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From Victims to Litigants

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From Victims to Litigants

ELIZABETH L. MACDOWELL*

This Article reports findings from an ethnographic study of self-help programs in two western states. The study investigated how self-help assistance provided by partnerships between courts and nongovernmental organizations implicates advocacy and access to justice for domestic violence survivors. The primary finding is that self-help programs may inadvertently work to curtail, rather than expand, advocacy resources. Furthermore, problems identified with self-help service delivery and negative impacts on advocacy systems may be explained by the structure of work within self-help programs and the nature of partnerships to provide self-help services. The Author uncovers previously unseen impacts of self-help programs on survivors and on the resources to help them. She concludes with a discussion of the implications for future research directions and describes what can be done now to improve self-help services for survivors.

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INTRODUCTION

This Article examines how the delivery of self-help legal services is shaped by structural factors within self-help programs, including partnerships between courts and nongovernmental organizations (“NGOs”), and the implications for advocacy on behalf of abuse survivors.¹ Protection orders are a primary legal remedy for domestic

1. For the purposes of this Article, the term self-help refers to legal services that do not involve or result in an attorney-client relationship. Under this definition, self-help services may be provided or supervised by attorneys or nonattorneys, and include a range of assistance such as electronic and software-based services, and one-on-one assistance with completing and filing forms. See JOHN M. GREACEN, RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE “STATE OF THE ART” 3 (2011) (summarizing information resources provided to self-represented litigants by courts); *Self-Representation Resource Guide*, NAT’L CTR. FOR ST. CTS., <http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/Resource-Guide.aspx> (last visited May 29, 2016) (listing examples of self-help resources offered by courts); see also 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 that overlap with self-help services as defined here).

violence,² and self-help programs often serve the most vulnerable of survivors.³ As partnerships between courts and NGOs to provide assistance to unrepresented litigants expand, these services for protection order applicants increase as well.⁴ Yet, little is known about the efficacy of self-help services, or their impact on advocacy-based services or systemic advocacy.⁵ This Article examines data from an ethnographic study of domestic violence self-help programs in two western states for evidence of how self-help assistance models implicate advocacy for survivors. In particular, it explains how preliminary findings pointing toward specific advocacy problems may be explained by the structure of work within self-help programs and the nature of partnerships between NGOs and courts.

I have previously reported findings about interactions between self-help program staff members and litigants, analyzed through the lens of

2. 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, 1503 n.103 (2008) (noting that applying for a protection order is second only to calling 911); see also 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 survivors seek civil protection orders more often than criminal remedies); PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, at iii, 52 (2000) (reporting that approximately seventeen percent of female survivors of domestic violence obtain civil protection orders each year).

3. See *infra* Part II (reporting data from the programs in this study); see also ADMIN. OFFICE OF THE COURTS, EQUAL ACCESS FUND: A REPORT TO THE CALIFORNIA LEGISLATURE 54 (2005) (reporting that a study of self-help programs provided through court-community partnerships in California found that almost two-thirds (63%) of partnership project customers are women; at least 58% were minorities, with Hispanic individuals comprising the largest percentage (39%)); OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES 1, 3–4 (2005) (reporting findings from a survey of unrepresented family court litigants in New York City showing 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 less than \$20,000 per year); JOHN M. GREACEN, SELF-REPRESENTED LITIGANTS AND COURT AND LEGAL SERVICES RESPONSES TO THEIR NEEDS: WHAT WE KNOW 3–6 (2002) (reporting studies of self-help service populations). For a discussion of the particular vulnerabilities of domestic violence survivors using self-help programs, see Elizabeth L. MacDowell, *Domestic Violence and the Politics of Self-Help*, 22 WM. & MARY J. WOMEN & L. 203, 207–09 (2016).

4. On the expansion of self-help services, see JUDICIAL COUNCIL OF CAL., TASK FORCE ON SELF-REPRESENTED LITIGANTS, STATEWIDE ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS I (2003) (“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. OFFICE OF THE COURTS, CALIFORNIA COURTS SELF-HELP CENTERS: REPORT TO THE CALIFORNIA LEGISLATURE 1–2 (2007) (reporting budget allocations for self-help programs are being increased). *But see* Tim Cory, *California Courts’ New Funding Formula: The Workload Allocation Funding Methodology*, U.S. COMMON SENSE (Sept. 5, 2014), <http://cacs.org/research/california-courts-wafm-assessment/> (reporting cuts to civil self-help services).

5. See MacDowell, *supra* note 3, at 226–28 (discussing the three existing studies of self-help services in the United States).

demeanor.⁶ Sociologists have used the concept of demeanor to analyze how individuals including judges, clerks, and advocates exert authority in interactions with abuse survivors and perpetrators.⁷ In my article *Domestic Violence and the Politics of Self-Help*, I modify and expand on prior demeanor typologies to map the ways in which self-help staff members regulate applicants' conduct and shape the protection order process.⁸ I show that the regulatory function of demeanor at the programs studied here mirror stereotypes and norms that victims should be passive rather than empowered self-advocates.⁹ I also show how staff members limit relief available to survivors by excluding or refusing assistance with some remedies, discouraging applicants from seeking disfavored relief or from filing an application, and withholding information and assistance selectively, depending on how they responded to individual litigants.¹⁰

This Article turns from documenting the operation of staff member demeanor to identifying its organizational and structural building blocks. The primary finding is that self-help programs may inadvertently work to curtail, rather than expand, some advocacy resources for domestic violence survivors in the community, even as they provide needed assistance and broaden the criteria for who is eligible to receive help.¹¹ Services at the programs studied are focused on completing and processing forms, rather than applicants' broader needs or systemic reform, and are not coordinated with other services to make the system more effective. Moreover, even within their narrow service orientation, the programs provided incomplete and problematic assistance. Additionally, the data show that participation in self-help partnerships by NGOs can present new challenges to empowerment-based advocacy models, which focus on helping survivors meet self-defined needs.¹² These findings both comport with and expand on previous research showing how the imposition of bureaucracy and hierarchy, and the alliance with institutional rather than social change goals, undermines advocacy for abuse survivors.¹³

6. *Id.* at 232–44.

7. JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES 92–111, 133 (1999) (reporting findings of a study of judicial demeanor toward protection order applicants and defendants); Angela Moe Wan, *Battered Women in the Restraining Order Process: Observations on a Court Advocacy Program*, 6 VIOLENCE AGAINST WOMEN 606, 621 (2000) (applying Ptacek's typology to judges and other court personnel and advocates); 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).

8. MacDowell, *supra* note 3, at 232–44.

9. *Id.* at 244–52.

10. *Id.* at 248–52.

11. See *infra* Part II (discussing findings).

12. See *infra* Part II (discussing findings).

13. See *infra* Part I (discussing studies of lay advocacy for survivors).

The findings also demonstrate the importance of a broad approach to studying access to justice that moves beyond individual cases and attitudes to examine institutions and systems.

The Article proceeds as follows: Part I lays out the conceptual and theoretical frameworks informing the analysis, including the role of demeanor in legal systems as a regulatory mechanism, and its effects on survivors accessing the courts. It then explains the role of advocacy in helping survivors access protection orders, and the challenges posed to empowerment-based approaches by professionalization and collaboration with the state. This is followed by a discussion of trends in poverty law practice that further limit advocacy for abuse survivors. This includes perspectives within poverty law practice that do not view family law as amenable to structural reform goals, as well as legal aid's turn from structural reform to direct services and self-help. Part II describes the current study, including relevant background information on Programs A and B, an overview of how the programs assist applicants with the protection order process, and the methodology used for the study. Part III discusses the findings. This Part shows how the organization of work within the self-help programs, and the larger organizational structures of which they are a part, shapes the delivery of services and impacts advocacy. Part IV then discusses implications of the findings for researchers, reformers, and service providers. This Part provides further analysis of the systemic impacts of the self-help programs in this study. It concludes with suggestions for future research on the systemic impacts of self-help interventions, and suggestions for reformers and service providers on ways to improve self-help services now.

