

**LET ME SHOW YOU HOW: PRO SE DIVORCE  
COURSES AND CLIENT POWER**

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\*Director, Social Policy Division, Center for Governmental Responsibility, University of Florida College of Law. A draft of this essay was originally presented at the 1994 Annual Meeting of the Law & Society Association in Phoenix, Arizona. This essay is dedicated to Becky, Lee, and all the foster moms. I thank Nancy Dowd, Wendy Fitzgerald, Richard Grayson, Joseph Jackson, Sharon Rush, and Rosalie Sanderson for their advice and encouragement, the Florida Bar Foundation for funding the research that gave rise to this essay, Anne Marie Kim and Lisa Powell for their research assistance, and John Wagner for his editing. Warning: This is an essay about practicing poverty law that does not cite Foucault.

## I. INTRODUCTION

The number of pro se litigants in divorce cases appears to have grown rapidly in the last decade.<sup>1</sup> While unrepresented respondents in divorce have long been common both in defaulted and contested cases, the notable increase in numbers of petitioners filing pro se divorces has troubled attorneys, judges, and court personnel.<sup>2</sup> Pro se representation may compromise fairness, legal rights, and judicial efficiency. Judges express uneasiness at their role in cases where one party is unrepresented. Many attorneys, too, prefer to litigate against another attorney rather than an unrepresented party. Perhaps more than most, legal services attorneys frequently face unrepresented adversaries in the courtroom or judge's chambers and are frequently troubled in domestic relations cases by the thought that they are representing one poor person against another. Indeed, that concern has been one factor in poverty lawyers' distaste for domestic relations cases.

Some legal services programs for the poor have responded to the increase in pro se litigants and the ceaseless, overwhelming demand for divorce services<sup>3</sup> by offering courses to train people to represent themselves in divorces. Along with meeting some pressing needs, creators of these courses often hope to empower their client-students. In this essay I express my concern that these courses may be an example of client disempowerment in the guise of empowerment. I wonder whether the creators of pro se courses, in their zeal to empower clients to take on the legal system, have ignored the way in which they deny clients power within the legal services program itself. Are the clients coming to the program because they want self-discovery, self-fulfillment, and power, or because they want a divorce? What role can and should the client community play in the decision to devote program resources to pro se courses?

I also question whether the academic advocates of teaching legal skills to lay people overlook their own assumptions about the value of the work they have been trained to do, and are training future lawyers to do, as compared to the skills their clients possess and the activities they engage in. Does the eagerness to train lay people in legal skills imply that such skills are more valuable than the many skills poor people commonly bring with them when they first walk in the office?

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<sup>1</sup>See A.B.A., STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES, RESPONDING TO THE NEEDS OF THE SELF-REPRESENTED DIVORCE LITIGANT 5 (1994) (observing that "there is no uniformity among published reports in describing the frequency of self-representation in America's divorce courts[.]" but that "[p]ro se representation in family law matters is increasing").

<sup>2</sup>See BRUCE D. SALES ET AL., AMERICAN BAR ASSOCIATION, SELF-REPRESENTATION IN DIVORCE CASES 2-4 (1993) ("self represented litigants may . . . strain the traditional roles of lawyers, judges, court personnel and clients").

<sup>3</sup>See Letter from Carolyn Kennedy, Assistant General Counsel, Legal Services Corporation, to Ann Marie Kim, research assistant, Center for Governmental Responsibility (Aug. 19, 1994) (observing that in 1993, programs funded by the Legal Services Corporation closed 535,000 family law cases) (on file with author). 19961 PRO SE DIVORCE COURSES 483

I am concerned that the decision to devote program resources to these courses is in part rooted in a devaluing of family issues, also commonly known as women's issues, which ignores significant legal rights. I wonder how we should weigh the dangers posed by a system of cursory screening and advice, against the possible benefits to the many clients whose divorces do not in fact raise significant legal issues. And finally, are these courses leaving clients with neither increased power nor a divorce?

## II. BACKGROUND-PRO SE COURSES IN FLORIDA

In 1993, with funding from the Florida Bar Foundation, the Center for Governmental Responsibility at the University of Florida undertook a study of pro se divorce courses offered to low-income people in Florida.<sup>4</sup> The study examined five such courses.<sup>5</sup> The researchers observed teaching sessions, interviewed program directors and judges, and administered questionnaires to sixty-six course participants.<sup>6</sup> Six months later, follow-up telephone calls to the thirty-nine participants who could be located revealed that seventeen, or fewer than half, had succeeded in obtaining a divorce.<sup>7</sup> The methodology and results are reported fully elsewhere.<sup>8</sup> This essay draws primarily on information gleaned in that study to address the questions of client power.<sup>9</sup>

In Florida, simplified divorce is available to couples who have no minor or dependent children and agree as to the division of property and debts.<sup>10</sup> In this procedure, both parties are petitioners; both must sign the petition and attend the final hearing.<sup>11</sup> Pro se divorce courses in Florida are instructing clients in both simplified procedures and regular dissolution procedures, which may involve issues of custody and support.<sup>12</sup> In these procedures, parties are petitioner and respondent, and the respondent is served either personally or through publication.

## III. POWER TO THE PEOPLE

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<sup>4</sup>ALEXANDRA B. STREMLER & CONSTANCE SHEHAN, CENTER FOR GOVERNMENTAL RESPONSIBILITY, FLORIDA PRO SE DISSOLUTION CLINICS: REPRESENTATION FOR THE POOR (1994) (on file with author).

<sup>5</sup>Id. at 16.

<sup>6</sup>Id at 10,19.

<sup>7</sup>Id at 13.

<sup>8</sup>See id. at 1-49.

<sup>9</sup>Stremler and Shehan assured those they interviewed that responses would not be attributed to individuals. See id at app. 8. Their report includes descriptions of each pro se program, compiled from course materials, observation, and interviews. See id at 16-49. As principal investigator of the research project, I have access to transcripts of the interviews and notes of the observations. To maintain the anonymity the interviewees were promised, I will identify them only by their position and will not connect them to a program or give the location of their interviews.

<sup>10</sup>See FLA. FAM. L.R.P 12.105(a)

<sup>11</sup>See FLA. FAM. L.R.P. 12.105, Form 12.901.

<sup>12</sup>See STREMLER & SHEHAN. *supra* note 4. at 17.

A central theme in much of the literature on poverty lawyering is the role of the lawyer in empowering the client.<sup>13</sup> Empowerment means giving people the power to change the circumstances of their lives. In the case of poor people, it means giving them the skills, information, and confidence to get what they need from public and private systems.

For many years, legal academics have discussed how poverty lawyers can participate in empowerment.<sup>14</sup> Using Gerald Lopez's term, recent writings urge that poverty lawyers engage in "rebellious lawyering" as opposed to "regnant lawyering."<sup>15</sup> Rebellious lawyers help clients tell their "stories" in their own way, both to the lawyer and, at least sometimes, to the judge.<sup>16</sup> Clients have major responsibility for litigation tasks such as investigation, examination of witnesses, and arguments to the court.<sup>17</sup> Rebellious lawyers recognize that formal legal strategies are not the only, nor necessarily the best, means of problem-solving.<sup>18</sup> They should help clients discover their own problem-solving ability, and engage them in strategizing.<sup>19</sup> Finally, rebellious lawyers should provide community education about law and training for lay advocacy.<sup>20</sup> In all these efforts, advocates should be attentive to the power relations between themselves and their clients; many of these means of empowerment are intended to shift power from lawyer to client as well as to help clients gain power in confronting "the system".<sup>21</sup>

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<sup>13</sup>See, e.g., Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2119 (1991) (observing the need to integrate "client voices and narratives in lawyer storytelling" to avoid tarnishing "client integrity"); Howard Lesnick, *The Wellsprings of Legal Responses to Inequality: A Perspective on Perspectives*, 1991 DUKE L.J. 413, 437 (discussing the poverty lawyer's role to "empower" the client and to "transform" the client's "consciousness"); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 952, 970 (1992) (arguing that poverty lawyers should engage in "rebellious" lawyering which focuses on "increasing . . . collaboration between client and lawyer"); Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1055-56 (1973) ("It is difficult for a lawyer to commit himself to believing that poor people can learn the law and be effective advocates; but until he believes that, a lawyer will create dependency instead of strength for his clients, and add to rather than reduce their plight."); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 REv. L. & SOC. CHANGE 535, 544-45 (1988) ("[A] lawsuit might be an occasion for poor people to join together, outside of the formal boundaries of the litigation . . . to engage among themselves in reflective conversation and strategic action.") [hereinafter White, *Mobilization*]; Lucie E. White, *Seeking . . . The Faces of Otherness. . .*: A Response to Professors Sarat, Felstiner, and Cahn, 77 CORNELL L. REV. 1499, 1510-11 (1992) ("The risk of domination is inextricable from every humanist practice. Yet [lawyers] must still seek to listen when others speak to us, and to be moved.") [hereinafter White, *Seeking*].

