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A Sad Story is Not a Legal Defense: Defining Legal Issues

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A Sad Story is Not a Legal Defense: Defining Legal Issues

Abstract: Those who work in the legal system are often viewed negatively as unhelpful and unsympathetic to those in need of legal assistance. Applicants seeking help from legal personnel feel disdain for the legal process because their expectations are not satisfied. This study examines how the communication processes between people seeking legal assistance and legal personnel contribute to an asymmetrical relationship in which the legal process feels inaccessible to prospective clients. Specifically, this study looks at the how prospective clients’ narratives are redefined to be a legally relevant narrative using legal definitions and categories at Colorado Legal Services. I discuss three main processes at Colorado Legal Services that work to redefine applicant narratives to fit legal procedure and the reasons why applicants don’t understand this legal structure. I conclude by offering recommendations that would remedy the communication between Colorado Legal Services’ staff and applicants and that would increase applicants’ comprehensibility of legal procedure.

Introduction

“Unfortunately, a sad story is often not a legal defense.” – Staff Member

This statement reflects the general problem in communication of and by people in the legal system: there is often a disjunction between speech that is legally relevant in a case and speech that prospective clients might expect to be of value. While lawyers focus on speech that is legally relevant, non-lawyers, or clients, have certain expectations of what parts of their communication should be valued. Consequently, when client expectations are not met, clients feel as though there is a lack of comprehensibility of the law, and thus we have a communication problem (Oliver-Lalana, 2001). Previous researchers have examined communication barriers that arise between non-lawyers and lawyers and suggest that differences in reasoning strategies may be a potential cause (DeSanctis, 2012). Many legal analysts consider analogical reasoning as a purely logical, rule-based form of reasoning in a legal context, everyday narrative reasoning relies on the use of stories as a tool to communicate a legal problem in a “comprehensible way” (DeSanctis, 2012). Lawyers oftentimes focus on analogical reasoning as more legally valuable because this type of speech appears to be purely rational and logical (DeSanctis, 2012).
However, lay clients emphasize narrative reasoning because they believe that their narratives are central to understanding the legal problem. This study examines the communication problems in initial legal proceedings that arise when lay people seeking legal assistance have specific expectations about the value of their individual narratives, and these expectations are not entirely fulfilled.

Specifically focusing on the use of legal definitions and categories at Colorado Legal Services (CLS), this study investigates how the process of redefining ordinary narrative to be a legally relevant narrative contributes to an asymmetrical relationship between applicants and legal personnel. Examining how legal personnel at CLS use legal definitions and categories and the extent to which the applicant’s narrative is altered to fit legal structures is significant to understanding how the asymmetrical communicative relationship persists. Legal forms of communication have a well-documented problem with lack of accessibility and comprehensibility that create obstacles for the average citizen when trying to understand the legal situation (Oliver-Lalana, 2001). Thus, this study examines how the use of legal definitions and categories intended to translate applicant commonsensical narrative to a textual summary that focuses on legally admissible components highlights the inaccessibility of legal communication to ordinary citizens. This study draws attention to three main processes at CLS that work to redefine an ordinary narrative into a legal narrative: the applicant interview, the translation of applicant dialogue to textual summaries, and the presentation of the summaries at case review. Legal procedures are structured in a very specific way that requires certain processes and forms of communication. This study examines the reasons why applicants don’t understand this legal structure.

**Background**
Colorado Legal Services (CLS) is a nonprofit organization that provides legal assistance to low-income applicants. Among the services CLS provides are advice letters, references to legal clinics, or providing an attorney to represent an applicant. CLS deals exclusively with civil disputes, such as consumer issues or family law. While criminal cases, where people have the right to an appointed attorney if they cannot afford to pay for legal services, in civil cases, people do not have the right to an appointed attorney if they cannot afford one. Thus, CLS was created to provide attorneys and legal assistance to those unable to afford help with civil suits.

CLS follows a strict process. First, an applicant calls or walks into the office and gives contact information and a brief description of the legal issue to the receptionist. If the applicant is a “walk-in,” the next available staff member or volunteer will come to the front office and take the applicant to the back offices to be interviewed. If the applicant called the receptionist, the receptionist takes the contact information and problem description and prints it in a “Call Back Sheet” format. There are two types of Call Back Sheets: urgent or time-sensitive, which are pink, and non-urgent, which are green. Applicants that have court dates or deadlines regarding the legal issue they are seeking help with are categorized as pink Call Back Sheets. These “pink Call Back Sheet” applicants are typically given priority due to the time-sensitive nature of the issue.

During the interviews, each applicant is asked about income and assets to determine eligibility for CLS services. Staff and volunteers interview eligible applicants for CLS services – that is, if they fall below the national poverty guidelines – using specific questionnaires depending on the legal issue. The legal issues are divided into two categories of intake: general and domestic. General cases consist of collections, bankruptcy, foreclosure, identity theft, public benefits denials or terminations, eviction, probate, landlord-tenant disputes, and subsidized
housing denials. Domestic cases include dissolution of marriage (DOM), allocation of parental rights (APR), domestic violence, adoption, child support, and guardianship. Each intake category is reviewed in a separate case review with CLS attorneys and legal staff. The CLS attorneys and legal staff make the final decision about which applicants will receive advice, clinical assistance, or be represented by an attorney, and which will be refused service.

This study examines the communicative processes that occur during this strict CLS procedure. The structured processes described above facilitate the strained communicative relationship between CLS personnel and applicants seeking legal assistance. To better frame this study’s analysis of CLS legal procedure, I next review previous scholarly studies of communication problems and processes in a legal context.

**Literature Review**

I focus on how definitional categories when transitioning from dialogue to text exacerbate an existing asymmetrical relationship between lawyers and clients. When CLS translates spoken narrative to text, the text relies heavily on legal definitions and categories that have been structured to fit within civil legal procedure. This study shows how these definitions often appear to the applicants to limit the role of their ordinary narratives in the legal communication at CLS and how this maintains a disjunction between lay people and legal personnel. Previous research has helped to explain legal communication problems, specific reasoning strategy differences in legal communication, and has offered some insight on the talk to text process within legal communication.

**Legal Communication Problems**

Scholars in legal rhetoric and communication have previously analyzed communicative barriers that occur between legal personnel and the average citizen seeking legal
assistance. While there have been different approaches as to the causes of communicative barriers and potential remedies, Anapol (1972) offers a summary of four major areas that often have communication problems: the lawyer-client relationship, the negotiation process, the trial, and the judicial opinion. Anapol’s (1972) analysis calls for a communicative approach to fix problems in the law (Anapol, 1972; Oliver-Lalana, 2001). Most notably, Anapol (1972) describes two of these basic problems as “preconceived notions by clients and attorneys” and “divergent views as to the role of the attorney” (p 8). Clients often expect to have an attorney immediately and expect the attorney to focus on their narratives of the legal issue. These two problems are important for this study because they highlight how client expectations differing from an attorney’s role plays a significant role in the communication problems that occur between client and attorney. This study draws from the notion that there are communicative aspects in the lawyer-client relationship that are not unavoidable, but that are kept in place by legal procedures that enforce a particular communicative relationship that non-lawyers struggle to comprehend. Thus, the key to diminishing the disconnection between lawyers and clients is to remedy the communication that occurs in interactions between the two. Scholars have made range of suggestions to remedy the miscommunication in lawyer-client interactions. While some scholars have advocated the greater use of client narrative to improve the lawyer-client relationship, other scholars have analyzed the use of basic communication techniques as a solution, such as using redundancy to help client comprehend the legal issue.

There is considerable scholarly research on narrative in legal communication – though most of this research is focused on the trial and judicial opinion stages of legal communication. DeSanctis (2012) describes the use of analogical reasoning and narrative reasoning in a legal context. Analogical reasoning uses logic, whereas narrative reasoning relies
on storytelling to increase comprehensibility (DeSanctis, 2012). More specifically, lawyers favor analogical reasoning because the use of logical arguments is thought to be most compatible with the rule-based nature of legal procedure (DeSanctis, 2012). However, DeSanctis (2012) makes a case for the advantages of narrative reasoning in the legal field. While she acknowledges the primary advantage of narrative or storytelling is its effectiveness in persuading, DeSanctis (2012) calls attention to how narrative reasoning is also beneficial because it complements analogical reasoning. DeSanctis (2012) argues that “narrative is a tool for producing meaning” (p 161), which is crucial in constructing a connection between a logos-based argument and the story-like elements of each distinct case.