I. CONCEPTUAL AND THEORETICAL FRAMEWORKS

A. Demeanor in Legal Systems

Demeanor is an analytical construct that differentiates the expressive aspect of interactions from their material function: “how” a thing is done, as opposed to “what” is done.¹⁴ Sociologist Erving Goffman refers to the first as ceremonial conduct and the second as substantive conduct.¹⁵ According to Goffman, demeanor is expressed through the dimensions of language (the words chosen for an exchange), spatial relationships (the distance maintained between persons), and within the performance of tasks.¹⁶ For example, a judge may grant an order in such a way as to underscore or undermine its legitimacy. Similarly, a clerk may handle a

14. PTACEK, *supra* note 7, at 93–95 (relating this concept to judicial actions in protection order hearings).

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

16. *Id.* at 477.

phone call abruptly or solicitously. Issuing the order and answering the phone are examples of substantive conduct, having meaning regardless of how they are done. The manner, tone, and words used in completing the acts constitute demeanor.¹⁷ Along with other social rules that govern interactions, such as deference, demeanor operates at an unconscious level most of the time, perhaps surfacing only when expectations about another's behavior are not met.¹⁸ Yet, the performance of these rules helps to define and construct individuals and groups through social interaction, and the violation of rules of conduct can lead to social sanctions.¹⁹ The study of demeanor can lend insight into the dynamics of power and other aspects of social relationships within institutions, including its regulatory function within sociolegal settings.

For example, in a study of criminal court judges, Maureen Mileski found that judges varied their demeanor according to the seriousness of the crime.²⁰ In interactions with defendants who were convicted of serious crimes, judges usually maintained a detached and neutral affect.²¹ However, judges issued what Mileski called "situational sanctions" (such as reprimands in open court) to punish defendants who had committed lesser crimes, disrespected staff, or disrupted the courtroom.²² Mileski observed that this shift in a judge's demeanor served a leveling function, evening out the expression of moral indignation between defendants receiving relatively light sentences and those convicted of crimes carrying more onerous penalties.²³

Other studies of judicial demeanor demonstrate how demeanor can be used to reward as well as punish. Drawing on Mileski's work, James Ptacek analyzed the demeanor of judges in civil protection order hearings using a typology of five demeanor categories: good-natured, bureaucratic, condescending, firm or formal, and harsh.²⁴ Ptacek found that judges most commonly treated applicants in a good-natured manner (for example, by showing interest and concern and making sure they understood the legal process and their options) and rarely spoke to them harshly or condescendingly.²⁵ In contrast, the most commonly observed demeanor toward defendants was firm or formal demeanor, which underscored the judge's disapproval of the abuse and her willingness to

17. See PTACEK, *supra* note 7, at 93–94 (discussing a similar example).

18. See Goffman, *supra* note 15, at 474 (explaining that demeanor is often expressed "unthinkingly").

19. See *id.* at 475 (arguing that rules of conduct should be analyzed as social action).

20. Mileski, *supra* note 7, at 523–26.

21. *Id.* at 524 (reporting that most judges behaved in a bureaucratic manner, remaining detached and affectively neutral).

22. *Id.* at 523.

23. See *id.* at 525–26.

24. PTACEK, *supra* note 7, at 98.

25. *Id.* at 100–01, 103–04.

sanction abusers.²⁶ Conversely, judges who treated applicants with condescension or spoke sharply to them tended to be solicitous of the defendant.²⁷ Because the judge's demeanor toward each party took place in a courtroom where both parties were present, Ptacek observes that how judges treated abusers was a dimension of their demeanor toward battered women and vice versa.²⁸

Subsequently, researcher Angela Moe Wan applied Ptacek's typology to analyze the demeanor of participants in the protection order process, with similar findings for judges and for advocates helping women with applications.²⁹ Wan found advocates sometimes exhibited bureaucratic, or firm or formal demeanor with clients, despite the advocates' ostensibly supportive purpose.³⁰ In keeping with the regulatory function of demeanor, Wan found that advocates exhibited more negative forms of demeanor toward applicants who were more troublesome (for example, those questioning advocates' advice).³¹

While lacking the substantive or legal authority of judges, the demeanor of self-help staff has particular significance for litigants due to their location in the courthouse and their role in providing access to the judge.³² In the present study, I modified and expanded Ptacek's typology to create a typology of seven demeanor categories: good-natured/supportive, token supportive, bureaucratic, apathetic, firm or

26. *Id.* at 105.

27. *Id.* at 109. Notably, these judges were in a jurisdiction that had been subject to intensive media scrutiny for bad judicial behavior, and thus may not be representative of judges in protection order cases. *Id.* at 50–68. For studies showing problems survivors often face in family courts, see, for example, 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) (summarizing results from gender bias task force studies conducted across the United States); see also DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 241 (1989); Laura L. Crites, *Wife Abuse: The Judicial Record*, in 11 WOMEN COURTS AND EQUALITY 41–42 (Laura L. Crites & Winifred L. Hepperle eds., 1987) (arguing family court judges do not understand the dynamics of domestic violence, blame women for being victimized, and prioritize men's privacy over women's safety); Elizabeth L. MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. GENDER, RACE & JUST. 531, 539 nn.28–29 (2013) (summarizing studies of outcomes in custody and visitation cases involving domestic violence claims); Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 361 (2011) (describing victim-blaming by family court judges).

28. PTACEK, *supra* note 7, at 108.

29. See generally Wan, *supra* note 7, at 621–22 (finding that the last three demeanor categories used by Ptacek tended to co-occur, and so combines condescending, firm or formal, and harsh demeanor into a single category).

30. *Id.* at 620–21.

31. *Id.* at 624–25.

32. See *id.* at 626 (observing that bureaucratic treatment by advocates may discourage survivors from seeking help through the court); see also 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) (describing how survivors' willingness to use the legal system is formed through interactions with courts).

formal, harsh, and patronizing/condescending.³³ These are briefly summarized in Table 1.

TABLE 1: Demeanor Toward Litigant

Demeanor Types	Attributes
Good-natured/supportive	Provides emotional and material support
Token supportive	Personable but superficial
Bureaucratic	Generic, perfunctory responses
Apathetic	Seemingly personal disinterest in helping
Firm or formal	Emphasizes a superior social position
Harsh	Abrasive, intimidating, and/or punishing
Patronizing/condescending	Trivializes concerns, assumes superiority

Application and analysis of these categories demonstrated the regulatory function of demeanor in self-help settings serving abuse survivors. Not only was a range of demeanor present, as in Ptacek and Wan's studies, and sometimes appearing concurrently, as in Wan's study, but demeanor also shifted or evolved within the span of a single interaction.³⁴ Specifically, staff members most commonly treated applicants in a bureaucratic, routine manner that failed to address their individual needs and concerns.³⁵ Applicants were also sometimes treated in a patronizing or condescending manner;³⁶ on the other hand, sometimes staff members were apathetic and simply refused to help.³⁷ However, staff members responded to applicants who self-advocated (for instance, by persisting in seeking disfavored remedies or resisting staff members' advice) with increasingly more negative demeanor types, such as firm or formal or (albeit infrequently) harsh demeanor.³⁸ In contrast, applicants who were more passive or compliant were treated with more pleasant demeanors, such as good-natured/supportive or token

33. MacDowell, *supra* note 3, at 232-44.

34. *Id.* at 244.

35. *Id.* at 236-38.

36. *Id.* at 242-44.

37. *Id.* at 238-39. Even good-natured/supportive staff members offered less emotional support as well as substantive assistance than was observed by good-natured/supportive individuals in Ptacek and Wan's studies. *Id.* at 236.

38. *Id.* at 239-42.

supportive demeanor.³⁹ Thus, ironically, staff members punished those applicants who were most actively engaged in helping themselves. These responses also correspond with the stereotype of the “perfect victim,” who is characterized as passive and not self-asserting.⁴⁰ In this way, “staff members reinforced—whether intentionally or not—a dominant trope about appropriate behavior for victims under the guise of neutrality.”⁴¹

Staff members also shaped protection order applications in problematic ways by discouraging or withholding assistance from some applicants, and—more routinely—by excluding some types of relief, and by limiting applicant narratives. In particular, staff members excluded assistance with available economic relief by not mentioning the relief was available,⁴² discouraging applicants who requested disfavored relief from applying, and not offering assistance with the forms necessary to obtain the relief, even when its availability was disclosed.⁴³ Staff members also routinized the drafting of supporting affidavits in ways that limited narratives of abuse to recent physical abuse that could be easily reported in a chronological fashion.⁴⁴ The latter finding is consistent with linguist Shonna Trinch’s study of paralegals in a prosecutor’s office assisting Latina survivors with protection order applications.⁴⁵ Trinch found that the paralegals helped to transform survivor narratives into the linear form of narrative preferred by the court, but in doing so failed to provide the supportive function sought by survivors, who wanted to be heard.⁴⁶ Thus, while providing an essential function—helping survivors access protection order remedies—the tailoring of narratives for the court also comes with costs for survivors. Survivors’ claims may be limited or discouraged altogether, and important contextual facts regarding nonphysical abuse may be omitted from their declarations; even those who obtain orders may have their goals in taking legal action only

39. *Id.* at 243.

40. 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).

41. MacDowell, *supra* note 3, at 246.

42. For example, neither program informed applicants about the availability of restitution. *Id.* at 248. Additionally, at Program B, applicants were not informed about the availability of attorney fees. *Id.* at 248–49.

