

Lawyering for the 'Mad:' An Institutional Ethnography of
Involuntary Admission to Psychiatric Facilities in Poland

by

Agnieszka Doll

M.A. (Magister Politologii), University of Marie Curie-Skłodowska, 2000

LL.M. (Magister Prawa), University of Marie Curie-Skłodowska, 2001

M.A., Simon Fraser University, 2011

A Dissertation Submitted in Partial Fulfillment
of the Requirements for the Degree of

DOCTOR OF PHILOSOPHY

in the Faculty of Law

© Agnieszka Doll, 2017
University of Victoria

All rights reserved. This dissertation may not be reproduced in whole or in part, by
photocopy or other means, without the permission of the author.

Supervisory Committee

Lawyering for the ‘Mad:’ An Institutional Ethnography of
Involuntary Emergency Admission to Psychiatric Facilities in Poland

by

Agnieszka Doll

M.A. (Magister Politologii), University of Marie Curie-Skłodowska, 2000

LL.M. (Magister Prawa), University of Marie Curie-Skłodowska, 2001

M.A., Simon Fraser University, 2011

Supervisory Committee

Professor Maneesha Deckha, Faculty of Law

Co-Supervisor

Dr. Pamela Moss, Faculty of Human and Social Development

Co-Supervisor

Dr. Kevin Walby, Faculty of Arts, University of Winnipeg

Outside Member

Abstract

Supervisory Committee

Professor Maneesha Deckha, Faculty of Law

Co-Supervisor

Dr. Pamela Moss, Faculty of Human and Social Development

Co-Supervisor

Dr. Kevin Walby, Faculty of Arts, University of Winnipeg

Outside Member

Located squarely within the experiences of legal aid lawyers, with particular emphasis on the challenges they face in delivering effective representation, this dissertation, designed as an institutional ethnography, problematizes the provisions and practices related to involuntary admission in psychiatric facilities in Poland, as well as the organization of legal aid representation in involuntary admission cases. Through detailed accounts of paramedics, psychiatrists, judges, and legal aid lawyers' work, connected and coordinated by legal and administrative texts, I demonstrate how the disjuncture between institutional regimes and lawyers' experiences is institutionally produced by the set of legal, professional, financial, and social relations that organize both the involuntary admission procedure and the system of legal aid in Poland. While I start my exploration with legal aid lawyers' embodied experiences of performing their work, accounting for how that work is organized and coordinated in local sites, this dissertation moves beyond a solo ethnographic description in seeking to discover *relations*, especially the social and legal relations mediated by the texts that govern these local experiences and practices. I trace the material and discursive practices that operate in key sites to organize the legal aid system, involuntary commitment procedures, and judicial decision-making. In Poland, the overwhelming majority of involuntary commitment cases are taken on by legal aid lawyers, whose work conduct is bound by both the law and a code of professional ethics. In this

dissertation, I advance my thesis by closely reviewing the legal context of involuntary commitment; the material practices associated with legal aid lawyers, such as appointment, client access, and remuneration; the processes through which psychiatric documents are created and attached to admittees; and the role psychiatrist-generated texts play in court. I argue that within the context of involuntary admission, lawyering is organized in such a way that legal aid attorneys are unable to perform at their utmost, in a way that would most benefit their clients. Moreover, through my research I show that—despite perhaps their best intentions—legal aid lawyers not only actively participate in the practices that circumscribe the space for their legal advocacy for admittees, but also reproduce the very discourses and practices that objectify people during involuntary admission procedures to psychiatric facilities in Poland.

Contents

Supervisory Committee	ii
Abstract	iii
Contents	v
List of Figures	viii
Acknowledgments	ix
Dedication	x
Chapter 1 – Introduction	1
1.1 – Introduction.....	1
1.2 – Context: Mental Health Reforms & Polish Law on Involuntary Admission.....	8
1.2.1 – Overview of Mental Health Reforms.....	8
1.2.2 – The Polish <i>Mental Health Protection Act</i>	13
1.3 – Experiential Accounts of Legal Aid Attorneys.....	15
1.4 – Focus & Objectives of the Dissertation	16
1.5 – Method of Inquiry: Institutional Ethnography	17
1.5.1 – Overview of IE.....	18
1.5.2 – Tenets of IE as Alternative Sociology	20
1.5.3 – Research Design.....	24
1.6 – Research Implications.....	28
1.7 – Order of Chapters.....	32
Chapter 2 – Institutional Ethnography as a Critical Research Practice for a Socio- Legal Project	36
2.1 – Introduction.....	36
2.2 – IE as a Research Practice	38
2.2.1 – Identification of an Experience	38
2.2.2 – Identification of Institutional Processes Shaping the Experience.....	46
2.2.3 – Investigation of Institutional Processes	55
2.3 – Potential & Limitations of Institutional Ethnography for Socio-Legal Studies.....	66
2.3.1 – IE and Other Modes of Qualitative Inquiry	67
2.3.2 – Potential of IE for Socio-Legal Empirical Research.....	71
2.3.3 – Limitations of Institutional Ethnography	77
2.3.4 – Ethical Considerations	81
2.4 – Conclusion	84
Chapter 3 – The <i>MHPA</i>: Provisions on Emergency Involuntary Admission to Psychiatric Facilities and the Right to Representation	86
3.1 – Introduction.....	86
3.2 – Polish Mental Health Reforms: Professional & Economic Interests.....	89
3.3 – Elements of the Regulatory Frame for Involuntary Emergency Admission under the <i>MHPA</i>	96
3.3.1 – Substantive Grounds for Involuntary Emergency Admission	96
3.3.2 – Procedures for Decision-Making and Reviewing Admission Decisions	101
3.3.3 – The <i>MHPA</i> ’s Textual Relations with Other Legal Texts.....	107

3.4 – Article 48 and the Right to Representation.....	110
3.4.1 – The Right to Representation under the <i>MHPA</i>	110
3.4.2 – The Supreme Court on the Right to Representation	114
3.5 – Conclusion	123
Chapter 4 – Proceedings with Legal Aid Assistance for Involuntarily Admitted Persons	126
4.1 – Introduction.....	126
4.2 – Retaining a Private Attorney.....	127
4.3 – Court-Appointed Legal Aid Lawyers for Involuntary Admission Cases	132
4.3.1 – Appointment of a Legal Aid Lawyer upon the Patient’s Request	133
4.3.2 – The Duty to Inform about the Right to Representation	136
4.3.3 – Appointments <i>Ex Officio</i>	143
4.4 – Procedure for Selecting Lawyers for Legal Aid Duties.....	151
4.5 – Urgency of Lawyers’ Involvement	154
4.6 – Conclusion	158
Chapter 5 – Professional and Economic Conditions of Attorneys’ Legal Aid Work	162
5.1 – Introduction.....	162
5.2 – Legal Aid Service of Polish Attorneys	164
5.2.1 – Professional Ethos and Attorneys’ Legal Aid Service.....	164
5.2.2 – The Changing Organization of Professional Legal Services in Poland and the Economic Conditions of Attorneys’ Work	167
5.2.3 – Selection for Legal Aid Duty and Mismatch of Field(s) of Practice	170
5.2.4 – Professional Accountability for Legal Aid Work	172
5.3 – Financial Relations Pertaining to Legal Aid.....	177
5.3.1 – Funding for Legal Aid	177
5.4 – Judges’ Practices around Legal Aid Finances	181
5.5 – The Discursive Frame for Local Practices Related to Legal Aid Financial Management.....	185
5.6 – ‘Working for Free’ or ‘Money for Nothing’?.....	192
5.7 – Conclusion	196
Chapter 6 – From Medical to Legal: Constructing ‘Mental Illness’ and ‘Dangerousness’ as Legal Facts	199
6.1 – Introduction.....	199
6.2 – The 72-hour Admission	201
6.3 – The Paramedics’ Intervention.....	207
6.4 – The Psychiatric Assessment in the Emergency Ward	215
6.5 – The Facility Supervisor’s Control of the Admission Decision.....	226
6.6 – The Judicial Prehearing in the Psychiatric Facility	229
6.7 – Conclusion	239
Chapter 7 – The 5-Minute Hearing: Lawyering with Judges	242
7.1 – Introduction.....	242
7.2. – Hearings	245
7.3 – Judicial Strategies for Managing Hearings in Involuntary Admission Cases	248
7.3.1 – Monitoring the Number of Participants in the Case	248
7.3.2 – Curbing Lawyers’ Involvement	251

7.3.3 – Limiting Case Material	254
7.4. – Enacting Admission Cases as Priority Cases.....	256
7.5 – “These are Straightforward Cases:” Standardizing the Processing of Involuntary Admission Cases	263
7.6 – Using the Technicalities of Non-Adversarial Proceedings in the Judgcraft.....	266
7.7. – “It Is Only the Psychiatric Opinion That I Care About”	269
7.8 – Textual Organization of Lawyers’ Work in Involuntary Admission Cases	275
7.8.1 – “I Did Not Need the Client to Defend His Rights”	275
7.8.2 – “It is Not a Criminal Case... the Implications are Not as Far-Reaching” ...	278
7.9 – Conclusion	282
Chapter 8 – Conclusion.....	285
8.1 – Introduction.....	285
8.2 – Research Findings.....	287
8.3 – Contributions	294
8.3.1 Empirical.....	294
8.3.2 Conceptual	296
8.3.3 Methodological	301
8.4 – Personal Reflection on the Dissertation Research	306
Bibliography.....	312
Legislation, Decrees, and Regulations.....	312
Polish Instruments.....	312
International Instruments	315
Jurisprudence	315
Polish Cases	315
Cases in Other Jurisdictions.....	316
Secondary Sources	316
Appendices	332
Appendix A – Ethics Approval.....	332
Certificate of Approval	332
Modification of an Approved Protocol	333
Appendix B – Recruitment Materials	334
Initial Contact Script.....	334
Invitation Letter	335
Appendix C – Consent Forms.....	337
Local Level Consent Form.....	337
National Level Consent Form.....	341
Patient Observation Consent Form	345
Appendix D – Data Collection Materials	347
Interview Questions: Local Level	347
Interview Questions: National Level	349
Research Log Form.....	350
Interview Progress Report.....	351
Reflexivity/Transparency Log Form.....	352

List of Figures

Figure 2.1: Lawyers' Standpoint	44
Figure 2.2: Data Collections Sites, Informants, and Methods.....	49
Figure 3.1: The Polish Court System	102
Figure 3.2: The Review Procedure for Involuntary Admission Decisions	104
Figure 5.1: Per Capita Spending on Legal Aid in Nine European Jurisdictions, 2013 ..	180
Figure 6.1: Activities in Medical Sites	200
Figure 6.2: Chart of Medical Rescue Activities	210
Figure 6.3: ICD-10 Codes	213
Figure 6.4: History of Illness Form (page 1).....	222
Figure 6.5: History of Illness Form (page 2).....	223
Figure 6.6: History of Illness Form (page 3).....	224
Figure 6.7: Addendum to the History of Illness Form	227
Figure 6.8: Facility's Notification to the Court Form	228
Figure 6.9: Protocol from the Prehearing Visit Form (page 1)	234
Figure 6.10: Protocol from the Prehearing Visit Form (page 2)	235
Figure 7.1: Activities in Legal Sites	243
Figure 8.1: The Organization of Legal Aid Lawyering.....	290

Acknowledgments

My doctoral research transformed me in many different ways: personally, academically, and methodologically. I would like to thank my committee for providing the space for this transformation and for some needed personal closure. I would specifically like to thank my co-supervisors for their support throughout my studies, fieldwork, and the writing of this dissertation. I greatly appreciate your feminist mentoring, consistent encouragement, sharing of academic and practical insights, and for not allowing me to settle into a comfort zone (although I really wanted to at the end). Thank you, Maneesha Deckha for being a role model as a feminist socio-legal scholar and a teacher. Pamela Moss, thank you for all that you put into my mentoring; I could have not done this work without you. Thank you also for patient responses to my notorious academic wanderings, and for responding to my ‘eureka’ moments with a gentle, “this is very interesting but it is not institutional ethnography.” Kevin Walby: thank you for your prompt feedback and comments that helped me rewrite my proposal and enrich my dissertation.

I would like to express my great gratitude to all my research participants and those who contributed to my fieldwork. I would also like to acknowledge all the special women that I befriended along the way: Margareta Lelea, Rachel Elfenbein, Ania Zbyszewska, Debbie Dergusoff, Kerry Sloan, Beth DeVolder, and Sam Grey. If it was only for you, the path was worth taking. This project would never have been completed without the warmth and love of my beautiful family: Jeff, Dixie, Rex, Milo, and Mika. Finally, my Ph.D. was completed with the support of the University of Victoria’s Faculty of Graduate Studies and Centre for Studies in Religion and Society; the Association of Women in Slavic Studies; the British Columbia Law Foundation; and the Bielefeld School of History and Sociology.

Dedication

For my mother, Małgorzata Dańko-Mrozińska,
my great-aunt Stanisława Gerula,
and my grandmother Anna Barbara Stankiewicz.

Chapter 1 – Introduction

1.1 – Introduction

This dissertation begins with lawyers, is about lawyers, and is intended for lawyers. In it, I seek to provide a critical assessment of the mental health legislation that guides involuntary emergency admission to psychiatric facilities in Poland, and to unveil practices and discourses that organize the procedure itself and the right to legal representation realized within it. This project is not only about law understood as *legislation*, although texts play an important role in my analysis; it is about law and the rights produced and reproduced by legal and non-legal actors in the context of involuntary psychiatric admission. It is about law's unmet promises to the people deemed mentally ill. It is about silence. It is about marginalization.

I open this dissertation with two vignettes illustrating the personal and professional experiences that catalyzed my project.¹ These vignettes show how lawyers, judges, and medical professionals—despite perhaps their best intentions—reproduce objectifying discourses and practices in involuntary institutionalization cases.

Vignette 1: My Mother's Involuntary Hospitalization (August 2001)

I had just begun work as a lawyer in a legal office when my stepfather called in emergency medical services to have my mother—who was a medical doctor—committed to a psychiatric hospital against her will. Prior to that, she had

¹ In this dissertation, I use the terms 'involuntary admission,' 'civil commitment,' 'involuntary commitment,' and 'committal' interchangeably to refer to the legal procedure for placing a person in a psychiatric facility against their will. I refer to the person so detained as, variously, the 'admitted person' or the 'admittee.'

been psychologically and emotionally abused by him, which resulted in his conviction on domestic violence charges. During my first visit with her, contact I pursued immediately after learning of the admission, my mother's treating psychiatrist asked to speak with me. Although I was the child of a medical doctor, I was not aware of the psychiatric practice of talking to the patient's family members without those family members initiating the conversation. I was therefore confused about the purpose of this meeting; nevertheless, I followed the psychiatrist to her office. At the outset of the conversation she informed me that the more honest and accurate the information I could provide, the better they would be able to assist my mother. Soon, however, I found myself in the midst of an interrogation about my mother's behaviour, prevented from saying what I wanted to say. When I tried to elaborate the complexities of my mother's situation, such as ongoing domestic violence and my stepfather's provocation and threats, as a necessary background to her angry outbursts and previous suicide attempts, my responses were either cut off or reduced to fragments of data. As the conversation progressed, I became aware that the doctor was only recording bits of information I had provided, and only asked questions to learn about possible pathologies in my mother's everyday behaviour, such as how often she used alcohol, and whether she abused it. Because I cared for my mother, I decided to resist being drawn into the co-production of an account of her as a pathological person in urgent need of in-patient treatment. I began to provide very laconic answers to the doctor's questions, and to deny any assertion that could be converted into statements about my mother's pathology. These were,

however, not the answers that I was expected to give, and not the behaviour that I was expected to exhibit.

Despite my limited experience in legal practice, I had already learned how difficult it could be to challenge a woman's pathology once the account had been scientifically constructed by medical practitioners—either when it came to her everyday existence or to her standing in a legal process. I had also learned how such accounts could undermine a woman's standing in a domestic violence case. While the doctor believed that psychiatric committal was in my mother's best interests, and that my stepfather had called emergency services out of deep concern, I had reasons to feel differently. Based on my mother's history of physical and psychological abuse at his hands, I had reason to believe that my stepfather's arrangement of her psychiatric hospitalization was not driven by care for her well-being, but instead was just another way to intimidate my mother and shatter the credibility of her accusations against him.

Reflecting on my experience as a family member of an involuntarily committed person, I realized how I was enlisted to co-produce my mother's pathology under the rhetoric of her so-called 'best interests,' defined exclusively by medical professionals. I experienced extreme discomfort when my version of her story was reframed in medical language that erased the grayness and complexity of my mother's lived experience—an institutional move aimed to produce an account of her 'mental illness' and 'dangerousness,' so that her emergency involuntary admission could be legally justified.²

² In Poland, mental disturbance and dangerousness are warrants of emergency involuntary admission. Both of these terms — 'mental illness' and 'dangerousness' — are regarded, in this dissertation, as contested and

In spite of my professional legal background I was only minimally able to affect the conversation by avoiding speaking to those aspects of my mother's life that could be used against her in the domestic violence case she had initiated against my stepfather, in case he requested this documentation as evidence. As the treatment she endured from him was silenced and her reaction to it stripped of its context, by medical professionals working in her 'best interests,' I was unable to prevent her secondary victimization in the form of forced psychiatric hospitalization.

Vignette 2: A Client's Psychiatric Commitment Hearing (Winter 2004)

About a year after my mother's hospitalization, I began to article as an attorney trainee in the legal office where I had previously worked as a lawyer. During my second year of articling, I started to substitute for a senior attorney³ in cases at the district court, many of which were assigned to him as a part of the legal aid duties that all attorneys in Poland are obliged to undertake. Polish courts assign legal aid assistance for persons who cannot afford a lawyer, or when professional representation is obligatory under the law. It is a common practice that articulated students substitute for senior attorneys in handling such cases, especially when a case is considered to have a predictable outcome. In addition to being released from personal participation, senior attorneys feel these cases provide an ideal space in which articulated students can learn the art of lawyering and

are treated as social constructs. In line with this, I show how these terms are institutionally produced to satisfy legal grounds for involuntary admission.

³ For the purposes of this dissertation I use the term 'attorney' (instead of advocate) to refer to a Polish bar member. This is to avoid confusion in the Canadian context, where 'advocate' denotes a lay person advocating for an individual or cause. In Poland, the term 'advocate' is used for legal practitioners called to the bar whose scope of practice would include the functions of barristers and solicitors in Canada.

become accustomed to the court. Cases involving psychiatric commitment are considered particularly suitable for this purpose, as they are not seen to require sophisticated legal skills.

In one of these cases, I represented a client in proceedings related to his discharge from the psychiatric facility in which he had spent more than a decade. His admission was an alternative to being sentenced; and according to Polish law, every six months the court is obliged to assess whether there are grounds for further confinement. While preparing for this case, I found defects in the psychiatric assessment recommending further institutionalization. First, the assessment document itself was very short, with few lines of actual ‘expert’ input. Second, it was almost an exact copy of the report prepared for my client six months earlier. When I checked all the previous reports, I found that they were all completed by psychiatrists from the facility where my client resided—and they were exact duplicates of one other, except for the date and signature. Based on my belief that my client had a right to a fair adjudication, and after presenting my reservations about the most recent psychiatric opinion, I petitioned the court to admit evidence from another expert. I argued that because my client’s institutionalization had already been lengthy, independent and solid psychiatric assessment was needed to ensure that this coercive measure was not overused. The court rejected my request out of hand, without meaningful justification. The judges approached my intervention on behalf of my client with equal parts annoyance and amusement: it was apparent that I had stepped outside of my expected role in a mental health case.

*I quickly learned that this was not what I was supposed to do, or how I was meant to behave as a court-appointed legal aid attorney.*⁴

These two ‘law stories’—stories of “actual experiences of clients and lawyers in concrete legal contexts”⁵—emerge at the interface between two powerful ruling regimes: psychiatry and law. They illuminate the complex set of relations in which I was entangled, both as a family member and as a lawyer attempting to speak on behalf of an individual confined in a psychiatric hospital, in order to challenge institutional arrangements. Law stories are an important site where knowledge about the operation of the legal system and the work of involved professionals is produced. When analyzed in a systematic way, law stories can provide first-hand accounts of “how the legal workers and those affected by law make their choices, understand their actions, and experience the frustration and satisfaction it entails.”⁶ I use my law stories, and the stories of legal aid attorneys collected during my research, as windows onto the socio-legal organization of lawyering in the context of involuntary emergency psychiatric admission procedures. Legal aid lawyering is an important element of the procedure for involuntary hospitalization in Poland, since the attorneys appointed to this duty are predominantly the ones who represent the committed in contesting their admission.

⁴ In Poland, a law degree is an undergraduate degree. A law graduate needs to pass an initial entry exam to be admitted for the legal training of her or his choice. The graduate can choose between the following legal professions: attorneys, in-house counsels, prosecutors, notaries, and judges. After working for eighteen months in an attorney legal law office, and after graduating from law school, I applied and was admitted to attorney training. The training lasted for three and a half years, during which time I took advanced, attorney-taught, practice-oriented classes in different fields of law while doing my practicum in an attorney’s office, which also included court litigation. I passed my bar exam in 2005. Through my legal work I became intimately familiar with the everyday practices of lawyering and the discourses that organize interactions between judges and advocates. I draw on that knowledge in multiple chapters of this dissertation.

⁵ Gary Bellow and Martha Minow, eds., *Law Stories* (Ann Arbor: University of Michigan Press, 1996), 1.

⁶ *Ibid.*

The objective of this dissertation, however, is not to defend attorneys or the quality of their work, especially as this can vary. Nor it is to address individual attitudes towards persons subjected to involuntary admission and treatment, and attorneys' often uncritical (and therefore troublesome) acceptance of the concept of mental illness. Rather, the objective here is to present a fuller picture of lawyering in involuntary admission cases, and to illustrate how the institutional practices involved in processing these cases coordinate and organize the work of court-appointed legal aid lawyers. I achieve this objective by exploring and mapping activities and practices in local sites and demonstrating how these are connected to the larger institutional processes that organize the practice of involuntary admission in Poland. Because such an exploration shows how lawyering within this specific legal context is organized, so that it functions as it does, my dissertation helps uncover potential hindrances to attorneys' advocacy for their involuntarily admitted clients. Such an investigation not only reveals how legal aid in the lawyering of involuntary admission cases is constituted as a certain kind of relation, it also links this relation to another that lawyers themselves co-produce: the institutional relation of 'legality' creates experiences of subordination and oppression within the context of the involuntary admission procedure. I argue that such an investigation enables more meaningful engagement with mental health law because it does not separate involuntary admissions procedures from other sets of social and legal relations, at the intersection with which concepts and practice pertaining to mental health law are produced and enacted. My dissertation thus gives a multi-dimensional picture of the involuntary admission process.

1.2 – Context: Mental Health Reforms & Polish Law on Involuntary Admission

1.2.1 – Overview of Mental Health Reforms

Located at the intersection of law and psychiatry, this dissertation focuses specifically on the involuntary admission procedure and the legal aid lawyering that occurs within it. Involuntary psychiatric admission can be defined as the “detention of persons, against their will to mental health facilities under a formal legal process.”⁷ The practice has stirred up legal and moral controversy due to its legitimization of the forceful intrusion of the state into the personal lives and liberties of individuals.⁸ In the context of involuntary psychiatric admission, the state has the authority to detain a person who is deemed mentally ill and dangerous to self or others in order to protect the well-being of society (police power) or protect this person from hurting themselves (*parens patriae*).⁹

Currently, in North American and European countries, state power to involuntarily detain is legally grounded; the process of commitment tends to be regulated by special acts that outline the legal grounds and procedures for involuntary admission.¹⁰ While specific

⁷ Robert A. Brooks, “Official Madness: A Cross-Cultural Study of Involuntary Civil Confinement Based on ‘Mental Illness’,” in *Madness, Disability and Social Exclusion*, ed. Jane Hubert (New York: Routledge, 2000), 23.

⁸ Bruce A. Arrigo, “Paternalism, Civil Commitment and Illness Politics: Assessing the Current Debate and Outlining a Future Direction,” *Journal of Law and Health* 7, no. 2 (1993); Bonnie Burstow, *Psychiatry and the Business of Madness: An Ethical and Epistemological Accounting* (New York: Palgrave Macmillan, 2015); Valerie L. Collins, “Camouflaged Legitimacy: Civil Commitment, Property Rights, and Legal Isolation,” *Howard Law Journal* 52, no. 2 (2009); Robert A. Brooks, “Official Madness.”: A Cross-Cultural Study of Involuntary Civil Confinement Based on ‘Mental Illness’,” in *Madness, Disability and Social Exclusion*, ed. Jane Hubert (New York: Routledge, 2000)

⁹ Burstow, *Psychiatry and the Business of Madness*; Collins, “Camouflaged Legitimacy;” Brooks, “Official Madness,” 9.

¹⁰ Burstow, *Psychiatry and the Business of Madness*; Peter Carver, “Mental Health Law in Canada,” in *Canadian Health Care Law and Policy*, ed. Jocelyn Downie, Timothy Caulfield, and Colleen M. Flood (Markham, ON: LexisNexis, 2011); Brooks, “Official Madness.”

criteria and their combination vary across countries,¹¹ socio-legal scholar Robert Brooks, who examined mental health law in thirty-two different jurisdictions, found that grounds for involuntary psychiatric admission “usually contain two components, first that the person in question be diagnosed with a ‘mental illness,’ and second that they: (a) pose a danger to themselves or others, (b) are in need of treatment, or (c) cannot see to their basic necessities of life.”¹² Such a legal ground for involuntary psychiatric admission is, however, a relatively recent development—an outcome of post-1960s mental health reforms in many countries.¹³ These reforms emerged in response to reports of severe abuse suffered by persons committed to psychiatric facilities against their will, and aimed to humanize and prevent unnecessary involuntary psychiatric admission by enacting tougher standards and restricting psychiatrists’ prerogatives.¹⁴ Reformers called for a legal model for civil commitment with more complex admission criteria than the singular need-for-treatment, and with measures limiting the power of psychiatrists, which was characteristic of the existing medical paradigm.¹⁵ Under the new legal model, “the freedom of the individual to conduct his or her own affairs [should be protected] from outside interference,

¹¹ Elizabeth C. Fistein et al., “A Comparison of Mental Health Legislation from Diverse Commonwealth Jurisdictions,” *International Journal of Law and Psychiatry* 32, no. 3 (2009); Thomas W. Kallert, Joanna Rymaszewska, and Francisco Torres-Gonzales, “Differences of Legal Regulations Concerning Involuntary Psychiatric Hospitalization in Twelve European Countries: Implications for Clinical Practice,” *International Journal of Forensic Mental Health* 6, no. 2 (2007).

¹² Brooks, “Official Madness,” 9.

¹³ Philip D. Arben, “A Commentary: Why Civil Commitment Laws Don’t Work the Way They’re Supposed To,” *Journal of Sociology and Social Welfare* 26, no. 3 (1999); Arrigo, “Paternalism”; Nicolas Rose, “Law, Rights and Psychiatry,” in *The Power of Psychiatry*, ed. Peter Miller and Nicolas Rose (Cambridge: Polity Press, 1986).

¹⁴ For more on changes in the mental health law and their social and ideological context see: Jennifer Brown, “The Changing Purpose of Mental Health Law: From Medicalism to Legalism to New Legalism,” *International Journal of Law and Psychiatry* 47 (2016); Arrigo, “Paternalism”; Rose, “Law, Rights and Psychiatry”; Collins, “Camouflaged Legitimacy”; Carol A.B. Warren, *The Court of Last Resort: Mental Illness and the Law* (Chicago: The University of Chicago Press, 1982).

¹⁵ Brooks, “Official Madness.”

so long as his or her conduct is not harmful to others.”¹⁶ This was to ensure that coercive psychiatric commitment was decided via a formal legal procedure—again, a necessity because of its severe invasion into civil liberties. Under the new model, then, a singular ground of need-for-treatment could justify neither involuntary admission nor forced treatment.¹⁷

These initial mental health reforms also resulted in procedural changes to decision-making processes, again by limiting psychiatric power.¹⁸ This limitation was either implemented by delegating involuntary admissions to an independent judicial or semi-judicial body, or by introducing an external control system regulating psychiatrists’ admission decisions.¹⁹ Accordingly, legal authorities and legal regulations were introduced as key guarantors of legality, in contrast to the previous medical model, in which all decision-making and controlling prerogatives were left in the hands of medical professionals.²⁰ Moreover, *patients*²¹ of psychiatric facilities were recognized as rights-

¹⁶ Uri Aviram, “Care or Convenience? On the Medical-Bureaucratic Model of Commitment of the Mentally Ill,” *International Journal of Law and Psychiatry* 13, no. 3 (1990).

¹⁷ Brooks, “Official Madness”; Collins, “Camouflaged Legitimacy”.

¹⁸ Jennifer Brown, “The Changing Purpose”, Bruce J. Winick, “Therapeutic Jurisprudence and the Treatment of People with Mental Illness in Eastern Europe: Construing International Human Rights Law” *New York Law School Journal of International and Comparative Law* 21 (2002).

¹⁹ Arben, “A Commentary”; Arrigo, “Paternalism”; Collins, “Camouflaged Legitimacy”; Rose, “Law, Rights and Psychiatry”.

²⁰ Arben, “A Commentary”; Arrigo, “Paternalism”; Collins, “Camouflaged Legitimacy”; Rose, “Law, Rights and Psychiatry”.

²⁰ Arrigo, “Paternalism”; Collins, “Camouflaged Legitimacy”; Judith Lynn Failer, *Who Qualifies for Rights? Homelessness, Mental Illness and Civil Commitment* (Ithaca: Cornell University Press, 2002); Rose, “Law, Rights and Psychiatry”.

²¹ I use the term ‘patient’ only when I refer to those instances when other scholars or professionals define the admitted persons (or admittees) specifically in this way. For my own discussion and analysis, I do not refer to persons admitted to psychiatric facilities as ‘patients’ because I contest the way the term locates people within a complex of medical interactions that construct the relationship between doctors and patients in a specific way, prioritize treatment-oriented rights, and define the best interests of patients exclusively through health-related outcomes. These are the relations that I want to expose and criticize in my dissertation, as I see as them as oppressive for involuntarily-admitted persons.

bearers and equipped with procedural rights,²² such as the right to demand a judicial review, to appeal, or to participate in a review or hearing of issues. So equipped, persons admitted to psychiatric facilities were seen as empowered to take action and challenge abuses and rights violations concerning their own admission and treatment.²³

Two major streams of critique emerged in response to these reforms.²⁴ A first stream of critique identified problems with the translation of reforms into institutional practices, questioning whether they really addressed patients' rights and health needs. It has been argued that rights-based reforms, although meant to humanize psychiatric procedures and ensure a fair process by providing legal remedies for patients, still left committed individuals without substantive protection thanks to pervasive paternalism among the institutional authorities guiding the application of new laws.²⁵ In a second stream of critique, medical practitioners criticized the change in mental health regulations, which in a number of countries co-occurred with psychiatric de-institutionalization, for leaving the mentally ill who did not meet criteria of 'dangerousness' "rotting with their rights" on the street.²⁶ In other words: medical professionals argued that, in order to prevent

²² Megan Pearson, "The Effect of Clinical Judgement in Decision-Making: the Mental Health Act 1986 (Vic.) and the Mental Health Review Board," *Ethical Human Psychology and Psychiatry* 8, no. 1 (2006); Warren, *The Court of Last Resort*, 21-43.

²³ Rose, "Law, Rights and Psychiatry," 190

²⁴ Joan Busfield, "Mental Disorder and Human Rights," in *Rights: Sociological Perspectives*, ed. Lydia Morris (London: Routledge, 2006) 209-223.

²⁵ Arben, "A Commentary"; Arrigo, "Paternalism"; Collins, "Camouflaged Legitimacy"; Rose, "Law, Rights and Psychiatry".

²⁶ Kenneth Kress, "Rotting with Their Rights On: Why the Criteria for Ending Commitment or Restraint of Liberty Need Not Be the Same As the Criteria for Initiating Commitment or Restraint of Liberty, and How the Restraint May Sometimes Justifiably Continue After Its Prerequisites Are No Longer Satisfied," *Behavioural Science & the Law* 24, no. 4 (2006); Marshall B. Kapp, "Treatment and Refusal Rights in Mental Health: Therapeutic Justice and Clinical Accommodation," *American Journal of Orthopsychiatry*, 64, no. 2 (1994); Zvi Zemishlany, "Involuntary Hospitalization and Treatment: The Interface between Psychiatry and Law," *Harefuah* 146 no. 8 (2007).

an intensification of mental disorders, treatment (even involuntary treatment) should not have to wait until that person becomes ‘dangerous.’

This second critique resulted in another wave of mental health law reforms that emerged in the late 1980s and through the 1990s, which was intended to balance provisions protecting the right to self-determination of persons deemed mentally ill with those guaranteeing them access to psychiatric care.²⁷ These changes also signified a transition from a *legal model* to a new *medico-legal model*, in which the right to medical services was constituted as an entitlement—a positive right that needed to be weighed against the individual’s right to liberty and bodily integrity.²⁸

Polish reformers, like their Western counterparts, envisioned rights as remedies, balancing (at least to some extent) the unequal power that psychiatrists held over the persons subjected to their actions. The ultimate aim of reformatory changes to the legal model governing admission to psychiatric facilities in Poland—as reformers declared it—was to ensure that no one was kept *illegally*, and that patients’ well-being was subsequently enhanced.²⁹ Polish reforms were complicated and time-consuming, lasting for more than two decades. On August 14, 1994 the Parliament voted in favour of the *Mental Health Protection Act, 1994 (MHPA)*,³⁰ and the new law came into force on January

²⁷ Jennifer Brown, “The Changing Purpose,” 4-5; Winick, “Therapeutic Jurisprudence,” 540-544.

²⁸ Jennifer Brown, “The Changing Purpose”; Winick, “Therapeutic Jurisprudence”.

²⁹ Stanisław Dąbrowski and Leszek Kubicki, “Introduction [Wprowadzenie],” in *The Mental Health Protection Act: An Overview of Major Issues* [An Ustawa o Ochronie Zdrowia Psychicznego: Przegląd Ważniejszych Zagadnień], ed. Stanisław Dąbrowski and Leszek Kubicki (Warszawa: Instytut Psychiatrii i Neurologii, 1994).

³⁰ *Mental Health Protection Act of 19 August 1994* [Ustawa O Ochronie Zdrowia Psychicznego Z Dnia 19 Sierpnia 1994 Roku] (“MHPA”), in 1994 *Journal of Laws*, no. 231, item 1375. Note: This reference is specific to the Polish law publication scheme where the number 231 refers to the volume of the *Journal of Laws* and the number 1375 to the page number. I will use this adjusted style of citation throughout the dissertation.

21 of the following year. It resulted in changes to the grounds for involuntary admission and to the procedure for making and assessing involuntary admission decisions.

1.2.2 – The Polish *Mental Health Protection Act*

Currently in Poland, involuntary commitment to psychiatric hospitals is conducted according to Articles 23 and 24 of the *MHPA*, on the grounds of mental disorder and dangerousness, or on the need for treatment. Article 23 regulates confinement of a person who already has a psychiatric diagnosis of mental disorder, while Article 24 refers to situations involving a person “who exhibits mental disturbances”³¹ and therefore needs to be observed, to determine whether a mental disorder is present. A third Article (29) regulates non-emergency involuntary admission. Such admission is conducted for a single treatment purpose: where it is determined that a person’s health would significantly deteriorate unless they were admitted to the hospital, or they are incapable of autonomous living and it is deemed that psychiatric treatment could improve their health.

Extended procedural guarantees set Poland’s mental health law apart from that of many other national or regional jurisdictions.³² The *MHPA* includes provisions regulating, in detail, procedures for admission and judicial control. It imposes a strict timeline for decision-making and legality-controlling activities (including a multi-level process of judicial control, along with a patients’ right to participate in the procedure personally or through a legal representative). According to the provisions of the *MHPA*, all decisions regarding involuntary admissions are made by psychiatrists, and subsequently adjudicated

³¹ In this dissertation, translation from Polish to English is my own, unless indicated otherwise in the footnotes.

³² Carver, “Mental Health Law in Canada”.

by an independent judicial body. Adjudication of the legality of an involuntary admission is not initiated by a patient, but is launched in every case automatically. Involuntarily committed persons are provided the status of a party and can thus, by their own means or with a legal representative, undertake actions to challenge the legality of their admission. Nevertheless, persons involuntarily committed in Poland, and those who advocate on their behalf, might find themselves struggling to obtain favourable decisions just as much as their counterparts in systems with fewer procedural guarantees.

While it aimed to ensure extensive patient engagement in the adjudication procedure, the *MHPA* does not, however, directly enact obligatory legal representation for persons hospitalized in psychiatric facilities against their will. Rather, Article 48 equips judges with discretionary power to appoint a legal aid representative for a person undergoing psychiatric involuntary admission if the admittee does not yet have a lawyer and if the judge deems such assistance to be necessary. In recent years, though, the Polish Supreme Court has proposed a new interpretation of Article 48, obliging judges to appoint legal aid lawyers in all mental health cases, especially when a person is unable to participate actively in their proceedings because of psychological or material restraints, such as when they are under the influence of strong medication or confined to a psychiatric ward.

Accounts from attorneys who did (or do) the actual work of such representation, however, speak to some of the challenges that Polish legal aid lawyers face in providing legal service in involuntary admission cases. Under this coercive procedure, without ensuring that lawyers' voices are heard and that they can deliver quality representation to all of their involuntarily committed clients, even the extensive and quasi-obligatory

representation recommended by the Supreme Court may be nothing more than a formalistic legal institution, without substantive content.

1.3 – Experiential Accounts of Legal Aid Attorneys

If a person admitted to a psychiatric facility against their will is represented by a lawyer in a legal proceeding, that representation will almost always take the form of a court-appointed legal aid lawyer. Yet Polish attorneys, unlike their Canadian or American counterparts, are obliged to provide legal aid as an element of their professional mandate, regardless of the individual lawyer's willingness to participate in legal aid service. While some cases are more welcomed than others, lawyers interviewed for this study commonly spoke about the challenges in performing legal aid lawyering work in involuntary admission cases. This is because of the inadequate remuneration they receive for these cases, as well their perceived inability to affect the outcome.

In Poland, a legal aid lawyer, for representation in an involuntary admission case, usually receives 120 złotych (roughly \$39 CAD)³³ for the entire case at the first instance of proceedings, and an additional 50 percent of that fee for representation at the appeals court. This remuneration is far less than the fee charged by a privately retained attorney for the same type of case, and quite inadequate for the time and work involved. Consequently, lawyers often need to put a significant number of *pro bono* hours into involuntary admission cases; and accordingly, they report struggling to balance legal aid cases with the

³³ Monetary values are given according to the average rate of conversion between the Polish złotych and Canadian dollar for the years 2012-2014 (averaged at 0.328959). Canadian Forex <http://www.canadianforex.ca/forex-tools/historical-rate-tools/yearly-average-rates>, accessed 10 June 2017.

private practices from which they derive their living.³⁴ Lawyers with whom I spoke expressed frustration over having to engage in this legal aid, for the disregard shown for the administrative and economic resources needed to deliver quality representation, and for the low remuneration for representing an involuntarily admitted person.

Further contributing to lawyers' frustration is the near-impossibility of successfully challenging arguments made by psychiatric experts. Many lawyers feel that judges dismiss the work they put into these cases, both in preparing them and in delivering sound arguments. Moreover, advocacy involving new facts and evidence puts lawyers in conflict with the court, which prioritizes quick adjudication of involuntary admission cases. Accordingly, departure from the judicially-set role can carry adverse consequences.

Some attorneys are able, willing, and have the necessary resources to take seriously their legal aid responsibilities in involuntary admission cases, despite the low pay and significant commitment of time and energy; yet others perform only the bare minimum required by law, merely purporting to advocate for their clients. Hence, the very persons who need spirited lawyering may not receive appropriate advocacy in the context of involuntary admission proceedings.

1.4 – Focus & Objectives of the Dissertation

Located squarely within the experiences of lawyers who face challenges in performing effective advocacy work, this dissertation problematizes the provisions and

³⁴ Polish attorneys are not allowed to provide legal services as 'employees,' under conditions of employment; they are only permitted to carry on the business of providing legal services as solo practitioners or partners in legal corporations. This legal relation means that attorneys and in-house counsels (who are allowed to be employees) may find themselves experiencing legal aid differently, at least to some extent. My findings are thus specific to legal aid lawyering provided by Polish attorneys and should not be generalized to in-house counsels or other legal professionals.

practices related to involuntary admission in psychiatric facilities in Poland, as well as the organization of legal aid representation in involuntary admission cases. While I start my exploration with legal aid lawyers' embodied experiences of and challenges in doing their representation work, accounting for how that work is organized and coordinated in local sites, this dissertation aims to move beyond a solo ethnographic description and analysis of local processes and the material contexts in which they occur. Rather, I seek to discover *relations*, especially the social and legal relations mediated by the texts that organize these local experiences and the practices involved in involuntary psychiatric admission, and legal aid lawyering in such cases, in Poland. Specifically, this dissertation provides a detailed description of an involuntary admission procedure; elucidates the work organization involved in obtaining and providing legal aid representation for involuntary admission cases; and maps and analyzes the relations governing and organizing these activities so that the disjuncture between institutional regimes and lawyers' experiences, as described above, emerge.

1.5 – Method of Inquiry: Institutional Ethnography

In my investigation I have adopted (with some modifications) a method for social inquiry developed by feminist sociologist Dorothy E. Smith and later named 'institutional ethnography' (IE).³⁵ IE seemed particularly suitable because of its focus on exploring institutional practice and its strong political commitment to social and institutional change.³⁶ IE has frequently been utilized by researchers with professional backgrounds

³⁵ Dorothy E. Smith, *The Everyday World as Problematic: A Feminist Sociology* (Boston: Northeastern University Press, 1987); Dorothy E. Smith, *Institutional Ethnography: A Sociology for People* (Lanham: AltaMira Press, 2005).

³⁶ Dorothy E. Smith, *A Sociology for People*.

oriented towards social justice, who are interested in addressing the operation of various policies that do not meet the actual needs of people.³⁷ By linking everyday troubles to specific features of systems and their translocal organization, IE can reveal how these constrain the ability of professionals to best support their clients or patients.³⁸

1.5.1 – Overview of IE

Institutional ethnography is a feminist method of inquiry associated primarily with, and emerging out of, the scholarship of Canadian sociologist Dorothy E. Smith.³⁹ It is a complex body of knowledge with its own ontological, epistemological, and methodological theorizations of the social world, and strategies for researching it. Institutional ethnographers Marie Campbell and Frances Gregor describe IE as “a theorized way of seeing and knowing that re-orient people in their everyday world,”⁴⁰ while Kevin Walby sees it as “more like an agenda for inquiry that is guided by particular theoretical and methodological commitments.”⁴¹

³⁷ Elizabeth Townsend, *Good Intentions Overruled: A Critique of Empowerment in the Routine Organization of Mental Health Services* (Toronto: University of Toronto Press, 1998); Ellen Pence, “Safety for Battered Women in a Textually Mediated Legal System,” *Studies in Cultures, Organizations and Societies* 7, no. 2 (2001); Laura Bisaillon, “Cordon Sanitaire or Healthy Policy? How Prospective Immigrants with HIV are Organized by Canada’s Mandatory HIV Screening Policy,” PhD diss., University of Ottawa, 2012, uO Research; Rena Miller, “Manageable Problems, Unmanageable Death: The Social Organization of Palliative Care,” MA thesis, University of Victoria, 1997, DSpace; Nancy M. Bell, “A Child’s ‘Terminal Illness’: An Analysis of Text Mediated Knowing,” MA thesis, University of Victoria, 2001, DSpace.

³⁸ Janet M. Rankin and Marie L. Campbell, *Managing to Nurse: Inside Canada’s Health Care Reform* (Toronto: University of Toronto Press, 2006); Townsend, *Good Intentions Overruled*; Naomi Nichols, “Investigating the Social Relations of Human Service Provision: Institutional Ethnography and Activism,” *Journal of Comparative Social Work* 11, no. 1 (2016).

³⁹ Dorothy E. Smith, *The Everyday World*.

⁴⁰ Marie L. Campbell and Frances Gregor, *Mapping Social Relations: A Primer in Doing Institutional Ethnography* (Toronto: University of Toronto Press, 2008), 11.

⁴¹ Kevin Walby, “Institutional Ethnography and Data Analysis: Making Sense of Data Dialogues,” *International Journal of Social Research Methodology* 16, no. 2 (2013): 141.

IE emerged out of Smith's feminist contestation of sociological knowledge production in academia.⁴² She began by reflecting on a disjuncture she experienced between social life as she had lived and known it—for example, as a mother of two children—and the social life that was an object of sociological inquiry, in which she engaged as part of her academic work. From this, Smith developed a two-tier criticism of sociological research.

First, she argued that social research is isolated from people's experiences because it proceeds from "a theoretical framework for the interpretation of people's behaviour" rather than from actualities of people's lives.⁴³ As a result, knowledge produced through such research has no relevance for people, or for helping understand the problems that really matter to them. Second, Smith pointed to the objectifying characteristics of even those qualitative and feminist studies that had developed as alternatives to traditional sociological research.⁴⁴ She argued that while these alternative methodologies aim to explain and understand social life, they still impose objectified interpretations on people. In other words: a person "become[s] the *object* of investigation and explanation" instead of being treated as a knowing subject.⁴⁵ To respond to these shortcomings, IE proposes an alternative approach to inquiry that aims to produce a form of sociology that is truly "for people." It does not reduce the meaning of the term "for people" to "matters of public

⁴² Dorothy E. Smith, *The Everyday World*; Dorothy E. Smith, *The Conceptual Practices of Power* (Boston: Northeastern University Press, 1990).

⁴³ Dorothy E. Smith, "Institutional Ethnography: From a Sociology for Women to a Sociology for People," in *Handbook of Feminist Research: Theory and Praxis*, ed. Sharlene Nagy Hesse-Biber (Thousand Oaks, CA: Sage Publications, 2007), 409.

⁴⁴ Dorothy E. Smith, *A Sociology for People*.

⁴⁵ Dorothy E. Smith, "From a Sociology for Women," 409 (emphasis in the original).

concern,” and moves beyond an engagement with methods towards a broader “rethinking and reorganizing of social relations that are built in the knowledge of the social.”⁴⁶

1.5.2 – Tenets of IE as Alternative Sociology

Over time, institutional ethnographers have developed a number of epistemological, ontological, and axiological tenets to help re-orient sociological research as a new mode of understanding and producing sociological knowledge. Some of the most significant include:

Epistemological Tenets

IE is premised on the belief that knowledge is socially organized and is reflective of the power relations involved in its production. The position (or ‘standpoint’) from which research begins has an impact on what can be seen.⁴⁷ For example, research produced from the standpoint of officials working in an organization will produce different knowledge than studies conducted from the position of a person requesting an institutional service. These groups of people, enmeshed in different worlds, know institutions from different vantage points: of those who purportedly serve, and of those who are served.

Learning about the world from people adheres to the claim that “[t]he world cannot be known from some objective standpoint outside.”⁴⁸ It can only be learned “from within the social and by learning from people about their lives and relations of struggles

⁴⁶ Dorothy E. Smith, “Introduction,” in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006), 2; Dorothy E. Smith, “From a Sociology for Women,” 409.

⁴⁷ Dorothy E. Smith, “Introduction,” 3.

⁴⁸ Cited in Caelie Frampton et al., “Social Movements/Social Research: Towards Political Activist Ethnography,” in *Sociology for Changing the World: Social Movements/Social Research*, ed. Caelie Frampton et al. (Halifax: Fernwood Publishing, 2006), 4.

[resistance] they put together.”⁴⁹ People are knowing subjects of their everyday worlds, and their knowledge should not be substituted with that of ‘experts.’ Rather, inquiry needs to expand toward the relations that organize people’s everyday experiences.⁵⁰ This requires offering a subject position to people who experience social life, and taking their experiences seriously as the “ground zero of the analysis.”⁵¹

Ontological Tenets

Institutional ethnography requires that a researcher make an ontological shift “involv[ing] a change from a generalized world of conceptual and theoretical explanations to the concrete, sensuous world of people’s actual practices and activities.”⁵² It is a materialist-oriented sociology that moves away from a *speculative* towards an *empirical* account of the social world.⁵³ Smith argues that social research should begin from “where people are and proceed from there to discoveries that are for them, for us, of the workings of a social that extends beyond any one of us, bringing our local activities into coordination with those of others.”⁵⁴ By tracing empirical linkages between people’s work/life and governing relations in the form of institutions, IE is committed to “discovering ‘how things are actually put together,’ ‘how things work’ in real life.”⁵⁵ Following this ontological

⁴⁹ Cited in Ibid., 4.

⁵⁰ Dorothy E. Smith, “Introduction”.

⁵¹ Marie L. Campbell, “Research for Activism: Understanding Social Organization from Inside,” in *Sociology for Changing the World*, ed. Caelie Frampton et al. (Halifax: Fernwood Publishing, 2006), 91; Marie L. Campbell, “Institutional Ethnography and Experience as Data,” in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006), 91.

⁵² George W. Smith, “Political Activist as Ethnographer,” in *Sociology for Changing the World*, ed. Caelie Frampton, Gary Kinsman, A. K. Thompson and Kate Tilliczek (Halifax: Fernwood Publishing, 2006), 51.

⁵³ Ibid., 53.

⁵⁴ Dorothy E. Smith, “Introduction,” 3.

⁵⁵ Ibid.

stance, IE is interested in discovering how the social world is assembled in/through people's everyday practices and activities.⁵⁶

The attention to texts in coordinating local action and linking it to governing relations is a distinctive feature of IE, an essential element of its social ontology, and a focus of its ethnographic inquiry. Smith argues that since, in modern societies, the number of face-to-face interactions has significantly decreased, multi-sited local activities are coordinated and standardized by texts.⁵⁷ Texts in IE are understood as “material artifact[s] that carry standardized messages”⁵⁸ and include such iterations as printed matter, film, photographs, and even music notes. Because of their material forms, texts can be replicated across sites and times. In texts, ideological messages are encoded—but for institutional ethnographers the term ‘ideological’ means “a form of knowledge that is uprooted and ungrounded from the social circumstances in which it is produced.”⁵⁹ Texts in IE's ontology are a “key means through which social action is mediated, organized and coordinated.”⁶⁰ Yet “[t]exts do nothing on their own;”⁶¹ they only accomplish their ideological work when people ‘activate’ them in their everyday practices—as, for example by referring to, reading, filling out, or reproducing their content. Because of these faculties of texts, “the technologies of texts and textuality as these enter into the coordinating of people's actions are foundational to [IE's] project.”⁶²

⁵⁶ Ibid., 1.

⁵⁷ Dorothy E. Smith, *A Sociology for People*, 15-16.

⁵⁸ Laura Bisaillon, “An Analytic Glossary to Social Inquiry Using Institutional and Political Activist Ethnography,” *International Journal of Qualitative Methods* 11, no. 5 (2012): 620.

⁵⁹ Caelie Frampton et al., “Glossary,” in *Sociology for Changing the World: Social Movements/Social Research*, ed. Caelie Frampton, Gary Kinsman, A.K. Thompson, and Kate Tilliczek (Halifax: Fernwood Publishing, 2006), 38.

⁶⁰ Bisaillon, “An Analytic Glossary,” 613.

⁶¹ Frampton et al., “Glossary,” 38.

⁶² Dorothy E. Smith, “Incorporating Texts into Ethnographic Practice,” in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006), 65.

Axiological Tenets

For institutional ethnographers, research is an emancipatory undertaking that can contribute to social change.⁶³ Accordingly, IE adopts two goals. The first is to expand people's knowledge of their own lives. It does this by showing to people how their lives are organized so as to trouble their encounters with institutional complexes such as law, health care, and education.⁶⁴ Although people are the 'knowers' of their daily lives, not all the relations that organize their lives are visible from their own location; when they become cognizant of how their lives are organized, people can enact change *from below*.⁶⁵ Yet, people can enact social change at either an individual level, through changes to their own practices, or at a structural level, through changes to institutional practices or to the laws and policies governing them, when equipped with research-based knowledge.⁶⁶ The second goal is to discover the workings of institutions and "more generally, the ruling relations of contemporary Western society" that extend across sites, so they can be modified.⁶⁷ Adopting an anti-psychiatry and critical socio-legal stance, I see my project as an attempt to discover the workings of the institution of involuntary admission, and to contest and problematize knowledge and ruling relations at the intersection of law and psychiatry.⁶⁸

⁶³ Dorothy E. Smith, *The Everyday World*, 157.

⁶⁴ Dorothy E. Smith, "Introduction," 3.

⁶⁵ Dorothy E. Smith, "Making Change from Below," *Socialist Studies* 3, no. 2 (2007).

⁶⁶ Judith A Howard, Barbara Risman, and Joey Sprague, "Series Editors' Foreword," in *Institutional Ethnography: A Sociology for People*, Dorothy E. Smith (Lanham: AltaMira Press, 2005); Pence, "Safety for Battered Women".

⁶⁷ Dorothy E. Smith, *A Sociology for People*, 51.

⁶⁸ Anti-psychiatry scholarship in Canada includes, among others: Robert J. Menzies, "Cycles of Control: The Transcerceral Career of Forensic Patients," *International Journal of Law and Psychiatry* 10 (1987); Brenda LeFrançois and Vicki Coppock, "Psychiatrised Children and Their Rights: Starting the Conversation (Editorial)," *Children & Society* 28 (2014); Burstow, *Psychiatry and the Business of Madness*; Eric Fabris, *Tranquil Prisons* (Toronto: University of Toronto Press, 2011). Geoffrey Reaume "'Keep Your Labels Off My Mind!' or 'Now I Am Going to Pretend I Am Crazy but Don't Be a Bit Alarmed: Psychiatric History from the Patients' Perspectives," *Canadian Bulletin of Medical History* 11, no. 2 (1994).

1.5.3 – Research Design

Institutional ethnographers understand that what happens to people in their everyday lives is systematically organized in a way that reflects power relations. Such organization is acquired through the coordination of ideological discourses and institutional systems and practices, which support the interests of those who wield power in ruling regimes. Yet people actively participate in this coordination, even unknowingly, by adopting “prevailing and dominant discourse[s] and act[ing] accordingly.”⁶⁹ By actively engaging in social relations, people enact social orders that create experiences of subordination and oppression.⁷⁰ For instance: racism, sexism, and ableism are not abstract entities but social practices that emerge in local sites, through people’s coordinated actions.⁷¹

To uncover ruling relations and oppressive institutional practices, IE directs inquiry toward the social organization of everyday life. In modern societies, where people’s face-to-face interactions have significantly decreased, texts coordinate and standardize local activities across multiple sites.⁷² Reflecting the relations of knowledge and power that operate on a global scale—such as those of capitalism or patriarchy—the universality of texts enables the interpenetration of ideological discourses and ruling regimes into institutional processes, organizing what happens to people in local sites.⁷³

I began my research with stories of the concrete experiences of legal aid lawyers who participated in proceedings adjudicating the legality of involuntary admission

⁶⁹ Campbell and Gregor, *Mapping Social Relations*, 41.

⁷⁰ Marie L. Campbell and Frances Gregor, “Theory ‘in’ Everyday Life,” in *Critical Strategies for Social Research*, ed. William K. Carroll (Toronto: Canadian Scholars’ Press, 2004), 172

⁷¹ Dorothy E. Smith, *A Sociology for People*.

⁷² *Ibid.*

⁷³ Campbell and Gregor, *Mapping Social Relations*.

decisions. In this dissertation, ‘legality’ is understood as a textually-organized, ongoing socio-legal practice. Medical and legal professionals actively engage in, participate in, and bring this practice into being through their work, guided by legal acts and legal knowledge. Thus, rather than conceiving that the legality of involuntary admission is assessed *against* the law, I conceive legality as being *produced* through the involuntary admission procedure, within the ideological frame provided by the *MHPA*. The term ‘frame’ can be defined as “a general term for the wide varieties of conceptualizations, theories, policies, laws, plans, and so on that operate at a general level to structure institutional action and reality coordinating people’s work at local levels.”⁷⁴ Ruling relations provide a frame within which local practices will be undertaken in order to realize broader institutional goals.

Studying lawyering as a socio-legal practice requires discovering and mapping how the local organization of everyday worlds is connected with ruling relations. I adopted lawyers’ ‘standpoint’ in pursuit of my research goals, which means that I worked from “the actualities of [legal aid lawyers’] everyday lives and experience to discover the social as it extends beyond experiences.”⁷⁵ I did not treat lawyering and legal representation as abstract concepts, but instead understood them as social relations that are produced in multiple sites, in concrete material conditions, by actual people, through their everyday activities, as coordinated by texts. With this understanding I demonstrate how, by actively engaging in social relations through their everyday work, psychiatric and legal

⁷⁴ Dorothy E. Smith, *A Sociology for People*, 191.

⁷⁵ *Ibid.*, 10.

professionals enact a socio-legal regime of ‘legality’ that creates experiences of subordination and oppression within the context of the involuntary admission procedure.

There were two analytical sites to which I paid attention in my research: 1) the local setting, where lives are lived and experienced by people; and 2) the translocal setting, which organizes the local, yet is outside the boundaries of people’s everyday experiences.⁷⁶

Initially, I asked the following set of questions:

1. What actually takes place during the process of involuntary admission to mental hospitals in Poland?
2. When and how do legal aid lawyers enter the involuntary admission proceeding and what work activities do lawyers undertake within the context of these proceedings?
3. What are the work processes and practices pertaining to involuntary commitment, and who participates in them?

As I progressed with data collection and began to grasp what involuntary admission proceedings involve and who participates in them, I developed a ‘puzzle’ that further guided my research and oriented my data collection.⁷⁷ My puzzle was not a problem to be solved; rather, it was a matrix of relations that needed to be explored, in which people’s everyday life experiences were embedded.⁷⁸ The puzzle was located at the intersection of everyday life and institutional relations and embodied problems, tensions, and enigmas. My puzzle can be stated as: *How is it that lawyers are unable to advocate for admittees in involuntary admission cases despite legal means that ensure admitted persons have the right to participate in proceedings controlling the legality of their admissions?* My subsequent fieldwork thus involved additional research questions:

⁷⁶ Campbell and Gregor, *Mapping Social Relations*, 170.

⁷⁷ This puzzle is called a *problematic* in IE. I discuss the concept of research problematic in detail in Chapter 2, section 2.2.1.

⁷⁸ Dorothy E. Smith, *The Everyday World*, 91; Campbell and Gregor, *Mapping Social Relations*, 47.

4. How are involuntary admission proceedings shaped by texts, and how are these texts activated (read, used, and reproduced) by professionals?
5. What are the social, legal, economic, and institutional relations and discourses that are embedded in these texts, which organize how lawyering happens in involuntary admission cases?

I collected data for this study in Poland for eighteen months, between August 2012 and February 2014. I collected it in multiple sites where activities pertaining to involuntary admission, and to lawyering in that context, were undertaken. My empirical research sites included offices of paramedical services, an office of a process server, courtrooms and court-administrative offices at both the district and regional level, offices of lawyers, an office of a local bar council, emergency wards in psychiatric facilities, offices of psychiatrists, offices of the personnel of psychiatric facilities, conference rooms, and training rooms for medical students and medical professionals.

The study included extensive observations: thirty-two interviews with professionals and personnel whose activities are part of the processing of involuntary admissions; and informal conversations with professionals, personnel, and administrative staff in some of my research sites (specifically in psychiatric facilities, courts, and lawyers' offices). During my fieldwork I obtained copies of legal files of involuntary admission cases and copies of archival medical records of persons admitted based on Articles 23 and 24 of the *MHPA*. After my fieldwork I continued to collect texts and documents used during involuntary admission procedures, as well as those I mapped as governing related work. For the purpose of collecting these items, I used a Polish commercial legal database called *LEX*

and an internet database of Polish legislative documents called *Internetowy System Aktow Prawnych*.⁷⁹

In institutional ethnography, the analytic task is to map texts and instances of texts' activation in the context of institutional processes, to discover how social relations are organized and social inequalities reproduced.⁸⁰ Mapping texts and work sequences directed me to the organization of the Polish legal aid system; to the material and discursive relations that organize the work of the judiciary pertaining to involuntary admission cases and legal aid assistance; and to the relations of knowledge operating in involuntary admission cases and practiced by judges, psychiatrists, and lawyers, as organizers of legal aid lawyers' work. By looking closely at how the involuntary emergency admission process in Poland is ordered and governed, I demonstrate how legal aid lawyering is ultimately constituted as a certain kind of institutional practice that may have nothing to do with lawyers' skills and knowledge, or with their clients' lives.

1.6 – Research Implications

My research is driven by a political commitment to the well-being of people who are deemed mentally ill and involuntarily committed to psychiatric hospitals. I believe that researching the system from the standpoint of lawyers is an important step in the realization of this political commitment. First, such an approach allows me to problematize the professionalization of admission procedures and the exclusion of the voices of those who are most concerned with the outcome: involuntarily committed persons. Second, it allows

⁷⁹ Chancellery of the Sejm of the Republic of Poland, "Internetowy System Aktow Prawnych (System of Legal Acts)," 2015, <http://isap.sejm.gov.pl/>.

⁸⁰ Dorothy E. Smith, *A Sociology for People*; Campbell and Gregor, *Mapping Social Relations*.

me to reveal that there are limited spaces for what can be considered ‘authoritative knowledge’ in involuntary admission procedures, and that this affects what can be known about committed persons in such a highly structured, normative legal context. This, in turn, affects who can make knowledge claims.

My research is grounded in the relevancies of people’s lives and work. While it remains close to those realities, it seeks to extend and transform people’s ordinary knowledge of the social, instead of replacing it with expert knowledge. I seek to reveal, to those affected, how the involuntary admission procedure works, as well as how its fragments work, since its discrete elements may be invisible to those located in distant organizational sites.

Beyond implications for policy and professional praxis, I aim to contribute to the scholarship on civil commitment, as well as to the literature on mental health law and related reforms. By adopting the standpoint of lawyers who actually do the work of representation in local settings, I hope to demonstrate how legal processes that are supposed to facilitate challenges of rights violations instead contribute to the marginalization of involuntary admission cases in the Polish legal system, and to silencing the voices of admittees and of those advocating on their behalf. By linking the system of legal aid to lawyers’ experiences and judicial practice, I show how the very worrisome realities pertaining to lawyering in civil commitment cases remain outside the purview of adjudicating judges, and of the authorities who recommend the expansion of legal aid representation in civil commitment cases.

My dissertation engages with socio-legal scholarship by exploring the functioning of legal institutions from the perspective of people working in them, specifically that of

legal aid lawyers. At the outset, I locate this inquiry in people's bodily experiences, and treat professionals as knowledgeable subjects of their local settings instead of as objects of inquiry. I provide a detailed account of lawyers' work and of the organization of the system of civil commitment in Poland. I pay specific attention to the material conditions of people's lives and the work they do in fulfilling their professional roles. I am interested in how things actually work on the ground, in real organizational settings where people work and live, and in investigating the views of people as experts of their own lives. My dissertation responds to the call for more law stories illustrating the experiences of professionals in real-life situations. I also use these stories as an entry point for revealing how the work of lawyers is hindered by the organization of the legal system, by courtroom processes, and by the power of psychiatric knowledge, as well as how lawyers' actions are defined by the material conditions of their own work and that of other involved professionals.

My project is unique in that it uses the conceptual and methodological tools offered by institutional ethnography to design research that avoids the problematic binary between 'law in books' and 'law in action,'⁸¹ and which also avoids treating law and psychiatry as two competing systems. Rather than focusing on divergences, IE highlights the points of convergence that allow involuntary admission processes and practices to function in the way they do. With its innovative understanding of the social world and of institutional processes as textually-mediated practices, institutional ethnography has the potential to overcome the methodological limitations of the current sociological and legal literature

⁸¹ The binary rests on the premise that the meaning of legal concepts, processes, or institutions is constructed in legal texts, and that practice adheres or departs from it.

pertaining to civil commitment and mental health reforms, and to open up the topic of involuntary psychiatric admission to broader socio-legal analysis. Moreover, in the context of my work, IE places involuntary admission law and practices in relation to political, economic, social, and institutional processes, yet it does not ignore local sites or people's lived experiences.

In this research, I detail connections between the use of IE and the discipline of law. This understanding is attentive both to extra-local relations of social power and to the operation of the internal legal mechanisms through which law governs the everyday work of professionals and people working within or interacting with legal services. Specifically, I aim to bring to institutional ethnographers' attention *legal knowledges* and *legal technicalities* (such as doctrinal or procedural technicalities, for example). Legal scholar Annelise Riles defines legal knowledge as an "ensemble of forms of knowing, theorizing, judging, analyzing and reflecting that constitute the practices of legal actors."⁸² She further points that the *technical* aspect of legal knowledge is the least studied both in socio-legal and other humanistic approaches.⁸³ Thus, bringing legal technicalities to the surface of socio-legal analysis is important because, even though often ignored, these "'technicalities' do a great deal of governing work."⁸⁴ My IE analysis also incorporates an argument that, "in order to avoid sociological reductionism and better understand the 'how' of legal mechanisms, analysis need to be simultaneously inside and outside law, simultaneously technical and theoretical, legal and socio-legal."⁸⁵

⁸² Annelise Riles, "Knowledge about Law," *Cornell Legal Studies Research Paper* 05-034 (2007): 885.

⁸³ *Ibid.*, 886.

⁸⁴ Mariana Valverde, "Studying the Governance of Crime and Security: Space, Time and Jurisdiction," *Criminology and Criminal Justice* 14 (2014): 389.

⁸⁵ Mariana Valverde, "Jurisdiction and Scale: Legal 'Technicalities' as Resources for Theory," *Social & Legal Studies* 18, no. 2 (2009): 153.

Lastly, my dissertation offers a constructive analysis of challenges that a social-justice oriented institutional ethnographer with a professional legal background may face in embarking on politically-motivated research. Specifically, I point to difficulties in negotiating *ad hoc* activism with transformative goals when the IE research is critical (at least to some extent) of professional practices, yet is undertaken from the standpoint of professionals. This speaks to the broader issue of conducting research for vulnerable populations from inside institutions of which the researcher is critical, yet upon which the success of their research depends.

1.7 – Order of Chapters

This dissertation is located at the intersection of law and psychiatry and focuses specifically on involuntary admission procedures and the legal aid lawyering that occurs within them. I organize the chapters of my dissertation to explicate the social organization of lawyering for people involuntarily committed to psychiatric facilities in Poland. In this first chapter, I introduce the problematic of my inquiry, its nature, and my approach. Institutional ethnographies usually begin with introducing a troubling disjuncture between experiential and official accounts of some aspects of the everyday world. The disjuncture I focus on is the dissonance between lawyers' actual experiences and official accounts of the representation work they do. By focusing on this disjuncture, using my data, I construct the puzzle that my dissertation explores.

In the second chapter, I present my research design and its underlying epistemological, ontological, and axiological premises. I make methodological arguments about the potential and the limitations of IE as a critical strategy both for socio-legal projects and for research geared toward legal professionals. While IE was suitable for the

politically-engaged socio-legal project that emerged out of my practical experience—because it allowed me to unpack oppressive institutional practices by closely examining the actual work that people do in local settings, and by mapping this work’s textual organization—it also has a number of conceptual and practical limitations of which socio-legal researchers need to be aware.

In the third chapter, I outline the development of Polish mental health reforms and discuss the *Mental Health Protection Act (MHPA)*. Specifically, I examine the *Act’s* provisions regarding emergency involuntary admission to psychiatric hospitals in Poland, and the related legal procedures adjudicating the legality of psychiatrists’ admission decisions. In the latter part of this chapter I introduce the regulations on the right to legal representation within the context of involuntary admission processes, and how the recent judgments of the Polish Supreme Court interpret the right to representation in involuntary admission cases. In this section I argue that the Polish mental health reforms and their legislative outcome—the *MHPA*—laid a frame for a specific set of ideological discourses, to be activated locally by professionals involved in decision-making about involuntary admissions.

In the fourth and fifth chapters I explore the system of legal aid, and the legal aid appointment procedures through which Polish lawyers predominantly become involved in involuntary admission cases. I demonstrate how work organization related to court-ordered legal aid appointments in involuntary admission cases, together with some specific features of the Polish legal aid system, constrains from the very outset what lawyers do (and are willing to do) when representing involuntarily committed clients. The mandatory nature of legal aid delivery for lawyers, poor remuneration, and financial and professional

accountability considerations are significant social organizers of lawyers' work in involuntary admission cases. In these chapters I demonstrate how the legal organization of involuntary admission, along with the work of district court judges involved at the initial stage, combined with pressure for processual expediency, locates legal aid lawyers at the margins of judicial work, while also determining whether people will have access to legal assistance. Judges treat the appointment of a lawyer as an exception to the patient's self-representation and an unnecessary burden for judges, affecting the speedy processing of cases. Ultimately, this leads to the exclusion of lawyers' voices from the very beginning of the procedure.

In the sixth chapter I map the social organization of knowledge that finds its articulation in the production of medical facts warranting legal involuntary admissions in Poland. These *medical facts* are later translated into *legal facts*. The *MHPA* assigns authority to particular methods, grounded in psychiatric knowledge,⁸⁶ and through the discourse of 'expert knowledge' sets up an ideological frame for those involved in processing involuntary admission cases. I trace ethnographically how medical documents in such cases are produced and who is engaged in their production. I uncover and present the ways in which material and institutional relations organize the institutional decision-making of paramedics, psychiatrists, and visiting judges regarding psychiatric confinement; and how procedural interchanges between these groups first solidify the initial medical facts recorded by paramedics, and then transform them into legal facts justifying involuntary admission. I also argue that while boundaries between judicial and medical knowledge are porous, and while decision-makers at this stage of the procedure

⁸⁶ Dorothy E. Smith, *Conceptual Practices of Power*.

draw constantly on the authority of science and law to generate legally effective decisions, lawyers are excluded from this procedurally significant moment in knowledge production.