However, there have been other scholars that argue analogical reasoning and narrative reasoning cannot be connected because analogical reasoning is considered more effective in legal dispute than narrative reasoning (DeSanctis, 2012). DeSanctis (2012) argues that the belief that analogical and narrative reasoning cannot be used together in a legal context is false, and that this false belief is partially to blame for the communication problems that occur between lawyers and clients. “This separation has a long history that depends on a more abstract and pervasive problem: the tendency to categorize narrative reasoning as a "lesser" form of argument that is not as rational or detached as more "logical" forms of reasoning” (DeSanctis, 2012, p 150). As a result, she proposes that both types of reasoning are dependent on and “complement” each other, and specifically emphasizes the ability of narrative reasoning to facilitate comprehensibility of legal matter (DeSanctis, 2012, p 150). The central idea among scholars like DeSanctis (2012) that look at narrative reasoning in a legal context is that increased non-lawyer comprehensibility through narrative will decrease the amount of miscommunication in each legal area. I agree with DeSanctis that the two types of reasoning do not need to be in opposition to each other and I will
extend her analysis by discussing how applicants’ narratives are significant as a potential way to complement legal procedure and enhance their chances of receiving legal assistance.

Other scholars, however, focus on basic communication tools to solve legal communication problems. Similar to scholars studying the use of narrative, this approach highlights the lack of availability and comprehensibility as the causes of communication barriers, but focuses on the use of basic communication tools as a solution (Oliver-Lalana, 2001). These scholars promote basic communication tools, like redundancy, as a way to remedy problems like comprehensibility (Oliver-Lalana, 2001). Oliver-Lalana’s (2001) primary focus is to “show that the general theory of information, especially the notion of redundancy, may be both a fruitful tool to deal with these problems and also to overcome the presumed inevitability of communication blocks in the legal field” (p 141). He bases his claims on the notion that “communication and information are conceptually bound to law” and thus, the goal of legal communication should be to increase comprehensibility, transparency, and accessibility (Oliver-Lalana, 2001, p 141). He argues that comprehensibility, transparency, and accessibility facilitate “relevant understanding,” and without this the effectiveness of legal information is drastically diminished because “citizens cannot make use of the information for any purpose” (Oliver-Lalana, 2001, p 144). In the next two sections I will draw on how scholars vary in their approaches to these communication problems. For example, while Oliver-Lalana (2001) proposes a focus on basic communication tools and narrative scholars emphasize narratology as a solution, other scholars debate the cause of communication problems is the use of categorization and definition (McGee, 1999; Schiappa, 2003).

**Narrative Use in Legal Communication**
This section explains how narrative has been viewed traditionally in the legal field, and how some scholars have advocated the benefits of narrative in legal communication. Traditionally, there is a general consensus that the use of narratives is highly influential in courtroom interactions and in persuading juries; however, there is less consensus about the effectiveness of narrative in pre-courtroom legal interactions (Chestek, 2012; DeSanctis, 2012; Gallacher, 2011; Tait & Norris, 2011). I will not be discussing how narratives influence juries, but rather the role narrative plays in the process that gets people into the legal system. Nonetheless, research conducted on narrative use in courtroom interactions illuminates the function of narrative in legal contexts. In previous studies, scholars have examined the origins of storytelling in courtrooms and judicial opinions and suggest the significant role narrative plays in making the legal field accessible to the average citizen. For example, Tait and Norris (2011) examine how “narratology” in the law pre-exists the use of narrative in courtrooms and thus, is a significant and often forgotten component in legal procedure (p 11-22). They argue narratives about the law largely laid the foundation for the development of law and legal structure (Tait & Norris, 2011). Furthermore, they suggest that through time, these legal narratives have helped us make sense of legal procedure through our understandings of stories. Subsequently, they conclude narrative is significant in legal procedure because of its ability to increase comprehension, understanding, and impression (p 11-22). Chestek (2012) and Kiernan-Johnson (2012) elaborate how narrative is used in legal procedure so that it increases comprehension, understanding, and impression. Both scholars explored how narrative and storytelling can persuade a judge or jury. Specifically, Chestek (2012) looks at the main components in legal narratives used in the Affordable Care Act trials and suggests the judicial opinions show that the most effective stories were the most persuasive while less effective stories resulted in failure to
 win the case. While Chestek (2012) recognizes the importance of legal narrative as a persuasive tool in a trial, he asserts narrative and storytelling are not the most crucial components in the law. “Narrative reasoning does not supplant the rule-based reason (the law) that allows the court to rule in the client's favor; rather, it provides a reason for the court to want to rule in the client's favor” (Chestek, 2012, p 102). Similarly, Kiernan-Johnson (2012) examines narrative, story, and storytelling in legal text and performance in the current conflict in the Applied Legal Storytelling (AppLS) movement. While advocating for the use of the word “narrativity,” Kiernan-Johnson (2012) places greater emphasis than Chestek (2012) on the importance of how narrative is used in legal contexts. “Narrativity” is a crucial part of legal practice in legal briefs and oral arguments, and is therefore a significant component that cannot be overlooked (Kiernan-Johnson, 2012). However, narrative should be used with caution because it may be “too effective in persuading its audience, raising ethical concerns” (Kiernan-Johnson, 2012, p 94). Ultimately, while these studies indicate how influential narrative can be in both trial and legal text, their cautions about the use of narrative in legal procedures suggest how the study of narrative in initial legal procedures has been limited.

Some scholars have examined the implications of narrative use on legal communication. For instance, Gallacher (2011) argued that the ability to create narrative has been argued to be a crucial skill relating to the empathetic nature of the lawyer-client relationship. He argues “the nature of empathy in lawyer-to-non-lawyer communication” is just as significant as “knowledge of applicable laws and rules and an ability to synthesize and distinguish precedent” (Gallacher, 2011, p 1). Gallacher’s (2011) argument is central to this study because it reveals the significance of the communication between lawyers and clients. Through his analysis of legal education, Gallacher (2011) explains how empathy is a core lawyering skill because of the
importance of communication between lawyers and lay people. In other words, “empathetic connection” to others is vital to communicating “effectively and persuasively” with non-lawyers, including clients and jury members (Gallacher, 2011, p 4). Gallacher’s (2011) work is particularly important because it provides evidence for arguments that narrative functions to bridge the gap in comprehensibility between non-lawyers – the clients and jury members – and lawyers. This study extends Gallacher’s (2011) argument by showing how despite the limitations of legal procedure, the communication between lawyers and clients plays a critical role in the average citizen’s perception of and satisfaction with the legal system. This study will ultimately argue that citizen disdain for the legal system can be remedied through better communicative processes.

DeSanctis’ (2012) study provides a different view of the legal value of narrative. Many scholars of narrative theory argue the belief that analogical reasoning is superior in a legal setting because it is valued as rational and logical is a myth and is detrimental to the functioning of the legal system. With too much focus on logical forms reasoning in legal settings, legal jargon that only legal personnel know yields the lack of comprehensibility and accessibility that clients face when dealing with legal issues. Ultimately, this creates a gap in the communicative relationship between clients and lawyers. As a result, DeSanctis (2012) advocates the importance of narrative as a way to facilitate “client-centered lawyering” and improve the communication between non-lawyers and lawyers (p 153). “Narrative is a tool for producing meaning—a tool whose utility increases with the abstractness and unfamiliarity of the concepts narrated” (DeSanctis, 2012, p 161). DeSanctis (2012) attempts to show the value of narrative reasoning in combination with logical forms of reasoning. As discussed before, this research is mainly limited to the use of narrative in courtroom interactions and as an influence on judicial
opinions. There has been little research examining narrative strategies in initial, pre-courtroom, interactions. These pre-courtroom interactions are significant because they lay the foundation for how a legal case proceeds and whether a case goes to trial. By drawing on previous research done on legal narrative, this study looks at the interaction of narrative with definitional argument at CLS and analyzes communication problems between applicants and legal personnel.