<sup>14</sup>See, e.g., Wexler, *supra* note 13, at 1056 (encouraging poverty lawyers to "(1) inform[ ] individuals and groups of their rights. (2) writ[e] manuals and other materials, (3) train[ ] lay advocates, and (4) educate groups for confrontation").

<sup>15</sup>See generally GERALD R. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICAGO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

<sup>16</sup>See Tremblay, *supra* note 13, at 953 ("A rebellious lawyer will encourage clients to organize, to connect, and to work for power and change extrasystemically as well as intrasystematically.").

<sup>17</sup>*See id.*

<sup>18</sup>LOPEZ, *supra* note 15, at 56.

<sup>19</sup>See Tremblay, *supra* note 13, at 953.

<sup>20</sup>*See id.*

<sup>21</sup>*See generally* William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992) (discussing the differing views of power in the lawyer-client relationship); Alex I. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 BUFF. L. REV. 71 (1996) (discussing lawyers' failures to discuss client goals with clients).

#### IV. CLIENT VOICE, CLIENT CHOICE AND CLIENT POWER

Surely pro se courses, where lawyers or other program staff train people to handle their own legal proceedings, should be perfect examples of an empowerment approach to poverty lawyering. Indeed, many advocates of such pro se courses use empowerment rhetoric, but can a legal services program claim to empower its clients vis-à-vis the legal system if it gives them no choice in what sort of services they will receive at their lawyers' office, the entry point into the legal system?

Who decides whether a lawyer will represent a poor client in a divorce or will teach her how to represent herself? The decision can be made at either the programmatic or the individual level. A program may provide no divorce services other than training. It may instead screen individual clients to determine whether to provide representation or training. It may involve clients in deciding its general policy, and it might conceivably offer individual clients the choice between a lawyer and a course.

At the program level, programs funded by the federal Legal Services Corporation must provide for input from the client community as they establish priorities in the allocation of their resources.<sup>22</sup> The priority-setting must include an appraisal of client needs "based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population."<sup>23</sup> While this provision requires information about client attitudes, it does not guarantee the client population a significant voice in setting priorities; the requirement can be satisfied by a survey of clients.<sup>24</sup>

Furthermore, priorities are usually defined in very broad terms. Thus, a program might decide to give priority to public housing issues, or domestic issues. Within domestic issues, the program might prioritize cases involving children. The process might even define goals for a certain period. However, it would be unusual for a priority-setting process to determine specific means for achieving goals. These will be decided by staff, either individually or as a group, or by the governing board. Moreover, the decision whether to handle a particular case is most likely to be determined by individual staff members.

Anthony Alfieri describes a "triage" method for accepting and rejecting cases in a legal services program, apparently a composite of several programs he had worked in.<sup>25</sup> According to him, "[a]doption of this crude method had been covert. There had been no internal debate within the office regarding its appropriateness or efficacy. Nor had there been external, public debate within the

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<sup>22</sup>See 45 C.F.R. § 1620.3 (1996).

<sup>23</sup>*Id.*

<sup>24</sup>See *id.* (allowing solicitation "in a manner reasonably calculated to obtain the views of all significant segments of the client population").

<sup>25</sup>Alfieri, *supra* note 13, at 2122.

client community concerning its necessity."<sup>26</sup>

Federal requirements determine the composition of the legal services program's governing board.<sup>27</sup> One third of the board must be people who were eligible clients at the time they were appointed, while sixty percent must be attorneys.<sup>28</sup> My experience on community boards leads me to believe that on many legal services program boards the "client slots" are frequently vacant. I also question how loud the clients' voices sound when sixty percent of the board are attorneys. Obviously, clients' influence on the governing board's programmatic decisions will vary from program to program.

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<sup>26</sup>*Id.* at 2123.

<sup>27</sup>*See* 42 U.S.C. § 2996f(c) (1997).

<sup>28</sup>*Id.*

The Florida researchers asked staff in the pro se courses to describe the development of pro se courses in their programs.<sup>29</sup> The questions were not directed toward the decision-making process, nor the client community's involvement.<sup>30</sup> However, some respondents briefly discussed how their program made the decision to offer pro se instruction. In one program, the board of directors decided case priorities based on recommendations from the executive director.<sup>31</sup> The judiciary, the Clerk of Court, and the sheriff's office participated in establishing and administering the course.<sup>32</sup> At another program, the course was initiated by program staff.<sup>33</sup> One director informed the researchers, "I think the idea may have come from the family law division [of the legal services program], but I am sure it was approved by the Board, we discussed it in the Board meeting."<sup>34</sup>

None of the respondents interviewed referred to a role for clients in the programs' decisions to offer pro se training.<sup>35</sup> In these narratives, clients are invisible in program governance.<sup>36</sup> Similarly, when Evergreen Legal Services in Washington established a pro se program, the impetus came from a meeting of program staff, representatives of the local bar association, and a judge.<sup>37</sup> The rest of program staff were supportive;<sup>38</sup> the author makes no mention of client input.<sup>39</sup>

We can only speculate whether clients were consulted in establishing these pro se courses, and we can only speculate whether, if clients could choose, they would choose REPRESENTATION by an attorney or by themselves. None of the Florida programs studied seemed to give individual clients a choice as to whether they wanted to take the course or be represented by a lawyer.<sup>40</sup> If the client's case fit the criteria for the pro se course, she was offered the course but not REPRESENTATION.<sup>41</sup> If her case later became complex or contested, some of the programs provided REPRESENTATION.<sup>42</sup> In one program, the course coordinator screened potential participants for language, literacy, and personal problems,<sup>43</sup> and referred those who failed to pass the screening to the local bar association's pro bono panel.<sup>44</sup>

One survey of attorneys in six Massachusetts programs found client enthusiasm for self-REPRESENTATION was mixed.<sup>45</sup> The Florida

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<sup>29</sup>See STREMLER & SHEHAN, *supra* note 4, at 9 (observing that the interview guide included "open-ended questions about the . . . history and/or development of the clinic").

<sup>30</sup>*See id.*

<sup>31</sup>*Id.* at 34.

<sup>32</sup>*Id.* at 35.

<sup>33</sup>*Id.* at 40.

<sup>34</sup>Interview with pro se program director, Aug. 9, 1993. Stremler and Shehan promised interviewees that their identities would remain confidential. See *supra* note 9.

<sup>35</sup>See STREMLER & SHEHAN, *supra* note 4, at 80-92 (reporting client-respondents' responses).

<sup>36</sup>*See id.*

<sup>37</sup>Elizabeth Thomas, *Self-Help Plus: A Pro Bono Program for Pro Se Family Law*, 17 CLEARINGHOUSE REV. 247, 249 (1983).

<sup>38</sup>*Id.*

<sup>39</sup>*See id.* at 247-56.

<sup>40</sup>See STREMLER & SHEHAN, *supra* note 4, at 19-49 (listing the characteristics of the various programs).

<sup>41</sup>*See id.* at 25, 30, 36, 46 (observing that additional assistance, such as a referral to a volunteer attorney, was provided in cases involving complicated or complex issues or if full REPRESENTATION was needed).

<sup>42</sup>*See id.* at 20, 41.

<sup>43</sup>*Id.* at 35.

<sup>44</sup>*See id.* at 39 ("Cases not appropriate for the pro se clinic are referred to the pro bono panel of the Orange County Bar.").