In the seventh chapter I focus on legal technicalities and the internal workings of law, and on how judges strategically use both in organizing lawyers' participation in involuntary admission hearings. I begin this chapter with a detailed account of involuntary admission hearings and appeal hearings, showing that the presence of lawyers is merely formal. I then discuss how the *MHPA* intersects with other legal and administrative texts, and how these collectively reinforce a specific hierarchy of knowledge (in which psychiatric knowledge holds superiority) and discursive and technical practices. These allow judges to construct involuntary admission cases as *straightforward* and thus suitable for fast adjudication, with minimal lawyer involvement. Lastly, I provide examples of textually-based practices that organize lawyers' frequent compliance with the way such cases are adjudicated, leaving the voices of those they represent subsumed by professional interests and the priorities of the psychiatric-judicial complex.

I conclude my dissertation by engaging further with the story of my mother's psychiatric hospitalization and with consequences that it had on her life and by summarizing my chapters while showing how each advances the overall argument.

Chapter 2 – Institutional Ethnography as a Critical Research Practice for a Socio-Legal Project

2.1 – Introduction

This chapter has two aims: first, to provide tools for assessing the credibility and validity of my research; and second, to engage critically with institutional ethnography (IE) as a method of inquiry for socio-legal research. IE has much to offer socio-legal scholars in terms of linking the various spheres in which law operates, moving beyond a static analysis of law and disrupting the dichotomy between ‘law in books’ and ‘law in action,’ as well unveiling the ideological nature of textually-mediated professional practices. Yet IE also has a number of conceptual and practical limitations, partly attributable to its grounding in sociological understandings of law. Specifically, institutional ethnographies of law and legal processes typically explore the ‘outside’ of law, consistent with an IE approach to law as a social institution,⁸⁷ leaving legal knowledges and the internal functioning of ‘the legal’ (in the form of *legal technicalities*) intact.⁸⁸ In light of recent claims by socio-legal scholars about the ‘sociologization’⁸⁹ of the socio-legal field through the direct utilization of sociological methods and methodologies, I explore how to productively incorporate IE so it enriches socio-legal research instead of simplifying it.

⁸⁷ See, for example: Daniel Grace, “This Is Not a Law: The Transnational Politics and Protest of Legislating an Epidemic,” PhD diss., University of Victoria, 2012, DSpace; Pence, “Safety for Battered Women”; Alex Wilson and Ellen Pence, “U.S. Legal Interventions in the Lives of Battered Women: An Indigenous Assessment,” in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006); George W. Smith, “Policing the Gay Community: An Inquiry into Textually-Mediated Social Relations,” in *Incorporating Texts into Institutional Ethnographies*, ed. Dorothy E. Smith and Susan Marie Turner (Toronto: University of Toronto Press, 2014).

⁸⁸ See: Valverde, “Jurisdiction and Scale”; Mariana Valverde, Ron Levi, and Dawn Moore, “Legal Knowledges of Risk,” in *Law and Risk*, edited by the Law Commission of Canada (Vancouver: UBC Press, 2005); Annelise Riles, *The Network Inside Out* (Ann Arbor: University of Michigan Press, 2001).

⁸⁹ David Cowan and Daniel Wincott, “Exploring the ‘Legal’,” in *Exploring the ‘Legal’ in Socio-Legal Studies*, ed. David Cowan and Daniel Wincott (Basingstoke: Palgrave Macmillan, 2015).

In the first section of the chapter I discuss institutional ethnography as a research practice in the context of my doctoral project. Specifically, I focus on how I pursued my study according to the epistemological, ontological, and axiological tenets of IE (as outlined in my Introduction). My objective is to emphasize the ongoing linkage between research design and its practical realization, rather than seeing these two as separate entities with which the researcher engages at different stages of the research process. Accordingly, I demonstrate how the conceptual orientation of IE is an integral part of data collection and analysis. I do this by showing how I came to identify the experiences from which my problematic emerged, some of the institutional processes that shaped those experiences, and how I investigated the ruling relations governing these institutional processes.

In the second section of this chapter I discuss points of convergence and divergence between IE and socio-legal scholarship in the study of legal processes and practices. To situate this discussion and lay the groundwork for my analysis in the latter part of the chapter, I first locate IE among other similar modes of qualitative inquiry, such as the extended case study, grounded theory, and governmentality research. This comparison helps to show what kind of knowledge claims IE sets out to make, and how these distinguish it from other modes of social inquiry. Subsequently, I speak to the potential of institutional ethnography by reflecting on the features I found particularly relevant to my empirical socio-legal study of involuntary admission processes and practices of lawyering. I then discuss the conceptual and practical limitations of IE for engaging in a complex and nuanced analysis of 'the legal,' as well as its shortcomings in attending to the ethical challenges facing a socio-legal researcher who is simultaneously a member of the legal practitioner community. I conclude the chapter by making a methodological argument that,

while institutional ethnography is generally suitable for projects in law and society, it also has a number of conceptual and practical limitations. Socio-legal researchers need to be aware of these parameters in order to work within them constructively.

2.2 – IE as a Research Practice

According to two prominent institutional ethnographers, Marjorie DeVault and Liza McCoy, IE is guided by a prescribed sequence of steps: “(a) identification of an experience, (b) identification of some of the institutional processes that are shaping that experience, and (c) investigation of those processes in order to describe analytically how they operate as the grounds of the experience.”⁹⁰ Outlining these steps will constitute sections 2.2.1, “Identification of an Experience;” 2.2.2, “Identification of Institutional Processes Shaping the Experience;” and 2.2.3, “Investigation of Institutional Processes,” below.

2.2.1 – Identification of an Experience

Consistent with its commitment to research ‘from below,’ an institutional ethnography begins with the actual experiences of people, rather than from a theoretical or empirical problem detected in the literature. According to Marie Campbell, “experience is the ground zero”⁹¹ of IE research. It enables the researcher to discover real-life problems

⁹⁰ Marjorie DeVault and Liza McCoy, “Institutional Ethnography: Using Interviews to Investigate Ruling Relations,” in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006), 20.

⁹¹ Campbell, “Experience as Data,” 91.

that matter for people as they carry out their day-to-day work, and to produce research that will matter to these people.⁹²

Institutional ethnographers typically identify the problematic they will take up in their study through interviews or informal conversations with individuals or group members.⁹³ For example, Janet Rankin, who conducted empirical research with nurses in British Columbia hospitals, used interviews and informal conversations with nurses to identify how they experienced difficulties in adjusting to hospital restructuring while trying to maintain the standards of good nursing practice.⁹⁴ A researcher's own professional or personal experience of engagement with institutional processes or practices may also be used as the 'site of experience' in institutional ethnography. In this case, the researcher begins "from an experience that he or she knows something about it, or where the problematic is already clear."⁹⁵ For instance, George Smith, a gay rights activist and advocate for people living with HIV, began his research with his experience of police raids on bathhouses, and later with the problem of access to various treatment options for HIV.⁹⁶ Alison Griffith and Dorothy Smith began with their own experiences as single mothers, and then reached out to other mothers who were "similarly engaged in institutional process[es] that organized [their] experience[s]."⁹⁷ Laura Bisailon and Janet Rankin refer

⁹² Laura Bisailon and Janet M. Rankin, "Navigating the Politics of Fieldwork Using Institutional Ethnography: Strategies for Practice," *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research* 14, no. 1 (2013).

⁹³ DeVault and McCoy, "Using Interviews," 20-21.

⁹⁴ Janet M. Rankin, "How Nurses Practice Health Reform: An Institutional Ethnography," PhD diss., University of Victoria, 2004, DSpace.

⁹⁵ DeVault and McCoy, "Using Interviews," 21.

⁹⁶ George W. Smith, "Policing the Gay Community: An Inquiry into Textually Mediated Relations," *International Journal of Sociology and the Law* 16 (1988).

⁹⁷ Alison I. Griffith, "Constructing Single Parent Families for Schooling: Discovering an Institutional Discourse," in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006)

to informants whose experiential accounts give rise to the study, and in whose interests the research is carried out, as ‘standpoint informants.’⁹⁸ This is to differentiate standpoint informants from ‘extra-local informants,’ who are located within organizational structures and represent institutional interests and knowledge.⁹⁹

For institutional ethnographers, standpoint is “a methodological starting point in the local particularities of bodily existence.”¹⁰⁰ It is “a site that is open to anyone—it furnishes an alternative starting point to the objectified subject of knowledge of social scientific discourses.”¹⁰¹ Distinguishing it from other applications of *women’s* standpoint,¹⁰² Smith does not take women’s experience as “a given and finalized form of knowledge,” but “as a ground in experience from which discoveries are to be made”¹⁰³ An IE standpoint is located in the “issues, concerns, or problems that are real for people and that are situated in their relationship to an institutional order.”¹⁰⁴ IE investigation is thus undertaken from the standpoint of people who experience oppressive and marginalized practices in their daily lives, and whose interests the researcher is committed to advance.¹⁰⁵ Because of this, the concept of ‘standpoint informants’ is a constant reminder, to the researcher, of their ontological commitment to the actualities (or standpoint) of the group contributing to their investigation.

⁹⁸ Bisaillon and Rankin, “Navigating the Politics”.

⁹⁹ DeVault and McCoy, “Using Interviews,” 20.

¹⁰⁰ Dorothy E. Smith, *A Sociology for People*, 228.

¹⁰¹ Cited in Caelie Frampton et al., “Towards Political Activist Ethnography,” 8. This provides a good illustration of how white people can, for example, take the standpoint of people of colour. As the authors argue: “It is not about asking what it feels to be the Other;” rather, it is about interrogating how social experiences of people of colour are organized and how white people participate in racializing practice.

¹⁰² Sandra G. Harding, *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies* (New York: Routledge, 2004).

¹⁰³ Dorothy E. Smith, *A Sociology for People*, 8.

¹⁰⁴ *Ibid.*, 23.

¹⁰⁵ DeVault and McCoy, “Using Interviews,” 228.

To ground a discovery in experience requires attending to the bodily actualities of those in whom the experience is embedded. An example from my own life illustrates how the concept of standpoint merges ontology and epistemology in IE by emphasizing the temporary and actual realities of people located in concrete local settings.¹⁰⁶ As the daughter of a medical doctor, throughout my childhood and adolescence I never had to queue to register for a medical appointment or wait for any tests or procedures (which in the Polish public system includes standing in the narrow and packed hallways of hospitals). Because my mother organized these appointments for me, according to my schedule, neither did I ever have to adjust my work hours to accommodate potentially random bookings, especially when it came to appointments with busy specialists. When my mother was there to guide me through the system, my experience of medical services was different from later engagements, wherein I needed to organize my own access and learn all the manoeuvres for securing appointments. Experiential narratives in IE are important because they consist of traces of the ruling relations that shape local experiences.¹⁰⁷

By engaging with experiential narratives, an institutional ethnographer aims to capture the ways in which dimensions of people's experience are linked to institutional orders in a way that contributes to the disjuncture between *the institutional* and *the experiential*.¹⁰⁸ Thus while:

Ethnography may start by exploring the experiences of those directly involved in the institutional setting, but they are not the objects of investigation. It is the aspects of the institutions relevant to the people's experience, not the people themselves.¹⁰⁹

¹⁰⁶ Caelie Frampton et al., "Towards Political Activist Ethnography," 32.

¹⁰⁷ DeVault and McCoy, "Using Interviews," 15; Dorothy E. Smith, *Conceptual Practices of Power*, 217.

¹⁰⁸ Pence, "Safety for Battered Women".

¹⁰⁹ Dorothy E. Smith, *A Sociology for People*, 38.

Disjunctures may include those between their knowledge and institutional accounts of it;¹¹⁰ their needs and institutionalized responses to those needs;¹¹¹ institutional discourses and people's everyday realities;¹¹² and/or what is intended versus what actually happens as a result of institutional processes.¹¹³ For example, while trained as a social worker, Rena Miller, in her study of palliative care grounded in her experiences as the wife of a dying person, identifies how such care constructs families of terminally ill patients as a problem, and how family members resist being objectified.¹¹⁴ Sociologist and activist Ellen Pence locates a disjuncture between the outcome of domestic violence cases and safety guarantees for women during and after the criminal trial.¹¹⁵ Barbara Herringer, as the sister of a person diagnosed with AIDS and intimately involved in his care, similarly locates a disjuncture between the account of the everyday life and death of the individual so diagnosed and the dominant medical and professional narratives intersecting with and defining that account.¹¹⁶

I used my own experience as a lawyer and a family member of an in-patient to begin exploring the social organization of involuntary admission procedures—a study focused on the interests of people involuntarily admitted while also exploring the issue from the standpoint of legal aid lawyers. I used my experience of being objectified and

¹¹⁰ Barbara M. Herringer, "Unruly Death: The Social Organization of AIDS Suicide," PhD diss., University of Victoria, 1998, DSpace; Rena Miller, "Wife Rena Teary," in *Research as Resistance: Critical, Indigenous, and Anti-Oppressive Approaches*, ed. Leslie Brown and Susan Strega (Toronto: Canadian Scholars' Press, 2005); Miller, "Manageable Problems, Unmanageable Death".

¹¹¹ Pence, "Safety for Battered Women"; Bell, "A Child's 'Terminal Illness'".

¹¹² Griffith, "Constructing Single Parent Families"; Rankin and Campbell, *Managing to Nurse*.

¹¹³ Townsend, *Good Intentions Overruled*.

¹¹⁴ Miller, "Manageable Problems, Unmanageable Death"; Miller, "Wife Rena Teary"; Campbell and Gregor, *Mapping Social Relations*.

¹¹⁵ Pence, "Safety for Battered Women".

¹¹⁶ Herringer, "Unruly Death".

misinterpreted by judges and psychiatrists as I attempted to advocate, both in a professional and personal capacity, for people committed to psychiatric facilities. My experience of being a family member of an admittee provided me with knowledge not readily available to lawyers. While grounding my study in lawyers' standpoint, I supplemented this experience with four in-depth interviews with lawyers about their experiences on involuntary admission cases, and the work involved in such lawyering. These individuals shared with me how their voices were silenced and dismissed by judges. Moreover, they felt that, although their work as state-appointed lawyers required significant time, effort, and resources, it was not appreciated by judges and was poorly remunerated. Interestingly, I found that while lawyers complained about the institutional limitations imposed on their lawyering in involuntary admission cases, they unquestionably believed that those cases were different from other commitment cases (such as criminal justice cases) in their severity. The line of differentiation was that in criminal cases they dealt with *punishment*, whereas in civil commitment cases they dealt with *treatment*. I was puzzled and wanted to learn more about how court procedures are organized so that they silence the voices of attorneys. I also wanted to understand why lawyers question some aspects of the procedures yet uncritically accept others.

The importance of experiential narratives and accounts of people's everyday lives and work has been preserved in this dissertation by incorporating vignettes and composite stories of individuals—whether lawyers, judges or admittees—in 'real-life' situations involved or related to the legal procedure of involuntary admission.

While beginning with lawyers' experiences worked well for achieving the objective of my study, working from these experiences also catalyzed a number of tensions in

aligning my work with institutional ethnography. To begin with, as noted above, IE research proceeds from the standpoint of people who experience oppressive and marginalizing practices in their daily lives¹¹⁷ or who occupy subordinate social positions.¹¹⁸ Lawyers would not normally so qualify; in fact, lawyers actively participate in oppressive legal practices and procedures with direct consequences for involuntarily admitted persons. Nonetheless, I found their experiences useful for understanding how those practices and procedures come to bear on the experiences of admittees.

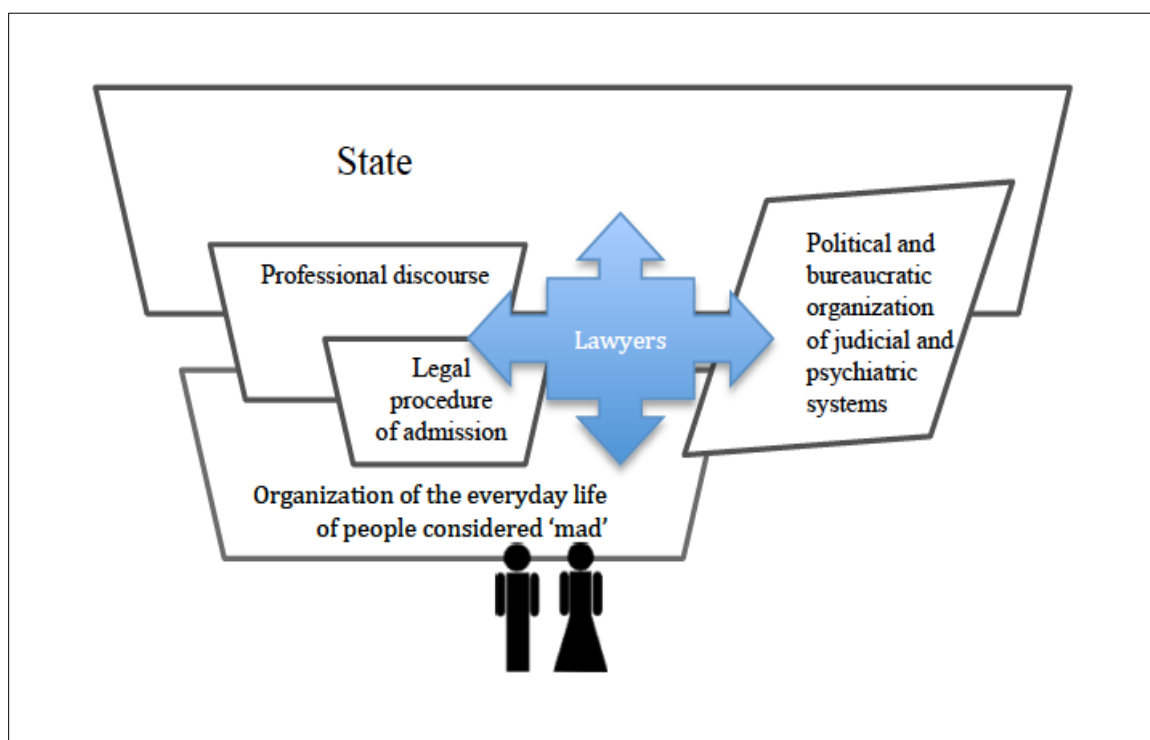


Figure 2.1: Lawyers' Standpoint

¹¹⁷ DeVault and McCoy, "Using Interviews," 4.

¹¹⁸ Timothy Diamond, "'Where Did You Get the Fur Coat, Fern?' Participant Observation in Institutional Ethnography," in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006), 54.

As shown in Figure 2.1, lawyers are located in the space between the institutional and the experiential in that their frontline work connects people undergoing hospitalization with the institutions themselves. Lawyers, similar to other frontline professionals, “make linkages between clients and ruling discourses, ‘working up’ the messiness of everyday circumstances.”¹¹⁹ The analysis of lawyers’ work can provide valuable insights into how to navigate legal procedures that work neither for them nor for their clients. Although lawyers take part in the objectifying practices of the dominant politico-legal regime, their standpoint in the everyday reality of lawyering locates them on ‘the line of fault,’ simultaneously separating them from that regime.¹²⁰

Lawyers experience a rupture between experiential and official accounts of their work. Quality lawyering involves complex activities that are beyond the purview of judges, who only see the final effects of that work: formal legal documents written by a lawyer or a lawyer’s appearance at a hearing. My research uncovers the processes through which lawyers’ knowledge and experiences are excluded from official representations in the courtroom. George Smith and Marie Campbell show, in their individual chapters in *Sociology for Changing the World*, that even inside organizations not all standpoints are equal and not all knowledge is equally valued.¹²¹ In my research I reveal how a set of relations evident in an institutional practice prioritizes certain knowledge within judicial and psychiatric systems—knowledge that excludes the input of lawyers, even though they participate in legal processes and have professional credentials.

¹¹⁹ DeVault and McCoy, “Using Interviews,” 27.

¹²⁰ George W. Smith, “Political Activist as Ethnographer,” 51.

¹²¹ Ibid.; Campbell, “Research for Activism”.

2.2.2 – Identification of Institutional Processes Shaping the Experience

After identifying experiences and locating a standpoint in the bodily actualities of people, an institutional ethnographer “begins to identify [through informants’ stories and descriptions] some of the translocal relations, discourses, and institutional work processes that are shaping the informants’ everyday work.”¹²² The researcher then shifts the investigation to an examination of these organizational processes. According to DeVault and McCoy, this shift involves a change in research location as the subsequent investigation is taken to organizational and professional sites.¹²³ It may take an extended period of time for an institutional ethnographer to map troublesome institutional practices or processes before they are able to move on to an investigation of institutional sites.¹²⁴

It is at this stage of the research that the problematic begins to emerge. The problematic can be discovered through interviews with people or in researchers’ own experiences of disjuncture. In IE ‘the problematic’ is not a problem to be solved but a line of inquiry to be pursued; it follows something that is not stated or is latent in the organization of people’s lives or work.¹²⁵ The institutional ethnographer may begin with some sense of troublesome processes but the development (and reshaping) of the problematic is a process that deepens the researcher’s understanding of how lived experiences are hooked into ruling relations. Marie Campbell and Janet Rankin explain that in the preliminary analysis of standpoint informant stories, “something troubling [...], or some kind of unease, may suggest a focus or *problematic* for an inquiry.”¹²⁶ In IE

¹²² DeVault and McCoy, “Using Interviews,” 21.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Campbell and Gregor, *Mapping Social Relations*, 47.

¹²⁶ Rankin and Campbell, *Managing to Nurse*, 47 (emphasis in original).

research the problematic develops from within the context of the research.¹²⁷ For example, in Rankin's study, the problematic is a rupture between how to perform good nursing practices, while at the same time having to adapt to changes put in practice by management for cost-efficiency.¹²⁸ In a research proposal put forth by George W. Smith, Eric Mykhalovskiy, and Douglas Weatherbee, the problematic arises from the experiences HIV-positive people go through in accessing social services and the work they are required to do to receive the services they need.¹²⁹ For Deborah Brown, the problematic is a disjuncture between risk reduction interventions in child protection services and the skills and knowledge mothers are expected to acquire and develop to protect their children according to imposed protocols.¹³⁰ Timothy Diamond locates his problematic in his work experiences as a nursing assistant in seniors' homes;¹³¹ Alison I. Griffith locates her problematic in the experience of single motherhood;¹³² and Barbara M. Herringer locates her problematic in the experience of her brother's death.¹³³

In some research, though, where the problematic is clear or where the researcher is already familiar with troublesome institutional practices, they may proceed "right into the examination of organizational work sites."¹³⁴ In such 'jump-in ethnographic research' the researcher works mostly with professionals, supervisors, managers, etc., during the data collection phase, to examine the work processes carried out in organizational sites. This

¹²⁷ Ibid., 47.

¹²⁸ Rankin, "How Nurses Practice Health Reform".

¹²⁹ George W. Smith, Eric Mykhalovskiy, and Douglas Weatherbee, "Getting 'Hooked Up:' An Organizational Study of the Problems People with HIV/AIDS Have Accessing Social Services," in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006).

¹³⁰ Debra Brown, "Working the System: Re-Thinking the Role of Parents and the Reduction of 'Risk' in Child Protection Work," MA thesis, University of Victoria, 1997, DSpace.

¹³¹ Timothy Diamond, "Fur Coat".

¹³² Griffith, "Constructing Single Parent Families".

¹³³ Herringer, "Unruly Death".

¹³⁴ Dorothy E. Smith, "Making Change from Below".

stage proceeds with a detailed ethnographic examination of administrative and professional work processes, exploring specifically “how they are carried out, how they are discursively shaped, and how they organize other settings.”¹³⁵ Here the researcher often follows “a chain of action, typically organized around and through a set of documents, because it is texts that coordinate people’s activities across time and place within institutional relations.”¹³⁶

The focus on work and work processes is an important and distinctive feature of institutional ethnography. By exploring people’s actual activities, as performed locally in the concrete conditions of organizational sites, and uncovering the linkages between those activities and the realization of institutional objectives developed elsewhere, the researcher is able to unveil the translocal regimes that coordinate local work and practices. To understand how the local is coordinated and organized, IE draws on documentary forms of knowledge that coordinate the activity of people in institutional settings.

Data collection in institutional ethnography is based on the premise of discovery. In practice, this means that new directions and threads for investigation emerge throughout the research process—but this does not mean that the research process is random.¹³⁷ Smith specifically points out that, in institutional ethnography, “[e]ach next step builds from what has been discovered and invades more extended dimensions of the institutional regime.”¹³⁸ The mapping of social relations “expands from and includes the original site so that the [broader] organization that enters into and shapes it becomes visible.”¹³⁹

¹³⁵ DeVault and McCoy, “Using Interviews,” 22.

¹³⁶ *Ibid.*, 21.

¹³⁷ Dorothy E. Smith, *A Sociology for People*, 50.

¹³⁸ *Ibid.*, 35.

¹³⁹ *Ibid.*

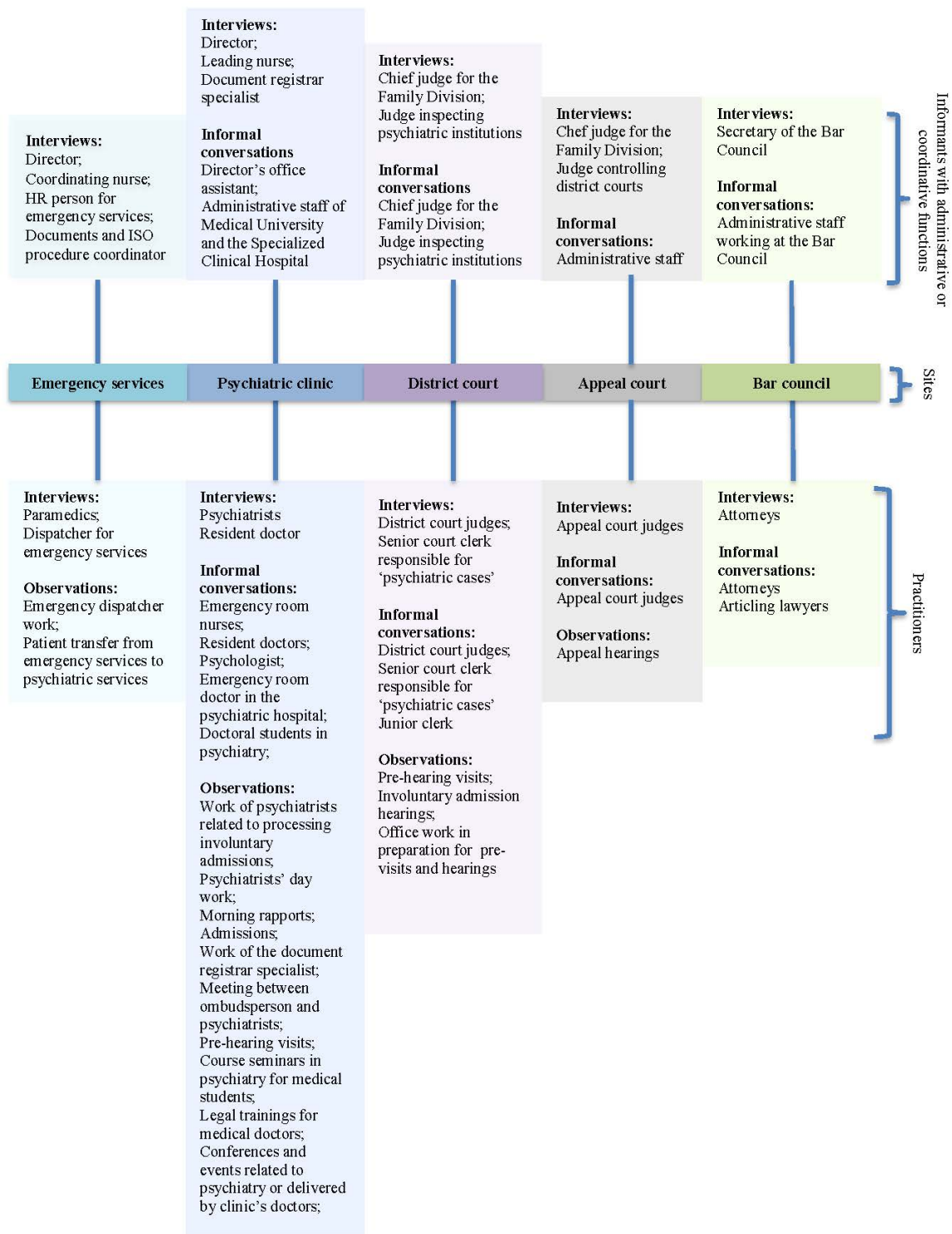


Figure 2.2: Data Collections Sites, Informants, and Methods

In my own research I spent eighteen months (from August 2012 to February 2014) collecting data. Through the entire data collection process, I interacted predominantly with extra-local informants. I conducted my data-gathering concurrently in a number of sites, including headquarters of emergency services, dispatchers' offices, and ambulance stations; offices of psychiatrists, emergency wards in psychiatric facilities, patient admission offices, psychiatric walk-in clinics, conference rooms, psychiatric training sites, and offices of hospital administrative staff; and an office of a process server, courtrooms, and court-administrative offices of both a district and a regional court, offices of lawyers, and an office of a local bar council.

After obtaining ethics approval from both my home university and the medical university overseeing one of my field research locations, I was able to immediately proceed with the investigation of organizational sites. I began this part of the investigation in January 2013, concurrently with my attorney interviews. I was able to shift to organizational sites right away since, through my professional experience, I already had a sense of which institutional processes were not working for attorneys and their involuntarily-admitted clients. Figure 2.2 shows my main organizational sites, informants, and methods.

While I was able to map some of the organizational sites in advance of my fieldwork, I remained open to clues for additional data collection and to the discovery of new sites. Initially I included a psychiatric hospital, a psychiatric clinic, and district and regional courts as sites for investigation. After interviews and informal conversations with doctors, I became aware of the important role that documentary processes in emergency services play in the handling of involuntary admission cases in psychiatric facilities.

Accordingly, I subsequently gained access to emergency services and conducted a number of interviews with administrative staff and practitioners. I also learned that appeals courts play an important role in organizing and coordinating involuntary admission cases, not only as a second site of decision-making but also because of their enforcement of a certain set of lower court practices. I therefore added this organizational site to my data collection process.

In courts, psychiatric facilities, and emergency services departments I was given broad access to data and—to my surprise—was welcomed to participate in and observe various work-related activities. I accompanied professionals on their daily routines (except for psychiatric morning rounds with patients), talked with them formally and informally, took taxis with them, and participated in legal training and *pro-bono* domestic violence prevention events. I conducted numerous interviews with practitioners and informants linked to the psychiatric admission procedure and/or involved in its standardization and governance.

My observations were conducted concurrently in various sites. For example, at the start of the day I would participate in the morning rapport at the clinic, after which I would accompany a judge on their visits to the clinic or sit in on involuntary admission hearings in courts. I was able to freely move between organizational sites and it was clear to my informants that I interacted with various professionals involved at different stages of the admission process. I was able to learn about procedural and organizational connections between these sites in a relatively short time, which helped me understand not only the work involved in processing cases, but also the pace of judicial and psychiatric work. I also

participated in various educational events organized within the context of the health care and/or legal system.

In institutional ethnography, interviewing is “better described as ‘talking to people’” because it “occurs during field observation, when the researcher is watching someone do his work and asking him to explain what he is doing, why he did what he did, what he has to think about to do this work, where this document goes, and so on.”¹⁴⁰ Informal conversations are an important source of relevant *ad hoc* data, while subsequent interviews and informal conversations may also build on previous interactions, as the researcher tries to check the correctness of their understanding of institutional practices. Talking to people is not confined to formal settings or research sites; “opportunities to talk with people about institutional processes can arise for the researcher serendipitously” in their everyday lives.¹⁴¹

In the case of my research, I engaged in a number of informal, casual conversations with other lawyers during my observations of court proceedings, while participating in professional events, and during random encounters. For instance, during street encounters with my fellow colleagues, when I described what I was doing in Poland and summarized my project, I often received comments such as, “I cannot be of any help to you because all the civil commitment cases that I had were straightforward and obvious.” I later realized this pervasive assumption underlies how lawyers, judges, and psychiatrists approach civil commitment cases, and was a clue to the routinizing practices that directly or indirectly marginalize such cases and contribute to the silencing of lawyers. Another unplanned but

¹⁴⁰ DeVault and McCoy, “Using Interviews,” 22.

¹⁴¹ Susan Marie Turner, “Mapping Institutions as Work and Texts,” in *Institutional Ethnography as Practice*, ed. D. E. Smith (Lanham.: Rowman & Littlefield, 2006), 140.

highly informative encounter was when a local ombudsperson¹⁴² of psychiatric patients withdrew her consent after providing an interview, explaining that she was instructed to do so by her supervisors, who worried that she may have misspoken. She advised me to contact those supervisors, who were more competent to explain the ombudsperson's work in assisting psychiatric patients. This was an important window on how the actual work of protecting patients' rights in local sites is made invisible by the hierarchy of knowledge and its policing in the context of civil commitment by authorities (who are, ironically, established to enact that very protection).

Taking up texts ethnographically is essential to IE. According to Smith, such an ethnographic integration of texts enables us “to reach beyond the locally observable and discoverable into the translocal social relations and organization that permeate and control the local.”¹⁴³ Institutional ethnography makes texts the site of an ethnographic inquiry in two ways: first, by mapping which and how texts enter into people's work; and second, by recognizing that people structure their work according to the messages encoded in texts – either those with which they work directly or those that serve as ‘boss texts’ (i.e., those that provide an ideological frame for working locally with other texts). Thus, in addition to observational and conversational data, I collected numerous texts that coordinated the civil commitment procedure, were produced during it, or were referred to by informants. These texts include documents operationalizing practices in the *MHPA*, issued by federal ministers of Justice, Health, Social Policy and Welfare; various administrative forms used directly within the context of decision-making in admissions, along with those that

¹⁴² Although the Canadian term is ‘ombudsperson,’ in Poland this term is always masculine.

¹⁴³ Dorothy E. Smith, “Incorporating Texts,” 65.

organized work in organizational sites; and educational materials and pamphlets. I also gathered a significant amount of jurisprudence on civil commitment and related matters. I collected copies of court cases and the medical files of patients involuntarily committed to the psychiatric clinic, whether a legal representative had been appointed or not. I collected documents from the bar council related to the appointment of state attorneys. All documents with personal information were anonymized before analysis. To protect the privacy of current patients, cases files of psychiatric involuntary admissions only included data on persons already discharged.

IE research is just not collecting data through interviews and observation, moving from site to site. IE research is also considered a reflexive practice, in three ways. First, reflexivity within the context of interviewing features as a “process in which both the participant and the interviewer construct knowledge together.”¹⁴⁴ Second, reflexivity in the context of empirical exploration of the social world requires that the researcher “examine empirically how people’s activities are reflexively/recursively knitted together into particular forms of social organization.”¹⁴⁵ Third, reflexivity in the pursuit of fieldwork requires that data collection be recursively organized in relation to data analysis. Based on his experience with institutional ethnographic research, Eric Mykhalowski notes that, for him, data collection and data analysis are reflexive in the sense that he starts analyzing data as he collects it, and he returns to that analysis to map further directions for inquiry. Thus, as I proceed with the discussion of the features of data analysis in IE (in the section that

¹⁴⁴ Gary Kinsman and Patricia Gentile, as cited in DeVault and McCoy, “Using Interviews,” 24.

¹⁴⁵ Eric Mykhalovskiy, quoted in DeVault and McCoy, “Using Interviews,” 23.

follows), a division is only imposed for clarity's sake, to explain nuances. I treated both the collection and the analysis of data as a single, reflexive process.

2.2.3 – Investigation of Institutional Processes

Following the identification of institutional processes, the institutional ethnographer begins to map the relations and broader discourses that organize the experience chosen for study at the outset of the project. Recall that there are two analytical sites to which institutional ethnographers pay particular attention: 1) the local setting, where lives are lived and experienced by people; and 2) the translocal, which is outside the boundaries of people's everyday experiences.¹⁴⁶ Through discovering connections between people's activities in local settings and the extended social relations that shape those settings, institutional ethnographers reveal to people how the organization of institutional processes and practices contributes to their experience of disjuncture. Consistent with IE, my 'mapping' was premised on the following three principles: materialism and empiricism; the dynamic character of the social world; and the textual organization of social and legal institutions. I also employed George W. Smith's concept of 'social relations' as a tool in my analysis. This concept is used to orient a researcher's attention to actual practices of people as they are articulated to one another and organized by texts.¹⁴⁷

Materialism and Empiricism

A dual commitment to materialism and empiricism is one of the defining features of institutional ethnography as a method of inquiry.¹⁴⁸ 'Materialism' in IE is found in the

¹⁴⁶ Campbell and Gregor, *Mapping Social Relations*.

¹⁴⁷ George W. Smith, "Political Activist as Ethnographer," 54.

¹⁴⁸ Campbell, and Gregor, *Mapping Social Relations*.

commitment to locating people's experiences and actions in material conditions of their everyday life, and 'empiricism' is the commitment to grounding all analytical and conceptual claims in empirical evidence. Smith emphasizes that "[i]ndividuals are there; they are in their bodies; they are active; and what they're doing is coordinated with the doings of others."¹⁴⁹ This means that a researcher needs to stay close to both people's knowledge and to the context in which that knowledge is produced and used, and of which it is reflective. The materialist commitment in IE requires that the researcher recognize the material character of organizational sites. In this respect, Pence argues that, in order to understand how agencies structure 'what goes on' and how people do their work, an institutional ethnographer must pay attention to the material details of the work setting.¹⁵⁰ Marie Campbell and Frances Gregor further explain that attention to the relationship between the data and the material setting is crucial not only because "[t]he meaning of the data is in their setting of use," but also because the organization of the setting could be traceable through/from empirical data.¹⁵¹

Empiricism in institutional ethnography means "the investigation of empirical linkages among local settings of everyday life, organizations, and translocal processes of administration and governance."¹⁵² The assumption is that organizational features are to be discovered in the data—they do not precede or guide data collection or analysis. Both the translocal and discursive features of social relations need to be mapped from actual settings and in actual work activities, and traced back to data, in order to foreground any analytical statement made in IE. Empirical linkages between local and translocal sites are mapped

¹⁴⁹ Dorothy E. Smith, *A Sociology for People*, 59.

¹⁵⁰ DeVault and McCoy, "Using Interviews," 22.

¹⁵¹ Pence, "Safety for Battered Women".

¹⁵² Campbell, and Gregor, *Mapping Social Relations*, 85.

through texts, their flow, their activation, and the thought-coordinated activities of people in organizational settings.

I began both data collection and data analysis from the viewpoint of people's experiential knowledge. To ensure that I did not impose abstract, general explanations of what was going on, or a certain ideological reading of my data, I constantly checked my interpretation against the empirical evidence. The process of revisiting my data regularly was important for maintaining a focus on people and on their actual activities. Sticking close to the data and to the materiality of people's bodies and of their settings meant that I took seriously—and further, engaged with—the gaps, tensions, and ruptures in my own research knowledge, as well as those in my informants' knowledge of involuntary admission procedures. Instead of dismissing such moments, I approached them with analytical tools to understand what they were telling me about disjunctures in institutional processes, or between the processes and, for example, professional ethics.

Campbell and Gregor suggest that “[p]rofessional discourse not only contribute(s) a language and authorized practices for conducting the work of an institution, it provides a framing of the way work is thought about and undertaken.”¹⁵³ In working with interview transcripts, I paid particular attention to the language used by informants and to ruptures between experiential and official talk. For example, in describing the working of the legal aid system and their work in legal aid, lawyers tended to use casual and colloquial language when expressing frustration related to their low remuneration. This kind of language stood in sharp contrast to the formal legal terminology they used to describe their official actions, their work knowledge, or their clients' experiences. This realization, traceable through my

¹⁵³ DeVault and McCoy, “Using Interviews,” 15.

interviews, provided valuable insight into how lawyers' work with clients is socially organized and mediated by professional and legal discourses.

I also followed Diamond's advice to make notes of my own bodily experiences and use these as data. Commenting on the value of participant-observation in his ethnography of nursing homes,¹⁵⁴ he notes:

[p]utting one's body on the line as part of a research project seems to give rise to the discovery *in* one's body of relevant data. Its specific aches and pains, its emotions, the messiness of the flesh and blood events—these provide a corporeal, incarnated base with which to ground the author's and other bodies in action and coordination.

My regular visits to a secured psychiatric ward equipped me with knowledge about the materiality of the setting. Not being allowed to leave the secured ward on my own, having to wait for someone to unlock the door for me, actualized what the abstract legal reference 'restraint to the freedom of movement' feels like *bodily*. I could see a door equipped with a handle, but I could not open it because the door handle served no purpose for me. It was not only the awareness that I was unable to leave, but the material reality of being unable to leave unless somebody else intervened, that made me realize how totally dependent ward residents are on others for access to the outside world and all the resources located therein.

Dynamic Character of the Social World

In my analysis, I followed institutional ethnography's premise that the social world has a dynamic character and is constructed in people's activities, which occur in specific times and places.¹⁵⁵ In IE, rather than a theoretical abstraction or a set of concepts with

¹⁵⁴ Diamond, "Fur Coat," 58.

¹⁵⁵ George W. Smith, "Political Activist as Ethnographer," 54-55.

prescribed meanings, ‘the social’ is an ongoing, local, and historically-embedded practice of people “going about their everyday lives.”¹⁵⁶ In practice this means that institutional ethnographers see forms of oppression (such as racism, sexism, and ableism) not as abstract entities but rather as social practices that are organized systematically through people’s coordinated actions.¹⁵⁷ Smith argues that “[c]oncepts such as ‘social relations’ or ‘social organization’ have no corresponding reality as such. What is to be discovered is essentially in motion.”¹⁵⁸

Institutional ethnographers presume that social life, rather than being chaotic, is systematically ordered. People actively participate in the methodical and coordinated organization of the social world—often unknowingly—by adopting the “prevailing and dominant discourse[s] and act[ing] accordingly.”¹⁵⁹ The local processes of knowledge production that assist in organizing ruling relations are particularly visible where abstract concepts are operationalized and gain content throughout bureaucratic decision-making. IE focuses on reporting and recoding the social processes of knowledge production through exploration of the generation and circulation of texts. By understanding local settings and what actually happens there, the researcher creates a ground for explicating “how [these] settings, including local understandings and explanation, are brought into being—so that informants can talk about their experiences as they do,” and proceed with their work/life as they do.¹⁶⁰ Smith explains that IE’s interest in insiders’ knowledge is a way of accounting for how texts organize local *doings*, but also how objectified forms of

¹⁵⁶ Dorothy E. Smith, “Introduction”; George W. Smith, “Political Activist as Ethnographer,” 54-55.

¹⁵⁷ George W. Smith, “Political Activist as Ethnographer”; Bisaillon, “*Cordon Sanitaire*”.

¹⁵⁸ Dorothy E. Smith, “Introduction,” 2.

¹⁵⁹ Campbell and Gregor, “Theory,” 41

¹⁶⁰ *Ibid.*, 90.

knowledge are constructed in local settings, along with institutional priorities. In this way institutional ethnography is able to overcome “the boundaries of conventional divisions between micro-and macro, sociology and political economy, without deserting its ethnographic commitment.”¹⁶¹

Coordinating Properties of Texts

In institutional ethnography, an analytic task is to map texts and instances of text activation in the context of institutional processes, and to discover how social relations are organized and social inequalities reproduced.¹⁶² An institutional ethnographer begins by focusing on how people’s everyday activities are textually-organized in a way that reproduces the dominant relations of power and knowledge. According to Smith, these relations, including discourse and ideology, “can be investigated as actual social relations ongoing and organized in and by the activities of actual people. People participate in those relations when they work with texts.”¹⁶³ The focus on texts in explicating the social organization of everyday life is a unique feature of IE. Institutional ethnographers accept that, in contemporary society, texts often substitute for face-to-face interactions between people. This is especially true for service and bureaucratic organizations¹⁶⁴ such as health care, law, education, and various forms of administration. Operating in distant organizational sites, these kinds of institutional complexes rely heavily on texts to coordinate and standardize their services and service delivery.

¹⁶¹ Dorothy E. Smith, *A Sociology for People*, 36.

¹⁶² Campbell and Gregor, *Mapping Social Relations*.

¹⁶³ *Ibid.*, 31-40.

¹⁶⁴ Dorothy E. Smith, “Introduction”.

But texts are not ideologically neutral. They reflect relations of power and knowledge that operate on a global scale, such as those of capitalism or patriarchy. The universality of texts enables the interpenetration of ideological discourses and ruling regimes into institutional processes, which organize what happens to people in local sites.¹⁶⁵ Texts organize institutional relations in a specific way and in line with specific institutional priorities, with the realization of institutional priorities often overriding the priorities of actual people.¹⁶⁶ Campbell and Gregor note that “more than a story about something, an organizational text is organizing a relation. The reader/knower is captured through participation.”¹⁶⁷ People working in institutions or interacting with them participate actively, and often unknowingly, through their work with texts.

To explore the coordinating function of texts in organizational settings, the institutional ethnographer needs to pay attention to two main aspects: first, how texts are organized in relation to each other, structurally but also functionally; and second, how texts enter into and coordinate sequences of action, and for what purpose. The organizing faculty of the text pertains to its position as a resource on which people draw: they utilize texts as a documentary form of knowledge and give the text substance through sequences of events that organize their professional actions. In the case of involuntary admission procedures, the *MHPA* provides information about the substantive grounds for involuntary admission, as well as procedures for pursuing an admission. Through concepts and categories that feature as elements of legally valid decision-making in admission cases, the *MHPA*

¹⁶⁵ Campbell, and Gregor, *Mapping Social Relations*.

¹⁶⁶ *Ibid.*, 31-40.

¹⁶⁷ *Ibid.*, 15.

establishes a frame for whether “what is done can be recognized as an instance or expression of [a] textually authorized procedure.”¹⁶⁸

In terms of inter-textual and hierarchical relations, the *MHPA* is considered a *boss text* in the context of involuntary admission. But there are numerous additional texts operating in various constellations, in relationship with it. For instance, the *Law on the Constitution of Courts*¹⁶⁹ supplements the *MHPA* by coordinating the work of the judiciary in regulating the involuntary admission procedure. The relation between these two acts can be seen as that between *ius specialis* (law specifically applicable) and *ius generalis* (law generally applicable).¹⁷⁰ Inter-textual relations are important because higher or more specialized texts dictate how other texts will be produced and used and, in the language of institutional ethnography, provide an ideological/conceptual framing for working with other texts. ‘Boss texts’ and ‘regulatory texts’ control how other texts are read and written, governing the work of inscribing reality into a documentary form. In other words: legal statutes provide a discursive frame for those working in organizations, who orient their observing and report-writing work to certain elements of actualities, so that they fit the content of legal terms and thus allow the statute to be actionable.¹⁷¹

George Smith’s article on the policing of gay sexuality through raids on bawdyhouses in Toronto is an excellent example of how the work of inscription is

¹⁶⁸ Dorothy E. Smith, “Introduction,” 83.

¹⁶⁹ *Law on the Constitution of Civic Courts of July 27, 2001* [*Prawo o Ustroju Sądów Powszechnych z Dnia 27 Lipca 2001 Roku*] (“Law on the Constitution of Courts”), in 2001 Journal of Laws, no. 98, item 1070. In Poland, the term ‘civic courts’ refers to all public courts except military courts. The constitution of military courts is regulated by a different statute. For the structure of Polish court system see Figure 3.1.

¹⁷⁰ *Ius generalis* is only used to regulate situations that are not directly regulated by *ius specialis*.

¹⁷¹ Dorothy E. Smith, *A Sociology for People*, 194-8.

accomplished in a legal context.¹⁷² He shows how, in written reports, police officers selectively approach the reality of men engaged in sexual activities, choosing elements that fit the description of a criminal act while excluding others. Embedded and educated in institutional discourse, police officers are knowledgeable agents of an institution that has trained them how “to look for and select what could be counted as sexual acts performed in public as well as recording how they did that looking in their report.”¹⁷³

Institutional texts make it possible to coordinate work across organizational settings and in different times and to organize standardized institutional practices. Smith argues that “[t]exts provide the basis of a technology enabling, among other things, an order of facticity suppressing divergent perspectives and establishing a shared and enforceable common ground, a virtual reality standardized across multiple settings.”¹⁷⁴ The ability of texts to purposefully organize people’s actions is grounded in their replicable and predetermined form: readers of institutional documents do not have the ability to change the structure of what they are reading. All they can do is to fill in documents, reproduce them, and pass them on to the next person, in a sequence of institutional actions.

Pence calls the coordination involved in passing texts from one site to another, “processing interchanges.”¹⁷⁵ In order for interchanges to become institutionally actionable, not only do local actualities have to be converted into textual realities, they also need to be expressed in standardized and institutionally actionable language. For example,

¹⁷² Alison I. Griffith and Dorothy E. Smith, “Introduction,” in *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*, ed. Alison I. Griffith and Dorothy E. Smith (Toronto: University of Toronto Press, 2014), 12.

¹⁷³ *Ibid.*, 13.

¹⁷⁴ Dorothy E. Smith, “Texts and the Ontology of Organizations and Institutions,” *Studies in Cultures, Organizations and Societies* 7, no. 2 (2007), 162.

¹⁷⁵ Pence, “Safety for Battered Women,” 215-222.

social work graduate student Lisa Watt shows how her attempt to secure adequate care for her diabetic daughter at school required a medical order from a doctor stating that the child “requires constant glucose monitoring”¹⁷⁶ (replacing a previous order that had only specified, “check BG at lunchtime”). The new medical order made it institutionally possible for the assisting nurse to measure blood sugar according to child’s needs while also making her actions accountable within the institutional order.

Texts connect one local setting with another while also connecting local settings with translocal ones. Through standardized texts, institutions “produce the generalized and abstract character of contemporary societies.”¹⁷⁷ However, the textual realities upon which institutional actions and governance are based obscure people’s lived actualities in local sites. This is because when people adopt a regulatory frame, it directs them “to interpret their lives and experiences in particular ways, and [...] to take actions appropriate to it.”¹⁷⁸ By adopting a regulatory frame people also remake their subjectivities along institutional categories. People participating in the standardizing practices of institutional relations begin to think about themselves and others through institutional categories, abstracted from their actualities. Institutional abstractions (such as the concept of a ‘single parent family,’¹⁷⁹ a ‘child with a terminal illness,’¹⁸⁰ or a ‘person with AIDS’¹⁸¹) enter local realities and begin to produce the everyday life experiences of people and guide their actions. Smith

¹⁷⁶ Lisa Watt, “(Un)Safe at School: Parents’ Work of Securing Nursing Care and Coordinating School Health Support Services Delivery for Children with Diabetes in Ontario Schools,” *The Journal of Sociology & Social Welfare* 42, no. 2 (2015), 115, 118.

¹⁷⁷ Peter R. Grahame, “Ethnography, Institutions, and the Problematic of the Everyday World,” in *Critical Strategies for Social Research*, ed. William K. Carroll (Toronto: Canadian Scholars’ Press, 2004), 185.

¹⁷⁸ Marie L. Campbell and Katherine Teghtsoonian, “Aid Effectiveness and Women’s Empowerment: Practices of Governance in the Funding of International Development,” *Signs* 36, no. 1 (2010): 196.

¹⁷⁹ Griffith, “Constructing Single Parent Families”.

¹⁸⁰ Bell, “A Child’s ‘Terminal Illness’”.

¹⁸¹ Herrerger, “Unruly Death”.

explains that people cease being “as they are in actuality, [and become] expressions of pre-given categories [such as] doctor, patient, nurse, pharmacist, and so on.”¹⁸² She further elaborates that “[i]nstitutional discourse sets up a way of seeing things in terms of its specialized functions.”¹⁸³ In this way, institutional discourses construct problems that are actionable and manageable in terms of available solutions.¹⁸⁴

Attention to the text and to its standardized properties across settings makes it possible to trace the overarching relations from a particular local instance and across settings, and to generalize how these relations are organized. Notably, generalizability in institutional ethnography does not depend on sampling, as it does in qualitative studies or the theorization of findings in ethnography. According to Campbell and Gregor, “[g]eneralizability in institutional ethnography relies on discovery and demonstration of how ruling relations exist in and across local settings, organizing the experiences talked about.”¹⁸⁵ The potential for generalization in my study does not rest on claims that *all* moments of legal aid lawyering are organized in exactly the same way across *all* jurisdictions in Poland. Some local practices of civil commitment, and lawyers’ involvement in these practices, may differ. For example, during my fieldwork I learned that in some cities civil commitment hearings are held in courts, while in others, they are held in hospitals (depending on the distance between the hospital and the court, and the availability of material space in the hospital dedicated for use as a courtroom).

¹⁸² Dorothy E. Smith, “Introduction,” 8.

¹⁸³ *Ibid.*

¹⁸⁴ Caelie Frampton et al., “Towards Political Activist Ethnography,” 5.

¹⁸⁵ Campbell and Gregor, *Mapping Social Relations*, 89.

Having explained the practice of IE and its implementation in the context of my research, I now turn my attention to the assessment of the potential of IE for socio-legal scholarship, as well as to its shortcomings.

2.3 – Potential & Limitations of Institutional Ethnography for Socio-Legal Studies

In this section I outline the potential and limitations of institutional ethnography in terms of knowledge production, its conceptualization of law and legal processes, and in the pursuit of professional activism. I show how I merged IE with socio-legal scholarship to tap into the richer and more multi-dimensional understanding of legal processes and practices that institutional ethnographies tend to provide.¹⁸⁶ To illustrate the epistemological objectives of IE, I locate it among other modes of qualitative inquiry—including the extended case study method (ECS), grounded theory (GT), and governmentality research (GR)—and point out some convergences with and divergences from these methodologies. In many aspects these research paradigms resemble institutional ethnography, yet their epistemological projects differ. In comparison to the above-noted modes of critical inquiry, the epistemological objective of institutional ethnography is rather modest—yet not unimportant. IE projects aim to provide robust data on the organization of the social world, rather than a conceptualization of that world or an abstract theory on how it functions. Therefore, IE's claims are empirical and analytical rather than

¹⁸⁶ There are only handful of IE studies that deal with law and legal processes. For some examples see: Pence, "Safety for Battered Women"; Kaitlyn Matulewicz, "Customers, Tips, and Law: Gender and the Precariousness of Work in BC Restaurants" (paper presented at the *Labour Law Research Network Inaugural Conference*, Barcelona, 13-15 June 2013); Grace, "This Is Not a Law"; Sarah Marsden, "The New Precariousness: Temporary Migrants in the Law in Canada," *Canadian Journal of Law and Society* 27, no. 2 (2012).

conceptual or theoretical. Finally, I outline the epistemic scope of possibility of IE, and discuss how socio-legal scholars can utilize this research methodology and harness its epistemological contributions.

2.3.1 – IE and Other Modes of Qualitative Inquiry

The ‘extended case study method,’ as developed by American sociologist Michael Burawoy,¹⁸⁷ is similar to IE in its attention to local practices and their macro organization. The ECS starts with a social situation and ethnographically explores its local occurrence—yet it goes on to use theory and concepts to explain the macro-level processes that organize the local.¹⁸⁸ An example of the ECS is Burawoy’s own research in Zambia, in which he investigated how, post-independence, the colonial order was maintained in the administration and governance of mines. Notably, while data on local practices and processes was collected ethnographically, it was interpreted through the application of pre-existing theories, such as Frantz Fanon’s theory of ‘postcolonial revolution,’ explaining broader social forces and sources of underdevelopment. This analytic pathway differentiates the ECS from IE.¹⁸⁹

‘Grounded theory’ is a method of qualitative data analysis that shares with IE its applicability to qualitative data and its interactive properties.¹⁹⁰ The latter means that “analysis starts after some of the data have been collected and then implication of that

¹⁸⁷ Michael Burawoy, “The Extended Case Method,” *Sociological Theory* 16, no. 1 (1998). Burawoy’s extended case study is also similar to IE in that it valorizes the researcher’s engagement in the social world. Both research strategies also represent a reflexive model of science, yet with some significant difference in terms of whether reflexivity encompasses a *dialogue with theory*.

¹⁸⁸ Dorothy E. Smith, *A Sociology for People*, 35-38.

¹⁸⁹ Burawoy, “The Extended Case Method”.

¹⁹⁰ Alan Bryman and James J. Teevan, *Social Research Methods* (Oxford: Oxford University Press, 2005), 283-90.

analysis shape any future data collection.”¹⁹¹ GT develops a theory from the gathered data, two types of which are expected to emerge: substantive theory (referring to the specific instance under investigation) and formal theory (a higher level of abstraction, applicable to several substantive areas).¹⁹² This theory-generating objective of GT is one feature, among others, that differentiates it from institutional ethnography.¹⁹³

‘Governmentality research’ resembles IE in its attention to texts, discourse, and linkages between everyday practices and ruling (or governing) relations. Drawing on critical social theorist Michel Foucault’s lectures on governmentality,¹⁹⁴ researchers developed a “conceptual framework for analyzing governing practices and their effects.”¹⁹⁵ Governmentality scholars empirically trace the textual organization of these linkages¹⁹⁶ to discover a set of discourses, how they operate, and with what effects. Interviews or ethnographies are rarely undertaken, and texts are treated as sites in which discourse articulates itself. The notion of ‘discourse’ is one of the differences between governmentality research and institutional ethnography: IE’s ‘discourse’ is not limited only to “texts and their inter-textual conversation, [but it includes] the activities of people in actual sites who produce them and use them and take up the conceptual frame they circulate.”¹⁹⁷ Another difference is that, being grounded in post-structural thought, GR

¹⁹¹ Ibid., 283.

¹⁹² Ibid., 284.

¹⁹³ Grounded theory also differs in, for example, how the analysis is conducted and the purpose of coding. For insights on data analysis in IE see, for example, Walby, “Institutional Ethnography and Data Analysis”.

¹⁹⁴ Michel Foucault, “Governmentality,” in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 87-104.

¹⁹⁵ Katherine Teghtsoonian, “Methods, Discourse, Activism: Comparing Institutional Ethnography and Governmentality,” *Critical Policy Studies* 10, no. 3 (2016); Foucault, “Governmentality,” 87-104.

¹⁹⁶ Teghtsoonian, “Methods, Discourse, Activism,” 335-36.

¹⁹⁷ DeVault and McCoy, “Using Interviews,” 44.

projects are not meant to deliver normative claims but rather to provide “criticism as an analytic practice of unsettling the taken-for-grantedness of how things are.”¹⁹⁸

The reservation institutional ethnographers have vis-à-vis the utilization of conceptual frames, insofar as these are used in ECS and grounded theory, relates to IE’s refusal to substitute people’s everyday knowledge for the expert knowledge articulated by concepts or theories.¹⁹⁹ Moreover, according to Smith, using abstract concepts in an investigation or in an analysis contributes to these concepts’ reification and the ‘freezing’ of the social. As she explains:

Reifying the concepts that you may use to hand on to what you can observe and giving them substance in your written account is at odds with recognizing that what we’re calling the social is only to be discovered among actual people and their ongoing activity. Concepts such as ‘social relations’ or ‘social organization’ have no corresponding reality as such. What is to be discovered is essentially in motion; concepts such as these freeze for inspection and analysis, dimensions of the complexly coordinated and historically embedded doings of people but must not be treated as if they refer to objectives out there.²⁰⁰

I found this critique particularly relevant in the context of involuntary admission as it enabled me to challenge the taken-for-granted nature of legal concepts such as ‘procedural justice,’ ‘due process,’ ‘representation,’ or even the social concept of the ‘stigma’ of mental illness. These abstracts are too often co-opted by institutions and utilized in meeting

¹⁹⁸ Teghtsoonian, “Methods, Discourse, Activism,” 341.

¹⁹⁹ Walby, however, makes two types of critiques of some of IE’s epistemological claims. He argues, first, that because the ontology of the social is based on certain theoretical premises, this theoretical frame also conditions what IE can discover and what institutional ethnographers conceive of as ontologically ‘real’ in their research. Second, because IE assumes that “people struggle in the dark” and sees the researcher as the one who can “recover’ parts of people’s lives, otherwise not visible to them,” it fails to treat people as experts of their lived situation. Thus IE to some extent retains elements of traditional sociology. Kevin Walby, “On the Social Relations of Research: A Critical Assessment of Institutional Ethnography,” *Qualitative Inquiry* 13, no. 7 (2007), 1022, 1014.

²⁰⁰ Dorothy E. Smith, “Introduction,” 2.

institutional goals. Thus, if IE is concerned with concepts, it is not with what they *are* but rather what they *do*. IE shares this empirical interest with governmentality studies—yet it differs from governmentality studies in that it investigates concepts, interpretations, ideologies, or knowledge as actual ongoing practices instead of treating them as if they were “essentially inside people’s heads.”²⁰¹ With this focus, IE can help demonstrate how discrimination, stigmatization, etc. are ongoing social practices that produce these oppressive outcomes.

Moreover, because institutional ethnography projects are built on a shared social ontology and realized through similar procedural and conceptual modes of inquiry, once put together they explain a broader picture of how institutions (such as health care, law, education, and immigration) function. Institutional ethnographic projects are seen as pieces of a broader puzzle. In this regard, DeVault and McCoy write:

Institutional ethnographies can ‘fit together’—much as squares of a quilt (...) because they share the same organizing ontology and the same focus on generalizing processes of ruling [...]. [T]hrough the analytical frame they share [IE studies] can be seen to be describing different moments and aspects of the same generalizing set of relations.²⁰²

It is thus assumed that future researchers may take up some of the relations of a previous IE project and analyze them further, or explore relations that were revealed by prior research but remained unexamined. “IE is like map,” DeVault and McCoy explain, “that can serve as a guide through a complex ruling apparatus.”²⁰³

²⁰¹ Dorothy E. Smith, *A Sociology for People*, 25.

²⁰² DeVault and McCoy, “Using Interviews,” 19.

²⁰³ *Ibid.*

2.3.2 – Potential of IE for Socio-Legal Empirical Research

Although analytically (instead of conceptually or theoretically) oriented, institutional ethnography can help address some existing methodological shortcomings in socio-legal scholarship, including the binary of ‘law in action’ and ‘law in texts;’ insufficient attention to lawyers’ knowledge practices; and ignorance of the operation of power in ethnographic-technocratic studies of legal institutions. I argue that IE can be particularly useful for: 1) exploring how texts enter legal practices and coordinate the related work of professionals in local settings, thereby breaking the dichotomy between ‘law in texts’ and ‘law in action;’²⁰⁴ 2) surfacing and exploring people’s work knowledges, thereby making legal knowledge the object of ethnographic study; and 3) addressing the ideological nature of legal texts, and consequently of legal practices, thereby linking power/knowledge relations operating translocally with their reproduction in local sites, while still remaining materially grounded and attentive to technicalities.

Textually-Mediated Legal Practices

Socio-legal scholars have recently highlighted insufficient research attention to how people and texts interact within the context of legal practices. For example, Canadian socio-legal scholars Mariana Valverde, Ron Levi, and Dawn Moore note that scholars who study ‘law in action’ focus strictly on people and abandon legal texts and other material things.²⁰⁵ Yet these legal texts, in terms of both their content and material forms, “create patterns of interaction.”²⁰⁶ Because it explores *texts in operation*, IE is equipped to fill this

²⁰⁴ An extensive discussion that problematizes a binary between ‘law in texts’ and ‘law in action’ can be found in Reza Banakar, *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity* (Heilderberg: Springer International, 2015).

²⁰⁵ Valverde, Levi, and Moore, “Legal Knowledges of Risk”.

²⁰⁶ *Ibid.*, 96.

gap. The praxis includes an empirical investigation of a) how people engage with texts; b) how legal texts are produced in relation to other texts; and c) what people do (and can do) in organizational settings, embedded in a network of texts that created the conditions for those actions.

Using institutional ethnography in my study, I was able to detail how people bring legal and policy texts into their institutional processes, and how these are taken up to coordinate the actions of legal authorities and professionals at different moments of decision-making. I was not restricted to focusing solely on the analysis of textual accounts or decisions (for example, psychiatric diagnoses or court sentences), which tends to be the norm in many critical analyses at the intersection of psychiatry and law.²⁰⁷ This also meant looking at the purpose that texts serve in coordinating the actions that follow their dictates. Locating texts and actions within temporal relations is especially useful for demonstrating how certain facts come to be ratified and naturalized as ‘legal facts’ through sequential rewriting. In this way, in my research, the legal process of an involuntary admission emerged as a textually-mediated practice. Legal texts provide a frame for this practice, on which local actualities of (a) professionals doing their work and (b) persons experiencing involuntary admission are articulated. Further, these articulations occur in ways that can be recognized as instances of legally-valid involuntary admission procedures.

Institutional ethnography also helps break through the naturalization of legal documents by providing tools for the investigation of legal texts. For example, law professor Emma Cunliffe used IE to investigate the production of transcripts of court

²⁰⁷ Pearson, “The Effect of Clinical Judgement”; Wendy Chan, “Gender, Murder and Madness,” in *Women, Murder, and Justice* (Houndmills & New York: Palgrave, 2001); Arben, “A Commentary”.

proceedings, arguing that a “transcript is defined in relation to the spoken proceedings it purports to represent even through the act of representing alters those proceedings.”²⁰⁸ She showed that what gets into the transcript is governed by a specific set of laws and practices, which allow professionals to construct a certain type of legal account, and that this account is later given authority even over the words of those who produced them. Transcripts as a “true documentation of proceedings” gained a life of their own, and were invested with significant authority—even when the court reporter expressed dissatisfaction with certain portions. In my study, I traced the material and textual conditions of how a person becomes officially considered as ‘having a mental illness’ and ‘dangerous to self or to others’ (which warrants involuntary psychiatric admission, based on Article 23 of the *MHPA*). While discourses were important in this investigation, so was the layout of different forms used by professionals to document a person’s ‘mental illness’ and ‘dangerousness.’ I also pay attention to how other texts, such as guidance on medical documentation, govern what gets inscribed in texts. In this way I am able to demonstrate how the narrative is ratified in subsequent texts, and thereafter stands as an objective and scientifically-grounded legal fact of meeting the relevant legal criteria of the *MHPA*.

Lastly, with institutional ethnography, socio-legal researchers can move toward an understanding of legal practice as multi-textual and materially grounded, and concerted across various local and translocal sites. In her publication on corporate deal-making, public international law and legal theory scholar Fleur Johns shows that getting a legal deal done is far more complex than just signing a contract—it involves coordinated and

²⁰⁸ Emma Cunliffe, “Untold Stories of Miraculous Mirrors? The Possibilities of a Text-Based Understanding of Socio-Legal Transcript Research,” *Allard School of Law Working Paper* (2016).

intersecting material and textual relations through which the legal deal is being produced.²⁰⁹ It involves, in other words, numerous texts:

Amid the vagaries of a deal, it becomes clear that employment law, partnership structure, service contracts, office leases, educational loan arrangements, billing and time-keeping standards, and the litany of norms that condition workplace interaction in and by large firms here as much have to do with allocation of capital as the mere ‘fact’ of their client’s corporate form or balance sheet.²¹⁰

In this fragment, Johns refers to multiple texts, work processes, and relations that may occur in different organizational sites. She thus departs from the fragmented take on legal practice as *independent from* or *external to* what happens in other organizational sites that often characterizes socio-legal empirical studies.²¹¹ IE also directs researchers’ attention to coordinated and intersecting work processes taking place in multiple sites and enables the mapping of various discursive regimes that intervene and intersect while guiding the work of professionals involved in legal processes. Hence, institutional ethnography’s analytical focus—on how text-mediated relations coordinate activities in local sites, as well as across sites, to accomplish certain work, fulfill certain functions, or ensure certain institutional outcomes—can help socio-legal scholars locate legal practices within the context of the other social practices that constitute their close surroundings.

Legal Professionals’ Work Knowledges

A number of socio-legal scholars have recently emphasized the importance, as a resource for socio-legal studies, of taking seriously the legal knowledge of professionals

²⁰⁹ Fleur Johns, “Performing Power: The Deal, Corporate Rule, and the Constitution of Global Legal Order,” *Journal of Law and Society* 34, no. 1 (2007).

²¹⁰ *Ibid.*, 118.

²¹¹ *Ibid.*

working in local sites,²¹² This resource is typically omitted from other academic fields. For example, Riles, in her article *Property as Legal Knowledge: Means and Ends*, compares the anthropological and legal accounts of property: “What is missing from many of these [anthropological] projects, [...] is a serious ethnographic engagement with lawyers’ own knowledge practices.”²¹³ Similarly, criminologist Mariana Valverde points to the diverse functions and practices around risk assessments across fields of law, arguing that lawyers are well aware of this diversity, yet their knowledge is ignored in the scholarship on risk.²¹⁴ Institutional ethnographers have already emphasized the value of such practical work knowledge, where “a researcher is learning from [legal practitioners’] expert and exclusive knowledge of what they do [or need to do] and of the contexts and conditions that complement their work.”²¹⁵ Thus, attention to the work knowledge of practitioners, developed by IE, can be an important methodological tool for gaining a more nuanced understanding of legal processes.