**Definitional Argument**

Many argumentation scholars examined how definitions and categorization are used in legal argument. While some scholars have analyzed court cases and judicial opinions to see the function of argument by definition, others have examined the socially constructed nature of definitions and their implications. For the purposes of this study, Schiappa’s (2003) study of definitional arguments lays the foundation for how definitions function in the argumentation seen at CLS. Most significantly, Schiappa (2003) suggests that definitions have broader implications for the particular situations. “When we define a situation, that definition becomes a form of social influence by implying what are or are not appropriate responses to it” (Schiappa, 2003, p 151). This study draws on Schiappa’s (2003) notion of the implications of definitions by exploring how definitions and definitional categories used at CLS inevitably construct what is considered relevant information, as well as how definitions impact the structure of the communicative relationship between staff and applicants. Correspondingly, McGee’s (1999) research on how definition functions rhetorically is also significant to this study in explaining how definitions in any context play a significant role in how the world is interpreted (McGee, 1999). These arguments draw attention to the notion that because definitions impact the way reality is interpreted, there are social, political, and ethical implications that are necessarily involved.
Other scholars like Schiappa (2001) and St. John (2003) have conducted a close textual analysis of the use of definitions in Supreme Court case opinions in order to examine broader implications of definitional argument. They conclude that not only do definitional arguments have a significant place in case disputes, but that there are normative implications when one definition is accepted (Schiappa, 2001 & 2003; St. John (2003). St. John (2003) defines definitional argument as “a mode of rhetorical inquiry that investigates how particular definitions are wielded to control, redirect, undermine, validate, support, qualify, or otherwise influence the development and persuasiveness of specific arguments” (p 263). Based on this notion of definitional argument, St. John (2003) advises that understanding how a community or society defines specific words and uses them in argumentation is the most effective way to understand the normative implications at work. “Definitions unavoidably depend on social interactions” (Schiappa, 2003, preface). For example, in trying to understand definitions and use them in argumentation, we should ask what social interests are at stake when using certain definitions over others. Schiappa (2001, 2003) elaborates by describing how adopting specific definitions have normative consequences, especially once these definitions become part of the law. Schiappa (2003) explains this concept through his idea of “definitive discourse – discourse that defines, whether in an explicit discourse about a definition, discourse that argues from a particular definition, or discourse that stipulates a view of reality via an argument by definition” (preface).

Understanding how definitional argumentation functions is crucial to understanding how definitions have normative implications. As a result, Schiappa (2001, 2003) proposes a shift in how definitions should be conceptualized. He contends we should ask “how term X ought to be used in the context of C?” rather than asking “what is X?” (Schiappa, 2001, p 18). Looking at
definitions within specific contexts is essential because definitions “must appropriately correspond to the structure of reality,” which is particularly important when dealing with legal definitions (Schiappa, 2003, p 52-61). This shift moves away from the notion that a definition is neutral towards the idea that certain people and organizations have the power to define a term when arguing about, from, or by definition. Consequently, some interests in defining terms prevail and overshadow competing interests. Schiappa (2003) argues this has social and ethical implications for the persons whose interests are not represented and what social or political interests are perpetuated. Schiappa’s study of definitional arguments and their implications in the law provide the basis for this study’s examination of how definitions and definitional categories used in argumentation at CLS.

Argumentation scholars, like Schiappa (2003) have looked at multiple forms of definitional argument: argument about definition, argument from definition, and argument by definition. This study will focus mainly on the arguments by definition made at CLS. Schiappa (2003) expresses that arguments by definition arise when the definition essentially speaks for itself. “Rather than explicitly advancing an argument about a definition (X should be defined as Y) or constructing an argument from definition (All X are Z; Y is an X; therefore Y is Z), advocates simply posit that X is Y and move on” (Schiappa, 2003, p 130). This means that the definition becomes the argument and no further argument must be made for the use of the definition. Thus, argument by definition potentially can be the most problematic use of definition in argumentation because the definition seems natural in the fact that it argues for itself. Consequently, the interests in defining a specific term are taken for granted as natural. This study will explore how argument by definition functions at CLS and how the focus on definition may become a source of frustration for applicant because of the applicants’
expectations that the story behind the legal issue will be most the primary focus in the process of translating dialogue to text.

**Moving from Dialogue to Text**

This study is primarily focused on how the interview process at CLS is used to transition clients into the CLS system. The important aspect of this process is how dialogue is transformed into a textual summary of each applicant that can be stored in the CLS system. Hallsdorsdottir (2006), Jonsson and Linell (1991), and Spencer (1984) have looked at this transformation in initial legal interactions including presentencing processes in probation and initial lawyer-client interactions.

Similar to this study, the studies mentioned above analyze the major processes that occur when moving from talk to text and the trends that occur in the process. Specifically, Spencer (1984) orient his study around the presentencing processes that occur in probation investigations, and how these processes ultimately result in probation sentencing recommendations. Through his study, Spencer (1984) suggests there are three important components in this transition from interviewing to writing a recommendation: eliciting, interpreting, and utilizing information provided in dialogue. Spencer (1984) contends that eliciting information from the interview dialogue is “the single most critical source of information for a parole officer (PO)” and is done through “the presentencing interview he or she conducts with a defendant” (p 209). The second component, interpreting, is often done simultaneously while eliciting the information through an interview. Spencer (1984) argues this process of interpreting is significant because “information is often disjointed and needs to be constructed in a meaningful way by the PO” (p 210). The process of interpreting enables relevant or important information given in a spoken narrative to be separated from information
that is irrelevant to the case at hand. This step is particularly significant in the processes that occur at CLS because often applicants give extra information or narratives that CLS does not consider legally relevant. It becomes the legal staff members’ job to collect and interpret only the information that is legally relevant to the case. Spencer (1984) explains the last component of the presentencing process as utilizing information. In his study, the parole officers conducting the interviews “utilize information by making and justifying decisions in the form of recommendations about what to do about defendants” (Spencer, 1984, p 210). Again, this component of utilizing information will be seen in the process that occurs at CLS. CLS legal staff members utilize the legally relevant information given in the interview by filling out questionnaires and presenting each applicant case at case review. This study will focus on these three components that occur in the process of translating information given in applicant interviews to a written summary of each case.

Additionally, scholars have concluded that when moving from spoken narrative and dialogue to written text there is oftentimes a shift from vague and incoherent pieces of a non-linear story to a precise and simplified categorization of the speaker and his or her story. Jonsson and Linell (1991) investigated how police translate spoken narratives given in police interrogations into police reports. Through their focus on the significant differences between the spoken narrative and the written account, Jonsson and Linell (1991) examine “how the ‘same’ story may be differently organized and perspectivized when told within two phases of the same overall situation” (p 420). It should be noted that there are significant differences between spoken and written language (Jonsson & Linell, 1991). For instance, spoken language is informational, elaborated, and abstract; whereas, written language is involved, situation-dependent, and given in a non-abstract style (Jonsson & Linell, 1991, p 420-421). Based on this
general overview of differences between spoken and written language, Jonsson and Linell’s (1991) study reveals certain trends when moving from spoken narrative to written narrative. First, their findings indicate that the written narrative (the police reports) were shorter and more succinct than the “dialogical story” (Jonsson & Linell, 1991, p 429). Second, they found notable trends that were only seen in spoken narrative: incoherent information was often given in a non-chronological format and there were often “irrelevant digressions” (Jonsson & Linell, 1991, p 431). Third, there is a transition from vagueness in the spoken narrative to increased precision in the written report (Jonsson & Linell, 1991, p 432). Lastly, and most pertinent to this study, Jonsson and Linell’s (1991) study shows that there is a transition away from emotionality to a neutral tone in the process of translating the spoken narrative to the written report (p 432). In particular, Jonsson and Linell (1991) explain that the end result of this process is “objectification and de-emotionalization” (p 434). This study will look at the extent to which the trends appear in processes at CLS when translating applicant spoken narrative to a written summary of the applicant’s case.

Similarly, Hallsdorsdottir (2006) analyzes how initial interactions between lawyers and clients construct case guidelines and records. In this aspect, Hallsdorsdottir’s (2006) study provides an understanding of the importance of initial interactions as having an impact on how the case will be carried out. “The legal world utilizes documents in virtually every aspect of its work; for instance, an orientation to written laws, codes, and guidelines shapes the direction and purpose of interactions between criminal justice professionals and defendants” (Hallsdorsdottir, 2006, p 263). While looking at the transition from talk to text in lawyer-client interactions, Hallsdorsdottir (2006) contends that initial lawyer-client interactions construct texts and documents. Hallsdorsdottir’s (2006) study is particularly significant in showing how this process
of moving from talk to text has a great impact on the future of the case in trial. She suggests that in the legal realm, the process is both unavoidable and “future-oriented” (Hallsdorsdottir, 2006, p 265-266). Moving from talk to text is unavoidable because “virtually every interaction between the defendant and the police, prosecutor, or defense lawyer is recorded or documented in some way” and serves “as the basis for future actions and interactions” (Hallsdorsdottir, 2006, p 265).

Similarly, this study will look at the broader impact of moving from spoken narrative to a textual summary, especially how this has implications for the lawyer-client communicative relationship.

Data Collection

This study looks at how the use of definitional categories in the process of translating dialogue to text at CLS limits the extent to which aspects of an applicant’s narrative is relevant, and how these processes have implications regarding the communicative relationship between non-lawyer applicants and legal staff. This study is both a rhetorical critique of and a qualitative study of the communication processes that occur at CLS. I chose to combine rhetorical and qualitative methods because this study requires both methods in order to show the complexity of the social components beyond textual analysis. Rhetorical critiques by Edward Schiappa (2003) and qualitative studies conducted by Hallsdorsdottir (2006), Jonsson and Linell (1991), and Spencer (1984) will provide theories and methods that this study will use as a foundation to study the use of definition and the process of moving from discourse to text at CLS.