43. This was the case with child and spousal support at both locations. As a result, judges either denied the request or continued the case so that the necessary paperwork could be completed and served. Continuance of the case would not only delay the relief, but might also result in the case being dropped due to the difficulty many applicants face coming to court.

44. See *id.* at 250–52 (describing how staff members limited applicants’ narratives).

45. See 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); Shonna L. Trinch & Susan Berk-Seligson, *Narrating in Protective Order Interviews: A Source of Interactional Trouble*, 31 LANGUAGE SOC’Y 383, 390, 397 (2002).

46. See Trinch & Berk-Seligson, *supra* note 45, at 410–12.

partially fulfilled.⁴⁷ It also has costs for the system, in that the conventional narrative is reinforced by the exclusion of alternative or disfavored narratives.⁴⁸ These findings also raise the question: what is the relationship between self-help (and other forms of institutional or quasi-institutional assistance for survivors) and advocacy-based models?

B. ADVOCACY IN LEGAL SYSTEMS

1. *Lay Advocacy*

Lay advocates have traditionally played an important role in providing services to survivors, including helping them access legal systems. The early battered women's movement was a survivor-centered effort, both in that it focused on the needs of survivors and that many within the movement were themselves former battered women.⁴⁹ The idea was to empower victims to become advocates and movement leaders.⁵⁰ Client advocacy in this context was focused on supporting and empowering women to gain greater control of their lives.⁵¹ Accordingly, advocates provided their clients with emotional support and information about options and resources, and represented their interests within state institutions.⁵² In addition, advocates worked on behalf of battered women as a group for changes in institutional practices as well as law and policy.⁵³ Andrea Nichols identifies several key features of this early advocacy. First, advocates' understandings of domestic violence and primary practices in response were guided by feminist meanings derived from the feminist

47. The latter can also lead to denial of subsequent claims, for example if the applicant tries to plead omitted facts in a later family court case. See MacDowell, *supra* note 3, at 251.

48. 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 the importance of presenting new narratives that challenge norms and stereotypes about domestic violence to judges).

49. Ellen Pence, *Advocacy on Behalf of Battered Women*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 329, 330 (Claire M. Renzetti et al. eds., 2d ed. 2001).

50. See SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 66 (1982) (describing the process of politicization at one early shelter).

51. 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, 179 (2013) (describing how battered women's advocates encouraged survivor autonomy); see also WASH. ADMIN. CODE § 388-61A-0145 (2016) ("Advocacy-based counseling means the involvement of a client with an advocate counselor . . . with the primary focus on safety planning and on empowerment of the client through reinforcing the client's autonomy and self determination."); Arlene N. Weisz, *Legal Advocacy for Domestic Violence Survivors: The Power of an Informative Relationship*, 80 FAMILIES SOC'Y 138, 145-46 (1999) (describing the role of advocates in empowering survivors by providing both empathy and vital information).

52. See Pence, *supra* note 49, at 329 (discussing individual case advocacy as opposed to institutional or system advocacy).

53. See Nichols, *supra* note 51, at 181.

movement of the 1960s.⁵⁴ Second, advocates utilized survivor-defined, intersectional, and social change practices.⁵⁵

Survivor defined practices were specifically intended to avoid the bureaucratic and hierarchical structures associated with patriarchy, which was at the core of feminist understandings of the problem of male violence against women.⁵⁶ These included collaborative, grassroots approaches designed to facilitate goal setting and decisionmaking by (rather than for) survivors, and ultimately enable their social and economic empowerment.⁵⁷ Intersectional practices, developed and promoted by women of color, are those that take into account the multiple identities (such as race, class, and sexuality) in addition to gender that impact the experience of domestic violence.⁵⁸ While often neglected by white, middle-class reformers and activists who focused on gender alone, these practices nonetheless constituted an essential contribution to antisubordination work.⁵⁹ Social change practices sought to change the underlying conditions of women's subordination in society and eliminate violence against women.⁶⁰

Advocacy practices that respect and support the decisionmaking of survivors are associated with better outcomes for women—including decreasing the likelihood of repeated violence, and helping them to develop their sense of self-efficacy and their identity as legal subjects.⁶¹ However, research suggests that only those advocates who identify themselves as feminists also articulate intersectional and social change practice goals.⁶² Others take a narrower view, albeit focusing on empowerment of survivors. Perhaps reflecting this trend, the National Organization of Victim's Assistance ("NOVA") defines advocacy work minimally as "encouraging a victim to speak for herself or providing her with a voice if she is unable to speak."⁶³

Numerous factors can interfere with the advocate's role however, even within this narrower definition. In particular, researchers document

54. *Id.* at 178. Note that this does not mean that all advocates self-identified as feminists. According to most accounts, there was significant ideological diversity in the movement (including among feminists). See SCHECHTER, *supra* note 50, at 43–52; Pence, *supra* note 49, at 332.

55. Nichols, *supra* note 51, at 178.

56. *Id.* at 178–79.

57. *Id.* at 179.

58. *Id.* at 180–81; see also SCHECHTER, *supra* note 50, at 48–49 (discussing the influence of black and third world feminists on the battered women's movement); Pence, *supra* note 49, at 332 (discussing perspectives of women of color in the early movement).

59. Nichols, *supra* note 51, at 180.

60. *Id.* at 181.

61. See *id.* at 179; see also PTACEK, *supra* note 7, at 177 (describing the positive impact of advocates on survivors' experiences in court).

62. Nichols, *supra* note 51, at 182–83 (citing studies); *id.* at 191–92 (describing findings).

63. Trinch, *supra* note 45, at 476 (citing MARLENE A. YOUNG, VICTIM ASSISTANCE: FRONTIERS AND FUNDAMENTALS 28 (1993)).

challenges to advocacy that result from professionalization and institutionalization of advocacy functions, including the imposition of hierarchical and bureaucratic structures and values that disconnect advocates from clients and from larger reform goals.⁶⁴ In these contexts, professional or system goals and objectives overtake client-centered ones.⁶⁵ Even within nongovernmental organizations, advocacy is impacted by case-driven approaches and professional goals and objectives that are not derived from clients' self-identified needs.⁶⁶ Further, due to professionalization, survivors have limited pathways to become advocates, and NGOs' objectives are unlikely to include organizing and other social change work that can include survivors.⁶⁷

Another challenge for advocates working within institutions is their dual role as gatekeepers. Trinch notes two gatekeeping tasks that paralegals helping protection order applicants in the prosecutor's office face:

First, protective order interviewers need to determine whether clients are eligible for the order, and second, they need to indicate to clients that there are very specific ways that legal complaints must be couched. In other words, interviewers must signal to clients that their lay norms and ways of narrating abuse are not, in fact, what the court wants to hear.⁶⁸

For system advocates and others working in contexts where they perform only or primarily as gatekeepers, this function arguably subsumes the advocacy function completely.

2. *Legal Aid*

Working in collaboration with lay advocates, legal aid attorneys have also played an important role in advocacy for survivors, including through law reform. One such effort was the coalition of legal aid

64. See, e.g., Nichols, *supra* note 51, at 182 (discussing the "growing body of research outlines challenges of professionalization" for feminist advocacy strategies); *id.* at 193–94 (discussing the relationship between feminist advocacy and organizational practices); Pence, *supra* note 49, at 339 (discussing the impact of professionalization on advocates' attitudes toward and relationships with survivors).

65. See SCHECHTER, *supra* note 50, at 243 (describing how "the goal of sustaining a vision of women's liberation and building a political movement was lost in the struggle to start, fund, manage, legitimate, and maintain programs for battered women"); see also 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.").

66. See BUMILLER, *supra* note 65, at 70 (discussing the negative impacts of professional case management on abuse survivors).

67. See Pence, *supra* note 49, at 340–41 (arguing for advocates to return to the inclusion of survivors in decisionmaking and to community organizing).

