
SHARE THE POWER OF QUESTIONS: A STRATEGY FOR OVERCOMING OBSTACLES TO SELF-DETERMINATION IN THE LEGAL SYSTEM[†]

NAOMI CAMPBELL* & KEILA PEREZ**

In *Self-Determination and Self-Represented Litigants*,¹ Lauren Sudeall explores how to better protect a frequently overlooked value in our legal system. Sudeall demonstrates that self-determination has doctrinal, theoretical, and sometimes empirical support—especially in criminal law—but notes a significant gap between theory and practice.² She argues that self-determination receives even less attention in civil cases involving unrepresented litigants.³ Sudeall warns that “demand-side reforms” for access to justice, which focus on how courts can improve access rather than on providing legal representation, pose particular risks to litigant self-determination.⁴

Sudeall highlights that power imbalances built into our adversarial system, including asymmetries in resources, expertise, and information, may infringe on true self-determination.⁵ At the same time, reforms intended to address these imbalances and uphold fairness and accuracy of judgments often have a compounding, adverse effect on the self-determination of unrepresented litigants.⁶ Sudeall acknowledges the tension between self-determination and due process values but argues that they can be reconciled, suggesting several approaches primarily centered around judges and courts giving and eliciting

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* Empowerment Program Director at the Right Question Institute.

** Empowerment Program Associate at the Right Question Institute.

¹ Lauren Sudeall, *Self-Determination and Self-Represented Litigants*, 106 B.U. L. REV. 1 (2026).

² See *id.* Part I.

³ *Id.* at 25.

⁴ *Id.* at 36-37.

⁵ *Id.* at 8, 54. Power imbalances arise in the dynamics between opposing parties. There may be a “significant asymmetry” between the opposing parties in their understanding of the legal system and the “knowledge required to use it effectively.” *Id.* at 8. There are also power imbalances between courts and litigants, where litigants concede authority to the court to resolve disputes. *Id.* at 7.

⁶ *Id.* at 42-43 (discussing how active judging impedes self-determination); *id.* at 55-56 (arguing court-administered party settlement may stifle autonomy and agency).

information, either through active judging approaches or form pleading and use of forms.⁷

In this Response, we share a complementary approach to realizing self-determination—with a particular focus on the concept of agency—while balancing other considerations such as fairness, accuracy, and efficiency. We suggest that there are overlooked barriers for many people navigating the legal system that are seemingly simple yet fundamental to agency. We argue that those barriers are present even for litigants with representation, especially those with limited literacy or academic training. Finally, we propose a solution that goes beyond giving or eliciting information and can also be applied in the context of the attorney-client relationship.

In our roles at the Right Question Institute (“RQI”), we aim to shape on-the-ground practice to promote agency in the legal system. RQI is a nonprofit organization with an educational strategy centered around helping people ask better questions and participate more effectively in decision-making.⁸ We train a wide range of professionals, advocates, community organizations, and court programs to incorporate RQI’s educational strategy into their work with clients or to support unrepresented litigants.⁹

The development of this strategy was informed by the first-hand experiences of individuals in low-income communities who struggled to advocate for and access information and support.¹⁰ Our co-founders were working with parents with primarily immigrant backgrounds who explained that they did not advocate for their children in their children’s schools because they “don’t even know what questions to ask.”¹¹ This overlooked barrier to self-determination—not knowing what questions to ask—is one we have heard repeatedly from communities with whom we have worked across the country and around the world. We have also consistently encountered other overlooked barriers: People did not know they were allowed to ask questions, that they should ask questions, how to ask questions

⁷ See *id.* Part II.

⁸ See *What is the QFT?*, RIGHT QUESTION INST., <https://rightquestion.org/what-is-the-qft> [<https://perma.cc/3TGP-7F2V>] (last visited Feb. 2, 2026); *What is the Voice in Decisions Technique?*, RIGHT QUESTION INST., <https://rightquestion.org/vidt> [<https://perma.cc/C8RT-9W66>] (last visited Feb. 2, 2026).