The rhetorical critique portion of this study will reflect Edward Schiappa’s (2003) analysis of definitional argument. This study will be a close textual analysis of the scripts and questionnaires used at CLS and the definitions and definitional categories that the scripts and questionnaires contain. In doing so, this study will focus on Schiappa’s (2003) theories of argument from definition and argument by definition, as well as the social implications Schiappa
Livingston (2003) discusses. This study addresses not only how definitional categories at CLS produce communication problems, but also who has the power to define these legal categories and how this perpetuates a disjunction in communication between lawyers and non-lawyers.

Additionally, this study is heavily influenced by the qualitative methods used by Hallsdorsdottir (2006), Jonsson and Linell (1991), and Spencer (1984) because these studies focus on the process of translating oral discourse to written text. I’ll be implementing their methods of observing how a conversation is transformed into a textual summary. These studies provide theories of talk and text as the basis for this study. This study will largely focus on their particular theories about how the transition from talk to text moves incoherent narratives to precise classifications. This study elaborates on how this transition relates to definitional argument in that narrative is transformed into a text that emphasizes definitional categorizations and classifications.

Data will be collected from two different sources focusing on both artifacts used at CLS and observations of processes at CLS. The first major component of data for this study will be a content analysis of the forms, scripts, and questionnaires that legal and volunteer staff uses to interview applicants. The forms used at CLS include instructions on how to interview an applicant and serve as a guideline for what legal staff and volunteers should say to an applicant. These data are important considerations because these instructions and guidelines function as the basis for how the entire interview proceeds. All interviews must follow the strict format of these guidelines. The forms also include applicant eligibility information. Further, a large portion of content data will come from the questionnaires used at CLS. These questionnaires are specific to each legal issue an applicant comes in with and will be classified as either “general” or “domestic” as mentioned previously. Due to the fact that each questionnaire
is specific to a particular legal situation and because each questionnaire has very particular wording of questions, the questionnaires become a crucial piece of this study’s data. The specificity and precision of the questionnaires enforces the definitions and definitional categories used at CLS and shows how applicants’ ordinary narratives are transformed in the process of transferring dialogue to the text written on each questionnaire.

The second component of data will come from my observations of interactions, discussions, and applicant interviews at CLS. First, I want to note that while I interned at CLS, I will not be using applicant data that I obtained while performing my duties as an intern. Due to confidentiality agreements, no applicant information will be used that is identifiable to a particular applicant in this study. However, with approval from supervisors at CLS, I will be using legal issue questionnaires and scripts for my content analysis, as discussed above, and common narratives that I observe from interactions in the office. The legal issues and narratives that I obtain through observations will not be identifiable with any specific applicant that has come to CLS, to guarantee confidentiality. The observation portion of the data highlights the social workings that play a role in how legal definitions function as arguments at CLS. Through my observations at CLS, I will look at the significance of the applicants’ narratives during the initial interviews and how the use of questionnaires in preparation for case review reveal a transformation from ordinary narrative to a summary of legally relevant facts that are utilized from these ordinary narratives. The observations of case review are particularly important because they reveal the significance of certain definitional categories in forming arguments for an applicant receiving legal assistance. The discussions I observed between CLS staff members draw attention to processes used at CLS, as well as to common practices outside legal institutions, that can potentially be problematic in the interactions between legal staff and
applicants. Through these methods of data collection, this study will give insight on how particular communicative relationships between non-lawyer applicants and legal staff are facilitated and maintained.

**Data Analysis**

This study’s findings reveal indications of a problematic communicative relationship between CLS staff and applicants. These findings suggest that while the procedures that occur at CLS contribute to an asymmetrical communicative relationship between non-lawyers and legal staff, there are other underlying problems that facilitate this relationship. Based on the three main procedures at CLS, the applicant interview, summarizing the applicant case, and presenting the case at case review, this analysis focuses on the communicative processes that occur during each procedure.

**Applicant Interviews: Redefining Narrative**

The first key step of the CLS process encompasses the initial applicant interviews. Briefly, CLS volunteers and staff conduct specialized interviews with each applicant depending on the applicant’s legal issue. CLS separates issues into two broad categories: general and domestic. General legal issues include: bankruptcy, collections, garnishments, identity theft, identification denial, Medicare and Medicaid termination or denial, eviction, foreclosure, public benefits denials or terminations, and will and inheritance disputes. Any applicant issue that falls within one of these issues will be categorized as a “general” applicant. On the other hand, domestic legal issues include: adoption, APR (custody of children), DOM (divorce), guardianship, domestic violence, and child support. After the initial categorization as “general” or “domestic,” applicant interviews are conducted specifically geared toward a particular legal issue and is maintained this way through the use of structured questionnaires. Despite how the
questionnaires attempt to structure the interview to discuss the legally relevant information needed by CLS legal staff, applicants tend to answer questions through a narrative framework.

The way a “Collections,” one of the “General” categories, applicant interview proceeds exemplifies how despite the strict structure of the questionnaire, the applicant relies on narrative to answer each question (see Appendix B). A “Collections” issue is a legal situation in which the applicant owes a certain debt to a creditor and is now facing collection of that debt or garnishment. For instance, when question three is asked, “What was the amount of the debt originally?” oftentimes applicants respond by saying something along the lines of “well this is what happened…” and go into an elaborate narrative of the entire situation surrounding the debt. This is often the case because the applicant probably feels as though their story of how the debt came about is important to getting legal help, especially when the applicant feels as though background circumstances were the reason why the debt could not be paid. For example, Theresa (pseudonym) was in debt from a previous marriage and faced collections and garnishment. When the interviewer asked the first question, “What is this debt from?” Theresa responded by relaying the entirety of the events leading up to the debt. In her past marriage, she and her children endured domestic violence and then she filed for divorce. However, during their marriage, her ex-husband had over-drafted their bank account. She continued to express that despite the fact that they were now divorced, she was still being held accountable for the debt he incurred. Additionally, she included that one of her children had severe medical issues and she was constantly paying medical bills and that she had no child support, no assets, and no home, so she could not afford to make payments on this debt that she believed her husband was responsible for. She ended her story by saying she was garnished and wanted CLS’s help to dispute the garnishment. While pieces of her narrative answered questions on the questionnaire,
like questions three, five, ten, eleven, and fourteen, where the specific questions were answered, there were many parts of her narrative that didn’t fit with the structure of the questionnaire (See Appendix B). The questionnaires ask for specifics: what was the numerical amount of the debt originally and presently?; what is this debt from (check one of the following boxes)?; and what date did you incur the debt? (See Appendix B). Theresa, like many applicants, was asked the first question and gave an entire narrative showing how there is a tension between the structure of the questionnaires and the applicants narrative. While the applicant gives the narrative, the questionnaires attempt to structure the information that is legally relevant given the situation. Consequently, most of the questions on the questionnaires work to redefine an applicant’s elaborate narrative, solely focusing on and eliciting the legally relevant components of each narrative.

The CLS legal staff asserts the questionnaires necessarily restrain or limit an elaborate narrative for efficiency and legal purposes. For example, CLS claims the legal purposes for this limitation includes eliciting all the information necessary for civil legal procedure. Riley (pseudonym), a CLS attorney, and other legal departments that CLS works with structured the questionnaires to obtain the most legally relevant way possible so that other attorneys can take up the cases easily. She explained that there are three key goals for the questionnaires: that they obtain the information other legal departments deem necessary, that they are comprehensible based on a 7th grade reading level, and most importantly, that they get all information necessary and relevant in civil procedure. When I discussed with Riley how the questionnaires may be problematic in the communication between CLS staff and applicants, she agreed this was a problem. Riley claimed the problems occur when applicants assume CLS is the law. However, Riley said CLS functions as more of a mediating institution between the applicant and the
law. In other words, CLS is the gate-keeper. As a result, Riley asserted that in order to leverage CLS’s resources and help the most people possible, the questionnaires need to rely on categorization. From a legal standpoint, the questionnaires need to shape the process of narrative because applicants often have no legal knowledge of civil procedure and extended interviews will take time away from CLS’s ability to help more applicants. In short, Riley stated, “law is about deadlines, it’s not a place for circumstances” and even though this is problematic because it doesn’t meet applicants’ expectations, CLS ultimately claims this is how the process should be because it is an efficient system for helping the most people. As a result, tensions between legal staff and applicants persist largely because the applicant is not concerned with the efficiency of the CLS process; he or she is coming in to get the most legal help possible. Furthermore, applicants expect that the most legal help possible comes in the form of a private attorney. However, very few applicants have the chance to even work with a private attorney and no applicants can consult a private attorney initially. Applicants thus become frustrated with the legal process. Applicants believe they can increase their chances of getting an attorney through a detailed, elaborate narrative of the legal issue and the surrounding circumstances. Again, the strained communicative relationship between the staff and the applicants occurs when applicants describe their stories and the CLS structure redefines and limits these stories.