68. Trinch, *supra* note 45, at 477.

attorneys and advocates who helped draft and pass the nation's first protection order statute in Pennsylvania.⁶⁹ Within a few years, protection order legislation passed in every state.⁷⁰ Although the breadth of legislation varies among the states, the goal was to expand and improve upon existing injunctive relief, available only in divorce, by providing expedited access to economic remedies for both married and unmarried survivors as well as orders that the adverse party stay away from the applicant and cease abusive conduct.⁷¹ Economic orders typically include orders for child support, spousal support, and restitution.⁷² Orders for attorney's fees and the exclusive use of property may also be available.⁷³ Importantly, although violation of a protection order is a crime in every state, protection orders were intended to provide survivors with an alternative to the criminal legal system, and to be enforceable through the civil contempt process.⁷⁴ These goals specifically reflected the input of legal aid and other coalition members who represented the interests of low-income women of color, who sought alternatives to criminal legal responses to domestic violence.⁷⁵

As with lay advocates, however, the role of legal aid in law reform is compromised by structural developments, as well as by countervailing or conflicting values.⁷⁶ Chief among the former are drops in funding, combined with restrictions on activities for legal aid organizations funded through the federal Legal Services Corporation ("LSC").⁷⁷ Among other

69. See 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 SCHECHTER, *supra* note 50, at 162-65 (describing early civil legal reforms for battered women); Elizabeth L. MacDowell, *VAWA @ 20: Improving Civil Legal Assistance for Ending Gender Violence*, CUNY L. REV. FOOTNOTE F. (Nov. 21, 2014) (describing the background of protection order legislation).

70. See 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, 910-1006 (1993); *Domestic Violence: Protective Orders and the Role of Police Enforcement*, ASSET (ACLU/Women's Rights Project, New York, N.Y.), June 1, 2007, at 1 (citing NAT'L NETWORK TO END DOMESTIC VIOLENCE, STATE PROTECTION ORDER LAWS (2005)).

71. Interview with Barbara Hart, Dir. of Strategic Justice Initiatives and Dir. of Law & Policy, Violence Against Women Initiatives, Muskie School of Public Service, Cutler Institute for Health & Soc. Policy, Univ. of S. Me. (Nov. 21, 2013) (notes on file with author) (describing motives for protection order initiatives brought by legal aid attorneys and activists).

72. Klein & Orloff, *supra* note 70, at 996-97.

73. *Id.* at 1001, 1004.

74. Interview with Barbara Hart, *supra* note 71; see also SCHECHTER, *supra* note 50, at 163.

75. Interview with Barbara Hart, *supra* note 71; see also Pence, *supra* note 49, at 334 (describing why activists were reluctant to focus on criminal justice remedies).

76. See Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975-2004*, 84 N.C. L. REV. 1591, 1618 (2006) (reporting that the majority of publically funded law firms are focused on individual services rather than law reform).

77. See REBEKAH DILLER & EMILY SAVNER, BRENNAN CTR. FOR JUSTICE, A CALL TO END FEDERAL RESTRICTIONS ON LEGAL AID FOR THE POOR 3-4 (2009) (describing efforts by conservatives to dismantle

limitations, LSC funded programs are prohibited from engaging in lobbying or other legislative advocacy with government officials.⁷⁸ Therefore, under the current federal regime, legal aid programs would be unable to take an affirmative role in developing legislation like the original protection order statute. Additional restrictions ban the use of LSC or private funds for organizing activities, such as those undertaken by grassroots coalitions that helped to pass early domestic violence reforms.⁷⁹ These structural developments support a more service-oriented role for legal aid, as opposed to a reform-oriented one. However, they do not fully explain the shift away from law reform.

Legal aid programs may still engage in many reform activities, despite restrictions. They may use non-LSC funds to “respond to a request from a legislator or other government official to testify or give information, analysis, or comments on a bill.”⁸⁰ They may also communicate with the public, their clients, and the media about pending bills or regulations, and use the litigation process to challenge existing legislation or rules.⁸¹ Additionally, public funds (for example, from IOLTA accounts) can be used for organizing activities, and the rules do not prohibit using LSC funds to provide legal information and advice to other organizations that have a reform agenda.⁸² Collaboration and partnership with non-LSC organizations is also permissible, so long as the program avoids LSC-restricted activities.⁸³ Indeed, performance standards introduced in 2007 encourage work resulting in systemic benefits for low-income communities, not just individual clients.⁸⁴ As a result, some have argued that the shift by legal aid programs to a narrow, legal services approach is more a crisis of will than a result of federal restrictions.⁸⁵

the legal services program); Deborah J. Cantrell, *A Short History of Poverty Lawyers in the United States*, 5 LOY. J. PUB. INT. L. 11, 29–31 (2003) (describing federal cutbacks to legal aid).

78. See DILLER & SAVNER, *supra* note 77, at 5–15 (describing restrictions imposed on LSC funded programs); Alan W. Houseman & Linda E. Perle, *What You May and May Not Do Under the Legal Services Corporation Restrictions*, in NATIONAL CENTER ON POVERTY LAW, POVERTY LAW MANUAL FOR THE NEW LAWYER (2002).

79. Houseman & Perle, *supra* note 78.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*; see also Legal Servs. Corp., Advisory Opinion AO-2015-003 on D.C. Housing-Initiative Coordinator (Nov. 9, 2015) (advising how an LSC-funded entity could employ a coordinator for a collaboration with non-LSC entities who engaged in LSC-restricted activities such as lobbying).

84. Gary F. Smith, *Poverty Warriors: A Historical Perspective on the Mission of Legal Services*, 45 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 34, 39 (2011).

85. *Id.* (arguing that legal aid stopped focusing on antipoverty work before federal restrictions were imposed); see also Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474, 577 (1985).

There is also a question of what counts as law reform. As described by Peter Margulies, “commentators [on poverty law practice] typically have linked family law practice with the stereotype of service work as routine and apolitical.”⁸⁶ In particular, engagement with family law by poverty lawyers has been critiqued “because of its supposed tendency to produce ‘intraclass transfer of resources’ from poor men to poor women.”⁸⁷ Such work is viewed as antithetical to the mission of reformers seeking to restructure power relations between classes and eliminate poverty.⁸⁸ Margulies advocates for the view that domestic violence cases challenge patriarchy, and are therefore political.⁸⁹ However, “a traditional concern among poverty lawyers is that family law does not lend itself to an impact case agenda. This view holds that such individual service work is not merely apolitical, but is also counterproductive, draining resources away from impact work.”⁹⁰ As a result, while legal aid programs perform a lot of family law work, this engagement may not be associated with law reform goals, including in cases involving domestic violence, and even for those legal aid programs that engage in law reform activities in other practice areas.⁹¹

These attitudes and trends in poverty law practice, along with the changes in advocacy models for survivors discussed above, are evident in the histories and practices of the programs in this study. The next Part provides information about the study, including a description of each program partnership, and an overview of the application process at each location. A brief explanation of the methodology used in the study is also provided.

II. THIS STUDY

A. THE PROGRAMS

This study was conducted in two western states at self-help programs that I will refer to as Program A and Program B.⁹² Both programs operate as partnerships between county courts and NGOs, and

86. Peter Margulies, *Political Lawyering, One Person at a Time: The Challenge of Legal Work Against Domestic Violence for the Impact Litigation/Client Service Debate*, 3 MICH. J. GENDER & L. 493, 509 (1996).

87. *Id.* (quoting Abel, *supra* note 85, at 609).

88. *See* Smith, *supra* note 84, at 36 (“The resolution of these individual demands for personal service, either singly or in the aggregate, has no necessary correlation whatsoever to the causes or conditions of poverty.”).

89. *See* Margulies, *supra* note 86, at 511–12.

90. *Id.* at 509.

91. *See infra* Part IV.B (discussing views about family law held by leadership at the LSC-funded program partner in this study).

92. The programs and persons who participated in this study are not identified in order to maintain their confidentiality.

are located in courthouses serving metropolitan areas. Both programs are utilized primarily by women of color.⁹³ Available data shows that most litigants had low educational attainment and spoke a language other than English as their primary language.⁹⁴

Program A consists of several self-help program locations operated as partnerships between the county and a legal aid organization (“LAO”). The county provides space and equipment for the program, and the LAO provides staff and manages program operations. The LAO previously provided self-help services in all but one of the current program locations using a limited scope representation model staffed by volunteer attorneys, and supplemented with staff and pro bono representation at hearings. These ancillary programs have largely been disbanded in recent years due to decreases in grant funding and layoffs of staff attorneys. Additionally, one of the program locations was previously operated by a shelter organization, and volunteers from the shelter continue to work as unpaid staff under the current model. At other locations, volunteers supplement paid interns and a full-time program director, who oversees and manages the program. This program serves more than 4000 applicants annually.⁹⁵

Program B provides self-help services at a single location. The program is run as a partnership between the county and a nonlegal domestic violence services organization (“DVSO”). In addition to providing space and equipment for the program, the county funds eight staff positions, including a director, four other full-time employees, and three part-time staff members. The DVSO funds two additional full-time staff positions.⁹⁶ This program started out run solely by the DVSO, using space provided by the court. The county stepped in with funds for a staff member and took over the program. The DVSO continued to participate by providing their trained advocates. However, the DVSO has no role in

93. In 2009, an average of seventy-eight percent of people who filed a protection order after receiving services at Program A were women; 86.5% were racial or 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.