<sup>45</sup>Susan Elsen, *An Evaluation of Pro Se Divorce Clinics—Stretching Legal Services Resources While Providing a Valuable Service to Clients*, THE REPORTER 7, 9 (Dec. 1992).

study gives us no insight into individual participants' choice to enter the pro se courses, but it does describe their response to the courses, which was by and large favorable.<sup>46</sup> Participants gave high ratings to convenience factors,<sup>47</sup> presentation of information,<sup>48</sup> and social or emotional support received in the course meetings,<sup>49</sup> with the mean responses for all these ratings falling between somewhat satisfactory and very satisfactory.<sup>50</sup> The mean rating of clarity of written materials also was high: 8.9 on a ten-point scale.<sup>51</sup> All of the participants who completed the questionnaires immediately following the course said they would recommend the course to other people.<sup>52</sup> A few months later, thirty-nine participants were interviewed by phone. Nineteen had taken their cases through a final hearing, and seventeen of these had received a divorce. All those who had received a divorce reported they would recommend the course to friends and family who intended to proceed pro se.<sup>53</sup> However, only nine of the nineteen who had taken their cases all the way through a final hearing reported they would try to represent themselves in future legal proceedings.<sup>54</sup>

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<sup>46</sup>STREMLER & SHEHAN, *supra* note 4, at 85-86.

<sup>47</sup>*Id.* at 82.

<sup>48</sup>*Id.* at 83.

<sup>49</sup>*Id.* at 83-84.

<sup>50</sup>*Id.* at 80.

<sup>51</sup>*Id.*

<sup>52</sup>*Id.* at 84.

<sup>53</sup>*Id.* at 89.

<sup>54</sup>*Id.*

One participant commented, " 'I learned a lot from doing your [sic] own divorce.' "<sup>55</sup> On the other hand,

one woman became so frustrated by the process that she decided not to file. She described herself as having to deal with too many things. She didn't have "the extra strength to wade through all of the uncertainty." She still want[ed] a divorce, but sounded as though she was totally intimidated by the process.<sup>56</sup>

A study by the American Bar Association found that pro se litigants were more satisfied with the legal process<sup>57</sup> and with judges<sup>58</sup> than those who were represented by an attorney, and were equally satisfied with the terms of their divorces.<sup>59</sup> However, compared to those represented by an attorney, a slightly smaller proportion of those who had been unrepresented would make the same choice in the future.<sup>60</sup>

In an earlier study, Joselson and Kaye interviewed ten women, six of whom obtained a divorce, in a pro se course the authors had helped to establish.<sup>61</sup> Six of the ten respondents would be willing to handle other legal matters pro se.<sup>62</sup> The women in this study reported different ways in which they had gained confidence following their divorces: they were more assertive, took leadership roles, and gained independence.<sup>63</sup> One woman, responding to the authors' questions regarding how she felt after handling her own divorce, said, "I walked myself into that mess but, hell, I walked myself out, too!"<sup>64</sup> Nevertheless, proceeding pro se was not necessarily the choice of these women. The authors found that "the attitude that pro se REPRESENTATION is a badge of poverty, while lawyer REPRESENTATION symbolizes wealth, sophistication, and social status, [is] widely held."<sup>65</sup> "[O]ne woman acknowledged honestly that 'doing things yourself is just another burden of being poor. Sure, if I had money I'd hire a lawyer.' "<sup>66</sup> Like so many poor people's views of the legal system,<sup>67</sup> this attitude comports with reality: people with lower incomes are substantially more likely to proceed pro se.<sup>68</sup>

So, the small amount of evidence we have reveals that while some legal services clients may gain a good deal (and sometimes obtain a divorce) from pro se training, they would not necessarily choose to proceed pro se. Legal services programs do not generally offer individual clients the choice of REPRESENTATION or training.

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<sup>55</sup>*Id.* at 85.

<sup>56</sup>*Id.*

<sup>57</sup>SALES, *supra* note 2, at 26.

<sup>58</sup>*Id.* at 28.

<sup>59</sup>*Id.* at 22.

<sup>60</sup>*Id.* at iv.

<sup>61</sup>Emily Joselson & Judy Kay, *Pro Se Divorce: A Strategy for Empowering Women*, 1 LAW & INEQ. J. 239, 243 n.13 (1983).

<sup>62</sup>*Id.* at 254.

<sup>63</sup>*See id.* at 248-49.

<sup>64</sup>*Id.* at 248.

<sup>65</sup>*Id.* at 253 n.26.

<sup>66</sup>*Id.* at 253.

<sup>67</sup>For a discussion of poor people's view of the legal system based on interviews with clients of a legal services office, see Austin Sarat, ... *'The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMANITIES 343 (1990).

<sup>68</sup>SALES, *supra* note 2, at 8.

Nevertheless, the idea of empowerment is as appealing to practitioners as it is to academics, and it sometimes appears in their discussion of the advantages of pro se courses.

## V. EMPOWERING THE CLIENT: PICTURE OF POOR PEOPLE

A course manual from New Jersey presented the course as a way of "increasing the self-confidence and self-sufficiency" of participants.<sup>69</sup> Founders of a course in Philadelphia saw a course as "bring[ing] women together to learn, assert themselves, and in some small way tackle the system."<sup>70</sup> An author of a self-help manual sees pro se divorce as letting people "take responsibility for their lives."<sup>71</sup> The pro se course at the Legal Services Center in Jamaica Plains, Massachusetts, was started by law students as an experiment in empowerment.<sup>72</sup> They saw the course as giving the participants "a ready-made support group of other women," which would teach them to value other women as a source of support and strength.<sup>73</sup> Several of the participants in that course wished they had been given even more opportunity for conversation with the other women.<sup>74</sup> In the Florida courses, over half of those who proceeded to final hearing said they had received emotional support from others in the class.<sup>75</sup>

The director of a pro se program in Florida was effusive about the transformation that such a course could effect in participants:

[T]his is more than just a pro se class. This is a voyage of motivation, of finding self-esteem, of finding the energy and the confidence to do something that is of great value to them in a very complicated bureaucracy. The satisfaction and relief that participants experience after they obtain their divorces has much more to do with their ability to succeed and to having accomplished something important in their lives, than with simply getting a dissolution of the marriage. To many, this might just be the beginning of a trip towards increased self-sufficiency and self-confidence.<sup>76</sup>

A composite of these assertions lets us picture the legal services client as she begins her "voyage of motivation." She is dependent (i.e., not self-sufficient) and non-assertive. She is isolated and lacks a personal support network. She lacks strength, energy, and self-confidence. She apparently has not yet

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<sup>69</sup>Joselson & Kaye, *supra* note 61, at 240, n.3 (quoting A. POZEFSKY & L. ROSENZWEIG, MANUAL FOR THE TEACHING OF PRO SE DIVORCE CLINICS I (Camden Regional Legal Services, 1976)).

<sup>70</sup>*Id.* (quoting C. Rosenthal, *Pro Se Divorce Clinics*, LAWYER'S GUILD WOMEN'S BULL., Fall 1979, at 1).

<sup>71</sup>*Id.* (quoting K. TRIANTAFILLOU, DO YOUR OWN NO FAULT DIVORCE v (1979)).

<sup>72</sup>Elsen, *supra* note 45, at 9. Joselson and Kaye were two of the founders of the pro se course and they wrote their article while developing it.

<sup>73</sup>Joselson & Kaye, *supra* note 61, at 241.

<sup>74</sup>*Id.* at 256.

<sup>75</sup>STREMLER & SHEHAN, *supra* note 4, at 88.

<sup>76</sup>*Id.* at unnumbered third page (brackets in original) (quoting an un-named clinic director).

"accomplished something important" in her life, and has not heretofore tackled the system.

Advocates of rebellious lawyering, who urge legal services practitioners to draw on the strengths of their clients, would certainly disavow this view of poor people. Yet I think the view that lawyers should involve poor people in lawyer's tasks and train them in legal skills may more subtly devalue the accomplishments and strengths of poor people.

Anthony Alfieri analyzed the work he had done on behalf of a class of foster mothers, whose food stamp benefits had been cut because the foster care payments had been counted as part of household income.<sup>77</sup> His rich analysis of the "violence" he had inflicted on the named plaintiff's story includes his concern that his view of her as dependent marginalized her.<sup>78</sup> Among his many failings he confesses.

I presumed Mrs. Celeste incompetent to understand the legal theory and strategy of the regulatory challenge.... I did not fully include her in discussions regarding the constitutional and statutory bases of her case or the strategy of litigation.... Nor did I provide her with legal materials (e.g., statutes, regulations, legislative history, case law) to explicate my case theory and strategy.... I declined to invite [her] to participate in meaningful discussion....