**Translating Narrative to Definitional and Categorical Text**

Translating applicants’ spoken narrative to the text on the questionnaires is a process done during the interview. However, I chose to separate these two procedures, interviewing and translating, to underscore the trends seen in each process. The applicant interview process shows how there are differences in expectations of what should be valuable information given during the interview. These problems are further highlighted by moving from talk to text
(Hallsdórsdóttir, 2006). While filling out the questionnaires, CLS staff elicits, interprets, and utilizes the information given in the dialogue with applicants (Spencer, 1984). As explained in the previous section, the dialogue with applicants is largely comprised of intricate pieces of narrative. While the applicant narratives are heartfelt, CLS considers these narratives to be legally irrelevant, or only relevant if the narrative fits into certain definitional categories. Thus, the purpose of the questionnaires as textual summaries of each legal issue is to condense and simplify the relevant information collected from each applicant. Most significantly, the transition from interview to questionnaire reveals a heavy reliance on legal definitions and categories.

The domestic issues questionnaires most prominently showcase this trend. Focusing specifically on the domestic cases, each particular applicant issue is broken into subcategories. Each domestic issue requires the following procedure, as discussed during Domestic Training at CLS on September 26, 2013. The applicant must first be asked five specific questions about the domestic legal issue including (1) what the issue is, (2) what the case status is, (3) the county in which the case occurs, (4) if there are children involved, and (5) if there is domestic violence. The applicant is then interviewed for financial eligibility, and if eligible, the interviewer must ask questions from the “Domestic Questionnaire” to determine how the applicant’s issue will be subcategorized (See Appendix B). This final step is crucial because it dictates how the interview will proceed and whether an applicant will complete a “Custody Questionnaire,” a “Dissolution of Marriage questionnaire,” a “Post-Decree questionnaire,” a “Family Law Litigation questionnaire,” a “Domestic Violence questionnaire,” or a combination of all these questionnaires during the interview (See Appendices C-H). These classifications are significant because each questionnaire is different in structure and therefore
determines the space available on each questionnaire to translate the applicant’s narrative. For example, while the “Domestic Violence questionnaire” has the most space to include applicants’ narratives, other questionnaires like the “Dissolution of Marriage questionnaire” have limited space and as a result limit the amount of narrative that can be documented.

A textual analysis of how domestic questionnaires structure and guide the applicant interviews reveals how CLS uses definitional categories to translate the dialogical narrative into the textual questionnaire (Hallsdorsdottir, 2006; Jonsson and Linell, 1991; and Spencer, 1984). To illustrate, I’ll focus on “domestic violence,” one of the most significant subcategorizations mentioned above. In the domestic interview process, the questionnaires ask the applicant to either categorize themselves as either in a domestic violence relationship or not in a domestic violence relationship. The initial question in the first step, “Is there domestic violence in the relationship?” forces applicants to use common definitions to determine what “domestic violence” is and what constitutes domestic violence. However, this can be problematic because often there is a common assumption that “domestic violence” only refers to physical abuse between spouses – primarily the male physically abusing the female. Further, within this assumption, applicants believe that physical abuse is more severe than verbal threats or emotional abuse, and therefore lesser forms of abuse don’t count as domestic violence. This commonsense definition would include physical brutality like hitting, punching, choking, beating, or using weapons. Together these notions support applicants’ beliefs that to be classified as a victim of domestic violence, physical abuse must have occurred. While all of these assumptions do constitute domestic violence, the legal definition of domestic violence includes actions that are not specifically physical. Verbal threats to harm or to kill a significant other are also considered domestic violence, as well as emotional abuse like stalking or
restricting personal freedoms. However, many applicants focus on the common sense definition of domestic violence which influences how they decide to characterize themselves.

Take for example Crystal (pseudonym), an applicant who was looking for legal assistance so that she could file for DOM (divorce) from her husband, and help with the process of APR (custody) of her children. During Crystal’s interview, the interviewer asked if there was domestic violence in her relationship with her husband. She hesitated for a long period before categorizing herself as an applicant not in a domestic violence relationship. Both her hesitance in answering the question and how she had brought family members in for “moral support” indicated the possibility she was a victim of domestic violence. As a result, the interviewer asked if she was sure of her answer because of her reluctance. In response, she explained, “well, there are threats, but it’s just emotional…nothing physical,” and she confirmed her first answer as “no”. Crystal, as well as many other applicants, struggled in answering this question that limited them to a “yes” or a “no” classification. Even when a follow-up question from the “Domestic questionnaire” reworded the question to ask “Has there been violence or threats in this relationship?” applicants still hesitated to categorize themselves either way (See Appendix C). In these situations, there was no physical space on the questionnaires for the applicant’s narrative, which would provide more explanation as to the situation in the relationship. In Crystal’s case, throughout the interview, more pieces of her narrative emerged regarding domestic violence. She began to open up about times when her spouse would threaten her if she would ever decide to leave him, and so she was planning to move to a secret location during and after the divorce, as well as stories about her husband accusing her of things she had not done. Yet, Crystal did not want to categorize herself as a domestic violence victim and the “Domestic Violence questionnaire” could not be used to translate these pieces of her narrative to
the textual summary of her case. Furthermore, there was no physical space on the other
questionnaires to include these pieces of her narrative, even though they seemed legally relevant
to the case at hand. As seen in Appendices C and H, the only physical space for narrative
regarding domestic violence is on the “Domestic Violence Questionnaire.” However, if the
applicant does not categorize him or herself as a domestic violence victim, the “Domestic
Violence Questionnaire” will not and cannot be used during the interview, and thus the
applicant’s story - that may very well be legally relevant - is not recorded on the textual
summary.

Crystal’s narrative being translated to the questionnaires shows how significant the
definitional categorizations are when determining what pieces of narrative can even be
documented. The format of and the questions asked on the questionnaires suggest that an entire
applicant narrative should not be translated into text – only the most legally relevant information
should be included. Most important, this process ends up being the most significant determinate
during the case review that determines how much and what type of legal assistance an applicant
will receive. Thus, the definitional categories become a crucial factor in the communication
between CLS staff and applicants because applicants often do not comprehend how classifying
themselves in certain categories will help or hinder them in getting legal assistance.

Case Review: Argument by Definition

The last significant process at CLS is the case review held at the end of each day. Case
review is where the CLS staff meets with the attorneys and paralegals to determine whether and
what type of legal assistance an applicant will receive. In CLS training, I observed that case
review was meant to be a short presentation of each applicant case interviewed during the
day. Each presentation is normally written on a sticky note which indicates how brief these
presentations are. For example, in “general” case review, the presentation consists of the applicant’s first name, age, income, a short chronological timeline of the legal issue, and what type of help the applicant is seeking. “Domestic” case review presentations are similar, varying only slightly: the applicant’s first name and age, the legal issue, the case status, which county it occurs in, if there are children involved, if there is domestic violence, and what type of help the applicant is looking for. After the presentations, the CLS paralegals and attorneys decide whether an applicant will get legal assistance and what type it will be. An applicant may receive an advice letter, be directed to a legal clinic, or may be represented by an attorney.

The case review is based on the information on the questionnaires, and the information presented by the CLS staff members. Since the attorneys must decide on the questionnaire information, the case review process also shows how the legal definitional categories function as arguments. The case review process at CLS exemplifies what Schiappa (2003) calls “argument by definition,” in which the definition essentially argues for itself without further justification or warrant, and importantly, then defines what “counts” as the most relevant or important information that should be presented at case review. At CLS, the definitions and classifications are translated onto the questionnaires and are subsequently used as an argument during the case review for an applicant receiving legal assistance. The CLS attorneys and paralegals review the questionnaires without hearing the applicants’ narratives surrounding the legal issue. This process reflects Schiappa’s (2003) formula “X counts as Y in context C” because according to CLS, the definitions and classifications (X) count as relevant (Y) in a legal context (C). In contrast, in a legal context, applicant narratives are not considered relevant given the structure and efficiency-based goals of CLS. This ultimately defines away parts of applicants’ stories that the applicants feel are relevant to the legal situation. At CLS case review, there are certain legal
definitional categories that function as an argument in themselves. This is particularly significant because if applicants fit within these categories, no further reasoning is required in order for these applicants to receive legal assistance.