I, however, assert that IE’s contribution to addressing the gap in legal work knowledges goes even further. By moving beyond an exclusive ethnographic description of local processes and locally-employed knowledges, institutional ethnography links them, showing how these reflect the relations of knowledge and power that operate on a translocal scale. Moreover, IE shows how they are articulated in the relations of professionalism, biomedical psychiatry, scientific knowledge, due process, legal formalism, etc. that enable the interpenetration of ideological discourses and ruling regimes into the local actions of

²¹² Including, among others, Riles, Valverde, Johns, and Cowan.

²¹³ Annelise Riles, “Property as Legal Knowledge: Means and Ends,” *The Journal of the Royal Anthropological Institute* 10, no. 4 (2004): 777.

²¹⁴ Valverde, Levi, and Moore, “Legal Knowledges of Risk,” 97.

²¹⁵ Dorothy E. Smith, *A Sociology for People*, 149.

people. While lawyers' experiences are the entry point for this study, my research moves beyond their experiences to explain how the involuntary admission system in Poland is organized such that it contributes to a worrisome reality in which lawyers are also active participants. I accomplish this by exposing how the texts and discourses that coordinate lawyers' work also construct their subjectivities, which subsequently translate into how they organize their relationship with involuntarily-admitted clients. Thus, IE not only exposes work knowledges but also critically interrogates them.

Ideological Account of Legal Practices and Processes

In exploring the power relations of law, the importance of analyzing everyday activities and work processes, undertaken in their material settings, has been recognized by socio-legal scholars. Robert Hale, who works at the intersection of law and economics, argues that: “the *inevitable*s of global corporate domination are produced, day by day, decision by decision, deal by deal.”²¹⁶ Thus, activities undertaken daily by lawyers are vested in specific sets of power relations, reproduced in local sites, and texts play an important role in such reproduction. The conceptual and analytical approach of institutional ethnography—specifically its focus on texts as technologies through which ideological messages are transferred to local settings—allows socio-legal scholars to map and demonstrate how ruling relations penetrate and organize the local practices of people working in highly textual settings, such as courts and medical centres. Texts provide ideological frames and coordinate the sequence of legal steps that guide the actions of local actors, who through their everyday activities provide substance to legal concepts and law.

²¹⁶ Johns, “Performing Power,” 120.

Yet the ideological aspects of legal texts rest also in their capacity to produce objectified knowledge that is stripped from local actualities and particularities. This knowledge may later stand as data, feeding changes to policy or to law. For example, in the book on *Managing to Nursing: Inside Canada's Health Care Reform*, social scientists Janet Rankin and Marie Campbell discuss how a patient satisfaction survey, through its highly structured form, offered not only a particular *framing* of satisfaction, but also *evidence* of what the problem with the delivery of nursing service was and how it could be institutionally improved. They suggest that “[w]hen an ideal representation replaces all of those various concerns that individual patients might voice, covering ‘what patients want’ can be accomplished much more efficiently through programmed managerial efforts.”²¹⁷ In this way, objectified and abstract knowledge plays an important role in reproducing the ruling relations that were invested in its production.

2.3.3 – Limitations of Institutional Ethnography

As useful as IE is, my journey as a novice institutional ethnographer revealed certain limitations of this method of inquiry when applied to socio-legal research. While methodological discussion in socio-legal scholarship is relatively new, scholars have nonetheless emphasized the need to reflect on issues related to methodology.²¹⁸ Such reflection is required when it comes to the practice of applying social science research methods to socio-legal scholarship. Yet, I argue that this discussion needs to be expanded—or it needed to be, in my own research—to embrace the ontological issues

²¹⁷ Rankin and Campbell, *Managing to Nurse*, 131.

²¹⁸ Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (Oxford: Hart Publishing, 2005), xi.

underlying the study of law and of the legal. In regards to ontology, sociologist Kevin Walby correctly notes that it “is not only a theory of reality but also it is always a particular theory of reality, in that selecting elements of the social to constitute as real truncates others that may be equally crucial.”²¹⁹ I find that institutional ethnography’s ontology of law is too narrow to satisfy the needs of socio-legal scholars.

Grounded in the discipline of sociology, IE (and IE-guided research) tends to adopt a conceptualization of law as a social institution. The term ‘institutional’ or ‘institutions’ refers to “complexes embedded in the ruling relations that are organized around a distinctive function, such as education, health care, and so on.”²²⁰ Institutional ethnographers study, for example, the organization of the judicial processes of dealing with domestic abuse, and how local practices are socially organized to fill the content of legally prescriptive legislation and meet the institutional goal set for that law.²²¹ Accordingly, IE scholars research law in the same way as they research any other institution.²²² Institutional ethnography can therefore help socio-legal scholars to think critically about the place of law in the larger social context²²³—yet IE’s focus on ‘the social’ can contribute to the problem of the ‘sociologization’ of socio-legal scholarship,²²⁴ since the specificity of ‘the legal’ disappears. A recently published collection, *Exploring the ‘Legal’ in Socio-Legal Studies*, pointedly argues that in the sociological scholarship on law, “[a]t best, legal

²¹⁹ Walby, “On the Social Relations,” 1016.

²²⁰ Dorothy E. Smith, *A Sociology for People*, 225.

²²¹ Pence, “Safety for Battered Women”.

²²² Annelise Riles (2004) makes a similar critique regarding anthropologists’ study of property relations, arguing that they would employ similar methods here as in the analysis of cultural artifacts, thus failing to attend to “the character and work of legal theory” and lawyers’ work-practices of theory making. Riles, “Property as Legal Knowledge,” 776-777.

²²³ Cowan and Wincott, *Exploring the ‘Legal’*.

²²⁴ Ibid.

thought and legal practice act merely as objects of study.”²²⁵ Along those line, Valverde cautions socio-legal scholars that, in order to avoid sociological reductionism and better understand the ‘how’ of legal mechanisms, analysis needs to be simultaneously inside and outside law, simultaneously technical and theoretical, legal and socio-legal.²²⁶ She further suggests that “[d]octrinal ‘technicalities’ would be as important in such a study as [the] sociological analysis of power.”²²⁷

One example of a study of legal technicalities is Riles’ work on legal doctrine-making, where ‘the doctrine’ is understood as “the artefact of the accumulation of individual cases.”²²⁸ Riles studied this doctrine-making within the context of a law course on legal property, during her own time at law school, specifically using two cases that dealt with the relation between personhood and property.²²⁹ What she was able to show was the distinct character of legal thinking and analysis; how one decision, when set in the context of other decisions on that matter, “becomes part of a ‘doctrine’ of property rights;” and how social facts feature differently for lawyers and anthropologists.²³⁰ On the latter point, Riles wrote:

The same social facts that provided the point of departure for anthropological interest in the Moore case, such as impact of new scientific discoveries on concepts of ownership, were also of great interest to lawyers, so long as these facts were made to emerge as the artefact of doctrinal analysis, as contextualized in doctrine.²³¹

²²⁵ Ibid.

²²⁶ Valverde, “Jurisdiction and Scale,” 153.

²²⁷ Ibid., 153.

²²⁸ Riles, “Property as Legal Knowledge”.

²²⁹ *Davis v. Davis* case is about an ownership of a frozen embryo after divorce and *Moore v. Regents of California* is about an ownership of a commercial patent based on blood and other fluids cells removed from a patient by his doctor. *Davis v. Davis* [Tenn. S.C. 1992]; *John Moore v. Regents of the University of California* [Cal. S.C. 1990].

²³⁰ Riles, “Property as Legal Knowledge,” 782.

²³¹ Ibid.

The analysis of legal technicalities matter because they may help with legal knowledge production, legal practices, and their relations with other systems of knowing—but also because, as in Riles’ article, the analysis of gaps in the doctrine of property leads students to conclude that “the real basis of the decision [in Moore case] was the court’s pragmatic commitment to creating the legal conditions for scientific progress.”²³² Yet the inclusion of legal technicalities is not limited to doctrine. It can include an analysis of the concept of ‘legal jurisdictions’ and its work in articulating the policing of risk, or an analysis of procedural technicalities within the context of judgecraft.²³³ An excellent example of such work is philosopher, anthropologist, and sociologist Bruno Latour’s study of the French administrative courts.²³⁴ In my research, I follow the suggestion to revisit socio-legal engagement with legal technicalities; moreover, I attempt to examine these together with the ruling relations in which they are embedded, and of which they are the articulation.

For legal philosopher and methodologist Sanne Taekema, legal theorist and historian Bart van Klink, and legal and political theorist Wouter de Been, fruitful engagement with interdisciplinarity in the context of law requires not only awareness of “the different ways in which facts and norms are understood,” but also, a “need to think about ways to connect the two.”²³⁵ I suggest that, in order for IE to serve socio-legal scholars, it needs to be modified to incorporate legal technicalities and a more nuanced understanding of legal practice and legal knowledge. At the same time, it brings to the

²³² Ibid.

²³³ I provide a definition and a sustained discussion of ‘judgecraft’ in Section 7.4.

²³⁴ Bruno Latour, *The Making of Law: Ethnography of the Conseil D’etat* (Malden: Polity Press, 2015).

²³⁵ Sanne Taekema, Bart van Klink, and Wouter De Been, *Facts and Norms in Law: Interdisciplinary Reflections on Legal Method* (Cheltenham: Edward Elgar, 2016).

study of law the relevance of the social and material world with which legal knowledge interacts and in which it is produced and carried out—or in other words, it provides a normative solution to the social problem of legal processes. Institutional ethnography does this by linking macro- and micro-scale processes and practices (or the ‘extra-local,’ as it is referred to in IE), as well as by a dynamic understanding of social and legal practices as constructed in and through people’s social interactions.

2.3.4 – Ethical Considerations

Although I perceived ethics as a reflexive practice embedded throughout the research process, in this section I reflect on one particular moment in my fieldwork. In that moment, I faced ethical and moral challenges related to navigating and upholding my political and professional commitment to persons institutionalized in psychiatric hospitals. The example that I use to illustrate this ethical dilemma is important not only ethically, but also methodologically, because it augments the previous discussion on the potential and limitations of IE for lawyers’ socio-legal research.

One of the most profound challenges I faced emerged in the course of data collection in psychiatric and courtroom settings, wherein I witnessed numerous abuses of involuntarily committed persons, including breaches of both their substantive and procedural rights. Further, I witnessed how some of these individuals unsuccessfully attempted to contest their admissions through legal means. Being trained as a lawyer and having the skills to address these abuses, I struggled over whether to intervene in procedures advocating for the rights of committed persons. For example, I noticed that, on occasion, individual requests for representation were not passed to the judges who appoint legal aid lawyers, and that psychiatrists purposefully altered admissions-related facts so

that they met the legal standards set by the *MHPA*. Compelled by a commitment to social justice in my research, which was ultimately undertaken for people who were involuntarily committed, I wanted to act and advocate for their rights—yet I felt constrained in my ability to do so because of my position as a researcher, and the highly structured institutional environment of my socio-legal fieldwork. Some tensions I experienced emerged at the interface of my legal-professional and research ethics, others at the interface of research pragmatics and the formalism of civil procedure.

With regard to professional constraints: while my membership in professional communities granted me certain privileges in the context of my fieldwork, it also imposed implicit and explicit obligations on my research informants, as well as on the communities of practitioners to which I belonged. Because of my professional credentials as a scholar, and previous work-based connections as a lawyer, I was able to gain access to field sites often closed to other researchers. It was through my unlimited access to data, granted me by the directors of the psychiatric facility, that I was able to have casual conversations with medical professionals and staff, and was able to learn the details of some cases—including the troubling breaches of patients' rights.

As an attorney I was bound by the ethical standards of the legal profession.²³⁶ According to these regulations, an attorney in Poland can provide legal assistance only when formally appointed, by a client or court, to act as a legal aid lawyer. Moreover, I was not even a practicing attorney at that time, as had suspended my practice upon entering graduate school.²³⁷ I also had a pragmatic consideration related to my fieldwork: I was

²³⁶ *National Bar Council of Poland, Resolution of the National Bar Council Concerning a Set of Ethical Principles and Professional Dignity for Attorneys* (Resolution No. 2/ XVIII/98; Resolution No. 32/2005). (Warsaw: Naczelna Rada Adwokacka, 1998/2005).

²³⁷ In Poland, only practicing attorneys can undertake valid legal representation for their clients.

granted access to research sites only after months of negotiation, an access that remained fragile. I was also aware of the significance of procedural formalism in legal institutions, where documentary evidence counted more than the hearsay commentary of a researcher. These professional and institutional constraints intersected in complex ways, contributing to my ethical dilemma and challenging my ability to directly intervene in cases.

Institutional ethnography is useful in approaching my analytically-experienced fieldwork dilemmas. By analyzing the organization of IE research processes, and the ethical dilemmas that may emerge in the fieldwork context, we can gain valuable insight into governing relations.²³⁸ For example, while I initially saw my roles as ‘researcher’ and ‘professional’ as conflicting, the close analysis of my dilemmas revealed that, in both of my roles, ethical standards reinforced my standing as a professional and an agent of certain institutions *against* my standing as an *ad hoc* attorney of the rights of the committed person. Serving “as a mechanism for endorsement and quality assurance,”²³⁹ professional standards are connected to broader social and legal relations. In both of my roles, I had internalized this kind of professional accountability, whether to my university or the bar association, that conflicted with my commitment to the people undergoing involuntary admission. Restraining myself from *ad hoc* intervention, I sacrificed my ability to help, even though I had the knowledge and skills to do so.

While fieldwork experience illuminates specific ethical challenges that researcher-professionals might face in pursuing their institutional ethnographic fieldwork, the implications of one’s professional background are not sufficiently addressed in the IE

²³⁸ Nichols, “Investigating the Social Relations”.

²³⁹ Jonathan Tummons, “Professional Standards in Teacher Education: Tracing Discourses of Professionalism through the Analysis of Textbooks,” *Research in Post-Compulsory Education* 19, no. 4 (2014): 418.

scholarship. I see addressing this lacuna as an imperative, particularly since institutional ethnography is especially attractive to researchers with professional backgrounds, because it assists them in understanding their workplace worlds and the problems that arise therein.²⁴⁰ Yet in IE, the professional background of a researcher, with all the experience and knowledge it involves, is only seen as an experiential site from which to launch inquiry. My fieldwork experience and subsequent analysis problematizes this selective attention, prevalent among institutional ethnographers, to researchers' professional backgrounds. I have documented that a researcher's professional background is an important element of her presence in the field, carrying methodological and ethical significance for the research practice. This professional background creates "conditions and restraints under which [research] is produced."²⁴¹ One does not stop being a professional when one becomes a researcher. Institutional ethnography, as a mode of inquiry, needs more discussion about the pragmatics of working in the field.

2.4 – Conclusion

This chapter presented the design and process of my research. Institutional ethnography is more than a methodology; I have therefore chosen to conceive of it as a 'method of inquiry.' I discussed its epistemological, ontological, and axiological tenets extensively, and showed its engagement with these tenets by deliberately adopting a unique structure for this chapter, rather than dividing it into the standard 'methodology,' 'methods,' 'data collection,' and 'data analysis' sections.

²⁴⁰ Campbell and Gregor, *Mapping Social Relations*, 18-23, 104-110.

²⁴¹ Natasha S. Mauthner and Andrea Doucet, "Reflexive Accounts and Accounts of Reflexivity in Qualitative Data Analysis," *Sociology* 37 (2003): 424.

IE has only recently been used to study legal processes and legal practices. Nevertheless, I argued that IE can provide socio-legal scholars with the empirical tools necessary to explore law as an everyday practice. This exploration merges the macro and micro aspects of law in a way that is attentive to power relations; departs from the current analytical distinction between ‘law in texts’ and ‘law in action;’ and surfaces the knowledge-productive qualities of legal subjects through their engagement with texts (including legal texts). Socio-legal scholars should consider constructively adopting institutional ethnography in their studies—but they must do so while grappling with the limits that IE as alternative sociology, intrinsically linked to social sciences and to a sociological conceptualization of law, may have.

In the next chapter I introduce and discuss the *Mental Health Protection Act, 1994*—the legal text that is the major legislation governing involuntary emergency admissions in Poland. The *MHPA* provides a regulatory frame and procedures for what can be considered a ‘legally valid’ process of admission to a psychiatric facility.

Chapter 3 – The *MHPA*: Provisions on Emergency Involuntary Admission to Psychiatric Facilities and the Right to Representation

3.1 – Introduction

In Poland, the law under which emergency involuntary admission decision-making is subsumed is the *Mental Health Protection Act (MHPA)*. The *MHPA* was enacted on August 19, 1994, and came into force on January 22, 1995, replacing the *Instruction of Minister of Health and Social Welfare Concerning Admission and Discharge from Psychiatric Hospitals 1952 (the Instruction 1952)*.²⁴²

The *MHPA* is an outcome of more than two decades of mental health reforms that began in Poland in the late 1960s. These reforms, however, only gained momentum when a new generation of Polish psychiatrists became institutionally involved in their drafting, adopting solutions for organizing psychiatric admissions that resembled those in other Western countries. These young psychiatrists, like their Western counterparts, aimed to change the regulations that granted medical professionals omnipotence in psychiatric facility admissions decisions (under the so-called ‘medical model’) by substituting them with a law changing this institutional arrangement (i.e., by the adoption of a ‘legal model’). There are at least two variations of the legal model. In one, the admission decision is made by a constituency independent from psychiatry (e.g., the judiciary or a committee); in the other, psychiatrists make the admission decision, which then undergoes judicial review.²⁴³

²⁴² *Instruction of the Minister of Health Concerning Admission and Discharge of the Sick People from Psychiatric Hospitals of December 10, 1952 [Instrukcja Ministra Zdrowia w Sprawie Przyjmowania i Wypisywania Chorych ze Szpitali Psychiatrycznych z Dnia 10 Grudnia 1952 Roku]* (“Instruction 1952”), Official Journal of the Minister of Health and Social Welfare no. 24, item 240 (1953).

²⁴³ Arrigo, “Paternalism”; Jennifer Brown, “The Changing Purpose”.

Both variations adopt rights-based solutions, according to which the protection of the rights of a person subjected to involuntary admission is meant to be an end product of a legal procedure, while the realization of their procedural rights was a means for achieving this end.²⁴⁴

The latter of the two variations (utilizing judicial review), also called the ‘medico-legal model,’ was the one ultimately adopted by the *MHPA*. Moreover, patients of psychiatric facilities were recognized as rights-bearers who, equipped with procedural rights, could “demand and obtain” their substantive rights by their own effort, when engaged in the legal procedure for adjudicating their involuntary admission.²⁴⁵ When finally ratified, the *MHPA* was proclaimed within both medical and legal communities as a major advancement in the functioning of psychiatry, and in the protection of the rights of persons who use or are subjected to psychiatric services.²⁴⁶

Indeed, when compared to laws from other national jurisdictions, the Polish *MHPA* provides an extensive and multilevel institutional system for controlling psychiatric decisions. Yet, similar to foreign legislation, the *MHPA* is grounded in and reflective of certain regulatory frames and institutional discourses. These orient the practices of Polish professionals involved in the processing of involuntary admissions in a way that, to some extent, resembles practices found in other jurisdictions.²⁴⁷ Just to mention a few: a high percentage of psychiatric emergency admission decisions are confirmed after an external

²⁴⁴ Arben, “A Commentary”; Arrigo, “Paternalism”; Collins, “Camouflaged Legitimacy”; Rose, “Law, Rights and Psychiatry”.

²⁴⁵ Rose, “Law, Rights and Psychiatry,” 184.

²⁴⁶ Warren, *The Court of Last Resort*.

²⁴⁷ For example, some similar practices related to lawyering work or the organization of involuntary admission hearing are described by Burstow, who conducted ethnographic research in Ontario Courts. Also, a number of professional practices recorded by Warren, who conducted her research in California’s courts in the 1980s, resemble my findings. Burstow, *Psychiatry and the Business of Madness*, 101-141; Warren, *The Court of Last Resort*.

authority's review (various researchers found a confirmation rate of at least 95 percent);²⁴⁸ involuntary admission hearings are of a short duration, usually lasting just a few minutes;²⁴⁹ and lawyers representing admittees are frequently absent.²⁵⁰

In this chapter, I explore the frames and institutional discourses embedded in the text of the *MHPA* that affect the regulation of emergency involuntary admissions. Following Dorothy E. Smith, I suggest that these legal normative frames and legal discourses are not ideologically neutral, but rather political. Smith argues that “[i]nstitutional discourse is designed, and the processes of design are essentially political; that is they concern the forms of power that emerge in institutional regimes.”²⁵¹ As I demonstrate, the *MHPA* emerged at the intersection of ideology, economy, and the pragmatic professional interests of psychiatrists involved in mental health reforms, and its design is reflective of and instrumental to the realization of these interests. Thus, in this chapter, I do not simply outline the law for emergency involuntary admission; I also describe the politics inherent and essential to the new mental health law's categories, terms, and legal technicalities.

This chapter is organized in the following way: in the first section, I briefly outline the Polish mental health reforms and link them to professional and economic interests invested in the ratification of the new mental health law. In the second section, I discuss substantive and procedural provisions for emergency involuntary admission in the *MHPA*, as well as the inter-textual relationship of the *MHPA* with other legal acts pertaining to

²⁴⁸ Warren, *The Court of Last Resort*; Pearson, “The Effect of Clinical Judgement”.

²⁴⁹ Burstow, *Psychiatry and the Business of Madness*, 101-141; Warren, *The Court of Last Resort*.

²⁵⁰ Warren, *The Court of Last Resort*; Arben, “A Commentary”; Bruce A. Arrigo and Christopher R. Williams, “The Ethics of Advocacy for the Mentally Ill: Philosophic and Ethnographic Considerations,” *Seattle University Law Review* 24, no. 2 (2000).

²⁵¹ Dorothy E. Smith, *A Sociology for People*, 120.

processing involuntary admission cases. I consider these three to be elements of the regulatory frame set by the *MHPA*, which influences what knowledge can be produced in the context of involuntary admission, who can produce it, and how it is produced. In the third section, I expand my discussion of procedural rights and the regulatory frame by focusing on Article 48 of the *MHPA*, which establishes a right to legal assistance for admittees, and how the Supreme Court in Poland has interpreted this right to representation.

3.2 – Polish Mental Health Reforms: Professional & Economic Interests

Polish mental health reforms emerged alongside waves of similar developments across North America and Western Europe, beginning in the mid-twentieth century.²⁵² Great Britain was one of the first nations to undertake civil commitment reforms, which received broad attention in other regions, including North America.²⁵³ Accordingly, at the end of 1960s and the beginning of 1970s, a number of European countries began implementing similar reforms, including Belgium, the Netherlands, Sweden, France, and Austria, among others.²⁵⁴ While predominantly heralded as a response to extensive psychiatric abuses of the mentally ill, evidenced in the previous decades, critical scholars maintain that mental health reforms have ideological, political, and economic roots.²⁵⁵ In

²⁵² Marek Balicki, Stefan Lader, and Andrzej Piotrowski, “Focus on Psychiatry in Poland: Past and Present,” *British Journal of Psychiatry* 177 (2000); Agnieszka Zajackowska, “New Paradigm, Same Dilemma: Civil Commitment Reforms in Poland (1997-1994),” MA thesis, Simon Fraser University, 2011.

²⁵³ Rose, “Law, Rights and Psychiatry”; Larry O. Gostin, “The Draft Mental Health Act of Poland and the Mental Health Act of England and Wales Compared and Analyzed,” *International Journal of Law and Psychiatry* 1, no. 2 (1978).

²⁵⁴ Rose, “Law, Rights and Psychiatry”; Warren, *The Court of Last Resort*; Winick, “Therapeutic Jurisprudence”; Johannes Legemaate, “Legal Protection in Psychiatry: Balancing the Rights and Needs of Patients and Society,” *European Psychiatry* 13, no. s3 (1998).

²⁵⁵ For an extensive discussion of the links between the economy and changes to mental health laws in the US jurisdiction see Collins, “Camouflaged Legitimacy”.

a number of countries, including Canada and the United States, these reforms were linked to the state's fiscal problem of financing psychiatric hospitals and in-patient services.²⁵⁶

Yet the interests of some professional groups—including civil-minded lawyers, legal researchers, and psychiatrists—also propelled these reforms and shaped the design of new mental health laws.²⁵⁷ For example, American sociologist Carol A.B. Warren, who studied involuntary commitment in California, argued that changes to mental health in that state reflected, among other things, the political ambitions of some members of the legislature, but also the pragmatic interests of professionals working in the mental health system.²⁵⁸ While Polish reforms emerged in different political and economic circumstances—Poland being a socialist country at the time and thus committed to socialized medicine²⁵⁹—the economic and professional interests of a young generation of Polish psychiatrists underpinned and guided them.²⁶⁰ Ultimately, the new Polish mental health law was intended not only to ensure that problematic practices around involuntary admission were eliminated, or at least limited so that nobody was admitted unnecessarily, but also to provide legal and administrative grounds for the ‘modernization’ and expansion of psychiatric professional practices in Poland, advancing Polish psychiatry as a field.²⁶¹

²⁵⁶ Arrigo, “Paternalism”; Collins, “Camouflaged Legitimacy”; Warren, *The Court of Last Resort*.

²⁵⁷ Warren, *The Court of Last Resort*; Arben, “A Commentary”.

²⁵⁸ Warren, *The Court of Last Resort*.

²⁵⁹ When Polish reforms began, political and economic changes loosened the totalitarian organization of the Polish state. Some engagement with Western ideas was permitted, while exchanges between students and academic faculty began to flourish. Shields argues these exchange programs shaped “the framework in which the [economic] transition model was embedded when Poland transformed from a socialist to a neoliberal economy.” Stuart Shields, “Transnational Social Forces and the Configuration of Polish Transition: Neo-Liberalism Revisited,” *Irish Studies in International Affairs* 12, no. 1 (2001), 22, 30.

²⁶⁰ Before these psychiatrists became involved in mental health reforms at the beginning of the 1970s, some reformatory efforts had already been undertaken by state agencies, responding to the problem of the underfunding of psychiatric services and the associated poor condition of facilities, and to reform provisions related to admission to psychiatric hospitals. Stanisław Dąbrowski, “Major Issues in the Polish Mental Health Legislation Draft Proposal,” *International Journal of Law and Psychiatry* 1, no. 2 (1978).

²⁶¹ Zajaczkowska, “New Paradigm, Same Dilemma”.

A new generation of psychiatrists was the force behind mental health reforms in Poland,²⁶² their main champion being a young psychiatrist named Stanisław Dąbrowski, while this group also greatly influenced the design of the *MHPA* (albeit subjected to some substantive changes and revisions from governing bodies and other external constituencies, at various stages of its drafting, as I discuss below).²⁶³ The main objective that these young psychiatrists set for mental health reforms was to substitute the *Instruction 1952* with a new law that would not only regulate involuntary admission, but also to cover all matters related to the functioning of psychiatry and the organization of psychiatric services.²⁶⁴ This included regulations related to the reorganization of psychiatric care delivery, rehabilitation of people suffering from mental illness, and the coordination of a broad range of activities related to the promotion of mental health care.”²⁶⁵ At the time of the reforms, psychiatric care was not considered, by other medical practitioners, as either specialized or scientifically sound.²⁶⁶ Moreover, psychiatric services were poorly funded by the state, leaving psychiatric wards underequipped.²⁶⁷ This, as reformers argued, negatively impacted the quality of care received by psychiatric patients.²⁶⁸

²⁶² At the beginning of the 1970s an independent interdisciplinary Commission of Experts was formed, tasked with drafting the text of the new mental health law. While the committee consisted predominantly of young psychiatrists (who adopted and championed their Western European and North American counterparts’ vision for mental health reforms, and were the force behind the progress of the reforms), at various times judges, lawyers, and other groups interested in the new laws were invited to participate (for instance, to broaden the support for mental health reforms). Criticizing these changes as conservative and narrow, the younger generation of Polish psychiatrists proposed changes modelled on those adopted abroad.

²⁶³ Zajaczkowska, “New Paradigm, Same Dilemma”.

²⁶⁴ Notably, the *Instruction 1952* only regulated the procedure for psychiatric admission and for discharge from psychiatric facilities.

²⁶⁵ Zajaczkowska, “New Paradigm, Same Dilemma,” 75; Andrzej Kiejna, “Transformation in Health Care Services in Poland,” *European Psychiatry* 12, no. s2 (1997).

²⁶⁶ Balicki, Lader, and Piotrowski, “Focus on Psychiatry”.

²⁶⁷ *Ibid.*; Dąbrowski, “Major Issues”.

²⁶⁸ Balicki, Lader, and Piotrowski, “Focus on Psychiatry”; Dąbrowski, “Major Issues”.

The new law seemed to be an essential device for achieving financial and professional stability. With it, psychiatrists hoped to impose certain financial obligations on the state, namely funding psychiatric services from a pool of money specifically designated for psychiatry. They also aimed to distinguish their field from other medical specializations by having a separate law for psychiatric services, ratified as a recognition of the different needs of psychiatric patients and the unique nature of psychiatric practices. Regarding the latter, Dąbrowski argued that “Psychiatry is a specific medical field as it its functioning involves coercion.”²⁶⁹ Thus,

The general principles regarding the examination, treatment and rehabilitation of mentally disturbed individuals [...] that define the legal contours of the physician-patient relationship in order to safeguard the constitutional rights of individuals as well as the ethical mandate of medical professionals [...] require that they be expressed in a mental health act because, even though they are commonly applied to the general population of patients, their application to mentally disturbed individuals is contested in the practice of psychiatric hospitals and [these general principles] have often been ignored.²⁷⁰

The need for the differentiated treatment of psychiatric patients was not, however, shared widely within the Polish psychiatric community. Neither was the sense of a need for a new law. For example, the older generation of psychiatrists saw the *Instruction 1952* as sufficiently protecting the rights of persons encountering psychiatric services, specifically because it did not differentiate voluntary from involuntary admissions and therefore did not ostracize the involuntarily admitted.²⁷¹ In fact, the *Instruction 1952* was

²⁶⁹ Stanisław Dąbrowski, “Introduction” [“Wprowadzenie”] in *The Mental Health Protection Act: Commentary [Ustawa O Ochronie Zdrowia Psychicznego - Komentarz]*, ed. Stanisław Dąbrowski and Janusz Pietrzykowski (Warszawa: Instytut Psychiatrii Sadowej, 1997).

²⁷⁰ Dąbrowski, “Major Issues,” 130.

²⁷¹ To make a claim about the character of the Polish *Instruction 1952*, I use Rose’s insights. Rose, “Law, Rights and Psychiatry,” 184.

based on the principles of ‘preventive social medicine,’ and therefore did not differentiate any procedures for voluntary treatment from those for involuntary treatment. The *Instruction 1952* enacted a flexible system of admission and discharge, similar to the one applied to physical illnesses, in order to encourage people to use psychiatric services. Mental and physical illnesses were treated alike, without additional formalities governing involuntariness.²⁷²

Dąbrowski attributed the resistance of his older peers to their unwillingness to give up discretionary power, and thus to modernize psychiatry. He promoted the rights-based solutions as a means of eliminating discretionary thinking (which, in Dąbrowski’s opinion, was reflective of psychiatric paternalism).²⁷³ To realize this objective, reformers invoked both national and international regulations requiring statutory regulation for all forms of deprivation of liberties.²⁷⁴ The *Constitution 1952* stated that one’s personal liberty could only be violated under conditions established by law.²⁷⁵ In the 1990s, the statutory requirement for the deprivation of liberty was also transferred into Article 87 of the *Provisional Constitution*.²⁷⁶ Additionally, with Poland’s ratification of the *International Covenant on Civil and Political Rights* in 1977, and of the *European Convention for the*

²⁷² Ibid.

²⁷³ Dąbrowski, “Major Issues”.

²⁷⁴ Ibid.; Balicki, Lader, and Piotrowski, “Focus on Psychiatry”.

²⁷⁵ *Constitution of the Polish People’s Republic of July 22, 1952* [Konstytucja Polskiej Republiki Ludowej z Dnia 22 Lipca 1952 Roku] (“Constitution 1952”), in 1952 Journal of Laws, no. 33, item 232.

²⁷⁶ *Constitutional Act on the Relationship Between Legislative and Executive Power of the Polish Republic and Territorial Government of October 17, 1992* [Ustawa Konstytucyjna o Wzajemnych Stosunkach Pomiędzy Władzą Ustawodawczą I Wykonawczą Rzeczypospolitej Polskiej Oraz o Samorządzie Terytorialnym] (“Provisional Constitution”), in 1992 Journal of Laws, no. 84, item 426; Stanisław Dąbrowski and Janusz Pietrzykowski, “Preface” [“Od Autorów”], in *Ustawa O Ochronie Zdrowia Psychicznego: Komentarz* [the Mental Health Protection Act: A Commentary], ed. Stanisław Dąbrowski and Janusz Pietrzykowski (Warszawa: Instytut Psychiatrii Sadowej, 1997), 16.

Protection of Human Rights and Fundamental Freedoms in 1994,²⁷⁷ the need to comply with convention obligations further bolstered the reformers' insistence on the formalization of involuntary admission procedures by way of a separate legislative act.

Arguing that involuntary admission belongs to the category of 'deprivation of liberty,' reformers claimed that the *Instruction 1952* was a governmental instrument not ratified by legislation and thus did not meet the required criteria.²⁷⁸ The *Instruction 1952* was a low-ranked regulation—an administrative provision.²⁷⁹ The lack of a mental health law was discussed as a significant and shameful gap in the Polish legal system that did not significantly protect the rights of the most vulnerable, such as people suffering from mental illness.²⁸⁰ Moreover, reformers evoking Poland's international obligations raised the argument that this state of unlawfulness carried potential financial ramifications for Poland, since involuntary commitments that reached international rights tribunals would be found to have an illegal basis.²⁸¹

²⁷⁷ Poland joined the Council of Europe in 1990, and four years later officially ratified the *Convention for the Protection of Human Rights and Fundamental Freedoms*. According to Article 5-1 of the *Convention*, a person can be deprived of liberty only within the procedures prescribed by law. Gerard Niveau and J Materi, "Psychiatric Commitment: Over 50 Years of Case Law from the European Court of Human Rights," *European Psychiatry* 22 (2007): 60; Dąbrowski and Pietrzykowski, "Preface," 16. *International Covenant on Civil and Political Rights*, United Nations 1976 Treaty Series 999, no. 14668 (16 December 1966); *Protocol 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby*, Council of Europe 1994 European Treaty Series 155 (11 May 1994).

²⁷⁸ Dąbrowski and Kubicki, "Introduction"; Lech K. Paprzycki, "Wprowadzenie" ["Introduction"], in *The Mental Health Protection Act [Ustawa O Ochronie Zdrowia Psychicznego]* (Krakow: Kantor Wydawniczy Zakamycze, 1996); Dąbrowski, "Introduction"; Senat Rzeczypospolitej Polskiej, *Patient's Rights in the Mental Health Protection Act [Prawa Pacjenta W Ustawie Psychiatrycznej]* (seminar held 5 September 1994) (Warsaw: Biuro Studiów i Analiz Kancelarii Senatu, 1994).

²⁷⁹ In the Polish legal system, an 'instruction' is a source of law that regulates the administrative functioning of institutions. It does not have the same status as a legal source that can establish restrictions on citizens' rights and obligations, which can only be ratified by legal acts of Parliament.

²⁸⁰ Senat Rzeczypospolitej Polskiej, *Patient's Rights*.

²⁸¹ In the Polish legal system, treaties ratified by Parliament become a part of that legal system and thus are legally binding for Polish authorities and for citizens. They establish grounds for legal claims against the state for not following up with their international obligations.

Some of the reformers' initial objectives were dropped, either because Poland's transition to neoliberalism and a market economy found the state unwilling to finance health services to the degree that it had done under socialized medicine, or because some concerns had already been incorporated into other acts. For example, the *Act on Health Care Centres* included regulation of patients' rights, as well as regulation of the doctor-patient relationship, and competed with proposed, 'essential' rights provisions in the new mental health law.²⁸² Nonetheless, the *MHPA* still encompasses a range of issues related to the delivery of psychiatric services, and sets a foundation for its financing and potential expansion. Its provisions include an extensive section on the treatment, rehabilitation, care of, and assistance for psychiatric patients, including the state's responsibility for promoting and protecting mental health (in Chapter 3); and a section on admission to social assistance services (in Chapter 4). Further, Chapter 3 contains a section on voluntary and involuntary admission and proceedings at the family and guardianship courts, while Chapter 5 features a subsection on admissions to psychiatric hospitals.

The *MHPA* has been modified several times since its ratification, including both new clauses and amendments to the original provisions. Some of the amendments include: provisions on the objectives and functioning of the National Program for the Protection of Mental Health (amended in 2009);²⁸³ a definition of direct coercion (added in 2011);²⁸⁴

²⁸² *Act on Health Care Centres of August 30, 1991* [Ustawa o Zakładach Opieki Zdrowotnej z Dnia 30 Sierpnia 1991 Roku], in 1991 Journal of Laws, no. 91, item 408.

²⁸³ *Act on the Amendment to the Mental Health Protection Law of July 23, 2008* [Ustawa o Zmianie Ustawy o Ochronie Zdrowia Psychicznego z Dnia 28 Lipca 2008 Roku], in 2008 Journal of Laws, no. 180, item 1108.

²⁸⁴ *Act on Patients' Rights and on the Ombudsperson for Rights of Patients of a Psychiatric Hospital of July 1, 2005* [Ustawa o Prawach Pacjenta i Rzeczniku Praw Pacjenta Szpitala Psychiatrycznego] ("Act on Ombudsperson for Psychiatric Patients' Rights"), in 2009 Journal of Laws, no. 76, item 641; *Provisions Introducing Law on Protection of Patients' Rights and Ombudsperson of Patients' Rights, Law on the Accreditation in Health Care and Law on the Consultation in Health Care* [Przepisy Wprowadzające

provisions regarding assistance to patients in protecting their rights and on the establishment and functioning of the Office of the Ombudsperson of Rights of Patients of Psychiatric Hospitals (added in 2009);²⁸⁵ and provisions on admission without a referral and of those unable to consent (amended in 2011).²⁸⁶

The political nature of the *MHPA*, however, not only rests in the professional and economic interests that undergirded its ratification, but also in the institutional discourse embedded in its provisions. These would go on to govern how the *Act* would be taken up and operationalized in local settings, by the people who read and used it.

3.3 – Elements of the Regulatory Frame for Involuntary Emergency Admission under the *MHPA*

3.3.1 – Substantive Grounds for Involuntary Emergency Admission

The *MHPA* differentiates two types of admission to psychiatric facilities: voluntary (Article 22) and involuntary (Articles 23, 24, and 29). Involuntary procedures are further classified into emergency involuntary admission (Articles 23 and 24) and involuntary admission based on a court order (Article 29). These two types of involuntary admission—emergency and court-ordered—have different substantive grounds and follow separate and distinct legal procedures. Only those based on Articles 23 and 24 are

Ustawę o Ochronie Praw Pacjenta i Rzeczniku Praw Pacjenta, Ustawę o Akredytacji w Ochronie Zdrowia oraz Ustawę o Konsultacjach w Ochronie Zdrowia, in 2009 Journal of Laws, no. 76, item 817.

²⁸⁵ *Act Introducing Law on Protection of Patients' Rights and Ombudsperson of Patients' Rights, Law on the Accreditation in Health Care and Law on the Consultation in Health Care of April 24, 2009* [Przepisy Wprowadzające Ustawę o Ochronie Praw Pacjenta i Rzeczniku Praw Pacjenta, Ustawę o Akredytacji w Ochronie Zdrowia oraz Ustawę o Konsultacjach w Ochronie Zdrowia z Dnia 24 Kwietnie 2009 Roku] (“Act on Ombudsperson”), in Journal of Laws 2009, no. 76, item 817.

²⁸⁶ *Act on the Amendment to the Mental Health Protection Law*.

considered ‘emergency admissions.’²⁸⁷ This dissertation explores involuntary admission procedures based on these two provisions.

The specific *MHPA* regulation pertaining to substantive grounds for emergency involuntary admission reads as follows:

Art. 23.1. A mentally ill person may be admitted to a psychiatric hospital without the consent specified in Article 22 only when her or his behaviour to date indicates that, due to illness, she or he directly endangers her or his life or the life and health of other people.

Art. 24. 1 A person, whose behaviour to date indicates that this person, because of mental disturbance, directly endangers her or his life or the life and health²⁸⁸ of other people, and where there are concerns about whether this person is mentally ill, she or he can be admitted to a psychiatric hospital without the consent specified in Article 22, in order to resolve such doubts.

To justify involuntary emergency admission, Article 23 requires the coexistence of mental illness and dangerousness, while Article 24 requires the coexistence of mental disturbance and behaviour dangerous to one’s own life or to the health and lives of others.²⁸⁹ In both cases, the conditions of mental illness/mental disturbance and related dangerous behaviour must be met in conjunction. Thus, in the construction of the substantive grounds for emergency involuntary admission, the *MHPA* departed from a singular, complex criterion, such as those combining ‘medical and behavioral’ warrants (substantive standards) for the purpose of emergency involuntary admission.²⁹⁰ Socio-legal scholar Robert Brooks, who

²⁸⁷ Balicki, Lader, and Piotrowski, “Focus on Psychiatry”.

²⁸⁸ Neither the provisions of the *MHPA*’s Article 23 nor of Article 24 include threats to others’ lives as a ground for emergency admission.

²⁸⁹ Neither provision includes threats to one’s own health as grounds for the restriction of a person’s liberty by the state.

²⁹⁰ Stanisław Dąbrowski and Leszek Kubicki, *The Mental Health Protection Act: An Overview of Major Issues [an Ustawa O Ochronie Zdrowia Psychicznego: Przegląd Ważniejszych Zagadnień]* (Warszawa: Instytut Psychiatrii i Neurologii, 1994), 34.

researched civil commitment laws in thirty-two different jurisdictions, found that, while specific warrants for involuntary admission varied, a two-tier admission criteria was generally adopted across legislations. These two-tier criteria, as a restriction intended to curb involuntary admissions, emerged during mental health reforms in Poland and elsewhere based on the claim that a single criterion allowed for overbroad psychiatric discretion.²⁹¹ These double-tier criteria are now treated as elements of ‘good practice,’ against which safeguards of the rights of involuntarily admitted persons are assessed.²⁹²

While ‘mental illness,’ ‘mental disturbance,’ or ‘dangerousness’ feature as warrants for emergency involuntary admission, the *MHPA* does not provide a specific definition for any of these terms. This legislative move was justified by appeals to the ever-evolving nature of knowledge about mental illness, itself tied to the progression of psychiatric understanding.²⁹³ Instead of fixing these definitions in a normative act, the *MHPA* provides a sort of guideline (or signposts) for assessing who should be considered ‘a person with mental disturbances’ (Article 3, clause 1). The choice of ‘a person with mental disturbances’ as an overarching term linking the provisions related to psychiatric admission was based on the argument that it refers to a broader category of psychiatric disorders than ‘mental illness.’²⁹⁴ Accordingly, Article 3, clause 1 of the *MHPA* states that whenever provisions of the statute refer to a person with mental disturbances, they are referring to a person who is:

²⁹¹ Arrigo, “Paternalism”; Arben, “A Commentary”.

²⁹² Fistein et al., “A Comparison of Mental Health Legislation”. Other elements include, for example, therapeutic aim, review process, etc. Kallert, Rymaszewska, and Torres-Gonzales, “Differences of Legal Regulations”.

²⁹³ Piotr Galecki, Kinga Bobinska, and Krzysztof Eichstaedt, *Commentary to the Mental Health Protection Act [Ustawa O Ochronie Zdrowia Psychicznego. Komentarz]* (Warszawa: LexisNexis, 2013).

²⁹⁴ Juliusz Duda, *Commentary to the Mental Health Protection Act [Komentarz Do Ustawy O Ochronie Zdrowia Psychicznego]* (Warszawa: LexisNexis, 2009); Senat Rzeczypospolitej Polskiej, *Patient’s Rights*.

- a) mentally ill (exhibiting psychotic disturbances);
- b) intellectually disabled; or
- c) exhibiting other disturbances in a psychological functioning, which according to the state of current knowledge are included in mental disturbance, and the concerned person requires medical assistance or access to health care and other forms of social assistance for functioning in social and family environments.

Juliusz Duda notes that the *MHPA* establishes three categories of *subjects* to which the term ‘person with mental disturbances’ refers.²⁹⁵ Through this categorization, the *MHPA* does what prominent Canadian anti-psychiatry scholar Bonnie Burstow observed in her analysis of Ontario’s *Mental Health Act*, that “perception on the part of the physician [whether one has a mental disturbance] is turned into a quality of a patient, which in turn is ascribed causal power such that it can ‘result in’ for instance, ‘serious bodily harm.’”²⁹⁶ This technical manoeuvre carries significant implications for detecting and diagnosing potential mental disturbance, as it converts something that is invisible (as it is in the biomedical model of brain disorders underlying mental illness) into an observable quality,²⁹⁷ and even more so when it is linked to ‘dangerousness’ understood as acts of aggression, such as jumping out a window, throwing a heavy object, etc.²⁹⁸ Here, ‘dangerousness’ is associated with an observable instance of an action that is decontextualized, potentially singular in occurrence, and of an unknown qualitative severity.

Yet, as is emphasized in commentaries to the *Mental Health Protection Act*, the classification of a person into one of the three categories, and thus the act of observing,

²⁹⁵ Duda, *Commentary*.

²⁹⁶ Burstow, *Psychiatry and the Business of Madness*, 108.

²⁹⁷ *Ibid.*

²⁹⁸ Duda, *Commentary*.

requires specialist understanding—and all the more as the *MHPA* requires a constant check against the current state of psychiatric knowledge. This specialized knowledge, in turn, requires the ability to engage with current psychiatric classification systems, such as the DSM or ICD-10,²⁹⁹ to demonstrate that “other disturbances in a psychological functioning [...] are included in mental disturbance” (Article 3, clause 1 (c) of the *MHPA*). Notably, “a diagnostic test based on functional impairment and symptoms, informed by the ICD-10” is suggested “to produce threshold criteria for the protection of people who may be subject to involuntary psychiatric treatment.”³⁰⁰

My aim is not to contest whether mental illness exists, or how categories of psychiatric knowledge are constructed, but rather to show that these legal terms, delivered from a psychiatric epistemology, are inherently political, and that legal terms and legislative technicalities are sites of knowledge-making.³⁰¹ In the absence of normative definitions of terms used as warrants for emergency involuntary admission, psychiatric knowledge enters as an essential and mandatory element of legal procedure for involuntary admission. This also validates the tools through which such a determination can be made. The presence of normative definitions might constitute or trigger substantive changes, yet

²⁹⁹ The acronym DSM stands for *Diagnostic and Statistical Manual of Mental Disorders*, 5th Revision, while ICD-10 is the *International Classification of Diseases*, 10th Revision. I will engage closely with ICD-10 in Chapter 6, Section 3, presenting a list of diagnostic categories of mental disorders. While some Polish psychiatrists promote broader incorporation of the DSM into institutional practice, others oppose it as imposing specifically North American standards. Differences in opinion can be linked to the specific geographical location of a given facility and the adopted view in the academic institution in which a given practitioner was trained (*Competences in Law and Psychiatry Conference*, Warsaw, 2008). In my research site, prominent clinicians who are also faculty of the local medical university adopted a strong stance against the use of DSM in the Polish context. I observed the both the difference and its local specification through my participation, as well through listening to audio recordings of legal-psychiatric conferences in Poland (2008-2013).

³⁰⁰ Fistein et al., “A Comparison of Mental Health Legislation,” 154.

³⁰¹ Leticia Barrera, “Disputable Means: Pragmatic Knowledge Practices in Sovereign Debt Agreements. Reflections on the Argentinian Case,” in *Pragmatics and Law. Perspectives in Pragmatics*, ed. Francesca Poggi and Alessandro Capone (Switzerland: Springer International, 2017).

they would establish a certain authoritative position vis-a-vis psychiatric experts' opinions in the context of admission proceedings.

3.3.2 – Procedures for Decision-Making and Reviewing Admission Decisions

Reformers emphasized procedural rights as remedies that could enhance the capacity of people deemed mentally ill to effectively challenge the legal grounds of psychiatrists' decisions and, to some extent, minimize the power imbalance between psychiatrists and patients in psychiatric facilities.³⁰² Accordingly, the *MHPA* introduced numerous procedural provisions for psychiatrists making decisions regarding involuntary psychiatric admissions, as well as mechanisms for those reviewing the legality of such decisions (i.e., the psychiatrist's supervisor and judges). These provisions are located in Chapters 3 and 5 of the *MHPA*. Article 23 regulates the procedure for a psychiatrist's decision-making, the review of this decision by the director of the facility, and an initial visit of a district court judge for a prehearing with the admitted person. Article 23 reads as follows:

Article 23.2. Regarding an admission [...], a decision is made by a designated doctor after she or he has conducted an examination [of the admittee], and after she or he has sought, in her capacity, the opinion of a second psychiatrist or psychologist.

3. The doctor referred to in clause 1 [of this article] is obliged to explain to the sick person the reasons for her or his admission to the psychiatric facility without consent and to inform this person about her or his rights.

³⁰² Dąbrowski, "Major Issues".

4. The admission to the hospital discussed in clause 2 [of this article], requires confirmation by the director of the facility or by a doctor-supervisor of the ward within 48 hours of the time of admission. Within 72 hours of the time of admission, the director of the facility or a doctor-supervisor of the ward must inform the family division of the relevant district court, to which legal jurisdiction over the facility belongs, about the admission.

This article is applied to an admission based on Article 24, with one exception: that the commitment of a person admitted for an observation cannot be longer than ten days.

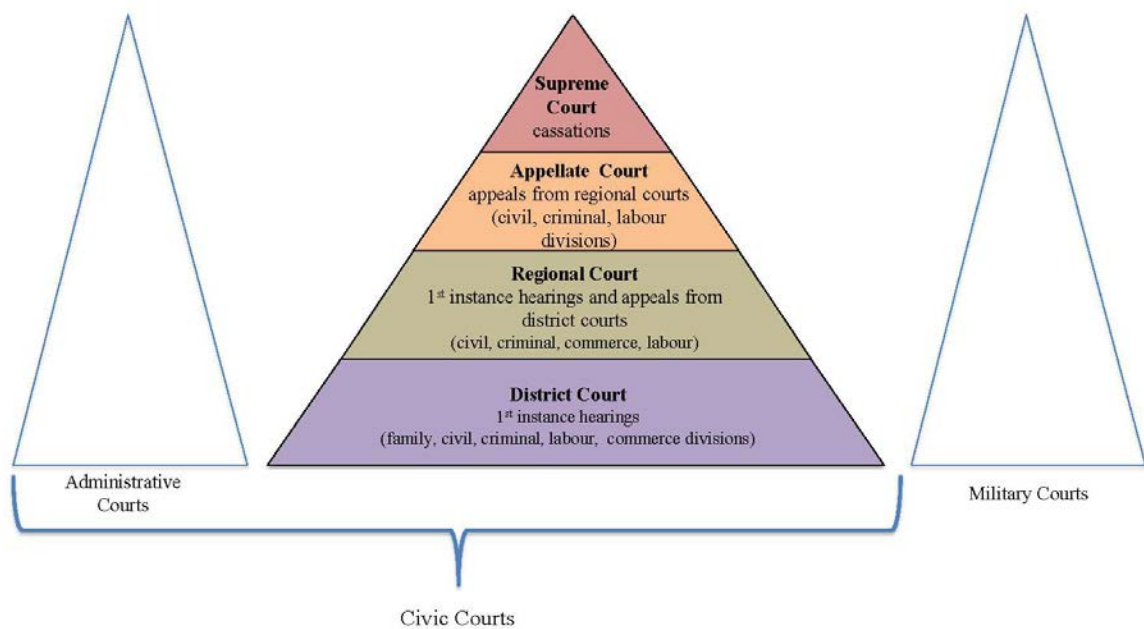


Figure 3.1: The Polish Court System

Article 23 provides strict procedural guidance to psychiatrists issuing admissions decisions. To begin with, the psychiatrist who contemplates an emergency involuntary admission should personally examine the individual they are seeking to admit, and should also seek the opinion of another psychiatrist or psychologist on the matter (clause 2). Psychiatrists must explain to patient the grounds for their admission, as well as their rights (clause 3). Once a decision is made, the admitting psychiatrist needs to inform their

superior—that is, a director of the facility or ward supervisor —about the involuntary admission. Within forty-eight hours of admission, that director or supervisor should either authorize or reject the involuntary admission decision. Even when the director or supervisor refuses to authorize the admission decision, they still need to notify the family court³⁰³ within seventy-two hours of the admission’s occurrence (clause 4); while also explaining, in the case of a refusal, the reasons underlying that decision.³⁰⁴

Further norms related to admissions procedures are found in Articles 45 through 48 of the *MHPA*. Within forty-eight hours of notification, a judge from the family court is obliged to attend the psychiatric facility to meet the admittee (clause 2). I call this initial step in the mandatory judicial review of involuntary admission decisions a ‘prehearing.’ Prehearings are rare in Polish law. Other instances of proceedings in which prehearings can be scheduled are: those concerning minors involved in criminal activity, under the *Act on Proceedings Concerning Adolescents* (Article 19);³⁰⁵ those concerning one’s legal incapacitation; family proceedings, such as those concerning contact between a child and a parent (or parents), based on the *Code of Civil Procedure (CCP)*³⁰⁶ (Article 216); or the prehearing of an employee regarding disciplinary measures proposed by their employer, based on the *Labour Code* (Article 109, clause 2).³⁰⁷ In these proceedings the judge can schedule a prehearing and listen to a minor or to a person who is undergoing an

³⁰³ This division is referred to, from this point on, as the ‘family court.’

³⁰⁴ Gałecki, Bobinska, and Eichstaedt, *Commentary*, 143

³⁰⁵ Article 19 of the *Act on Proceedings Concerning Adolescents of October 26, 1982* [*Ustawa o Postępowaniu w Sprawach Nieletnich z Dnia 26 Października 1982 Roku*], in 1982 Journal of Laws, no. 25, item 228.

³⁰⁶ *Act the Code of Civil Procedure of November 17, 1964* [*Ustawa Kodeks Postępowania Cywilnego z Dnia 17 Listopada 1964 Roku*] (“CCP”), in 1964 Journal of Laws, no. 43, item 296.

³⁰⁷ *Act the Labour Code of June 26, 1974* [*Ustawa Kodeks Pracy z Dnia 26 Czerwca 1974 Roku*] (“Labour Code”), in 1974 Journal of Laws, no. 24, item. 141.

incapacitation procedure or disciplinary action to hear that person's stance, become familiar with details of the case, and ultimately determine the future course.

In the context of an involuntary admission prehearing, the judge speaks with the admittee, as well as with a medical professional, to establish whether the committal decision was *obviously* unfounded and unjust (Article 45, clause 2 of the *MHPA*). If the judge decides affirmatively, they will order the admittee's immediate discharge. If a person who previously did not consent subsequently agrees to be admitted, the judge hears that person out, closes the case, and issues a decision on whether the case should proceed to a hearing or the admittee should be discharged based on the judge's findings that the admission was unfound and unjust (Article 26, clause 1 of the *MHPA*).

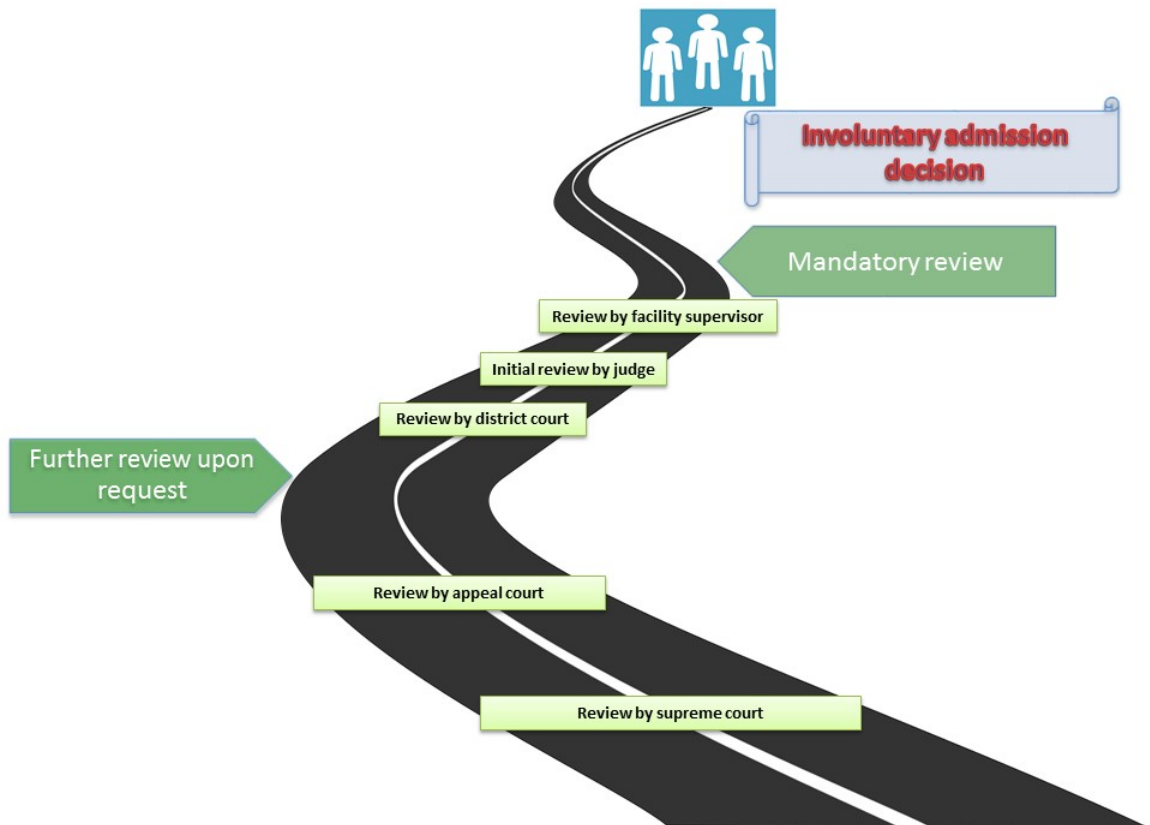


Figure 3.2: The Review Procedure for Involuntary Admission Decisions

While the involuntary admission judicial prehearing has an *exploratory* function, it also has a *protectionist* one.³⁰⁸ This is ostensibly to protect so-called ‘vulnerable legal subjects’ from unnecessary hardship related to being put through formal legal proceedings, both by providing a ‘safe space’³⁰⁹ for meeting with a judge, and by providing an opportunity to make a decision in the case based on the information collected up to that point, and thus to avoid the necessity of exposing the admittee to unnecessary stress.³¹⁰ If the judge does not issue a discharge order after the prehearing, the case advances to a court hearing, which should be scheduled within fourteen days of the date the court received the hospital’s notification of the involuntary emergency admission (Article 45 of the *MHPA*). Although this deadline has a rather instructional character, and its violation does not carry procedural implications for the case (such as an invalidation of activities completed after the deadline), Gałeczki, Bobińska and Eichstaedt argue that its purpose is to ensure nobody is kept unnecessarily or illegally for an extended time without having their involuntary admission decisions reviewed by the judiciary.³¹¹

The organization of an involuntary admission hearing is largely governed by the *CCP*; however, the *MHPA* levies a few exceptions to the general organization of non-processual proceedings of an involuntary admission case. The general rule pursuant to Article 151 of the *CCP* is that all court hearings are held in the courthouse, but when holding a hearing is justified in the interests of an involuntarily admitted person (Article

³⁰⁸ Supreme Court, decision in the case *I PKN 605/98*.

³⁰⁹ I contest whether the pre-hearing in involuntary admission cases is a ‘safe space’ by ethnographically showing how it is organized in a routine of judges and the everyday functioning of involuntary admissions procedures.

³¹⁰ District Court in Wrocław-Srodmiestecie, decision in the case *IV P 1091/12*.

³¹¹ Gałeczki, Bobinska, and Eichstaedt, *Commentary*, 201-202.

45, clause 1(a) of the *MHPA*),³¹² the hearing can be held in the relevant psychiatric facility. Also, before making a final decision about whether the person was admitted to the psychiatric hospital legally, the judge is obliged to obtain an expert opinion from one or more psychiatrists (Article 46, clause 2 of the *MHPA*). The psychiatrist who participated in the initial admission procedure cannot serve as an expert for this purpose (Article 46, clause 2 of the *MHPA*).

With the final decision of the district court, the mandatory review of the admission decision ends. The final decision determines whether the person was involuntarily admitted legally—that is, whether, at the moment of the admission, substantive warrant existed and the decision made by the psychiatrist followed prescribed procedural norms. In this decision, the court responds to the past occurrence,³¹³ and therefore should not be concerned with whether the criteria that warranted admission still exist at the moment of adjudication.³¹⁴ If the judge finds that the admission was unfounded, the hospital must discharge the person immediately (Article 27 of the *MHPA*). If the judge finds the admission legal, the admittee stays in the hospital. After the final decision is made its content is communicated, by the court, to the hospital in which the admitted person is institutionalized.

³¹² While this appears to encompass a very broad range of possibilities that could justify holding the hearing in a psychiatric facility, I observed not a single case where the hearing was held outside of the courthouse. In Chapter 7, I engage with the organization of the institutional practice of holding involuntary admission hearings in a courthouse.

³¹³ In the context of Article 29 and the court-ordered admission, the purpose of the court's involvement is very different. Here, since the person whose admission is the subject of court adjudication is still outside of hospital walls, the court actually orders hospitalization of that person against their will. Police enforcing that court order can bring that person to the hospital if they do not follow that order on their own.

³¹⁴ In order to assess whether the grounds for the continuation of involuntary hospitalization have ceased, the admitted person needs to launch a new legal proceeding based on Article 36 of the *MHPA*.

The final decision of the district court can be appealed, however, to the regional appeals court. Article 47 of the *MHPA* exempts an appeal by an admitted person from the formal requirements normally set by for appeals by Article 368 of the *CCP*, such as that an appeal needs to specify whether it is based on an error of fact or of law.³¹⁵ An appeals court adjudicates through a panel of three judges, and its ruling is a final decision in the case.³¹⁶ The decision of the appeals court can be contested to the Supreme Court only if it meets the warrants for submitting a ‘cassation:’ an extraordinary means of recourse grounded in “errors in law” and “errors in procedure.”³¹⁷ Only rarely do involuntary admission cases reach the Supreme Court, although, as an appeals judge suggested in an interview,³¹⁸ the number of such cases has increased in recent years.

Thus, an admission decision is reviewed at least once, potentially by two courts, in addition to the review conducted by the facility director or ward supervisor at the psychiatric facility. The *MPHA* makes review by such individuals, and by a visiting judge, mandatory for all involuntary admission decisions; reviews by upper courts are undertaken only upon a petition from a dissatisfied party.

3.3.3 – The *MHPA*’s Textual Relations with Other Legal Texts

The *MPHA*, as the main legal text regulating involuntary emergency commitment in Poland, operates as a ‘boss text’ in this context and, accordingly, controls how other texts

³¹⁵ Duda, *Commentary*, 230.

³¹⁶ In this context, the term ‘final decision’ means that the case exhausted the ordinary course of adjudication and the decision of the highest court is immediately enforceable.

³¹⁷ Factual accounts of the case cannot be contested in the cassation. Hence, a party may lose grounds for cassation if they do not formulate appeal claims properly. Before the cassation is forwarded to the bench of the Supreme Court for adjudication, it undergoes a pre-assessment by one Supreme Court judge, who decides whether it meets the grounds for cassation. The majority of submitted cassation are rejected at this point.

³¹⁸ Interview with appeal judges, 28 February 2013 and 23 May, 2013.

pertaining to involuntary admission are read and written. According to feminist sociologist Dorothy E. Smith, a ‘boss text’ governs the work of inscribing reality into a documentary form.³¹⁹ It does this by providing a discursive frame for those working in organizations, orienting their observing and report-writing work to certain elements of actualities, so that they fit the content of legal terms.³²⁰ Through concepts and categories that feature as elements of legally valid decision-making in admission cases, the *MHPA* provides a certain frame through which these institutional processes are ordered. The frame does not prescribe, however, a definite meaning to certain terms or procedures; rather, it provides “terms under which what people do becomes institutionally actionable.”³²¹

The capability of the *MHPA* to work as boss text and organize local actions lies in its statutory position, which structures its relation with other texts. Valverde argues that in addition to time and scale, jurisdiction (territorial and functional) is an important organizer of local legal practices because it determines how things will be done and governed.³²² She provides an example of homosexuality and how whether it falls under the scope of the criminal justice system or of medical services is based on its framing. Thus the Polish struggle between psychiatrists and jurists—who opposed a separate mental health act as an unnecessary multiplication of statutes—can be seen as a struggle to establish ‘functional jurisdiction’ over mental health-related legal procedures.

I argue the usefulness of restating and applying Valverde’s observation that framing is important because it directly translates how things will be governed.³²³ For example, the

³¹⁹ Dorothy E. Smith, “Incorporating Texts”.

³²⁰ *Ibid.*

³²¹ Dorothy E. Smith, *A Sociology for People*.

³²² Duda, *Commentary*, 132.

³²³ Valverde, “Jurisdiction and Scale”.

placement of involuntary admission in a separate legal *medical* act (which prescribes a certain mode of governing mental health matters and related legal proceedings) will determine how a concept or proceeding is framed. Within a *legal* context, this framing would involve the operation of certain discourses and the work of legal technicalities. When it comes to the latter, enacting the *MHPA* as a separate statute activated a certain way of ordering this text against other legal texts (which I call an ‘external ordering’) as well as certain ordering of provisions within this act (which I call an ‘internal ordering’).

An illustration, here, helps to explain the work that legal technicalities do in ordering. In terms of external ordering: because the *MHPA* was enacted as separate legislation, it gained a status of *lex specialis*. As *lex specialis*, it has priority over a general statute, such as the *CCP*, when it comes to regulating legal processing related to involuntary admission. In practice this means that the *CCP* will only be applicable to mental health law-related matters when they are unregulated by the *MHPA*. When both acts regulate the same matter differently—for example, the evidence of an expert witness—the *MHPA* overrides these provisions of the *CCP*. Thus, even though involuntary admission is considered a type of a civil proceeding, the opinion of a psychiatric expert is mandatory in involuntary admission cases, contrary to other civil proceedings in which the opinion would be only ordered if requested by a party. This way of structuring involuntary admission cases has significant consequences for what kind of knowledge will be acquired.

In terms of internal ordering: there are legal technical rules for how to read and interpret provisions in a given act, based on a provision’s location. General provisions, located at the beginning of an act, set a frame (or in other words, an instruction) for reading further provisions—similar to what Smith notes about the title of a document. If

involuntary admission was inserted into the *CCP*, it would require interpreting the relevant provisions according to the frame provided at the beginning of the *CCP*, and treating them as one of numerous specialized proceedings regulated by that act. Since involuntary admissions provisions are located in a separate act, though, the ideological frame of *that* act applies to them. Accordingly, the preamble of the *MHPA* instructs to treat “mental health [as] a fundamental good of a person” and designates the state as responsible for protecting the rights of persons with mental disturbances. It is thus important to pay attention to legal technicalities, such as the location of a legal provision, because these technicalities operate as “techniques of governance”—implying certain forms of legal reasoning, or a mode of legal argumentation³²⁴—and subsequently produce a certain kind of knowledge. As I provide ethnographic details later in the dissertation, I will reveal how these provisions shape and organize how the involuntary provisions are read and applied in local practices of emergency psychiatric admission.

3.4 – Article 48 and the Right to Representation

3.4.1 – The Right to Representation under the *MHPA*

The *MHPA* recognizes the status of an admittee as a *party* to an admission procedure and provides them with all of the rights accorded to a party in a civil proceeding, so that they can actively participate in proceedings related to their case. Article 48 also establishes the admitted person’s right to free legal aid representation if not already

³²⁴ Leticia Barrera, “Performing the Court: Public Hearings and the Politics of Judicial Transparency in Argentina,” *Political and Legal Anthropology Review* 36, no. 2 (2013); Annelise Riles, “A New Agenda for the Cultural Study of Law: Taking on the Technicalities,” *Buffalo Law Review* 53 (2005).

represented by a lawyer, and if the conditions ratified by the article are met. Article 48 states:

The court may appoint a legal aid lawyer for a person whom the procedure concerns, even though the person does not request it, if due to her or his mental state that person is not capable of submitting such a request, and yet the judge conceives such lawyer's involvement is needed.

Awarding a legal aid lawyer in mental health proceedings can occur according to one of two scenarios: 1) upon request of the admitted person, who is a party to the proceedings, or 2) by the court acting *ex officio*.³²⁵ In both scenarios, judges are given discretion over whether a person's inability to undertake a legal defence requires an *ex officio* grant of professional assistance, financed through legal aid; and further, whether in the concrete circumstances of the case, the involvement of a legal professional is necessary. In the second scenario, the judge also needs to assess and decide whether the person is capable of submitting a request on their own and, if this assessment is negative, take the opportunity to act upon it *ex officio*.³²⁶

Article 48 institutes two types of exceptions to the general rule about obtaining legal aid representation in civil proceedings in Poland. First, it does not grant access to legal aid assistance based on financial need; and second, it equips judges with the prerogative to appoint a legal aid representative *ex officio*.³²⁷ A general rule in civil proceedings is that legal aid is granted to persons who cannot afford to hire a lawyer

³²⁵ The term '*ex officio*' means "[a]ny prerogative or jurisdiction which a person in office has, by virtue of that office" Herbert Newman Mozley and George Crispe Whiteley, *Concise Law Dictionary* (London: Butterworths, 1876), 145.