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<sup>77</sup>See generally Alfieri, *supra* note 13.

<sup>78</sup>*Id.* at 2126-28.

I limited her participation to identification and referral of prospective plaintiffs-intervenors.... I did not offer her an opportunity to meet and talk to the various plaintiffs-intervenors, nor did I make arrangements to allow her to visit additional foster care agencies in order to address groups of affected foster parents.... I did not invite [her] to attend litigation planning sessions, negotiation conferences, or federal court arguments.<sup>79</sup>

Instead of inviting Mrs. Celeste to do all these things, Alfieri did it for her and believes that by doing so, he marginalized her.<sup>80</sup>

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<sup>79</sup>*Id.* at 2128.

<sup>80</sup>*Id.*

Meanwhile, as the lawyers toiled over their law books and pleadings on her behalf, what was Mrs. Celeste doing? Alfieri tells us a lot about her life, using her own words.<sup>81</sup> She was the head of a household which included her twenty-two-year-old daughter, her seventeen-year-old son, her two-year-old granddaughter, and six foster children ranging in age from seven months to eleven years.<sup>82</sup> She shopped carefully to stretch her money and stamps to buy enough rice and Cheerios; fresh fruits and vegetables were beyond her.<sup>83</sup> She told her children they couldn't play Little League, couldn't go to the movies, and couldn't go skating: there wasn't enough money.<sup>84</sup> She shopped at the thrift store.<sup>85</sup> She attended monthly meetings about being a foster mother, and accompanied the foster care worker three times a year per child to the childrens' schools to meet with the teachers.<sup>86</sup> She washed the foster children's heads with lice shampoo when they returned from visiting their mother.<sup>87</sup> She visited the hospital every day to see "her" baby (who seems to be a foster child).<sup>88</sup> She fretted that she might lose her priority to adopt two of these children.<sup>89</sup> In between all these activities, and between the lines of Alfieri's narrative, I imagine she washed dishes, cooked, and kept clothes clean and repaired for ten people. She grabbed one baby or another before it knocked a pan off the stove, and intervened in countless squabbles. When, I wonder, was she going to read the statutes, regulations, legislative history and case law that Alfieri now wishes he had provided her?<sup>90</sup> Who would arrange for babysitters while she attended yet more meetings? Who would provide the transportation? She's clearly perfectly capable of doing both, but I sit exhausted as I contemplate adding anything else to her load.

Now let us suppose Mrs. Celeste, on top of her other trials, has a long-absent husband in her past. She wants to remarry, and so she goes to a legal services office and tells the screening interviewer she would like to get a divorce. She learns that she is eligible to enroll in the next pro se course, and, in three class sessions, learn how to represent herself. When she asks the screener why they cannot just represent her in the divorce, she hears that the program does not have resources to represent everybody. The program staff had decided that teaching people to represent themselves would enable more people to get divorces.

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<sup>81</sup>See *id.* at 2109-10, 2114-18.

<sup>82</sup>*Id.* at 2114, 2115.

<sup>83</sup>See *id.* at 2114 ("I couldn't buy them fresh vegetable, fresh fruits.... Sometimes I run out of rice for my kids and they don't eat no [sic] rice. They eat anything; maybe they eat Cheerios or something like that.").

<sup>84</sup>See *id.* at 2114-15.

<sup>85</sup>*Id.* at 2115.

<sup>86</sup>See *id.* at 2116-17.

<sup>87</sup>*Id.* at 2116.

<sup>88</sup>See *id.* at 2117-18.

<sup>89</sup>*Id.* at 2117.

<sup>90</sup>See *supra* text accompanying notes 53-80 (discussing Alfieri's view that he marginalized Mrs. Celeste by excluding her from participation in the litigation).

Furthermore, the staff thought clients would benefit by learning to represent themselves, to negotiate the legal system. Clients would become more self-assertive and more confident if they could do this for themselves, and they would gain from the fellowship, or sisterhood, which would emerge among the members of each pro se class.<sup>91</sup>

Mrs. Celeste might be puzzled. She might think about her years of negotiating with a changing crew of foster care workers, food stamp workers, and teachers and wonder whether she really needed one more opportunity to clear a path through the bureaucratic brambles. Those same workers could testify about her assertiveness; she has plenty and some to spare. As for self-confidence, she's long since learned that no matter how turbulent and chilly the water, if thrown into the river, she'll swim, and her complex network of family, friends, and church members gives her all the sisterhood and support she has time for.<sup>92</sup> Nevertheless, she knows an unbendable rule when she sees it; she has had lots of experience in figuring out when to try to work the rules and when to accept them. And it's clear to her that the legal services program will give her the course or give her nothing. So, if she wants the divorce, this is the route she must take.

Whether the route will take her where she wants to go is another question. In the Joselson and Kayes study, six of the ten women interviewed had succeeded in obtaining a divorce.<sup>93</sup> In the Florida study, of the thirty-nine participants reached by phone, seventeen had succeeded.<sup>94</sup> Anthony Alfieri believes that we must change our conception of winning:

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<sup>91</sup>Joselson and Kaye saw the pro se course as giving the participants "a ready-made support group of other women." Joselson & Kaye, *supra* note 61, at 241. In the third of the four stages of empowerment the authors describe, the participants, by connecting with other women, would learn to value other women as a source of support and strength. *See id.* at 245. The authors did indeed find that a number of the ten women they interviewed wished there had been more opportunity for conversation among the women. *See id.* at 256. Participants in the Florida clinics were generally satisfied with the opportunity to discuss their feelings with others in the class, STREMLER & SHEHAN, *supra* note 4, at 82, 83-84, while 11 of the 19 who took their case all the way to final hearing said they received emotional support from others in the class, *id.* at 88.

<sup>92</sup>Jane Mansbridge, in a lecture, told of the AFDC recipients she had interviewed and how they, especially African-American women, consistently spoke of their mothers and sisters as role models of strength for them. Jane Mansbridge, *Feminist Identity: The Voices of African-American and White Working-Class Women 18-19* (1992) (unpublished working papers) (on file with author).

<sup>93</sup>Joselson & Kaye, *supra* note 61, at 243 n.13.

<sup>94</sup>STREMLER & SHEHAN, *supra* note 4, at 87.

"Winning the case" is the yardstick by which success is measured in our adversarial system. The poverty lawyer shares this ethos with all lawyers. But "winning" may often hold a different meaning in the poverty law context. Here, outcome may extend beyond material benefits and compensation to encompass deeper ideals of political and socioeconomic progress, and affirmation of individual or group identity and dignity.<sup>95</sup>

While this may hold true in some other types of cases, I believe the bottom line of success in an uncontested divorce case is obtaining a final judgment.<sup>96</sup>

## VI. LAWYERS AND PLUMBERS AND POOR FOLKS AND SUCH<sup>97</sup>

Perhaps implicit in the enthusiasm for teaching poor people to represent themselves in court is the idea that the skills many poor people bring with them when they enter a law office, and the activities that take up their time, are not as valuable as the skills and activities of lawyers. It is paradoxical that those who, like Alfieri, value poor people's abilities and seek to empower clients, should at the same time hope to encourage them to do something other than what they usually do.

Many of us who practice law became lawyers because we enjoy reasoning, arguing, advocacy, and perhaps public speaking. Do we assume these are desirable pursuits for everyone? I would be enriched if a plumber came to my house and showed me how to replace the faucets; after that I could do it for myself. However, that's not how I want to spend my time. Furthermore, maybe the plumber isn't a very good teacher. Encountering a cloud on the title to my house, I have hired a lawyer. I did not want to spend my time in this particular legal morass, and the anxiety that accompanies that cloud might disable my legal skills. I am much happier to turn that struggle over to someone else.

In response to a question whether course participants' failure to complete pro se divorce proceedings is related to apprehension or confusion regarding the judicial system, one program director in Florida responded, "No, I never get that feeling. I get the feeling that they sometimes give up. They change their minds or do not want to do any more work. It is a lot of work. They are bogged down in something else and they put it aside."<sup>98</sup>

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<sup>95</sup>Alfieri. *supra* note 13, at 2146.