An example of how this argument by definition process works is the “domestic violence” category. Simply being categorized as a domestic violence victim produces an argument for an applicant to receive legal assistance, most likely in the form of a private attorney, without needing justification from other information on the questionnaire. For example, Maria (pseudonym) was an applicant looking for legal assistance with DOM (divorce) and APR (custody) and a victim of severe domestic violence. In her interview, she described that while she was pregnant, her husband had locked her in a facility that she had to escape. She relayed more details of the physical violence and the threats her husband had made to her. Ultimately, Maria was sent to a private attorney through Metro Volunteer Lawyers (MVL) to help her with the divorce and custody. Applicants are rarely sent to a private attorney; the majority are sent to a clinic or receive an advice letter. Although Maria’s specific stories were documented on the “Domestic Violence questionnaire,” they were not used as justification for Maria getting a private attorney. Simply the fact that Maria was classified as a “severe” domestic violence victim was sufficient to send her to MVL or Family Children Unit (FCU), without any CLS staff having to present reasoning for providing this type of legal assistance. This case illustrates why such a category argues for itself: they are victims and should get as much legal help as possible. It seems inhuman to suggest domestic violence victims should not receive private legal assistance, but the process of deciding who does and doesn’t receive a private attorney is problematic. More specifically, the use of argument by definition to determine who gets legal assistance and what type is given bypasses a crucial acknowledgment of why some definitional
categories require certain types of legal assistance while other definitional categories serve as a barrier to receiving legal assistance. The reasoning behind decisions and justifications need to be addressed and discussed, especially with the prospective client.

Argument by definition can also work in alternative ways; a specific categorization can prevent an applicant from receiving certain types of legal assistance. In a conversation I had with Ken (pseudonym), a MVL attorney and Family Law Court Program (FLCP) coordinator, he explained how MVL, FCU, and FLCP rely on categories to determine which applicants could be sent to certain departments. According to Ken, FCU requires that there must be domestic violence and children involved in the case, but the case status is irrelevant. By contrast, FLCP requires either that a case must not be filed yet or must be post-decree, meaning the case has already gone to court and permanent orders have been put in place. If a case has been filed, indicated by the “Family Law and Litigation questionnaire” and category, the applicant cannot be sent to FLCP. FLCP also requires that the applicant be the petitioner and in divorce cases, the applicant cannot own a house or assets with their spouse. While Ken explained the efficiency and legal reasoning behind these requirements, the case review process reveals problems with these classifications because the applicants do not understand why the requirements are in place. Briefly, FLCP claims these requirements are in place because of legal procedure. For instance, since petitioners in divorce cases are given priority to determine the court dates, FLCP attorneys require that clients be petitioners so that multiple clients can be helped on one court date. This is another efficiency-based argument: help the most people, while using fewer resources. FLCP also requires that cases must not yet be filed because the assistance FLCP provides is largely help with filling out the case paperwork. If an applicant has already filed case paperwork, FLCP argues there is little more that their attorneys can do to assist the applicant.
This requirement is particularly frustrating to applicants because a good number of applicants come to CLS having started the filing process for divorce or custody and are not domestic violence victims. These applicants cannot be sent to either FCU or the FLCP clinic because of the categories “Family Law and Litigation” (active case status) and “no domestic violence.” Consequently, these applicants receive advice letters on how to finish the divorce or custody process. According to Riley, these are oftentimes the applicants that call back to complain to the CLS legal staff asking why they didn’t receive legal assistance when they had this or that circumstance. The rationale given to these applicants by CLS staff is that resources are limited and not every applicant can receive legal assistance in the form of personal contact with an attorney.

While I do understand that resources are limited, so CLS must rely on categories like these to be as efficient as possible, there are still troublesome parts to this process. In many cases, notions of legal relevancy and definitional categorizations overshadow the applicants’ narrative, which sometimes could play a crucial role in legal issues. The number of calls from applicants complaining about being denied legal assistance indicates there is a major communication barrier between legal staff and applicants. The differences in expectations become problematic because most applicants come in expecting CLS staff to be lawyers who can solve their problems immediately after hearing their narratives. Unfortunately, this is not how the process at CLS works. Processes based on efficiency have complications and understanding these problems begin discussions about potential solutions.

**Discussion and Conclusion**

This study was particularly significant to me, as a student planning to attend law school. I’ve argued that the communication between CLS staff and applicants is vital to the
functioning of legal procedure as a whole. While I do understand the necessity of following legal procedure, I also advocate that there are ways to improve the communicative processes between staff that has legal knowledge and the average citizen without such knowledge.

The purpose of this study was to closely analyze where the problems occur and how these problems create a disjunction between CLS staff members and applicants. On a broader level, I believe this study could apply to the relationship between lawyers and their clients in the hopes of improving the legal communication there as well. The legal procedures and processes seem natural and unchangeable because the definitions CLS use enforces the procedures and processes in place.

This study attempts to show that deferential acceptance of these definitions contribute to an unequal communicative relationship between legal staff and persons seeking legal assistance, resulting in frustration and disdain for the entire legal system. Communication strategies can also be a potential solution to construct a more positive communicative relationship. For example, rather than trying to change the entire civil legal procedure to incorporate room for personal or common narrative, there could be changes to the way legal personnel communicate with persons seeking legal assistance. Most notably, this study suggests that given organizations like CLS that mediate between lawyers and citizens, there can be room for educating citizens about civil procedure – even if there are only enough resources to help develop a basic education of civil procedure.

For instance, within the CLS organization, volunteers and staff can potentially be trained to explain to the applicants the purpose of particular questions asked during the interviews or to explain why certain pieces of information are legally valuable. CLS claims that taking the extra time to explain legal relevancy to applicants uses too many resources when CLS has limited
resources. Since the current goal of CLS is to help the most people possible with limited resources, efficiency is critical. While CLS does not keep track of how long applicant interviews take, staff leaders encourage interviewers to limit the interviews to about an hour and to complete as many interviews as possible during the day. However, this efficiency goal may ultimately be more detrimental than it is beneficial. It may be more beneficial to spend the extra time with each applicant because understanding civil procedure and why certain facts are relative, the applicants may disclose other pieces of narrative that they would not have otherwise because they lacked knowledge about the legal issue. Furthermore, maintaining a good relationship with prospective clients is as worthy a goal as efficiency. This study emphasizes the necessity of a trusting and equal relationship between legal staff and applicants to maintain citizen confidence in the legal system as a whole. While the legal system may not yet have the low approval ratings that Congress does, there is an abundance of negative stereotypes attributed to those who work in the legal system, especially lawyers. This negative sentiment toward legal personnel can be reversed and prevented by focusing on communicative strategies that can improve the relationship between lawyers and non-lawyers. This study suggests that this is an area that requires further inquiry.

During a discussion with Riley, a CLS attorney, I noted some staff members’ beliefs about the origins of the communication problems between CLS staff and applicants and the potential for a remedy. Riley firmly believes in the legal system as a nonviolent way to resolve disputes, and I agreed. However, she believes the communication necessary to nonviolently resolve disputes is analogous to fitting a square in a circle. The applicants come in, having no education about how the legal system works or what their rights are, and expect their narratives to be the most significant pieces of information (the square). They expect their narrative
information to fit into legal procedure (the circle). The end result, is the “applicants are screwed because of ignorance.” Despite this harsh-sounding phrase, Riley explained why people are generally ignorant of the legal system. In her and other staff members’ opinions, Riley believes the underlying cause is in the education system’s failure to teach basic legal procedure in high school and in college. She argued that incorporating basic legal knowledge into general education would drastically improve communication problems. Although I agree with Riley’s assessment of education failures as an underlying cause, after completing this study, I think it is possible to put in place the smaller solutions that I discussed earlier in this section, which would at least remedy this larger problem of “legal ignorance.” However, I think Riley’s and other staff members’ assessments of education failures as an underlying cause is in many ways a typical stance taken by experts of all fields towards the general public, which deflects from the possibility that lawyers’ ways of communicating with the public contributes to the lack of understanding (Hartelius, 2011). I argue that lawyers and legal staff can change their communication practices to increase public comprehension.

