *Bellow Scholar Study, supra* note 125; *see supra*, Part III.

239. About half the states, including the states where Programs A and B are located, have legal presumptions that a parent found to have committed domestic violence is unfit to be awarded sole or joint custody. *See* NAT'L COUNCIL ON JUVENILE & FAMILY COURT JUDGES, REBUTTABLE PRESUMPTION STATES (2013), http://www.ncjfcj.org/sites/default/files/chart-rebuttble-presumption.pdf [http://perma.cc/2DUN-6V2P] (compiling state statutes for jurisdictions employing such a presumption).

a child was exposed to domestic violence. Advocates claimed that these reports were in response to pressure from judges hearing the protection order cases, who did not want to make the reports themselves. Knowledge of reporting to child protective services might travel through the community and result in self-censorship of details involving children.[240] Additionally, as noted earlier, survivors who could benefit from a protective order might be discouraged from using self-help services and from going to court if they believe they will be reported to child protective services as a result.

These findings comport with Trinch's study showing how narratives of abuse are co-produced in the protection order process by survivors and institutional service providers.[241] Trinch shows how paralegals working with Latina protection order applicants in a district attorney's office constrained survivors' storytelling and reshaped their narratives of abuse into linear witness accounts.[242] Trinch notes that this reshaping made survivors' abuse narratives more palatable to judges, and their protection order applications more likely to be granted.[243] However, the discursive practices of institutional service providers also frustrated abuse survivors' desire to be heard.[244] This study demonstrates how self-help programs can contribute to the contorting and curtailing of survivor accounts. Moreover, these practices negatively impact not only individual applicants but also the greater population of survivors and the community at large. Narratives about abuse in protection order applications and other pleadings are an opportunity to educate courts about domestic violence and to counteract prevailing stereotypes with the truth about survivors' experiences.[245] By contributing to constraints on applicants' stories, self-help staff members also curtailed this opportunity for reform.

CONCLUSION

Protection orders arose from a legal reform movement to address the needs of battered women, and low-income women of color in

240. The possibility of a report was not disclosed to applicants before they received services, which is an additional problem. MacDowell, *Bellow Scholar Study*, *supra* note 125.

241. *See* Trinch, *supra* note 120, at 497; Trinch & Berk-Seligson, *supra* note 121, at 412.

242. Trinch & Berk-Seligson, *supra* note 121, at 412.

243. *Id.* at 410–11.

244. Trinch, *supra* note 120, at 497; *see* SHONNA L. TRINCH, LATINAS' NARRATIVES OF DOMESTIC ABUSE: DISCREPANT VERSIONS OF VIOLENCE 57 (2003) (observing that the protection order system "is designed not to be receptive to change, but rather to alter those narrative representations that challenge it").

245. *See* Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 123 (2008) (explaining why advocates must find ways to create space for new narratives that challenge stereotypes).

particular.[246] While applicants face structural barriers that raise numerous concerns about access to justice, self-help may be part of the problem rather than the solution.[247] As demonstrated above, the absence of advocacy does not mean the absence of influence over litigants. The self-help staff members observed in this study regulated the conduct of protection order applicants in subtle and not-so-subtle ways that echo stereotypes about victims and perpetrators, and limit access to some of the remedies considered most important by feminist legal activists and reformers. These results suggest the need for a coherent theory and practice of advocacy in self-help services, and methods of accountability that address the potential for intersectional bias.[248] Self-help services should be centered on the needs of applicants who are seeking relief from abuse and should help address rather than amplify structural and systemic barriers to relief.[249]

This study also demonstrates the need for a broader research agenda about access to justice. This agenda should include studying how partnerships between advocacy organizations and the state impact system advocacy as well as direct service delivery, and how both are shaped by the organization of work within self-help centers.[250] The data from this study suggest that self-help programs may create new constraints on the supportive functions of traditional lay advocacy. The demeanor of staff members is not only a set of behaviors manifested in response to applicants, but is also shaped by the institutional settings within which staff members work.[251] The regulatory function of demeanor helped staff members to manage difficult encounters for which they were often ill prepared; their demeanor was also constrained by the context in which it arose.[252] Accordingly, in a forthcoming article I analyze how the organization of work within Programs A and B structured the expression of demeanor and delivery of services, and assess the relationship between organizational and system dynamics, and self-help.[253] Research should also

246. *See* Goldfarb, *supra* note 11, at 1488.

247. MacDowell, *Reimagining Access to Justice*, *supra* note 67, at 478.

248. *See* MacDowell, *Improving Civil Legal Assistance*, *supra* note 44 (arguing for the importance of training civil court personnel about implicit bias); *see also* MacDowell, *Reimagining Access to Justice*, *supra* note 67, at 510 (arguing for a social justice advocacy approach to legal services in family courts).

249. *See* Wan, *supra* note 159, at 630 (pointing out that the process of obtaining a protective order should be empowering rather than demeaning).

250. *See* Jill Adams, *The Civil Restraining Order Application Process: Textually Mediated Institutional Case Management*, 10 ETHNOGRAPHY 185, 202–03 (2009) (describing how the division of labor in a protection order process impacts how staff treat applicants).

251. *See id.* at 207–08.

252. *See* Wan, *supra* note 159, at 626–27 (arguing that the conditions in which services are rendered should be considered).

253. MacDowell, *From Victims to Litigants*, *supra* note 230.

be conducted in other jurisdictions to learn if similar problems exist and under what conditions.

Additionally, the findings above show that research about case outcomes should examine whether applicants are applying for all of the relief for which they are eligible, and if they are getting help with all of the paperwork required for that relief. Researchers should also examine the interplay of self-help and the larger web of legal and domestic violence services. The programs in this study did little to mitigate the exposure of low-income applicants to potentially punitive state processes, such as child welfare, nor to facilitate access to supportive services like shelters or legal aid. Indeed, one of these programs may exacerbate some applicants' exposure to unwanted state interventions by reporting them to child protective services. Researchers should examine if other programs share these problems and how they can be addressed.

Finally, access to justice researchers should move beyond customer satisfaction to study how legal consciousness is constructed within the institutional and social relationships of which self-help is a part.[254] The attitudes, actions, and experiences of litigants using self-help services must be studied in context, and self-help critically assessed from the position of those vulnerable to state power. Only then can researchers fully ascertain the politics of self-help, and how self-help services might be reformed to fit into the broader goals of a social justice agenda for low-income people trying to access the courts and end abuse.

254. *See* Silbey, *supra* note 124, at 338. Interviews with applicants are planned as part of the next stage of this study.