<sup>96</sup>Cathy Mansfield criticizes the theoretics of practice school, saying that while they address the benefits of empowerment these same authors do not address the impact of such practices on the results reached for the individual clients Cathy Lesser Mansfield, *Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretics of Practice Movement*, 61 BROOK. L. REV. 889, 892 (1995).

<sup>97</sup>This subtitle is a variation on Dorothy Parker's poem. See Dorothy Parker, *Bohemia*, in THE COLLECTED POETRY OF DOROTHY PARKER (1936).

<sup>98</sup>Interview with pro se program director, July 9, 1993. Stremler and Shehan promised that the interviewee's identity would remain confidential. See *supra* note 9.

"Give a man a fish, and you feed him for a day. Teach a man to fish, and you feed him for a lifetime."<sup>99</sup> Fishing and feeding are intrinsically valuable, but how valuable is it to know how to represent ourselves in divorce court? Certainly success in filling out forms, with a lot of coaching, might increase skill and confidence in filling out forms, an important ability in our society. Success in speaking for oneself to the Clerk of Court, the judge's secretary, and the judge herself, may increase confidence in other encounters. Nevertheless, one would hope that the specific ability to represent oneself in a divorce would not be useful more than a few times in most people's lives. Moreover, I believe the training, focusing as it must on specific forms and steps, does not provide the sort of understanding that could be generalized to enable participants to represent themselves effectively in other legal proceedings. Only nine of the nineteen respondents in the Florida study who had proceeded to final hearing said they would represent themselves in future legal matters.<sup>100</sup>

I don't know that the skills taught by the courses are more valuable than child-rearing. Almost one third of the respondents in the Florida study had children of the marriage,<sup>101</sup> and at least some presumably had other children. Nor are these skills necessarily more valuable than those involved in cleaning houses and offices, or in clerical work, each the occupation of ten percent of the Florida respondents who were employed in wage work.<sup>102</sup> All of the tasks required to maintain the daily lives of households and families, which I have only hinted at in my musings on Mrs. Celeste, are made so much harder and more complicated by poverty. Those of us with money can pull out our checkbooks, however grudgingly, to address daily crises: the broken furnace, the ear infection, the urgent need for materials for yet another science project. For those without money, these become chronic hardships, to be endured, ignored, or circumvented.

## VII. JUST A WOMEN'S ISSUE

The occupations and preoccupations I have mentioned are primarily relegated to women,<sup>103</sup> and consistently undervalued. The work of poor women is even less valued; of course, this statement is somewhat circular, since if it were both valued and rewarded,

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<sup>99</sup>Chinese proverb, in RHODA TRIPP, THE INTERNATIONAL THESAURUS OF QUOTATIONS 640 (1970).

<sup>100</sup>STREMLER ~ SHEHAN, *supra* note 4, at 89.

<sup>101</sup>*Id.* at 6.

<sup>102</sup>*Id.* at 12.

<sup>103</sup>The 1990 Census showed that 5,355,243 women but only 290,294 men were secretaries, stenographers, typists, or clerks. Search of 1990 Equal Opportunity File, Detailed Occupation by Sex-United States. In private household occupations (such as launderers, cooks, house cleaners, child care workers) there were 534,841 women and 29,077 men. *Id.* Men outnumber women, however, in the categories of maids/housemen and janitors/cleaners: 1,356,013 women compared to 1,838,321 men. *Id.* Women spend much more time on unpaid domestic work than men. In the 1980s and 1990s, women in the United States spent an average of 32 hours a week on housework and childcare, compared to an average 18 hours a week for men. See DAPHNE SPAIN & SUZANNE M. BIANCHI, BALANCING ACT: MOTHERHOOD, MARRIAGE, AND EMPLOYMENT AMONG AMERICAN WOMEN 189 (1996) (citing UNITED NATIONS, THE WORLD'S WOMEN 1995 TRENDS AND STATISTICS tbl. 8 (1995)).

they would not be poor.<sup>104</sup> Attacks on mothers who receive public assistance, and their failure to "work," are particularly fierce; while the popular media respectfully discuss middle class women who postpone career aspirations to ensure a good beginning for their children,<sup>105</sup> they assail the women who stay home and raise their children in the challenging circumstances of poverty.<sup>106</sup>

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<sup>104</sup>For a discussion of historical claims to compensation for household labor, see generally Reva B. Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073 (1994).

<sup>105</sup>E.g., Pamela Kruger, *The Myth of the Mommy Wars*, WORKING WOMAN, Mar. 1993, at 11 (observing that many supposedly "at-home" mothers work part-time); *More Moms Are Homeward Bound*, INSIGHT, Jan. 10, 1994, at 16. Cf. NANCY E. DOWD, IN DEFENSE OF SINGLE-PARENT FAMILIES 6-7 (1997) (providing examples of how middle-class employed mothers sometimes lose custody of their children due to their employment). *But cf.* Lynn Darling, *What's Maternally Correct*, 182 REDBOOK, Mar. 1994, at 77, 79 (suggesting that children of working moms will eventually be "pretty good grown-ups who make it hard to remember what all the worry was about").

<sup>106</sup>See, e.g., Lee Smith, *The New Wave of Illegitimacy*, FORTUNE, Apr. 18, 1994, at 81, 81 (discussing the "heavy burden" illegitimate children have placed on American taxpayers). The translation of this attitude into legislation is described in Mimi Abramovitz, *Why Welfare Reform Is a Sham*, THE NATION, Sept. 26, 1993, at 238, 239. See also DOWD, *supra* note 105, at 76 ("More than ever, 'welfare' is a dirty word.... Many policy makers stigmatize welfare in order, in their view, to prevent laziness.").

It is striking to me that pro se courses are so frequently created to handle divorce cases. When I began thinking about this issue, I believed I would find that the devaluing of family law by legal services attorneys and programs led to the creation of these courses. I based this on my own experience in legal services, as well as attitudes common among attorneys in general.<sup>107</sup> Among the Florida legal services programs studied, however, a considerable amount of resources were devoted to family law matters beyond the pro se courses.<sup>108</sup> They could hardly be said to have established the courses as a way to do a minimal amount of domestic relations work.

Instead, I have concluded that far more important factors in the growth of pro se courses are the unremitting demand for divorce services, the rapid increase in pro se divorce petitions,<sup>109</sup> the dismay of the judiciary and courthouse staff faced with bewildered petitioners, and the concern of judges and the organized Bar to turn back the tide of paralegal services which charge fairly stiff fees to send pro se litigants to court ill-prepared.<sup>110</sup> The courses also satisfy legal services programs need to make effective use of pro bono volunteers.<sup>111</sup>

Nevertheless, though the establishment of pro se divorce courses may reflect a commendable desire to expand access to the courts despite limited resources, it also reflects a view that family law cases are simple and not worthy of a lawyer's careful investigation and analysis. Hidden beneath this is a devaluing of "women's issues": all those messy, emotional concerns that permeate conflicts about children, family support, and household matters.<sup>112</sup> Not only are the issues unattractive to the legal mind, some lawyers feel they are not important. One pro se program director noted:

Divorce is not a priority here. We handle housing cases. We handle eviction cases. We feel that if one person is being evicted they could be homeless. That, for us, is a priority. Or if they're being exploited by somebody,

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<sup>107</sup>See J. Fraser Himes & Richard Y. Feder, *Family Law Judicial System: Indictment from Within*, FLA. B.J., Nov. 1987, at 11 (discussing a survey of 171 circuit court judges revealing that 65.1% of the judges dislike or strongly dislike family law matters).

<sup>108</sup>See, e.g., STREMLER & SHEHAN, *supra* note 4, at 28 (observing that one program offered referral for other services and provided information about domestic violence).

<sup>109</sup>See *id.* at I (observing that the estimates of the proportion of dissolutions in uncontested cases that proceed pro se range from 30 to 70%).

<sup>110</sup>See Gary Blankenship, *Board Rejects Nonlawyer Proposals*, FLA. B. NEWS, June 15, 1994, at 2, 2, 6 (discussing The Florida Bar's disapproval of nonlawyers performing family legal tasks); see also *The Florida Bar v. Schramek*, 616 So. 2d 979, 980-81 (Fla. 1993) (holding that paralegal service caused significant public harm when it prepared pleadings for person seeking child support modification).