⁹ Right Question Institute (“RQI”) works with a wide range of partner organizations in different fields within the legal system—including housing and homelessness, workers’ rights, mental health services, child welfare, domestic violence, and disability advocacy—to adapt the strategy to their individual working contexts. RQI’s educational programs also draw from RQI’s course at the Harvard Graduate School of Education, initiatives funded by the Library of Congress and the National Science Foundation on improving research questions, as well as workshops for legal audiences, including through the Chicago Bar Foundation and the Legal Services Corporation.

¹⁰ *About RQI*, RIGHT QUESTION INST., <https://rightquestion.org/about/history> [<https://perma.cc/QNL7-N9Q2>] (last visited Feb. 2, 2026).

¹¹ *Id.*

when a decision was being made, and even, in some cases, what a decision is. In other cases, people did not know how to ask strategic questions to achieve particular goals or hold decision-makers accountable. Overcoming these barriers is essential to self-determination.¹²

Drawing on experiences with low-income communities across the United States and internationally, we have created a model for structuring an interaction with a system so that people formulate their own questions and participate effectively in decisions.¹³ We worked with early champions of RQI's strategy, including adult literacy and English as Second Language ("ESL") educators, human services workers, and others, who refined and field-tested the approach.

While Sudeall's nuanced definition of self-determination encompasses the idea of agency as "the ability to act as and when needed, or to refrain from doing so,"¹⁴ we propose that agency includes cognitive, affective, and behavioral elements.¹⁵ To effect change—to choose to act or not to act—a person must have knowledge, feel a sense of self-efficacy (a belief in one's own capacity), and have the ability to act.¹⁶ We have seen that when people formulate questions, they understand more (a cognitive change), are more

¹² Sudeall cites Stephen Ellmann in discussing whether decisions made by a client or that a client participates in are "competent." Sudeall, *supra* note 1, at 12-13. Ellmann suggests an individual is competent when:

(1) [A person is] aware a decision exists to be made and that they are entitled to make it; (2) they understand the range of available choices and understand the costs and benefits that might result from such choices; and (3) they are acting with as full an understanding as possible of their own values and needs.

Id. at 13 (citing Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717, 727-28 (1987)). In our experience, it is possible to help people become more aware of these elements by helping them ask questions about key elements of the decision to be made. Ellmann, in our view, goes too far, arguing that the model rules are paternalistic because clients should choose the decision-making method. Ellmann, *supra*, at 731. We agree with Sudeall, who writes, "[w]here the appropriate line rests between complete deference to the client's choices (including the method of decision-making) and the lawyer's obligation to emphasize fully-informed, vigilant decision-making is a difficult question, with tradeoffs on either side." Sudeall, *supra* note 1, at 13.

¹³ See LUZ SANTANA, DAN ROTHSTEIN & AGNES BAIN, PARTNERING WITH PARENTS TO ASK THE RIGHT QUESTIONS: A POWERFUL STRATEGY FOR STRENGTHENING SCHOOL-FAMILY PARTNERSHIPS 4-8 (2016); DAN ROTHSTEIN & LUZ SANTANA, MAKE JUST ONE CHANGE: TEACH STUDENTS TO ASK THEIR OWN QUESTIONS 12-13 (2011); Naomi Campbell, *From Service Delivery to Capacity Building: A Scalable Approach to Legal Empowerment*, 10 SOC. INNOVATIONS J., Dec. 6, 2021, at 1, 1-2.

¹⁴ Sudeall, *supra* note 1, at 3.

¹⁵ Our understanding of agency is informed by educational theory. Benjamin Bloom's taxonomy, for example, divides learning into three domains: cognitive, affective, and psychomotor. See BENJAMIN S. BLOOM, TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS 7-8 (1956).

¹⁶ *Cf. id.*

engaged (an affective change), and discover new ways to take action to meet their goals (a behavioral change).¹⁷ When people are participating effectively in decisions, they know or ask about the reasons for a decision, the process for making a decision, and the role they play in the decision-making process. Equipped with this knowledge, they are more prepared to act—to identify their goals and to advocate for themselves.