³²⁶ In Chapters 4 and 5, I detail ethnographically how judges make these important legal appointment decisions when carrying out their work.

³²⁷ Supreme Court, decision in the case *V CSK 390/10*.

without compromising their ability to support themselves or their families (Article 117 of the *CCP*). In mental health proceedings, though, the financial needs of the person do not constitute grounds for obtaining a legal aid lawyer. Instead, the grounds are 1) an assessment that the concerned person cannot defend their rights, and 2) that the judge conceives of a lawyer's involvement as necessary in that given case. Both grounds feature in Article 48. These exceptions are supposed to facilitate access to justice for persons with mental health problems and to simplify the procedure for acquiring a legal aid lawyer.

A general right to retain a legal representative within the context of a legal procedure stems from provision 45, clause 1 of the *Constitution 1997* and provision 86 of the *CCP*. According to the former, all parties in legal proceedings in Poland are guaranteed the right to a fair hearing.³²⁸ The right to legal representation emerges from a broader conceptualization of the right to a fair trial, which includes the right to receive a judicial decision within a reasonable time, to be heard by the court, and to defend one's own rights.³²⁹ In other words: a fair trial requires that parties can actively participate in the legal proceedings, which means that they have 1) access to information; 2) the ability to present their legal position; and 3) the ability to establish facts in support of their legal claims.³³⁰ In civil proceedings, "parties or their agencies or their legal [statutory] representatives can

³²⁸ Article 45, clause 1 of the *Constitution 1997* reads: "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court." *Constitution Act of the Republic of Poland from April 2, 1997* [*Konstytucja Rzeczypospolitej Polskiej z Dnia 2 Kwietnia 1997*] ("Constitution 1997"), 1997 in *Journal of Laws*, no. 78, item 483. The English translation of the statute was retrieved from <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>, 8 March 2017.

³²⁹ Sławomir Pilipiec, "The Principle of the Right to a Court in the Constitution of the Republic of Poland and in the Constitution of the Russian Federation" ["Zasada Prawa Do Sądu W Konstytucji Rzeczypospolitej Polskiej I Konstytucji Federacji Rosyjskiej"], *Annales Universitatis Mariae Curie-Skłodowska* 51/51, no. G (2003/2004).

³³⁰ *Ibid.*

act in front of the court in person or through their legal counsels.”³³¹ Thus, at any moment in civil proceedings, as well as in proceedings guided by provisions of the *CCP*, a party can retain a private lawyer to represent them.

This broader understanding of a fair trial present in the Polish jurisprudence literature aligns with judgments of the European Tribunal of Human Rights (ETHR) related specifically to mental health cases.³³² In one judgment the tribunal established that the fair trial principle requires that parties to a proceeding have equal opportunities to defend their rights, and acknowledges that this principle of equality is easier to achieve in criminal cases than in civil ones.³³³ According to the ETHR, a person has the right to participate in hearings, to make claims, to submit new evidence, to respond to evidence provided by the opposing party, and to appeal the lower courts’ decisions. An admittee can undertake all of these activities personally or through a privately-retained or court-appointed legal representative.

It is difficult to provide definitive national numbers as, to my knowledge, official statistics on this matter do not exist in Poland. In the district court in which I conducted my field research, out of over 1,200 cases submitted annually, involuntarily admitted persons were represented by legal aid lawyers in less than 0.01 percent. During my fieldwork, I also noted that legal aid lawyers were more frequently appointed once cases reached the appeal court level, but that these appeals constituted only a small percentage of all involuntary admission cases. For example, the appeals court in my research site (during 2012 and 2013) only registered approximately twenty involuntary admission cases per year

³³¹ Article 86 of the *CCP*.

³³² Jennifer Brown, “The Changing Purpose”.

³³³ *Ibid.*

on average,³³⁴ compared to over 1,200 involuntary admission cases registered at the district court. While it is impossible to generalize, the numbers collected during my fieldwork shed some light on the infrequency with which legal aid lawyers are appointed by courts, particularly the lower courts. This infrequency pertains both to appointments upon admitted persons' requests and appointments *ex officio*. In my dissertation, I demonstrate ethnographically how the procedure for granting legal aid, the organization of involuntary admission procedures, and the material and financial conditions of judges' work create a network of relations in which this infrequency of appointment is embedded.

3.4.2 – The Supreme Court on the Right to Representation

In recent years the right to representation, stemming from Article 48 of the *MHPA*, has drawn the considered attention of the Polish Supreme Court. In a series of judgments issued since 1999, the Supreme Court considered matters related to 1) barriers to self-representation for persons diagnosed with mental illness, and 2) circumstances in which a court or a judge ought to act *ex officio* to grant legal aid assistance to persons subjected to mental health proceedings. Prior to this, the Supreme Court's judgments mostly dealt with issues related to the organization of mental health proceedings, such as cost exemption,³³⁵ lesser formal requirements for appeals submissions,³³⁶ or appropriate court action if a person is discharged before the final decision of the appeals court.³³⁷

³³⁴ I gathered this information both from documentation provided to me by the local bar council and from my observations of court proceedings. The local bar council, as I will discuss in detail in the next chapter, is involved in the appointment of lawyers to legal aid duties, and thus keeps a record of all legal aid appointments.

³³⁵ Valverde, "Jurisdiction and Scale".

³³⁶ Supreme Court, decision in the case *III CZP 154/95*.

³³⁷ Supreme Court, decision in the case *I CZP 25/97*.

On the matter of legal aid representation for local legal practices, the importance of the Supreme Court's decision relates to its prerogative to ensure, under its control prerogatives, courts' compliance with the law and the uniformity of judicial decisions. The Supreme Court does this by adjudicating cassations and other means of recourse, as well as by issuing resolutions on questions of law.³³⁸ Unless they obtain the status of legal principles, the decisions of the Supreme Court usually bind courts only in a given case (Article 64, section 5 of the *Supreme Court Act*). However, other courts pay attention to these resolutions since, if they do not adhere to the direction established by the Supreme Court, they risk their decisions being overturned by the Supreme Court, if a case reaches that level, or potentially by appeals courts that may want to ensure lower courts' adherence to uniformity of adjudication.³³⁹ Yet, as will be revealed in later chapters, the adoption of certain practices recommended by the Supreme Court by district court judges, who do the majority of legal aid appointments as they adjudicate involuntary admission cases, is organized by a set of legal and institutional relations of their everyday work.

Barriers to Self-Representation

In a series of judgments the Polish Supreme Court has established that, due to particular concerns related to the mental state of participants in mental health proceedings, the right to legal aid assistance should be interpreted broadly. Along these lines, the court recognized multiple barriers that a person locked in a psychiatric facility might face in terms of undertaking self-representation—barriers which went beyond mere consideration

³³⁸ Article 1 of the *Act on Supreme Court of November 23, 2002* [*Ustawa o Sądzie Najwyższym z Dnia 23 Listopada 2002 Roku*] (“Supreme Court Act”), 2002 Journal of Laws, no. 240, item 2052.

³³⁹ For instance, the appeals court in my fieldwork site tends to overturn district court decisions in involuntary admission cases if they do not comply with the Supreme Court's recommendation on mandatory legal representation for persons undergoing the admission procedure.

of a participant's mental state, also involving material impediments such as the inability to participate in a hearing due to confinement in a closed ward.

In the decision II *CKN 41/99* from 9 March 1999,³⁴⁰ the Supreme Court stated that when it became obvious that the party to the proceedings could not be expected to rationally utilize legal tools because of their diagnosed mental disorder, such as psychosis (which in this case articulated itself in persistent hallucinations and became more acute due to the admittee's forced confinement), the adjudicating court had an obligation to consider whether the appointment of a legal representative was needed.³⁴¹ In its judgment, the Supreme Court suggested that while Article 48 gives a judge discretionary power to decide whether one needs a legal representation, the fact of one's diagnosis of mental illness *requires* that a judge consider this issue seriously.

In a more recent judgment, in the case *V CSK 390/10* from 14 June 2011,³⁴² the Supreme Court further addressed this issue by stating:

[Although the provision of Article 48 of the *MHPA* does] not directly impose an obligation on a judge to undertake activities covered in these provisions, the use of the terms “the court may” or “conceives as necessary” does not imply discretion when the circumstances in the case indicate that the participant cannot defend her or his rights [...] [in a situation] when other forms of assistance provided to a participant, such as providing information about the procedure and procedural activities, or admitting evidence on the court's own initiative, have been ineffective and purposeless [...] [the participant's] inability to properly utilize legal (procedural) institutions invokes the necessity to appoint a legal representative for that person. Failure to meet this obligation constitutes a ground for a proceeding's invalidity, pursuant to article 379, clause 5 of the *CCP*.

³⁴⁰ Supreme Court, decision in the case *II CKN 41/9*.

³⁴¹ The text of judgment of Polish Supreme Court is not paginated and the paragraphs are not numbered.

³⁴² Supreme Court, decision in the case *V CSK 390/10*.

Furthermore, the Supreme Court's interpretation of the 'capacity for undertaking legal action' underlying Article 48 of the *MHPA* has been attentive to institutional and temporary factors that may affect a person's capacity to actively participate as a legal subject in the procedure. The Supreme Court recommended that adjudicating courts, when assessing patients' capability of defending their rights, broaden the spectrum of factors beyond those linked to a *pathological* mental state. In its decision issued on 15 February 2012, in the case *IV CZ 2/12*,³⁴³ the Supreme Court stated:

That established mental condition [of the admittee] allowed the court to grant legal aid assistance *ex officio*, especially when combined with the fact that the participant was committed to the psychiatric hospital and could not even come to the hearing, [both factors in conjunction] justify an opinion that adequate protection of rights of the participant required [additional] assistance.

This is especially applicable when the circumstances of a particular case suggest that mental illness adversely impacts a person's ability for rational thinking and acting, so as to ensure the protection of that person's rights, the judge should appoint them professional legal aid assistance. Due to the fact that important goods such as liberty, choice, freedom, and health are at stake in an involuntary admission, if there is any doubt about a party's capability for undertaking a *rational* legal defence, they should receive more assistance rather than less. When the Supreme Court annuls the decision of a lower court because it did not appoint a legal aid lawyer *ex officio* (as with case *II CKN 41/99*), it justifies that annulment through a reference to the participant's mental illness. It writes:

³⁴³ Supreme Court, decision in the case *IV CZ 2/12*.

From the circumstances of this case, it should be conveyed that the participation of an advocate was necessary, and thus required. Notably, the participant in the proceedings, not having insight into her mental illness, sees the roots of the conflict, as a result of which she was institutionalized, in deliberate behaviors of her husband, whom she divorced, and her daughter, being under his influence.”^{344,345}

While the Supreme Court makes a link between a diagnosis of mental disorder and the capacity for undertaking legal actions, it also emphasizes that the specific manifestation of the disorder, in concrete circumstances of a given case, should be assessed when the adjudicating judge considers the need to appoint a legal aid attorney. Accordingly, the Supreme Court recommends that judges pay specific attention to how the party with the diagnosis of mental disorder utilizes legal resources during the processing. An indication of a party’s mental incapacity for undertaking defence of their rights could be passivity during the proceedings, which should raise questions for the adjudicating court about whether that party is able to contest unfavourable evidence (with the court’s assistance).³⁴⁶ Thus, the Supreme Court has established that the adjudicating court should consider mental illness as a factor preventing a party’s self-representation, especially when that party’s behaviour during the procedure (not only at the hearing) indicates such. Moreover, according to the Supreme Court, while a mental illness diagnosis may already be sufficient grounds for granting legal aid assistance, the fact that the party is locked in a closed ward

³⁴⁴ Supreme Court, decision in the case *II CKN 206/98*.

³⁴⁵ If the Supreme Court, in the process of adjudicating a cassation or other means of recourse, finds that a court or courts that adjudicated the case committed an obvious error in law, it can reproach (in writing) the court(s). In the process of reproach, the adjudicating lower court judges are informed that they can submit written explanations. Regardless of whether written explanations are submitted, the chief justice(s) of the relevant court(s) is (are) informed about the reproach (Article 65). In this way, not only the court is informed about the required line of adjudication of a given matter but also the chief justice of the relevant court as well.

³⁴⁶ Supreme Court, decision in the case *I CSK 234/10*.

and cannot participate in the hearing at the courthouse further justifies a claim that an effective defence by their own means may be impossible.

To sum up the discussed judgments: while the Supreme Court does not directly impose a judge's obligation to appoint a legal aid lawyer in every mental health case, it does oblige all judges to consider it. In this sense, the term "might consider," as stated in Article 48, should be read as, "is obliged to consider." When the judges find that, in spite of the existence of a mental illness diagnosis, the party to the involuntary admission procedure is active in utilizing their rights, then it would be sufficient for the adjudicating court to advise that party about available legal remedies so they can make an informed decision about whether to use them or not. Yet, the responsibility to deliver advice and needed information nonetheless rests on the adjudicating court. In that regard, in the case *IV CSK 222/12* from 4 April 2013, the Supreme Court found that, since the party to the procedure represented himself personally in front of the district and appeals courts, and as there was medical evidence of his mental illness and its progression, the courts should have at least informed him about legal activities he may have wanted to undertake, including the appointment of a lawyer.³⁴⁷ Even where the party undertakes legal actions, should the court,

based on a patient's behavior, the content of their written submission and oral statements, [the basis] of experts' opinions, [or] other circumstances conclude that the patient, due to [their] mental state is incapable of submitting a request for a legal aid lawyer, and that legal representation is essential—[the court] is obliged to appoint a lawyer on that patient's behalf.³⁴⁸

³⁴⁷ Supreme Court, decision in the case *IV CSK 222/12*.

³⁴⁸ Supreme Court, decision in the case *III CSK 13/12*.

Building on the judgments of the Supreme Court's insistence on the need for representation in mental health cases, in 2012 the Ombudsperson of Human Rights attempted, albeit unsuccessfully, to change the wording in the *MHPA* from "judge may appoint" to "judge appoints."³⁴⁹ In support of this legislative change, the Ombudsperson argued that mental illness always impacts one's mental state, to one degree or another, and interferes with one's defence ability.

Additional Problematic Aspects of Supreme Court Decisions

The Supreme Court's recognition of multiple barriers can be seen as a progressive attempt to ensure broader representation of interests of involuntarily admitted persons in admissions proceeding concerning them—yet there are also problematic aspects of these Supreme Court decisions, as they reinforce the authority of psychiatry within the operation of involuntary admissions proceedings, while precluding what can be contested. These problematic aspects are particularly visible in the Court's decisions in the cases *VCSK 384/09*, *VCSK 390/10*, *I CSK 234/10*, and *II CSK 222/12*.³⁵⁰

The Supreme Court encourages judges to pay attention to how the party diagnosed with a mental disorder utilizes legal resources during the process, in order to determine whether the party had mental incapacity for undertaking their defence—for example, whether they are able to contest unfavourable evidence with the court's assistance.³⁵¹ Passivity during the proceedings, or lack of contestation of unfavorable psychiatric opinion, should be a sign that and a ground for granting legal representation *ex officio*. Yet

³⁴⁹ I discuss this initiative more broadly in Chapter 5.

³⁵⁰ Supreme Court, decisions in the cases *VCSK 384/09*, *VCSK 390/10*, *I CSK 234/10*, and *II CKS 222/12*.

³⁵¹ Supreme Court, decision in the case *I CSK 234/10*.

while judges are encouraged to pursue their independent assessment, the Supreme Court accepts such an assessment only to the extent that it aligns with psychiatric opinion/s in the case. The Supreme Court writes:

[in the case *V CSK 384/09*]: It is obvious that, because of mental illness diagnosed in Anna Š. and [participant's] behaviour related to that mental illness—also during the hearing [...]— it should not be expected that [the participant] will undertake rational defence of her rights.³⁵²

[in the case *V CSK 390/10*]: Participant's behavior during the hearing should raise concerns because “the participant was only present in the hearing at the court of the first instance, did not submit any evidence, and wrote that she does not feel mentally ill, which suggests her lack of insight into her illness [...] this is confirmed by the opinion of psychiatric experts who state that the participant suffers from paranoid schizophrenia, exhibits pathological thinking, applies logic only known to her, insulates herself from her environment and does not see need for treatment, to which she also does not agree.

In these cases, the Supreme Court annulled decisions of the lower courts on the basis that the participants' rights were not properly protected, while there was evidence of the participant's inability to undertake their own defence due to diagnosed mental illness. Similarly, in the case *III CSK 222/12*, the Court re-affirmed the superiority of psychiatric opinion over the court's own assessment and determination of the participant's legal capacity.³⁵³ These decisions contribute to establishing a certain hierarchy of knowledge guiding involuntary admission processing when it comes to the appointment of legal aid lawyers—with implications that go much further.

The Supreme Court also adopts a presumption that the admittee is mentally ill even though this fact is yet to be determined, which precludes what can and should be contested

³⁵² Supreme Court, decision in the case *II CKN 41/99*.

³⁵³ Supreme Court, decision in the case *IV CSK 222/12*.

in these proceedings. This is achieved, for example, by the Supreme Court's consistent use of the term 'a person with mental disturbances' in reference to participants in proceedings reviewing the legality of admission decisions.³⁵⁴ It is also accomplished by treating the psychiatric opinions issued in the case as stating an uncontested fact—even before the validity of this opinion is assessed by adjudicating courts. For example, case *I CSK 234/10* invokes an opinion of the psychiatric expert stating that the participant had problems with perception as a basis for the court's assumption that they might, therefore, have difficulty in pursuing their self-defence. Similarly, in cases *I CSK 234/10* and *VCSK 384/09*, the court rests the argument for the need for professional representation on findings from the psychiatric opinion. When these decisions pertain to legal representation, their broader significance lies in the fact that the Court presumes their validity and correctness *against which* other facts in the case might be assessed, and *on the basis of which* potential evidence might be accepted or rejected.

Another troublesome aspect of the Supreme Court's interpretation of Article 48 lies in its lack of recognition of the actual conditions organizing lawyers' work in representing persons confined in psychiatric facilities. Close readings of these judgments show a Supreme Court preoccupation with enhancing the fairness of the involuntary admission proceeding by equating it with the enhancement of legal formal standards. For the Supreme Court, the legality of the procedure under the *MHPA* can be validated or ensured by the appointment of a legal aid lawyer—yet the decisions of the Court are abstracted from the realities of legal aid delivery, of carrying out involuntary admission proceedings, and of the inhabited world of the admittee when it comes to confinement in a psychiatric hospital.

³⁵⁴ Supreme Court, decision in the case *III CZP 6/96*.

In this way the court aims to *formally* reconstruct the legal procedure based on the assumption that having professional representation perfectly equates with having one's rights protected.

Even though, as in civil law systems, the Supreme Court does not make but only interprets law, judges, lawyers and other legal professionals utilize these decisions on a daily basis by referring to them or by inserting them directly. Although Supreme Court decisions usually bind the courts that adjudicated the case (article 64, section 5 of the *Supreme Court Act*),³⁵⁵ other courts also pay attention to these resolutions. The Supreme Court's decisions are broadly available on the Court's website; can be found featured in electronic databases of legal acts and jurisprudence, such as *LEX*; or in the hard copy *Official Casebook of the Supreme Court*, a document prepared separately for each chamber of the Court and delivered to courts monthly, as it is published. As mentioned earlier, courts pay attention to the Supreme Court's decisions as they create standards for adjudication against which lower court judgment are assessed; moreover, they create the knowledge on which judges draw in adjudicating involuntary admission cases, instructing them on how to take up the text of the *MHPA*.

3.5 – Conclusion

In this chapter I introduced the legal regulation of involuntary emergency psychiatric admission in Poland, and discussed some elements of the ideological frame that it establishes for the conceptualization and processing of these admissions. The *MHPA*

³⁵⁵ When the Supreme Court decision is given the status of legal principle it binds all courts in Poland.

introduced a fairly extensive system³⁵⁶ of legal control over psychiatric admission decisions, to ensure that people are not admitted and kept hospitalized illegally. This change included, first, the imposition of stricter grounds for involuntary admission and specification of timeframes and procedures to which psychiatrists (and related professionals) need to adhere when making involuntary admissions decisions; and second, the introduction of a judicial review of psychiatric decisions. Medical discourse and the professional and economic concerns of this professional community entered the provisions of the *MHPA*, shaped its design, and established a frame for the set of ideological practices enacted locally by legal and medical professionals involved in involuntary admission cases. According to Smith, ideological practices “separate the locally known and experienced from the objective versions.”³⁵⁷ In other words, the *MHPA* established certain frames for subjecting the experiences and realities of legal aid lawyers and admittees to institutional actions, by their “being fitted to institutional categories.”³⁵⁸ Both the *MHPA* and the decisions of the Supreme Court interpreting its provisions work from the position of power attributed to law and to the Supreme Court’s location in the legal hierarchy. Due to their authoritative stance, they form an official account of *what really happens* and *what the problem with the malfunctioning of the involuntary admission proceedings actually is*—namely, lack of formal representation and pursuit of a defence on behalf of

³⁵⁶ Yet, as institutional discourses embedded in the *MHPA* prescribe actions, I conceive of them as “providing terms under which what people do becomes institutionally actionable.” Thus, the purpose of this chapter is to discuss substantive and procedural provisions as a frame of reference that instructs people how to engage with the text of the *MHPA*, as well with other texts within the process of involuntary admission, to produce what can be recognized as a legally valid involuntary admission decision. Dorothy E. Smith, *A Sociology for People*, 113.

³⁵⁷ Dorothy E. Smith, *Conceptual Practices of Power*, 61.

³⁵⁸ Dorothy E. Smith, *A Sociology for People*, 19.

involuntarily admitted persons—ignoring the real-life experiences of admittees and of the lawyers representing them.

In the following chapters, I surface the material and institutional realities of lawyers' work, to provide an alternative account of how legal aid representation and, more broadly, how the processing of involuntary admission cases actually happens, while still meeting the requirements set by the *MHPA*. The Supreme Court's decisions regarding legal representation, while they may be seen as progressive on some accounts, are grounded in and reflective of abstracted knowledge about legal aid representation in involuntary admission cases. Lawyers' work, I argue, is materially and institutionally grounded; it is embedded in a complex web of legal, institutional, financial, and administrative relations; and it is organized by the work conditions of judges and other professionals involved in processing involuntary admissions cases. In the next chapter I ethnographically explore relations related to granting legal aid, and how lawyers' work is organized by these local practices.

Chapter 4 – Proceedings with Legal Aid Assistance for Involuntarily Admitted Persons

4.1 – Introduction

In this chapter I present and analyze the provisions for and practices of legal aid appointments in involuntary admissions cases in Poland. Under the term ‘appointment’ I include both the procedure for granting legal aid assistance to an involuntarily admitted person, and that of selecting an attorney for this legal aid duty. This will illustrate how legal aid lawyers enter into involuntary admission cases. Notably, this group of lawyers predominately assists admittees in contesting the legality of their involuntary admission.

As Article 48 of *Mental Health Protection Act (MHPA)* establishes, a legal aid lawyer can be appointed by a judge acting upon a patient’s request, or by judge acting *ex officio*. (This is in addition to an admittee’s right to retain a private lawyer at any time in the procedure.) While the Supreme Court has recommended a broad interpretation of Article 48 that should compel judges to grant legal aid assistance on a regular basis in involuntary admission cases, the number of lawyers appointed—as I observed—is still minimal.

In this chapter I ethnographically explore how judges make decisions about awarding legal aid assistance in involuntary admissions cases; how the procedure of selecting a lawyer for legal aid duty is coordinated between the court and local bar council; and what consequences this has on legal aid lawyers’ work. A strict timeframe for processing involuntary admissions cases was intended to advance the rights of admittees so that no one is kept unnecessarily or illegally—yet I argue that, when seen through practices pertaining to Article 48 and in light of judges’ work organization, this timeframe

actually contributed to a bare minimal appointment of legal aid lawyers in involuntary admissions cases. Further, sometimes appointed less than two days before the admission hearing at the court, lawyers are given little time to prepare for their lawyering job, which bears on the quality of representation they can deliver.

This chapter is organized as follows. First, I use ethnographic data to describe the moments and circumstances in which legal aid lawyers are appointed for involuntarily admitted persons. Second, I explore the work organization of judges, specifically district court judges, and how it plays into their decision-making in granting legal aid assistance in involuntary admissions cases. Next, I map the series of actions involved in the procedure for designating an attorney for legal aid duties, which follows the judicial decision granting legal aid assistance; and how this designation is practiced so that involuntary admissions hearing are scheduled promptly, within the timeline prescribed by the *MHPA*. I then discuss how the organization of these appointments—their tight time frame and unpredictability—requires the urgent involvement of legal aid lawyers in the case. In order to meet this requirement, the lawyer may need to significantly adjust their work schedule on their private cases from which they earn living. Otherwise, the lawyer risks being charged disciplinarily for not attending to their legal aid duties.

4.2 – Retaining a Private Attorney

Psychiatric admission typically catches people by surprise; accordingly, they may be too overwhelmed to retain a lawyer of choice to represent them in involuntary admission proceedings. They may also be financially unprepared. In Poland, retaining a lawyer typically involves an upfront payment for that lawyer's services—and the costs can be significant, depending on the complexity of the case and the amount of work required.

There are no binding regulations that cap the fees of privately retained lawyers. The monetary value of legal services are agreed upon by a lawyer and the potential client, and costs may vary from lawyer to lawyer. Legal fees that are charged by privately retained lawyers are also usually significantly higher, even several times higher, than what lawyers can get when delivering legal aid service.³⁵⁹

Even when a person has the financial resources to pay for a lawyer of choice, there are several barriers to accessing these resources when one is held in a closed ward. Because of the emergency character of the admission, admittees tend to have just a few basic items with them, if they can have anything at all. Some may have resources in their banks or homes but accessing those resources is difficult thanks to strict rules regulating both their physical movement and their possession of property. Confinement in a secure ward significantly curtails contact with the outside world, including access to bank machines. In one of the psychiatric facilities where I conducted my research, bank machines were located in hospital lounges and outside the building, inaccessible to persons locked on wards, who require permission to exit. Even with a hospital assistant, authorities are unlikely to grant permission to anyone viewed as aggressive or deemed a flight risk—common assumptions about the involuntarily admitted—since a facility can be civilly liable if the person escapes or hurts themselves.³⁶⁰ Furthermore, the admittee may

³⁵⁹ An extensive discussion on the remuneration for legal aid lawyers and its legal basis is provided in the following chapter.

³⁶⁰ The psychiatrists whom I interviewed emphasized that, at the very moment an individual is transferred into their hands by police, paramedics, or others, they are obliged to ensure the safety of that person. The psychiatrist's responsibility for ensuring the safety of an admittee directly stems from the provisions of the *MHPA*. Additional pressure on doctors and psychiatric facilities has recently emerged in Poland, in relation to new facility accreditation procedures. Among standards determining whether a medical facility will be able to gain accreditation for quality of delivered service are practices for ensuring the safety and security of patients and persons working in that facility. While these practices may have the purpose of guaranteeing the safety of those concerned, they complicate access to the monetary resources needed for hiring a lawyer of choice.

not be able to count on their family to provide money for a lawyer. In other medical emergencies, family members are often able to access financial resources if needed, but in the context of involuntary admission, family members tend to be less helpful since—according to my observations and case analyses—they are often the ones who initiated the process in the first place.³⁶¹

Lawyers are hesitant to represent strangers without a financial arrangement in place because of potential difficulties in collecting remuneration once their work is complete. This consideration may be even more relevant in the context of involuntary admissions proceedings due to the attorneys' perception that, generally, such admittees are poor.³⁶² Although people from all social and economic classes are subject to involuntary commitment in psychiatric hospitals in Poland, between 80 and 90 percent of those admitted to the emergency room I visited were homeless, living in poverty, on social assistance, and/or with severe alcohol or drug problems. Another major group of involuntarily admitted patients are geriatric individuals whose supposed dangerousness results from their inability to care for themselves (i.e., they are a danger *to themselves*). I learned from conversations with psychiatrists, judges, and hospital personnel that most of these admittees are already retired and living on pensions or other forms of social assistance.

With changes to the functioning of detoxification detention centres in Poland, persons who would previously have been taken to such facilities are now taken to

³⁶¹ Interviews with psychiatrists, 25 March 2013, 20 May 2013, 6 June 2013; Interviews with paramedics, 30 July 2013, 29 July 29 2013, 29 August 2013; Małgorzata Kolińska-Dąbrowska, “The Psychiatric Hospital Instead of Divorce: How to Have Your Wife Deemed Mad” [“Psychiatryk Zamiast Rozvodu: Jak Zrobić Z Żony Wariatkę”], *Rzeczpospolita*, 5 December 2015.

³⁶² Interview with an attorney, 22 January 2013.

psychiatric hospitals. Paramedics with whom I spoke explained that detox centres often refuse to admit people who are posing a danger to others because they do not have sufficient medical staff to determine whether that behaviour is caused by intoxication or by mental illness. Even just a few days observing the emergency room at a psychiatric facility were sufficient for me to see that the majority of admissions were of intoxicated persons deemed to be behaving dangerously in public. Alcoholism still tends to be widespread in Poland, exceeding the average for the member countries of the Organization for Economic Cooperation and Development (OECD).³⁶³ According to the statistics, in 2014 11.9 percent of the adult population abused alcohol.³⁶⁴ About 600,000 Poles were addicted to alcohol,³⁶⁵ in a population of 38.2 million.³⁶⁶

Exceptionally, a lawyer of choice is willing to step in on an involuntary admission case without advance payment when they have an ongoing client-lawyer relationship with the admittee.³⁶⁷ In this situation, the risk of non-payment might be mitigated by the certainty of future encounters with the client, or by the fact that the lawyer has been sufficiently paid by the client in other cases. One of the lawyers I interviewed experienced such a situation when she went to a psychiatric hospital with the intention of representing an involuntarily admitted person without a prior financial arrangement.³⁶⁸

During my observation of court hearings over a few months, I did not encounter any cases in which a lawyer of choice represented an involuntarily committed person.

³⁶³ In Poland the average consumption of alcohol per person in 2013 was 10.8 liters; the average in OECD countries was 9.5 liters. Wojciech Stefan Zgliczyński, *Alcohol in Poland [Alkohol W Polsce]*, (Warszawa: Biuro Analiz Sejmowych, 2016), 2.

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*

³⁶⁶ Zbigniew Strzelecki et al., *Demographic Situation of Poland [Sytuacja Demograficzna Polski]*, (Warszawa: Rządowa Rada Ludnościowa, 2011), 6.

³⁶⁷ Interview with an attorney, 10 January 2013.

³⁶⁸ Interview with an attorney, 10 January 2013.

Neither did I find, among the more than two thousand pages of involuntary admission cases I reviewed for my project, any record of legal representation provided by a lawyer of choice. Others have reported similar findings about the scarcity (or total absence) of cases in which privately retained lawyers represent people in proceedings adjudicating the legality of involuntary admissions. For example, in 2011 the Ombudsperson of Human Rights reported to the Minister of Justice only one instance in which a person retained a lawyer, in this case an in-house lawyer, for the purpose of representation in an involuntary admission procedure.³⁶⁹ Interestingly, researchers studying other jurisdictions noted a similar absence of private lawyers in involuntary admissions proceedings. For example, legal scholar Philip Arben, who observed sixty-three hearings in Michigan courts, noted that privately retained lawyers acted in only two cases.³⁷⁰

The implication of this absence of private lawyers in involuntary admission proceedings may be far-reaching in terms of time they can or will devote to the case, and for their lawyering strategies as well. Private lawyers can be familiarized much earlier in the procedure, and therefore affect which psychiatrist will prepare an expert opinion—evidence that my research participants considered the most important in any case. As I was told in an informal conversation with one lawyer, some experts are more likely to see involuntary admission as too extreme a measure for what is established as an

³⁶⁹ Kamila Dołowska, “Legal Aid Ex Officio in Civil Cases from the Perspective of the Ombudsperson of Human Rights,” [“Pomoc Prawna Z Urzedu W Sprawach Cywilnych W Swietle Dzialnosci Rzecznika Praw Obywatelskich”] (paper presented at the *Legal Aid Ex Officio and Access to Justice Conference*, Warszawa, 2012): 52.

³⁷⁰ Arben, “A Commentary”.

admittee's dangerousness, and to be more flexible in recommending out-patient alternatives.³⁷¹

4.3 – Court-Appointed Legal Aid Lawyers for Involuntary Admission Cases

There are two ways for a legal aid lawyer to enter the legal procedure pertaining to involuntary admission: a judge can grant legal aid legal assistance in an involuntary admission case either upon patient's request for a legal aid lawyer, or *ex officio* (Article 48 of the *MHPA*). In Poland, the prerogative to grant legal aid in a civil procedure always belongs to judges. In civil proceedings other than involuntary admissions, legal aid is always granted upon the party's request (Article 87, clause 1 of the *CCP*). Typically, the judge who adjudicates the case decides whether to grant legal aid assistance. Sometimes a presiding judge of a relevant division of the court can also make that decision, specifically when the need for considering legal aid assistance emerges but an adjudicating judge has not yet been assigned to the case. The presiding judge of a division can also get involved when, during a preliminarily screening of the case, they see grounds for granting *ex officio* legal aid assistance to an involuntarily admitted person.

If legal aid representation is granted, the official procedure for appointing a lawyer begins. A refusal to grant legal aid subsequent to an admittee's request can be contested to the court of higher instance (article 394 clause 1 point 2 of the *CCP*).³⁷² For decisions issued by district court judges, the regional court is the relevant appeal court. If a complaint

³⁷¹ I learned, during my fieldwork, that the more lenient psychiatrists tend to be the older ones. Particularly vociferous in support of involuntary admissions are very young psychiatrists, including psychiatric residents doing their required practicum.

³⁷² *CCP*.

regarding the denial of legal aid assistance is accepted, then the appeals court reverses the negative decision and grants legal aid assistance. If a complaint is denied, this decision ends the legal aid granting procedure, as the final decision of the higher instance court cannot be appealed any further when it comes to auxiliary decisions.

4.3.1 – Appointment of a Legal Aid Lawyer upon the Patient’s Request

At any moment during the admission procedure a person undergoing an admission can request a legal aid lawyer. In one of my field interviews, a family court judge said she always awards a legal aid lawyer in an involuntary admission case upon the patient’s request.³⁷³ The problem I observed during my fieldwork, though, is that admittees rarely submit such requests, or if they do, their request may not conform to the institutional norm for achieving a desirable outcome. Yet, I also observed that the majority of people admitted to psychiatric facilities do not have sufficient legal knowledge to ensure proper representation on their own.

Persons who request legal aid assistance tend to be those familiar with the legal system through their education, work, or previous admission histories, and who have knowledge of their rights regardless of being informed of them by a judge or psychiatrist. Similar findings have emerged from a study conducted by legal scholar Lukasz Bojarski for the Helsinki Foundation for Human Rights.³⁷⁴ Bojarski found that a higher level of education or a previous encounter with the justice system translated directly into greater knowledge about the availability of, and acquisition procedure for, legal aid. In spite of this

³⁷³ Interview with a family court judge, 28 February 2013.

³⁷⁴ Lukasz Bojarski, *Access to Legal Aid in Poland* (Warszawa: Helsinki Foundation for Human Rights, 2003), 45.

awareness, people with higher levels of education tend to retain private legal representation.³⁷⁵ Unfortunately, those with low socio-economic status or lacking an understanding of the legal tools necessary to challenge their involuntary admission may find themselves unaware of their right to receive professional legal representation. The case of a woman I call ‘Anna’ illustrates further challenges involuntarily admitted persons may face in submitting an institutionally effective request for legal aid assistance.

Anna’s Case

Anna was a young woman admitted to a psychiatric facility without her consent. From the initial moment of her admission, she made it known that she disagreed with the admission and voiced her intention of challenging it by legal means. Due to her legal education and the previous unsuccessful attempts of her family to have her committed, Anna was knowledgeable about her substantive and procedural rights. Speaking with her treating psychiatrist on the morning after her admission, she made a strongly worded request for a consultation with a lawyer. The psychiatrist made a note of this in her medical history—yet Anna’s request never reached the judge who had the authority to appoint her a lawyer. Indeed, the psychiatrist failed to convey Anna’s request to the judge who came for the preliminary hearing, and the judge herself failed to notice the annotation in Anna’s medical files during the prehearing. Anna’s request was lost in the vast pile of paperwork included in her medical history. Only when Anna again submitted a request, this time in writing and directly to the court, was she awarded a legal aid

³⁷⁵ Ibid.

lawyer for the remaining part of the proceedings in her case—that is, for the appeal. Although she had extensive knowledge of her legal rights and the legal remedies available to her, Anna did not realize that an oral request addressed to a medical professional might not necessarily lead to the end she desired. Her request for a legal aid lawyer was successful only when she sent it in writing and addressed it directly to the court adjudicating her case.

When Anna was admitted she already had extensive knowledge of the legal remedies available to contest her involuntary admission, thanks to her previous encounters with the mental health system and her legal education. Her parents tried unsuccessfully to confine her twice before she was finally admitted to the facility in my research site. Thus, her personal and educational experiences fostered both a knowledge of mental health law generally, and of the specific remedies available to her. For example, in addition to asking for legal aid assistance she also wrote a letter to the Office of the Ombudsperson requesting their involvement in her case. While Anna was able to locate herself in the context of an involuntary admission and start actions to contest her hospitalization almost immediately, her request for a legal aid lawyer was not successful until later, after she had sent a request as a written submission to the court adjudicating her case.

Anna failed to recognize that an oral request addressed to a medical professional might not be the proper avenue to her end-goal. In her case, the request was documented in her medical history, among other notes that psychiatrists and psychiatric interns made about her activities and medical condition. When the judge skimmed through Anna's files during the preliminary hearing in the psychiatric facility, that request disappeared among the many other notations. Only when she re-requested at a later stage in the proceeding was

she granted legal aid. Legal scholar and anthropologist Annelise Riles found, during her research on the artifacts of institutional lives, that if a document “had not travelled the proper institutional network path, [it] did not exist” formally.³⁷⁶ Anna’s request, even though inscribed in her medical files along with her other statements, did not evoke institutional action because it did not follow that proper path, and thus did not formally exist.

Anna’s case is atypical in the sense that she had knowledge of her rights and was aware of her right to legal aid assistance; yet Anna’s case is very topical because it illustrates the confusion, common among admittees, about executions of their rights, and often even about rights themselves. Admittees’ general lack of awareness about legal aid exists despite the fact that the *MHPA* emphasizes that the person undergoing the admission should be informed about their rights.

4.3.2 – The Duty to Inform about the Right to Representation

According to Article 23, clause 3 of the *MHPA*, an admitted person has the right to be informed about their legal rights. While in regards to psychiatrists this duty is directly stated in the provisions of the *Act*, judges’ duty to inform stems from decisions of the Supreme Court. In the same year the *MHPA* was enacted, Stanislaw Dabrowki, in the first commentary to the *MHPA*, recommended that verbal information about their rights be strengthened by providing the patient with a pamphlet containing a detailed description of those rights, even though they, at the moment of admission, may not be able to familiarize themselves with them because of their mental condition. In this section I show that

³⁷⁶ Riles, *The Network Inside Out*, 67.

admittees may not be aware of the possibility of requesting a legal aid lawyer because of how the ‘duty to inform’ is institutionally organized within the context of the involuntary admission procedure. I begin by revealing, below, how psychiatrists and judges fail to inform the admitted person about their access to free legal representation.

Psychiatrists

Article 23 clause 3 of the *MHPA* imposes on the admitting psychiatrist a direct obligation to be the first to inform the admitted person about their rights. It states that the doctor who decides on involuntary admission “is obliged to explain to the sick person reasons for her or his admission to the psychiatric facility without consent and to inform that person about her or his rights.” I observed, on many occasions, that psychiatrists take seriously all the formal requirements that law imposes on them and do not try to deceive the admitted persons about their rights—but their understanding of rights tends to be limited. Moreover, I learned that some psychiatrists passionately advocate for the patient to have a chance to participate in the court hearing, and to have other procedural rights guaranteed, yet they fail to facilitate the admittee’s access to legal representation. There are no procedural guidelines advising psychiatrists about how to act on a spoken request for a lawyer, beyond writing such a request into the patient’s medical documentation. As well, the duty to inform that stems from Article 23 is framed in an abstract way, a discursive textual element that allows psychiatrists to decide, on their own, what information is to be conveyed. In Anna’s situation, institutional discourse prescribes the terms under which their actions become institutionally accountable.³⁷⁷ The following excerpt, from an

³⁷⁷ Dorothy E. Smith, *A Sociology for People*, 113.

interview with a psychiatrist with years of experience, illustrates psychiatrists' understanding of legal rights:

We try to follow the procedure and inform the patient that he will be institutionalized in the hospital, and explain under which provision this institutionalization will proceed [...] and that this type of involuntary admission is subject to a court's review. Then we inform him about the statutory timeframe that the admitting psychiatrist has to inform the supervisor of the facility and how much time the supervisor has to inform the court, and that when this information reaches the court the judge will come, and [...] talk to the patient, and will evaluate the legality of the admission to see whether the psychiatrists overused their power in restraining the freedom [of the concerned patient].³⁷⁸

In this quotation, the psychiatrist clearly does not consider representation as included in the bundle of rights available to involuntarily admitted persons. While I found, through an internet search, that some psychiatric facilities list representation in the catalogue of patients' rights posted on their websites, the texts that psychiatrists have in their offices—texts of legal commentaries to the *Mental Health Protection Act*—do not mention this right in the commentary under Article 23.³⁷⁹ One commentary, written by attorney Juliusz Duda, only paraphrases the text of the article, without further engagement; the other, written by a team of psychiatrists and a judge, only briefly mentions psychiatrists' obligation to explain the reasons underlying a person's admission, along with informing the patient about their rights—which the commentators do not specify, either.³⁸⁰ The latter, under the commentary to Article 23, advises psychiatrists how to *safely* inform the admittee about her or his rights. The authors write:

³⁷⁸ Interview with a psychiatrist, 7 March 2013.

³⁷⁹ Galecki, Bobinska, and Eichstaedt, *Commentary*; Duda, *Commentary*; Riles, *The Network Inside Out*.

³⁸⁰ Duda, *Commentary*.

Information [about rights] needs to be conveyed to the patient in an understandable and comprehensive way. However, the conversation with a person who poses a danger to herself or himself and other people, and hence is often aggressive, needs to be conducted in a calm, non-provocative, non-accusatory, but firm and confident way. [...] The way medical professionals and personnel behave [when they convey reasons for admission and information about rights] will shape future prospects for collaboration with the patient. Showing hesitation and fear increases aggressive behaviours [of the patient].^{381,382}

In this excerpt, commentators instruct admitting psychiatrists to organize their interaction with persons undergoing admission in a way that allows smooth processing of the admission. A focus on the ease of processing admissions may be critical for psychiatrists working in busy hospitals or during night shifts, which tend to be insufficiently staffed.³⁸³ The use of technical legal terms, such as “an evaluation the legality of the admission” or “an overuse of power in restraining freedom”—terms seen in the interview excerpt—can help psychiatrists formally fulfil the duty to inform while easing admissions proceedings since, when the patient does not understand information about rights conveyed in a technical way, it is unlikely that they will question it or inquire further.

With regard to discourse, both of these texts construct the involuntarily admitted person as a passive recipient of protection provided by others. Judges are constructed as primary guarantors of the legal validity of the admission decision, while psychiatrists are guarantors of the right to treatment. Thus, admitted persons’ subjectivity is constructed via

³⁸¹ Galecki, Bobinska, and Eichstaedt, *Commentary*.

³⁸² I explore the construction of ‘dangerousness’ within the context of admission procedures in Chapter 6. What emerges in this excerpt from the legal commentary, which is an authoritative text for medical and legal practitioners, is the troublesome link between received information on the potential aggressiveness of the admittee and the framing of potential patient resistance to a psychiatrist’s action based on a well-grounded understanding of their rights in terms of aggression and dangerousness.

³⁸³ I illustrate material actualities of work in psychiatric emergency departments, and the differences between day and night shifts, in Chapter 6.

an ideological frame grounded in biomedical psychiatry and the legal formalism present in the *MHPA*, through which the subjectivities of the admittee and those in power are constructed as a binary opposition: ‘the protector’ and ‘the one being protected.’

It is not, however, that medical professionals attempt to intentionally prevent admitted persons from receiving legal aid assistance; rather, it is a combination of the absence of a specific obligation to inform admittees about their right to representation, the construction of a passive role for those admittees, and the prevalent *MHPA* discourse emphasizing rights to medical service rather than procedural rights.³⁸⁴ Through my review of Polish scholarship on rights in the context of the medical system, I found that the discussion focuses on the rights listed in the *Charter of Patients’ Rights*.³⁸⁵ Additionally, as I sat in on *MHPA* training delivered to medical students, I noted that they were not instructed to inform admittees about their right to legal representation. If the patient is diligent, and searches long enough on various websites, they maybe able to find the right to representation mentioned, but it is usually buried below medial service-related rights.³⁸⁶ Additionally, this search requires technical means, such as cell phones with data access, which patients of psychiatric facilities may not have.

The person undergoing psychiatric admission is thus not treated as partner in the discussion about their rights; they are an object of protection, rather than its subject—a subject who may want to take action based on the information received.

³⁸⁴ Jędrzej Bujny, *Patients’ Rights: Between Autonomy and Paternalism* [*Prawa Pacjenta Między Autonomią a Paternalizmem*] (Warszawa: Wydawnictwo C.H. Beck 2007); Izabela Bernatek-Zagula, *Patients’ Rights to Medical Information in Poland* [*Prawo Pacjenta W Polsce Do Informacji Medycznej*] (Toruń: Wydawnictwo Adam Marszałek, 2008); Teresa Dukiet-Nagórska, *Patients’ Autonomy and Polish Criminal Law* [*Autonomia Pacjenta a Polskie Prawo Karne*] (Warszawa: Oficyna a Wolters Kluwer, 2008); Maria Nowacka, *Patients’ Autonomy as a Moral Problem* [*Autonomia Pacjenta Jako Problem Moralny*] (Białystok: Wydawnictwo Uniwersytet w Białymstoku, 2005).

³⁸⁵ *Act on Ombudsperson for Psychiatric Patients’ Rights*.

³⁸⁶ I conducted an Internet search to discover the availability of this information to the public.

Judges

In addition to the obligation that the *MHPA* places directly on psychiatrists to inform a person undergoing admission about their rights, the Supreme Court of Poland constructed a similar obligation for judges involved in mental health cases. The Court stated in this regard: “Specifically, it is the court’s obligation to instruct a person about their right to submit evidence, to request that a psychiatric expert who prepared written evidence [for their case] be examined, and about their right to retain a lawyer, or to have a legal aid lawyer appointed by the court.”³⁸⁷

According to the Supreme Court, the first step for the judge who encounters the admittee is to deliver information and explain procedures and rights, so that the person can undertake a rational defence. This provides an opportunity for an admittee to realize their rights by first ensuring that those rights are known. Only if a judge subsequently sees that an admitted person is incapable of exercising their rights, or faces challenges in understanding their procedural situation and undertaking a rational defence of their rights,³⁸⁸ should professional legal assistance be granted.

This recommendation of the Supreme Court, obliging judges to provide information about rights, is, however, based on the assumption that judges of the district and regional appeals courts can (and are willing to) devote time to giving patients all the information essential to the effective defense of their rights, and that judges are interested in lawyers’ participation in the proceedings. Yet, as I will show, the work of judges is organized by a set of material and institutional relations that tend to determine how their encounter with the admittee happens, and what institutional priorities guide it. Specifically,

³⁸⁷ Supreme Court, decision in the case *V CSK 145/14*; Supreme Court, decision in the case *II CKN 206/98*.

³⁸⁸ Supreme Court, decision in the case *II CKN 41/99*.

those material conditions (such as workload, accountability for procedural efficiency, the expectation of minimizing the costs associated with legal aid, dominant psychiatric and legal discourses, and knowledge hierarchies) organize judges' encounters with admitted persons, and how these encounters are structured.

In my research site, I observed that not only do these encounters tend to occur only once, they are also brief and highly structured. I saw that the only chance the admitted person had to interact with a judge was when the judge came to the psychiatric facility for the prehearing—an encounter that lasts, on average, between two and five minutes. During it, the judge asks as a set of standard questions to determine whether the patient has an orientation in time and space, and to assess the patient's cognitive skills to determine whether they should be found incapable of acting as a party in a procedure.

I did not encounter a single prehearing meeting between a judge and an admittee during which the judge moved beyond the standard questions to advise the patient about her or his rights, including the right to professional legal aid representation. I encountered only few instances when the admitted person tried to inquire about the details of the legal procedure and their rights—yet even these attempts did not result in information about procedural rights, including the right to representation. Usually judges informed the admittee that a hearing would be scheduled, to take place at the court, and that they would be notified about it. Typically, however, the involuntarily admitted person tended to be intimidated by judges and afraid of being charged with a criminal offence, as many associated judges with the criminal justice system. The fast pace of the encounter between the judge and the admittee, and the associated fear and confusion, may prevent many admittees asking questions to explore their legal options. The way the practice around the

right to information is organized in the context of an involuntary admission seems to leave the admitted person uninformed about their rights to legal aid assistance, and might itself explain the low numbers of requests for such assistance coming from this group. The features of the encounter between the judge and the admittee seem to foreclose the space for the latter's active acquisition of information about the legal instruments necessary for undertaking a defence of their rights. The activities of the judge are not structured so as to be accountable to admittee's needs, rather than to the provisions of the *MHPA*, which makes timely proceeding with decision-making in involuntary admission cases the primary order of business."³⁸⁹

4.3.3 – Appointments *Ex Officio*

The importance of the prehearing also lies in the fact that is often the first time the district court judge can actually determine whether a legal aid lawyer should be appointed *ex officio*—because this is, according to my observations, the first moment when the judge not only encounters the admitted person, but also learns anything about the case.³⁹⁰ Accordingly, district court judges make the majority of decisions regarding granting legal aid after the prehearing is conducted at the hospital. I learned that district court judges typically grant legal aid assistance *ex officio* on two legal grounds: minor status and mental incapacity.

³⁸⁹ Campbell, and Gregor, *Mapping Social Relations*, 37.

³⁹⁰ In chapter 6, I discuss how it is that judges encounter information about the case as late as when they come to the facility for the pre-hearing. This textually-organized practice has important implications for lawyers and for the opportunity to attend the pre-hearing.

Appointments due to Minor Status

The first typical instance in which legal aid is granted *ex officio* is when the judge finds out that the admitted person is a minor (under sixteen years old) or has been incapacitated by the court. During the prehearing, the judge tries to determine whether the current mental state of the admittee requires *ex officio* appointment of an attorney. Briefly skimming the form of the notification and the relevant medical history files, the judge looks for any indication that the admitted person was under age (less than sixteen years old), as in this instance a substitute decision maker or guardian is obligatory under Polish civil law.³⁹¹ This legal regulation is based on the presumption that minors are not able to defend their rights on their own. If a legal aid lawyer was not subsequently appointed, the proceedings could be invalidated upon appeal. In these two situations, judges always *ex officio* award legal aid lawyers.

Appointments due to Mental Incapacity

The second typical instance of *ex officio* appointment of a legal aid lawyer is when the judge encounters information indicating that the admitted person might had been given a court-declared status of incapacity; or when the district judge determines, during the prehearing, that the person lacks mental capacity to undertake their defence. In the first situation, similar to the case of minors, a court-declared incapacity status determines mandatory appointment of a substitute decision-maker or guardian, or an attorney when these substitute decision-makers are not involved in the involuntary admission proceeding.

³⁹¹ This stems from the premise that, in the Polish Civil Court, a person younger than 16 is considered a minor with a limited consent capacity, who needs to be supported in the execution of their procedural rights either by a guardian or a legal professional.

In the second situation, as I personally observed, judges undertake specific activities to examine grounds for assuming that a person may be lacking mental capacity. This is to eliminate factors that would risk court proceedings being invalidated on the basis of ‘inability to defend.’³⁹²

When judges come to the prehearing, they look for any physical or psychological indicators of the admittee’s lack of mental capacity. Such a lack becomes clear when the person they meet does not respond to visual and vocal cues, for example if that individual is in a coma or unconscious. In these instances, judges always grant legal aid assistance. Beyond such straightforward situations, as indicated by one of my judge-informants, judges on their own, or with help of psychiatrists, try to determine whether the admitted person has mental capacity to participate in an admission procedure. While this assessment does not directly stem from the legal provisions of the *MHPA*, it is implied by other provisions requiring the judge to ensure that the person participating in activities in the course of legal processing has processual and legal capacity, and can express their will.³⁹³ Otherwise, all of that person’s activities require ‘supported’ decision-making. Hence, in avoiding this assessment the judge risks invalidating the process.

In making their assessments, judges ask a set of standard questions, including: 1) What is your name and date of birth? 2) Do you know the current day, month, and year? 3) Do you know where you are? 4) Do you know why you are here? and 5) Do you agree to be admitted? Upon my inquiring why this specific set of questions is asked, one of my judge-informants responded: “We need to know whether the person has spatial and

³⁹² Article 379, point 5 of the *CCP*.

³⁹³ Article 65 of the *CCP*.

temporal awareness.”³⁹⁴ Yet, while judges asked these questions of admittees, they tended to rely on psychiatrists’ suggestions about when a person needs assistance, and only in those situations granted a legal aid lawyer. This happened, for example, when a doctor suggested, after the admittee had left the prehearing room, that the patient was in a delusional state or had some brain impairment affecting their cognitive and decision-making capacities. As those suggestions occur infrequently, so do *ex officio* legal aid appointment on such grounds.

The recognition that persons undergoing psychiatric admission can still, in spite of their diagnosed mental illness, have mental capacity to consent (for example to their admission, or to realize their rights on their own) was heralded as an important achievement in mental health, and seen as progress in the justice system’s treatment of people deemed mentally ill. Article 3, clause 4 of the *MHPA* defines consent as:

freely expressed [...] by a person with mental disturbances, who—independently of their mental health condition—is actually capable of understanding received information related to the purpose of the admission to the psychiatric facility, their health, proposed diagnostic activities and treatment and the possibility of predicting the consequences of referred actions or the consequences of restraining from undertaking those actions.

The *MHPA*’s recognition of the ability of people with mental disturbances to consent, and therefore of their capacity to make legally valid decisions, was contrasted with provisions of the Polish *Civil Code*, which fails to recognize any consent capacity in people deemed mentally ill (in Article 82).³⁹⁵ According to this article “Any expression of will by a person

³⁹⁴ Interview with a family court judge, 28 February 2013.

³⁹⁵ *Act Civil Code from April 23, 1964 [Ustawa Kodeks Cywilny Z Dnia 24 Kwietnia 1964 Roku]* (“*Civil Code*”), in 1964 *Journal of Laws*, No. 16, item 93.

who is in a mental state that excludes conscious and free decision-making and expression of will is invalid.”

While the *Civil Code* was enacted in 1964, the *MHPA* responded to new developments in psychiatry, according to which mental illness does not always equate with a lack of capacity.³⁹⁶ For example, as Galecki, Bobinska and Eichstaedt argue in the commentary to the *MHPA*'s Article 3, clause 4, even a person experiencing psychotic episodes is able to agree to treatment if information is presented in an accessible and understandable way.³⁹⁷ This conception of consent is based on the premise that in different moments a person may have different degrees of mental capacity. Thus, ‘capacity’ was recognized as the fluid, ever-changing, and context/matter-specific³⁹⁸ ability to make independent and informed decisions.

According to the Commentaries to the *MHPA*, the assessment of the capacity of persons deemed mentally ill requires specialized knowledge—notably, knowledge that only psychiatrists possess, or at least tools developed by this discipline.³⁹⁹ The judge’s assessment thus reflects institutional discourses in which the biomedical model and psychiatric tools predominate. The set of questions asked allows the judge to find

³⁹⁶ Galecki, Bobinska, and Eichstaedt, *Commentary*; Duda, *Commentary*, 37-38.

³⁹⁷ Galecki, Bobinska, and Eichstaedt, *Commentary*, 51.

³⁹⁸ It has been recognized, in the medical and legal literature, that while a person may not be capable of consenting to one matter, they can be quite capable of understanding and consenting to another. This recognition exists both in the Polish literature as well as literature from other contexts. Some example from the Polish literature include Galecki, Bobinska, and Eichstaedt, *Commentary*, 51-53; Andrzej Zoll, “Patients’ Consent as Warrant for Legal Medical Treatment” [“Zgoda Pacjenta jako Warunki Legalności Leczenia”] in *The Patient’s Rights and the Physician’s Stance on It* [*Prawa Pacjenta a Postawa Lekarza*], ed. Anna Wiekłuk (Krakow: Nakł. Polskiej Akademii Umiejetności, 1996); and Eleonora Zielinska, *Statute on the Professions of a Physician and of a Dentist: Commentary* [*Ustawa o Zawodach Lekarza i Lekarza Dentysty: Komentarz*] (Warszawa: ABC Wolters Kluwer, 2008). Examples of foreign literature include Grant H. Morris, *Refusing the Right to Refuse: Coerced Treatment of Mentally Disordered Persons* (Lake Mary: Vandeplass Publishing, 2000); Carver, “Mental Health Law in Canada”.

³⁹⁹ Galecki, Bobinska, and Eichstaedt, *Commentary*, 51-53; Duda, *Commentary*, 37-38.

themselves in terrain beyond the scope of their legal knowledge. As feminist sociologist Dorothy E. Smith notes, the concepts governing institutional actions must be filled according to the institutional frame. “Institutional categories,” as she elaborates, “don’t stand alone. They are specifications of and are responsible to regulatory texts that authorize and subsume the local particularities resulting from the work of translation.”⁴⁰⁰ The process of inscription is not pre-determined, thus the judge does not need to ask this specific set of questions to assess mental capacity, yet it must be done in such a way as to be recognized by others as a ‘process of assessment.’ By drawing on psychiatric tools in the context of a judge’s actions pertaining to the realization of the provisions of the *MHPA*, ‘assessment’ aims to fill the content of the term ‘consent’ in line with the normative frame established by the *MHPA*.

This ideological frame, of course, did not enter into judges’ practices from nowhere. I learned, through interviews and conversations with judges, that when the *MHPA* was coming into force in the mid-1990s, judges went for training delivered by psychiatrists. In addition, they taught themselves about mental illness from psychiatric texts. One regional court judge, who was very active in the implementation of the *MHPA* in her court, was very proud of her psychiatric knowledge. “I can sometimes,” she said, “recognize psychiatric illness faster than doctors do.”⁴⁰¹

Appointments due to Problems with Serving Documents

In the context of an involuntary admission procedure, challenges in the service of court documents are typically encountered at the appeal stage, because admittees are often

⁴⁰⁰ Dorothy E. Smith, *A Sociology for People*, 199.

⁴⁰¹ Interview with a regional court judge, 21 August 2013.

discharged from hospital between their case's adjudication by district courts and their appeal hearing. While mental health cases should have priority and appeals should be heard within three months of being filed with the appeals court, the chair of the family court explains: "We never meet this deadline, regardless of how hard we try, because we have too many cases."⁴⁰² She also notes that there are problems with the delivery of correspondence that significantly delay the processing of involuntary admission cases.

My review of the court register showed that an appeal hearing for an involuntary admission case is held within five to six months of the case's notation in the appeals court register. By that time, the appellant⁴⁰³ has usually been discharged from the facility, as the average stay there is six weeks,⁴⁰⁴ yet the appeals court is informed neither about this discharge nor about the need to service documents at the appellant's home address. I observed cases where the court had problems serving documents, returned by the psychiatric facility, at appellant's home address, either because they were no longer interested in continuing their encounters with the courts after being released from hospital, or perhaps because they had not actually returned to the address on file with the hospital.

⁴⁰² Interview with a regional court judge, 30 July 2013.

⁴⁰³ When I talk about appellants from district court decisions, I specifically refer to an involuntarily admitted person who contests the grounds of their admission. This is because of a single case when the district court decision overruled psychiatric admission — an appeal in which only the admitted person, or family members (if involved), could be parties in the case. Such involvement of family members as a party, while possible according to the *MHPA*, was non-existent in cases I examined.

⁴⁰⁴ This length of time correlated with the medical services funding scheme that psychiatric facilities receive from the National Health Fund. Psychiatric facilities are reimbursed on patient-by-patient basis, and for most psychiatric disorders the facility will receive full reimbursement only for six weeks of in-treatment. The state-funded rate of coverage for longer stays is only 80 percent. Interview with the supervisor of the psychiatric facility, 18 July 2013; Interview with a senior medical assistant, 16 January 2013.

Few unsuccessful attempts to deliver court correspondence prompt judges adjudicating the case to appoint a legal aid lawyer.⁴⁰⁵

Appointments due to Problems with Meeting Filing Requirements

The other most common reason for pursuing *ex officio* appointments at the regional appeals court is when the chair of the family division checks whether submitted documents meet the filing requirements and ensures that all needed documents are included. As discussed in the previous chapter, appeals submitted by an involuntarily admitted person do not need to meet formal requirements set by the *CCP*. There are some gaps, such as the impossibility of deducing what the appeal specifically contests, that motivate judges to appoint a legal aid lawyer to correct defects.

Situations in which appeals court judges grant legal aid differ, as these judges try to follow recent Supreme Court decisions suggesting that the material circumstances of involuntary admission and the psychiatric state of admittees justify broader application of the *ex officio* legal aid-granting prerogative. In the midst of my fieldwork, the chief of the family court began appointing legal aid lawyers to all mental health cases, when previously they were only appointed when judges encountered problems with serving documents to the appellant, or there were defects in the text of an appeal that required fixing. In an interview, the chair of the family court where I conducted my research told me that, in line with the Supreme Court's recommendation, she tends to grant legal assistance in all mental health cases that reach her office.⁴⁰⁶ The difference in local practices between district and

⁴⁰⁵ In the proceedings at the district court, one judge hears involuntary admission cases; in civil proceedings, three judges hear appeals. Articles 47, 373 and 374 of the *CCP*.

⁴⁰⁶ I discussed the Supreme Court's decisions in Chapter 3.

appeals courts needs to be located in the organization of the work of judges in both contexts.

4.4 – Procedure for Selecting Lawyers for Legal Aid Duties

Whether a judge's decision to award an involuntarily admitted person legal aid assistance is issued in response to that person's request for a lawyer, or the judge issues it *ex officio*, they make their decision by producing a court document that states whether the assistance was granted.⁴⁰⁷ The way the procedure for legal aid appointments is organized requires coordination between the court and the regional bar council, as well as the production and exchange of a number of texts.⁴⁰⁸

My data shows that the route from the court to the bar council and back to the court may be lengthy, both because mail correspondence takes time and because of the way work in the local bar council is organized. Consider the following theoretical example: On 28 May 2012 the court issued a request for the appointment of a legal aid attorney in an involuntary admission case. In the text of the request, the bar council was asked to select, within three days of receiving the correspondence, an attorney who would be undertaking this duty. According to my data, such two-to-three-day requests for appointments are common in involuntary admission cases. In this theoretical case, the request was sent via mail and reached the bar council on 3 June. The decision regarding the designation of a

⁴⁰⁷ If the decision is negative, then the concerned person will receive a copy of this decision with a cover letter prepared by the judge's secretary, via registered mail, at the psychiatric facility where they are confined. This decision is not appealable. Receipt of proof of the individual having been served the decision ends the procedure.

⁴⁰⁸ Article 117 of the *CCP*.

specific lawyer was made by the bar council on 11 June 2012. The entire cycle took more than two weeks.⁴⁰⁹

The delay in responding promptly to a court request is not, however, due to a lack of attention by the bar council. The local bar council is an administrative body working on a voluntary basis and consists of practicing lawyers. A bar council's secretary comes in to the office only once or twice a week, sometimes even less when circumstances prevent them from fulfilling their duty. Thus, the frequency with which decisions are made by the secretary reflects their work schedule at the bar council office. In an interview,⁴¹⁰ the bar secretary admitted that it takes, on average, four days to respond to courts' requests for legal aid appointments. To this must be added time for preparing and delivering correspondence.

Given the way the procedure is organized, the whole cycle of document exchange, in the best of circumstances, takes close to two weeks—but as my analysis of court documents shows, exceeding this timeframe is not uncommon, with serious consequences for the organization of the hearing. According to Article 45 of the *MHPA*, the involuntary admission hearings at the district court level should be held within two weeks of the date of the prehearing. When an attorney is not appointed within that time, or is not informed of the date of the hearing, the hearing needs to be adjourned. As has been mentioned, the actual purpose of the expedited involuntary admission procedure is to ensure that nobody is kept for longer than necessary.

⁴⁰⁹ Sometimes it can take even longer. This does not include the time the lawyer waits to receive the information from the bar council on their appointment, which is bundled together with correspondence sent by the council to the court. This adds at least a few days for postal delivery, and potentially up to two weeks, to the time that the lawyer has to pick up the letter from the post office. This is the time deemed under the provisions of the *CCP*.

⁴¹⁰ Interview with an attorney/the bar secretary, 19 July 2013.

To attend to the tight deadline imposed by the *MHPA* and the administrative court, requests are sometimes sent to the bar council via fax, in addition to the regular correspondence sent by post. The bar secretary informed me that the bar councils also use faxes to expedite court delivery of information on the name of the designated attorney, when they know that the hearing date is approaching soon.⁴¹¹ Information about the date of the hearing is not usually included in the court correspondence to the bar council, though. The text of a typical piece of court correspondence reads as follow:

The court [court specifics] requests to designate a legal aid lawyer within [time frame] for [first and the last name of the person to be represented] currently residing in [name of the facility] for the proceeding [identifying number] that was initiated by the Director of [name of the facility].

Based on this standardized information, it is hard not only to deduce for what specific procedure an attorney appointment is being requested, but even if one makes an educated guess that it may be a procedure of admission (because a Director of the Facility is mentioned), it is impossible to guess the stage of processing the case is at, and therefore how quickly the deadline for lawyers' activities is approaching. Yet, such a guess will require that the bar secretary spends time looking carefully at the wording of each individual request. This may be difficult given that they come in to the office for just a few hours, and legal aid appointments are only one of their many duties.⁴¹²

Regarding next steps, the senior secretary of the family court explains: "We call attorneys directly to tell them about the date of the hearing."⁴¹³ This is to make sure

⁴¹¹ Interview with the bar secretary, 19 July 2013.

⁴¹² Interview with the bar secretary, 19 July 2013; Bar *Law of May 26, 1982 [Ustawa Prawo o Adwokaturze z Dnia 26 maja 1982 Roku]* ("Bar Law"), in 1982 Journal of Laws, no. 16, item 124.

⁴¹³ Interview with the senior court secretary, 5 February 2013.

attorneys are notified in advance. Without such notification, if the hearing proceeds the court risks nullifying the case, by operation of law, upon appeal.⁴¹⁴ Because of these procedural consequences, the secretary expressed frustration when he could not get in touch with the lawyer via telephone. Court personnel blaming lawyers for not picking up their phones demonstrates how problematic the procedures and practices are in the organization of legal aid appointment in involuntary admission cases.

4.5 – Urgency of Lawyers’ Involvement

Civil commitment cases, more often than any other type of legal aid case, may require lawyers to take action immediately after they have been informed about their appointment. This is because of the strict timeline for processing involuntary admissions cases, set out in the *MHPA* in order to prevent a person from being kept in a psychiatric facility illegally. In this section, I situate the activities related to lawyers’ legal aid appointments within the material and institutional contexts in which they are embedded. Attorneys whom I interviewed reported facing particular difficulties in delivering quality legal aid representation in involuntary admissions, due to the urgent character of these cases. They also found it difficult to keep up with the heavy, regular workloads integral to private practice.

The narrative below, from ethnographic data collected in 2013, describes a young attorney negotiating the contingencies of the work he faces in trying to realize his legal aid appointment at the regional appeals court.

⁴¹⁴ Interview with the senior court secretary, 5 February 2013.

A young attorney was appointed to represent a client in an involuntary admission case at the appeal level. From the correspondence that accompanied the letter of his appointment, he learned his client's appeal had formal deficiencies that the appeals court had obliged him to correct within seven days. Given the proximity of this deadline, the case required urgent intervention. In order to comply with the court's order, the lawyer went first to the courthouse to read case files. He wanted to be familiar with the case, particularly its facts, so that he could prepare his legal submission. After that visit, the attorney decided that he needed more details about the circumstances of the involuntary admission. He drove to the outskirts of the city to visit his hospitalized client. After that meeting, the attorney prepared a draft submission in which he responded to the deficiencies of the appeal, and also introduced new facts to support his client's challenge to the legality of the admission decision. The lawyer then went back to the hospital to review the draft with his client. After gaining his client's approval, the attorney submitted the document to the court within the time prescribed. It was one of his first legal aid cases as a young lawyer, as he had only recently been admitted to the bar. In a few weeks, the attorney participated in the appeal hearing on behalf of his client. For all this work he was paid 60 zlotych (about \$20 CAD).

In the interview, this lawyer specifically stated that he was able to deliver quality representation and undertake all the actions he thought necessary because he received his legal aid appointment at the beginning of his professional career. At the time of our interview, he had been practicing for some time, and reflected that if he were to be

appointed as a legal aid lawyer in the near future he would have to limit some of his activities pertaining to the representation.

Agnieszka: Given what you told me at this interview, that the legal aid case was at the beginning of your legal career, as a more seasoned attorney with more clients, would you be able to engage to that same extent if you got the case now?