94. In 2009, 86.5% of protection order applicants helped at Program A were racial or ethnic minorities, fifty-three percent spoke a language other than English as a preferred language, and only twenty-six percent had attended some college; less than thirteen percent had a college degree. Given the links between educational attainment and income disparity, a relatively low average income in this group can be assumed. *See, e.g.*, Steven Strauss, *The Connection Between Education, Income Inequality, and Unemployment*, HUFFPOST BUS. (Nov. 2, 2011, 11:54 AM), http://www.huffingtonpost.com/steven-strauss/the-connection-between-ed_b_1066401.html. Similar data was not available for Program B.

95. Based on 2009 data drawn from new protection order cases filed at each program location in four one-week periods.

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

the administration of the program or policy setting. The program serves more than 5000 people annually.⁹⁷

B. THE APPLICATION PROCESS

Applying for a protection order is generally, and at both of these locations, a two-step process. Applicants initiate the process by filing *ex parte* (that is, without notice, or with limited notice, to the adverse party) for a temporary protection order. The application consists of a form on which the applicant identifies what orders are requested, and a supporting declaration that sets out the factual basis for the relief requested. Under state law in both program locations, applicants can request orders including for exclusive use of property, child support, spousal support, restitution, and attorneys fees, as well as that the adverse party stay away from the applicant, refrain from specified conduct, and surrender guns. The court may grant the requested orders (in whole or in part), deny the application outright, or deny the temporary order but set the matter for an evidentiary hearing. Temporary orders are limited to stay-away and orders for exclusive use of property, and last about three to four weeks. If the court sets the case for hearing (step two), the applicant may seek an order for a longer time.⁹⁸ Both programs utilize nonlawyer staff members to assist applicants in preparing and filing their applications. However, they do so in different ways.⁹⁹

At Program A, staff members provide applicants with one-on-one assistance completing the application form. A staff member asks the applicant questions about what orders the applicant wants, while filling out the forms on a computer or by hand.¹⁰⁰ The staff member also asks the applicant to explain the basis for the orders (such as, why the applicant wants the protection order), and uses this information to draft the applicant's supporting declaration. An attorney staff member then

97. Based on 2012 data.

98. 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.

99. Staff members 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 some applicants with an information sheet that includes contact information for the DVSO, and that lists considerations for safety planning. I will analyze these documents in a separate article.

100. Advocates led applicants through the process using prompts drawn from the form. Prompts were generated by the computer software, or by the advocate using the form. In either case, prompts mirrored the question on the form. However, as discussed further below, not all categories of relief on the form were covered.

reviews the completed application before it is filed.¹⁰¹ In contrast, applicants at Program B complete the application form themselves before meeting with a staff member. The completed form is then reviewed by one of the DVSO-funded staff members, who may augment the application with additional facts or details disclosed by the applicant during the review.¹⁰² There is no attorney supervision or review at Program B.

The programs also differ in how work is delegated, and in how the roles that staff members perform are described. At Program A, all non-attorney staff members perform the identical work in assisting applicants, and are called “advocates” in program materials. At Program B, staff members who interact with applicants can be divided into two categories: (1) front desk staff members, who interact with all applicants and answer the phones, answer applicants’ questions, conduct initial screenings (which may result in redirecting would-be applicants), hand out applications, and provide instructions on completing the form; and (2) back office staff members, who review applications. Back office staff members include the two DVSO employees, who are differentiated in that they are called “advocates,” and are identified as such by a placard on each of their desks.

Finally, the programs differ in their involvement with the rest of the protection order process. Applicants at Program A are responsible for filing the completed application and delivering the application and any orders that result for service on the adverse party. Conversely, Program B manages the administrative aspects of the process, including filing and delivery of documents for service; staff members also prepare the final order after hearing. However, obtaining a temporary order takes longer at this location. While applicants at Program A typically receive a temporary order within twenty-four hours, receiving an order at Program B usually takes at least two days.

C. METHODOLOGY

This study uses traditional qualitative methods for grounded, exploratory ethnographic research, including nonparticipant observation (of courthouse activities, self-help services, and interactions between applicants and staff members), and informal, semi-structured interviews with everyday actors (program staff members, legal aid attorneys, and survivor advocates).¹⁰³ Observations took place at Program A over

101. The attorney is usually off-site. Staff members e-mail or fax completed applications to the attorney for review. Applications that are completed by applicants without a staff member’s help and then reviewed by a staff member are not reviewed by an attorney.

102. If it is very busy, county-employed staff members review completed applications as well.

103. See JULIET CORBIN & ANSELM STRAUSS, *BASICS OF QUALITATIVE RESEARCH: TECHNIQUES AND PROCEDURES FOR DEVELOPING GROUNDED THEORY* 12–13 (3d ed. 2007) (defining grounded theory as

several months in 2009 and 2010, and at Program B from December 2013 to August 2014.¹⁰⁴ Observations were recorded in field notes.¹⁰⁵ 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.¹⁰⁶ The findings that emerged through this process showed how demeanor was shaped by the organization of work within the programs. These findings are detailed next in Part III. The findings and implications for systemic advocacy are then discussed in detail in Part IV.

“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”). This study also fits into the subfield of institutional ethnography. See 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). See generally Marjorie L. Devault, *Introduction: What Is Institutional Ethnography?*, 53 *SOC. PROBS.* 294 (2006) (describing the field of institutional ethnography and providing examples of research projects that use this methodology). As this project studies multiple locations, it can also be viewed as a multisited ethnography. See generally George E. Marcus, *Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography*, 24 *ANN. REV. ANTHRO.* 95 (1995) (describing a multisited approach to ethnographic inquiry). Institutional ethnographers seek to uncover how organizational work processes shape the activities and conditions of the everyday world. Using texts and discourses as a starting point, institutional ethnographers focus on identifying “institutional case management processes and the logic, thinking and assumptions that support them.” Jane M. Sadusky et al., *The Praxis Safety and Accountability Audit: Practicing a “Sociology for People,”* 16 *VIOLENCE AGAINST WOMEN* 1031, 1034 (2010); see also Devault, *supra* note 103, at 294 (noting that institutional ethnographers seek to explain the world, rather than build theory).

104. Observation data totaling eighty-four hours were transcribed from these preliminary collections; an additional 150 hours of data collected from the protection order courtroom, and lobby areas outside the courtroom were also transcribed. Observations at Program B were conducted until no new variations (for example, of demeanor type) or contradictions were observed. This data was consistent with observation data from Program A.

105. Field notes consisted of notes recorded simultaneously or contemporaneously with observations in the field (and augmented after leaving the field), and notes recorded surreptitiously at opportune moments, so as not to influence or disturb what was being observed. The first technique was used when observing front desk staff at Program B; the second was used primarily when observing advocates interacting with applicants. See JOHN LOFLAND ET AL., *ANALYZING SOCIAL SETTINGS: A GUIDE TO QUALITATIVE OBSERVATION AND ANALYSIS* 108–16 (4th ed. 2006); W. LAWRENCE NEUMAN, *SOCIAL RESEARCH METHODS: QUALITATIVE AND QUANTITATIVE APPROACHES* 443–49 (2009) (regarding techniques for recording notes in and out of the field).

106. 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). Additionally, in order to further situate the research, we also reviewed secondary materials, including informational materials distributed to applicants at the programs, and records concerning the protection order process maintained by partnering organizations. We also conducted legislative research on the history of civil protection order laws, and archival research and interviews with participants in the movement for protection order legislation on the connection between law reform and the battered women’s movement. See CORBIN & STRAUSS, *supra* note 103, at 11–12 (describing the variety of sources from which qualitative data can be derived for grounded theory).

III. Demeanor and the Organization of Work

A. Focus on Forms

Researchers have found that the organization of work within courts and organizational culture can structure the nature of interactions in protection order proceedings. For example, Jill Adams's study of the protection order process in a Canadian court found that the division of labor into piecemeal work and a focus on efficiency, along with an emphasis on the uniform treatment of applicants, left no space for court personnel to feel empathy or get to know or care about the women applying for orders.¹⁰⁷ Some of these findings are echoed in Wan's study, which found that a focus on efficient processing of orders resulted in a more bureaucratic approach to client services among some advocates, and irritation when people needed more help because it slowed things down.¹⁰⁸ Similarly, Trinch notes that paralegals assisting protection order applicants may act in ways that appear bureaucratic as a result of performing repetitive tasks.¹⁰⁹ The task of preparing a supporting affidavit for a protection order that meets the legal system's demands for a linear narrative also shapes the nature of the interaction between participants in the process.¹¹⁰ As noted above, Trinch's study shows how paralegals working with Latina survivors contort and constrain survivors' accounts of abuse, while helping them create narratives that are more likely to succeed at court.¹¹¹ In this context, the more supportive dimensions of advocacy such as validation and empowerment are lost.¹¹²

As in these prior studies, the programs in this study were organized around the processing of protection order applications in ways that limited staff members' engagement with applicants, and potentially, the value of their services. The emphasis on forms started at intake, which at both programs focused on screening applicants to see if they were qualified for a protection order, and made no attempt to identify safety issues or other legal or service needs.¹¹³ Afterwards, applicants either progressed to the form-filling stage or were turned away or redirected.¹¹⁴

¹⁰⁷ Jill Adams, *The Civil Restraining Order Application Process: Textually Mediated Institutional Case Management*, 10 *ETHNOGRAPHY* 185, 202-03 (2009).