For self-represented litigants, we help access-to-justice and court reform efforts restructure traditional and more passive client interactions with the court and judges. As clients learn to generate and prioritize their own questions, they are better able to seek out information about court procedures, legal principles, and potential consequences of a judgment. For

¹⁷ Research in the medical field, including a study funded by the National Institutes of Health, has shown RQI's educational strategy can lead to greater engagement and significant increases in self-efficacy and participation among participants in low-income communities. See Darwin Deen, Wei-Hsin Lu, Dan Rothstein, Luz Santana & Marthe R. Gold, *Asking Questions: The Effect of a Brief Intervention in Community Health Centers on Patient Activation*, 85 PATIENT EDUC. & COUNS. 257, 259 (2011) [hereinafter Deen et al., *Asking Questions*]. Other studies have also shown increases in patient agency and ability to partner with their health care providers. See *id.*; Darwin Deen et al., *The Impact of Different Modalities for Activating Patients in a Community Health Setting*, 89 PATIENT EDUC. & COUNS. 178, 181-82 (2012); Wei-Hsin Lu, Darwin Deen, Dan Rothstein, Luz Santana & Marthe R. Gold, *Activating Community Health Center Patients in Developing Question-Formulation Skills: A Qualitative Study*, 38 HEALTH EDUC. & BEHAV. 637, 642-43 (2011); Dharma E. Cortes, Norah Mulvaney-Day, Lisa Fortuna, Sarah Reinfeld & Margarita Alegría, *Patient-Provider Communication: Understanding the Role of Patient Activation for Latinos in Mental Health Treatment*, 36 HEALTH EDUC. & BEHAV. 138, 144-49 (2009); Alegría et al., *Evaluation of a Patient Activation and Empowerment Intervention in Mental Health Care*, 46 MED. CARE 247, 254 (2008). In one study, a ten-minute intervention in community health center waiting rooms showed dramatic increases in patient activation—a measure of patients' knowledge, skills, and confidence to manage their health and actively participate in their care. See Lu et al., *supra*, at 639-42. One patient said, "[The intervention] gave me an extra push to ask what I need. I don't feel nervous and intimidated." *Id.* at 641. Another patient said: "I realized I needed to ask questions instead of staying quiet." *Id.* at 642.

Other research has indicated that asking questions is a potent cognitive strategy for comprehension. See, e.g., J.W. RIGNEY, *Learning Strategies: A Theoretical Perspective*, in LEARNING STRATEGIES 165, 165 (H.F. O'Neil ed., 1978); HELENE M. ANTHONY & TAFFY E. RAPHAEL, USING QUESTIONING STRATEGIES TO PROMOTE STUDENTS' ACTIVE COMPREHENSION OF CONTENT AREA MATERIAL 8 (1987). It has also indicated that asking questions accelerates and improves information search strategies, and subsequently, more effective problem-solving. See, e.g., Michelle M. Chouinard, P. L. Harris & Michael P. Martsos, *Children's Questions: A Mechanism for Cognitive Development*, 72 MONOGRAPHS SOC'Y FOR RSCH. CHILD DEVEL. 1, 4-5 (2007); Marian Martinho, Patrícia Albergaria & José Teixeira-Dias, *Students' Questions in Higher Education Chemistry Classes According to Their Gender*, 47 PROCEDIA-SOC. & BEHAV. SCI., 835, 838 (2012); Yehudit J. Dori & Orit Herscovitz, *Question-Posing Capability as an Alternative Evaluation Method: Analysis of an Environmental Case Study*, 36 J. RSCH. SCI. TEACHING 411, 426 (1999).

example, eviction diversion facilitators based in state courts across the country were trained to incorporate this approach into their interactions with self-represented litigants. Hearing a litigant's questions helps the court understand what a litigant has or has not understood, what information to give to a litigant, and how to help a litigant structure their legal identity and goals in a way that aligns with certain legal principles. Litigants, in turn, better internalize the information given to them when they have first asked a question. They feel more confident and able to advocate for their needs. They also feel heard—an essential element of procedural justice.¹⁸ Finally, by identifying and prioritizing their questions, litigants can, in the process, identify their goals. As Nelida Herrera, a parent in Sacramento, California, shared with us, “Estás más preparado. Sabes lo que quieres. Cuando sabes lo que quieres, buscas la forma de obtenerlo. [You are better prepared. You know what you want. And when you know what you want, you can look for a way to get it.]”¹⁹