Legal aid attorney: I think that now I would limit myself to only one visit. This is because those cases require a lot of time. But it would depend on the stage the legal proceedings were at when I was appointed.⁴¹⁵

The work of legal aid lawyers is organized in a way that may negatively affect the quality of representation. Through court-issued appointment decisions, lawyers are abruptly plunged into legal proceedings without their consent. The attorney in the above account learned about his appointment to legal aid duty at the same time as he received a court order obliging him to attend to the formal defects of his client's appeal. As part of a complex institutional landscape that materializes in the moment of the appointment decision, lawyers' work is not simply about the delivery of legal aid representation; instead, the institutional actions and texts involved in the appointment procedure hook lawyers into numerous additional institutional processes and relations, which they must negotiate concurrently, as a part of their legal aid lawyering in involuntary admission cases.

This 'hooking in' creates a sense of urgency that characterizes all involuntary admission cases—and perhaps all legal aid cases—due to the conditions that underlie lawyers' appointments. This is even more pervasive in the context of legal aid appointments at the district court level, as lawyers may have fewer than two days to prepare

⁴¹⁵ Interview with an attorney, 10 February 2013.

for involuntary admissions hearings. While this expedited way of proceeding with an appointment, and with delivering information to the appointed lawyer, enables courts to meet formal procedural requirements, at the same time it puts even more pressure on lawyers to drop all of their other work and attend to this unexpected, urgent appointment. Given lawyers' lack of immersion in the field of mental health law, and due to the organization of legal aid appointments in involuntary admission cases, lawyers are often given little-to-no time to prepare cases—to learn the facts and the evidence presented, and to research the applicable enactments and jurisprudence. In this context, lawyers' case preparation, and thus the ability to substantively contribute to the proceedings, seems not to number among courts' and judges' concerns.

Although they lack immersion in mental health law, and are prevented from allotting adequate time to case preparation, attorneys cannot refuse legal aid appointments on the grounds of insufficient notice, scheduling conflicts with other hearings, or lack of sufficient knowledge in the field to deliver quality service. This aspect of the legal aid system, along with others explored in this dissertation, puts both attorneys and admitted patients in a precarious position: for attorneys, legal liability issues may be at stake, while admittees face the adverse consequences of lacking quality representation.

Negotiating mandatory lawyering in legal aid cases, and specifically in civil commitment cases, requires a substantial amount of time and attention. To accommodate the legal aid tasks relating to their appointment, attorneys need to make significant adjustments to their regular workload. It may be easier for young lawyers to accommodate these new urgent duties when they do not yet carry an extensive private practice, or for senior lawyers who have articling students helping in running theirs. Negotiating

workloads can include adjusting daily schedules to assign time for preparation of and participation in newly assigned cases. Like the nursing assistants in sociologist Timothy Diamond's institutional ethnography on nursing homes, legal aid lawyers did not complain about their job *per se* but about "the occupational hazards [that] were the products of this specific form of business."⁴¹⁶ Yet, attention to these conditions of lawyers' appointments differs, as I show later in the dissertation, by framing the sacrifice of quality legal assistance as a matter of the lawyer's character and lack of investment in working for those in need. This individualist approach green-lights further control over lawyers and the social relations that organize their work.

4.6 – Conclusion

In this chapter, I traced a number of legal and institutional relations and practices that organize the work of legal aid lawyers appointed at the appellate level, and how these may contribute, along with other factors, to the experiences of lawyers given this duty. First, I explored legal-institutional relations pertaining to judges' appointment of legal aid lawyers for involuntarily admitted persons, and described the associated organizational and decision-making processes. I paid particular attention to the relationship between the materiality of judges' and psychiatrists' everyday work and the textually-mediated administrative and legal procedures for requesting and appointing legal aid lawyers within the context of involuntary admissions. Second, I located the decision about awarding legal aid representation as a step in a sequence of actions involved in the appointment of a legal aid lawyer.

⁴¹⁶ Timothy Diamond, *Making Gray Gold: Narratives of Nursing Home Care* (Chicago: University of Chicago Press, 1992), 208.

District judges tend to apply Article 48 of the *MHPA* narrowly, limiting appointments of legal aid to only two instances: when an involuntarily committed person is deemed incapable of consenting to their admission, or when they are incapable of consciously participating in the procedures for involuntarily admission. In these cases judges are obliged, by law,⁴¹⁷ to ensure that a person lacking legal capacity is supported in decision-making procedures and that they are represented and buttressed in realization of their rights. This means that in instances of being incapable of consenting to admission or being unconscious, the presence of a lawyer is mandatory—otherwise the judge risks a decision being overturned on appeal, on the grounds of an invalid proceeding. As a result, judges grant *ex officio* legal aid assistance only to a small number of persons.

There is an ongoing discussion in Polish legal circles about whether administering legal aid assistance via courts is the best way to ensuring access to legal aid. During a recently organized conference entitled “Legal Aid *Ex Officio* and Access to Justice,”⁴¹⁸ prominent Polish legal scholars, judges, and practitioners reflected on the functioning of the legal system in Poland. Generally, participants were concerned about the potential lack of objectivity when an adjudicating judge also grants legal aid assistance in the same case. They suggested that courts should only be able to *review* negative decisions, and that authorities external to the proceedings should be the ones *making* decisions about granting or denying legal aid. The general point regarding court authority in administering legal aid is well-taken, but problematically locates problems related to legal aid granting procedures in individual judges and their personal qualities. In other words: the concerns of conference

⁴¹⁷ *CCP*.

⁴¹⁸ *Legal Aid Ex Officio and Access to Justice Conference*, Warszawa, 2012.

participants were expressed in individualistic terms, where the malfunctioning of the Polish legal aid system is rooted in the lack of objectivity of judges. Yet the problem is more complex and should not be so narrowly conceived. Instead of blaming judges for not being objective or not adhering to the Supreme Court's recommendation to appoint legal aid lawyers in all involuntarily commitment cases, practitioners should recognize that judicial practices are grounded in and responsive to a complex set of institutional relations that organizes their work, and the practice of legality in admission cases. While the *MHPA* establishes psychiatrists' duty to inform the admittee about their rights, and recommends judges consider factors that may impede the admittee acting on their own in the proceedings reviewing the legality of their admission decision, the "prescriptions of the law do not exist in an abstract theoretical space; they are locally incorporated into people's work and the coordinating of their work as a sequence of action."⁴¹⁹ Psychiatric and judicial professionals fill legal concepts with local meanings and ways of doing things, upon the condition that these practices "can be recognized as an instance or expression of the textually authorized procedure."⁴²⁰ Through various means—their professional training, observation of others' practices, and reading commentaries—psychiatrists and judges find "what might be recognizable as a proper instance of [a textual category or concept]"⁴²¹ and act accordingly.

The focus of the next chapter is on the financial relations that organize the legal aid system in Poland, and legal aid assistance in involuntary admissions cases. These financial relations are important organizers of practices of granting of and remunerating legal aid

⁴¹⁹ Dorothy E. Smith, "Incorporating Texts," 67.

⁴²⁰ *Ibid.*, 83.

⁴²¹ *Ibid.*

assistance. Compelled by their professional ethics, lawyers experience legal aid cases, specifically involuntary admission cases for which they are minimally remunerated, as a financial burden imposed by the state, instead of the state fulfilling its obligation for funding legal aid.

Chapter 5 – Professional and Economic Conditions of Attorneys’ Legal Aid Work

5.1 – Introduction

In an interview with me, a lawyer remarked on his experience of being appointed to legal aid representation in an involuntarily admission case: “Nobody takes these cases willingly and eagerly. I do it because it is my professional duty [but] they require a lot of time, and the remuneration [...] is simply laughable. I spend more on stationery used for these cases than what I receive for remuneration.”⁴²² This quote speaks to the troubling fact that lawyers experience legal aid lawyering in involuntary admission cases as a burdensome obligation, in which they would prefer not to engage if it was not their professional duty. Indeed, every Polish attorney, by virtue of membership in an attorney community/constituency (in Polish, called *Adwokatura*) is obliged to provide legal aid representation.⁴²³ This obligation has both legal and ethical grounds, as historically Polish attorneys have seen their work as a *vocation*, and being an attorney as a *mission*.

Currently, though, financial relations pertaining to legal aid service, and the economic conditions of attorneys’ legal practice in Poland, make the fulfillment of this

⁴²² Interview with an attorney, 22 January 2013.

⁴²³ The difference between the organization of the legal aid system in Poland and other countries, such as Canada or United States, is that while in these countries legal aid service for lawyers is voluntary, in Poland this service is obligatory. In the United States, according to legal scholars and political scientists Austin Sarat and Stuart Scheingold, “lawyers are encouraged by the organized profession to undertake a variety of *pro bono* activities and to support legal aid and legal services programs” because their legal aid service reflects well on the legal profession. For a broader discussion of ‘cause lawyering’ see: Austin Sarat and Stuart Scheingold, *Cause Lawyering: Political Commitments and Professional Responsibilities* (New York: Oxford University Press), 4. For a discussion of the blurred boundaries between cause lawyering and *pro bono* legal work specifically, see Austin Sarat and Stuart Scheingold, “Cause Lawyering and the Reproduction of Professional Authority: An Introduction,” in *Cause Lawyering: Political Commitments and Professional Responsibilities*, ed. Austin Sarat and Stuart Scheingold (Oxford: Oxford University Press, 1998).

mission challenging and contribute to attorneys' discontent with this mandatory obligation. Attorneys are particularly discontented with cases, like involuntary admission, for which they are paid little and which additionally require putting in *pro bono* hours. In effect, to navigate the financial burden associated with these low-paid cases, lawyers may decide to invest only the time and effort necessary to satisfy the documentary requirement of their participation. In this chapter, I consider the legal and financial organization of the legal aid system in Poland, in order to illuminate the relations that constitute attorneys' lawyering in involuntary admission cases.

The chapter is organized in the following way: first, I explain the legal organization of lawyers' legal aid services and discuss the legal and professional grounds for attorneys' mandatory engagement in this activity. While developed in a different historico-political context, discourses of *vocation* and *mission* still feature as essential elements of an attorney's profession. Second, I map and discuss the financial relations organizing legal aid in Poland, and illustrate how they enter the everyday work of judges through textually-mediated processes. Third, I elucidate how Polish state and government agencies co-opt the discourses of an attorney's *mission*, in order to fulfill the state's obligation to provide legal aid at minimal cost. The state, however, does not consider the potential impact of low remuneration for legal aid service on the quality of that service. I then discuss the discursive practices of judges that enable them to rationalize low remuneration for lawyers and reduce courts' expenses related to legal aid. Reductions in legal aid funding and states' reliance on the *pro bono* work of public interest lawyers has been a trend in a numerous countries, but because Polish lawyers' participation is mandatory, it bears on the quality of representation involuntarily admitted people may receive in Poland.

5.2 – Legal Aid Service of Polish Attorneys

5.2.1 – Professional Ethos and Attorneys’ Legal Aid Service

As a public trust profession, historically *Adwokatura* has established itself as one of the pillars of the rule of law and a constituency involved in the protection of legal rights in Poland.⁴²⁴ Polish attorneys’ public service in protecting the rights and liberties of those in need is a long tradition that can be traced back to at least the 18th century, when Poland was partitioned between Russia, Prussia, and Austria, and Polish attorneys engaged in armed struggles and defended dissidents in political trials. Seen as a potential threat to Nazi and Soviet occupiers during the Second World War, many attorneys were executed or imprisoned. When Poland became a satellite country of the Soviet Union, Polish attorneys took part in numerous political processes. In all of these periods, Polish attorneys took upon themselves the duty to protect individuals from state violence, often risking their own lives within this political-legal project. They protected individuals from the state and legal apparatuses—including the judiciary and public prosecutors, who represented occupiers—that were seen as tools of repression.⁴²⁵

⁴²⁴ Polish public trust professions can be recognized by the following features: 1) a professional focus on the delivery of services that are essential (i.e., of high significance) from a public policy perspective and that are delivered for the sole benefit of the recipients; 2) additional ethical norms and professional requirements that ensure proper conduct and qualifications of members of the profession; and 3) actual public respect for the profession, grounded in the public’s trust that members of the group are properly motivated in undertaking their duties, are following required professional standards, and are embracing values essential to the profession. Andrzej Krasnowolski, *Professions of Public Trust, Regulated Professions and Liberal Professions: Genesis, Functioning and Actual Problems* [Zawody Zaufania Publicznego, Zawody Regulowane Oraz Wolne Zawody. Geneza, Funkcjonowanie I Aktualne Problemy] (Warszawa: Kancelaria Senatu, 2013), 9, 13; Jerzy Naumann, *The Collection of Ethical Principles for Attorneys and Professional Integrity: Commentary* [Zbiór Zasad Etyki Adwokackiej I Godności Zawodu. Komentarz]. (Warszawa: Wydawnictwo C.H.Beck, 2015); Paweł Skuczynski, “Lawyers’ Paternalism and the Identity of Polish Legal Culture” [“Paternalizm Prawniczy a Tożsamość Polskiej Kultury Prawnej”], *Filozofia Publiczna I Edukacja Demokratyczna* 2, no. 2 (2013).

⁴²⁵ Skuczynski, “Lawyers’ Paternalism”.

The history of Polish attorneys' involvement in resistance, either by direct combat or by using their knowledge and skills in the service of others and their homeland, requiring bravery, self-sacrifice, and selflessness, directly contributes to the formation of the attorneys' ethos. This ethos is built on knight-like virtues, such as *honour*, *courage*, and *commitment to a higher good*. *Law, homeland and honor* and are symbolically featured on the symbol of the Polish National Bar Council.

In reference to this tradition, professional advocacy has been constructed as a *mission* and lawyering as a *vocation*. A prominent Polish attorney and long-standing member of the National Bar Council, Jerzy Naumann, states that attorneys serve as a contrast to other legal professionals, who only provide legal advice.⁴²⁶ This mission, as a service for others, implies that attorneys are willing to self-sacrifice in the protection of their clients' interests and in the promotion of law. "Not as any other job or ways of making money," a profession founded on a *calling* is "perform[ed] out of 'love' and dedication."⁴²⁷ In the *Commentary to the Code of Ethics and Professional Conduct for Advocates* (2015), Naumann emphasizes the strong moral component of legal aid service and its altruistic underpinnings. He suggests that attorneys should be motivated by a desire to help rather

⁴²⁶ For the purpose of fulfilling their public mission, the *Constitution Act 1997* guarantees the attorney community a significant level of self-governance and independence from the state apparatus, so attorneys do not fear the negative consequences, either financial or disciplinary, when they defend individuals against the state. An example of a regulation that could undermine attorneys' autonomy and independence would be one that excluded disciplinary proceedings against attorneys from the prerogative of their association. The danger of such regulations is a potential lack or diminishing of transparency and problems with how the disciplinary action is taken by the professional association. Krasnowolski, *Professions of Public Trust*; Naumann, *The Collection of Ethical Principles*.

⁴²⁷ Ania Zbyszewska, "Women in Research and Academic Labour Markets: Revisiting the Issue Ten Years On," in *Festskrift till Ann Numhauser-Henning*, ed. Mia Rönnmar and Jenny Julén Votinius (Lund: Juristförlaget, 2017): 952.

Alex Wilson and Ellen Pence, "U.S. Legal Interventions in the Lives of Battered Women: An Indigenous Assessment," in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006)

than by remuneration.⁴²⁸ The *Code of Advocates' Ethics* institutionalizes and reinforces that ethos, stating: “[t]he objective of professional actions [...] is the protection of clients’ interests” (para. 6) and advocates are obliged to pursue representation to the highest professional standards, with knowledge, eagerness, and a sense of responsibility (para. 8), regardless of the benefit to themselves (para. 43).⁴²⁹ Thus, an attorney is expected to subordinate all private interests, including financial ones, to the interests of their clients.

The obligation of all Polish attorneys to participate in the delivery of legal aid services has been ratified in the provisions of the Bar Law, specifically Article 1, clause 1, which states that the *Adwokatura*⁴³⁰ is called on to “deliver legal assistance, work towards the protection of rights and civil liberties, and participate in the formation and implementation of law along with other authorities mandated by the Constitution.” Moreover, Polish attorneys cannot refuse to accept legal aid cases when appointed, except where they can demonstrate that service in a specific legal case poses a conflict of interest for clients that the attorney currently represents, represented in the past, or advised (Article 28 of the *Bar Law* and para. 46 of the *Code of Attorneys' Ethics*). If an attorney refuses to undertake legal aid service without approval from their local bar council, they can be found professionally liable and subjected to disciplinary proceedings.

⁴²⁸ Naumann, *The Collection of Ethical Principles*, 10.

⁴²⁹ *Bar Law; Resolution of the National Bar Council Concerning a Set of Ethical Principles and Professional Dignity for Attorneys [Zbiór Zasad Etyki Adwokackiej i Godności Zawodu]* (“Code of Attorneys’ Ethics”), 2011, in *Palestra* 2012, 1

⁴³⁰ Article 2 of the *Bar Law* defines *Adwokatura* as the collective of attorneys and attorney trainees.

5.2.2 – The Changing Organization of Professional Legal Services in Poland and the Economic Conditions of Attorneys’ Work

While Polish attorneys see the protection of rights and liberties as core values guiding their profession and the root of their professional ethos, they find it difficult to combine these with the practice from which they derive their living. For legal representation in some categories of cases, such as custody, incapacitation, child support, or in involuntary admission, lawyers can receive as little as 60-120 złotych (\$20-\$39 CAD) for their work at the lower court level, and an additional 50 percent for appeal work.⁴³¹ By way of comparison: in a tort-based case with a claim value above 200,000 złotych (around \$65,800 CAD), this same lawyer would earn sixty times more for their legal aid services. Specially, for young lawyers facing barriers to entering the profession, surviving in the competitive legal services market might mean that they need to prioritize more profitable cases acquired through private practice.⁴³²

Some of the challenges that attorneys experience can be linked to the increasingly competitive market for legal services in Poland. Beginning in the mid-2000s, the federal government initiated a series of deregulatory changes to the organization of legal

⁴³¹ *Ministry of Justice’s Decree concerning Attorneys’ Fees and Responsibility of the State Treasury for Unpaid Legal Aid Fees of September 28, 2002 [Rozporządzenie Ministra Sprawiedliwości w sprawie opłat za czynności adwokackie oraz ponoszenie przez Skarb Państwa kosztów nieopłaconej pomocy prawnej udzielonej z urzędu z Dnia 28 Września 2002]* (“Decree on Attorneys’ Tariffs 2002”) in 2002 Journal of Laws 2002, no. 2013, item 461. This decree does not bind attorneys when they are setting up their tariffs within the context of their private practice. While not preventing attorneys from charging remuneration of their choice, when judges decide about distribution of cases’ costs, they are bound by tariffs set by the decree regardless of how much the clients paid to their lawyers. Therefore, it may happen that the winning party may not be able to recover all the costs paid for the legal service.

⁴³² At the same time, some attorneys who just passed the bar specifically contact the local bar council asking for appointments to legal aid cases, as they do not have clientele. For some, being able to appear in court or give legal advice can help them acquire additional clients. Interestingly, Sarat and Scheingold also note that “[n]ot all cause lawyers are self-sacrificing [...]. Often cause lawyers can make more money in some forms of organized cause lawyering (class actions, plaintiffs’ personal injury work) and many gain fame and prestige by what they do.” Sarat and Scheingold, “Reproduction of Professional Authority”.

professions.⁴³³ This entailed interference in self-regulation, specifically when it came to the process of recruiting new members. Most importantly, the profession's governing bodies lost their prerogative to determine the conditions for accepting new articling students. Previously, each local bar council set up quotas limiting how many new articling students would be admitted for training in a given year. In my first articling year, only ten individuals were admitted by my local bar council, while more than six hundred law students graduated in my city. Also, each council prepared its own admission exam and determined its form; the same applied to the preparation of the final bar exam.

With these changes, the profession's self-regulation prerogative was significantly reduced. Quotas were substituted with a specific number of points that one needed for admission. Judges and representatives of the government, along with attorneys, became involved in the preparation and administration both of the articling entry exam and the bar exam, which are the same for all local councils.⁴³⁴ As a result of these changes the number of attorneys in Poland increased from 6,000 in 2004 to 13,800 in 2014, while the number of articling students increased from 880 in 2004 to 7,000 in 2014.⁴³⁵ While this upswing indicates *decreased* competition in the process of becoming a lawyer, it indicates *increased* competition in the field post-graduation, as working lawyers proliferate in number.

In addition, the previously exclusive scope of attorneys' practice in criminal and family cases has been opened to members of the in-house counsel community. Originally

⁴³³ Even though there are certainly critical views of how it was designed and implemented, my intention is not to criticize de-regulation, because it certainly creates possibilities for broader groups of law graduates to enter the legal profession. Rather, I aim to present changes and processes that organize the current material conditions of attorneys' work.

⁴³⁴ The same changes were introduced to the organization of the in-house lawyers' profession.

⁴³⁵ Sylwia Witkowska, "Market Verifies Lawyers" ["Rynek Weryfikuje Prawników"], *Gazeta Wyborcza* 17 August 2015, <http://wyborcza.pl/1,75248,18579639,rynek-weryfikuje-prawnikow.html?disableRedirects=true>; Tomasz Sęk and Ryszard Sowiński, "Prognosis for the Market for Legal Services" ["Prognoza Rynku Usług Prawniczych"], in *The Modern Law Firm Blog*, 3 March 2014.

(since 1961), in-house counsels worked as lawyers for specific state organizations,⁴³⁶ with a scope of practice limited to commercial law, property law, and administrative and civil proceedings. Law excluded in-house counsels from practicing in criminal and family fields. Only as of 2007 did in-house counsels gain access to family law cases. Since 2015, in-house counsels can also represent the accused in a criminal case.⁴³⁷ This community—which has also grown, from 17,000 in 2004 to 28,000 in 2014, again as a result of de-regulation⁴³⁸—has become a source of competition for attorneys. This means that income from criminal and family cases, on which the majority of attorneys tend to rely for their living, has become precarious. Along with the expansion of the scope of practice of in-house lawyers, a number of new professionals, including financial legal advisors and latent experts, have begun to deliver services previously reserved for attorneys.⁴³⁹ This has created even more competition among service providers and made it increasingly difficult for attorneys, or at least for some, to combine legal aid service with meeting financial ends.

The material realities of current attorneys who actually provide legal service within the context of a competitive legal services market in Poland can make it difficult to reconcile these professional duties with the actualities of a private practice. While some seasoned attorneys may be able to balance out small fees by making money in other, private practice cases, junior attorneys or those running small practices may not be able to accomplish this. For example, I learned from conversations with attorneys that older

⁴³⁶ Jakub Michalski, “Genesis and Diversification of Liberal Legal Professions in Poland” [“Geneza i wyodrębnianie wolnych zawodów prawniczych”], *Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM I* (2011): 102.

⁴³⁷ Dariusz Sałajewski, “Not a Breakthrough, but an Important Date” [“Nie przełom, lecz ważna data”], *Radca Prawny* 160 (2015).

⁴³⁸ Sęk and Sowiński, “Prognosis for the Market”.

⁴³⁹ Paweł Antkowiak, “The End of Legal Professions in Europe? The Case of Poland” [“Czy to Koniec Zawodów Prawnicych W Europie?—Przypadek Polski”], *Refleksje* 1 (2010).

attorneys or those with smaller practices also struggle to survive in the market—not just those entering the profession. I additionally learned that attorneys have increasingly been asking for loans, from bar council funds, to cover their everyday living expenses.⁴⁴⁰ Additionally, a blog written by Polish attorneys has noted numerous attorneys closing their practices and transferring to in-house positions, which provide greater employment security via the simple fact of their relative permanence.⁴⁴¹

5.2.3 –Selection for Legal Aid Duty and Mismatch of Field(s) of Practice

Attorneys are selected for legal aid duty from a general pool of all active members of their local bar. Moreover, in my research sites, attorneys were assigned to cases according to their rank/order on the list of all current members. In an interview with me, an attorney, who was the secretary of the local bar council and so responsible for processing legal aid assignments, described the procedure in the following way:

When it comes to the procedure at the local bar council, [it] is very simple and short [...]. When I received the correspondence [from the court, in which the court requests that the council designate an attorney], then from a list of attorneys run by the council I assign a specific person. No specific preferences exist, we did not do any [...] so-called market research about who would like to take this kind of case or who would not. So it is under my consideration, who would be appointed to these cases.⁴⁴²

As the quote indicates, an attorney’s field of specialization and experience are not factors considered in making the assignment. This potentially random match between attorneys

⁴⁴⁰ Informal conversations at the conference, *Ethics of Legal Professions in Practice – Relations in the Courtroom* [Etyka Zawodów prawniczych w praktyce –Relacje na sali rozpraw], Kazimierz Dolny, 19-20 October 2012.

⁴⁴¹ “Will Attorneys En Masse Transfer to In-House Counsels?” [“Adwokaci masowo przepiszą się do radców prawnych?”]. *Palestra Polska*, 31 January 2015, .

⁴⁴² Interview with an attorney/the secretary of the local bar council, 19 July 2013.

and cases leaves no room for lawyers to choose fields of specialization or to support specific causes or cases.

The mismatch between the involuntary admission cases to which lawyers are assigned and the lawyers' actual fields of legal practice needs to be situated within the broader set of relations organizing the legal profession in Poland. Since the work of Polish attorneys is contextualized as a mission, not simply as providing legal services, attorneys are expected to be generalists.⁴⁴³ Attorney Maciej Marek Kamiński, in an article on specialization, explains, "Existing law, and specifically the *Bar Law*, does not provide for an attorney's specialization."⁴⁴⁴ An attorney can only declare a *preferred* field of law when registering their law office in the bar registry of attorneys. Only in 2006 was the *Attorneys' Code of Ethics* (paras. 23a and b) amended to allow attorneys to present information about their legal practices on webpages, and include the scope of provided services and preferred fields of law. After this legal change, local bar councils were allowed to prepare lists of attorneys and their preferred areas of practice and make them accessible online. This being said, an Internet search of a published list of attorneys practicing in the jurisdiction of the local bar council at my research site shows that about 95 percent declare a general field of practice.⁴⁴⁵ This confirms the local bar council secretary's lack of knowledge regarding members' specializations, expressed to me during an interview. Moreover, my research findings and my professional legal experience show that mental health law is not a generally recognized field of specialization and is absent from the articling courses

⁴⁴³ Maciej Marek Kamiński, "Specialization for Attorneys – Yes or No?" ["Specjalizacja Adwokatów – Tak Czy Nie?"], *Rzeczpospolita*, 2 November 2013.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ A list of attorneys of Lublin Bar Council can be found at Lublin Chamber of Bar Attorneys, "List of Lawyers of the Lublin Chamber," 2017, <http://www.ora.lublin.pl/strona,lista-adwokatow-izby-lubelskiej>.

curriculum. While the bar secretary indicated that some attorneys come and ask for specific types of cases, he denied that anybody came to ask for mental health cases.⁴⁴⁶

Although the bar council secretary quoted above tries to discharge attorneys from their legal aid duties if they can justify such requests, for example if they are not qualified in a given field of law,⁴⁴⁷ when analyzing the regional bar council's files related to legal aid appointments during my fieldwork, I came across few cases in which lawyers had requested exemption on grounds such as a lack of knowledge of a particular field of law. Further, none of these attempts were successful. An automatic appointment of lawyers to legal aid duties based on their position on the list might be seen also as a matter of equity. Given the significant disparities between tariffs that lawyers receive for their legal aid services in different kinds of cases, it could be hard to find lawyers willing to invest their time in cases located at the bottom of the remuneration scale. This could make the work of the bar council secretary particularly challenging in trying to appoint lawyers to all the cases that courts request.

5.2.4 – Professional Accountability for Legal Aid Work

There are intersecting circuits of accountability organizing the work of Polish attorneys, including legal aid work, and these circuits involve their accountability to their clients and bar councils. I discuss these circuits in sequence. The term 'accountability circuits' was introduced by institutional ethnographers who explored new public

⁴⁴⁶ Interview with an attorney/the secretary of the local bar council, 19 July 2013.

⁴⁴⁷ Interview with an attorney/the secretary of the local bar council, 19 July 2013. Article 28, clauses 1 and 2 of the *Bar Law* state that only the body who selected an attorney can excuse them from legal duties, based on important reasons for doing so.

management practices of first-line service employees in Canada.⁴⁴⁸ The term refers to “institutional circuits requiring specified and measurable performance or outcomes to meet the mandate of regulatory frames” set by, for example, various laws, policies, or agreements.⁴⁴⁹ While accountability circuits tend to be associated with operating within institutional hierarchies, Majorie DeVault, Murali Venkatesh and Frank Ridzi expand this notion, arguing that “accountability may operate through more diffuse and complex circles, as local institutions respond to the distinctive demands of their local environment, that is to lateral as well as vertical demands for accountability.”⁴⁵⁰ I focus specifically on the legislation, rules, and regulations that construct frames for lawyers’ accountability for legal aid lawyering.

Attorneys’ responsibility for cases and for the delivery of quality representation for private clients begins with receiving a power of attorney from a client or client’s family members. This responsibility lasts until the case is closed. In the context of legal aid cases, this responsibility begins when an attorney receives a notification that they have been appointed in a specific case. The responsibility of legal aid lawyers extends to pursuing an appeal if the client is dissatisfied with the outcome in the lower court. In situations in which the legal aid lawyer does not have clear instructions from the client *not* to appeal the case,

⁴⁴⁸ Alison I. Griffith and Dorothy E. Smith, eds., *Under New Public Management: Institutional Ethnographies of Changing Frontline Work* (Toronto: University of Toronto Press, 2014).

⁴⁴⁹ Lauri Grace, “Accountability Circuits in Vocational Education and Training,” in *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*, ed. Alison I. Griffith and Dorothy E. Smith (Toronto: University of Toronto Press, 2014), 225.

⁴⁵⁰ Majorie DeVault, Murali Venkatesh, and Frank Ridzi, “‘Let’s Be Friends:’ Working within an Accountability Circuit,” in *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*, ed. Alison I. Griffith and Dorothy E. Smith (Toronto: University of Toronto Press, 2014), 177.

the lawyer must appeal, unless all of the clients' legal interests were fully satisfied in the lower court.⁴⁵¹

Attorneys appointed to legal aid service, like attorneys representing private clients, are professionally and legally responsible for the delivery of quality representation and can potentially be sued for professional malpractice. In terms of the first kind of accountability: legal aid attorneys are accountable to their bar councils. Article 80 of the *Bar Law* states that, "Attorneys and attorney trainees can be disciplinarily liable for conduct contrary to law, and to the principles of professional ethics and dignity, as well as for breach of professional duties." One of these professional duties, as discussed previously, is the delivery of legal aid service that meets quality standards. Depending on the gravity of charges, a lawyer can be punished by admonition, reprimand, fine, suspension for the duration of three months to five years, or expulsion from the profession (Article 81.1 of the *Bar Law*).

In terms of the second kind of accountability: a dissatisfied client can initiate a disciplinary proceeding against a lawyer if "principles of professional ethics are infringed by a member of the corporation."⁴⁵² For instance, a legal aid attorney may be required to "to cover potential damages [they] caused when performing professional activities [if] an injured client [...] demands the payment of compensation."⁴⁵³ Thus, mandatory legal aid

⁴⁵¹ Para. 56 of the *Attorneys' Code of Ethics* states: "In order to retreat from a submission of a means of recourse on behalf of their client, an attorney needs to obtain the client's consent, optimally in a written form."

⁴⁵² Bojarski, *Access to Legal Aid*, 20. In Polish legal terminology, 'legal corporation' has historically referred to the professional self-governing communities of attorneys and in-house lawyers.

⁴⁵³ *Ibid.*, 44.

representation can have potential disciplinary and financial repercussions for lawyers if a client is dissatisfied with service received.⁴⁵⁴

The circuits of accountability organizing the work of legal aid lawyers additionally connect to the work of judges, to whom legal aid lawyers are also accountable. A lawyer who is appointed to a legal aid case should be present at hearings⁴⁵⁵ and should respond to all orders that a judge imposes, such as to provide additional information or documents, or to submit legal statements.⁴⁵⁶ If a lawyer fails to do their job, the judge can either impose a fine, notify the relevant local bar council about the professional misconduct, or award lower remuneration for the lawyer's services. As discussed in the previous chapter, Polish law equips judges with the prerogative of granting legal aid assistance in all legal cases, including mental health ones. Judges also grant remuneration for legal aid lawyers, typically in their final decision, and are given discretionary power to adjust legal fees to the specific circumstances of an individual case. The power of judges to grant legal aid in a form of assistance of a legal professional, and the judges' prerogative to award remuneration to legal aid lawyers, directly links the work of judges to the work of legal aid lawyers. Both are, in turn, linked to the state agencies involved in producing the very policies and discourses that find articulation in local practices of judges' remunerating

⁴⁵⁴ I learned from an interview with the Secretary-Attorney of the local bar council (19 July 2013) that the council in my research site abandoned the practice of assigning legal aid duties to attorney trainees. This is because only advocates are civilly insured, leaving young trainees unprotected from the financial consequences of malpractice suits. Attorney trainees only participate in the delivery of legal aid as the legal substitute for an assigned advocate, as in this situation the senior lawyer remains financially responsible for the quality of legal aid service.

⁴⁵⁵ Although in involuntary admission cases the presence of a lawyer at hearings is not obligatory (as stated in Article 150 and 237 of the *CCP*), attorneys tend to come to these hearings because of the potential repercussions of their absence, and take their obligation in this regard seriously. If they cannot be present personally (for instance, when they have scheduling conflicts with other cases), they try to secure another lawyer who can substitute for them.

⁴⁵⁶ Paragraphs 2.1-2 and 19 of the *Decree on Attorneys' Tariffs 2002*.

lawyers for their work. Below, I discuss the textually-organized system of funding for legal aid, in order to locate judicial practices in a broader context of financial relations pertaining to the management of court resources.

Canadian institutional ethnographer Ian Hussey points out that a “person’s ‘ethics,’ ‘morals,’ or ‘politics’ don’t just come from anywhere. They are embedded in a set of ruling relations.”⁴⁵⁷ While the professional ethos (and, embedded in it, the discourses of mission and vocation) emerged in a specific historico-political context, the discourse of an attorney’s mission is still promoted by its authorities as an essential feature of the profession, in spite of the change in the economic and social conditions that influence the current legal practice of attorneys. Discourses of mission and vocation, as Skuczyński critically asserts, herald the elite professional status of Polish attorneys who, due to their special knowledge and morals, are chosen to fulfill socially important missions—to ensure the rule of law.⁴⁵⁸ This elite status, however, always already hierarchically shapes relations with other professions and with attorneys’ clients, as well as the disjuncture between their professional ethos and their economic realities. In respect to attorneys’ relationships with clients, Skuczyński argues that elitism often goes hand-in-hand with paternalism.⁴⁵⁹ In Chapter 7 of this dissertation, I demonstrate how this elitism and related paternalism bear on attorneys’ work and, in involuntary admission cases, the greater likelihood of their aligning with other professionals over their involuntarily-admitted clients. Institutional ethnographers Marie Campbell and Frances Gregor note that discourse, abstracted from the relations in which it was embedded, acts as a ruling device with ideological

⁴⁵⁷ Ian Hussey, “‘Political Activist as Ethnographer’ Revisited,” *Canadian Journal of Sociology* 37, no. 1 (2012).

⁴⁵⁸ Skuczynski, “Lawyers’ Paternalism”.

⁴⁵⁹ *Ibid.*

underpinnings; being connected to broader social and legal relations, it serves “as a mechanism for endorsement and quality assurance.”⁴⁶⁰

With respect to the aforementioned disjuncture, in the following section I show how the internalized elite status of Polish attorneys, placed against the current financial standing of some, contributes to a cleavage in the professional ethos. I begin by showing how funds for legal aid are allocated in Poland, in terms of their categorization and redistribution.

5.3 – Financial Relations Pertaining to Legal Aid

5.3.1 – Funding for Legal Aid

Funds for legal aid in Poland come from the state budget and are part of broader funding for the justice system.⁴⁶¹ As the annual state budget is being prepared, the Minister of Finance sets aside funds for the general functioning of the justice system.⁴⁶² The Minister of Justice, who oversees the administration of the Polish justice system, then further divides that money between different categories of expenses related to the system’s functioning.⁴⁶³ One of these categories includes expenses for the functioning of courts (Article 97, section 1, subsection 3 of the *Law on Public Finances of June 30, 2005*).⁴⁶⁴ In order for courts to receive money they need to prepare a provisional budget for the

⁴⁶⁰ Campbell and Gregor, 2008, Moreover, see Tummons, “Professional Standards”.

⁴⁶¹ *Decree of the Minister of Finance concerning Correct Classification of Income and Expenditure and Foreign Resources [Ministra Finansów w sprawie szczegółowej klasyfikacji dochodów, wydatków, przychodów i rozchodów oraz środków pochodzących ze źródeł zagranicznych]* (“Decree concerning Correct Classification of Income and Expenditure and Foreign Resources”), in 2006 Journal of Laws, no 107, item 726.

⁴⁶² The financing of the legal sector from the state budget is grounded in the *Act on Public Finances of August 27, 2009 [Ustawa o Finansach Publicznych z Dnia 27 Sierpnia 2009 Roku]*, in 2013 Journal of Laws, no. 938; Filip Czernicki, *Access to Legal Aid in Poland [Dostęp Do Pomocy Prawnej W Polsce]* (Warszawa: Helsinki Foundation for Human Rights, 2001), 4.

⁴⁶³ *Law on the Constitution of Courts*.

⁴⁶⁴ *Decree concerning Correct Classification of Income and Expenditure and Foreign Resources*.

upcoming year, with revenues and expenses estimated against the budget from the previous year. The Minister of Justice does not directly distribute money to lower courts in Poland, though; rather, they divide the sum among the eleven appellate courts, which later transfer funds to the lower courts in their jurisdictions.⁴⁶⁵ Directors of appellate courts also prepare annual financial reports for the Minister of Justice at the end of each year,⁴⁶⁶ based on financial reports received from all directors or chief justices of courts in their appellate jurisdictions.⁴⁶⁷

There are no specific categories in courts' budgets designated to cover the costs of legal aid. The *Decree concerning Correct Classification of Income and Expenditure and Foreign Resources* (para. 461) subsumes legal aid expenses under the category "costs of proceedings before courts and public prosecutors' offices." Under the same category belong, for example, expenditures for translation services during legal proceedings; for expert opinions; for compensation of jury members; for field sessions of courts; for the transportation of defendants, witnesses, and experts; and for the delivery of summonses. Accordingly, in provisional budgets prepared at the beginning of the year, court managers and chief justices do not allocate specific sums for legal aid expenses. Lukasz Bojarski, a Polish legal researcher working in the field of access to justice, argues that the dearth of designated resources for legal aid in Poland speaks directly to the low importance of legal aid in the eyes of legislators and government.⁴⁶⁸ He has been critical of the lack of a

⁴⁶⁵ The territorial jurisdiction of appeals courts in Poland roughly reflects the political division into *voivodships*. There are eleven Appeal Courts in Poland.

⁴⁶⁶ *Law on the Constitution of Courts*.

⁴⁶⁷ Financial management of appellate and regional courts is done by financial directors, who are directly accountable to the Minister of Justice. In district courts, if financial directors are not appointed, chief justices manage the budget. District Court in Warsaw, "Principles of Civil Court Budget Management," *Biuletyn Informacji Publicznej*, 24 June 2017, <http://bip.warszawa.so.gov.pl/artykuly/504/tryb-dzialania-w-zakresie-wykonywania-zadan-publicznych-i-dzialalnosci-budzetowej-i-pozabudzetowej>

⁴⁶⁸ Bojarski, *Access to Legal Aid*.

specialized fund for legal aid, equivalents of which exist for programs to support victims of crimes, or post-incarceration assistance, for example.⁴⁶⁹

Grouping legal aid costs with other proceeding-related costs allows courts to shift between types of expenses, if necessary, to balance the court's budget. It may, therefore, take months or even years for legal aid attorneys to receive their approved legal aid fees from courts' budgets.⁴⁷⁰ This 'shifting' is done to prevent an infringement of budgetary discipline, which is punishable by up to five years imprisonment for the financial directors of regional courts and, for chief justices, by potential removal from their positions. The *Law on the Constitution of Courts* (Article 22, para. 2) makes chief justices directly accountable to the Minister of Justice for activities related to the administrative and financial functioning of their courts. This supervision of the Minister is "to ensure that courts can properly fulfill their functions [of the administration of justice and of legal protection]" (Article 8.1 of the *Act on the Constitution of Courts in Poland*).

The Minister of Justice, as the office responsible for distributing finances and controlling their effective management, can send directives for designing courts' budgets for the upcoming year. For example, it can require that courts' expenses for specific budgetary categories, such as fees for legal aid representation or specialized expertise, do not exceed a threshold set by the Minister. For example, in one memo the Minister required that the total expenses for legal aid representation or specialized expertise not exceed the value from the previous year.

⁴⁶⁹ Ministry of Justice, "Budget," *Ministerstwo Sprawiedliwosci/Rzeczpospolita Polska*, 2017, <https://bip.ms.gov.pl/pl/dzialalnosc/budzet/>.

⁴⁷⁰ Bojarski, *Access to Legal Aid*.

The Dutch Ministry of Justice prepared a report comparing, among other matters pertaining to the organization of legal aid, state spending in nine European countries. Of all nine, Poland spent the least.⁴⁷¹ While highest-ranked England and Wales spent €39.37 EUR per capita, Poland spent just €0.59. The table below provides further specifics:

Country	Per Capita Spending on Legal Aid (2013) ⁴⁷²
England & Wales	€39.37 (\$53.88 CAD)
Scotland	€13.28 (\$17.71 CAD)
The Netherlands	€9.11 (\$12.14 CAD)
Ireland	€1.28 (\$1.70 CAD)
Finland	€12.00 (\$15.79 CAD)
Belgium	€6.96 (\$9.14 CAD)
Germany	€5.52 (\$7.24 CAD)
France	€5.40 (\$7.11 CAD)
Poland	€0.59 (\$0.77 CAD)

Figure 5.1: Per Capita Spending on Legal Aid in Nine European Jurisdictions, 2013

What becomes evident is that Poland is not investing resources in ensuring the quality delivery of legal aid. This limited resource allocation guides the administration of legal aid locally, by the judges who deal with legal aid attorneys' appointments. Yet because legal aid expenses are lumped in with other expenses, according to the aforementioned report, it is "difficult to demonstrate the necessity for the cuts or changes within legal aid budgets."⁴⁷³

⁴⁷¹ Maurits Barendrecht et al, *Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice* (The Hague: HiiL, 2014), 49.

⁴⁷² Figures converted from Euros to Canadian Dollars to maintain the comparison undertaken elsewhere in this dissertation, using 2013 figures. Canadian Forex <http://www.canadianforex.ca/forex-tools/historical-rate-tools/yearly-average-rates>, accessed 19 July 2017.

⁴⁷³ Barendrecht et al, *Legal Aid in Europe*, 87.

5.4 – Judges’ Practices around Legal Aid Finances

The funding for legal aid and the financial management of resources allocated for legal aid work, which construct the material conditions of lawyers’ work, is brought into being through local practices of those judges in charge of granting and remunerating legal aid assistance.⁴⁷⁴ The district court judges are clearly aware of the financial consequences that these decisions may have on the budget of the court in which they work. Responding to my question about the Supreme Court’s promotion of an extensive scope of legal aid assistance in involuntary admissions cases, one district court judge said, “If I appoint an attorney to every single case, the Chief Justice will not be happy about it.”⁴⁷⁵ This statement illuminates not only that judges actively participate in the financial relations of legal aid, but also that this participation comes with certain interests and obligations in mind—and possibly a compromise of the cardinal principle of judicial independence.

Involuntary admissions are among those proceedings seen as imposing a significant burden on the court’s budget. This burden stems from their *cost-exemption* status, which means that courts’ budgets must cover all costs associated with these proceedings.⁴⁷⁶ In other civil proceedings, while the court temporarily covers some costs, such as sending correspondence, at the outcome of the case certain parties will be ordered to reimburse the court for these expenses. In mental health cases, however, the court covers all expenses—including all the court expenses, fees for a legal aid lawyer, and the cost of a

⁴⁷⁴ The state covers expenses for legal aid when the lawyer is appointed in cost-exempted cases, and it is impossible to retrieve the lawyer’s fee from the party who lost the proceedings. If the legal aid lawyer represented the losing party, then the legal aid fee is covered by the state.

⁴⁷⁵ Interview with a family court judge, 28 February 2013.

⁴⁷⁶ Duda, *Commentary*.

psychiatric expert's opinion.⁴⁷⁷ Given that the *MHPA* requires such expert opinions⁴⁷⁸ in all involuntary admission cases, and given the significant number of these cases that district courts adjudicate (in my research site, about 1,200 cases per year), the costs associated with these proceedings can be significant.

Many expenses related to processing of cases are unavoidable, and in Poland those costs are pre-paid by courts, including delivery of court documents, sending notifications to all parties and witnesses, and translation costs. Even with the best planning, though, the costs of proceedings are impossible to predict, and courts can only extrapolate from previous years' data.⁴⁷⁹ Predicting expenses related to legal aid representation is particularly burdensome for trial (district and regional) courts in Poland, as they carry all legal aid expenses generated throughout each procedure—yet for some part of it, they have no control.⁴⁸⁰ In other words: even if a legal aid lawyer is appointed at the appeal stage, that lawyer's fee would be paid from the budget of the lower court that adjudicated the case. A judge can save some money if they do not generously appoint legal aid lawyers to involuntary admission cases, or if they grant said lawyers low remuneration.

By appointing legal aid representation and granting lawyers' remuneration of legal aid work, judges actively participate in the financial management of the court and of legal aid lawyers' material conditions. The *Decree of Attorneys' Tariffs 2002*⁴⁸¹ is a text that

⁴⁷⁷ *Ibid.*, 232.

⁴⁷⁸ Based on my analysis of legal files collected for my research, psychiatric experts tend to invoice the court between 120 and 200 Polish złotych (roughly \$39-\$66 CAD) for their opinion. They charge an additional amount if they have to actually come to the court.

⁴⁷⁹ Dołowska, "Legal Aid Ex Officio," 49.

⁴⁸⁰ This makes the work of financial directors or chief justices of district courts involved in preparing and reconciling court budgets even more challenging, since they have no advance access to information about how many legal aid fees, awarded by other judges, they may need to cover throughout the year.

⁴⁸¹ The *Decree on Attorneys' Tariffs 2002* is a rather short legal document — when originally published in the *Journal of Law* it was less than four and a half pages. The text of the *Decree* is organized in seven chapters. Chapter 1 includes general provisions; Chapter 2 describes directives guiding courts in awarding

organizes the everyday practices of judges in decision-making about lawyers' remuneration, which opens space for judges to act according to the state's financial interests. As a *lex specialis*, it provides specific principles and concrete tariffs for judges when they make decisions on awarding fees for professional legal representation, and is used daily by judges awarding remuneration either for privately retained or legal aid lawyers. Tariffs in the *Decree on Attorneys' Tariffs 2002* set thresholds of how much parties will be reimbursed for legal assistance, or how much the state will pay the legal aid lawyer in cost-exempted cases.

Chapter 3 of the *Decree* lists specific tariffs for civil, family, labour, and social insurance cases; civil cases are listed accordingly to the type of proceedings trajectory applicable to the case. According to the *CCP*, there are two trajectories for civil proceedings: processual and non-processual.⁴⁸² To the processual category belong cases adjudicated in an adversarial mode, such as cases in contract law, remedies, and torts. All other cases are adjudicated within the non-processual trajectory. Tariffs vary significantly when it comes to these two groupings, but even within the non-processual, higher tariffs for lawyers' work are assigned to cases related to market economy or intellectual property.

Yet the list provided in the *Decree on Attorneys' Tariffs 2002* is not inclusive. For cases not listed, including mental health cases, the judge needs to apply the tariff set for the most proximal type (para. 5 of the *Decree on Attorneys' Tariffs 2002*). As I observed,

attorneys' legal fees; Chapter 3 lists specific tariffs for civil, labour, and social insurance cases; Chapter 4 lists specific tariffs for criminal and petty criminal cases; Chapter 5 lists specific tariffs in other types of cases (including administrative proceedings); Chapter 6 regulates fees for legal aid attorneys covered by the State Treasury; and Chapter 7 provides interim and concluding provisions. The whole *Decree* consists of 24 paragraphs.

⁴⁸² I explain these trajectories in detail, as they organize legal activities in the case and prerogative of parties differently.

judges in involuntary admissions cases apply tariffs assigned either for incapacitation cases or for other unlisted cases adjudicated in the non-processual mode. In the first situation the tariff would be 120 złotych (\$39 CAD) and in the second, 240 złotych (\$79 CAD). It is important to note, too, that cases in the group to which involuntary admissions belong—personal rights cases⁴⁸³—are assigned one of the lowest tariffs among all civil cases.

While specific data is not available for involuntary admission cases, the disparity in the compensation for legal aid lawyers in Poland versus other countries can be illustrated using a divorce case as an example. For the entire divorce proceeding, a Polish legal aid lawyer would receive 360 zł (\$111 CAD); while a Belgian lawyer would receive €435 (\$559 CAD); a French lawyer would receive €724-820 (\$930-1,054 CAD), depending on whether the divorce is by mutual agreement or not; a Dutch lawyer, €850 (\$1,092 CAD); and an English attorney, £5,956 (\$9,436 CAD).⁴⁸⁴ While some complexity and variation between legal proceedings should be factored into these differences, the fact that remuneration in Poland is less than 25 percent of the next lowest figure (seen in Belgium), together with the Polish state spending several times less on legal aid, illustrates the scope of underfunding of legal aid in Poland and its ramification for lawyers. I discuss, below, three discursive strategies the state uses to organize local practices, related to the financial management of legal aid, in order to meet its fiscal promises.

⁴⁸³ I discuss these judgments in detail in Chapter 3.

⁴⁸⁴ Barendrecht et al, *Legal Aid in Europe*, 72. All values were converted to Canadian dollars for the sake of comparison, using 2012 rates. Canadian Forex <http://www.canadianforex.ca/forex-tools/historical-rate-tools/yearly-average-rates>, accessed 19 July 2017.

5.5 – The Discursive Frame for Local Practices Related to Legal Aid Financial Management

How court administrators and judges manage legal aid expenses locally is affected not only by the governmental distribution of resources for financing legal aid in Poland, and by direct intervention by the Minister of Justice into the financial management of courts through various budget-related instructions, but also by a certain regulatory discourse produced by governmental bodies, federal courts, and the legislature. I discuss three instances of how the regulatory discourse for understanding the relationship of legal aid lawyering in involuntary admission cases has been produced translocally, in legal texts. What emerges is that these state constituencies have coopted attorneys' ethos (their 'mission') and use it to justify attorneys' responsibility for sharing the state's legal aid financial burden.

The first instance of the frame's production involves a discussion on legislating changes to Article 48 of the *MHPA*, subsequent to the Supreme Court's recommendation to ensure broad legal aid assistance to patients in mental health cases.⁴⁸⁵ Acting upon these judgments, the Polish Ombudsperson for Human Rights launched a series of conversations with the Ministers of Health and Justice, encouraging them to propose an amendment to Article 48.⁴⁸⁶ This amendment was supposed to change the wording of the provision about appointing legal aid lawyers in mental health cases from "the judge may appoint" to "the judge appoints," along with removing the phrase that states that such appointment proceeds

⁴⁸⁵ These judgments were discussed in Chapter 4.

⁴⁸⁶ Official letter from Ombudsperson Irena Lipowicz to Minister of Health Bartosz Arłukowicz, dated 30 January 2014 and obtained from the Office of the Ombudsperson on 26 May 2015; official letter from Director of the Administrative and Economic Law Division of the Office of the Ombudsperson Katarzyna Łakoma to Deputy Director, Department of Public Health (Ministry of Health), Justyna Mieszalska, dated 21 January 2015 and obtained from the Office of the Ombudsperson on 26 May 2015.

when “the judge conceives that the involvement of a legal aid lawyer is necessary.”⁴⁸⁷ The Ombudsperson argued that mental illness *per se* should indicate the need for extensive protection of the rights of a person being involuntarily committed to a psychiatric facility, as it is sufficient to raise doubts about that person’s ability to defend their rights.

While there was initial backing for the proposed changes from the Minister of Health,⁴⁸⁸ he eventually withdrew his support, claiming that the Minister of Finance had clearly denied the financial resources needed to implement the changes, without which the ministry would be unable to cover the costs associated with mandatory legal aid assistance in mental health cases.⁴⁸⁹ The Justice Minister had earlier taken a similar stance, explaining that the issue of mandatory professional representation had already been discussed in his department in 2011, and it had been decided that it would cause a significant financial burden on the state budget.⁴⁹⁰ Furthermore, the Minister of Justice ultimately contested the need for such legislative change, arguing that his office had not received any information that the current system of legal aid in mental health cases was malfunctioning. The Justice Minister also noted that some people who are involuntarily admitted do not agree to be represented by somebody else.⁴⁹¹

⁴⁸⁷ Official letter from Deputy Director, Department of Public Health, Ministry of Health Justyna Mieszalska to Director of Administrative and Economic Law Division of the Bureau of Ombudsperson Katarzyna Łakoma, dated 23 May 2015 and obtained from the Office of Ombudsperson on 26 May 2015.

⁴⁸⁸ Official letter from the Deputy Director, Department of Public Health, Ministry of Health Igor Radziwicz-Winnicki to Ombudsperson of Human Rights Irena Lipowicz, dated 17 July 2012 and obtained from the Office of the Ombudsperson on 26 May 2015.

⁴⁸⁹ Official letter from Deputy Director, Department of Public Health, Ministry of Health Justyna Mieszalska to Director of Administrative and Economic Law Division of the Bureau of Ombudsperson Katarzyna Łakoma dated 23 May 2015 and obtained from the Office of the Ombudsperson on 26 May 2015.

⁴⁹⁰ Official letter from Ministry of Justice Undersecretary Michal Krolkowski to Ombudsperson of Human Rights Irena Lipowicz, dated 5 July 2012 and obtained from the Office of the Ombudsperson on 26 May 2015.

⁴⁹¹ Official letter from Deputy Director, Department of Public Health (Ministry of Health), Justyna Mieszalska to Director of Administrative and Economic Law Division of the Office of Ombudsperson

As a result of this lack of ministerial support, the provision remains in its unamended form. The blocking of obligatory representation in all mental health cases by the Ministers of Finance and Justice signaled that the financial priorities of the state, and its current financial agenda related to legal aid, override an individual's right of access to justice, along with the Supreme Court's recommendation in this matter.

The significance of this conflicting approach to mandatory legal aid representation in involuntary admission cases, between government agencies and the Supreme Court, lies in the fact that courts and judges in Poland are legally accountable to both of these constituencies. While according to Article 178, section 1 of the *Constitution 1997*, "Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes,"⁴⁹² the *Act on the Constitution of Courts* is an important organizer of those institutional relations, both with the Supreme Court and with the Minister of Justice. This legal provision creates a dual regime of accountability—of courts and of judges—first in terms of the control of their adjudication (to the Supreme Court), and second, in terms of the administration of justice (to the Minister of Justice).

A second instance of frame production can be found in the line of adjudication of the Constitutional Tribunal, in cases related to the constitutionality of some provisions on remuneration for legal aid lawyers. In the recent case *TS 263/13*, submitted to the Constitutional Tribunal, the claimant, a practicing attorney, argued that the minimal tariffs established by the *Decree on Attorneys' Tariffs 2002*⁴⁹³ and guiding courts remunerating for legal aid service infringed upon her right to adequate remuneration for work. In a

Katarzyna Łakoma, dated 23 May 2015 and obtained from the Office the of Ombudsperson on 26 May 2015.

⁴⁹² *Constitution 1997*.

⁴⁹³ Constitutional Tribunal, decision in the case *TS 263/13*.

lengthy and complicated custody case, the claimant received 60 złotych (about \$20 CAD)⁴⁹⁴ for her legal aid service. She argued that the established legal tariffs had not been updated in twelve years, despite inflation and the increased costs of running a private practice; in addition to which, the *Decree on Attorneys' Tariffs 2002* also established an unfair scale for legal aid remuneration by having it depend on whether an opposing party or the state is held responsible for remunerating the attorney. Her claim was rejected, based on *res judicata*, invoking the judgment of the Constitutional Tribunal in the case *SK 23/05*.⁴⁹⁵

In the case *SK 23/05*,⁴⁹⁶ the Constitutional Tribunal stated that the guarantees of “a decent wage” for work do not apply to attorneys performing legal aid work because of their status as members of a *public* profession. This indicates, according to the Tribunal, that attorneys have a special social mission that involves carrying, together with the state, financial responsibility for legal assistance for those who cannot afford it. In this way, the Constitutional Tribunal produced a discourse of the justifiability of awarding lawyers low fees for their services when they perform legal aid representation, despite the labour input involved in that work.⁴⁹⁷ In the past few years, when young attorneys sought remuneration from the state for their legal aid service through legal means, not only did they not achieve

⁴⁹⁴ To provide a descriptive comparison: a 2013 article attorney argued that 60 zł was equal to the amount paid for 3 kilograms of good quality sausage. Łukasz Supera, “Attorney for Three Kilograms of Good Quality Sausage” [“Adwokat za trzy kilo lepszej kielbasy”], *Rzeczpospolita*, 12 June 2013.

⁴⁹⁵ I have discussed in detail, earlier in this chapter, judgments of the Constitutional Tribunal related to the funding for legal aid (when I talked about a discourse frame, produced by at the national level, that provides direction for local practices on remuneration for legal aid lawyers).

⁴⁹⁶ Constitutional Tribunal, decision in the case *SK 23/05*.

⁴⁹⁷ This is not the first time the Constitutional Tribunal has issued a judgment that aligned with state financial priorities. For example, in deciding on retirement for women, the Tribunal adjudicated that the difference between the retirement age for men (65 years) and women (60 years) is constitutional because any change in that matter would be an unforeseen financial burden on the state and a threat to its fiscal stability. Constitutional Tribunal, decision in the case *K 43/12*.

their goals, their attempts reinforced, in public discourse, attorneys' legal aid service as an *unpaid* professional mission.⁴⁹⁸

A third instance of the trajectory of changes instituted to the law on attorneys' fees shows how systematically, over time, lawyers' tariffs have been subsumed under the broader relations governing the legal system, and to the discourse of lawyers' *pro bono* work. Some symbolic changes were inserted into the provisions guiding lawyers' fees, in response to the attorney community's struggle for tariffs increases. The *Decree of Attorneys' Tariffs 2002* followed the previous *1997 Decree*, when it came to setting fee maximums. The *Decree of Attorneys' Tariffs 2002* increased the general limit—except in legal aid cases—to 600 percent (up from 400 percent) of the minimal fee for privately retained lawyers. Yet this document actually *decreased* the maximum threshold for legal aid lawyers' remuneration: the *Decree 1997*⁴⁹⁹ provided a 200 percent maximum, which the *Decree on Attorneys' Tariffs 2002* dropped to 150 percent.

The *Decree on Attorneys' Tariffs 2002* also equipped judges with the prerogative to assess whether the fee and costs claimed by lawyers were adequate to the type and complexity of the case, and the necessary input of an attorney. This holds especially in cases where the judge remunerates a privately-retained lawyer, where the judge can reimburse the party less than was agreed in a contract with said lawyer. These legislative changes were accompanied by a discourse of the necessity of controlling lawyers, as their

⁴⁹⁸ See the decision and its legal reasoning of the Constitutional Tribunal in the case *TS 263/13* from 18 November 2014.

⁴⁹⁹ *Ministry of Justice's Decree concerning Attorneys' and In-House Counsels' Fees and Responsibility of the State Treasury for Unpaid Legal Aid Fees of December 12, 1997* [*Rozporządzenie Ministra Sprawiedliwości w sprawie Oplat za Czynności Adwokackie oraz Oplat za Czynności Radców Prawnych z Dnia 12 Grudnia 1997 Roku*] ("Decree on Attorneys' Tariffs 1997") in 1997 Journal of Laws, no. 154, item 1013.

high costs prevent parties from accessing justice. Yet, the conditions upon which judges were to assess lawyer's costs and expenses were not discussed, instead being left to their subjective decisions.

The tariffs listed in the *Decree on Attorneys' Tariffs 2002* are set as minimums (para. 2.1), understood as 'base tariffs,' for remuneration in particular types of cases. Judges were given the authority to increase these under the conditions specified in paragraphs 2.1 and 2.2 of *Decree on Attorneys' Tariffs 2002*. Paragraph 2.1 reads: "In deciding upon the remuneration for a lawyer, the court will take into consideration the necessary labour input of the attorney, the nature of the case, and the attorney's contribution to the resolution of the case." If the judge assesses that the minimal tariff is not adequate to these criteria, they can increase it. These terms, however, are open concepts—'shells'—that allow judges to respond to the demands imposed on them by institutional discourses related to the financing of legal aid.

Even if the judge increased the fee granted to a legal aid lawyer, though, that lawyer would receive significantly less than their private counterpart in a similar case. This is because the *Decree on Attorneys' Tariffs 2002* also differentiates the fee thresholds subject to increase by the judge. For privately retained attorneys, "[t]his remuneration cannot be higher than six fold of the minimal tariff nor it can exceed the value of the case" (para. 2.2 of the *Decree on Attorneys' Tariffs 2002*). For legal aid attorneys, unpaid expenditures for legal aid service covered by the State Treasury include "remuneration in the amount up to 150 percent of the minimal tariffs listed in Chapters 3-5" (para. 19 of the *Decree on Attorneys' Tariffs 2002*). In other words, even though two different attorneys—one privately retained and one court-appointed—may both meet the conditions for an increase

in their remuneration, a judge can increase a privately-retained lawyer's minimum fee six fold, but can only increase a legal aid lawyer's fee by a maximum of 150 percent.⁵⁰⁰ It is not only that these tariffs for attorneys' remuneration are troublesome in themselves, as they minimize the visibility of lawyers' work in representation, the difference in judge-granted maximums seems to instruct judges that, when it comes to cases paid from the public purse, the state's financial interests may justify the unequal treatment of lawyers.

These instances show how attorneys' vocational ethos has been mobilized by various state agencies to justify low remuneration for lawyers who are appointed to legal aid duty, and who are mandated to take up this responsibility regardless how much they are paid. Attention has been paid to the processes and techniques of coopting the vocational ethos as a 'labour of love,' particularly by those scholars who research the changing work conditions of knowledge-based elites, such as academics (particularly women or low-ranked academic instructors), creative professionals, etc.⁵⁰¹ Partaking in the delivery of state services, the willingness of academics or attorneys to perform unpaid duties, and to put extra time and effort into fulfilling them to the highest standards, is seen as a measurement of their commitment to the cause underlying their profession.⁵⁰² Moreover, when this work is discursively abstracted from the material conditions in which it is pursued, the state can require flexibility and readiness to undertake additional jobs, even when those tasks are urgently assigned.

⁵⁰⁰ As I learned in interviews with attorneys, it is extremely rare for judges to increase attorneys' fees, either for privately retained lawyers or legal aid-appointed ones. Despite this rare occurrence, even the potential sixfold increase still may not be what an attorney would otherwise charge in the contract. For example, in divorce cases the sixfold increase would be 2,150 zł for a divorce case — yet a 2013 case in Warsaw commanded 10,000 zł for the first instance court proceedings in a divorce case, while in the city where I conducted my research the fee was at least 3,000 zł. Legal aid lawyers in competition could maximally receive 540,00 zł.

⁵⁰¹ Zbyszewska, "Women in Research and Academic Labour Markets."

⁵⁰² *Ibid.*

5.6 – ‘Working for Free’ or ‘Money for Nothing’?

Lawyers talk about legal aid cases as ‘working for free’—when their time and work invested is inadequate to the remuneration they receive.⁵⁰³ One also told me that, in fact, lawyers lose money on involuntary admission legal aid because, during that time, they are not available for retaining private clients.⁵⁰⁴ The story presented in Chapter 4, section 4.3.1, illustrated that lawyering includes a range of activities that often need to be taken before a lawyer can even prepare a legal submission or appear at the hearing. In that vignette, the attorney went to the court to become familiar with the case files and attended the hospital (a twenty to thirty minute drive) twice to meet with his client—all of this in addition to preparing a draft legal submission that included new facts and evidence.

To fully account for time spent on lawyering, the general conceptualization of ‘work’ proposed in institutional ethnography is useful, as it includes activities that are not typically considered work but which require time and are undertaken with purpose in mind. For example, waiting for the hearing occupies a lawyer’s time, and even more so when that wait happens at the courthouse. In my fieldwork, I observed that involuntary admission cases might start after a 40 or even 60-minute delay, a span which greatly exceeds the average hearing time of five to ten minutes. Delays are an everyday experience for Polish lawyers; I experienced them as a legal professional, too. According to a report from the Polish non-profit organization Court Watch, hearings in Polish courts are notoriously delayed, often in the range of 30 minutes to three hours.⁵⁰⁵

⁵⁰³ Interviews, 22 January 2013; 10 February 2013; and 19 July 19 2013.

⁵⁰⁴ Interview, 22 January 2013.

⁵⁰⁵ Bartosza Pilitowskiego and Stanisława Burdzieja, *Report: Civic Monitoring of Courts [Raport: Obywatelski Monitoring Sądów]* (Toruń: Fundacja Court Watch Polska, 2014).

Scheduling conflicts—themselves the result of already impossible demands of ‘time management’—impose another time burden. Some of my respondents pointed to having as many as six legal aid cases, in different fields of law, scheduled for the same day and approximate time. Their legal aid lawyering thus includes finding a substitute lawyer who can appear in court. Finding such a substitute in two or three days may be particularly challenging, and may require making several phone calls to locate a lawyer or an attorney trainee who is available, to deliver case files to them, and often to provide remuneration for their help. When tariffs accepted in the attorneys’ community are taken into account, the remuneration for the substitute lawyer may be even higher than what the appointed lawyer will receive, from the state, for the entire case.

The time spent carrying out legal activities, when added to the time spent on travel, court delays, finding a substituting attorney, etc. only adds to the characterization of legal aid lawyering, by legal aid lawyers working on involuntary admission cases, as an unwelcome professional duty. It also further highlights the disparities between a lawyer’s actual work and the remuneration granted to them, by the judge, for that work. These often-invisible activities tend to be discarded by judges, in part because they cannot draw on their own personal experience. In Poland the professional trajectory into the judiciary does not include past experience in other legal professions: future judges go for a judicial training immediately after they receive their law diploma and pass an admission exam—a person can become a judge in their mid-to-late twenties. Thus, the realities of lawyers’ work and of the costs related to running a private practice are outside of judges’ experience and knowledge.

The *Decree on Attorneys' Tariffs 2002* does not specify, however, how and what elements of lawyers' work should be taken into consideration when awarding legal fees. While the amount of work involved in the representation can vary depending on the precise timing of an appointment, as in the story in section 4.3.1, lawyering includes many interconnected activities. Judges' understanding relies on 'officially documented aspects' of lawyers' work; i.e., the number of hearings a lawyer has participated in and the number and quality of submitted documents. Judges take into consideration only those elements of lawyers' work that are 'objectively knowable,' because these are documented in the case files. Even those judges who advocate for an increase in the financial compensation that lawyers receive, on the grounds that what they receive is inadequate given the amount of work involved, still understand lawyering work in terms of the duration of a case and number of hearings.

Thus judges tend not to recognize the majority of preparatory activities undertaken by lawyers, even though they are an intrinsic element of lawyering. One district court judge's comment that lawyers get "money for nothing"—that is, for their five-minute participation in the hearing—clearly shows how lawyers' work is assessed.⁵⁰⁶ DeVault notes that while the *products* of individuals' work are recognized by institutions, the work itself is largely unacknowledged.⁵⁰⁷ According to my observations, and my analysis of legal files in involuntary admission cases, judges remunerate legal aid lawyers the minimum amount. The value of lawyering work is, therefore, not based on how much work lawyers actually perform, but rather arises through the visible manifestation of that work

⁵⁰⁶ Interview, 28 February 2013.

⁵⁰⁷ Marjorie DeVault, "Introduction," in *People at Work: Life, Power, and Social Inclusion in the New Economy*, ed. Marjorie DeVault (New York: New York University Press, 2008).

to judges. In that official determination, all other work activities—those not undertaken in front of the court or materially articulated in files—are made invisible, and subsequently go unrecognized. Judges can activate the *Decree on Attorneys' Tariffs 2002* in such a way as to mitigate the cost of legal aid by awarding appointed lawyers the lowest possible fee—for example, by seeing involuntary admission cases as ‘straightforward,’ requiring nothing beyond participation in the actual hearing.⁵⁰⁸ Judges are able to rationalize this decision by setting the frame for the amount of work involved according to the financial priorities of the state.

Given the mandatory character of legal aid service, together with the low remuneration for many legal aid cases, including involuntary admission cases, legal aid representation is often experienced by attorneys as burdensome, regardless of their commitment to provide lawyering to those in need. Attorneys conceive that, by relying on low-paid and *pro bono* work, the state shifts the economic burden of legal aid onto lawyers.⁵⁰⁹ This practice of ‘outsourcing’ the delivery of social services to community and charitable organizations, as well as reliance on public-oriented professionals, is not unique to Poland, however. Indeed, scholars in Canada and the UK have documented that cuts to legal aid services, and subsequent reliance on legal professionals to fill that gap in legal

⁵⁰⁸ Chapters 6 and 7 show how texts, discourse, and people’s activities come together in various moments of the admission procedure to construct these cases as straightforward and simple. Notably, attorneys actively participate in those problematic practices.