¹⁰⁸ Wan, *supra* note 7, at 624-25.

¹⁰⁹ Trinch, *supra* note 45, at 497.

¹¹⁰ *Id.* at 477; *see also id.* at 497 (noting that advocates co-construct the account of abuse with survivors).

¹¹¹ *Id.* at 497.

¹¹² *Id.* at 498.

¹¹³ *See* Stoever, *supra* note 27, at 353-54 (arguing that safety planning is an essential component of advocacy).

¹¹⁴ The applicants who were turned away because the program was too busy to assist them, or because they had arrived after the cut off time, were generally told to return the next day the program was open. Applicants who did not identify a qualifying relationship were generally redirected to apply

As noted, at Program A applicants who received assistance completing the application form sat with an advocate, who completed the form on the computer (or on occasion by hand if the computer was down or there were no computers available). At Program B, applicants received instructions on completing the forms and then filled them out themselves. If applicants were subsequently seen by an advocate, the focus was on ascertaining whether the forms were complete and accurate. Indeed, although both Programs described a broad approach to services on their websites and other materials, matters beyond processing the application form were entirely peripheral to the process at these programs.¹¹⁵

Unlike advocates observed by Wan, who sometimes assisted women in finding a shelter or completing forms in other aspects of their family law case,¹¹⁶ interactions with staff members at Programs A and B were almost exclusively limited to the process of obtaining a temporary protection order. Information about safety planning (provided only at Program B) and referrals was relegated to printed materials that were distributed to applicants before they left the location. Even information about the protection order process beyond the temporary order—for instance, preparing for the subsequent evidentiary hearing—which was provided only at Program A, was provided on a handout.¹¹⁷ Moreover, individuals who were not assisted at either program, or who dropped off applications at Program B without seeing an advocate, typically did not receive these materials at all. Further, as in Adams’s study, the division of labor also fragmented staff members’ contact with applicants at Program B—in this case between front desk staff members who screened applicants and instructed them on filling out forms, and the advocates who reviewed applicants’ completed paperwork. These conditions limited staff members’ ability to connect with applicants and understand or care about their needs and concerns, much less address them. Other aspects of the workplace environment may also help explain staff members’ demeanor, including the physical environment.

for an anti-stalking or harassment order. Staff at Program B sometimes also screened for whether the adverse party was in custody; if so, they redirected the applicant to apply for an emergency protection order.

115. The website for the program of which Program A is a part advertises, “advocates provide critical information and assistance to victims of domestic violence, including . . . referrals to myriad social services.” The website for Program B claims the program aims to provide “information regarding court-related procedures, safety planning and community awareness of domestic violence issues.”

116. See Wan, *supra* note 7, at 619 (providing examples of advocates providing support and assistance to applicants beyond the application process).

117. These materials are themselves expressive in ways akin to demeanor and will be analyzed in another article.

B. SELF-HELP WORK ENVIRONMENT

As Wan notes, while advocates' bureaucratic—or worse—treatment of applicants is troubling, “it is important to recognize the conditions under which [applicants] received such treatment.”¹¹⁸ The conditions faced by staff members at the locations in this study are detailed below.

1. *Lack of Privacy*

Wan observed that the environment in which the advocates she observed worked “was dismal, dirty, and crowded.”¹¹⁹ These advocates also carried high case volumes.¹²⁰ Wan reasoned that it was “possible that advocates exhibited bureaucratic demeanor because they found such demeanor to be the easiest way of working in a small and dismal environment and the most efficient way of assisting large numbers of people.”¹²¹ While I would not describe the facilities at Program A or B as dirty or especially dingy, they were busy and lacked privacy. Staff members' awareness of the volume of applicants needing their attention was undoubtedly a factor influencing their interactions with individual applicants, leading to some applicants being turned away when the program was at capacity.

Additionally, both locations at Program A were particularly cramped, and there were no partitions between advocates as they assisted applicants. As a result, exchanges between applicants and staff members could easily be overheard. Similarly, exchanges between front desk staff and applicants at Program B were generally audible to everyone else in line or in the crowded waiting room. The only relatively private space at either location was at Program B, which had partitions separating the advocates from one another and other staff members. In the majority of interactions at these programs, however, the design of the program site did not foster the potential for intimacy suggested by the emphasis on one-on-one assistance. Moreover, neither program had childcare, and applicants often brought their children. This added to the crowded and sometimes noisy atmosphere of the programs. Further, the presence of young children was not conducive to sharing intimate information about abuse, especially in cases where the child was also a victim, or where the abuser was the child's parent or another family member.

118. Wan, *supra* note 7, at 626.

119. *Id.* at 626–27.

120. *Id.* at 627.

121. *Id.*

2. *Inadequate Translation Services*

Limited resources of other kinds also created tensions for staff and applicants alike and inhibited effective assistance. This is exemplified by the lack of adequate translation services. Applicants at both locations were primarily Latino/a with many speaking English as a second language, while staff members at both programs were primarily monolingual in English. At Program A, there were no Spanish-speaking staff members who regularly worked at the busiest location. As a result, applicants were sometimes turned away because they could not be helped. At Program B, two of the four part-time front desk workers were bilingual in Spanish, but none of the staff members who reviewed applications spoke Spanish. Program B used court translators for monolingual applicants, but this meant that applicants had to wait for a translator to be free to assist them. As a result, applicants who needed a translator waited significantly longer than other applicants to see an advocate. The frequent inability of staff members to communicate with non-English speaking applicants obviously hindered their ability to interact and relate with these individuals. Moreover, the inability of staff members to understand applicants who did not speak fluent English triggered patronizing/condescending demeanor on at least one occasion.

3. *Lack of Training and Accountability*

Staff members also received minimal training, focused primarily on the application process. At Program A, staff members received approximately one half-day of training, which included a brief overview of the “cycle of violence” in domestic violence relationships and no training on intersectional concerns relating to race, ethnicity, or class. Front desk staff at Program B received only what the program administrator called “on the job” training for their regular job duties. This consisted of shadowing and then being observed by another worker until they were deemed competent to manage the desk on their own. Only the two advocates at Program B had received intensive training on domestic violence, including cultural competency training, which was provided by the program’s shelter partner. However, as discussed further below, their relationship to their funding advocacy organization was very attenuated, which diminished the value of their access to training and other supportive resources as an ongoing matter.

Further, all staff members were essentially unsupervised and largely unaccountable to the public they served. None of the workers observed were subject to any kind of regular employment evaluation by a supervisor. Program A conducted annual mailed surveys of applicants who had used the program, and a minimal number were returned each year with generally favorable results. Program B had never conducted an evaluation of its services or staff. By the same token, neither did they

receive support for the stress and burnout likely experienced from their work environments.

4. *Lack of Support for Vicarious Trauma*

Wan identifies secondary or vicarious trauma as another factor that may contribute to bureaucratic treatment of applicants by advocates.¹²² Researchers have found that counselors working with victims of sexual assault and other traumatic experiences may over time begin to suffer symptoms of vicarious traumatization or post-traumatic stress disorder as a result.¹²³ Counselors also struggled to deal with the ineffectiveness of courts and other systems that were supposed to help their clients but failed to do so.¹²⁴ In this way, being ensconced within ineffective systems became a source of trauma for both those helping victims and for victims themselves. “Although advocates are not counselors,” Wan notes that “they engage[] in some of the same activities as counselors, [such as] hearing repeated stories of horrific abuse”¹²⁵ They might therefore react bureaucratically to applicants in order to avoid the adverse effects of trauma that can result from emotional involvement with clients.¹²⁶ Similarly, staff members in self-help programs may find it easier to remain emotionally distant from applicants to whom they can offer little substantive help in exchanges that may cause them emotional stress. This problem may be exacerbated for advocates who are isolated from erstwhile sources of support, such as advocacy-based organizations. The next Subpart discusses the organization of program partnerships in relation to the self-help work environment and self-help services.