<sup>111</sup>See 45 C.F.R. § 1614.2(a) (1996) (requiring federally-funded legal services programs to devote a portion of their grant to administering a pro bono program). Three of the six courses studied in Florida used pro bono attorneys as well as legal services program staff. See STREMLER & SHEHAN, *supra* note 4, at 21, 26, 31, 36-37, 42, 47 (discussing the staff personnel requirements for the various clinics).

<sup>112</sup>Though characterized as a woman's issue, family law does not only concern women. One Florida program, in fact, has held a couple of pro se clinics to teach men to bring their own paternity proceeding to formalize the custody of children born outside marriage in cases where they already have de facto custody. Memorandum from Elizabeth McCulloch to Constance Shehan (Aug. 14, 1992).

their property is being taken from them or their wages are being garnished, those are priorities for us. Much more so than divorces really.<sup>113</sup>

Of course, a divorce case also can involve or lead to homelessness, exploitation, loss of property, and wage garnishment.

#### VIII. WHERE DID MY RIGHTS GO?

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<sup>113</sup>Interview with pro se program director, July 9, 1993. Stremler and Shehan promised that the interviewees that their identities would remain confidential. See *supra* note 9.

Some undetermined proportion of the divorce clients who bring their cases to legal services have complicated underlying issues. I am concerned that the screening is too perfunctory and the training too general and routinized to address those issues.<sup>114</sup> Screening procedures differ from program to program. Generally, the applicant or an interviewer fills out a form to determine whether the applicant is financially eligible and has a case that meets course guidelines. Apart from financial eligibility,<sup>115</sup> the various checklists and application forms which screen participants into the course cover the following questions: Are there children of the marriage? Are there debts or property to divide? Are you asking for alimony? Do you know where your spouse is? Is your spouse in the military?<sup>116</sup> Can you read and write English? Are you seeking a restraining order? Do you own or are you buying land? Will your spouse object to or sign an agreement? Such topics may be filled with legal landmines. Any family law attorney can tell tales of the labyrinth of couplings, both marital and non-marital, that can underlie a response to so simple a question as, "Are there children of the marriage?"<sup>117</sup>

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<sup>114</sup>For a discussion of the importance of careful screening, see Elsen, *supra* note 45, at 18.

<sup>115</sup>See 45 C.F.R. § 1611.3(b) (1996) (requiring that people served by programs receiving funds from the federal Legal Services Corporation have income no greater than 125% of the federal poverty level).

<sup>116</sup>Before obtaining a default judgment, plaintiff or petitioner in any court must file affidavits to show the defendant or respondent is not in the military. See 50 U.S.C. app. § 520(1) (1988). See generally Meredith J. Cohen, Representing the Military Spouse, 61 FLA. B.J., June 1987, at 117.

<sup>117</sup>See, e.g., Blitch v. Blitch, 341 So. 2d 251, 252-53 (Flat 1st DCA 1976) (holding that an emotional outburst by wife that father was not father of the child is insufficient to overcome presumption that a child born 228 days after marriage of the parties is a child of the marriage); Esparza v. Esparza, 382 S.W.2d 162, 168 (Text Civ. App. 1964) (holding that unless clear and convincing evidence that a common-law husband fathered the children, the prior husband would be presumed to be father); Brown v. Commonwealth *ex rel.* Custis, 235 S.E.2d 325, 331 (Va. 1977) (man who married woman who was still married to first husband was father of their child); West Virginia *ex ret.* J.L.K. v. R.A.I., II, 294 S.E.2d 142, 149 (W. Va. 1982) (holding that a woman, who conceived child while she was still married, but gave birth to a child while she was unmarried, could not claim that father was other than her former husband).

Poverty law attorneys should understand the effect on client's eligibility for public benefits of arrangements regarding custody and visitation,<sup>118</sup> yet there are no questions designed to connect the applicant's aid status to proposed custody provisions. The question of alimony requires more than an answer to "Are you seeking it?"<sup>119</sup> Many older women, the most likely candidates for alimony, are instantly impoverished upon separation from their spouse and are likely to be eligible for free legal services.<sup>120</sup> It can be difficult to obtain an order for alimony, and even more difficult to enforce it. Competent legal assistance must include a consideration of the length of the marriage, the parties' roles during the marriage, their present circumstances, and their future prospects. Many people come to legal services tangled up in debt; many do not understand that they are often jointly liable with their spouse for the debts incurred during the marriage.<sup>121</sup> Nor do they understand that a judicial order dividing up the obligation to pay the debts may not stop the creditors from pursuing both parties for repayment.

These are just a few of the issues that are likely to be missed in a routinized screening. They could be picked up with careful interviewing. They might emerge during the pro se class as clients fill out the form pleadings with the guidance of the instructor. However, observations reported in the Florida study lead me to believe this will not usually be the case.

In one course, if a participant inquires about the possibility of obtaining sole custody, or barring visitation, the director tells her what the law is, and that she can ask for whatever she would like, but "there will be a judgment day."<sup>122</sup> This program's policy is to exclude cases with custody issues.<sup>123</sup> The instructor in one course informed students in opening remarks that they would not be able to deal with contested issues, nor get help in obtaining property or alimony.<sup>124</sup> The instructor then asked whether anyone needed such help, and with no response, proceeded with the course.<sup>125</sup> Later in the class the instructor asked whether anyone needed help obtaining a protective order against abuse.<sup>126</sup> The observers noted, "It appeared that some of the women were very

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<sup>118</sup>CENTER FOR LAW AND SOCIAL POLICY, PUBLIC BENEFITS ISSUES IN DIVORCE CASES: A MANUAL FOR LAWYERS AND PARALEGALS (1994).

<sup>119</sup>For example, the Florida statute lists seven factors the court must consider in deciding whether to award alimony. See FLA. STAT. § 61.08 (1995). In addition, the court may consider "any other factor necessary to do equity and justice." *See id.*

<sup>120</sup>*See* Joan Pennington, *The Economic Implications of Divorce for Older Women*, 23 CLEARINGHOUSE REV. 488, 488 (1989).

<sup>121</sup>*E.g.* *Deas v. Deas*, 592 So. 2d 1221, 1222 (Flat 1st DCA 1992) (holding that the mere fact that the wife was unaware of debts is insufficient to demonstrate that the debts were not marital liabilities).

<sup>122</sup>Memorandum from Elizabeth McCulloch to Constance Shehan (Aug. 14, 1992) (quoting a program director's comments at a meeting of representatives from Florida programs which conduct pro se clinics).

<sup>123</sup>*See id.*

<sup>124</sup>Observation at pro se clinic (June 23, 1993) (notes on file with author).

<sup>125</sup>*Id.*

<sup>126</sup>*Id.*

reluctant to admit this in front of the group of strangers.... But in the end two additional women [had] these forms [for the protective order] attached to their files."<sup>127</sup> In another program, while clients filled out the forms, and the instructor circulated around the room to help them, a client asked, "My husband said he'd kill me if I got a divorce, what should I do?"<sup>128</sup> The instructor replied, "You should probably get a restraining order. It doesn't cost anything, and it's good for thirty days."<sup>129</sup>

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<sup>127</sup>*Id.*

<sup>128</sup>*Id.*

<sup>129</sup>*Id.*

Domestic violence raises additional issues. The programs generally include the forms to obtain a protective order, but the stigma that still attaches to the "battered woman" will preclude many women from so identifying themselves in a group of strangers. Even attorneys who have met individually with clients sometimes fail to recognize or respond to domestic violence. The possibility of mortal danger, so bluntly raised by the participant mentioned above, is particularly acute when a woman acts to free herself from the battering relationship<sup>130</sup> and requires something more than the dismissive response it received in the observed class. Battered women with children need legal counseling regarding the danger that children's protective services will become involved in their case, and that the state may hold them responsible for "failure to protect" the children from abuse.<sup>131</sup> Finally, whether long-abused women should be left to their own devices in a judicial system notoriously unable or unwilling to protect them, in a situation where they may confront their abuser, is a serious question. One need not characterize these women as helpless victims to contend they need professional advocacy.