⁵⁰⁹ On 5 December of 2015, attorney Łukasz Supera organized a seminar on legal aid fees, called “Tariffs<Life” [“stawki<życie”] that was attended by attorneys, judges, legal scholars, and members of the in-house lawyers’ community. Łukasz Supera, “Few Words Per Introduction” [“Parę Słów Wstępu”], in *Proceedings of the Tariffs<Life Conference*, (Warszawa: Łukasz Supera, 2015); Rafał Dębowski, “Voice in the Discussion” [“Głos W Dyskusji”], in *Proceedings of the Tariffs<Life Conference* (Warszawa: Łukasz Supera, 2015); Jacek Trela, “Voice in the Discussion” [“Głos W Dyskusji”], in *Proceedings of the Tariffs<Life Conference* (Warszawa: Łukasz Supera, 2015). See also a press release on the attorneys’ protest that took place in Warsaw on 30 June 2015: Michał Fertak, “Protest of Warsaw Attorneys” [“Protest Warszawskich Adwokatów”], 10 July 2015, <http://www.adwokatura.pl/z-zycia-ora/protest-warszawskich-adwokatow>.

services, has been going on since the 1990s. Poland is thus only another example of eroding state support for those populations who are particularly in need.

Polish governmental agencies tend to argue that high attorneys' fees, including those for legal aid, are barriers preventing the most vulnerable from obtaining lawyers' services, and call for further decreases in those fees. Under this egalitarian rhetoric, the relationship between legal aid attorneys' low fees and the potential effects on the quality of representation are strategically muted. As I show later in this dissertation, while some attorneys selected for legal aid are willing and have adequate resources to provide quality representation, others may engage in legal aid cases only marginally.

The responsibility to provide access to legal aid for those who cannot afford it falls on the state. Legal aid in Poland is funded with public money, yet my analysis of legal aid relations and practices reveals that, while the Polish state indeed contributes funds to the delivery of legal aid, it also relies heavily on the minimally remunerated labour of the professionals who provide legal aid assistance. In this way the state shifts (at least partially) the financial burden associated with funding legal aid onto legal professionals, primarily the attorneys and in-house counsels who are obliged to undertake these duties. Textually-mediated practices of appointment of and remuneration for legal aid lawyers, along with the state-coopted discourse of attorneys' ethical mission, are important organizers of the financial relations around providing legal aid in Poland.

5.7 – Conclusion

In this chapter I discussed some aspects of the textual organization of the legal aid system in Poland. I outlined how legal aid is administered, delivered, and financed, and showed how the practices of legal aid are embedded in the organization of the legal aid

system and the professional and legal discourses underpinning it. Additionally, I discussed some hierarchical and horizontal relations that organize and connect the work of judges and lawyers. The incorporation of various professional, financial, and legal texts into this discussion allowed me to show how a ruling is accomplished within the context of lawyering in involuntary admission cases as professionals, either judges or lawyers themselves, activate texts in their work.

What this discussion shows is that both judges and lawyers are located in a space in which they have to respond to contradictory demands imposed by various policies, as well as to the demands of their work environments or work activities. Judges are trapped in a situation in which they are expected to efficiently manage limited court resources, while also meeting the expectations of the Supreme Court to provide legal representation to persons confined to psychiatric hospitals. In turn, lawyers are trapped between their professional ethos and the costs of running a private practice.

The focus of the chapter was on the financial relations that are an intrinsic element of the obligatory participation of lawyers in the delivery of legal aid, and which are also important organizers of the practice of granting and remunerating legal aid assistance in Poland. Both through decision-making about legal aid appointments, and on the remuneration for lawyers' legal services, judges are implicitly participating in the financial relations around the delivery of legal aid to involuntarily admitted persons. Such concerns require judges to navigate professional practice in a way that allows them to satisfy the standards of accountability imposed on them by statutes, financial policies, and professional regulations.

Given the low remuneration for their legal aid work, considering the time, effort and resources invested in providing legal representation, attorneys experience the effects of the state shifting the economic burden of legal aid onto their shoulders.⁵¹⁰ The disjuncture between lawyers' work and their remuneration is especially striking in involuntary admission cases, which command one of the lowest figures among the prescribed tariffs in the *Decree 2002 on Attorneys' Tariffs*. Nevertheless, because of the relations organizing attorneys' profession, they need to carry out those legal aid duties. Many of the financial, professional, and institutional relations, at the intersection of which actual material work is done, remain unaccounted for in the official discussion on the financing of legal aid or in the practices of local courts constructing lawyers' quality of engagement as a matter of 'a good will.'⁵¹¹

In the next chapter I trace the professional activities that often occur before a legal aid lawyer is appointed in an involuntary admission case, including the paramedics' psychiatric intervention, the admission decision-making, the review of the admission decision by the supervisor of the facility, and the prehearing. These activities are sites where knowledge is produced about admittees. Importantly, they are also sites from which attorneys are excluded, even though the knowledge produced therein constitutes the facts to which attorneys will need to respond during the legal procedure.

⁵¹⁰ Łukasz Supera, *Proceedings of the Tariffs<Life Conference*, Warszawa, 5 December 2015.

⁵¹¹ Rankin and Campbell, *Managing to Nurse*.

Chapter 6 – From Medical to Legal: Constructing ‘Mental Illness’ and ‘Dangerousness’ as Legal Facts

6.1 – Introduction

The *Mental Health Protection Act (MHPA)* requires that before a person is involuntarily admitted to a psychiatric hospital on emergency grounds, that person’s mental illness and resulting danger to self and/or others must be established (Article 23). In other words: the admitting psychiatrist needs to ensure that statutory criteria for involuntary admission are met. This chapter considers the social organization of knowledge involved in the construction of concepts of ‘mental illness’ and ‘dangerousness,’ producing the substantive legality of an involuntary admission. Through a close analysis of texts used by paramedics, psychiatrists, and lawyers in completing certain steps leading to, or involved in an involuntary admission, I explore how ‘mental illness’ and ‘dangerousness’ are institutionally produced, and by whom. In this chapter I demonstrate how medical and legal knowledges are textually produced by coordinated sequences of the actions of paramedics, psychiatrists, and judges. Further, I outline the process by which medical accounts are transformed into legal accounts, becoming constitutive elements of legal files in an involuntary admission case, and how these together produce an official and authoritative account of the mental illness and dangerousness of the admittee.

My account of this social organization of knowledge about mental illness and dangerousness within the context of involuntary admission proceeds via a close analysis of the production of four documents: 1) the paramedics’ report of their intervention in a “psychiatric case;” 2) the admission form, prepared by an admitting psychiatrist as a step in the emergency involuntary admission; 3) the hospital’s notification of the court about an

involuntary admission; and 4) the protocol of the prehearing with the admittee, conducted by a judge in the medical facility. I locate the production of these documents in time and space, and within organized sequences of activities that occur in medical sites, to show how each of them is produced in a different moment of the involuntary admission process, solidifying facts produced without the participation of the person the admission concerns.

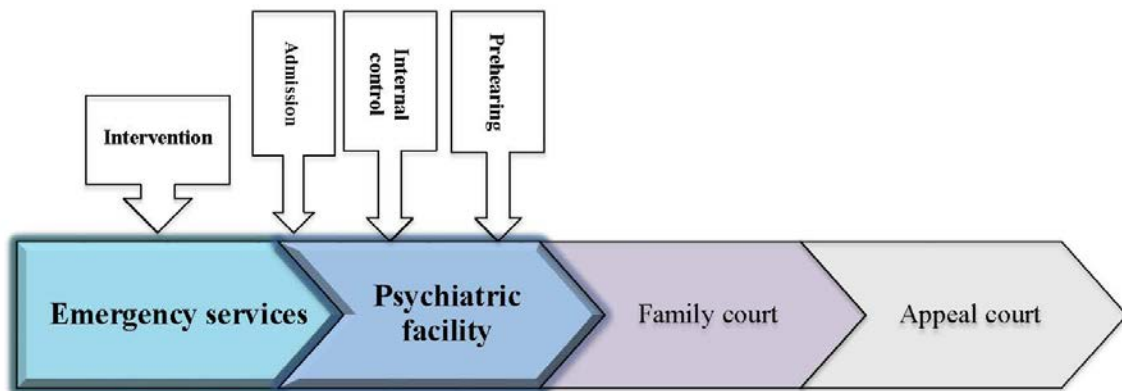


Figure 6.1: Activities in Medical Sites

These texts are essential because they organize sequences of actions in involuntary psychiatric admission; and they are important sites of knowledge production in this context, governed by the *MHPA*. Following Dorothy E. Smith’s claim of “texts as happening in time and place,”⁵¹² I provide a detailed description of what is involved in completing these forms, and how the completed forms are read.

I begin this chapter by relating the story of a young woman involuntarily admitted to a psychiatric facility in my field site. This story is a composite account, produced from numerous medical and legal files. The following sections are organized according to how an admittee would experience the process of involuntary admission, that is, from the

⁵¹² Dorothy E. Smith, “Introduction,” 67.

moment of the initial call to emergency medical services, to the judicial prehearing in the psychiatric facility. In each section I give a detailed description of the organization of the professional intervention, as well as the texts produced at each stage. I present that discussion through: a section on the paramedics' intervention; a section on the psychiatric assessment in the emergency ward; a section on the facility supervisor's control of the admission decision; and a section on the prehearing. In each of these sections I consider how textually-organized professional practices help construct a medicalized, de-contextualized, and ostensibly objective knowledge about an involuntarily admitted person *before* the case reaches the court for adjudication.

6.2 – The 72-hour Admission

The call to a 999 number reporting that, for example, an individual is behaving differently, is aggressive, or is throwing things or voicing threats,⁵¹³ becomes an entry point into a sequence of actions that tends to end in institutionalization in a psychiatric facility. In the following vignette I describe a routine involuntary admission, following a sequence of actions that unfold from the moment of the 999 call to the start of the prehearing. All of these activities are undertaken in various sites of medical service(s).

Monika's Involuntary Admission

It is early evening in the paramedic services dispatch office and the night staff—consisting of the dispatcher and three call-takers—answers phone calls to 999 continually. Sitting there for a while, one can discern three questions that

⁵¹³ Interviews with paramedics, 29 August 2013, 30 July 2013, and 29 July 2013; Interview with a dispatcher, 22 May 22, 2013.

organize these conversations. Upon receiving the call, the first question asked is who is calling, what happened, and what the location is. This routine exchange lasts less than a minute and is followed-up by assigning a first response team to the given location. In cases of calls reporting mental health issues, an additional question is asked about a previous history of hospitalization. Before the team is sent, the dispatcher assigns a priority code (which determines response time) to the intervention and sends this code, along with the incident location, to the assigned team. Psychiatric interventions, called 'psychiatric rides' by paramedics, usually receive a low priority code unless there is a report of the use of a weapon. In such cases, police assistance is requested. When the paramedics arrive at the psychiatric intervention, for instance after a call from a family member, they enter the house, proceed with collecting information about what happened, and observe the incident site.

This particular intervention was subsequent to a call about a young woman, Monika, who was described as aggressive and brandishing a knife. Two paramedics, from a team of three, enter the house with police assistance. While Monika's husband and her friend greet the paramedics in the hallway, Monika is sitting in one of the rooms, ignoring both the paramedics' presence and the questions they ask her. The paramedics talk briefly with the husband and the friend before approaching Monika again, suggesting that she follow them to the hospital so that psychiatrists can assess her. Upon resisting, she is told that she will be taken anyway, in a straightjacket if need be. She gets up and follows the paramedics to the ambulance. She stays silent during the ride to the psychiatric facility.

She is taken to the psychiatric clinic: a specialized psychiatric hospital to which individuals with no previous psychiatric history are usually directed. Most of the doctors working at the clinic are clinical researchers or professors at the medical university who are conceived of as better qualified to deal with first-time patients or with 'difficult cases,' such as 'vulnerable' (for example, pregnant) patients. When the ambulance arrives, the paramedic presses the doorbell at the entrance of the clinic to announce their arrival. A few minutes later the nurse opens the door and leads the paramedics and Monika to a small room; she also calls the night doctor, asking her to come downstairs.

The doctor comes from the ward in which she does her after-hours shift, which runs from 3:30 pm to 8:00 am. She is in a rush, as she needs to return quickly to the now-unattended ward. One of the paramedics, in just a few words, describes the situation and what he observed about Monika's behavior. Monika still does not engage in conversation and refuses to sign any documents; she says only that she wants to be left alone and allowed to leave the hospital. While the doctor makes notes in the admission file, the nurse gathers other personal details from the paramedics. The doctor tells Monika that she will need to stay overnight, and will be assessed psychiatrically the following day. Monika starts saying, in a high voice, that she wants to go home. The doctor calls the clinic orderlies and Monika is taken to the ward in a straightjacket. The doctor signs some papers for the paramedics, and as they depart the nurse leaves the admission form for the administrative assistant, who will prepare a notification for the court about an individual being involuntarily admitted to the clinic. The form is completed and printed out early the

next morning and delivered to the doctor who admitted Monika (for her signature) and later to the supervisor of the clinic. The supervisor signs it after the morning report from the night shift, during which Monika's case is briefly outlined. In the meantime, the administrative assistant calls the family court and learns that judges will be attending the neighboring psychiatric facility that day. She asks to have a judge come for a prehearing at the clinic as well.

The judge arrives at the neighboring facility around 9:00 am and by 11:00 am, and after completing a round of fifteen prehearings, comes to the clinic. The clinic's administrative assistant leads the judge and his secretary to one of the doctor's offices. As they arrive, the office assistant hands the judge the court notification document, places Monika's medical files in front of the judge, and asks a nurse to fetch Monika. The administrative assistant leaves the room to call in Monika's lead doctor for the prehearing. The doctor arrives before Monika enters in the company of a nurse. The judge asks Monika to sit at the table in front of her. While skimming the medical file and placing a few signatures, the judge asks Monika if she can tell her name, if she knows where she is, if she knows what day it is, if she understands why she is in the clinic, and whether she agrees to stay. Monika answers the questions about the time and place and tells the judge that she does not know why she is there, relating that her husband called the ambulance after a family quarrel. On the judge's question about the knife, she insists that she was making a sandwich for herself, did not point the knife at anybody, and says that she wants to leave because she is not the one who should be in the hospital. The judge asks Monika to read and sign the protocol form for the hearing, which

was prepared concurrently by the judge's secretary. Monika signs it and asks when she will be able to leave. The judge tells her that she will be informed about the date of the hearing at which that matter will be decided.

When Monika leaves, the judge turns to the psychiatrist and asks her what she thinks. The psychiatrist says that it is hard to definitively assess because Monika was just brought in last night, but from an early morning conversation with her family it seems that she hears voices and is aggressive and violent. This information is entered into the protocol of the prehearing, which the psychiatrist also signs. Now the case will go to the judicial hearing for adjudication.

There are several issues that Monika faced between her emergency admission and the time she appeared before the judge. In the follow-up discussion to this story, in the rest of this section, I map the activities that lead to an involuntary admission and the 72 hours that follow. I describe the paramedics' intervention, the psychiatrist's decision-making regarding involuntary admission, and the subsequent three days. Within these 72 hours, as I explained in Chapter 3,⁵¹⁴ initial control of the admission decision is taken—first by the facility supervisor and then by the judge who attends the psychiatric facility for the prehearing. Drawing on the above story, I also explain how texts organize both what is *known about* people and what is *done to* them during the admission proceedings. The focus of this section is on standardized forms and their use by paramedics, psychiatrists, facility authorities, and judges in their recording of facts, as well as in subsequent decisions based on these facts. As mentioned above, I focus specifically on the activation of four forms: a

⁵¹⁴ See Section 3.3.2.

paramedic's *Chart of Medical Rescue Activities*; a *History of Illness*, a psychiatric facility's notification to the court about an involuntary admission; and the court protocol from the prehearing. In other words: I locate these texts within the institutional and material everyday work of the professionals who take them up, fill them out, and either pass them along to the next group of professionals or add them to a case file.

While the involuntary institutionalization procedure can be initiated in a number of ways, in my documentary analysis I observed that the more common are either by a call to emergency medical services or by bringing an individual directly to the psychiatric facility. Most often, this is done by family members. Through interviewing paramedics, I learned that the procedure could also be initiated by a phone call to police. This call is later transferred to paramedic services' dispatch after the operator discovers that the reported occurrence is not criminal behaviour, but rather behaviour potentially stemming from a medical condition. I begin my ethnographic description with paramedics' involvement ('psychiatric intervention,' as my paramedic-informants call it) in activities resulting from an emergency call.⁵¹⁵ The practices through which this intervention is organized and translated into an institutional text are guided by a particular framing of paramedics' work (as "timely emergency medical care"),⁵¹⁶ the presumption of psychiatric expert knowledge, and certain discourses about the relationship between mental illness and dangerousness.

⁵¹⁵ I was not initially planning to include paramedics in my fieldwork, but when I started doing my ethnography, it seemed they were often involved in involuntary admissions, and even psychiatrists advised me to expand my investigation to include emergency services. This required me to obtain another permission to enter this research site. I was able to gain knowledge about the organization of the initial stage of the admission procedure, and the organization of the emergency service centre, through my interviews with a dispatcher, paramedics, supervising nurse, emergency services director, and internal quality controller.

⁵¹⁶ Michael K. Corman and Karen Melon, "What Counts? Managing Professionals on the Front Line of Emergency Service," in *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*, ed. Alison I. Griffith and Dorothy E. Smith (Toronto: University of Toronto Press, 2014), 148.

6.3 – The Paramedics' Intervention

The chain of actions that leads to the involvement of emergency services often begins with a call to 999 (on a land line) or 112 (on a mobile phone), which are nationwide numbers assigned for medical emergencies in Poland. These calls are received by a dispatcher or other call-takers in a dispatch office—persons who perform the work of medical emergency services in a specific territory. Answers to emergency calls tend to be quick and structured. I observed that the average conversation between a caller and dispatch personnel lasts last a minute or less. The dispatcher or call-taker asks a few identical questions, which include the reason for calling, address where the accident happened, what the condition of person(s) involved in the occurrence is, what happened, and if time allows, the caller's name and phone number.⁵¹⁷ If a psychiatric issue is reported during the call, the caller is asked whether the person in question has previously received psychiatric treatment, and if there are any documents or records of that treatment. The information obtained is recorded in a computer database, which automatically sends information about the incident location and intervention priority code to the team the dispatcher assigns to the incident.⁵¹⁸ The priority code indicates a response time for the emergency team: code 1 is a high priority intervention, 2 is medium, and 3 is low. Code 1 is assigned to an intervention when people on-site are in critical condition. A mental health case—according to the dispatcher—is not usually considered a high priority (unlike, for

⁵¹⁷ Interview with a dispatcher, 22 May 2013.

⁵¹⁸ Interview with a dispatcher, 22 May 2013; Interview with a paramedic, 30 July 2013; and field notes from observation.

example, a car accident). When a weapon is reported, though, the high priority code is assigned to mental health cases.⁵¹⁹

When paramedics arrive at any incident site, they enter it with a certain professional objective in mind: to assess the patient's condition, to provide immediate and the most needed assistance, and to determine the next step in the rescue process. According to the *Act on Emergency Services* and the *Decree of the Minister of Health Concerning Specific Range of Rescue Activities Undertaken by Paramedics*, paramedics should first of all undertake an assessment of a patient's condition to determine an appropriate medical procedure, and decide whether to implement it. Paramedics can only leave the incident site when they have ensured that nobody's life or health is at risk, otherwise they can be criminally and professionally responsible for their negligence.⁵²⁰

The most important information that paramedics try to obtain when arriving on site is “what happened to the patient that the ambulance was called.”⁵²¹ In making this determination, my informants told me they first gather information from family members, because the person with potential mental illness is not a reliable source of information.

Paramedic 1: A person who is treated psychiatrically doesn't necessarily have a realistic perception [...]. It is not necessarily the way he describes it, therefore we rely on what the family tells us, and eventually what we see when it comes to that person's behaviour.

⁵¹⁹ In a high priority case, it is likely that police assistance may be requested when the accident relates to a car crash or involves a weapon.

⁵²⁰ *Act on Public Emergency Services from September 8, 2006 [Ustawa o Państwowym Ratownictwie Medycznym]* (“Act on Emergency Services”), 2007 Journal of Laws, no. 191, item 1410; *Decree of the Minister of Health Concerning Specific Range of Rescue Activities that Can be Undertaken by Paramedics of December 29, 2006 [Rozporządzenie Ministra Zdrowia w Sprawie Szczegółowego Zakresu Medycznych Czynności Ratunkowych, które Mogą Być Wykonywane przez Ratownika Medycznego z Dnia 29 Grudnia 2006 Roku]*, 2007 Journal of Laws, no. 4, item 33.

⁵²¹ Interview with paramedics, 29 July 2013.

Paramedic 2: First of all, if the person is aggressive and family members are on site, we gather information from that family about why emergency services was called. Family usually provides, I may say, quite specialist information, even on what type of medication the patient is on, if that person is mentally ill. Of course, we also get a psychiatric medical record, if that person was hospitalized, so we can read the mental stage at discharge, etc.

In this sense, the initial activities in a psychiatric intervention already follow the structure of a *Chart of Medical Rescue Activities* (see Figure 6.2, below), the document prepared by the Ministry of Health to guide and standardize paramedics' work across sites. This one-page form is used for all kinds of medical emergencies. The format is focused on recording the medical condition of a person who suffered an accident or a health issue. It includes:

- Section I: Wywiad (Reconnaissance).
- Section II: Badanie (Examination). This covers information about the person's medical condition and includes boxes for recording visual, aural, and mechanical responses, respiratory rate, pulse, and symptoms of other conditions.
- Section II: Rozpoznanie (Diagnosis).
- Section IV: Postepowanie z chorym (Procedures applied). This section requires paramedics to tick boxes indicating the medical activities they undertook, give their recommendations, and describe specific drugs administered (and their dosage), as well as the outcome of the intervention.
- Section V: Czas realizacji i dane pacjenta (Intervention time and personal details of the patient). In this section administrative details are recorded, such as the patient's name and address, insurance number, and when the patient was passed to another facility.

In the box provided for 'reconnaissance,' paramedics write down information obtained from the family or their own observations, including whether the person has received prior medical treatment. Noting any aggression is a key component of the reconnaissance. In a psychiatric intervention, this section alone will predetermine further action, since an assessment of physical symptoms and bodily functioning are not essential—or at times,

Paramedics conceptualize aggression rather broadly, and may also associate it with a single behavior. Those described below are acts of aggression, which seem to be decontextualized from the conditions under which they occurred:

Agnieszka: And if, as you said, some persons are aggressive, what do you mean? How do you assess this?

Paramedic: How do I assess it? First of all, if there is verbal aggression, in that sense of cursing, offending, name-calling, addressed towards our crew or towards other persons present in the room. And also aggression, as you might say—physical, such as pulling, hitting, plus additionally throwing some objects... probably to hurt somebody or demonstrate strength.

Conflicting versions of events often emerge between the accounts of family members and those of the individual being assessed. For example, when the person was reported to be aggressive, yet on the paramedics' arrival is calm (as illuminated in Monika's story), according to one of my paramedic-informants this raises the question of "whether this patient is lying to avoid hospitalization or actually does not remember being aggressive."⁵²² The same paramedic explained that this is hard to verify because they "cannot get inside of the patient's head,"⁵²³ so they always propose that the person go with them to the psychiatric facility for assessment. These comments specifically show how, already at this stage of the procedure, any statement of the individual concerned is subsumed under the biomedical model and treated as indication of mental illness. This will only further invalidate the claims of that person, in the paramedics' eyes.

While "[t]rained to use specialized biomedical knowledge [of] a variety of procedures and interventions, [to] assist in diagnosis", when it came to psychiatric

⁵²² Interview with a paramedic, 29 July 2013.

⁵²³ Interview with a paramedic, 30 July 2013.

diagnosis my informants saw themselves as unqualified to determine the presence or absence of mental illness. One of them explained to me:

To determine whether patient is mentally ill or not does not lie in the scope of my competences [...]. To state that the person can be left at home, that he is fine and will not do anything—there is no such opinion, unfortunately. Despite that we had psychiatry in school [...] and psychology at the university, it is not enough [...]. This needs to be assessed by a psychiatrist.⁵²⁴

The psychiatric intervention is attended by a primary emergency team that consists solely of paramedics. This primary emergency team, unlike a specialized team, does not include a physician or a nurse. The perception among paramedics is that the diagnosis of mental illness requires specialized knowledge in psychiatry and a professional assessment that can only be performed in a psychiatric facility. Without a doctor's presence on the team, my paramedic informants explained that they always take the patient—who has or might have psychiatric disorders and is reported to have shown signs of aggression—to an emergency room, unless it is clear that this is not a mental disorder but alcohol-based aggression. Despite their claim of a lack of knowledge, the *Chart of Medical Rescue Activities* requires them to fill in a diagnostic category and assign a specific code from the ICD-10. The codes from the ICD-10 pertaining to mental disorders are shown in Figure 6.3 (below).⁵²⁵ In the case of a first intervention with no prior psychiatric history, paramedics tend to assign the code 'F-99' for 'unspecified mental disorders.' When they have access to prior psychiatric documentation, they reiterate any previous diagnosis.

⁵²⁴ Interview with a paramedic, 30 July 2013.

⁵²⁵ World Health Organization, "Chapter V: Mental and Behavioural Disorders (F00-F99)," *International Statistical Classification of Diseases and Related Health Problems (10th Revision, 2016)*, <http://apps.who.int/classifications/icd10/browse/2010/en#/V>

The screenshot shows the WHO ICD-10 website interface. At the top, there is a search bar and navigation tabs for 'ICD-10', 'Versions - Languages', and 'Info'. The main content area is titled 'International Statistical Classification of Diseases and Related Health Problems'. On the left, a sidebar lists various chapters, with 'V Mental and behavioural disorders' highlighted. The main content area displays 'Chapter V Mental and behavioural disorders (F00-F99)'. It includes an 'Incl.' section for 'disorders of psychological development' and an 'Excl.' section for 'symptoms, signs and abnormal clinical and laboratory findings, not elsewhere classified (R00-R99)'. Below this, a section titled 'This chapter contains the following blocks:' lists various code ranges and their descriptions, such as 'F00-F09 Organic, including symptomatic, mental disorders' and 'F02* Dementia in other diseases classified elsewhere'. A final section, 'Asterisk categories for this chapter are provided as follows:', lists 'F00*' and 'F02*' as examples of dementia codes.

Figure 6.3: ICD-10 Codes (Screen Capture)

Yet in numerous instances, it is not only the perception of lacking diagnostic qualification that is at issue, but also the discursive relationship between mental illness, unpredictability, and dangerousness. This emerged during interviews with my paramedic-informants, and also exists more broadly in Polish society—and elsewhere. Referring to this unpredictable propensity for violence and aggression, one paramedic stated: “It is hard to know when it comes to the person with mental illness. One minute the person is calm,

and the next minute is furious.”⁵²⁶ They take that person to the hospital, as they assert, for their personal safety and that of the family.

As it comes to a person with mental illness, we leave and in five minutes this person may do the same thing again. Thus we need to take this person to the hospital [...]. None of the paramedics are brave enough to leave a person at home, who was aggressive few minutes ago, and go. [The paramedic] leaves and it turns out that this person beat somebody, or engaged in some other type of physical violence, or even worse. Thus, we need to take [this person].

Similar to paramedics, the public in Poland (and elsewhere) tends to view patients in psychiatric hospitals as wielding a high potential for violence, despite a lack of evidence to support such a claim.⁵²⁷ Furthermore, media reports often sensationalize criminal offences committed by discharged patients, which in turn exacerbates the already high level of anxiety about the dangerousness of people deemed mentally ill.⁵²⁸ Thus, despite the fact that paramedics tend to frame alternatives to psychiatric assessment as avenues they will propose to a patient, the practice in my fieldwork site was to take all persons who with a psychiatric diagnosis, or who could potentially receive one, to the psychiatric hospital.⁵²⁹

Yet, to make this pre-determined outcome of the intervention actionable and in accordance with law, paramedics needed to translate “the actual into the institutional [...] as an essential step in making the actual actionable institutionally.”⁵³⁰ This is required to apply a certain way of seeing and gathering information, so that it fits the medical-legal

⁵²⁶ Interview with a paramedic, 29 July 2013.

⁵²⁷ Bogna Wciórka and Jacek Wciórka, “Mentally Ill People in Society” [“Osoby Chore Psychiczenie W Społeczeństwie”], *Katalog Komunikatów CBOS* 124, no. 1 (2008); Bogna Wciórka and Jacek Wciórka, “The Attitudes of Poles toward Mental Disorders and Mentally Ill People” [“Polacy Wobec Chorób Psychiczych I Osób Chorych Psychiczenie”], *Katalog Komunikatów CBOS* 118, no. 1 (2005).

⁵²⁸ Joanne Warner, “Inquiry Reports as Active Texts and Their Function in Relation to Professional Practice in Mental Health,” *Health, Risk & Society* 8, no. 3 (2006).

⁵²⁹ Interview with paramedic, 30 July 2013.

⁵³⁰ Grahame, “Ethnography, Institutions, and the Problematic,” 183-201.

grounds for a restriction of freedom against one's will. While paramedics have never directly mentioned the *MHPA*, their actions are nevertheless guided by it. To establish facts that will allow and support the required institutional action, they need to produce a knowledge about 'facts' that suppresses certain voices. Given the brief descriptive section in the *Chart of Medical Rescue Activities*, highly selective attention and write-up is necessary. In this process, decontextualization (through buried dialogue and the omission of the broader context and alternative versions of events), along with the application of medical terminology, becomes a practical necessity. Yet, as institutional ethnographers note, standardized forms, by naturalizing certain writing practices, define what is to be known, what is important to be known, and who has the power to say what is known, thereby reproducing the power relations embedded in a given institution.

In the next section, I explore and analyze the organization of the moment of admission in the emergency department, to which the emergency team brings the person concerned. I show how the work of paramedics connects with the work of doctors and nurses in the emergency room, both materially and discursively.

6.4 – The Psychiatric Assessment in the Emergency Ward

According to Article 23, clause 2 of the *MHPA*, upon arrival at the emergency room the potential admittee is examined by a doctor to determine whether a psychiatric admission is needed, is justifiable, and on what grounds. In situations when the admission is non-consensual, the doctor needs to assess whether the person poses a danger to themselves, and if the underlying cause is mental illness. Every new arrival, even if not eventually admitted, requires documentation of a medical consultation and psychiatric

examination on a standardized medical form called a *History of Illness* (Figure 6.4, below). The admission record features as part of this form.

The composition of the team of professionals and the processing time varies with the timing of an arrival at the emergency room. In the clinic to which Monika was taken, it is rare that random emergency admissions are processed during the day shift—‘random’ being admissions that are not arranged with clinic doctors before the potential admittee is brought to the clinic. While prearranged admissions are still classified as ‘emergency admissions’ in clinic reports, having been prearranged means that there is nothing ‘emergency’ about them; rather, this classification denotes an admission outside of a waiting list situation. Hence, I was told that ‘mental illness’ and ‘dangerousness’ are not *immediate* in a way that is understood by the *MHPA*. Instead, these admissions proceed when they do because a facility bed becomes available.⁵³¹ Thus, most intakes that are considered ‘emergency involuntary admissions’ occur during the night shift.

The psychiatric clinic where I conducted my fieldwork has a total of seventy beds in four wards. While eight doctors work the day shift, there is only one doctor, for the whole facility, during the night.⁵³² Each night the shift doctor is assigned to a specific ward and is assisted by a nurse, along with the other night personnel at the facility.⁵³³ Thus, it is

⁵³¹ This organizational practice of naming prearranged admissions as ‘emergency’ compromises the monthly data on involuntary admissions that every psychiatric facility is supposed to forward to the Minister of Health. According to the 2013 annual report prepared by a family court judge who audited one of the psychiatric facility in my research site, there were 555 involuntary patients in 2012. This number does not differentiate between prearranged and non-prearranged involuntary admissions, nor is it clear whether it includes those patients who later consented to the admission, as it does not specifically refer to the *numbers of involuntary admissions* but rather to the *numbers of patients on wards* during that year. Ministry of Justice, *Selected Issues from the Mental Health Protection Act* (Warszawa: Ministry of Justice, 2004).

⁵³² Interview with a psychiatrist, 13 March 2013.

⁵³³ For example, in the other facility in my research site, there were 12 full-time psychiatrists, 4 part-time psychiatrists, and 1 psychiatric resident on 3 wards, taking care of a total of 224 beds. This amounts to

imperative for these doctors to process potential admissions quickly, so they can return to the wards. One of the psychiatrists explained to me that many activities that would normally be performed in a regular admission are postponed during night shifts, until more staff are available in the morning.⁵³⁴ This is even more problematic in light of the fact that when a person undergoing an admission is uncooperative—which is often the case in involuntary admissions—processing times may necessarily be extended.

Despite time constraints, emergency room psychiatrists need to perform assessments, on which decisions will be made about admission to the facility. A psychiatrist with five years of experience in the emergency room explained the psychiatric examination for the purposes of admission in the following way:

Agnieszka: When an ambulance arrives and brings a person who does not agree to the psychiatric admission, what actions do you subsequently take? From whom do you gather information?

Psychiatrist: Let's assume that the ambulance arrives without a family [member], but this is rare, because most often somebody arrives [...]. Then the person from the ambulance—the paramedic or a medical doctor—is the resource [...]. In the emergency room, I do not need to diagnose the illness because it is not always possible. Yet, if there is some kind of an aggression, and I assume that there is—given that the ambulance brought [the person], or if I see that the person is agitated, even if I do not know the origin of [their] agitation—I can always admit them for observation [based on the Article 24 of the *MHPA*] [...]. It is easier to implement Article 23 [of the *MHPA*] if [the person] was our patient before, or family brings an in-patient record chart [...] because then we have the diagnosis.

As the admitting psychiatrist stated, her main source of information is the emergency team or family members, when present. Paramedics always enter the emergency room and wait

about 14.9 patients per doctor with full occupancy; however, the report notes that additional beds are placed in hallways. Confidential communication with a family court judge.

⁵³⁴ Interview with a psychiatrist, 13 March 2013.

until the doctor makes a decision about whether the potential admittee should stay in the facility or be taken elsewhere.⁵³⁵ During a brief exchange with the admitting psychiatrists—brief because, as one psychiatrist described, the paramedics “would just prefer me to sign their papers and leave”⁵³⁶—paramedics summarize information about the event and the individual’s behavior, gathered at the intervention site, as well hand in any psychiatric documentation they received. I observed that this information exchange usually lasts less than a minute.

Paramedics’ time is closely supervised by the dispatcher. Indeed, they need to report all activities so their ambulance can be tracked and sent to the next intervention. The wait time at the medical facility, though, can be significant—in some instances, up to an hour.⁵³⁷ As one of my paramedic-informants stated, paramedics consider this “time wasted” while they could have been helping other people. Nonetheless, as paramedics are responsible for the person transported, they cannot leave the hospital before the doctor signs the form indicating legal transfer of that individual to the hospital’s responsibility.

Paramedics’ information about the event is, for the doctor, an important source of knowledge that influences whether to accept or reject admission. Yet, not only do their words and explanations matter, so does the very fact that the potential admittee was brought by ambulance. Police assistance also matters since, while the presence of law enforcement in itself may be useful for paramedics, since “people tend to comply with paramedics’

⁵³⁵ All interventions need an institutionally-recognized resolution, such as the transfer of the person to the legal responsibility of another institution, or a decision that the person will remain at home. When the person is transported, the paramedics are responsible until their papers are signed by personnel at the receiving institution.

⁵³⁶ Interview with a psychiatrist 13 March 2013.

⁵³⁷ Interview with a psychiatrist, 25 March 2013.

orders when they see the police,”⁵³⁸ it also tends to serve as a ‘red flag’ in the emergency room, indicating dangerousness. Indicators of danger to life, or information about such indicators, force psychiatrists to invariably admit the transported person to the hospital. As one of my psychiatrist-informants added: “When there is a danger to life, we cannot send the patient away.”⁵³⁹ She further explained:

There [in the *MHPA*] is a differentiation between harm to self and to others [...], so all of those suicidal, arousals of aggression of some sort, fit. Yet what is difficult for me is to make the admission decision when I suspect that may be that a real conflict in the family has escalated, and the person is angry and irritated, and of course reacts inappropriately to the situation. But I have a personal issue: to what extent I can use my power to involuntarily commit? Here, of course, the best interests of the patient come into play, so that person does not harm [themselves] or another person. So I admit hoping that the next day another doctor will come, assess this person properly, and change the medical qualification, if necessary.

Once the person is admitted involuntarily, though, and the official decision is made, the procedure for control over this decision, as prescribed by the *MHPA*, begins immediately. Although an involuntary admission can be highly dynamic—the admitting doctor may not be able to complete all the required documentation during the admission, especially at night—the basic information (including personal details, insurance number, and the legal grounds for admission) are recorded so that the hospital’s notification can be prepared, signed by the supervisor, and passed on to the court. The rest of the documentation is completed when the admittee is on the ward, the following day.

The documentation of activities related to admission to a psychiatric facility is enclosed in a *History of Illness* (Figure 6.4, below). This part of a patient’s medical files is

⁵³⁸ Interview with paramedics, 29 July 2013 and 30 July 2013.

⁵³⁹ Interview with a psychiatrist, 25 March 2013.

systematically expanded, during their hospitalization, with daily observations, the results of various tests, nursing documentation, etc. This is a standard form in Polish psychiatric hospitals, the only variation being that some hospitals only keep a physical copy while others also maintain an electronic version.⁵⁴⁰ The first page includes personal details of the admittee, their address, profession, education, the time of the admission to the facility, and whether it was the individual's first such admission. Under this is a section titled "Patient's Consent to the Admission," where patient places a dated signature if they agree to the admission; otherwise the prehearing judge, if they do not perceive the admission as obviously unfounded, will place their substitute signature.⁵⁴¹ The last section is where the psychiatrist gives a preliminary diagnosis, or lists the previous diagnosis, if available. A second page of the form consists of questions about marital status, education, income, housemates, and the institutional route to the facility (i.e., doctor's referral, emergency services, etc.). Below this is listed the referrer's identity and in whose company the admittee was delivered to the facility. At the bottom of page three is a section on the clinical history obtained at admission, which extends to the middle of the next page. The bottom of the final page is dedicated to the results of the psychiatric assessment at admission.

Close analysis of completed forms show that the preliminary diagnosis of first-time patients is rewritten from the *Chart of Medical Rescue Activities*, while those for patients with previous admissions will restate their pre-existing psychiatric documentation. In the clinical history section, information about prior psychiatric treatment (for persons previously hospitalized) is given, along with when behavioral disturbances started and how

⁵⁴⁰ This was the situation in two psychiatric facilities in my research sites.

⁵⁴¹ I discuss this unfoundedness further when I talk about the pre-hearing, in Section 6.6.

they progressed, if such information is available. This is usually captured in one long sentence, such as, “the beginning of the disturbance was four years ago when the patient claimed that somebody wanted to kidnap her youngest daughter.” The subsequent sentence usually refers to what triggered the patient’s recent deterioration, through a descriptive, attention-getting sentence such as “The patient, feeling unsafe, does not allow her suicidal daughter to leave” or “the patient is afraid of her neighbors and threatens to kill them.” Typically, only these sentences are written in non-medical language, and are rewritten from the *Chart of Medical Rescue Activities*. The rest of the insights have already been translated into medical terminology: “wife speaks to herself” becomes “auto-discussion” or “verbal hallucination,” both of which are considered signs of schizophrenia.

The admitted person’s voice only emerges in the last sentence, when their withholding consent to the admission is acknowledged. Beyond that, even if the person decides to engage, their voice is not taken into account at this stage, nor was it at the paramedics’ intervention stage. As I have shown, if the potential admittee contradicts the family’s version of events, this is interpreted as an attempted self-exculpation following violence, or as a sign of sickness. Paramedics and psychiatric residents shared with me that family members are the only objective voices in the discussion because they know the patient well and “looked from a distance at what was happening.”⁵⁴² However, my own experience demonstrates that family members’ trustworthiness correlates with their propensity to confirm either established medical facts, or facts that medical professionals would like to establish.

⁵⁴² Interview with a psychiatric resident, 15 April 2013.

Information specifically related to aggressiveness is once again rewritten, in a more condensed and laconic form, in the section on the outcomes of the psychiatric assessment—a section where only five lines' worth of space is provided for 'mental condition.' In that limited space, in addition to excerpts from the clinical history, psychiatrists need to add information obtained from the physical examination of the person at admission—including their orientation in time and space, and any visible symptoms such as difficulties with motor function or speech—which support a finding that the individual needs treatment.

Referring to this apparent obviousness of mental illness, a resident explained to me that he knows someone is mentally ill because “it is visible,” “you look at the person and you know.”⁵⁴³ The construction of the medical history documented on admission, as well as the transfer of knowledge based on abstracted and decontextualized information, allows the resident to make this kind of statement—that the person is what they seem to be—through medically predefined symptoms. The social and everyday context of events described in the clinical history disappear; neither are they located in a specific time, in order to justify the direct and imminent danger that the admittee potentially posed to self and others. Violence is often written in very abstract and general terms, with the only specification being the intended target. All of this information is abstracted away from its source as well as its method of acquisition—for example if there was a dialogue, we never learn the questions asked. The texts that spring from the admission decision further reinforce facts established up to that point, instead of being a record of a facility supervisor's and judge's critical engagement with the admission decision.

⁵⁴³ Interview with a psychiatric resident, 15 April 2013.

6.5 – The Facility Supervisor’s Control of the Admission Decision

Because admission is often a dynamic event, and completing the paperwork may be impossible on the night shift given psychiatrists’ limited time, the remaining documentation is filled out on the ward the following day—with the exception of one form, the *Addendum to the History of Illness*, listing the *MHPA* provisions related to the specific grounds on which involuntary admissions can be based (similar to the list provided in Chapter 3 of this dissertation). This form is internal to the given facility, and allows its staff to more quickly process documentation. The other facility where I conducted my research has a similar form, but electronic. A doctor needs only to cycle through to the correct answer on this form, without having to provide any justification for the admission decision. The form is left on the desk in the emergency room, to be picked up the following day.

The next morning the medical recorder adds the information from the *Addendum to History of Illness* to the *Facility’s Notification to the Court* form, as provided in the decree of the Minister of Health.⁵⁴⁴ The *Notification* is then taken to the admitting doctor for their signature, and subsequently left with the assistant to the Facility Supervisor for their review, before moving on to the court. Apart from the personal details of the admittee, date of admission, and names of admitting psychiatrists, which are inserted for each admission, this document simply repeats the same statutory clauses, without any additional reference to the actual circumstances of the case.

⁵⁴⁴ Interview with a facility supervisor, 18 July 2013.

ZAŁĄCZNIK
do „HISTORII CHOROBY – SZPITAL PSYCHIATRYCZNY”
w sprawie przyjęcia z mocy art.: 22 ust. 2a, 5, 23, 24

.....
(imię i nazwisko pacjenta) (data urodzenia) (nr ka. gł.)

1. Art. 22 ust. 2a
Pacjent niezdolny do wyrażenia zgody z powodu:

.....
(podpis lekarza decydującego o przyjęciu bez zgody)

2. Art. 22 ust. 5
Pacjent małoletni, nie pozostający pod władzą rodzicielską albo ubezwłasnowolniony całkowicie, zdolny do wyrażenia zgody, przyjęty w trybie nagłym z powodu:

.....
(podpis lekarza decydującego o przyjęciu bez zgody)

3. Art. 23
Pacjent przyjęty bez zgody Data: Godz.

- zagraża bezpośrednio własnemu życiu	TAK NIE
- zagraża bezpośrednio życiu lub zdrowiu innych osób	TAK NIE
- wyjaśniono pacjentowi przyczyny przyjęcia bez zgody	TAK NIE
- poinformowano pacjenta o jego prawach	TAK NIE

.....
(podpisy lekarzy decydujących o przyjęciu bez zgody)

4. Art. 24
Pacjent przyjęty bez zgody Data: Godz.

- zagraża bezpośrednio własnemu życiu	TAK NIE
- zagraża bezpośrednio życiu zdrowiu innych osób	TAK NIE
- wyjaśniono pacjentowi przyczyny przyjęcia bez zgody	TAK NIE
- poinformowano pacjenta o jego prawach	TAK NIE

.....
(podpisy lekarzy decydujących o przyjęciu bez zgody)

“Addendum to Medical History on Admission, based on Articles 22 point 2a, 5, 23, 24.”

name and date of birth of the patient

“Patient is lacking capacity to consent due to (explanation).”

signature of the admitting psychiatrist

“Minor or a legally incapacitated patient, capable to consent, was involuntarily admitted because (explanation).”

signature of the admitting psychiatrist

for patients admitted on the grounds of Articles 23 or 24:

“Patient admitted without consent (date and hour) because they:”
-“endanger their own life” (YES/NO)

-“pose a danger to the health or lives of others” (YES/NO)

-“the patient was informed about reasons underlying their admission” (YES/NO)
-“the patient was informed about their rights” (YES/NO)

signature of the admitting psychiatrist

Figure 6.7: Addendum to the History of Illness Form

Załącznik nr 3

WZÓR

(pieczęć podmiotu leczniczego) (miejsowość, data)

(numer pisma) **Sąd Rejonowy w
Wydział Rodzinny i Nieletnich**

**ZAWIADOMIENIE
o przyjęciu do szpitala psychiatrycznego**

na podstawie art. ustawy z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego (Dz. U. z 2011 r. Nr 231, poz. 1375)

1.
(nazwa i adres podmiotu leczniczego)
zawiadamia, że w dniu o godz. została(a)
- przyjęta(y) do szpitala psychiatrycznego¹⁾
- zatrzymana(y) w szpitalu, wycofał(a) zgodę na przyjęcie do szpitala psychiatrycznego¹⁾

Pani/Pan:
córka/syn:
ur. w
rodzaj i numer dokumentu stwierdzającego tożsamość:
PESEL (jeżeli posiada)
zamieszkała(y) w:
i została(a) zapisana(y) w księdze głównej pod numerem:

2. Imię i nazwisko lekarza decydującego o przyjęciu do szpitala psychiatrycznego lub zatrzymaniu w tym szpitalu bez zgody:
ewentualnie imię i nazwisko innego lekarza lub psychologa uczestniczącego w podjęciu decyzji o przyjęciu do szpitala psychiatrycznego:

3. Pani/Pan przyjęta(y) - zatrzymana(y) zagraża bezpośrednio:
1) swojemu życiu,
2) życiu lub zdrowiu innych osób¹⁾.
Uzasadnienie:

4. Imię i nazwisko ordynatora (lekarza kierującego oddziałem), zatwierdzającego przyjęcie:

5. Dane o osobach będących z mocy prawa uczestnikami postępowania sądowego (art. 46 ust. 1 ustawy z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego):

1) małżonek:
(imię, nazwisko, adres)

2) osoba sprawująca opiekę faktyczną:
(imię, nazwisko, adres)

3) przedstawiciel ustawowy:
(imię, nazwisko, adres)

.....
(podpis i pieczęć/kxa kierownika podmiotu leczniczego)

¹⁾ Odpowiednie zakreślić

date, place, and identification of psychiatric facility and court being notified

1. "Statement that on the grounds of Article ... of the MHPA a person ... was admitted to..."

personal details and address of the person admitted

2. identification of the admitting psychiatrist
3. "Mr./Mrs. who was admitted poses a danger to:
1) their health
2) others' health and lives
Justification..."

4. name of the facility supervisor
5. information on persons who, as guardians of the admittee, are parties to the legal proceedings

Figure 6.8: Facility's Notification to the Court Form

In my fieldwork, the supervisor receives the *Facility's Notification to the Court* with a pile of official correspondence and other documents awaiting his action. In an interview, he told me that he always signs off on it as he trusts his employees as 'qualified' people. Indeed, in order to substantively review the form he would need to request the patient file and read it thoroughly,⁵⁴⁵ which is not the practice in this institution. It is not that the supervisor is unfamiliar with the admission, though, since all new admissions are announced and briefly reviewed, using the facility's *Documentation Record*, every morning. At this 'morning briefing,' information about everything that occurred during the night shift is provided. Psychiatric professionals commonly perceive that any mistakes they make will be corrected by another medical practitioner, if not by the judge who comes for the hearing. In this sense, the judicial review provides confidence and a sense of shared, medico-judicial responsibility for admissions.

6.6 – The Judicial Prehearing in the Psychiatric Facility

Prehearing hospital visits are duties imposed on district court judges in addition to their regular adjudication work. Although it depends on the size of the psychiatric facility in the court's jurisdiction, the frequency of visits will differ from court to court. In my research site, district court judges visited psychiatric facilities for prehearings twice a week. Although responsibility for visits rotates, on average each judge will attend two or three a month, and even more frequently during the summer holiday season. Judges usually start their visits at the psychiatric facility between 8:00 and 8:30 am, and complete them between 11:00 am and noon. During that time, they may conduct between ten and twenty

⁵⁴⁵ Interview with a psychiatric facility supervisor, 18 July 2013.

prehearings across different wards and buildings. It is not uncommon for a judge who goes to the hospital in the morning to resume their other duties in the courthouse by noon. In the afternoon, judges may need to pursue regular court sessions, hold hearings, or fulfill other assigned duties, such as when they are scheduled to serve 'on-call.' Judges may need to start their work back in the courthouse as early as 1:00 pm, in as little as an hour after their return from the psychiatric facility.

When judges arrive at the psychiatric facility they only know the total number of prehearings scheduled for that day. They do not know the names of or any details about the admittees because they have not yet received the notification from the hospital. Below, I describe a typical prehearing's organization, which I observed on several occasions. This narrative is based on my field notes.

The Prehearing

It is just before 9:00 am when the judge, a court senior secretary, and I arrive at the psychiatric facility by taxi. This complex is located a significant distance from the courthouse, on the outskirts of the city; it takes about 25 minutes by car from the district court. "We have fifteen cases today," the secretary informs the judge as we reach the entrance gate to the complex, located in a large and rather wild-looking park. Wards are scattered around, within a walking distance. The main office and emergency room are in the building we head for first. I was informed we need to pick up court notifications from the hospital administrative assistant, who is the designated facility-court liaison for involuntary admissions. While the judge waits outside, the secretary and I undergo a security check and enter the building. It is a rectangular structure, dating probably from the 1970s.

The rest of the wards seem to have been built around the same time, although some are significantly older—probably the 1920s, judging by the architectural style and state of disrepair. A big sign informs visitors that the complex is undergoing ‘modernization,’ largely sponsored by the European Union. The judge signals her approval: “This place looks much better; the patients are good now.”

Around 9:20 am we begin rounds, the hospital liaison guiding us to different wards for the prehearings. First the judge sees the ‘generic’ patients, then patients with additional problems, and finally we attend the general psychiatric wards. “We are lucky that it is not snowing,” the judge comments, “last time it took me ages to do the rounds, to pass these snowy alleys.” Our visit to each of the wards is similar. Upon entering the ward, the hospital liaison leads us to either a doctor’s office or a conference room. We either enter right away or end up waiting a few minutes if another meeting is in progress. As we wait for one of these rooms, the judge expresses her discontent: “In this ward, they are never ready when we come.” While the judge is welcomed politely in every instance, some wards are more welcoming than others, and some judges more welcomed—offered coffee and sweets, and engaged in friendly chats by psychiatrists. Indeed, many of the judges have known the psychiatrists working in these wards for years, and see them frequently, given the rather busy prehearing schedule in this facility.

As we enter the room, the judge sits at a table or desk while either the psychiatrist or liaison requests that a nurse fetch the admittee. Meanwhile, the treating psychiatrist(s) or their substitute(s) bring that person’s medical history to the judge, who skims through the file, signing in some places, while listening to

their verbal overview of the case. When the admittee enters they are asked to sit in front of the judge. For a prehearing, the room will be occupied by the judge, the secretary, and the lead doctor, all of who remain throughout the proceeding; as well as the liaison, interns, other doctors, and potentially psychiatrist-residents, among others. The admittee is asked the set of questions mentioned in Chapter 4:

- *Can you please tell me your name?*
- *Do you know where you are?*
- *Do you know today's date?*
- *Do you know why you are here?*
- *Do you want to be treated?*

The prehearing is protocolled by the senior secretary, using a standardized form called a Protocol from the Prehearing Visit (Figure 6.7). Its first page includes the personal information of the admittee, the date of the visit, the reason for the visit, which hospital requested it, etc. On the second page is a space for writing in information obtained from the admitted person, and below that from the treating psychiatrist. The judge and the secretary sign the protocol at the bottom. Once the admittee's answers are written down, the judge asks them again whether they consent to stay. If they agree, they need to write this statement in the protocol; if they refuse, they are asked to sign below their explanation. The usual length of this explanation is about four lines, regardless how much was expressed verbally.

The hearing lasts only a few minutes. At the end, after the judge informs them they will be notified about the date of the courtroom hearing, the admittee leaves, assisted by the nurse. Asked by the judge who will write the expert opinion, the liaison opens her roster of ward psychiatrists and provides a name—which is

immediately rejected by the judge, on the grounds that this individual never prepares opinions on time. The next name from the list is accepted, and noted by the judge in the corner of the protocol. When the judge returns to the courtroom they will prepare an official document of expert appointment, and the senior secretary will assemble physical file so the case can be officially opened.

According to Article 45, clause 1, of the *MHPA*, the judge visiting the psychiatric facility hears out the admitted person to determine whether their committal is *obviously* unfounded. Yet during my interviews and informal conversations, only one judge admitted that she had released a person at this stage, upon the psychiatrist's recommendation—and this was an incidental case over the span of more than a decade of her work as a visiting judge.⁵⁴⁶ Another judge spoke about the fragmented information available to her at the prehearing, since it can be scheduled as soon as the day after an admission, and how she needs to make a decision whether she is ready or not.⁵⁴⁷ Judges—as I was told in an interview with the regional court judge—are taught that in case of uncertainty about admission, they should make the decision that would be easier to justify and support legally. Pointing to this insufficient material, the judge was able to rationalize her decision not to challenge the psychiatric decision, and instead to allow the court to adjudicate its legality at the hearing.

⁵⁴⁶ Interview with a family court judge, 28 February 2013.

⁵⁴⁷ Interview with a family court judge, 10 July 2013.

PROTOKÓŁ WYŚLUCHANIA UCZESTNIKA

Dnia r. w

z udziałem protokolanta

w obecności lekarza

na podstawie art. 45 ust. 2 ustawy o ochronie życia psychicznego z dnia 19 sierpnia 1994 r. (Dz.U. Nr 111, poz. 535) wysłuchał uczestnika

1. Nazwisko

2. Imiona

3. Imiona rodziców

4. Data urodzenia

5. Przedstawiciel ustawowy:

a) Opiekun

b) Kurator

c) Rodzice

d) Osoba sprawująca opiekę faktyczną

Data przyjęcia do szpitala

Oddział nr

Wynik badania psychiatrycznego (art. 21 ust. 1 ustawy)

Lekarz przyjmujący:

“On (date) in (identification of the facility), in the presence of a court reporter and a psychiatrist, on the grounds of Article 45, point 2 of the MHPA, heard...”

name, date of birth, and parents' names of the person being heard, plus identification of guardians (if appointed)

Figure 6.9: Protocol from the Prehearing Visit Form (page 1)

Uczestnik wyjaśnia:

Lekarz wyjaśnia:

Sędzia zapoznała się z dokumentacją medyczną oraz poinformowała uczestnika i ordynatora o terminie i miejscu rozprawy.

“The party (the admitted person) explains...”

“The psychiatrist explains...”

signed statement that the judge familiarized themselves with medical documentation and informed the party about the date and place of the involuntary admission hearing

Figure 6.10: Protocol from the Prehearing Visit Form (page 2)

While not a site of review and control of mental illness and dangerousness, the prehearing is an important organizer of judges' work and the procedure of adjudication. During the prehearing, judges determine first whether the admittee has capacity to consent (which I have already suggested, in Chapter 4), and second, whether they should have another chance to consent to the admission. These objectives govern the way the prehearing is organized, as the narrative above illuminates. When it comes to the first objective—the matter of legal capacity to consent—the significance of that determination is not only whether the need for legal assistance may potentially emerge, but also whether the individual should be admitted and the case processed on different legal basis. Indeed, admission according to Articles 23 and 24 of the *MHPA* requires that the admittee was legally capable of disagreeing with their admission. If doubt exists about the capacity to consent, the person should be admitted according to Article 22, clause 2 of the *MHPA* in conjunction with Article 23, 24, or 27. The subsequent procedure for adjudication would not differ, but the legal ground would.

In determining this legal technicality the judge is highly dependent on psychiatrists' knowledge for assessing whether an individual has mental capacity sufficient for undertaking valid decisions, because under the *MHPA* the notion of 'capacity' is more nuanced and complicated than under the *Civil Code (CC)*. According to Article 82 of the *CC*: "Any expression of consent by a person who is in a mental state that excludes conscious and free decision-making and expression of will is invalid." This invalidity is directly applicable to any action of a person with a mental illness.⁵⁴⁸ Expansion of the conception of legal capacity, as instituted in the *MHPA*, allows a person to consent to

⁵⁴⁸ A.Ciecierska and I D. Gajus, cited in Duda, *Commentary*, 37.

admission (which, under the *CC*, the same person would not be able to do) while also establishing psychiatric professionals as experts in determining said capacity. This assessment requires a determination of whether and to what extent, in a given moment, mental illness or mental disorder impairs the capacity to consent to admission.⁵⁴⁹ It would be counterintuitive and against the hegemonic knowledge attributed to psychiatrists, or at least an impediment to maintaining the smooth functioning of the collaboration, if the judge accepted the treating doctor's medical expertise in assessing the admittee's capacity to consent but rejected their assessment of the admittee's mental health condition and dangerousness. The organization of the prehearing shows the existence of interdependency between legal and psychiatric professionals and its articulation in local practices where the judge ensures that that the admission decision is a legal technicality, while psychiatrists assist the judge in making such a technical assessment by assigning meaning to concepts that require medical expertise.

Aside from the issue of capacity, the fact that judges ask whether the admittee wants to get help points to the judicial attempt to provide a space to consent. Indeed, I observed that when people hear the language of 'help' and 'treatment,' a number started to rethink their resistance to admission, and eventually consented. It is also the authority of a judge—as one of the psychiatrists told me—that makes people more willing to agree and get treatment, along with being told that the judge's visit will not alter the fact that they must stay in the facility until (at least) the hearing. When admittees ask how long they will need to stay if they do not agree to admission, the judge typically answers, "Until the doctor

⁵⁴⁹ I have already outlined some differences between the notion of capacity in the *MHPA* and in the *Civil Code* in Chapter 4, section 4.3.3.

tells you you're ready to go." In this moment, the person learns that either way, whether they agree or not, they will stay in the facility until a doctor decides otherwise.

For the judge, to have the admittee's consent means that the case does not need to go to a courtroom hearing, only to an in-camera hearing for the closing decision. For statistical reasons, the case will count as completed. Given busy courthouse schedules and the high number of involuntary admission cases, closing the case quickly, possibly at the prehearing, is considered a significant achievement. The report issued by the Minister of Justice, covering the functioning of the *MHPA* 1995-2004 and providing statistics on involuntary cases' legal outcomes, shows that every year about half are completed through means other than 'claim adjudication.' In other words: 50 percent of cases are completed not by a merit decision related to an assessment of the legality of admission but, for example and most often, through the discontinuation of the trial upon the admittee's consent or death. I observed a similar rate of discontinuation of proceedings, during my observations, due to gaining consent.

According to paragraph 250 of the *By-Law for Civic Courts*, "a protocol should be prepared from the prehearing, in which should be an annotation that the judge familiarized themselves with the medical documentation of the person whom the proceedings concern, and should include also other important information for the assessment of the legality of that person's institutionalization in the hospital."⁵⁵⁰ Thus the organization of the prehearing in terms of legal provisions can be seen as an articulation of the overlapping borders between legal and medical expertise, and the mutual transgression of knowledge

⁵⁵⁰ *Minister of Justice Decree By-Law on the Functioning of Civic Courts of February 23, 2007* [Rozporządzenie Ministra Sprawiedliwości Regulamin Urzędowania Sądów Powszechnych z Dnia 23 Lutego 2007] ("By-Law for Civic Courts"), 2007 Journal of Laws, no. 249, item 249.

boundaries between fields. This carries implications for how this mutual interaction between psychiatrists and judges is organized so that each professional, restraining from authoritative claims related to one aspect of the involuntary admission case, can assert their expertise in another. In this sense, the judge reviews the decision of psychiatrists at the prehearing in its *technical legal sense*, while restraining themselves from directly assessing its *substantive legality*.

6.7 – Conclusion

The *Mental Health Protection Act* requires that before a person is involuntarily admitted to a psychiatric hospital on emergency grounds, their mental illness and resulting danger to self and/or others must be established (Articles 23 and 24). In other words: the admitting psychiatrist needs to ensure that statutory criteria for involuntary admission are met. Yet, in this chapter I have demonstrated that the work of admitting psychiatrists is already implicated in the sequence of actions that both precede and follow it. Knowledge that psychiatrists produce about a person's mental condition and related dangerousness is thus a response to both the prior and the subsequent interchanges.

This chapter considered the social organization of knowledge involved in the production of a person's mental illness and dangerousness, which warrant the substantive legality of involuntary admission. By close analysis of the texts used by paramedics, psychiatrists, and judges in completing the steps leading to or involved in an involuntary admission, I explored how 'mental illness' and 'dangerousness' are institutionally produced and by whom. Subsequently, I showed how medical and legal knowledges are textually produced by coordinated sequences of actions by paramedics, psychiatrists, and

judges. These medical accounts are directly transposed into legal accounts that later constitute element of legal files in the involuntary admission case.

Given that involuntary admission is dynamic and may require a prompt psychiatric call, paramedic-produced knowledge about a person's mental illness and dangerousness gains significance for psychiatrists making admission decisions. This knowledge is ushered in, however, by the material conditions of paramedics' work and the objectives guiding their practice. Nevertheless, these early 'facts' have implications not only for the admission decision made by the psychiatrist, but also for the facility supervisor and the prehearing judge who, instead of controlling the facts underlying psychiatrists' decisions, accept them uncritically. Ultimately, through their coordinated action, psychiatric and legal professionals produce a hegemonic narrative about the mental illness and dangerousness of a potential admittee that will serve, in later legal proceedings, as an official account, and thus authoritative knowledge of the facts justifying involuntary admission. Not only is this knowledge is decontextualized, partial, and organized according to medical and legal frames, but it also suppresses or excludes any potential alternative knowledge presented by the person undergoing admission. The coordination of knowledges of professionals is essential in building institutional realities that align with the dominant frame's suppression of other ways of knowing.

While the professional boundaries between judicial and medical knowledge are porous, and draw constantly on the authority of science and law to generate legally effective decisions, not all professionals are welcomed into the process of knowledge production in the pretrial/hearing stage. It is at this point that facts about a person's mental illness and dangerousness are produced and ratified in such a way that it is almost

impossible to challenge them later. During my fieldwork, I encountered a situation where an attorney attempted to engage in this important moment by trying to access his client's hospital-held medical records to prepare for his advocacy. He hoped to support his client's claim with a submission before the hearing, or to influence the choice of or questions for expert witnesses. This attempt, though, was unsuccessful. The judge who learned about this incident based his action on the assertion that "A lawyer only has a prerogative to act in the context of a legal procedure and needs to submit a formal request to the court to attach medical files to the legal files of the case so he can view them."⁵⁵¹

This situation not only speaks to the problem of accessing medical files, but also addresses the boundaries of lawyers' involvement in the production of legal facts, and the knowledge-power relations that organize, from the earliest stages of the case, lawyering for involuntarily admitted persons. By illuminating a moment of a tension between legal and medical authorities on one side, and a lawyer on the other, it shows how boundaries are created between those who are seen as authorized to produce knowledge in the pre-court stage, and those who are not. While the rationale for the exclusion of the lawyer was presented by the judge in legal terms—that lawyers can only act as parties, accessing files once the court procedure is officially launched—this statement uncovers the broader perception of judges. This perspective becomes more visible in the following chapter: ultimately, lawyers are not attributed with knowledge of a quality that allows them to engage with psychiatric expertise, and thus they cannot contribute to the resolution of the involuntary admission case.

⁵⁵¹ Interview with a family court judge, 28 February 2013.

Chapter 7 – The 5-Minute Hearing: Lawyering with Judges

7.1 – Introduction

In this chapter, I direct my attention to the organization of judicial hearings in civil commitment cases and the ruling relations that coordinate judges' and lawyers' work practices in this context. The involuntary admission hearing is an element of external control imposed on psychiatric decisions by the *Mental Health Protection Act (MHPA)*. This judicial control, conducted according to formal legal procedure, was meant to limit psychiatric discretion, as all involuntary admission decisions are subject to mandatory judicial review of their adherence to substantive and procedural standards ratified by the *MHPA* (Articles 23 and 24). Yet, as I observed, these involuntary admission hearings are held *in camera*, without the participation of involved parties; or if they are held in the courtroom, they last just a few minutes. Moreover, my standpoint informants—legal aid lawyers—expressed additional concerns regarding the organization of these hearings, arguing that judges uncritically rely on psychiatric documents, disregarding any potential challenge to them. One lawyer notes: “I am under the impression that [psychiatrists] decide the outcome of the case. By issuing an opinion on one’s mental health, the psychiatrist *de facto* makes a final decision in the case, determines its outcome [...]. It is practically impossible to challenge or discredit these opinions.”⁵⁵² Indeed, lawyers find that space for intervention on behalf of their clients is limited during involuntary admission hearings.

⁵⁵² Interview with an attorney, 22 January 2013.

In this chapter I unpack and map the organizers of legal aid lawyering that take place during involuntary admission hearings. I argue that the organization of involuntary admission hearings is ushered in by a set of institutional practices around the nature of these cases and the purported needs of admittees. I illuminate how the actualities and voices of admittees are displaced by textually-constructed, professional interpretations, and how this displacement is made possible by legal technicalities and legal logic, ultimately allowing a conceptual coherence between the way involuntary admission cases are adjudicated and the legality of involuntary admission decisions. This chapter makes visible the material and discursive practices through which the intervention of legal aid lawyering, during involuntary admission and appeal hearings, is circumscribed.⁵⁵³ It also reveals that attorneys representing their clients in courts do so within the boundaries of a professional discourse pertaining both to the nature of mental illness of their clients and to the desirable outcome of the legal proceedings. Staying within this prescribed professional discourse aligns lawyers more with judges and psychiatrists than with the people whom they actually represent. Indeed, this discourse allows both judges and lawyers, along with other the relations articulated in previous chapters, to justify their marginal attention to involuntary admission cases.

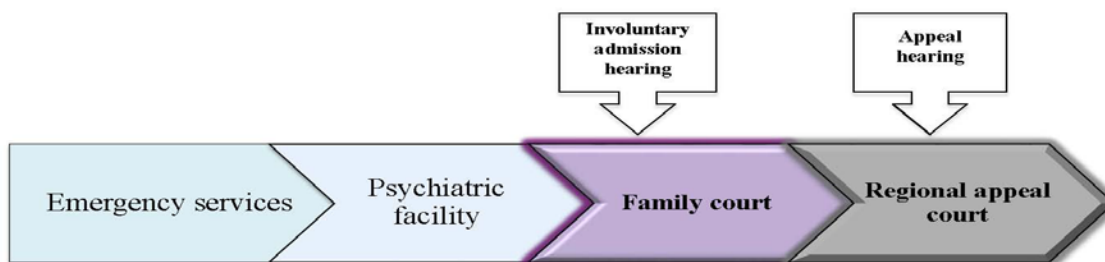


Figure 7.1: Activities in Legal Sites

⁵⁵³ *Decree on Attorneys' Tariffs 2002*; Tummons, "Professional Standards".

This chapter is organized as follows: I begin with two narratives that describe involuntary admission hearings at the district court and regional appeals court.⁵⁵⁴ These are composite accounts of routine hearings I observed at courts in my research site, as well as those I encountered in the files of involuntary admission cases. I use these stories as an entry point to explore why legal aid lawyering happens as it does. Second, in the discussion that follows, I map the work practices of judges who treat involuntary admission hearings as a priority, articulated in prompt scheduling and expedited adjudication, limited collection of facts and evidence, and reliance on psychiatric expert opinion. I attend to how these work practices, together with a certain constriction of involuntary admission cases and the needs of involuntarily admitted persons in law, position lawyers' intervention as an unnecessary prolongation of the case. Third, I link these judicial practices to text-based institutional discourse around involuntary admissions and related proceedings. I demonstrate how the *MHPA*, the *CCP*, and the *Decree on Attorneys' Tariffs 2002*⁵⁵⁵ work together to construct involuntary admission cases as ones that do not involve conflicting interests—meaning that the professionals involved in these cases are expected to collaborate for the sake of the best outcome for the admittee. Participating actively in these professional discourses, legal aid lawyers handle involuntary admission cases and engage with lawyering work in different ways than they would in cases falling outside functional jurisdiction of the *MHPA*.

⁵⁵⁴ These stories are composite accounts based on data obtained from my interviews with lawyers, my observations of court hearings, and documentation in files of involuntary admission cases.

⁵⁵⁵ *Decree on Attorneys' Tariffs 2002*.

7.2. – Hearings

Hearing at the Family Court

It is early morning in the district courthouse. The hallways are predominantly empty, except for few people sitting in front of the assigned courtrooms in their cases. On one of these doors, a list of hearings for that day shows that involuntary admission cases will be adjudicated. Cases on the list are scheduled in twenty-minute intervals. Close to the time of the first hearing, the court clerk assigned to the adjudicating judge for that day appears in the hallway. She looks around, checking if anybody is waiting. Since nobody has responded to her call, she crosses the first case from the list on the door. It has been adjudicated.