C. ISOLATION FROM ADVOCACY ORGANIZATIONS

Staff members as well as applicants suffered from program partnerships that failed to utilize advocacy resources. Instead, these relationships sometimes created new hierarchies that, like bureaucratization, inhibited advocacy functions. For example, at Program A, volunteer advocates from a local shelter organization had previously run one of the program locations themselves. When legal aid took over the program, these advocates remained as volunteers. Advocates expressed frustration with the new program, which they regarded as less efficient and less client centered than their own. They reported that, by assisting applicants in

122. *Id.*

123. Lisa McCann & Laurie Anne Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. TRAUMATIC STRESS 131, 144 (1990); see also Laura J. Schauben & Patricia A. Frazier, *Vicarious Trauma: The Effects on Female Counselors of Working with Sexual Violence Survivors*, 19 PSYCH. WOMEN Q. 49, 50 (1995).

124. Schauben & Frazier, *supra* note 123, at 57.

125. Wan, *supra* note 7, at 627.

126. *Id.*

groups, they had helped more applicants and had provided more complete assistance than the current program.¹²⁷ Legal aid, however, made them work with applicants individually. While advocates reported that completing forms on the computer was easier, it slowed things down when the computers malfunctioned, which happened frequently. Advocates were also slowed down by the requirement that lawyers review the applications they completed and resented what they perceived as a lack of appreciation for their expertise. Additionally, they resented being cut off from judges and the administrative staff of the court, with whom they previously communicated directly, receiving direct feedback on their work, and discussing problems regarding the legal process. Now that legal aid had assumed these roles, advocates felt disconnected from the court and meaningful feedback and communication. One advocate said of attorney supervision, “we take umbrage.”¹²⁸

Advocates at Program A also believed that the legal aid attorneys were insufficiently victim centered. They pointed in particular to the program’s policy on helping represented applicants. Applicants sometimes revealed that they had an attorney who was helping them with their family law case, but were proceeding without counsel in the protection order process. Advocates reported that the program had previously assisted these applicants because it was economically beneficial to the applicant to receive the program’s help rather than to use her lawyer, and the court accepted this practice. Legal aid, however, insisted that applicants with attorneys be turned away, telling advocates, “their attorneys are just lazy and dumping clients on us,” and seemingly disregarded the impact on the applicant.

These advocates also noted some improvements with attorney involvement. In particular, they reported learning a broader view of domestic violence: previously, the program had only assisted female applicants, and not men or adverse parties, even if the latter were women. Advocates spoke of learning more about same-sex victims who were men under the new regime, and also to empathize with respondents’ need for assistance. One advocate noted that attorney review relieves her worry that advocates will be blamed for negative outcomes. However, advocates appeared wary of what one advocate called a shift from “victims to litigants” under the new model.

Advocates at Program B also lacked effective input into program practices, although the shelter organization paying their salaries was touted as a program “partner.” Moreover, the client-centered goals of the shelter partner, to the extent internalized and shared by the

¹²⁷. Specifically, they had helped applicants with financial disclosures required in applications for child or spousal support, which the current program failed to do.

¹²⁸. Interview with Program A Advocate (Apr. 29, 2010) (transcript on file with author).

advocates, seemed to conflict with the expectations of neutrality placed upon them by program administrators. These dynamics are illustrated by tensions between one of the shelter advocates and program administrators over compliance with state child abuse reporting laws. The shelter partner at Program B had a policy of exercising discretion to avoid reporting in most cases unless there was a clear indication of ongoing child endangerment. If a report was necessary, the policy was to encourage the client to make the report. In contrast, the program's policy was to report any suspected abuse, even if it was outside the advocate's direct knowledge or not clearly ongoing. One advocate described her efforts to resist this broader definition of reportable abuse, including refusing to call child protection authorities regarding a case that met the program's definition of a reportable case, but not the shelter's policy. When the program administrator contacted authorities about the case, the advocate continued to resist by refusing to provide additional information to the investigator who contacted her to follow up. This advocate had also urged the program administrator to provide a disclosure to applicants about the reporting policy before they met with an advocate, a proposal that had not been implemented.

Advocates at Program B were also separated from the shelter organization partnering with the court, physically and in terms of training and support. The shelter program director reported that these advocates were hesitant to attend trainings and team meetings, where other advocates obtained vital information and support, because it meant fewer applicants would receive individual assistance at the program. This isolation also undermined the shelter's goal of connecting the program to system advocacy—for example, by promoting referrals of applicants who had a related criminal case to shelter advocates in the prosecutor's office. The program director reported that advocates in the program rarely made appropriate referrals to outside services, presumably because of the attenuated nature of their relationship to shelter goals and resources.¹²⁹

These conflicts highlight tensions between the partiality of the advocacy perspective and the goal of impartiality in self-help services, as well as the relative powerlessness of the advocacy-based program partner to set policy at this location. At both locations, the isolation from advocacy organizations appeared to drain staff members' morale and may have affected demeanor toward applicants as staff met what they perceived as lowered expectations for individualized assistance and support.

¹²⁹ Legal aid attorneys in the community also reported that they did not receive referrals from the self-help program, although they encouraged these referrals by leaving fliers about their services with the staff.

IV. IMPLICATIONS AND CONCLUSIONS

A. FUTURE RESEARCH

More studies of NGO-court partnerships to provide self-help services are needed to learn more about what organizational, system, and program differences matter to how services are provided, as well as how these programs impact the organizations and systems of which they are a part. Future studies should also examine different models of service delivery, such as those using limited scope representation for completing forms.

In addition, future studies should explore the impact of local legal cultures on services for unrepresented litigants. Several findings in the present study suggest the role of local legal culture on decisions about the design of the programs and the expressive qualities of staff members. For example, the decision at Program B not to help applicants complete forms was consistent with comments from staff members and other players in the system that evidenced a mistrust of both applicants and advocacy processes—or what might be called an “anti-legal” or “anti-legal advocacy” culture that applied to domestic violence cases. For example, the director of Program B and local legal aid attorneys thought judges would give less credibility to applicants who had assistance completing their forms. One judge reportedly told the director, when she proposed providing computers for applicants to use, that he preferred to actually see their handwriting, as though he could glean something of their credibility from seeing it.

In contrast, system participants at Program A evinced a more positive attitude about the benefits to be gained through assisting applicants with the legal process and a more positive attitude toward lawyers and legalism in general. This may have supported the greater level of assistance provided to applicants at Program A. For example, the director at Program A described a judicial officer with a history of hostility to domestic violence claims who had a better opinion of applicants after the LAO took over because the quality of declarations had purportedly gone up, and the program was supervised by “officers of the court.” That said, this heightened credibility was associated with lawyers in a nonadvocacy role—as “court officers” rather than zealous advocates. Moreover, Program A as well as Program B limited the supportive role of staff members through processes that restricted individualized assistance. Together, however, these examples and the influence of the court on staff attitudes and advice to applicants suggests the importance of studying self-help in the larger context of the court, including judicial attitudes, and the legal system of which it is a part.

More generally, these findings show the need for an expansive research agenda that considers the impact of access to justice

interventions on advocacy systems and on substantive justice goals, as well as on more narrowly defined case outcomes. Greater use of ethnographic methods to study self-help services and court systems will help this effort. By building knowledge from the ground up, researchers can uncover and describe how structures of power and subordination are constructed through everyday interactions in legal settings, and identify how they might be dismantled.

B. WHAT CAN BE DONE TO IMPROVE SELF-HELP NOW

Some solutions to the structural problems recounted herein are straightforward, albeit possibly challenging to implement when resources are limited: self-help programs should find ways to provide adequate translation services, improve provisions for privacy and childcare needs, and consider whether their hours are likely to accommodate applicant availability. Referrals should be available and readily provided. Staff members should receive training on domestic violence and cultural competency, and programs should support self-care for vicarious trauma. For lay advocacy partners, staff members could do rotations in the program in order to keep their training fresh and expose them to other aspects of advocacy work. Given the different roles lay advocates perform in self-help programs and for clients, lay advocacy organizations should also consider sending advocates with clients who use self-help programs.

More broadly, NGOs should assess whether they are balancing advocacy with self-help and partnering with courts in ways that increase rather than constrain representation and reform. The history of the programs in this study shows how self-help might replace or disrupt preexisting programs and alternative advocacy models. By focusing on a single legal remedy, self-help has a much narrower focus than traditional lay advocacy, or legal advocacy aimed at systemic reform, yet may absorb advocacy resources that could be directed more broadly. Here, the results were mixed. Program A replaced a similarly focused program that—while more effective in some respects (completing all forms for economic relief)—lacked the benefits of legal expertise. Lack of legal expertise could make self-help programs less able to maintain independence from the court—although the issue of independence is a complex one.