One of the most notable remedies I noticed within the CLS office was the creation of FLCP. FLCP was created as a family law clinic to help multiple applicants through divorce and custody disputes using very little resources. By resources, I’m referring to the attorneys available to go to court and the time used to complete the legal process. FLCP can help at least ten family law applicants with filing and going to court using one day for each process and one or two attorneys. With the large amount of applicants seeking legal help for divorce and custody, this is a genius system in how it is able to help a majority of these applicants. Furthermore, I use the description ‘genius’ because this program gives applicants access to an attorney if a problem should arise, but largely teaches the applicants how the legal procedure
works. The applicants in the FLCP program are mainly responsible for their cases, but with the supervision of an attorney. The end result is legal assistance and legal education. Thus, I advocate using a portion of funding dedicated to creating similar programs with other areas within civil law, like collections, bankruptcy, or foreclosure. Riley, dissatisfied, explained how currently at CLS, it is no one’s job to come up with these ideas and solutions. So, I would like to conclude this study with a recommendation. While the communication between legal staff and applicants may not seem like an urgent problem, it is a problem that will endure and will continue to facilitate dissatisfaction with the legal system. Therefore, I suggest that there should be funding dedicated to coming up with programs like FLCP that use resources creatively and cost-effectively to legally assist and educate the average citizen.

In this study I argue that there is a persistent communication problem between CLS staff members and the applicants seeking legal assistance. The efficiency goals of CLS require the communication between staff and applicants be structured in a way that focuses on definitions and classifications that are legally relevant. As a result, applicants’ narratives are redefined in terms of legally relevant definitions and are often defined away entirely. CLS attorneys and paralegals ultimately make decisions about who gets legal assistance and what type of assistance based on these definitions and classifications. Consequently, the applicants feel frustrated when their narratives are not taken into consideration by CLS staff because they expect their narratives to be significant in the process. Further, I argue that this communication problem between CLS staff and applicants can be remedied. While changes to the education system to incorporate teaching legal procedure in high school or college would be beneficial, it is important to not overlook the smaller, structural changes that could be made at CLS to improve the communication between legal personnel and applicants. In this study I propose that CLS’s
interview structure could be changed to include more applicant narrative and more explanation of legal procedure. I also propose there should be resources dedicated to developing programs that facilitate applicants’ understanding of legal procedure while providing them with the legal assistance they need. While a sad story is not a legal defense, efforts to improve understanding of legal procedure will lead to more realistic expectations and a more symmetrical relationship between legal personnel and applicants.

References


**Appendices**

Appendix A: Glossary

APR - “Allocation of Parental Rights” is a CLS legal issue category. Allocation of Parental Rights refers to a child custody case and is included in the broader categorization of “Domestic” legal issues at CLS.

CLS - “Colorado Legal Services” is a non-profit organization designed to help provide low-income applicants with legal assistance.

DOM - “Dissolution of Marriage” is a CLS legal issue category. Dissolution of Marriage is commonly referred to as “divorce” and is included in the broader categorization of “Domestic” legal issues at CLS.

FCU - “Family Children Unit” is a legal organization affiliated with CLS. Family Children Unit deals exclusively with the “Domestic” legal issues of divorce and custody. An applicant must have children and be a victim of domestic violence to receive assistance from FCU.

FLCP - “Family Law Court Program” is a legal program that works closely with CLS. Family Law Court Program is a relatively new organization that provides legal assistance to applicants seeking help with divorce and/or custody. The program’s purpose is to help a large group of clients while using less resources and providing basic self-education on the divorce and custody legal process.

MVL - “Metro Volunteer Lawyers” is a group of private, pro-bono attorneys that work closely with CLS. Applicants who receive private attorneys for their cases are referred to MVL the majority of the time.

Appendix B: Collection Questionnaire
COLLECTION QUESTIONNAIRE

Applicant's name: ___________________________ Date: ___________________________

Social Security Number: ___________________________

1. Who is claiming that you owe them money?
   → Not the current collection agency or lawyer, but the original creditor.

2. What is this debt from?
   □ Credit card
   □ Back rent/damages
   □ Something you bought
   □ A deficiency after a car or truck was repossessed
   → If so, complete Repossession Addendum.
   □ Bounced check
   □ Medical debt
   → If so, complete Medical Debt Addendum.
   □ Taxes
   □ Student loan
   □ Other ___________________________

3. What was the amount of the debt, originally? $ ___________________________
   a. On what date did you incur the debt? ___________________________
   b. How did you incur the debt? ___________________________
   c. Do you believe you owe:
      □ All of this amount
      □ None of this amount
      □ Some of this amount? $ ___________________________
   d. Why? ___________________________________________

4. What is the amount of the debt now? $ ___________________________
   a. Do you believe you owe:
      □ All of this amount
      □ None of this amount
      □ Some of this amount? $ ___________________________
   b. Why? ___________________________________________

5. Do you believe that someone else should be responsible for any of this debt? □ yes □ no
   a. If yes, who? ___________________________________________
   b. Why? ___________________________________________

6. Who is trying to collect this money from you now?
   □ The original creditor
   □ A collection agency or law office
   □ Other ___________________________

7. Has anyone sent you any letters to try to collect this debt? □ yes □ no
   If yes, what is the date of the last letter you got? ___________________________
8. Is there or has there ever been a lawsuit to collect this debt? □ yes □ no If yes,
   a. What court:
      □ Small Claims
      □ County
      □ District
   b. What County? ________________________________
   c. What is the case number? _________________________
   d. Have you (or anyone in place of you) ever gotten a Summons and Complaint about
      this debt? □ yes □ no
      If yes, who was served?
      □ You
      □ Someone else. If someone else,
         i. What is their name? ________________________________
         ii. Relationship to you? ________________________________
         iii. Age: ________________________________
         iv. Were you living with that person? □ yes □ no
         v. If yes, for how long? ________________________________
   e. Where were you (or they) served?
      □ Home
      □ Work. If at work, did you work at the place the service happened at the
      time? □ yes □ no
      □ Other ________________________________
      If no, how did you find out about the lawsuit? ________________________________
   f. Did you file a response? □ yes □ no
   g. Is there or was there a date for trial? □ yes □ no
      If yes, what is (or was) the date? ________________________________
   h. Has judgment been entered against you for this debt? □ yes □ no
      If yes, for what amount? $ ________________________________
   i. Have you gotten interrogatories (written questions from the creditor's lawyer) asking
      about your income and assets? □ yes □ no
      If yes, did you answer them? □ yes □ no

9. Are your wages being garnished to collect this debt? □ yes □ no

10. Has your bank account been garnished to collect this debt? □ yes □ no
    If yes,
    a. How much money was garnished? $ ________________________________
    b. Where did the money come from? $ ________________________________
    c. Was anyone else's name on the account or money in the account? □ yes □ no
       If yes, who? _______________________________________
    d. Did you get a notice about the bank garnishment? □ yes □ no
    e. Did you file an objection to the garnishment? □ yes □ no
       If yes, on what date? _______________________________________

11. Do you own any real estate? □ yes □ no
Appendix C: Domestic Questionnaire

DOMESTIC QUESTIONNAIRE

Start all family law interviews with this questionnaire.

Applicant’s name: ___________________________ Date: _______________________

1. What is your Social Security Number: ___________ - _________ - _________

2. What state do you live in?: _______________ County?: _______________________
   a. Since what date have you lived in this state?

3. What is the adverse party’s:
   a. Name? __________________________
   b. Date of birth: ____________________
   c. Social Security ___________ - _________ - _________
   d. Street address: ______________________
   e. What state does the adverse live in?: ______________________
   f. County? ______________________
Appendix D: Allocation of Parental Rights (Custody) Questionnaire

**CUSTODY (Allocation of Parental Responsibilities) QUESTIONNAIRE**

Applicant's name: ____________________________ Date: ____________________________

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>M/F</th>
<th>Mother</th>
<th>Father on birth certificate*</th>
<th>Your relationship (if not parent)</th>
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</tbody>
</table>

⇒ If father on birth certificate is not the biological father of the child, fill out paternity addendum for that child.

2. For any children who are living together:
   a. Who are the child(ren) living with right now?
   b. What is that person’s relationship to the child(ren)?
   c. In what state? ____________________________ county? ____________________________

3. Do you need help with a divorce? Yes □ No □

⇒ If yes, complete a Dissolution of Marriage questionnaire in addition to this questionnaire.

4. Are there any children involved in this case? Yes □ No □

⇒ If yes, complete a custody questionnaire in addition to this questionnaire.

5. Has anyone filed a divorce or case involving these children? Yes □ No □

⇒ If yes, for every case, complete the POST-DECREE QUESTIONNAIRE. If no complete the FAMILY LAW LITIGATION QUESTIONNAIRE. Complete the rest of this questionnaire.

6. If yes, have Permanent Orders been entered? Yes □ No □

⇒ If yes, consult with staff.

7. Does the other side have a lawyer in this case? Yes □ No □ If yes, what is the lawyer’s name? ____________________________

⇒ If yes, complete DOMESTIC VIOLENCE Questionnaire and the rest of this Questionnaire.