Sudeall's primary focus is not on concrete ways to foster agency within the context of the lawyer-client relationship. While acknowledging that self-determination is not always achieved with representation, Sudeall lays out common assumptions of the legal system about the ability of representatives to ensure the agency of their clients, with the exception of when a lawyer's recommendations and a client's wishes conflict.²⁰

However, in spite of the mandate of ethical and professional rules, lawyers are rarely, if ever, explicitly taught how to involve clients in decision-making or to educate clients about their choices.²¹ Nor are lawyers trained on how to make legal decisions, processes, and information accessible to people with low levels of literacy or formal education.²² It may seem a self-evident skill; after all, most lawyers would trust themselves to act in their own best interests, and rely on skills developed over years of formal education and real

¹⁸ See Tom R. Tyler, *What Is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 L. & SOC'Y REV. 103, 104-05 (1988).

¹⁹ Right Question Institute, *Voices from the Field*, YOUTUBE (Apr. 24, 2018), <https://youtu.be/mYfC1OM9AS4?t=142>.

²⁰ Where a lawyer is involved, the concern that such factors are absent may be mitigated. The lawyer's role is to provide zealous representation to their client; serving as the client's agent, the lawyer can express the client's identity in legal terms and use their relevant expertise to manifest their client's desires to the greatest extent possible.

Sudeall, *supra* note 1, at 3. “These are the kinds of decisions a lawyer would typically help their client make, keeping in mind the values and priorities of their client, as well as the range of possibilities available under the law.” *Id.* at 5.

²¹ See Ellmann, *supra* note 12, at 719-20 (acknowledging lawyers are often ill-equipped to listen to clients and meet their needs despite professional obligations).

²² See *id.* at 718 (arguing “[e]ven lawyers not eager to embrace class privilege may accept traditions and habits of professional autonomy which restrict the spheres of client decisionmaking and active involvement”).

world experience to be able to advocate for their needs. This gap persists in part because exercising agency in decision-making may seem an innate skill; after all, most lawyers, drawing on years of formal education and professional experience, trust their own ability to advocate for themselves, and may assume their clients can do the same.

Facilitating meaningful client participation in a legal case is more complex than the legal profession typically acknowledges. Clients must understand the consequences of a decision, navigate institutions and organizations set up to benefit some people and not others, and recognize that there is in fact a way to effect change. The ability to self-advocate in decision-making processes becomes more difficult when there are power imbalances, expectations regarding expertise, and language barriers.²³ Clients and legal aid attorneys alike often report feelings of helplessness: clients in participating in decisions around their case, and attorneys in engaging clients in decision-making processes.²⁴ Kisha Petticolas, a supervising attorney at the Maryland Office of the Public Defender, elaborates on the problem:

[M]ost people would be surprised at the number of clients who throw up their hands and say, “I don’t know what to do. I don’t care. Just do something. I just want this over with, just whatever’s quickest, whether it’s best or not.” Very few clients ask good questions when it’s time to make a decision. I think fear comes into play—and so they get kind of paralyzed and want me to make a decision for them.²⁵

Studies in the medical field have shown the potential of RQI’s strategy to establish agency within the context of a professional-client relationship. In one study, a ten-minute intervention in community health center waiting

²³ See Jason D. Boardman & Stephanie A. Robert, *Neighborhood Socioeconomic Status and Perceptions of Self-Efficacy*, 43 SOCIO. PERSPS. 117, 130 (2000) (“Our findings suggest that individuals with the same SES [socioeconomic status], on average, will report different levels of self-efficacy, depending on the socioeconomic characteristics of the neighborhoods that they live in.”); WRIGHT MILLS, *THE POWER ELITE* 3-4 (1956); Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 872-73 (1990) (“For lawyers, [Goldberg v. Kelly] counsels caution when we set out to advocate for the poor. Before we craft ambitious remedies to redress economic and political subordination, we should attend to, and engage with, the poor people’s movements around us.”).

²⁴ See Marjorie A. Silver, Sanford Portnoy & Jean Koh Peters, *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship*, 19 TOURO L. REV. 847, 856 (2004); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 457 (1994); Lucie White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 544-45 (1987).