Observations of pro se courses raise the suspicion that the form-driven group process of these classes offers few opportunities for participants to raise individual issues. Even when the issues emerge, they may be ignored. Participants, both students and instructors, have an interest in pursuing the process to its goal: a divorce. Most of the Florida programs provide for full REPRESENTATION if a case becomes complex or contested,<sup>132</sup> but I presume the staff prefers to keep the number of these cases low. For her part, the student may be in a hurry to finish the divorce, without understanding the consequences of failing to resolve some buried issues,

I do not mean to imply that the attorneys in these programs do not care about the rights of their clients.<sup>133</sup> The Florida study makes it clear that the staff care a great deal. They worry about the respondents who receive no legal assistance at all.<sup>134</sup> They worry about the many people who are turned away because their

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<sup>130</sup>See Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 34 (1989) (observing that "several thousand women are killed each year by the men who supposedly love them"); Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. I, 11 n.42 (1991) (observing that at some time "1.7 million Americans have faced a spouse wielding a knife or a gun") (citing MURRAY A. STRAUS ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* 34 (1980)).

<sup>131</sup>E.g., *Johnson v. Florida*, 508 So. 2d 443, 446 (Fla. 1st DCA 1987) (Zehmer, J., dissenting) (observing that the majority upheld an enhanced sentence given to an abused mother for the manslaughter of her child killed by the father even though she herself did not inflict any injury and the undisputed record showed that she could not physically prevent the father's abuse).

<sup>132</sup>STREMLER & SHEHAN, *supra* note 4, at 20, 25, 30, 36, 41, 46 (listing three of the programs as providing in-house assistance, two as referring persons to pro bono attorneys, and one as sending attorneys to hearings for observation only).

<sup>133</sup>Robert Dinerstein notes that some of the theoretics of practice writers are unduly harsh in their critique of poverty lawyers. Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L.J. 971, 983 (1991); see also (vary L. Blasi, *What's a Theory For? Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063, 1088 (1994) ("Much of postmodern scholarship has adopted a stance critical of virtually all poverty law practice...."); Tremblay, *supra* note 13, at 949 ("[S]ome theoretics literature ... reflects an apparent antipathy toward [poverty law] practice.").

<sup>134</sup>See STREMLER & SHEHAN, *supra* note 4, at 53.

income puts them just over the eligibility guidelines.<sup>135</sup> They express concern for whether their students are treated "professionally and courteously" at the courthouse and not discriminated against for appearing pro se.<sup>136</sup> These programs are a response to the enormous demand for services and the staff's awareness of how few clients they can serve individually in the face of the huge demand for divorce services.<sup>137</sup>

## IX. COUNTING ON THE COURTS

If issues do not surface in the screening and are pushed aside in the classes, perhaps they may emerge in the courtroom, but time constraints and the judicial role make this unlikely. Several of the judges interviewed in the Florida study spoke tellingly to this concern, as they discussed their wariness about pro se clients. One remarked:

I know there's a push on for better access of [sic] the court system for indigent people, or people who cannot afford to hire an attorney, but in my mind the decisions made concerning your personal property, your future concerning single versus married status, and above all, the custody and welfare of your minor children of the marriage is part of the most important decisions you can make.<sup>138</sup>

Another stated:

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<sup>135</sup>*See id.*

<sup>136</sup>*See id.* (quoting an un-named program director or instructor).

<sup>137</sup>For discussions of the dedication of poverty lawyers and the problem with expecting "street-level" lawyers to implement resource allocation decisions, see generally Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, I D.C. L. REV. 123, 139-40 (1992); Tremblay, *supra* note 13, at 947-70.

<sup>138</sup>STREMLER & SHEHAN, *supra* note 4, at third unnumbered page (quoting an un-named circuit judge).

I'm a little bit concerned about the effort to make everything so easy. The system is not difficult because we [tried to sit down and design] a system that would prevent people from coming to court. The reason that the system is difficult is because it has all these procedural safeguards built into it and so when we start talking about making it easy to access what we are really talking about is eliminating the procedural safeguards that have developed over the years.<sup>139</sup>

Litigants can jeopardize such financial security as they have if they are not properly counseled:

[A person seeking a divorce feels] I want out. I don't care what I have to do to get out. The other spouse says fine, if that's what you want, I'm not going to fight it. All of a sudden they wind up a year later with medical bills, mortgage payments, whatever. A lot of women, for example, who are homemakers, all they want is the home. They feel that's security. But there's no money to keep the home up. All of a sudden there's foreclosure and they're out in the street and they've already given up what rights they had.<sup>140</sup>

In one case, the participants did not even want a divorce:

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<sup>139</sup>Id at 76 (quoting an un-named circuit judge).

This judge's remarks evoke concerns expressed by feminists about the movement away from an adversarial, rights-oriented system of family law, which followed and was perhaps partly spurred by feminists' success in increasing women's rights in divorce. See Carol Lefcourt, *Women, Mediation, and Family Law*. CLEARINGHOUSE REV. 266, 267 (1984) ("Removal of family disputes from the 'public' legal system endangers the advancements made [by women in the previous decade]. For continued progress, the judicial system and legislative bodies must be monitored and prodded to achieve the ideal of equal treatment."); Penelope Bryant, *Killing Us Softly: Divorce Mediation and the Politics of Power*. 40 BUFF. L. REV. 441, 442-43 n.2 (1992) ("While law reform has granted divorcing women more property rights than twenty years ago, more changes are needed.... Mediation, however, not only sabotages the reforms that have already occurred; it also inhibits needed additional reform.").

<sup>140</sup>Interview with Circuit Judge (Aug. 16, 1993) (transcript on file with author).

He leads her in, she had a cane, . . . and sits her down, and I watch. Very compassionately he sits her down in the chair, makes her comfortable and then he sits down. [The judge assumed he was a residency witness] . . . and then it came out that he is the husband. [Their] body language belies people who are so estranged that they are asking for a divorce. So after a few minutes . . . it came out that . . . she was a very articulate woman and he seemed to have some kind of a mental handicap that prevented him from expressing himself, signals getting scrambled somehow. And finally, after about ten minutes of this I looked at them and said, "Do you really want a divorce?" And they said no. And she said, "Judge, we're having problems communicating. I think with some counseling he might be able to express himself." [The judge referred them for counseling, and a few months later noticed they had dismissed their divorce case.] Had I taken three minutes to go through the run of the mill [questions], I'd have divorced them, they would have gone their separate ways, it would have been terrible.... [I]f there had been a lawyer involved who had some sensitivity, maybe the lawyer would have done what I did, too.<sup>141</sup>

Of course, the assistance of an attorney does not guarantee thorough work. Many attorneys run high-volume divorce practices and provide minimal services. One judge said, "I see a lot of shoddy work. It's very common[;] they just go through the motions. That's probably worse than not having a lawyer altogether."<sup>142</sup>

These judges told stories of cases where they had spotted and forestalled a potential problem. Those cases will be the exception rather than the rule in a system for handling "routine cases" where judges expect each case to take three minutes or less. One judge said, " 'They need to understand the judge can't spend 10 to 15 minutes on their case when there's a lot of other people waiting.' "<sup>143</sup> Another judge related his concern about the time he was asked to substitute for a judge in another county, and found twenty-five people waiting for a simplified divorce:

So I went ahead and put them all under oath and asked them all the questions at the same time, the standard questions—residence, etc. Then I brought them up one at a time and looked over their paperwork and signed the judgment. I don't like doing it that way but I didn't know what else to do because they gave me fifteen minutes to do twenty-five

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<sup>141</sup>Interview with Circuit Judge (Aug. 13, 1994) (transcript on file with author).

<sup>142</sup>Interview with Circuit Judge (Aug. 16, 1994) (transcript on file with author). Over 50% of 171 judges responding to a survey felt that family lawyers were ill-prepared, compared to fewer than 25% who felt lawyers are ill-prepared in non-family matters. Himes & Feder, *supra* note 107, at 13.

<sup>143</sup>STREMLER & SHEHAN, *supra* note 4, at 63.

divorces.<sup>144</sup>

## X. CONCLUSION

This essay has examined one small piece of poverty law practice, pro se dissolution courses, and questioned whether they contribute to client empowerment, protect clients' rights in divorce, or even produce divorce decrees. Rebellious, empowering practice involves clients, lawyers, and other problem-solvers in identifying appropriate responses to a community's needs and constructing methods for solving problems. The lawyers do not impose a strict "code of roles and tasks."<sup>145</sup> The emphasis in rebellious lawyering on really hearing a client's voice demands individual attention, patience, and time. Students in pro se divorce courses learn to standardize their situation to fit the boxes on the legal forms; some instructors discourage exploration of other issues which may concern them. Indeed, far from being empowering, the relationship of the instructors to the clients who come seeking their services appears to most resemble the conventional image of advocacy described, and disavowed, by Felstiner and Sarat: "The lawyer governs the relationship, defines the terms of the interaction, and is responsible for the service provided."<sup>146</sup>

Nevertheless, legal services programs are faced with an overwhelming demand for divorce services, and the courts are coping with an overwhelming number of ill-prepared pro se litigants. How might a legal services program which is concerned both with meeting these needs and empowering clients address this?