8. What are you asking Colorado Legal Services to do for you? Write short phrase here.

⇒ if yes, consult with staff.

9. Has there been violence or threats in this relationship? Yes □ No □

⇒ If yes, were you the victim of the violence? Yes □ No □

⇒ If yes, complete DOMESTIC VIOLENCE Questionnaire and the rest of this Questionnaire.
Appendix E: Dissolution of Marriage Questionnaire

**DISSOLUTION OF MARRIAGE QUESTIONNAIRE**

**Applicant's name:** __________________________ **Date:** __________________________

1. **Were you married in a civil or religious ceremony?**
   - [ ] yes
   - [ ] no
   a. **If yes, in what year?** __________________________
   b. **If no, do you or the adverse party believe you may be common law married?**
      - [ ] yes
      - [ ] no
      
      If yes, complete **COMMON-LAW MARRIAGE QUESTIONNAIRE** and the rest of this questionnaire.

2. **Do you or your spouse own a house or other real estate?**
   - [ ] yes
   - [ ] no
   If yes:
   a. **What is the current fair market value? $** __________________________
   b. **How much do you owe on it? $** __________________________
   c. **How much is your monthly mortgage payment? $** __________________________
   d. **What year did you buy it?** __________________________
   e. **What was the purchase price? $** __________________________
Appendix F: Post-Decree Questionnaire

POST-DECREE QUESTIONNAIRE

Applicant's name: ___________________________________________ Date: ____________________

Tell applicant: We will not have a lawyer to represent you in this case. We may have advice or a clinic to help you, or we might not be able to help you at all. To find out, I need to ask you some more questions. Do you want to continue? ☐ yes ☐ no If no, stop here. If yes, complete this questionnaire.

1. Was your case a:
☐ Divorce (Dissolution of Marriage)
☐ Custody (Allocation of Parental Responsibility)
☐ Dependency and Neglect
☐ Child Support only
☐ Other ___________________________

2. Where was your case filed? State: ___________________ County: ____________________
3. Case Number: ____________________________

4. What was the date of your Permanent Orders hearing? ____________________________

5. Has a Motion been recently filed in this case? □ yes □ no
   a. If yes, who filed the Motion? ____________________________
   b. On what date? ____________________________
   c. What does the Motion ask for? ____________________________
   d. Has a response to the Motion been filed? □ yes □ no
      i. If yes, on what date? ____________________________
   e. Has there been a hearing on the Motion? □ yes □ no
      i. If yes, what was the date of the hearing? ____________________________
      ii. What was decided at the hearing? ____________________________
   f. Is the Motion set for hearing? □ yes □ no
      i. If yes, date of hearing: ____________________________

6. Are you asking us to help you enforce the court's order? □ yes □ no
   a. If yes, what order do you want us to help you enforce? ____________________________
   b. How has the other party violated this order? ____________________________
   c. If the order is for child support or maintenance, when was the last date that a payment was made? ____________________________ What is the total amount of child support or maintenance due now? $ ____________________________

7. Are you asking us to help you change the court's order? □ yes □ no
   a. If yes, what order do you want us to help you change? ____________________________
   b. What do you want the order changed to? ____________________________
   c. Why do you think this order should be changed? ____________________________
   d. What has changed since the last order so that this order should be changed now? ____________________________

8. What are you asking Colorado Legal Services to do for you? ____________________________

   Additional information or advice given: ____________________________

Appendix G: Family Law Litigation Questionnaire
FAMILY LAW LITIGATION QUESTIONNAIRE

Use this questionnaire to supplement a DOM or APR Questionnaire when a case has already been filed and is pending. Do not use this Questionnaire if Permanent Orders have already been entered; use POST-DEGREE QUESTIONNAIRE instead.

Always do one, unless you have a case where there is no case.

Applicant name: ____________________________ Date: ______________

1. What type of case has been filed? □ DOM (Dissolution of Marriage)
   □ APR (Allocation of Parental Responsibility) □ Other ________________
   a) In what state was the case filed? ____________________________
   b) County? ____________________________
   c) Case number? ____________________________
   d) Name of Court? □ District □ Juvenile □ County □ Other ________________
   e) Date filed? ____________________________

2. Who filed the case? □ applicant □ another party ____________________________
   a) If another party filed, have you been served with the Petition and Summons?
      □ yes □ no ____________________________
   b) If yes, on what date did you receive the Petition and Summons? ____________________________
   c) Have you filed a Response to the Petition? □ yes □ no ____________________________

If Applicant has been served, give the following advice: While we are reviewing your case, you are responsible for filing a Response to the Petition. You can get the form and help in filling it out from the self-help office in the county in which the divorce or custody case was filed. You will either have to pay a filing fee or have the court waive the fee by filling out another form, which you can get from the same office. Check here that this advice was given. □

3. Is the other party represented by an attorney? □ yes □ no ____________________________

4. Have any hearings been held in this case? □ yes □ no ____________________________
   a) If yes, what type of hearing? □ Status Conference □ Temporary Orders
      □ Permanent Orders □ Other ____________________________

b) On what date? ____________________________

b) What did the Court rule? ____________________________
Appendix H: Domestic Violence Questionnaire

**DOMESTIC VIOLENCE QUESTIONNAIRE**

Applicant's name: ___________________________ Date: ____________________

1. What is the abuser's:
   a. name? _____________________________
   b. Relationship to you? ________________

2. Does the abuser live with you right now?  □ yes  □ no

3. Are you concerned that the abuser will harm or threaten you?  □ yes  □ no

4. Do you and the abuser have any children together?  □ yes  □ no

   ➔ *If yes, complete custody questionnaire and this questionnaire.*

5. Is there a protection order in place right now?  □ yes  □ no
a. If no, do you want a Protection Order at this time? ☐ yes ☐ no  

If no, why not? ________________________________  

⇒ If yes, refer applicant to resources on Temporary Orders of Protection by County sheet on your wall.  

b. If there is already a protection order in place, what kind of protection order?  

☐ County Court Temporary Protection Order  
☐ County Court Permanent Protection Order  
☐ District Court Temporary Protection Order  
☐ Criminal No-contact Order/Mandatory Restraining Order (MRO)  
☐ Municipal or City Protection Order  
☐ Other ________________________________  

⇒ If applicant doesn’t know, ask whether s/he asked the court for it, or whether it happened when the abuser was arrested. If she asked for it, it’s a TPO. If it happened when the abuser was arrested, it’s a criminal no-contact order.  

c. Is this Protection Order ☐ Temporary ☐ Permanent  

i. If temporary, what is the date of the Permanent Protection Order hearing?  

______________________________  

⇒ If this date is sooner than five days from today, see staff.  

ii. Has the perpetrator been served with the Protection Order papers? ☐ yes ☐ no  

d. From what county? ________________________________  

e. Issued on what date? ________________________________  

f. What is the case number? ________________________________  

6. Has the abuser been violent toward you, or threatened you with violence, in the past?  

☐ yes ☐ no If no, why are you afraid of the abuser? ________________________________  

7. What is the date of the most recent incident of violence? ________________________________  

a. Describe the violence that day: ________________________________  

name calling, hitting, (one word, not sentences)  

b. Were the police called? ☐ yes ☐ no  

i. If yes, by whom? ________________________________  

What happened as a result? arrest? jail? classes?  

______________________________  

ii. If no, why not? ________________________________  

c. Did you receive any injuries or medical treatment? ☐ yes ☐ no If yes,
8. What is the date of the worst incident of violence? If same date, put same as #7
   a. Describe the violence that day: ____________________________

   b. Were the police called? □ yes □ no
      i. If yes, by whom? ____________________________
      1. What happened as a result? ____________________________
      ii. If no, why not? ____________________________

   c. Did you receive any injuries or medical treatment? □ yes □ no If yes, please describe: ____________________________

9. Has the abuser ever been arrested for domestic violence? □ yes □ no

10. Have you ever been arrested for domestic violence? □ yes □ no
   a. If yes, were you charged with any crime? □ yes □ no
      i. If yes, what crime? ____________________________
      ii. What was the result of that charge? ____________________________

11. Does the abuser own any weapons? □ yes □ no If yes, what weapons? ____________________________
   a. Has the abuser ever threatened you with a weapon? □ yes □ no
      If yes, what weapon? ____________________________
   b. Has the abuser ever used a weapon against you? □ yes □ no
      If yes, what weapon? ____________________________

12. Has the abuser ever stalked you? □ yes □ no If yes, please describe: ____________________________
13. Has the abuser ever threatened you with violence? [ ] yes [ ] no
   a. If yes, on what dates? ____________________________
   b. What threats did the abuser make? ____________________________

14. Additional information or advice given:

   ____________________________

   - Separation Date
   - History of DV (really important)