Hearing at the Appeals Court

The appeal hearing in one of involuntary admission cases I'm following is scheduled for 10:30 am. When I enter the courthouse a few minutes before 10:30, I find a lawyer waiting in front of the assigned courtroom. We wait for about 40 minutes before the case is called. The lawyer waits near the entrance, since nobody knows when the hearing will start. The court clerk eventually calls in all the parties to the case. I follow the lawyer, who enters the room and sits at the table to the right of the bar. I sit in the section for the public. I face three judges seated at the table located in the centre of the courtroom, behind the bar. It is 11:20 am, and the hearing begins. First, the presiding judge confirms the presence of the parties and their representatives. Except for the lawyer, none of the parties nor any of their

agents is present. The judge checks if the client's hearing notification was properly delivered and finds confirmation of it in the file.

As these formalities are attended to, the hearing proceeds. The presiding judge asks the judge to his left to summarize the facts. From documents in the court file, the judge delivers a brief summary of the dates, activities, and documents, emphasizing the content of the psychiatric opinion. Following this, he briefly outlines the grounds for appeal. Subsequently, the judge asks the lawyer to present his position, while politely reminding him not to repeat arguments from his written appeal, stating: "Those arguments and facts are known to the court." The lawyer announces that he relies on his arguments as presented in his textual submission and asks the panel to admit evidence from witnesses on the fact of the admitted person's dangerousness, as requested in the appeal, or to return the case to the lower court for re-trial.

Finally, the lawyer asks the panel to grant him remuneration for legal aid service in the amount prescribed by law. The presiding judge asks everybody to leave and to wait outside for the court's decision on the admission of additional evidence. Presently, everybody is called back in. The panel rejects the admission of additional evidence with a brief explanation that the expert opinion is clear, coherent, and based on established facts. Afterwards, the presiding judge closes the hearing and pronounces the final decision: the panel rejects the appeal. The involuntary admission was found to have been made on legal grounds and according to correct procedure. The lawyer is awarded 60 złotych (about \$20

CAN) for his legal aid representation. The entire appeal hearing has lasted five minutes.

Hearings like this are apparently unremarkable in involuntary admission cases. In assessing the realization of the rights of the admittee within the context of involuntary proceedings, Tomasz Pałdyna, who conducted research on 250 cases of involuntary institutionalization based on Articles 23, and 31 cases based on Article 24 (retrieved from eleven family courts in Poland), found that adjudication of an involuntary admission case lasts, on average, eight minutes.⁵⁵⁶ I ask how it is that competent legal professionals—judges and attorneys—engage in practices that entail the questionable provision of optimal and fair adjudication of involuntary admission cases. This is even more troublesome given that it was commonly stated to me, by a number of the professionals involved, that the involuntarily admission system works well, despite the few administrative errors that sometimes occur, such as a missing signature on a document. Judges prize psychiatrists for their respect of patients' rights and for meeting administrative deadlines;⁵⁵⁷ psychiatrists feel that judicial adjudication provides a solid stamp of legality to their intervention;⁵⁵⁸ and attorneys, in spite of some concerns about the quality of some expert opinions, generally accept psychiatric intervention as needed in their client's case, and thus legitimate the involuntary admission.⁵⁵⁹

⁵⁵⁶ Tomasz Pałdyna, *Judicial Practice in Application of Some Institutions from the Mental Health Protection Act* [*Praktyka Sądowa W Zakresie Stosowania Wybranych Instytucji Prawnych Zawartych W Ustawie O Ochronie Zdrowia Psychicznego*] (Warszawa: Instytut Wymiaru Sprawiedliwości, 2015).

⁵⁵⁷ Interview with a family court judge, 28 February 2013; Interview with the Chair of the Family Court, 23 May 2013.

⁵⁵⁸ Interviews with psychiatrists, 13 July 2013, 20 May 2013, and 13 March 2013.

⁵⁵⁹ Interviews with attorneys, 10 January 2013, 21 January 2013, 22 January 2013 and 10 February 2013.

7.3 – Judicial Strategies for Managing Hearings in Involuntary Admission Cases

7.3.1 – Monitoring the Number of Participants in the Case

As the narratives above show, both of the hearings—at the district court and at the appeals court—proceeded with a limited number of participants, and even in their total absence. It is typical that an involuntary admission hearing at the district court level proceeds without the presence of a lawyer, or of an admittee, or any other participant. Despite the Supreme Court’s suggestions for the broader appointment of lawyers for involuntarily admitted persons,⁵⁶⁰ at my research site the district court judges pointed to their inability, in terms of time and resources, to find an attorney in all of the involuntary admission cases they process each month.⁵⁶¹ As I demonstrated in Chapter 4, lawyers’ appointments are seen as a burden on a court’s limited resources, yet also as a barrier to judges’ ability to quickly process involuntary admission hearings. Indeed, without the presence of a lawyer the judge can proceed with a more convenient adjudication of the case—meaning they can decide the case in their own office, at their own pace. The judge can utilize the time they would otherwise devote to processing the case in the courtroom, to catching up on their workload.

When it comes to the participation of the admitted person, in my field site the established practice is that admittees are not transported to courthouse hearings as the court is more than 25 minutes away from both of the psychiatric facilities that I researched. Indeed, I did not see any admittee participate in their hearing while institutionalized in a

⁵⁶⁰ I discussed this in Chapter 3.

⁵⁶¹ Interview with a family court judge, 28 February 2013.

psychiatric hospital. Upon inquiring about the absence of admitted persons at their hearings, I was told by judges and psychiatrists that their transportation is ‘logistically impossible,’ since they have the same status as, and so should be subject to same security measures as, a criminally detained person.⁵⁶² This means that the admittee should be transported in an ambulance or a secured car with guards, and that those guards should be present at all times. I also discovered, when I traced the trajectory of one involuntary admission case, that this ‘logistical impossibility’ additionally suffers from unclear regulations about whether the court or the hospital is responsible for organizing such transport, and for covering associated costs.

To avoid these financial and organizational burdens, the chair of the family court informed me that when the *MHPA* came into force, she approached the psychiatric facility’s governing authority about setting up a hearing room on-site. This initiative was dropped because the director was not able to designate such a room. Further, she said that it would be very hard for the court to organize such an on-site hearing room as one judge would have to go to the hospital for the entire day. Given the fact that only eight judges are currently active in her division, this would significantly disrupt the work in that division and the ability to attend to cases in a timely fashion—especially since involuntarily admission hearings are often added to the already-scheduled hearings of a given judge. Even if the hearing were at the hospital, the judge noted, it would be hard to group all of these involuntary admission cases so their number justified moving the hearings to that site.

⁵⁶² Interview with a family court judge, 28 February 2013.

The last two potential participants in the hearings include the representative of the psychiatric facility, and a family member or members (if they feature, for example, as legal custodians). According to the Supreme Court's judgment from 15 March 2012, the representative of the psychiatric facility should be included among hearing participants and informed about scheduled hearings and other activities in the case.⁵⁶³ Prior to this, the hospital representative was not considered an official party to the proceedings, and even now court practices vary on the matter. Local practice around the inclusion of the psychiatric facility director's has not been consistent, despite the interpretation that, within the context of involuntary admission, they should be given the status of a party due to their legal interest in the outcome of the case. Judges explained to me that they tend not to inform the directors because it is costly and judges do not think that the director would be interested in sending a lawyer to every single involuntary admission hearing.⁵⁶⁴ When it comes to family, I did not encounter a family member at any of the hearings I observed. Neither did I see a representative of a psychiatric facility.

Polish civil procedure does not require the attendance of parties when cases are adjudicated, unless the judge decides that the presence of a given party is mandatory at one of the hearings.⁵⁶⁵ This happens when the judge wants to obtain testimony they have deemed crucial to the adjudication of the case.⁵⁶⁶ Parties just need to be properly informed about the hearing, after which it is up to them to come and defend their rights—or not.

⁵⁶³ Supreme Court, decision in the case *IV CSK 373/11*.

⁵⁶⁴ Interviews with family court judges, 28 February 2013; Interview with the Chair of the Family Court, 23 May 2013.

⁵⁶⁵ Articles 150 and 237 of the CCP.

⁵⁶⁶ Only when the judge issues an order requiring the obligatory presence of the party at the hearing, is the party required to come; otherwise they risk being fined or even escorted by police. It is unclear whether this is the default position characteristic of Eastern European civil law jurisdictions or unique to Poland, as such a comparative investigation is beyond the scope of this chapter.

While hearing out a party is an important institution and realization of the right to procedural equality, Polish jurisprudence and civil procedure scholars Joanna Bodio and Wojciech Graliński note that “the essence of a legal principle *audiatur et altera pars* [‘let the other side be heard’] is to create a condition for allowing for being heard yet the fact [of] whether one is heard is a of a secondary importance.”⁵⁶⁷ This is the interpretation adopted by judges in involuntary admission cases: if an admittee is properly notified, and proof of such notification is included in the case file, this provides sufficient grounds to proceed with the hearing. Yet there is silence on what else goes on outside this proof of notification. From the hearing transcript, judges often omit that the admittee’s absence is due to the material barriers related to their institutionalization in a closed ward. Only at the appeal stage (if an appeal was indeed submitted) can the admittee potentially participate in the hearing, typically because they have been released from the hospital by that time.⁵⁶⁸ Notably, the Supreme Court’s proposed solution, instead of ensuring that the admittee is given an opportunity to participate in their own hearing, is to substitute their presence and voice with those of a legal professional.⁵⁶⁹

7.3.2 – Curbing Lawyers’ Involvement

Even when a lawyer is appointed and present, judges utilize various strategies to limit their involvement in the case in the name of expediency. In an interview with me, one

⁵⁶⁷ Joanna Bodio and Graliński Wojciech, “The Importance of the Principle of Equality between Parties in the Civil Process,” *Studia Iuridica Lublinsia* 25, no. 1 (2016): 262.

⁵⁶⁸ What I noticed, however, is that once people are released they rarely come to the appeal hearing and tend to avoid court correspondence (which results in a legal aid lawyer’s appointment) because they fear re-institutionalization or are unsure about the purpose of an appeal hearing in the context of their release.

⁵⁶⁹ I discussed Supreme Court recommendations pertaining to legal representation in mental health cases in Chapter 3.

district court judge stated: “lawyers make even simple cases complicated.”⁵⁷⁰ One of the strategies for restricting lawyers’ involvement in the hearing is ordering, or exerting pressure on the participating lawyers to reduce their oral presentation to a bare minimum—as is apparent in the second narrative, above. The ‘bare minimum’ means that it is enough for lawyers to state that they support the appeal, along with all the arguments included in it, and to request either that the decision made by a lower court be changed, or that the case be sent back to a lower court for additional adjudication.

To contradict evidence at the appeal level with another document, or by cross-examining the expert-witness, is particularly difficult because the underlying aim of an appeal is to control the finding of facts and the application of law in cases adjudicated by the lower courts. It is not considered the work of the appeals court to engage in a search for new facts; thus new evidence is only considered if it does not prolong the case. This generally means that only documents can be introduced as new evidence. In situations where the appeals court decides that a case needs more extensive proceedings related to new facts and evidence, it can send the case to a lower court to consider new evidence. I encountered, however, a case where an auxiliary psychiatric opinion was admitted at the appeals court, and an additional hearing was scheduled for the cross-examination of the authoring psychiatrist. In that case, the court *ex officio* admitted this new evidence to clarify the issue of the admittee’s diagnosis.

It may seem, then, that lawyers have more opportunities for involvement in civil commitment cases at the level of a district court; however, my lawyer-informants shared a common perception that involuntary admission hearings have a predetermined character

⁵⁷⁰ Interview with a judge, 16 June 2013.

because of the weight psychiatric opinions, unlike other expert opinions, carry for judges generally. The lower court is the site where lawyers should make their claims and present evidence in support of these claims—yet my analysis of numerous cases, observations of judicial hearings, and data from interviews all show that even in this site the space for lawyers’ engagement is limited. For example, I interviewed one lawyer, appointed at the district court stage of processing, who spoke about submitting a legal document wherein he contested the quality of the psychiatric opinion ordered by the court.⁵⁷¹ As a result of this action, the judge allowed supplementary psychiatric evidence and cross-examination of the psychiatric expert during the hearing. Yet, according to the lawyer, the new evidence did not matter: the judge chose not to take any problems with the opinion into consideration, including that the examined expert himself was unable to address deficiencies in his opinion.⁵⁷²

Accordingly, the lawyers I interviewed spoke of the limited opportunities to engage in the hearing of involuntary admission cases in a meaningful way, regardless of whether the hearing was at the district or the appeals court level. What admittees typically seek in questioning their involuntary admission is an immediate discharge from the hospital; however, in one case I witnessed an already-released individual merely seeking formal acknowledgment that his detention had been illegal because he “disagreed with what had been done to him.”⁵⁷³ A lawyer’s obligation is to represent their clients and argue their clients’ stance and their rights—so when judges treat those cases as straightforward and pointless, contrary to what the lawyer tries to prove, it can put lawyers working in civil

⁵⁷¹ Interview with an attorney, 10 February 2013.

⁵⁷² Interviews with an attorney, 22 January 2013; 10 February 2013.

⁵⁷³ Interview, 22 January 2013.

commitment cases into conflict with judges. Seen by judges as activities geared towards the unnecessary prolongation of a case, these types of interventions are not welcome.

7.3.3 – Limiting Case Material

The appeals court judge's ability to proceed with the hearing promptly depends not only on a limited number participants, but also on the size of case files, and subsequently the scope of the material with which the court needs to engage. There are typically only a few documents that make up involuntary case files. When the case reaches the district court hearing, these documents include: an organizational sheet where details of the case are recorded by the chair of the section; the notification from the director of the psychiatric facility about an admission (the *Facility's Notification to the Court*, shown in Figure 6.8); the protocol from the judge's meeting with the admitted person (the *Protocol from the Prehearing Visit*, shown in Figures 6.9 and 6.10); the court decision to call for a psychiatric expert opinion; and the document of that opinion. At the appeals court, the involuntary admission file additionally includes the text of the protocol of the lower court hearing, usually a single page; the final decision of the district court; and the document of the appeal. Administrative documents, such as a proof of mailing correspondence, are also included in the files, along with the decision to appoint a legal aid lawyer (if granted), and the entire correspondence with the local bar council. The total number of pages included all legal and administrative documents does not usually exceed twenty.

While not directly referring to the pace at which involuntary admission cases are adjudicated, the chief of the family court, while handing me about twenty files of

involuntary admission cases, noted: “not much here; those cases are thin.”⁵⁷⁴ In this way she indicated that the limited number of pages translated into limited content, and therefore less complex material needing to be taken into consideration. This minimal content allows the referring judge to quickly engage with the case, and to do so even at the last minute. For instance, one afternoon I went to the district court and noted that the files of involuntary admission cases scheduled for following day were still on the shelf in the administrative office. This means that the judge who was to adjudicate these cases would get the files no sooner than the day of the hearing. This differs from what I remember from my legal practice: in other types of cases, at least one and up to a few days before the hearing, judges tend to take files home, or at least to their office, to review. As a lawyer, I knew that my access to case files would be restricted during that period. Moreover, the limited case material is produced, as I demonstrated in the previous chapter, in way that establishes internal coherence both in terms of facts and of documents. This produces one unified narrative about an involuntarily admitted person. Limited documentation and maximum coherency enables judges to summarize facts quickly, and to arrive at a final decision quickly as well, since they (or the adjudicating panel) do not need to attend to inconsistencies in claims or in facts, contradictions in witnesses’ testimonies, etc., all of which take time.

If there were any inconsistencies between the experiential (admittee’s) account and the institutional account, they had disappeared by the time the case reached the court. Their disappearance is collectively achieved by psychiatrists and judges producing case documents according to certain frames and the institutional objectives set for involuntary

⁵⁷⁴ Informal conversation with the Chief Judge of the Family Court, 10 January 2013.

admission cases. In Chapter 6, I showed how the documents produced prior to the hearing adopted a biomedical model for framing information about the admittee and the context of the admission. The disappearance is also produced by law, which does not require that all medical documents are attached to the case files. Indeed, provision 252.2 of the *By-Law for Civic Courts*⁵⁷⁵ requires only that the judge who conducts the prehearing notes, in the prehearing protocol, that they has familiarized themselves with the medical documentation.

The practice in the district court where I conducted my fieldwork is that different judges should conduct the prehearing and hearing for individual cases, to ensure that the adjudicating judge has a fresh look at the information. The change of judges dealing with an involuntary admission case is also related to avoiding the appearance of bias in terms of procedural fairness principles, because the judge who conducted the prehearing had already taken a stance by not discharging the admitted person immediately thereafter. Yet this means that the adjudicating judge, or an adjudicating panel, lacks knowledge of the medical documents and facts presented. These documents can be accessed only when the party asks for their admission as evidence, or the court admits them as such *ex officio*. I did not encounter any involuntary admission case based on Articles 23 and 24 of the *MHPA* where these documents were included in the case material.

7.4. – Enacting Admission Cases as Priority Cases

While the institutional discourse of urgency, as an organizer of involuntary admission cases under the *MHPA*, prescribes a tight deadline for all interchanges between psychiatrists, facility/ward supervisors, and judges, the *By-Law for Civic Courts*⁵⁷⁶

⁵⁷⁵ *By-Law for Civic Courts*.

⁵⁷⁶ *Ibid.*

constructs all cases governed by the *MHPA* as *priority* cases that should be heard first, once they reach the court. The significance of this text is that it regulates the everyday functioning of courts and featured as such in interviews that I conducted with judges. The *By-Law for Civic Courts* is a normative act issued by the Minister of Justice that claims to regulate the “internal organization, functional order of civil courts [...] the order of activities in these courts, functioning of courts’ authoritative bodies, undertaking of duties by judges, and judicial assessors, mode of administrative functioning, [and] work distribution.” Judges in different levels of courts often refer to this text when they explained to me how and why they perform their work in a particular way.⁵⁷⁷

Provision 46, clause 4.3 of the *By-Law for Civic Courts* lists mental health cases as priorities, along with others such as arrest and child custody. This legal concept of ‘priority’ organizes the work of judges in a specific way. The judges I interviewed referred to involuntary admission cases as priorities because they required both prompt scheduling of hearings and quick adjudication. For example, the chair of the family court explained her work in enacting the priority of involuntary admission cases in the following way:

[These cases] are registered in the court roster [as they come and] are treated indeed as priorities. But this priority, in a technical and organizational sense, works so that those cases are scheduled for the hearing within a month or two the earliest [...]. But even if we have already full bookings for [the following] months we add these psychiatric cases to the case lists for already booked hearings, because we try to ensure that psychiatric cases are adjudicated first [...]. These are recommendations stemming from the courts’ by-laws. Yet we have never been able to meet the fourteen-day deadline—never. As I said, we adjudicate them within one or two months, unless there is a need to admit another psychiatric opinion, then these cases remain in the court [...] for much longer [...]. Another hurdle [to fast processing] relates to problems with notification of the concerned party. That party does not need to come to the court but needs to know that this is

⁵⁷⁷ *By-Law for Civic Courts*.

the fundamental principle of our civil procedure. Without receipt of the delivery of this notification—and this often occurs because the person may already be discharged from the hospital before the appeal hearing and we do not have that person’s current address, or the correspondence was sent to the wrong address—we need to adjure the hearing and begin all over again.⁵⁷⁸

In this excerpt, the judge refers to the scheduling priority for the involuntary admission cases she is obliged to adjudicate under Provision 48, clause 1 of the *By-Law for Civic Courts*. That provision reads: “Cases should be adjudicated according to their date of submission, unless special provisions indicate otherwise.”⁵⁷⁹ As the judge indicated in the appeal to involuntary admission cases, the appeal hearing should be scheduled within fourteen days (Article 45 of the *MHPA*) of the date of the appeals court’s intake of the appeal, and adjudicated at that hearing. The judge also spoke to organizational limitations hindering the possibility of adjudicating an appeal of an involuntary admission case during one hearing. If the court is not able to so adjudicate, due to the above reasons, the case will expand significantly in time and will require additional preparatory work, including sending the hearing date notification. In Poland, hearings are not scheduled for one session that lasts a few days (as happens in Canada, for example). Rather, cases are adjudicated during hearings scheduled potentially over the span of a few weeks or even months. Sometimes, civil hearings can be scheduled once a month or every few months, depending on the factors specific to a given court.

⁵⁷⁸ Interview with the chair of the family court, 23 May 2013.

⁵⁷⁹ *By-Law for Civic Courts*.

Similar time pressures related to adjudicating involuntary admission cases and their impact on the workload of judges was expressed by the chair of the family court.⁵⁸⁰ In an interview with me, a judge expressed her concerns in the following way:

Presently we have eleven judges employed in the family court but [...] [only] eight of these judges actually work because one is delegated to the Ministry of Justice, another is on long-term medical leave, etc. Yet there is enough work for eleven judges. Thus, we really need to push hard [to] prevent extensive delays [in adjudication], but this is very difficult. The judge needs to schedule at least eight to ten hearing days a month, and it does not matter if she has additional [visits] to the psychiatric hospital. We receive about a hundred notifications from the psychiatric facilities per month. There are an additional 3,500 enforcement cases per year, which require constant monitoring, changes to the orders, new orders, new probation measures, etc., [...] but these do not count officially within the statistics of judges' workload.

This judge further explained that she tries to divide cases equally between judges so no one feels overworked. With the intake of 100 involuntary admission cases a month, sometimes the chair schedules additional court days, but sometimes she adds to judges' existing lists of hearings. She tries to organize the scheduling so the involuntary admission case can be heard within the prescribed fourteen-day period. Thus adding to the existing case lists or scheduling additional hearing days for involuntary admission cases carries implications for judges' work. First, it extends the already long list of cases that judges in the family court have for each day. This list can vary between seven and fourteen cases, of different hearing lengths, per day (hearings usually at begin at 8:30 am and may not stop until 30 minutes before the court closes at 4:00 pm). Second, an additional day added to a judge's schedule means they have less time to attend their other judicial and administrative

⁵⁸⁰ Interview with the Chair of the Family Court, 23 May 2013.

duties. In addition to their adjudicating duties and obligatory two days a week of hearings, other administrative or non-hearing duties to which district court judges attend on a regular basis include: visits to psychiatric facilities; additional prehearings in adolescents' cases; multiple enforcement proceedings; and annual reviews of various social facilities that belong to that court, such as senior social housing, psychiatric hospitals, etc. She concluded that she had work to do every day.⁵⁸¹

Moreover, judges are under constant pressure to process cases as fast as possible,⁵⁸² to meet a monthly adjudication target. The discourse of 'procedural economy' is an important organizer of how judges work in involuntary admission cases because it requires them to meet a monthly target⁵⁸³—indeed, judges are assessed on the number of cases they process monthly.⁵⁸⁴ Over the duration of my fieldwork, the Minister of Justice undertook various initiatives to monitor work in courts.⁵⁸⁵ One such initiative was introduced in the spring of 2013, requiring that each member of the court meet a daily target of 'points.' Various amount of points were attached to different activities, such as protocoling the hearing, sending court correspondence, etc. This, as one of the court clerks reflected, totally missed the point of how the work in courts is organized:

⁵⁸¹ Interview with a family court judge, 28 February 2013.

⁵⁸² Kathy Mack and Sharyn Roach Anleu, "'Getting through the List:' Judgecraft and Legitimacy in the Lower Courts," *Social & Legal Studies* 16, no. 3 (2007).

⁵⁸³ Interview with the Chair Judge of Family Court, 23 May 2013; Interview with a Regional Court Judge, 23 May 2013; Interview with the Family Court Senior Secretary, 5 February 2013.

⁵⁸⁴ Interview with the Chair Judge of Family Court, 23 May 2013.

⁵⁸⁵ Interview with a Regional Court Judge, 23 May 2013; Interview with the Family Court Senior Secretary, 5 February 2013.

If I sit for few hours at a hearing and do the protocoling I get points for one activity even though this protocoling lasted hours. So, for this day I will not be able to meet the daily target. But if I send few letters, attach some new documents to files, which I can do in a [few] hours, and do a few more quick activities, then I get all my points, even though it took me much less time than I spent on protocoling.⁵⁸⁶

I soon learned that this policy was abandoned and a new one was pending, in terms of maximizing judges' time and monitoring their work progress. In mid-2013, however, a new initiative was undertaken by the Minister of Justice, centered on changing the standard form for judges' appraisals. According to the judges' association, *Iusticia*, this new form not only imposes additional documentary duties on judges, but also attempts to impose indicators to measure the work of employees of bureaucratic organizations. *Iusticia* criticized this initiative as abstracted from the realities of work in courts, and specifically the workload of judges.⁵⁸⁷

This new initiative was added to the already existing system of control over judges' work. Every month the chair of each division is required to send a report to the Minister of Justice on how many cases were submitted to the division, how many were completed, and with what result.⁵⁸⁸ The judge of the regional appeals court, who also monitors the work of judges in district courts located in the territorial jurisdiction of that appeals court, stated that she constantly receives recommendations from the Ministry of Justice to pay attention to overdue, postponed, and incomplete cases. She added that when one judge constantly

⁵⁸⁶ Interview with the Family Court Senior Secretary, 5 February 2013.

⁵⁸⁷ Iustitia (Association of Polish Judges), "Response from 'Iusticia' to the Minister of Justice Regarding Changes in the Design of the Judge's Work Evaluation Document ["Opinia Ssp 'Iusticia' Do Projektu Wzoru Arkusza Ocen Sdziego"], 27 August 2013, <http://www.iustitia.pl/opinie/741-opinia-ssp-iustitia-do-projektu-wzoru-arkusza-ocen-sdziego>.

⁵⁸⁸ Interview with the Chair Judge of the Family Court, 23 May 2013.

falls behind, in comparison with other judges, she reports this to the chair of the department.⁵⁸⁹ The senior secretary working in one section of the family court—the section solely responsible for processing involuntary admission cases—appraised the work of that section by saying: “We process all the case that we get in a month. We close a month without any outstanding cases.”⁵⁹⁰

Working under this imperative of expediency, judges use legal technicalities and nuanced legal knowledge to adjudicate involuntary admission cases according to the legal discourse of priority, while still ensuring that this adjudication can be recognized as legally valid. In the following section I discuss the judgecraft that organizes the processing of involuntary admission cases. According to political scientist Roy B. Flemming and his coauthors, ‘judgecraft’ refers to “how [judges] go about their tasks in the courtroom.”⁵⁹¹ It includes deploying certain strategies and techniques to manage institutional relations within the context of the courtroom so that judges can achieve the conciliation of potentially competing demands pertaining to the organization of their work, such as time constraints and a long, potentially unpredictable list of cases⁵⁹² (or a list of cases with drastically different attributes). Australian socio-legal researchers Kathy Mack and Sharyn Roach Anleu add that judgecraft is “is more than a practical craft, it must also be considered in light of the bounded nature of judicial authority.”⁵⁹³ This means that judges need to employ significant legal knowledge and navigate legal technicalities in managing the courtroom so that they act within the boundaries of law. In their study of lower courts in

⁵⁸⁹ Interview with a Regional Court Judge, 23 May 2013.

⁵⁹⁰ Interview with the Family Court Senior Secretary, 5 February 2013.

⁵⁹¹ Mack and Anleu, “‘Getting through the List’,” 341.

⁵⁹² *Ibid.*

⁵⁹³ *Ibid.*, 342.

Australia, Mack and Anleu note that: “skillful judgecraft is required to meet conflicting ideological demands [such as procedural fairness values, judicial legitimacy, and unbiased decision-making, among others] as well as the practical challenges of ‘getting though the list’ of cases assigned for that day.”⁵⁹⁴

As discussed previously, judges’ practical strategies to limit the number of participants in the hearing, concentrate case materials, and restrain lawyers’ intervention, while performed within the necessary judgecraft, are embedded in norms that define what a judge can and cannot do in the legitimate exercise of judicial authority. In the sections below, I present how the judicial authority in involuntary admissions cases is embedded in and bounded by the discourse about the nature of said cases, the status of psychiatric knowledge, and the prerogatives attributed to family judges under non-adversarial modes of civil proceeding. Consequently, I argue that, thanks to the active role attributed to them in non-processual cases, the Polish *CCP* allows judges to actively manage the rapid adjudication of involuntary admission cases without formally undermining the principles of procedural fairness.

7.5 – “These are Straightforward Cases:” Standardizing the Processing of Involuntary Admission Cases

Although the judges that I interviewed differed in their opinions of how much judicial attention involuntary admission cases receive, texts related to hearing preparation, as well as those produced during those hearings, reveal that judges and court personnel approach involuntary emergency cases in a standardized way. For example, the review of

⁵⁹⁴ *Ibid.*, 346.

the list of involuntary admission cases scheduled for a given day shows that the time allocated for each case is 10 minutes.⁵⁹⁵ In contrast, the time allocated for cases in a neighboring courtroom of the family court was significantly higher; further, this time allocation is decided on a case-by-case basis.⁵⁹⁶ One district court judge, in explaining the process of preparing a draft of a final decision, also illuminated the perceived lack of complexity of these cases, which justifies delegating preparation of the final decision to court personnel. She commented that the preparation of a final decision in an involuntary admission “is not a very complicated activity” and said she asks articulated students or court assistants to prepare decision drafts:

It is done according to a template [...] so [they] change the numbers identifying the case, the names, because the subject matter proved and evidence is the same, [...] here we cannot invent anything because it is specified in the law [the *MHPA*], so the circumstances are the same. It is a simple task, not requiring particular intervention.⁵⁹⁷

The perceived lack of complexity of involuntary admission hearings at both the district court and appeals court level, and the focus on their prompt adjudication so that the *MPHA*'s tight timeline is met, organizes the standardized approach to scheduling civil commitment hearings and proceeding with those hearings—but additional reinforcement comes from other legal acts, such as the *Decree on Attorneys' Tariffs 2002*, which regulates the tariffs for legal aid lawyers.⁵⁹⁸

In Chapter 5, I discussed the significant differences in tariffs that the *Decree on Attorneys' Tariffs 2002* establishes between, for example, contract or tort cases and mental

⁵⁹⁵ Observation of hearings at the district court: 11 February 2013; 18 February 2013; and 2 April 2013.

⁵⁹⁶ Observation of hearings at the District Court: 11 February 2013; 18 February 2013; and 2 April 2013.

⁵⁹⁷ Interview with a district court judge, 28 February 2013.

⁵⁹⁸ *Decree on Attorneys' Tariffs 2002*.

health cases. A lawyer providing legal aid representation in an involuntary admission case receives 120 złotych (equivalent to \$39 CAD) for the entire case at the district court level. For representing claimants at the appeals court, he or she will receive an additional 50 percent of the lower court tariff.⁵⁹⁹ This is 60 times less than what the same lawyer would receive for legal aid lawyering in a tort-based case with a claim value above 200,000 złotych (around \$65,800 CAD).⁶⁰⁰ The importance of the *Decree on Attorneys' Tariffs 2002* lies not only in the links it creates between the state's finances and the everyday practices of judges, but also the ideological work of establishing a certain discourse of importance and complexity attributed to different kind of cases, on the basis of their remuneration. This, in turn, contributes to how much time and effort judges and legal aid lawyers invest in involuntary commitment cases.

Paragraph 2.1 of the *Decree on Attorneys' Tariffs 2002* fosters an assumption that tariffs assigned for specific cases listed in Chapters 3-5 are an adequate remuneration for the activities involved in lawyering in those cases, as they take into account their complexity and 'nature.' Paragraph 2.1 reads: "Deciding upon the remuneration for a lawyer for the representation, court takes into consideration the necessary labor input of the attorney, nature of the case, and attorneys' input in the resolution of the case." Thus, the fact that the legal aid lawyer receives between \$40 and \$80 CAD for the entire case proceeding at the district court, and half again for the proceedings at the appeals court, is read by judges as adequate to the complexity of the case and to any activities needed for

⁵⁹⁹ *Ibid.*

⁶⁰⁰ The difference in the amount stems from the fact that the *2002 Decree* does not specify fees in mental health cases and thus, according to paragraph 5, judges ought to apply the fee for the most similar case. Some judges apply the fee for incapacitation cases or that for the category of 'non-specified proceedings' (para. 5).

its resolution. When the National Bar Council challenged the constitutionality of the *Decree on Attorneys' Tariffs 2002*, the Polish Constitutional Tribunal and the Minister of Justice argued that minimal tariffs are based on the assessment of a typical case and that courts are still given discretionary power to adjust them according to specific circumstances.⁶⁰¹ Ultimately, though, these statements only confirmed the adequacy of the \$40 to \$80 CAD remuneration typical of an involuntary admission case.

Notably, neither during my fieldwork nor in my review of final decisions in involuntary admissions cases did I find any evidence that judges increase the remuneration granted. Thus, this low remuneration granted for, and the short time allocated for adjudication of these cases, speaks to the institutional practices and discourse around involuntary admission cases. When the judge has 10 minutes assigned for the completion of a given case, this organizes how they will approach the case—whether routinely or with recognition of all its potential complexity—as well as the lawyering involved in the case, which can obviously vary.

7.6 – Using the Technicalities of Non-Adversarial Proceedings in the Judgecraft

As I explained in Chapter 3, Polish civil procedure is regulated by the *CCP*, which divides it into two modes of adjudication: processual and non-processual. These two modes reflect adversarial and non-adversarial (inquisitorial) conceptualizations of the relationship between parties, the procedure for data collection, and the ultimate goal of the

⁶⁰¹ The main constitutional challenge of the *Decree on Attorneys' Tariffs 2002* was that the Minister of Justice issued it in violation of Article 16, sections 2 and 3 of the 1982 *Bar Law* by using criteria that were not included in the *Bar Law* provisions founding the Minister's prerogative to issue a relevant decree (see the Constitutional Tribunal's decision from 29 August 2006 in case number *SK 23/05*).

proceeding.⁶⁰² Cases recognized by the processual mode are those emerging mostly from contractual relations, where a conflict between parties tends to be easily detectable.⁶⁰³ In this mode the judge is only minimally involved and serves largely as an adjudicator. This differs in non-processual proceedings, where the judge has an extended inquisitorial prerogative for the collection of case material and for an interrogation of facts. The leading premise of this mode of processing is achieving a 'just outcome' that meets the 'best interests' of those concerned. To emphasize the collaborative endeavour of this mode, the parties are called 'participants.' The collective effort is expected to act in the best interests of the person that the procedure concerns, yet the matter of who defines these 'best interests' is linked to the active role of the judge in the context of non-processual proceedings in Poland.

In civil commitment proceedings the judge is assigned an active role. They are responsible for efficiently organizing and managing the case and case hearings; ensuring that all necessary facts are explained; making sure that there is sufficient material for adjudicating the case; and eventually pursuing any necessary investigation into possible evidence that can contribute to the resolution of the case. For example, in one mental health case the Supreme Court criticized the adjudicating judge for not collecting evidence diligently and not calling expert witnesses to provide oral opinion to the court during the hearing, when the written expert opinion had serious flaws. Thus it up to the judge whether a given matter needs further investigation, but the judge's decisions still need to ensure that the law is followed.

⁶⁰² Henryk Dolecki, *Civil Procedure: Overview [Postępowanie Cywilne: Zarys Wukładu]* (Warszawa: LexisNexis Polska, 2015), 23-28.

⁶⁰³ *Ibid.*

The inquisitorial role of the judge in an involuntary admission proceeding can impose certain boundaries on lawyers' interventions, and closing these boundaries can put lawyers into conflict with judges. British law professor Jacqueline Hodgson notes that when it comes to lawyers' involvement in the inquisitorial mode of discovery: "Even the most specialist criminal lawyers tend not to take a proactive role—to do so is to challenge judicial investigation/supervision itself."⁶⁰⁴ Moreover, lawyers tend to organize their interventions accordingly: "The way, in which [the lawyer] understands her task is to re-read the dossier, to look for weaknesses and to present the reading most favourable to her client."⁶⁰⁵

I, too, observed generally passive and limited interventions from lawyers in involuntary admission cases in my field site—yet the legal aid lawyers I cite throughout my dissertation are, to some extent, atypical, due to the scope and type of their intervention into the involuntarily admission cases to which they were assigned. The majority of lawyers' interventions were limited to their presence at the hearing, either supporting the appeal or verbally opposing the claim of the involuntary admission's legality at the district court. While conversing about their experiences, I commonly heard from lawyers in involuntary admission cases that their clients were obviously ill and needed help. If the lawyer undertook any initiative in data collection, they were contesting the findings of the expert opinion. Without lawyers' participation in the hearing, most cases are resolved on the basis of that single opinion, regardless of its quality. Yet even as lawyers try to contest

⁶⁰⁴ Jacqueline Hodgson, *The Role of the Criminal Defence Lawyer in Adversarial and Inquisitorial Procedure* (Berlin: Duncker & Humbolt, 2008).

⁶⁰⁵ Jacqueline Hodgson, "Hierarchy, Bureaucracy, and Ideology in French Criminal Justice: Some Empirical Observations," *Journal of Law and Society* 29, no. 2 (2002). Although Hudson specifically talks about criminal procedure in France, the Polish involuntary admission procedure (at the stage of adjudication) is also organized around the central role of judges as inquisitors.

these opinions they find the undertaking unproductive because although judges sometimes allow the admission of additional expert reports upon lawyers' petitions, they are not willing to critically engage with them.⁶⁰⁶ Without lawyers, as I have observed, the admission hearings are concluded with only one expert report.

Judges adjudicating involuntary admission cases treat lawyers as informants that can provide additional details about their clients, instead of *knowledge-bearers* and valuable participants in the procedure. At least few times, I observed and heard in interviews that, during hearings, judges approached lawyers with questions about their client's current address, whether the client was still in the hospital, etc. The judges do not depend on lawyers' knowledge and activities to determine the best interests of the admitted person, though—they depended exclusively on psychiatric expert opinion in that matter. Lawyers pointed out to me, and district and appeal judges confirmed for me, that psychiatric expert opinions are an important organizer of decision-making in adjudicating involuntary admission cases.

7.7. – “It Is Only the Psychiatric Opinion That I Care About”

As I explained in Chapter 3, one site where the *MHPA* supersedes the procedural regulation of the *CCP* is in terms of evidence collection, specifically when it comes to admitting an expert psychiatric opinion. In every case where the court adjudicates the admission decision the district court judge is obliged to admit evidence from an independent psychiatric opinion. This provision constructs an exception to the rule of the *CCP* (Article 278) that evidence from an expert opinion is admissible upon a request of a

⁶⁰⁶ Interviews with lawyers, 22 January 2013 and 10 January 2013.

party (who also finances it). This obligation on the obligatory admission of psychiatric opinion in involuntary admission cases stems from Article 46, clause 2 of the *MHPA*:

Before issuing a decision regarding the merit of the case, the court is obliged to obtain an expert opinion of one or of few psychiatrists. A person who participated in issuing the admission decision or a decision rejecting to discharge the mentally ill person cannot serve as an expert.

In both situations, whether the admission of the expert opinion is governed by the *MHPA* or by the *CCP*, the court decides who will serve as an expert. In other words, the judge selects an expert from a roster maintained by the regional court. This way of choosing experts should also be applicable in involuntary admission cases—yet I learned during my fieldwork that, instead, the family court judge selects the psychiatrist from a list of those working on the ward. Further, the determining factor is the sequential location of this name on the list: experts are selected one after another, in the order in which they are listed, unless somebody directly states that they are not interested in serving as an expert.

Another factor that determines the selection of experts is the timeframe within which the psychiatrist must prepare a report. I observed that some judges reject appointing certain psychiatrists because they do not write their opinions ‘on time,’ that is, before the involuntary admission hearing, thereby causing an adjournment. Thus, the judge is preoccupied with neither the quality of expert knowledge nor the fact that these experts come from the same ward, participate in the discussion about the patient, and can even be (as I observed) present informally at the prehearing. This speaks to the attention that judges give to procedural fairness and the merits of evidence in involuntary proceedings, which does not go beyond the formal documentation of meeting the *MHPA*’s procedural requirements.

Recall that in Vignette 2 I described my experience in attempting to challenge a psychiatric opinion, together with the accounts of my attorney-informants. My depiction speaks to the near-impossibility of challenging psychiatric opinions in courts on the grounds of problems with the quality of the opinion or due to its substance. This court practice of uncritical acceptance of the substance of psychiatric experts' opinions is based on the assumption that diagnoses of mental illness and dangerousness require specialist knowledge—an assumption that has been broadly accepted in the decision-making of lower courts, as well as at the Supreme Court.⁶⁰⁷ The Supreme Court advises that:

An expert opinion provides a court with specialist knowledge necessary to an assessment of the mental health of the concerned person [...], including the type of existing mental disturbances, the degree of their severity and intensity of the symptoms. The court cannot—against the psychiatric expert opinion—establish facts in that matter on its own conviction.⁶⁰⁸

Accordingly, neither the Supreme Court members nor lower court judges see themselves as competent to assess a person's mental state because none of them has, as they explained to me, the 'specialist' knowledge to do so. Thus, for lawyers, to challenge a psychiatric opinion is not easy, whether it is in the context of the criminal or the civil justice system. As one lawyer reflected: "When it comes to other medical opinions it is much easier to contest them. I think that the decisive factor [in terms of psychiatric opinions] is the experts' title, their specialization in psychiatry." This quote speaks to lawyers' experience of the unassailability of psychiatric knowledge and impossibility of contesting psychiatric reports, unlike other kinds of medical reports. Indeed, the Supreme Court, in its judgment

⁶⁰⁷ I discussed this matter in Chapter 3.

⁶⁰⁸ The Supreme Court, decision in the case *III UK 130/06*, cited in Duda, *Commentary*, 214.

from 17 February 1999 emphasized that a psychiatric opinion can only be contested by another psychiatric opinion:

For, judges generally lack specialist medical knowledge, and psychiatric knowledge in particular, therefore in the involuntary admission proceedings as a principle it is possible to discredit a psychiatric report only on the basis or through another psychiatric report of contradictory content, and not even on the basis or through report of another medical doctor or a non-expert psychiatrist.^{609,610}

Given the central role of the judge in the gathering of evidence and in ensuring that all the facts in the case are sufficiently interrogated, they should *ex officio* call the psychiatric report's issuing expert or experts to the hearing, to address any inconsistencies in the report. Recall that, ultimately, the judge can even call for another expert opinion.⁶¹¹ Such inconsistencies may rarely arise, though, given the carefully crafted narrative about an admittee's mental illness and dangerousness, as described in the previous chapter, produced through the medical files on which the experts base their report. Notably, I also learned that expert opinion is not delivered to the admitted person when they self-represent. The matter of self-representation emerged in interviews when I asked judges to describe, step by step, what they do procedurally in involuntary admission cases. Interestingly, it seemed to be the first time that my judge-informant noted that the expert opinion is not delivered to the admitted patient—ever. The practice appears to be so routinely organized around meeting the *MHPA*'s timeframe that judges do not give a second thought to whether

⁶⁰⁹ Supreme Court, decision in the case *I CKN 1019/98* (1999). Judgment reasons do not include explanations for that court's thesis.

⁶¹⁰ In Poland experts are chosen from a court roster. *Decree of the Minister of Justice concerning Court Experts of January 26, 2005* [*Rozporządzenie Ministra Sprawliwosci w Sprawie Bieglych Sadowych z Dnia 26 Stycznia 2005 Roku*] ("Decree on Experts"), in 2005 Journal of Laws, no. 15, item 133.

⁶¹¹ Supreme Court, decision in the case *V CSK 384/09*.

substantive grounds for preparing a defence are ensured for the admittee. Given the fact that this person does not have access to their files, which are held in the court, this omission places the admittee in a situation where they cannot really challenge the opinion—the determining evidence—before the involuntary admission hearing, nor can they develop an appeal claim. While in other civil commitments, parties are given the chance to respond to an expert’s opinion, admittees are not given that same opportunity in involuntary admission cases. What is particularly troubling is that this serious violation of the procedural standard in my research sites was not brought up by judges or lawyers in my interviews. It emerged only when I directly asked a judge whether the opinion is delivered to the admitted person at any point in the procedure. After answering “no” to this question, the judge simply moved on, without even trying to justify the practice.

The final assessment of whether psychiatric claims about the admittee’s mental illness and dangerousness meet statutory criteria ultimately belongs to the adjudicating judge, and the expert report should only assist the judge in making such assessment. Yet my analysis of case files shows that psychiatric experts make claims, and these claims are often directly written into the final judgment, about circumstances that go beyond what is stated in the legal provisions of the *MHPA* in terms of the prescribed content of the psychiatric opinion. A recent report prepared by the Helsinki Foundation of Human Rights confirms the problem of judges’ uncritical reliance on experts’ opinions, noting that experts make statements that should be the responsibility of courts.⁶¹² In the files that I read, the text of the opinion would span approximately a page and a half, of which the majority is a

⁶¹² Józef Wójcikiewicz, ed., *Expert Opinion: Selected Issues [Ekspertyza Sądowa: Wybrane Zagadnienia]*. (Warszawa: Oficyna a Wolters Kluwer Business, 2007).

description of facts from medical files along with one or two sentences on the assessment of mental illness and, related to it, dangerousness. Even this brevity and lack of insight does not shatter judges' conception of these reports as valid documents, though. Moreover, it was common for experts to go beyond stating whether the admittee was a person with a mental disorder, who posed a danger, to asserting whether or not the admission was valid.

From what I have observed, judges call experts to testify at the hearing, and even call for another opinion when the diagnosed mental disturbance does not easily fit diagnostic manual criteria for mental illness—thus the formal recognition of the condition as basis of involuntary admission is questionable. In another case I observed, the lawyer did not make such an argument, despite the fact that it was possible. The latter appeal was denied while the former was accepted. The difference between these two cases is that when the latter was adjudicated, the admittee was still in the hospital, and in the former, they had been discharged and were present at the appeal hearing, during which they made a good impression on the court.

In involuntary admission cases, the framing of lawyers' work and their input into the resolution of the case is organized from *outside* of the work and *in accordance with* the position that involuntary admission cases occupy in the work practices of judges. For the defence to have any major impact, engagement with the case must come during the all-important pretrial enquiry. To present an alternative case at trial will, in many instances, be too late, as much reliance is placed on the written evidence gathered during the pretrial stage, and thus contained within the dossier.

7.8 – Textual Organization of Lawyers’ Work in Involuntary Admission Cases

7.8.1 – “I Did Not Need the Client to Defend His Rights”

Judges do not produce involuntary admission hearings alone. Even though at least some lawyers attempt to deliver legal intervention on behalf on their involuntarily admitted clients, and while, more broadly, attorneys contest jurists’ and the judiciary’s focus on procedural economy in the adjudication of civil proceedings, lawyers in involuntary admission cases share with judges what I refer to as ‘legal and knowledge regimes.’ These are discourses pertaining to involuntary admission cases and to involuntarily admitted persons, which work from and with textually-organized case accounts. Textually-mediated knowledge about their clients and the facts of the case, at least in few instances, produces a certain kind of knowledge that the lawyer will use in their involuntary admission lawyering.

Routinely, when a legal aid lawyer is appointed to a case, their first step is to read the case files at the courthouse. By going to the court and reading files, the lawyer tries to gain an overview of the case: what it is about, who the parties are, and what the client’s stance is. One of the attorneys called it “a familiarization with the case.”⁶¹³ Up to that moment, attorneys usually have only vague information about the case, based on the letter from the bar association informing them of their appointment. The information in these letters includes the number identifying the case, the name of the adjudicating court, a short description of the case type, and the name of the client that the lawyer is to represent. Thus, the first encounter that the lawyer has with the case is reading the case file.

⁶¹³ Interview with a legal aid attorney, 10 February 2013.

Notably, this encounter usually takes place at a particular moment in an involuntary admission procedure, which informs what would and could be known about the client as the lawyer reads the case. Since legal aid appointments in involuntary admission cases usually happen either just before the civil commitment hearings at the district court, or before or at the hearing at the appeals court, the majority of case documents have usually already been collected and are attached to the case file. At the moment when the attorney goes to the court to read the case, a file contains the hospital notification to the court about an involuntary admission (the *Facility's Notification to the Court*, shown in Figure 6.8); the protocol from the meeting with the judge (the *Protocol from the Prehearing Visit*, shown in Figures 6.9 and 6.10); the judge's decision to call for a psychiatric expert's opinion; and the judge's decision to moving for an adjudication at a specific date and time. Potentially, the psychiatric expert's opinion is already in the file or on its way, as is the official confirmation from the admittee that they were informed about the date and time of the involuntary admission hearing.

While lawyers with sufficient time may visit the patient in the hospital and potentially counterbalance the textual narrative with their clients' experiential account, those who do not or cannot incorporate such a visit into their regular workload rely on the textual representation of their client constructed in case documents. One of the interviewed attorneys pointed to it directly by saying, "I did not need [to see] the client to defend his rights. I think that arguments that I formulated [based on the case files] were sufficient."⁶¹⁴ It is typical that the file information substitutes for an actual encounter with the client, especially given that lawyers are appointed with limited time for preparation.

⁶¹⁴ Interview with an attorney, 22 January 2013.

Consequently, when the lawyer limits themselves to reading case files, these texts inform them about what will and can be known about their client, and how they will engage in lawyering. In other words: the medical lexicon, medical knowledge, and medical discourse are embedded in texts, presented as case files, and further reproduced as the lawyer goes about lawyering.

The medical lexicon, as well as the textually-established facts that are in those texts, enter lawyers' work by their activation in court files. Lawyers read them, re-written in the form of notes; copy them; and use information included in them to organize their work activities, such as interactions with their client and the preparation of documents for submission. Given that attorneys do not participate in the production of these files, they treat them as true statements of facts about their clients, from which they prepare their position documents. When I subsequently interviewed lawyers about their involuntary admission cases they simply summarized those cases using medical terminology found in the case documents.

There have been at least few more moments where I noticed how textually-mediated knowledge and biomedical discourse enter the work of lawyers in involuntary admission cases. For example, these organize how lawyers interact with clients. Even those attorneys who invest a significant amount of work in their representation and make every effort to actually meet the client they represent rely on professional discourses, including psychiatric ones, in those interactions. From the reading of case files, attorneys adopt the discourse of the medical diagnosis their client received, which seems to inform how they will understand their client's behaviour during their encounters, and subsequently what defence strategy they will develop. One attorney described his encounters with his client

at the hospital as: “This person was already on pharmaceutical therapy so no logical contact with him was possible.”⁶¹⁵ In this way, the attorney expressed an uncritical acceptance of medical discourse, which provided an official interpretation of what was going on with his client and what kind of medical assistance that person needed. While this attorney contested the involuntary admission decision, he focused on the facts related to his client’s dangerousness, while leaving those that ‘proved’ his client’s mental illness intact.

7.8.2 – “It is Not a Criminal Case... the Implications are Not as Far-Reaching”

Lawyers tend to adopt two strategies for arguing against the legality of involuntary admission: the first is to question the assessment of ‘dangerousness’ as grounds for involuntary admission; the second is to contest whether the diagnosis falls under the diagnostic category of ‘mental disturbance,’ as outlined in diagnostic manuals. Neither of these strategies contests the existence of mental illness or mental disturbance, confirming that lawyers adopt certain understandings of who their clients are and what they need. An excerpt from an interview with one lawyer speaks to how his lawyering strategy was informed by his understanding of the consequences of involuntary admission as much less severe than if his client were to be institutionalized in a penal facility:⁶¹⁶

Agnieszka: You said that in the involuntary admission case, while you contested the psychiatric opinion, you did not contest the [diagnostic] merit of this opinion?

Lawyer: No, I did not.

Agnieszka: You just questioned the assessment of dangerousness, right?

Lawyer: Right.

⁶¹⁵ Interview with an attorney, 10 February 2013.

⁶¹⁶ Interview with an attorney, 10 February 2013.

Agnieszka: Yet, in the [criminal homicide] case [you described before], you contested the merit, right?

Lawyer: Yes, I did challenge the merit of the opinion and its laconic form—that was the second element that I contested.

Agnieszka: And why did you not contest the psychiatric diagnosis [of mental illness] in the involuntary admission case?

Lawyer: I did not question the mental health assessment of my client because I did not find premises for doing so, and also because the effects/implications of this procedure were not as far-reaching as in the criminal case, where my client faced a life sentence.⁶¹⁷

This interview illuminates how the lawyer organized his lawyering in criminal homicide and in involuntary admission cases differently, despite the fact that both involved an assessment of their client's mental health and dangerousness. In the homicide case, he tried to prove, against the psychiatric opinion, that his client should not be sentenced to prison because the act was committed in a state of diminished capacity caused by “abnormal/atypical pathological alcoholic intoxication;” moreover, he also questioned the quality of the expert opinion. As the interview excerpt illustrates, it is not only that he asserted the incorrectness of the psychiatric assessment on the basis of the professional literature, he claimed that the opinion itself should not be accepted because its length and laconic reasoning were not adequate to the seriousness of the case. He applied neither of these arguments in his lawyering in the involuntary admission case, despite the fact that he saw similarities in both:

Agnieszka: It is surprising—there are similar issues in both cases, both persons are under the influence of alcohol...

⁶¹⁷ Interview with an attorney, 10 February 2013.

Lawyer: Yes, yes.

Agnieszka: One person starts an argument with his family and is involuntarily committed...

Lawyer: Yes, exactly.

Professionals often adopt rationalistic explanations when disparities occur between their practices and the principles or concepts that are meant to guide them. When this lawyer's work in the criminal case is juxtaposed with his work and strategy in the involuntary admission case, a significant disparity in his lawyering emerges: in the latter, the attorney did not touch the issue of mental health and only contested the psychiatric opinion on the basis that the recommended in-patient treatment was harsher than necessary. His client, in the course of a family argument, had thrown some items, and upon arrival at the hospital was diagnosed with schizophrenia. The lawyer accepted this diagnosis and, accordingly, contested the psychiatric opinion only with respect to the assessment of his client's dangerousness. He was convinced that this was the only correct strategy. In these two cases, the lawyer's work engagement was conditioned by the severity of the outcome, where imprisonment ranked higher than psychiatric hospitalization, even though both involved an equal deprivation of liberty, induced stigma, and furthered the trans-carceral career of the person, once confined.⁶¹⁸ This discursive move is visible in the discussed practices of lawyers when they justify different lawyering strategies, and a potentially lesser degree of involvement, via an explanation constructed with reference to the needs of a person undergoing involuntary admission.

⁶¹⁸ Menzies, "Cycles of Control".

Legal scholar Jennifer Brown locates the translation of the discursive shift from the right to protection of one's liberties to the right to treatment in the 1980s and early 1990s, when numerous countries adopted a medico-legal model (called the "new legalism" in the mental health law field and "therapeutic jurisprudence" in the medical field).⁶¹⁹ Polish reformers were responding to this shift in drafting the final versions of the *MHPA* in the 1990s, when they included provisions ensuring access to mental health services for people deemed to have a 'mental disturbance.'⁶²⁰ These reformers argued that access to needed treatment should be conceived of as a right and protected under mental health law. The preamble of the *MHPA*, along with other provisions, institutionalizes the promotion of mental health and state's responsibility for it.⁶²¹ Along with later amendments to the *MHPA*,⁶²² these strengthened the right to treatment and ratified it as a discourse guiding the interpretation of an admittee's best interests, thereby organizing the judicial review of psychiatric admission decisions. Yet it is not only psychiatrists and judges who adopt and practice this discourse, but also the lawyers who represent involuntarily admitted clients. They do this by aligning their professional understanding and their interpretation of behaviours and needs more with other professionals' understanding than with the understandings and experiences of their clients. This discursive frame permits both judges and lawyers to rationalize the disparities in what participants would consider the 'optimal' way of processing cases to 'allow' the admitted person to get 'the needed' treatment. In an

⁶¹⁹ Jennifer Brown, "The Changing Purpose".

⁶²⁰ Dąbrowski and Kubicki, "Introduction [Wprowadzenie]," 13, 19, 23.

⁶²¹ Article 2, clauses 1-3 of the *MHPA* obliges the central and territorial governments, entities of the public health care system, social assistance agencies, schools and universities, correctional facilities, re-socialization facilities, and military agencies to organize activities aimed at the protection of mental health. Galecki, Bobinska, and Eichstaedt, *Commentary*; Dąbrowski and Kubicki, "Introduction [Wprowadzenie]," 13, 19, 23.

⁶²² I discussed these amendments in Chapter 3. Galecki, Bobinska, and Eichstaedt, *Commentary*, 23.

informal conversation, one of the family judges ironically stated that in all other medical wards, “everybody is sick,” whereas, “here, nobody is sick.” The family judge’s sentiment perfectly captures the dismissal of the voices of admittees and the ultimate objective of the involuntary admission: to medically help those who claim that they are not sick, when they ‘really are.’

7.9 – Conclusion

In one interview, a district court judge stated: “I know that everybody would like their case to be given adequate time, but I need to move on [...]. I have other cases to adjudicate as well.” In this section, I explored the organization of these hearings and the ruling relations that order them in such a way that these five-minute hearings are possible and treated as legitimate. I did this by ethnographically exploring how the courtroom processes are organized by the material, legal, and discursive practices of judges trying to adhere to institutional demands on their time and caseload management. I discussed the strategies used by judges to manage the processing of involuntary admission cases, which are constructed as priority cases, expediently. It became clear how textually-mediated practices of judges shape the quality of legal aid lawyering.

The tight timeframe for completing involuntary admission cases was intended to make sure that no person was kept hospitalized for an extended period without a legally valid admission decision—but this timeframe trumps the substantive realization of that person’s equally important right to a meaningful, quality defence, either of themselves or by a professional. Indeed, it seems materially impossible to satisfy the many and serious procedures that must happen in the fourteen-day period between the prehearing and the

hearing: the appointment of an expert, the preparation of an expert opinion, the delivery of that opinion to the admittee, and the delivery of their reservation back to the court.

At the same time, lawyers actively participate in the co-production of involuntary admission hearings by adopting certain discourses and basing their lawyering strategies on them, subsuming their clients' interests under institutional interests and professional priorities. That leaning is not, however, only mediated by the everyday interaction with judges, but also by various texts, including the *Decree on Attorneys' Tariffs 2002* that governs the relationship between the work of legal aid lawyers and their remuneration. Legal professionals involved in involuntary admission hearings adopt certain shared medical discourses and legal logics that guide their work despite the role they occupy within the legal system. These shared discourses "help mesh the roles of the participants into the neatly functioning unit."⁶²³ It is the coherence of this unit, and the power of professional discourse ratified within and by it, that prevents the admittee's alternative knowledge from entering the very process that is supposed to ensure their participation and protect their rights. Institutional ethnographers have emphasized that people actively participate in this coordination, even unknowingly, by adopting "prevailing and dominant discourse[s] and act[ing] accordingly."⁶²⁴ Indeed, texts and discourses that coordinate lawyers' work also construct their subjectivities, which then translate into how they organize their relationship with their involuntarily-admitted clients.

Subsequently, while judges provide limited space for lawyers' interventions, lawyers' general compliance with that limitation is ultimately oppressive—of themselves,

⁶²³ Warren, *The Court of Last Resort*, 140.

⁶²⁴ Campbell and Gregor, *Mapping Social Relations*, 41.

ironically, but more importantly of their clients. Lawyers also quickly learn judicial expectations in involuntary admission cases, which directly leads to the low intensity of their involvement.

Chapter 8 – Conclusion

8.1 – Introduction

This dissertation was both an academic and a personal endeavour, to help me understand what happened to my mother and make sense of a disjuncture I experienced as simultaneously a caring daughter and a social justice-oriented lawyer—one who attempted to advocate on behalf of admittees, yet found herself unable to move beyond the ‘routineness’ of psychiatric and judicial professional practices. I began this dissertation with the experiences of legal aid attorneys who represented clients in involuntary admission proceedings, and the challenges they faced in doing that work. These challenges included difficulties in balancing the many legal aid duties to which all Polish attorneys are mandatorily appointed, inadequate remuneration, and their perceived inability to affect the outcome of involuntary admission cases. Illuminating the embodied experiences of persons who do the actual work, these experiences proved to an important site from which to explore the operation of the legal system and involuntary admission procedures. They pointed to a complex set of relations in which lawyers were entangled.

I explored the right to representation and lawyering because I was concerned with the quality of advocacy involuntarily-admitted persons receive, or can receive, within that inherently coercive procedure, and the limitations that legal aid lawyers face in their lawyering for these clients. Hence, the fundamental rationale for this dissertation was the well-being of the people subjected to coercive psychiatric admission, even though it proceeded from the standpoint of lawyers. Accordingly I showed that while in the absence of changes to the organization of the law and legal work, lawyers indeed will continue to experience challenges to their work, and that “despite the discourse of rights, the

involuntarily admitted person will continue to have compromised representation,”⁶²⁵ as the shortfalls of ‘access to justice’ for persons admitted to psychiatric institutions are systematically organized by broader, oppressive legal and social practices and arrangements. I demonstrated how institutional pragmatics may override patients’ rights in a way that is difficult to contest because they are deeply ingrained in legal and institutional logic, in biomedical and legal knowledges, and are thus naturalized.

I begin this conclusion with a brief, chronological summary of my chapters and of the arguments advanced therein. Following this I map my work’s empirical, conceptual, and methodological contributions to socio-legal, critical mental health, and institutional ethnographic scholarship. I then provide a personal reflection on the dissertation research, in which I present more of my mother’s story and tease out salient points about the effects of admissions practices on the admittee’s everyday life and legal subjectivity. Indeed, the silencing and oppression of involuntarily admitted persons does not end with their discharge from a psychiatric facility. There are severe personal, socio, legal, and economic consequences of having a history of psychiatric commitment, which add an additional layer to the lawyering discussed in this dissertation. Yet many, if not most of these far-reaching implications would not be visible from the perspective of lawyers—the standpoint I adopted in my research—since a lawyer’s encounter with an involuntarily admitted client often ends as the legal proceedings commence. Thus, I conclude this chapter with a discussion of the limitations of my work and potential directions for future research.

⁶²⁵ Agnieszka Doll, “Lawyering for the ‘Mad:’ Social Organization and Legal Representation for Involuntary-Admission Cases in Poland,” in *Psychiatry Interrogated: An Institutional Ethnography Anthology*, ed. Bonnie Burstow (Cham: Palgrave Macmillan, 2016), 200-201.

8.2 – Research Findings

Any discussion of the contributions of my research must necessarily follow from a review of the work itself—namely, a quick summary of my dissertation chapters and the main findings of each. In Chapter 1 I presented the reader with the topic of my dissertation, its objectives, research design, and potential contributions. I introduced and justified the pursuit of my study from the standpoint of legal aid lawyers. My puzzle was organized around uncovering the set of relations hindering lawyers' legal aid work in involuntary admission cases. I pursued this through the following questions:

- 1) What actually takes place in the process of involuntary admission to psychiatric hospitals in Poland?
- 2) What are the work processes and practices pertaining to involuntary institutionalization, and who participates in them?
- 3) When and how do legal aid lawyers enter the proceeding, and what activities do they undertake within it?
- 4) How are involuntary admission proceedings shaped by texts, and how are these texts activated (read, used, and reproduced by professionals)?
- 5) What are the social, legal, economic, and institutional relations and discourses that are embedded in these texts, that organize how lawyering happens in involuntary admission cases?

These questions were developed accordingly to my understanding of lawyering as a social relation that is produced in multiple sites, in concrete material conditions, by actual people, through their everyday activities, as coordinated by texts.

The objective was not to defend lawyers and the quality of their work, as this varies, but rather to provide a more complex picture of lawyering by uncovering how different sites and activities are connected within the context of involuntary admission, and how this connection is organized so that lawyers face the hurdles they do.

In Chapter 2, I further elaborated my research design as an institutional ethnography and showed how, in the course of my research, I implemented the epistemological, ontological, axiological, and methodological premises of IE. Generally, IE was particularly suited to my research because it grounds any investigation into people's embodied experiences of their everyday lives or work; conceptualizes social phenomena in a dynamic and relational way; ethnographically explores the connection between local sites and trans-local processes; and approaches texts as mediators of institutional relations. Rooted in the premise that the social world is systematically organized, by acting in a textually organized and coordinated way, people enact certain ideological orders. Nonetheless, I also demonstrated IE's certain limitations for socio-legal scholars, related to its reductionist understanding of law, articulated in its ignoring of the specificity of legal institutions and of the knowledges that operate within it (such as knowledge of doctrinal technicalities). Moreover, IE fails to recognize the importance of the nexus of research and legal professionalism, and so ignores the implications for, for example, ethical research practice. Responding to these shortcomings of IE, I modified my inquiry so that I could engage with the legal field and legal knowledges in a more nuanced way.

In Chapter 3 I provided a detailed description of an involuntary admission procedure, as well as an ideological legal frame for the adjudication of the validity and legality of an admission decision. I specifically engaged with the procedure grounded in the provisions of Articles 23 and 24 of the *Mental Health Protection Act (MHPA)*. According to these, a person can be admitted to a psychiatric hospital against their will if that person is considered mentally ill or has engaged in behaviour indicative of mental disturbance; and if, in addition, that behaviour directly endangered their lives or the lives

and health of others. This work also considered the provisions of Article 48 of the *MHPA*, which institutionalizes conditions for the appointment of legal aid lawyers for mental health cases. Importantly, the Polish mental health statute was enacted to advance the situation of persons involuntarily admitted through narrowing the grounds for admission; and the judicial review of, and admittees' active participation in, admission decisions processes. I demonstrated, however, that medical discourse and the professional and economic concerns of this professional community entered the provisions of the Polish *Mental Health Protection Act*, shaped its design, and established a frame for the set of ideological practices enacted locally by legal and medical professionals involved in involuntary admission cases.

In Chapters 4 through Chapter 7, I took up an analysis of the set of relations identified in my data as organizing lawyers' work. These included mapping relations that organized the moments and situations in which lawyers are appointed to legal aid work and, accordingly, undertake their lawyering activities; the financial underpinnings of legal aid work; and establishing a hierarchy of knowledge that limits who can speak, and what can be said in the medical and legal sites where involuntary admission cases are processed. Figure 8.1 illustrates the key elements of the social and legal organization of involuntary admissions procedures, which I explored as producing legal aid lawyering for involuntarily admitted clients.

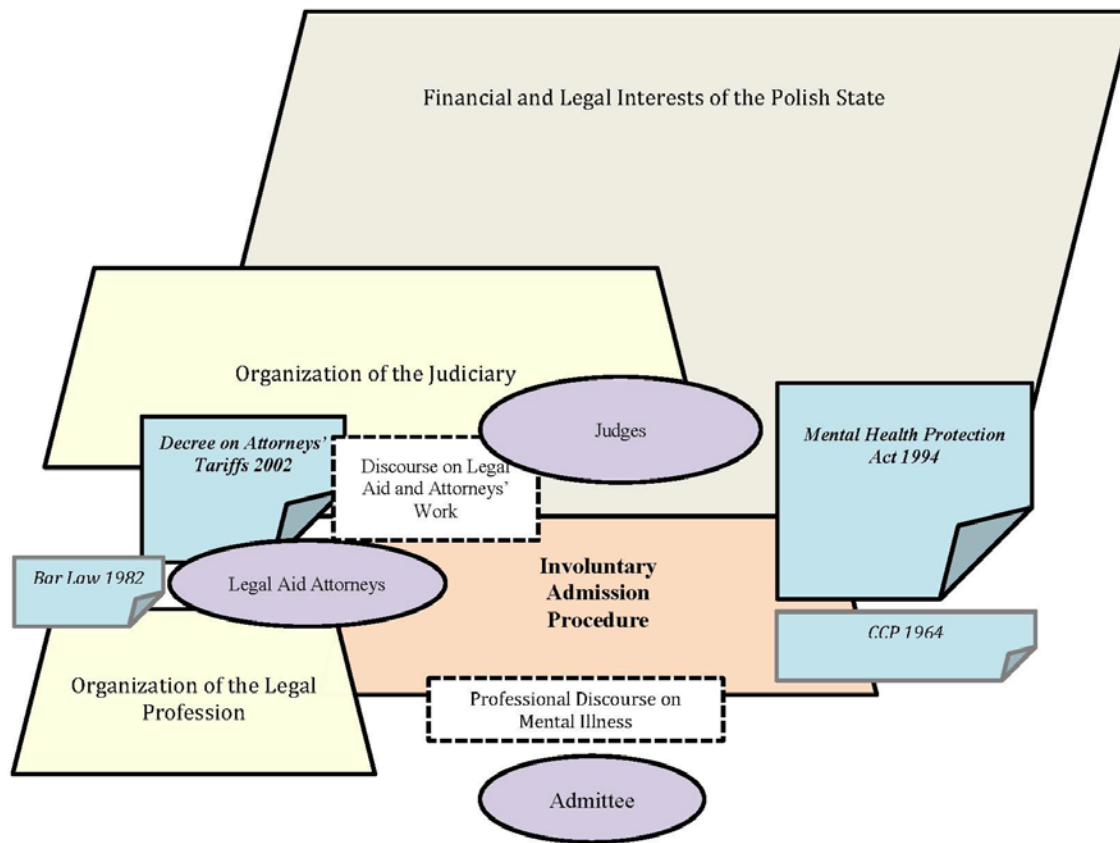


Figure 8.1: The Organization of Legal Aid Lawyering

Studying lawyering as a socio-legal practice required discovering and mapping the local organization of lawyers' everyday worlds and connecting them to the ruling relations that organize them. Thus, my ethnographic study of lawyering had two foci. First was a focus on the exploration of the organization of the legal proceedings. Accordingly, I mapped the complex, mundane, and intricate work of paramedics, psychiatrists, hospital authorities, and judges, occurring at different stages of an involuntary admission, and the coordination of that work across sites. Second, I explored the material conditions of lawyers' work as shaped by their professional norms and ethics, and by the organization of Polish legal aid system. I discovered how and at what stages legal aid lawyers are present, where they are absent, and with what consequences.