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<sup>144</sup>Interview with Circuit Judge (Oct. 27, 1993) (transcript on file with author).

<sup>145</sup>LOPEZ. *supra* note 15. at 70.

<sup>146</sup>William L.F. Felstiner & Austin Sarat, Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions, 77 CORNELL L. REV. 1447, 1451 (1992).

First, legal services programs should engage with members of the client community and wrestle with the place of domestic relations cases in the program's priorities. The demand for REPRESENTATION in family cases, including divorces, can swamp a legal services program, but this may be evidence of the importance of these cases to the client community. Before limiting services in this area, we must be sure to listen to such constituencies as battered women, welfare recipients, and older women, both through groups claiming to represent them and in their own voices. Legal services staff should thoroughly investigate the possibilities for both law reform and individual service work in family law and the interaction between them,<sup>147</sup> and should educate the client community regarding the choices. They should acknowledge that the establishment of pro se courses is a decision to provide minimal service in the face of limited resources and an overwhelming demand for divorce services.

If the community decides that improving pro se proceedings is one good target for legal services activities, the program need not necessarily offer a pro se course. Advocates and clients might better direct their efforts at helping to establish and monitor systems in local courts to serve all pro se litigants, not just the poor. Programs for only the poor are often poor programs.<sup>148</sup> Poverty advocates' voices are important in determining which types of cases to include and how to screen litigants; they can bring to the table the special concerns of their clients. Involving clients in advocacy, such a key part of empowerment, is as appropriate in modifying the judicial system as it is in addressing bureaucratic systems.

Alternatively, programs could create pro se courses structured to enhance client empowerment. They could make room for each student to tell her divorce story<sup>149</sup> in a less system-driven context than a swift screening interview or class sessions designed to fit the stories to the forms. In some cases this would avoid endangering important legal rights, or even endangering the safety of a woman by a clumsy, cookiecutter legal response in a domestic violence situation.

Courses also could provide an opportunity for real education about law and the legal system, as opposed to training in how to carry out a particular legal procedure. In a course teaching people how to obtain a divorce according to the rules, there is little room to question the rules. I suspect that the attorney who was careful to screen out anybody with personal problems would exclude the insistent, angry client who persists in complaining about

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<sup>147</sup>For a discussion of this interaction, see generally Susan C. Jamieson, Speech at the Florida Bar Foundation Public Service Fellows Symposium, Orlando, Florida (Feb. 1992) (on file with the author).

<sup>148</sup>Richard Margolis calls this "Cohents Axiom." RICHARD J. MARGOLIS, RISKING OLD AGE IN AMERICA 44 (1990) (quoting JAMES H. SCHULZ, THE ECONOMICS OF AGING 103 (1985), who is in turn quoting WILBUR COHEN & MILTON FRIEDMAN, SOCIAL SECURITY, UNIVERSAL OR SELECTIVE? (1972)).

<sup>149</sup>Pieces of these stories do emerge during classes. Some instructors allow discussion among the students and indeed consider the sharing valuable. STREMLER & SHEHAN, *supra* note 4, at 53. Sometimes they refer clients for other legal assistance, *see supra* note 41 and accompanying text, hearing the client's full story is not the purpose of these courses.

unfairness.

Perhaps empowering pro se students would entail explaining the "realm of the possible"<sup>150</sup> within existing divorce law, listening to their dismay at the mismatch between the possible and their own needs, and strategizing with them to expand that realm of the possible. When we tell a woman emerging from a long marriage, in which she helped her husband build his career, that she has little or no right to the earning power she helped him build, we may hear, "Don't I get anything?" From this we develop the idea that perhaps earning ability is some sort of property right.<sup>151</sup> Clients bring special knowledge of their own individual cases, but they also bring fresh outrage at injustice. Family lawyers working for so long within the realm of the possible may have lost their ability to see beyond the boundaries of that realm. We learn by asking clients to teach us about their situation, as well as by teaching them about the situation they will face in obtaining a divorce.

It would be a shame, however, to focus entirely on empowerment with no regard for the bottom line: the number of clients who actually succeed in obtaining a divorce. If a program decides to use pro se courses to provide divorce services, it should consider methods for supporting students until they obtain a final judgment. Perhaps course participants could work in teams to be sure each case is completed.

A system like this would use up a lot of resources. If the goal is producing a high volume of divorces, I believe a standardized no-fault divorce mill would probably better serve more clients with fewer resources than either the pro se courses the researchers observed or the approach to client education suggested here.<sup>152</sup>

Legal advocates for the poor and legal academics who write and teach about poverty sometimes meet at conferences. Often the academics are clinical professors who are trying to achieve client empowerment in their own programs;<sup>153</sup> sometimes they work in community-based projects outside the law school. A useful enterprise would be to encourage the clients in programs which focus on empowerment—the farmworkers who can get legal services from the Workplace Project<sup>154</sup> after they take a ten-week course, the

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<sup>150</sup>Felstiner & Sarat. *supra* note 146, at 1459.

<sup>151</sup>See FLA. STAT. § 61.075(1)(e) (Supp. 1996) (requiring the judge to consider the contribution of one spouse to the personal career of the other in allocating property upon divorce); LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION* 68 (1985) (observing that the largest asset of most couples is the earning ability of each person).

<sup>152</sup>I supervised such a mill as director of the family law unit at Jacksonville Area (Florida) Legal Aid in the 1970s. With an experienced paralegal conducting thorough interviews and preparing pleadings, attorney review of each file before the client returned to sign papers, and all the program lawyers taking turns to represent "uncontested" at the courthouse, we would obtain divorces for three to five clients a day. It was uninspiring and certainly not empowering work, but it provided a useful service fairly quickly and was quite effective at screening the cases that required something other than routine processing.

<sup>153</sup>Many of these professors have united in the Project Group of the Interuniversity Consortium on Poverty Law. Louise G. Trubek, *Lawyering for Poor People: Revisionist Scholarship and Practice*, 48 U. MIAMI L. REV. 983, 985 (1994). Their work combines "teaching . . . with practice through field work, clinics, or focused policy debates with poverty law advocates in the community." *Id.*

<sup>154</sup>Omar Henriquez, community organizer with the Workplace Project in Hempstead, New York, speaking as a panelist at the Eighth Annual Public Service Fellows Symposium, Orlando, Florida, Feb. 22, 1997.

teenagers who take a leadership course and work as partners in their family's immigration case at the Florida Immigrant Advocacy Center in Miami, Florida,<sup>155</sup> the women who seek a divorce from legal services and receive lessons instead—to tell the stories of their encounters with these rebellious lawyers. Advocates and academics should hear and share not only the selected anecdotes of such clients as Mrs. Celeste,<sup>156</sup> but larger accounts of how these programs helped and empowered some people but discouraged and wasted the time of others.

My concern is that the academic advocates of empowerment, while acclaiming the strength and wisdom of poor people, also devalue the way they are spending their time. A greater concern is that one of the methods of empowerment touted by academic advocates of empowerment, teaching people how to pursue their own cases, in the real world quickly becomes another means of disempowerment. After denying them the services they seek, the training may require them to fit their individual cases into Procrustean beds, sometimes jeopardizing legal rights, and then turn clients loose, unsupported, into the judicial system. There, despite a considerable expenditure of their own valuable and sore stretched time and energy, many will fail to obtain the relatively simple remedy they first sought when they came to legal services.

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<sup>155</sup>Vincente A. Tome, director of the PROMISE project at Florida Immigrant Advocacy Center, speaking as a panelist at the Eighth Annual Public Service Fellows Symposium, Orlando, Florida, Feb. 22, 1997.

<sup>156</sup>Alfieri, *supra* note 13, at 2122.