²⁵ *Empowerment Spotlight: Insights on Building Trust and Supporting Client Decision-Making as a Public Defender*, RIGHT QUESTION INST. (July 11, 2024), <https://rightquestion.org/blog/legal-empowerment-spotlight-insights-on-building-client-trust-and-navigating-the-court-system-as-a-public-defender> [https://perma.cc/W7D5-FZJC].

rooms showed dramatic increases in patient activation—a measure of patients’ knowledge, skills, and confidence to manage their health and actively participate in their care.²⁶ In another study focused on Latino patients, the strategy improved patient-provider communication.²⁷ One patient described, “[the RQI method] helped me a lot explaining myself and getting my point across to let [my doctor] know how I feel instead of letting him tell me how I feel.”²⁸ Another concluded, “now, if something happens to me, we decide together.”²⁹

We have also seen relationships between legal professionals and clients in vulnerable circumstances improve with a strategy that centers client agency.³⁰ As a legal aid social worker working with unhoused youth shared, “utilizing [the RQI method] is putting into practice a trauma-informed approach. You’re really putting [young people] in the driver’s seat. . . . It makes them feel capable, . . . [and] feel safe . . . to build relationships.”³¹ Clients report feeling more confident and respected when engaging with people they perceive to have more power or expertise. Lawyers, in turn, strengthen their ability to provide client-centered services and partner with clients to achieve their goals.³²

²⁶ See Lu et al., *supra* note 17, at 639-42.

²⁷ See Cortes et al., *supra* note 17, at 150.

²⁸ *Id.* at 147.

²⁹ *Id.* at 148.

³⁰ As Sudeall states, “[a]llowing clients this degree of self-determination is not only important to vindicate the client’s inherent dignity but may also improve the lawyer-client relationship.” Sudeall, *supra* note 1, at 13.

³¹ See Campbell, *supra* note 13, at 3-4. In another case, a lawyer described how using RQI’s methods in an interaction with a client over the phone helped change the emotional tenor of the conversation. She reported:

I asked her to write down all of her questions, without stopping to think or answer the questions. I was desperate to get her to focus and calm down. It felt natural in the conversation. I was able to get her to prioritize. She didn’t want to share her questions with me. Instead, she took her questions, and used them to formulate an email to the rest of the [Individualized Education Plan (“IEP”)] team. It helped to clear her mind. One thing that I noticed was that normally when a parent comes to me, I feel like I have to have all the answers. Instead I put it back on her—to frame the questions—which gave me a moment to breathe, and actually helped me calm down too.

Telephone Interview with Attorney, L. Found. (May 6, 2021) (on file with authors). Individualized Education Plans (“IEPs”) are programs developed to ensure that children with disabilities receive the educational support they need. By law, parents or guardians have a right to be involved in the creation of such a plan. See Individuals with Disabilities Education Improvement Act of 2004 § 636, 20 U.S.C. § 1436.

³² See AM. ACAD. OF ARTS & SCI., CIVIL JUSTICE FOR ALL: A REPORT AND RECOMMENDATIONS FROM THE MAKING JUSTICE ACCESSIBLE INITIATIVE 13 (2020), https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf [<https://perma.cc/477Q-GMGF>] (recounting efforts to train corporate lawyers to provide pro bono representation to low-income women in family court).

Sudeall clearly explains how demand-side reforms can either hinder or support self-determination of pro se litigants.³³ For represented litigants, deference to an attorney for a variety of reasons can also impact their self-determination. To support client agency, we believe legal professionals and access-to-justice reformers can employ methods that increase someone's ability to obtain knowledge about their legal issue, feel confident in participating in their case, and take action toward achieving their goals. RQI's strategy for asking questions and participating in decision-making can build these abilities, and in turn, foster agency and self-determination for represented and unrepresented litigants alike.

³³ See Sudeall, *supra* note 1, at 37 ("Demand-side reform has the potential to address numerous aspects of the civil access-to-justice crisis Yet there is a danger lurking amidst this push for structural court reform. The more that processes are automated or focused primarily on arguments made by the claimant party, and the more the court holds primary responsibility for shaping and driving the proceedings, the less the defending party retains the ability to define their own justice journey." (footnote omitted)).