At Program B, the lack of independence of the program director from the court is a major issue. As a county employee and a nonlawyer, the director lacks the wherewithal to pursue an agenda independent of the court or the professional knowledge to carry it out. Similarly, the partnering DVSO—while organizationally independent of the court—was hamstrung by its lack of independent legal knowledge and capacity to effectively pressure the court on behalf of applicants through appeals

or other measures. The DVSO sunk financial resources into a program that did not meet its objectives or its clients' needs, and felt incapacitated to challenge the program's operation in a community with few resources.

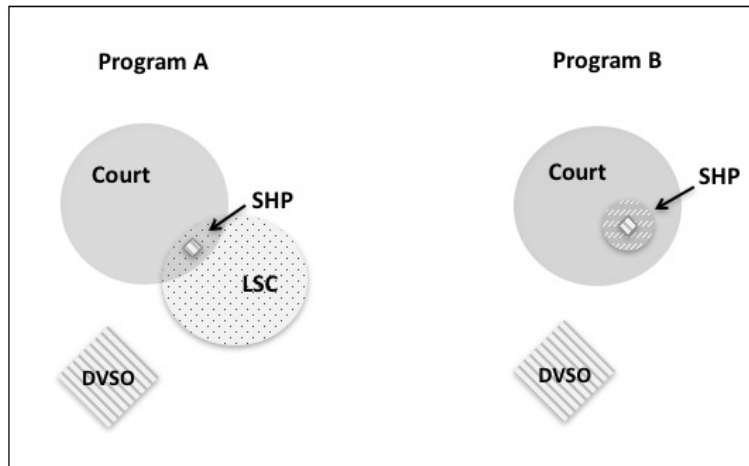
In contrast, the NGO partner at Program A is not only organizationally independent from the court, but as a legal aid provider obviously possesses legal expertise. Nonetheless, staff members referenced what the court wanted when restricting access to remedies for applicants, seemingly without reference to a considered, independent legal analysis. This might relate to organizational priorities as well as workplace structure. The LAO has a reputation for not being interested in family law, a viewpoint confirmed by attorneys on staff and the program director. Reflecting the perspectives on family law held by some poverty lawyers, discussed above, the LAO's leadership was reportedly more interested in other practice areas that they believed were more relevant to social change goals.¹³⁰ This likely limited the development of goals and objectives for the self-help program, and the resources made available to position it within a broader advocacy strategy. Indeed, while both programs in this study identified some staff members as "advocates," staff and administrators were careful to distinguish this role from traditional notions of advocacy. All emphasized that advocates at the self-help program do not "take sides" or affirmatively advocate for anyone. Rather they provide general information to litigants about the legal process. Additionally, the LAO does not provide representation to applicants at hearings at significant levels or on appeals, or engage in other advocacy work aimed at systemic reform. Also, because of the way "turf" is divided up in the county, there is no other legal aid organization able or willing to assist. As a result, a large portion of the county is without a reform-oriented legal services program. In the self-help program, a lack of support from attorneys left staff members reliant on judicial cues for how to advise applicants.

The courts may therefore have influenced both Program A and Program B more than the other way around. Figure 1 illustrates this dynamic. The relative influence of the court over both programs, and their respective NGO partners, is reflected in the solid shape for the court. Patterned shapes depict the more "permeable" nature of each self-help program ("SHP"), and the NGOs. Additionally, the isolation of DVSO advocates within Programs A and B is depicted by the encapsulation of a small diamond shape in the same pattern as the DVSO, representing the DVSO staff members within each program.

130. See *supra* Part I.B.2.

Similarly, each DVSO's lack of influence over program policies and practices is shown by their position outside the partnership.¹³¹

FIGURE 1: SYSTEM ANALYSIS OF SELF-HELP PARTNERSHIPS



These findings show how the failure to provide culturally and legally competent services can arise from multiple sources, including lack of capacity, poorly navigated tradeoffs between helping more people and the routinization of services, and a lack of interest in integrating self-help into a larger advocacy or reform strategy. In some instances, NGO partners might reconsider partnerships with court-affiliated self-help programs that drain resources without effectuating advocacy goals. However, better self-help services can also be achieved by applying principles of social justice advocacy.¹³²

Although a full discussion of what this might look like is beyond the scope of this Article, models for progressive approaches to self-help exist, and provide accessible alternatives to railroading individuals through bureaucratic services that disregard individual needs and perpetuate stereotypes.¹³³ Indeed, self-help presents opportunities for group work and community education that are fundamental precepts of social justice

131. Although the DVSO associated with Program A is not a program partner, it is still connected through its volunteers, who dedicate time to the program as well as to the DVSO.

132. Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 *GEO. J. ON POVERTY L. & POL'Y* 473, 510–26 (2015) (detailing the key features of social justice advocacy in lawyering, social work, and lay victim advocacy).

133. *Id.* at 526–41 (laying out the foundations for a legal services program informed by social justice advocacy principles).

advocacy.¹³⁴ As a social justice practice, educating people about how to approach the court involves exposing the reasons for conventional narratives so that individuals can participate more fully in decisions about how and when to tell their stories—including whether to depart from convention in the telling.¹³⁵ This process can also result in the construction of multiple templates for narratives about domestic violence, rather than just one, to better fit the diversity of circumstances that abuse survivors present. Any mode for service delivery can succumb to routinization and its attendant problems. Thus, a normative commitment to social justice may be the most important starting point for reconnecting services for survivors, such as self-help, to social change goals aimed at empowering individuals and eliminating gender violence. To the extent that it may not be clear to some providers how legal assistance for unrepresented litigants fits into a social justice mission, funding requirements can help incentivize a better balancing of priorities.

Applications for funding should be required to show the capacity of NGO partners to maintain independence from the court, and for culturally competent services. Independence of the court should include both capacity for analysis of legal issues and strategies, and capacity for systemic reform that benefits vulnerable litigants. In this regard, collaborations between legal aid and lay advocacy organizations in which both contribute expertise to the partnership should be encouraged. Lay advocates bring needed expertise in domestic violence, and a broader perspective to supportive services.¹³⁶ Lawyers provide expertise necessary to independently assess the legal scheme, related issues such as child welfare reporting requirements, and other legal issues and strategies.¹³⁷ Proposals or agreements for self-help programs should explain how the NGO partners will ensure their collaboration maximizes the benefits of their respective expertise, and ensure both are involved in decisionmaking and priority setting.¹³⁸ Additionally, preference should be

134. *Id.* at 512 (“The component of education is at the center of social justice lawyering: education of the lawyer, as well as the client or community.”). Such opportunities can be balanced with the applicants’ desire for privacy by providing targeted one-on-one assistance at critical junctures—at intake for example.

135. *Id.* at 511 (describing storytelling as a method for revealing the social construction of the world, and thus essential to social justice advocacy).

136. *See id.* at 522–24 (describing the expertise lay advocates contribute to a social justice advocacy program).

137. *Id.* at 521–22 (describing the expertise of lawyers); *see also* Colleen F. Shanahan et al., Representation in Context: Party Power and Lawyer Expertise 6 (Aug. 11, 2014) (unpublished manuscript) (on file with author) (defining attorney expertise as: substantive, such as knowledge of the rules of law; relational, such as understanding how to navigate among legal actors and settings; and strategic, such as synthesizing substantive and relational knowledge to make informed choices for clients).

138. MacDowell, *supra* note 132, at 536–38 (discussing the benefits of collaboration between lay advocates and lawyers).

given to programs that will connect self-help assistance to direct advocacy services (lay and/or legal) and systemic reform activities. The NGO partners should be required to explain how the self-help program would coordinate with advocacy activities to maximize services to individuals using the program and benefit the larger goal of eliminating domestic violence. Independent program evaluation that critically assesses services to make sure these goals are met is vitally important and can also be incentivized through funding channels.¹³⁹

In sum, self-help is not inherently incompatible with empowerment or structural reform goals. However, this study shows how self-help programs for abuse survivors may shift the focus from victims to litigants without eliminating foundational stereotypes about victims (and perpetrators) or other barriers to the courts and to justice. By replacing notions of neutrality with structures that support social justice advocacy, self-help programs may become a creative part of the solution.

139. *Id.* at 539–40 (advocating for program evaluation that examines “whether the program’s efforts reduce punitive practices, unwanted interventions, and the influence of bias, while increasing judicial compliance with the law. [Such an approach] would also develop methods to examine whether client-litigants are empowered to address the problems that brought them to the program.”). For a detailed discussion and examples of the role clinical legal education can play in meeting needs for empirical access to justice research, including program evaluation, see Jeanne Charn & Jeffrey Selbin, *The Clinic Lab Office*, 2013 WIS. L. REV. 145, 161–68.