In Chapter 4, I specifically looked at involuntarily admitted persons' access to justice in civil commitment cases, in order to contextualize the predominance of legal aid lawyers in involuntary admissions proceedings, along with the significance of legal aid lawyering in such cases. At the outset of that chapter I discussed the barriers that admittees face in both retaining a private lawyer and in obtaining legal aid assistance. Indeed, in a recent publication, a representative of the Office of the Ombudsperson shared Ministry of Justice information on rates of representation in 2011 in all involuntary admission proceedings based on Articles 23, 24, and 29 of the *MHPA*. This data showed that, out of all involuntary admission cases that year, together with all cases of involuntary placement in assisted living homes, in only *one* did an individual retain a legal professional; moreover, in only 11 percent of these cases was a representative appointed *ex officio*.⁶²⁶ According to the Minister of Justice, the low number of legal professionals involved in these cases only suggests that professional representation is *not* needed, otherwise courts would grant more legal aid lawyers to admittees. Such an interpretation not only ignores the local actualities and situations in which admittees find themselves, but also lacks an understanding of how this low number is the outcome of a judicial focus on expediency (specifically, meeting the strict timeline for processing involuntary admission cases), rather than on ensuring admittees' representation. Even when legal aid is granted, lawyers' entry into civil commitment processes is organized in such a way as to impact the quality of service delivered.

In Chapter 5, I showed that while Polish attorneys generally accept that public legal service is a key element of their professional ethos, the actual work of legal aid lawyers is

⁶²⁶ Dołowska, "Legal Aid Ex Officio," 52.

organized by a set of financial and managerial policies and practices that limit the work they can or are willing to do in involuntary admission cases. I turned my attention to the financial texts that organize the legal aid system, which govern how the state's financial priorities are realized locally by the judges who appoint and remunerate lawyers for their work. I identified a key text as the 2002 *Decree on Attorneys' Tariffs*, which establishes a certain hierarchy of knowledge and of work that shapes everyday judicial practices. Subsequently, to navigate the financial burden associated with involuntary admission cases, lawyers may decide to limit their time and effort in order to meet only the documentary requirement of their participation—with adverse implications for their legal aid clients.

In Chapter 6, I addressed the matter of knowledge production in involuntary admission cases, and specifically the construction of 'mental illness' and 'dangerousness' as conditions for such admission. Starting with the psychiatric intervention initiated by a call to an on-call emergency response unit, I mapped the sequence of actions and texts in sites where such knowledge is produced. I showed how the textually-coordinated work of paramedics, psychiatrists, facility authorities, and judges stems from the initial account produced by paramedics and is systematically reiterated through textual professional practices. These reiterations construct an 'objective' and 'scientific' account of a person with a mental disturbance, who is dangerous to themselves or others, that meets the criteria laid out in Article of 23 or 24 of the *MHPA*. Such a textual account supersedes the admitted person's voice and stands as a true record of fact. Furthermore, in that textual account the material and professional relations that organized the initial decision to convey the individual to a psychiatric facility are invisibilized. Thus, while the objective of the multi-

step and multi-person system of control established under the *MHPA* was to ensure that nobody's liberties were restricted without legal grounds, the subsequent professional decisions only reinforce, reify, and legitimize prior textual accounts. Hence, at the moment the attorney typically enters into the procedure, knowledge about their admitted client has already been institutionally authorized, setting the frame for the attorney's further action at the hearing.

In Chapter 7, I dealt directly with the organization of an involuntary admission hearing at the family court, and an appeal hearing at the appeals court, and the lawyering that occurs in these sites. I showed how judges use legal instruments and legal technicalities to manage hearings in a way that allows them to adjudicate involuntary admissions quickly while meeting formal procedural provisions. In addition to actively disciplining lawyers to act in a way that benefits themselves (i.e., the judges), judges also limit the number of participants and treat psychiatric expert opinion as the only evidence that truly 'counts,' in order to achieve the goal of expediency. However, attorneys actively cooperate in practices that actually limit their potential engagement at the hearing. This is because they share, with judges, preconceived notions about the admittee's mental illness and uncritically accept the treatment objective of the involuntary admission. It is also the learned predictability of outcome in these cases, which links back to the personal experiences I presented in the Introduction to this dissertation, that organizes lawyers' engagement in the courtroom. The work of legal aid lawyers is structured so that cases result in predictable outcomes and a legally valid admission. I have already shared my findings with persons who may face psychiatric hospitalization, as well as with their advocates, by publishing them in *Psychiatry Interrogated: An Institutional Ethnography Anthology*, edited by

Canadian anti-psychiatry scholar Bonnie Burstow, and by contributing a chapter to Athabasca University Press' contracted text, *Political Activist Ethnography: Studies in the Social Relations of Struggle*, edited by the institutional political ethnographers Ian Hussey and Laura Bisailon.

8.3 – Contributions

My contributions include empirical, conceptual, and methodological contributions to socio-legal studies, institutional ethnography, and mental health scholarship.

8.3.1 Empirical

My empirical contributions span socio-legal studies, institutional ethnography, and mental health scholarship. I provided a detailed ethnographic account of the quotidian work of a range of professionals involved in involuntary admissions to psychiatric facilities, and described the institutionally-organized settings that structure their work processes. My data suggests that legal aid lawyering, which predominates in the context of involuntary admission proceedings, is constituted as a certain kind of institutional practice – one that may, because of the way their lawyering work is organized, have nothing to do with lawyers' skills and knowledge, or with their clients' lives. In the conduct of their work, legal aid lawyers are bound by: the law and legal knowledge; a code of ethics; the legal context of involuntary commitment; the material practices associated with legal aid appointments, client access, and remuneration; the processes through which psychiatric documents are produced and attached to admittees; and by the role psychiatrists' texts and biomedical discourse play in court. Thus, even with the best intentions, those attorneys who are willing and have the necessary resources to take seriously their legal aid

obligations are unable to do their best work in involuntary admission proceedings, or to perform in a way that would make them accountable to their clients. Indeed, acting according to institutional discourses and logics, lawyers not only actively participate in the practices that limit the space for their advocacy, but also reproduce the very discourses that objectify people during an involuntary admission.

Mapping and analyzing the organization of the work involved in obtaining and providing legal aid representation for admittees allowed me to delineate and analyze the relations that govern and order these activities in a way that forms a disjuncture between institutional regimes and lawyers' experiences. My dissertation findings also suggest that existing law, and the judicial system in Poland itself, constrains people's capacity to resist being pathologized and to defend their rights within the context of their involuntary hospitalization, either by their own effort or through an appointed professional representative. It is not only that admittees are rarely given a chance to participate in the legal proceedings concerning them; even lawyers, if appointed, face obstacles in providing quality representation. These obstacles, however, disappear from the official account of representation. Thus, my empirical findings shine a new light on the legal measures proposed by the Polish Supreme Court and the Ombudsperson of Human Rights, to ensure due process in mental health cases through making legal representation obligatory—which ignores the accounts of those who do the actual lawyering. I argue that these measures might simply obfuscate the problem instead of solving it.

Yet, I am aware that due to the fragmentation of institutional practice and of the work of involved professionals, some discrete elements of involuntary admission may be invisible to those located in distant organizational sites, for example, to Supreme Court

judges. Hence, as this dissertation demonstrates, the very worrisome realities pertaining to lawyering in civil commitment cases remain outside the purview of adjudicating judges and of the authorities who recommend the expansion of legal aid representation in civil commitment cases. In this sense, my empirical findings can extend psychiatric and legal professionals' ordinary knowledge of the legal organization of law and legal processes. If taken up by professionals and by persons whom the involuntary admission concerns the most—the admittees—I that the findings of this dissertation may catalyze changes in institutional practice. I have already reached out to the Polish attorney community to deliver portions of my work on the organization of legal aid lawyering.

8.3.2 Conceptual

In terms of conceptual contributions to socio-legal scholarship, my dissertation adds to the conceptualization of law as a practice and to the contextualized and situated understanding of law promoted by socio-legal and feminist socio-legal scholars. It illuminates how “the prescriptions of the law do not exist in an abstract theoretical space but [they] are rather locally incorporated into people’s work”⁶²⁷ and coordinate their work in a sequence of actions. For example, people, through their activities that are coordinated with others’ activities (e.g. through texts), produce and enact certain legal concepts (such as mental illness or dangerousness), and so organize the hegemony of biomedical knowledge in the context of involuntary admission. Additionally, IE brings to the study of law the relevance of the social and material world with which legal knowledge interacts, and in which it is produced and carried out—or in other words, it provides a normative

⁶²⁷ Dorothy E. Smith, *Institutional Ethnography: A Sociology for People* (Lanham: Rowman & Little Publishers, Inc., 2005), 67.

solution to the social problem of legal processes. Institutional ethnography does this by linking macro- and micro-scale processes and practices (or the ‘extra-local,’ as it is referred to in IE), as well as through a dynamic understanding of social and legal practices as constructed in and through people’s social interactions.

This dissertation also adds to the socio-legal critique of the fragmented understanding of law when it is conceptualized through binaries of ‘law in books’ and ‘law in practice.’ Traditionally, legal scholarship and mental health scholarship concerned with legal change assesses the potential effectiveness of legal provisions by comparing practices on the ground with ‘law in books.’ This approach treats ‘law in books’ and ‘law in action’ as separate legal phenomena. In my dissertation, I destabilized this approach to the assessment of legal reforms by contesting the perpetuation of the problematic separation between *texts* and *actions*, which provides a fragmented understanding of law and legal reforms. Such a dualistic approach to law abstracts legal meanings from local practices, while I see these meanings as produced in people’s actions. Moreover, such a dichotomous perception of law focuses researchers’ and practitioners’ (or policymakers’) attention on points of difference, not on the points of convergence that enable law to coordinate various organizational sites translocally and hierarchically.

My dissertation demonstrated the interconnectedness between texts and actions, and between the local and the translocal, in the working of law and how legal practice emerges at the encounters between texts, institutional settings, work practices, governing relations and discourse, etc. I argued, in agreement with other socio-legal scholars,⁶²⁸ that

⁶²⁸ Dave Cowan and Emma Hitchings, “‘Pretty Boring Stuff.’ District Judges and Housing Possession Proceedings.” *Social & Legal Studies* 16, no. 3 (2007); Mack and Anleu, “‘Getting through the List’”.

it is the *everydayness*, the *routine* of ‘doing law’ according to uncontested discourses about the worthiness of certain cases, rather than the conflict between psychiatric and legal professionals in establishing their dominance, that contributes to the marginalization of certain types of cases and of the voices of people who are directly concerned with the outcome of institutional processes—particularly the involuntarily admitted. Thus, instead of either blaming or exculpating professionals for the problems in the practices of involuntary admission procedures, this dissertation presented a more complex picture of involuntary admission decision-making, and showed how institutional disjunctures are produced at the intersection of the everyday practices of professionals and the ruling relations in which involuntary admission in Poland is embedded.

To institutional ethnography scholarship, my work adds attention to the operation of the internal-legal mechanisms through which texts govern the work of legal professionals. Legal knowledges and legal technicalities are an important organizer of how judges and lawyers engage in legal work and with each other. To avoid a reductionist understanding of law, institutional ethnographers should thus engage with both the external and the internal aspects of law. Institutional ethnographies of law and legal processes typically explore the ‘outside’ of law, consistent with an IE approach to law as a social institution, leaving legal knowledges and the internal functioning of ‘the legal’ (in the form of legal technicalities) intact, yet they are an important and unique aspects of legal processes and practices. I found that institutional ethnography’s ontology of law was too narrow to satisfy the needs of socio-legal scholars. Accordingly, I suggested that, in order for IE to serve those scholars, it needs to be modified to incorporate legal technicalities and a more nuanced understanding of legal practice and legal knowledge. By paying attention

to the technical aspects of law, institutional ethnographers can avoid sociological reductionism in their research and better understand the ‘how’ of legal mechanisms.

In terms of my contributions to mental health literature, I show how the study of lawyering for the involuntarily admitted person can tell us about the operation of mental health law and rights discourses, including the right of the involuntarily admitted to participate in proceedings that concern them. My dissertation made visible the shortfalls of access to justice for persons institutionalized in psychiatric facilities by demonstrating how the pragmatics of institutions may override psychiatric patients’ rights in a way that is difficult to contest because it is deeply ingrained in legal and institutional logic, and in biomedical and legal knowledges and their methods, and is thus naturalized. It demonstrates how the marginalization of involuntary admission cases is collaboratively achieved through the everyday work professionals.

My doctoral research also problematizes the professionalization of involuntary emergency admission procedures. Aided by ethnographic accounts, this project revealed that there are limited spaces for what can be considered ‘authoritative knowledge’ in involuntary admission procedures. This affects what can be known about admittees and who can make knowledge claims in such a highly structured, normative legal context. I accomplished this by problematizing the professionalization of admission procedures and the exclusion of the voices of those who are most concerned with the outcome: involuntarily committed persons. Sociologist Debra Brown, in her thesis on risk reduction practices within the British Columbia child protection system, argues that the child protection system—including mechanisms and techniques for identifying risks to children and for assessing the effectiveness and efficiency of risk reduction strategies, as well as the

selection of personnel who perform these tasks—is “for the most part a closed circuit of professional consultation” in which the chosen mechanisms only reinforce the professional frame for risk reduction, leaving the voices of mothers, who do the actual job for their children, unheard.⁶²⁹ I argued that a similar observation can be made about the procedure for involuntary psychiatric admission in Poland. Textually-organized practices of knowledge about an admittee, the superiority of professional knowledge over experiential knowledge, and a formalistic approach to one’s right to a defence, produced within the context of legality co-crafted by professionals, leaves the voices of admittees unheard. Despite the severe consequences of involuntary admission, these cases are produced as *marginal* in the practices of both lawyers and judges, thus justifying their limited attention and engagement.

Finally, I wrote this dissertation in the hope of prompting a rethinking of legal institutions as confined to the formal settings of a legal system. In institutional ethnography, an institution (such as law) is understood as a functional complex produced and sustained in sites to which it may not even be directly linked. Moreover, institutions are not materially independent entities, existing ‘out there’ in the world, but are produced and achieved through people’s coordinated actions. I argued that this conceptualization of an institution, proposed by IE, may help socio-legal scholars rethink their understanding of legal concepts like ‘legitimacy,’ corporate deal, etc. through focusing on the dynamic character of legal concepts, their local and historic specificity, and their relational character. In this sense, I envision a fruitful dialogue between IE and some strains of socio-legal scholarship, specifically critical legal pluralism, which understands law as made in the everyday

⁶²⁹ Debra Brown, “Working the System,” 14.

activities of people and as a practical achievement of the actions of legal and non-legal actors.

8.3.3 Methodological

Joining other recently-published work,⁶³⁰ my project brought the conceptual and methodological tools offered by institutional ethnography to bear on empirical socio-legal scholarship. With these tools, IE can help address some existing methodological shortcomings in that scholarship, including: the binary of ‘law in action’ and ‘law in texts,’ insufficient attention to lawyers’ knowledge practices, and ignorance of the operation of power in ethnographic-technocratic studies of legal institutions. IE’s methodological innovations are particularly beneficial to empirical work in light of recent claims, by socio-legal researchers, of insufficient attention paid to how people and texts interact within the context of legal practices. The IE dynamic and relational conceptualization of textual practice can help address the call for greater attention of socio-legal scholars to how people interact with texts in legal settings, and how texts create conditions for people’s actions. IE provides tools for a nuanced empirical investigation of how people engage with texts; how legal texts are produced in relation to other texts; and what people do (and can do) in organizational settings, embedded in a network of texts that created the conditions for their actions. Using institutional ethnography in my study allowed me to detail how people bring legal and policy texts into institutional processes, and how these are taken up to coordinate the actions of legal authorities and professionals at different moments of decision-making.

Institutional ethnography also helps break through the naturalization of legal

⁶³⁰ Matulewicz, “Customers, Tips, and Law”; Marsden, “The New Precariousness”.

documents as ‘true records’ of what happened⁶³¹ and authoritative sources of knowledge by demonstrating often the invisible processes through which these texts are produced. Moreover, IE techniques help uncover how technical texts (such as guidelines, standards, or manuals), which often guide the production of other documents (such as legal documents), are invested with power. What makes it into legal documents is governed by a specific set of laws and practices, which allow professionals to construct a certain type of legal account; this account is later given authority even over the words of those who produced it.⁶³² By moving beyond an exclusive ethnographic description of local processes and locally-employed knowledges, institutional ethnography links them, showing how these reflect the relations of knowledge and power operating on a trans-local scale.

My methodological contributions to institutional ethnography include both the problematization of IE’s selective engagement with researchers’ professional backgrounds and the delineation of clear boundaries between academic and activist standpoints. Drawing on my experience, I argued that these distinctions are not useful as they may preclude an understanding how all of these standpoints or categories intersect, in different way and in different moments of the research process, sometimes contributing to ethical dilemmas. Instead of freezing the concept of a researcher in space and time, IE should apply a relational and fluid ontology to understand the concept of ‘researcher,’ which IE proposes in relation to other social concepts.

My work also advanced critical reflections on institutional ethnography, which emerge occasionally⁶³³ but are still far from being an established element of IE scholarship.

⁶³¹ See Cunliffe, “Untold Stories.”

⁶³² Ibid.

⁶³³ Walby, “On the Social Relations,” 282-284.

As much as I appreciate the ontological frame of IE and its applicability (with some modification) to socio-legal projects, I also struggled to make institutional ethnography ‘my own.’ Although prominent institutional ethnographers, including Dorothy Smith, argue that IE is open to different ways of doing a project, I found that the boundaries of IE projects are circumscribed by the fact that institutional ethnographers engage with a very limited literature. I am not the first one to notice⁶³⁴ that institutional ethnographers predominately draw on the work of Dorothy Smith, along with the work cited in her publications, in their epistemological and ontological discussions. In a similar vein, there appears to be a relatively small group of institutional ethnographers invited to publish in the ‘key’ IE textbooks.⁶³⁵ I felt this narrowness constituted (or inspired) a lack of appreciation of new thinking, which affected my willingness to identify myself as an institutional ethnographer. Further, because the core IE textbooks are produced from the standpoint of scholars who are fully committed to their disciplinary location, the unique challenges posed by interdisciplinarity (including projects that cross or transcend disciplinary lines, and the educational and professional experiences of interdisciplinary researchers) receive no treatment in these texts.

Institutional ethnographers’ adherence to these political, ontological, and epistemological commitments also results in the development of a quite homogeneous approach to the study of the social. Since each IE work is imagined as a piece of a puzzle that, combined with other pieces, will reveal different aspects of the functioning of social institutions, two strands of IE have developed over time: one associated with the work of

⁶³⁴ Ibid.; Bisailon, “*Cordon Sanitaire*”.

⁶³⁵ Dorothy E. Smith and Susan Marie Turner, eds., *Incorporating Texts into Institutional Ethnographies* (Toronto: University of Toronto Press, 2014); Dorothy E. Smith, ed., *Institutional Ethnography as Practice* (Lanham: Rowman & Littlefield, 2006).

Dorothy Smith (which I call the ‘classic’ strand) and a second associated with the work of George Smith (which I call the ‘political-activist’ strand). In the classic strand, researchers take an inquiry from the site of the bodily reality of mothers, nurses, social workers, teachers, etc. to discover, through tracing and mapping a web of relations and discourses, how the everyday life/work of informants is organized into a complex of relations, beyond their view.⁶³⁶ The political-activist institutional ethnography strand⁶³⁷ differs from the classic in one key respect: George Smith, himself an activist, was concerned with social change and direct activism. Thus the aim of his work was to move beyond mapping how people’s lives are organized by ruling relations to mapping social relations of struggle and offering recommendation for policy change.⁶³⁸ In a concluding chapter, “New Directions for Activist Research,” the editors of *Sociology for Changing the World: Social Movements/Social Research* argue that activists focus on broader “relations of poverty, class and racialization” while academics/professionals are rather concerned with “shifts in the managerial relations of professional work.” In this instance, Dorothy Smith would represent the ‘academic/professional’ and George Smith the ‘activist’ researcher.

Maintaining the distinction between classic and political-activist IE obscures the fact that some projects may draw from both approaches, and that in such projects the boundaries between the two may blur. Sometimes a researcher can be both: an academic researcher and an activist.⁶³⁹ For example, my own research emerged from my legal professional and personal experiences. It was fostered not only by my interest in

⁶³⁶ Dorothy E. Smith, “Introduction,” 3.

⁶³⁷ See, for example, George W. Smith, “Political Activist as Ethnographer”.

⁶³⁸ Hussey, “Revisited”.

⁶³⁹ Caelie Frampton et al., “New Directions for Activist Research,” in *Sociology for Changing the World: Social Movements/Social Research*, ed. Caelie Frampton et al. (Halifax: Fernwood Publishing, 2006), 259.

discovering how broader social relations organized my experiences, but also by my commitment to challenging organizations that enact oppressive practices towards people deemed mentally ill. The blurred boundaries between the professional and the activist can be particularly problematic in the context of lawyering, which can be considered a “‘public profession,’ one whose contribution to society goes beyond the aggregation, assembling, and deployment of technical skills.”⁶⁴⁰ Moreover, ‘cause lawyering’ “is frequently directed at altering some aspects of social, economic and political status quo.”⁶⁴¹ Cause lawyers can subsume political commitments under their public service and undertake political activism within or in addition to working on individual cases. In this way, my research was located at the intersection of academic ethnography and professional activism—a type of activism that does not seem to be recognized in/by IE. Given new developments in IE and the increasing involvement of professionals from diverse and distinct academic fields, a more nuanced understanding of their work *in relation to activism* is needed. Thus, the conventional understanding of ‘activism’ ought to be rethought in order to incorporate diverse sites and ways of ‘doing activism,’ as it is currently actually taking place in the context of institutional ethnography. Providing space for professional activism, as well as activism that could potentially emerge though and in the context of research, can open space for new kinds of knowledges from which activists involved in social mobilization or in *ad hoc* intervention may draw. The practical knowledge of professionals regarding effective strategies and optimal sites for direct intervention could be a valuable resource for those who engage in social struggle as grassroots activists.

⁶⁴⁰ Sarat and Scheingold, “Reproduction of Professional Authority,” 3.

⁶⁴¹ *Ibid.*, 4.

For me, the future of IE is in its openness, not in its closure, and in its critical examination of knowledges and actions that, as a method of inquiry, IE may be unintentionally policing through its commitment to the conventional understanding of activism. It could be more productive to see activism as a spectrum of possibilities from which radical critique could be addressed, as well direct intervention enacted. As such, IE may benefit from the recognition of professional activism and its potential to build bridges to grassroots activists.

8.4 – Personal Reflection on the Dissertation Research

I began this dissertation by drawing on my personal and professional experiences with the psychiatric hospitalization of my own mother. I would like, now, to relate the rest of her story. My mother was discharged from the psychiatric hospital after a week—not because of any sort of judicial intervention, but rather because of my personal connection with the supervisor of the facility, who offered to initiate a discharge if my mother consented to the admission and stayed for seven days. Thanks to my informal network and position in professional circles, I was able to strategically proceed through a route with a higher probability of achieving the desired outcome: my mother's release. Yet during my mother's stay in the facility, my stepfather was able to obtain confirmation of her admission under the false pretense of having to excuse her absence from work. He sent that documentation to institutions with which my mother was professionally associated, with the intention of causing damage to her reputation and to her ability to act as a medical doctor. He also used these letters in criminal proceedings my mother had initiated against him, and in retaliatory lawsuits of his own. The information about my mother's hospitalization triggered two further psychiatric assessments in the context of these legal

proceedings.⁶⁴² In order to eliminate any doubt about her mental capacity, doctors recommended six weeks of in-patient observation in a psychiatric facility housing people accused of serious crimes. My mother died two days after finding out that her appeal of that recommendation had been rejected; the evidence suggests that she committed suicide.

My mother's story reveals the severe consequences that psychiatric hospitalization may have on the lives of persons with histories of psychiatric hospitalization. While psychiatrists use the patient's welfare to ground claims for the necessity of in-patient hospitalization, they de-contextualize the admission recommendation from the other sets of social and institutional relations that could provide a different interpretation of whether the hospitalization really is in the admittee's 'best interests.' In this dissertation I showed that the legal framework ratified in the *MHPA*, the organization of professional practices, and the dismissal of the voices of people (even potentially) subjected to involuntary hospitalization, work together to construct grounds for psychiatric intervention in the life of an individual deemed as having mental health problems and exhibiting aggression. What gets ignored in the process of such an intervention is the way in which family members, neighbours, and opposing parties in legal proceedings may use psychiatric commitment with questionable intentions.

My mother's story, and my step-father's use of the involuntary admission to shatter her credibility on the basis of her psychiatric hospitalization, is not incidental in that regard. Indeed, media reports.⁶⁴³ and my own legal representation of women in intimate violence

⁶⁴² Polish criminal law requires that, in any situation in which one's sanity is in doubt, the court is obliged to obtain a psychiatric assessment since that individual may be found unable to stand a trial or incapable of being a credible witness. These obligatory assessments are evidenced on the mere fact of psychiatric hospitalization.

⁶⁴³ Kolińska-Dąbrowska, "The Psychiatric Hospital Instead of Divorce."

cases demonstrate that male partners often use a woman's psychiatric diagnosis or hospitalization to undermine the credibility of her testimony in a family or criminal case, and/or to question her fitness as a mother. Not only do documented psychiatric diagnoses add to women's distress and feelings of secondary victimization, they are also extremely difficult to challenge in court. Because judges tend to assign objective qualities to psychiatric documents and to treat them as true statements of fact, it is almost impossible to expose the broader context of women's lives, which is critical to an understanding of their forced hospitalization yet is excluded from these documents, or to grasp the social nature of the documents themselves.

It has been widely acknowledged in the academic literature that psychiatric hospitalization directly affects people's ability to lead satisfying lives, thanks to their perceived pathologies. People labelled 'mentally ill' experience numerous challenges in their social, economic, and legal functioning. Particularly negative consequences of psychiatric hospitalization may ensue for women who have been involuntarily admitted on the grounds of their 'dangerousness' to themselves or others. This polymorphous status of being 'mad' and 'bad,' resulting from involuntary psychiatric hospitalization, can have particularly severe implications for women, as it directly interferes with regimes of femininity and women's traditional roles. Such hospitalization puts at risk women's 'ability' to pursue care-giving roles due to the inscription of a label of 'mental illness' and 'dangerousness;' notions of irrationality and unpredictability; and thus the imaginary threat of violence or negligence. For instance, women with histories of psychiatric hospitalization may be seen as 'unfit mothers' and 'troublesome wives,' who are not merely disruptive to the 'normal' functioning of their families, but who actually pose a direct threat to its

members.

Through psychiatric examination, people are categorized via detailed classification systems wherein specific behaviours function as social control strategies and, in particular, indicators of insanity. Scholars have problematized the nexus between psychiatry and ‘dangerousness’ by contextualizing it within the power relations of the modern state and its social control projects. They argue that the highly politicized concept of ‘dangerousness’ is used as a factor guiding state punitive actions and as a category of social exclusion. For example, Menzies suggests that the concept has provided modern states with a reference point for implementing punitive policies toward people who ‘pose a danger’ to society.⁶⁴⁴ Through the process of re-labeling certain actions as criminal or constructing certain behaviors or personal characteristics as dangerous to society,⁶⁴⁵ the state legitimizes its interventions toward particular groups deemed dangerous.⁶⁴⁶ Furthermore, the scientific underpinning of the construction of dangerousness, in addition to legitimizing state punitive actions toward ‘unruly’ groups, helped laypeople to create a moral distance between ‘normalcy’ and ‘criminal deviancy’ and hence separate themselves from behaviours that transgress the ideological foundation of modern society.⁶⁴⁷ Scholars interested in processes of constructing dangerousness⁶⁴⁸ have pointed out the relation of

⁶⁴⁴ Menzies, “Cycles of Control,” 182, 186.

⁶⁴⁵ Warner, “Inquiry Reports as Active Texts”; Gill Aitken and Caroline Logan, “Dangerous Women? A UK Response,” *Feminism & Psychology* 14, no. 2 (2004).

⁶⁴⁶ Katherine P. Luke, “Are Girls Really Becoming More Violent? A Critical Analysis,” *Affilia* 23, no. 1 (2008): 42.

⁶⁴⁷ Kathleen Kendall, “Beyond Reason: Social Constructions of Mentally Disordered Female Offenders,” in *Women, Madness and the Law: A Feminist Reader*, ed. Wendy Chan, Dorothy E. Chunn, and Robert Menzies (London: Glasshouse, 2005), 50.

Alex Wilson and Ellen Pence, “U.S. Legal Interventions in the Lives of Battered Women: An Indigenous Assessment,” in *Institutional Ethnography as Practice*, ed. Dorothy E. Smith (Lanham: Rowman & Littlefield, 2006)

⁶⁴⁸ Luke, “Are Girls Really Becoming More Violent?”; Warner, “Inquiry Reports as Active Texts”; Jane Hubert, *Madness, Disability and Social Exclusion* (New York: Routledge, 2000).

these processes to Western social anxieties about body image or changing gender and racial norms. People who enter psychiatric facilities, particularly for an extended period, become constructed as medical subjects, defined by medical records, dehumanized, and objectified.⁶⁴⁹ The loss of social identity leads both to the dehumanization of patients (who are perceived as dirty, dangerous, sexual, and sick), and their desocialization, both from society generally and from the people working within the institution. Therefore psychiatric hospitalization can not only be used by individuals to achieve their particular goals, but can work as a tool of governmentality and a strategy for controlling certain social groups or behaviours. The effects of law and legal practices extend beyond the legal procedure of admission to *spaces* and *relations*, the exploration of which fell within the scope of this dissertation.

In this dissertation, I have only traced one way of talking about involuntary admission, yet the problem of involuntary commitment is much broader and multi-dimensional. Similarly, I have delivered research pursued from only one specific standpoint, leaving other potential standpoints unexplored. To reveal troublesome practices I adopted the standpoint of legal aid attorneys, who predominately represent admittees in their involuntary admission procedures, yet I am aware that this design precluded the other ways in which involuntary admission could be investigated—for example, from the standpoint of the person undergoing the admission or that of a family member. These different standpoints would reveal a different set of experiences, along with the specific institutional relations organizing them. As I noted earlier, the lawyering standpoint invisibilized the effects of post-institutionalization on my mother, as well as the impacts

⁶⁴⁹ Hubert, *Madness, Disability and Social Exclusion*, 199.

on my own life. Such matters relating to the organization of the ‘life-after’ involuntary admission, of the admittee and/or their family members, may be taken up in future research. While the focus on lawyers’ lawyering crystalized during my fieldwork, it was also prompted by the painful and traumatic memories that returned to me as I engaged in that research. Taking lawyers’ standpoint, to some extent, allowed me to distance myself emotionally from the oppression and violence that is a part of the everyday life of people in psychiatric facilities, so that I could complete my field research.

Nevertheless, while the research presented in this dissertation adopted the standpoint of legal aid lawyers, I see my work generally as a project of *bearing witness*⁶⁵⁰ to the subjugation, degradative treatment, and trauma that my mother, and the other involuntarily admitted persons I encountered during my time in the field, experienced. Not attempting to speak on behalf of involuntarily admitted persons nor to their experiences, my testimony is only to the matter of “why and how” they were there.⁶⁵¹ Witnessing, which differs from observation by the witness’ emotional entanglement with the witnessed and care for their wellbeing, can be a subversive political act, as it “reveals and documents hierarchies of power and inequality that affect embodied experiences of marginalized individuals and populations.”⁶⁵² Even if the witness cannot change the fate of the individuals being witnessed, “[t]elling the stories of those whose lives often go unmarked is an act of resistance that makes a statement about whose lives matter and have meaning.”⁶⁵³

⁶⁵⁰ Kelly Oliver, “Witnessing and Testimony,” *Parallax* 10, no. 1 (2004).

⁶⁵¹ *Ibid.*, 84.

⁶⁵² Kathryn Gillespie, “Witnessing Animal Others: Bearing Witness, Grief, and the Political Function of Emotion,” *Hypatia* 31, no. 3 (2016): 573.

⁶⁵³ *Ibid.*, 577.

Bibliography

Legislation, Decrees, and Regulations

Polish Instruments

Act Civil Code from April 23, 1964 [*Ustawa Kodeks Cywilny Z Dnia 24 Kwietnia 1964 Roku*] (“*Civil Code*”), in 1964 Journal of Laws, no. 16, item 93.

Act Introducing Law on Protection of Patients’ Rights and Ombudsperson of Patients’ Rights, Law on the Accreditation in Health Care and Law on the Consultation in Health Care of April 24, 2009 [*Przepisy Wprowadzające Ustawę o Ochronie Praw Pacjenta i Rzeczniku Praw Pacjenta, Ustawę o Akredytacji w Ochronie Zdrowia oraz Ustawę o Konsultacjach w Ochronie Zdrowia z Dnia 24 Kwietnie 2009 Roku*] (“*Act on Ombudsperson*”), in 2009 Journal of Laws, no. 76, item 817.

Act on Health Care Centres of August 30, 1991 [*Ustawa o Zakładach Opieki Zdrowotnej z Dnia 30 Sierpnia 1991 Roku*], in 1991 Journal of Laws, no. 91, item 408.

Act on Patients’ Rights and on the Ombudsperson for Rights of Patients of a Psychiatric Hospital of July 1, 2005 [*Ustawa o Prawach Pacjenta i Rzeczniku Praw Pacjenta Szpitala Psychiatrycznego*] (“*Act on Ombudsperson for Psychiatric Patients’ Rights*”), in 2009 Journal of Laws, no. 76, item 641.

Act on Proceedings Concerning Adolescents of October 26, 1982 [*Ustawa o Postępowaniu w Sprawach Nieletnich z Dnia 26 Października 1982 Roku*], in 1982 Journal of Laws, no. 25, item 228.

Act on Public Emergency Services from September 8, 2006 [*Ustawa o Państwowym Ratownictwie Medycznym*] (“*Act on Emergency Services*”), 2007 Journal of Laws, no. 191, item 1410.

Act on Public Finances of August 27, 2009 [*Ustawa o Finansach Publicznych z Dnia 27 Sierpnia 2009 Roku*], in 2013 Journal of Laws, no. 938.

Act on Supreme Court of November 23, 2002 [*Ustawa o Sądzie Najwyższym z Dnia 23 Listopada 2002 Roku*] (“*Supreme Court Act*”), 2002 Journal of Laws, No. 240, item 2052.

Act on the Amendment to the Mental Health Protection Law of December 3, 2011 [*Ustawa o Zmianie Ustawy o Ochronie Zdrowia Psychicznego z Dnia 3 Grudnia 2011*], in 2011 Journal of Laws, no. 6, item 19.

- Act on the Amendment to the Mental Health Protection Law of July 23, 2008 [Ustawa o Zmianie Ustawy o Ochronie Zdrowia Psychicznego z Dnia 28 Lipca 2008 Roku]*, in 2008 Journal of Laws, no. 180, Item 1108.
- Act the Code of Civil Procedure of November 17, 1964 [Ustawa Kodeks Postępowania Cywilnego z Dnia 17 Listopada 1964 Roku]* (“CCP”), in 1964 Journal of Laws, no. 43, item 296.
- Act the Labour Code of June 26, 1974 [Ustawa Kodeks Pracy z Dnia 26 Czerwca 1974 Roku]* (“Labour Code”), in 1974 Journal of Laws, no. 24, item. 141.
- Bar Law of May 26, 1982 [Ustawa Prawo o Adwokaturze z Dnia 26 maja 1982 Roku]* (“Bar Law”), in 1982 Journal of Laws, no. 16, item 124.
- Constitution Act of the Republic of Poland from April 2, 1997 [Konstytucja Rzeczypospolitej Polskiej z Dnia 2 Kwietnia 1997]* (“Constitution 1997”), in 1997 Journal of Laws, no. 78, item 483.
- Constitution of the Polish People’s Republic of July 22, 1952 [Konstytucja Polskiej Republiki Ludowej z Dnia 22 Lipca 1952 Roku]* (“Constitution 1952”), in 1952 Journal of Laws, no. 33, item 232.
- Constitutional Act on the Relationship Between Legislative and Executive Power of the Polish Republic and Territorial Government of October 17, 1992 [Ustawa Konstytucyjna o Wzajemnych Stosunkach Pomiędzy Władzą Ustawodawczą I Wykonawczą Rzeczypospolitej Polskiej Oraz o Samorządzie Terytorialnym]* (“Provisional Constitution”), in 1992 Journal of Laws, no. 84, item 426.
- Decree of the Minister of Finance concerning Correct Classification of Income and Expenditure and Foreign Resources [Ministra Finansów w sprawie szczegółowej klasyfikacji dochodów, wydatków, przychodów i rozchodów oraz środków pochodzących ze źródeł zagranicznych]* (“Decree concerning Correct Classification of Income and Expenditure and Foreign Resources”), in 2006 Journal of Laws, no. 107, item 726.
- Decree of the Minister of Health Concerning Specific Range of Rescue Activities that Can be Undertaken by Paramedics of December 29, 2006 [Rozporządzenie Ministra Zdrowia w sprawie Szczegółowego Zakresu Medycznych Czynności Ratunkowych, które Mogą Być Wykonywane przez Ratownika Medycznego z Dnia 29 Grudnia 2006 Roku]*, 2007 Journal of Laws, no. 4, item 33.
- Decree of the Minister of Justice concerning court experts of January 26, 2005 [Rozporządzenie Ministra Sprawiedliwości w sprawie Biegłych Sądowych z Dnia 26 Stycznia 2005 Roku]* (“Decree on Experts”), in 2005 Journal of Laws, no. 15, item. 133.

Instruction of the Minister of Health Concerning Admission and Discharge of the Sick People from Psychiatric Hospitals of December 10, 1952 [Instrukcja Ministra Zdrowia w Sprawie Przyjmowania i Wypisywania Chorych ze Szpitali Psychiatrycznych z Dnia 10 Grudnia 1952 Roku] (“Instruction 1952”), 1953 Official Journal of the Minister of Health and Social Welfare, no. 24, item 240.

Law on the Constitution of Civic Courts of July 27, 2001 [Prawo o Ustroju Sądów Powszechnych z Dnia 27 Lipca 2001 Roku] (“Law on the Constitution of Courts”), in 2001 Journal of Laws, no. 98, item 1070.

Mental Health Protection Act of 19 August 1994 [Ustawa O Ochronie Zdrowia Psychicznego Z Dnia 19 Sierpnia 1994 Roku] (“MHPA”), in 1994 Journal of Laws, no. 231, item 1375.

Minister of Justice Decree By-Law on the Functioning of Civic Courts of February 23, 2007 [Rozporządzenie Ministra Sprawiedliwości Regulamin Urzędowania Sądów Powszechnych z Dnia 23 Lutego 2007] (“By-Law for Civic Courts”), 2007 Journal of Laws, no. 249, item 249.

Ministry of Justice’s Decree concerning Attorneys’ and In-House Counsels’ Fees and Responsibility of the State Treasury for Unpaid Legal Aid Fees of December 12, 1997 [Rozporządzenie Ministra Sprawiedliwości w Sprawie Oplat za Czynności Adwokackie oraz Oplat za Czynności Radców Prawnych z Dnia 12 Grudnia 1997 Roku] (“Decree on Attorneys’ Tariffs 1997”) in 1997 Journal of Laws, No 154, item 1013.

Ministry of Justice’s Decree concerning Attorneys’ Fees and Responsibility of the State Treasury for Unpaid Legal Aid Fees of September 28, 2002 [Rozporządzenie Ministra Sprawiedliwości w sprawie oplat za czynności adwokackie oraz ponoszenie przez Skarb Państwa kosztów nieopłaconej pomocy prawnej udzielonej z urzędu z Dnia 28 Września 2002] (“Decree on Attorneys’ Tariffs 2002”) in 2002 Journal of Laws, no. 2013, item 461.

Provisions Introducing Law on Protection of Patients’ Rights and Ombudsperson of Patients’ Rights, Law on the Accreditation in Health Care and Law on the Consultation in Health Care from April 24, 2009 [Przepisy Wprowadzające Ustawę o Ochronie Praw Pacjenta i Rzeczniku Praw Pacjenta, Ustawę o Akredytacji w Ochronie Zdrowia oraz Ustawę o Konsultacjach w Ochronie Zdrowia Z Dania 24 Kwietnia 2009 Roku], in 2009 Journal of Laws, no. 76. Item 817.

Resolution of the National Bar Council Concerning a Set of Ethical Principles and Professional Dignity for Attorneys [Zbiór Zasad Etyki Adwokackiej i Godności Zawodu] (“Code of Attorneys’ Ethics”), 2011, Palestra 2012, 1.

International Instruments

International Covenant on Civil and Political Rights. United Nations 1976 Treaty Series 999, no. 14668 (16 December 1966), 171-346.

Protocol 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby. Council of Europe 1994 European Treaty Series 155 (11 May 1994), 1-15.

Jurisprudence

Polish Cases

Constitutional Tribunal, decision in the case *SK 23/05*.

Constitutional Tribunal, decision in the case *TS 263/13*.

Supreme Court, decision in the case *I CKN 1019/98*.

Supreme Court, decision in the case *I CSK 234/10*.

Supreme Court, decision in the case *I CZP 25/97*.

Supreme Court, decision in the case *I PKN 605/98*.

Supreme Court, decision in the case *II CKN 206/98*.

Supreme Court, decision in the case *II CKN 41/9*.

Supreme Court, decision in the case *II CKN 41/99*.

Supreme Court, decision in the case *II CKS 222/12*.

Supreme Court, decision in the case *III CKS 13/12*.

Supreme Court, decision in the case *III CZP 154/95*.

Supreme Court, decision in the case *III CZP 6/96*.

Supreme Court, decision in the case *III UK 130/06*.

Supreme Court, decision in the case *IV CSK 222/12*.

Supreme Court, decision in the case *IV CSK 373/11*.

Supreme Court, decision in the case *IV CZ 2/12*.

Supreme Court, decision in the case *V CSK 384/09*.

Supreme Court, decision in the case *V CSK 390/10*.

Wroclaw-Srodmiescie District Court, decision in the case *IV P 1091/12*.

Cases in Other Jurisdictions

Davis v. Davis [Tenn. S.C. 1992].

John Moore v. Regents of the University of California [Cal. S.C. 1990].

Secondary Sources

“Will Attorneys En Masse Transfer to In-House Counsels?” [“Adwokaci masowo przepiszą się do radców prawnych?”]. *Palestra Polska*. 31 January 2015.
Antkowiak, Paweł. “The End of Legal Professions in Europe? The Case of Poland [Czy to Koniec Zawodów Prawniczych W Europie?–Przypadek Polski].” *Refleksje* 1 (2010): 166-80.

Aitken, Gill and Caroline Logan. “Dangerous Women? A UK Response.” *Feminism & Psychology* 14, no. 2 (2004): 262-267.

Arben, Philip D. “A Commentary: Why Civil Commitment Laws Don’t Work the Way They’re Supposed To.” *Journal of Sociology and Social Welfare* 26, no. 3 (1999): 61-70.

Arrigo, Bruce A. “Paternalism, Civil Commitment and Illness Politics: Assessing the Current Debate and Outlining a Future Direction.” *Journal of Law and Health* 7, no. 2 (1993): 131-68.

Arrigo, Bruce A., and Christopher R. Williams. “The Ethics of Advocacy for the Mentally Ill: Philosophic and Ethnographic Considerations.” *Seattle University Law Review* 24, no. 2 (2000): 245-95.

Aviram, Uri. “Care or Convenience? On the Medical-Bureaucratic Model of Commitment of the Mentally Ill.” *International Journal of Law and Psychiatry* 13, no. 3 (1990): 167-77.

Balicki, Marek, Stefan Lader, and Andrzej Piotrowski. “Focus on Psychiatry in Poland: Past and Present.” *British Journal of Psychiatry* 177 (2000): 375-81.

- Banakar, Reza. *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity*. Heilderberg: Springer International Publishing, 2015.
- Banakar, Reza, and Max Travers. *Theory and Method in Socio-Legal Research*. Oxford: Hart Publishing, 2005.
- Barendrecht, Mauritis, Laura Kistemaker, Henk Jan Scholten, Ruby Schrader, and Marzana Wrzesinska. *Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice*. The Hague: HiiL, 2014.
- Barrera, Leticia. "Disputable Means: Pragmatic Knowledge Practices in Sovereign Debt Agreements - Reflections on the Argentinian Case." In *Pragmatics and Law. Perspectives in Pragmatics*, edited by Francesca Poggi and Alessandro Capone, 273-91. Switzerland: Springer International Publishing, 2017.
- . "Performing the Court: Public Hearings and the Politics of Judicial Transparency in Argentina." *Political and Legal Anthropology Review* 36, no. 2 (2013): 326-40.
- Bell, Nancy M. "A Child's 'Terminal Illness': An Analysis of Text Mediated Knowing." MA Thesis, University of Victoria, 2001.
- Bellow, Gary, and Martha Minow, eds. *Law Stories*. Ann Arbor: University of Michigan Press, 1996.
- Bernatek-Zagula, Izabela. *Patients' Rights to Medical Information in Poland [Prawo Pacjenta W Polsce Do Informacji Medycznej]*. Toruń: Wydawnictwo Adam Marszałek, 2008.
- Bisaillon, Laura. "An Analytic Glossary to Social Inquiry Using Institutional and Political Activist Ethnography." *International Journal of Qualitative Methods* 11, no. 5 (2012): 607-627.
- . "Cordon Sanitaire or Healthy Policy? How Prospective Immigrants with HIV Are Organized by Canada's Mandatory HIV Screening Policy." PhD Dissertation, University of Ottawa, 2012.
- Bisaillon, Laura, and Janet M. Rankin. "Navigating the Politics of Fieldwork Using Institutional Ethnography: Strategies for Practice." *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research* 14, no. 1 (2013).
- Bodio, Joanna and Graliński Wojciech. "The Importance of the Principle of Equality between Parties in the Civil Process." *Studia Iuridica Lublinesia* 25, no. 1 (2016): 251-268.
- Bojarski, Lukasz. *Access to Legal Aid in Poland*. Warszawa: Helsinski Foundation for Human Rights, 2003.

- Brooks, Robert A. "Official Madness: A Cross-Cultural Study of Involuntary Civil Confinement Based on 'Mental Illness'." In *Madness, Disability and Social Exclusion*, edited by Jane Hubert, 9-28. New York: Routledge, 2000.
- Brown, Debra. "Working the System: Re-Thinking the Role of Parents and the Reduction of 'Risk' in Child Protection Work." MA Thesis, University of Victoria, 2004.
- Brown, Jennifer. "The Changing Purpose of Mental Health Law: From Medicalism to Legalism to New Legalism." *International Journal of Law and Psychiatry* 47 (2016): 1-9.
- Bryman, Alan, and James J. Teevan. *Social Research Methods*. Oxford: Oxford University Press, 2005.
- Bujny, Jędrzej. *Patient's Rights in-between Autonomy and Paternalism [Prawa Pacjenta Między Autonomią a Paternalizmem]*. Warszawa: Wydawnictwo C.H. Beck, 2007.
- Burawoy, Michael. "The Extended Case Method." *Sociological Theory* 16, no. 1 (1998): 4-33.
- Burstow, Bonnie. *Psychiatry and the Business of Madness: An Ethical and Epistemological Accounting*. New York: Palgrave Macmillan, 2015.
- Busfield, Joan. "Mental Disorder and Human Rights." In *Rights: Sociological Perspectives*, edited by Lydia Morris, 209-23. London: Routledge, 2006.
- Campbell, Marie L. "Institutional Ethnography and Experience as Data." In *Institutional Ethnography as Practice*, edited by Dorothy E. Smith, 91-107. Lanham: Rowman & Littlefield, 2006.
- . "Research for Activism: Understanding Social Organization from Inside." In *Sociology for Changing the World*, edited by Caelie Frampton, Gary Kinsman, A. K. Thompson and Kate Tilliczek, 87-96. Halifax: Fernwood Publishing, 2006.
- Campbell, Marie L., and Frances Gregor. *Mapping Social Relations: A Primer in Doing Institutional Ethnography*. Toronto: University of Toronto Press, 2008.
- . "Theory 'in' Everyday Life." In *Critical Strategies for Social Research*, edited by William K. Carroll, 170-80. Toronto: Canadian Scholars' Press, 2004.
- Campbell, Marie L., and Katherine Teghtsoonian. "Aid Effectiveness and Women's Empowerment: Practices of Governance in the Funding of International Development." *Signs* 36, no. 1 (2010): 177-202.

- Carver, Peter. "Mental Health Law in Canada." In *Canadian Health Care Law and Policy*, edited by Jocelyn Downie, Timothy Caulfield and Colleen M. Flood, 341-83. Markham: LexisNexis, 2011.
- Chan, Wendy. "Gender, Murder and Madness." In *Women, Murder, and Justice*, 79-107. Houndmills & New York: Palgrave, 2001.
- Chancellery of the Sejm of the Republic of Poland. "Internetowy System Aktow Prawnych (System of Legal Acts)." 2015. <http://isap.sejm.gov.pl/>.
- Collins, Valerie L. "Camouflaged Legitimacy: Civil Commitment, Property Rights, and Legal Isolations." *Howard Law Journal* 52, no. 2 (2009): 407-58.
- Corman, Michael K., and Karen Melon. "What Counts? Managing Professionals on the Front Line of Emergency Service." In *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*, edited by Alison I. Griffith and Dorothy E. Smith, 148-76. Toronto: University of Toronto Press, 2014.
- Cowan, Dave, and Emma Hitchings. "'Pretty Boring Stuff': District Judges and Housing Possession Proceedings." *Social & Legal Studies* 16, no. 3 (2007): 363-82.
- Cowan, David, and Daniel Wincott. "Exploring the 'Legal'." In *Exploring the 'Legal' in Socio-Legal Studies*, edited by David Cowan and Daniel Wincott, 1-31. Basingstoke: Palgrave Macmillan, 2015.
- . *Exploring the 'Legal' in Socio-Legal Studies*. Basingstoke: Palgrave Macmillan, 2015.
- Cunliffe, Emma. "Untold Stories of Miraculous Mirrors? The Possibilities of a Text-Based Understanding of Socio-Legal Transcript Research." *Allard School of Law Working Paper* (2013): 1-45.
- Czernicki, Filip. *Access to Legal Aid in Poland [Dostęp Do Pomocy Prawnej W Polsce]*. Warszawa: Helsinki Foundation for Human Rights, 2001.
- Dąbrowski, Stanisław. "Introduction [Wprowadzenie]." In *The Mental Health Protection Act: Commentary [Ustawa O Ochronie Zdrowia Psychicznego: Komentarz]*, edited by Stanisław Dąbrowski and Janusz Pietrzykowski, 6-18. Warszawa: Instytut Psychiatrii Sadowej, 1997.
- . "Major Issues in the Polish Mental Health Legislation Draft Proposal." *International Journal of Law and Psychiatry* 1, no. 2 (1978): 125-36.

- Dąbrowski, Stanisław, and Leszek Kubicki. "Introduction [Wprowadzenie]." In *The Mental Health Protection Act: An Overview of Major Issues [an Ustawa O Ochronie Zdrowia Psychicznego: Przegląd Ważniejszych Zagadnień]*, edited by Stanisław Dąbrowski and Leszek Kubicki, 6-18. Warszawa: Instytut Psychiatrii i Neurologii, 1994.
- . *The Mental Health Protection Act: An Overview of Major Issues [Ustawa O Ochronie Zdrowia Psychicznego: Przegląd Ważniejszych Zagadnień]*. Warszawa: Instytut Psychiatrii i Neurologii, 1994.
- Dąbrowski, Stanisław, and Janusz Pietrzykowski. "Preface [Od Autorów]." In *The Mental Health Protection Act: A Commentary [Ustawa O Ochronie Zdrowia Psychicznego: Komentarz]*, 9-12. Warszawa: Instytut Psychiatrii Sądowej, 1997.
- DeVault, Marjorie. "Introduction." In *People at Work: Life, Power, and Social Inclusion in the New Economy*, edited by Marjorie DeVault, 1-22. New York: New York University Press, 2008.
- DeVault, Marjorie, and Liza McCoy. "Institutional Ethnography: Using Interviews to Investigate Ruling Relations." In *Institutional Ethnography as Practice*, edited by Dorothy E. Smith, 15-44. Lanham: Rowman & Littlefield, 2006.
- DeVault, Marjorie, Murali Venkatesh, and Frank Ridzi. "'Let's Be Friends': Working within an Accountability Circuit." In *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*, edited by Alison I. Griffith and Dorothy E. Smith, 177-98. Toronto: University of Toronto Press, 2014.
- Diamond, Timothy. *Making Gray Gold: Narratives of Nursing Home Care*. Chicago: University of Chicago Press, 1992.
- . "'Where Did You Get the Fur Coat, Fern?' Participant Observation in Institutional Ethnography." In *Institutional Ethnography as Practice*, edited by Dorothy E. Smith, 45-63. Lanham: Rowman & Littlefield, 2006.
- District Court in Warsaw. "Principles of Civil Court Budget Management." *Biuletyn Informacji Publicznej*. 24 June 2017.
<http://bip.warszawa.so.gov.pl/artykuly/504/tryb-dzialania-w-zakresie-wykonywania-zadan-publicznych-i-dzialalnosci-budzetowej-i-pozabudzetowej>.
- Doll, Agnieszka. "Lawyering for the 'Mad': Social Organization and Legal Representation for Involuntary-Admission Cases in Poland." In *Psychiatry Interrogated: An Institutional Ethnography Anthology*, edited by Bonnie Burstow, 183-202. Cham: Palgrave Macmillan, 2016.
- Dołęcki, Henryk. *Civil Procedure: Overview [Postępowanie Cywilne: Zarys Wykładu]*. Warszawa: LexisNexis Polska, 2015.

- Dołowska, Kamila. "Legal Aid Ex Officio in Civil Cases from the Perspective of the Ombudsperson of Human Rights [Pomoc Prawna Z Urzedu W Sprawach Cywilnych W Swietle Dzialnosci Rzecznika Praw Obywatelskich]." Paper presented at the conference Legal aid ex officio and access to justice [Pomoc prawna z urzedu a prawo do sadu], Warszawa, 2012.
- Duda, Juliusz. *Commentary to the Mental Health Act [Komentarz Do Ustawy O Ochronie Zdrowia Psychicznego]*. Warszawa: LexisNexis, 2009.
- Dukiet-Nagórska, Teresa. *Patients' Autonomy and Polish Criminal Law [Autonomia Pacjenta a Polskie Prawo Karne]*. Warszawa: Oficyna a Wolters Kluwer, 2008.
- Fabris, Eric. *Tranquil Prisons*. Toronto: University of Toronto Press, 2011.
- Failer, Judith Lynn. *Who Qualifies for Rights? Homelessness, Mental Illness and Civil Commitment*. Ithaca: Cornell University Press, 2002.
- Fertak, Michał. "Protest of Warsaw Attorneys" ["Protest Warszawskich Adwokatów"]. 2015. <http://www.adwokatura.pl/z-zycia-ora/protest-warszawskich-adwokatow>.
- Fistein, Elizabeth C., A.J. Holland, I.C.H. Clare, and Michael J. Gunn. "A Comparison of Mental Health Legislation from Diverse Commonwealth Jurisdictions." *International Journal of Law and Psychiatry* 32, no. 3 (2009): 147-55.
- Foucault, Michel. "Governmentality." In *The Foucault Effect: Studies in Governmentality*, edited by Graham Burchell, Colin Gordon, and Peter Miller, 87-104. Chicago: University of Chicago Press, 1991.
- Frampton, Caelie, Gary Kinsman, A.K. Thompson, and Kate Tilliczek. "Glossary." In *Sociology for Changing the World: Social Movements/Social Research*, edited by Caelie Frampton, Gary Kinsman, A.K. Thompson and Kate Tilliczek, 27-38. Halifax: Fernwood Publishing, 2006.
- . "New Directions for Activist Research." In *Sociology for Changing the World: Social Movements/Social Research*, edited by Caelie Frampton, Gary Kinsman, A.K. Thompson and Kate Tilliczek, 246-271. Halifax: Fernwood Publishing, 2006.
- . "Social Movements/Social Research: Towards Political Activist Ethnography." In *Sociology for Changing the World: Social Movements/Social Research*, edited by Caelie Frampton, Gary Kinsman, A.K. Thompson and Kate Tilliczek, 1-17. Halifax: Fernwood Publishing, 2006.
- Galecki, Piotr, Kinga Bobinska, and Krzysztof Eichstaedt. *Commentary to the Mental Health Act [Ustawa O Ochronie Zdrowia Psychicznego: Komentarz]*. Warszawa: LexisNexis, 2013.

- Gillespie, Kathryn. "Witnessing Animal Others: Bearing Witness, Grief, and the Political Function of Emotion." *Hypatia* 31, no. 3 (2016): 572-588.
- Gostin, Larry O. "The Draft Mental Health Act of Poland and the Mental Health Act of England and Wales Compared and Analyzed." *International Journal of Law and Psychiatry* 1, no. 2 (1978): 231-35.
- Grace, Daniel. "This Is Not a Law: The Transnational Politics and Protest of Legislating an Epidemic." PhD Dissertation, University of Victoria, 2012.
- Grace, Lauri. "Accountability Circuits in Vocational Education and Training." In *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*, edited by Alison I. Griffith and Dorothy E. Smith, 255-63. Toronto: University of Toronto Press, 2014.
- Grahame, Peter R. "Ethnography, Institutions, and the Problematic of the Everyday World." In *Critical Strategies for Social Research*, edited by William K. Carroll, 181-89. Toronto: Canadian Scholars' Press, 2004.
- Griffith, Alison I. "Constructing Single Parent Families for Schooling: Discovering an Institutional Discourse." In *Institutional Ethnography as Practice*, edited by Dorothy E. Smith, 127-38. Lanham: Rowman & Littlefield, 2006.
- Griffith, Alison I., and Dorothy E. Smith. "Introduction." In *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*, edited by Alison I. Griffith and Dorothy E. Smith, 3-24. Toronto: University of Toronto Press, 2014.
- Griffith, Alison I., and Dorothy E. Smith, eds. *Under New Public Management: Institutional Ethnographies of Changing Frontline Work*. Toronto: University of Toronto Press, 2014.
- Harding, Sandra G. *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies*. New York: Routledge, 2004.
- Herringer, Barbara M. "Unruly Death: The Social Organization of AIDS Suicide." PhD Dissertation, University of Victoria, 1998.
- Hodgson, Jacqueline. "Hierarchy, Bureaucracy, and Ideology in French Criminal Justice: Some Empirical Observations." *Journal of Law and Society* 29, no. 2 (2002): 227-57.
- . *The Role of the Criminal Defence Lawyer in Adversarial and Inquisitorial Procedure*. Berlin: Duncker & Humboldt, 2008.

- Howard, Judith A, Barbara Risman, and Joey Sprague. "Series Editors' Foreword." In *Institutional Ethnography: A Sociology for People*, edited by Judith A. Howard, Barbara Risman and Sprague Joel, ix-xiii. Lanham: AltaMira Press, 2005.
- Hubert, Jane. *Madness, Disability and Social Exclusion*. New York: Routledge, 2000.
- Hussey, Ian. "'Political Activist as Ethnographer' Revisited." *Canadian Journal of Sociology* 37, no. 1 (2012): 1-23.
- Iustitia (Association of Polish Judges). "Response from Iusticia to the Minister of Justice Regarding Changes in the Design of the Judge's Work Evaluation Document [Opinia Ssp "Iusticia" Do Projektu Wzoru Arkusza Ocen Sdziego]." 27 August 2013. <http://www.iustitia.pl/opinie/741-opinia-ssp-iustitia-do-projektu-wzoru-arkusza-ocen-sedziego>.
- Johns, Fleur. "Performing Power: The Deal, Corporate Rule, and the Constitution of Global Legal Order." *Journal of Law and Society* 34, no. 1 (2007): 116-38.
- Kallert, Thomas W., Joanna Rymaszewska, and Francisco Torres-Gonzales. "Differences of Legal Regulations Concerning Involuntary Psychiatric Hospitalization in Twelve European Countries: Implications for Clinical Practice." *International Journal of Forensic Mental Health* 6, no. 2 (2007): 197-207.
- Kamiński, Maciej Marek. "Specialization for Attorneys – Yes or No? [Specjalizacja Adwokatów – Tak Czy Nie?]." *Rzeczpospolita*, 2 November 2013.
- Kapp, Marshall B. "Treatment and Refusal Rights in Mental Health: Therapeutic Justice and Clinical Accommodation." *American Journal of Orthopsychiatry* 64, no. 2 (1994): 223-34.
- Kendall, Kathleen. "Beyond Reason: Social Constructions of Mentally Disordered Female Offenders." In *Women, Madness and the Law: A Feminist Reader*, edited by Wendy Chan, Dorothy E. Chunn, and Robert Menzies, 41-57. London: Glasshouse, 2005.
- Kiejna, Andrzej. "Transformation in Health Care Services in Poland." *European Psychiatry* 12, no. s2 (1997): 128s.
- Kolińska-Dąbrowska, Małgorzata. "The Psychiatric Hospital Instead of Divorce: How to Have Your Wife Deemed Mad [Psychiatryk Zamiast Rozvodu: Jak Zrobić Z Żony Wariatkę]." *Rzeczpospolita*, 5 December 2015.
- Krasnowolski, Andrzej. *Professions of Public Trust, Regulated Professions and Liberal Professions: Genesis, Functioning and Actual Problems [Zawody Zaufania Publicznego, Zawody Regulowane Oraz Wolne Zawody. Geneza, Funkcjonowanie I Aktualne Problemy]* [in Polish]. Warszawa: Kancelaria Senatu, 2013.

- Kress, Kenneth. "Rotting with Their Rights On: Why the Criteria for Ending Commitment or Restraint of Liberty Need Not Be the Same as the Criteria for Initiating Commitment or Restraint of Liberty, and How the Restraint May Sometimes Justifiably Continue after Its Prerequisites Are No Longer Satisfied." *Behavioural Science & the Law* 24, no. 4 (2006): 573-98.
- Latour, Bruno. *The Making of Law: Ethnography of the Conseil D'état*. Malden: Polity Press, 2015.
- LeFrançois, Brenda, and Vicki Coppock. "Psychiatrised Children and Their Rights: Starting the Conversation (Editorial)." *Children & Society* 28 (2014): 165-71.
- Legemaate, Johannes. "Legal Protection in Psychiatry: Balancing the Rights and Needs of Patients and Society." *European Psychiatry* 13, no. s3 (1998): 107s-12s.
- Lublin Chamber of Bar Attorneys. "List of Lawyers of the Lublin Chamber." 2017. <http://www.ora.lublin.pl/strona,lista-adwokatow-izby-lubelskiej>.
- Luke, Katherine P. "Are Girls Really Becoming More Violent? A Critical Analysis." *Affilia* 23, no. 1 (2008): 38-50.
- Mack, Kathy, and Sharyn Roach Anleu. "'Getting through the List:' Judgecraft and Legitimacy in the Lower Courts." *Social & Legal Studies* 16, no. 3 (2007): 341-61.
- Marsden, Sarah. "The New Precariousness: Temporary Migrants in the Law in Canada." *Canadian Journal of Law and Society* 27, no. 2 (2012): 209-29.
- Matulewicz, Kaitlyn. "Customers, Tips, and Law: Gender and the Precariousness of Work in Bc Restaurants." In *Labour Law Research Network Inaugural Conference*. Barcelona, 2013.
- Mauthner, Natasha S., and Andrea Doucet. "Reflexive Accounts and Accounts of Reflexivity in Qualitative Data Analysis." *Sociology* 37 (2003): 413-31.
- Menzies, Robert J. "Cycles of Control: The Transcarceral Career of Forensic Patients." *International Journal of Law and Psychiatry* 10 (1987): 233-49.
- Menzies, Robert J., Dorothy E. Chunn, and Christopher D. Webster, "Risky Business: The Classification of Dangerous People in the Canadian Carceral Enterprise." In *Canadian Penology: Advanced Perspectives and Research*, edited by Kevin R.E. McCormick and Livy Visano, 61-93. Toronto: Canadian Scholars Press, 1992).
- Michalski, Jakub. "Genesis and Diversification of Liberal Legal Professions in Poland" ["Geneza i Wyodrębnianie Wolnych Zawodów Prawniczych"]. *Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM I* (2011): 99-104

- Miller, Rena. "Manageable Problems, Unmanageable Death: The Social Organization of Palliative Care." MA Thesis, University of Victoria, 1997.
- . "Wife Rena Teary." In *Research as Resistance: Critical, Indigenous, and Anti-Oppressive Approaches*, edited by Leslie Brown and Susan Strega, 181-98. Toronto: Canadian Scholars' Press, 2005.
- Ministry of Health. "Card of Medical Care [Karta Medycznych Czynności Rantunkowych]." Ministerstwo Zdrowia/Rzeczpospolita Polska. 2016. http://www2.mz.gov.pl/wwwfiles/ma_struktura/docs/karta_czynnosci_16122009.pdf.
- Ministry of Justice. "Budget." <https://bip.ms.gov.pl/pl/dzialalnosc/budzet/>.
- . *Selected Issues from the Mental Health Protection Act*. Warszawa: Ministry of Justice, 2004.
- Morris, Grant H. *Refusing the Right to Refuse: Coerced Treatment of Mentally Disordered Persons*. Lake Mary: Vandeplass Publishing, 2000.
- Mozley, Herbert Newman, and George Crispe Whiteley. *Concise Law Dictionary*. London: Butterworths, 1876.
- National Bar Council of Poland. *Resolution of the National Bar Council Concerning a Set of Ethical Principles and Professional Dignity for Attorneys (Resolution No. 2/Xviii/98; Resolution No. 32/2005)*. Warsaw: Naczelna Rada Adwokacka, 1998/2005.
- Naumann, Jerzy. *The Collection of Ethical Principles for Attorneys and Professional Integrity: Commentary [Zbiór Zasad Etyki Adwokackiej I Godności Zawodu. Komentarz]*. Komentarze Becka. Warszawa: Wydawnictwo C.H.Beck, 2015.
- Nichols, Naomi. "Investigating the Social Relations of Human Service Provision: Institutional Ethnography and Activism." *Journal of Comparative Social Work* 11, no. 1 (2016): 1-26.
- Niveau, Gerard, and J. Materi. "Psychiatric Commitment: Over 50 Years of Case Law from the European Court of Human Rights." *European Psychiatry* 22, no. 1 (2007): 59-67.
- Nowacka, Maria. *Patients' Autonomy as a Moral Problem [Autonomia Pacjenta Jako Problem Moralny]*. Białystok: Wydawnictwo Uniwersytet w Białymstoku, 2005.
- Oliver, Kelly. "Witnessing and Testimony." *Parallax* 10, no. 1 (2004): 79-88.

- Pałdyna, Tomasz. *Judicial Practice in Application of Some Institutions from the Mental Health Protection Act [Praktyka Sądowa W Zakresie Stosowania Wybranych Instytucji Prawnych Zawartych W Ustawie O Ochronie Zdrowia Psychicznego]*. Warszawa: Instytut Wymmiary, 2015.
- Paprzycki, Lech K. "Wprowadzenie" ["Introduction"]. In *The Mental Health Protection Act [Ustawa O Ochronie Zdrowia Psychicznego]*. Krakow: Kantor Wydawniczy Zakamycze, 1996.
- Pearson, Megan. "The Effect of Clinical Judgement in Decision-Making: The Mental Health Act 1986 (Vic.) and the Mental Health Review Board." *Ethical Human Psychology and Psychiatry* 8, no. 1 (2006): 43-53.
- Pence, Ellen. "Safety for Battered Women in a Textually Mediated Legal System." *Studies in Cultures, Organizations and Societies* 7, no. 2 (2001): 199-299.
- Pilipiec, Sławomir. "The Principle of the Right to a Court in the Constitution of the Republic of Poland and in the Constitution of the Russian Federation [Zasada Prawa Do Sądu W Konstytucji Rzeczypospolitej Polskiej I Konstytucji Federacji Rosyjskiej]." *Annales Universitatis Mariae Curie-Skłodowska* 51/51, no. G (2003/2004): 151-62.
- Pilitowski, Bartosz, and Stanisław Burdziej. *Report: Civic Monitoring of Courts [Raport: Obywatelski Monitoring Sądów]*. Toruń: Fundacja Court Watch Polska, 2014.
- Rafał, Dębowski. "Voice in the Discussion [Głos W Dyskusji]." In *Proceedings of the Tariffs<Life Conference [Publikacja Pokonferencyjna Stawki<Życie]*, 14-15. Warszawa: Łukasz Supera, 2016.
- Rankin, Janet M. "How Nurses Practice Health Reform: An Institutional Ethnography." PhD Dissertation, University of Victoria, 2004.
- Rankin, Janet M., and Marie L. Campbell. *Managing to Nurse: Inside Canada's Health Care Reform*. Toronto: University of Toronto Press, 2006.
- Reaume, Geoffrey. "'Keep Your Labels Off My Mind!' or 'Now I Am Going to Pretend I Am Crazy but Don't Be a Bit Alarmed:' Psychiatric History from the Patients' Perspectives." *Canadian Bulletin of Medical History* 11, no. 2 (1994): 397-424.
- Riles, Annelise. *The Network inside Out*. Ann Arbor: The University of Michigan Press, 2001.
- . "A New Agenda for the Cultural Study of Law: Taking on the Technicalities." *Buffalo Law Review* 53 (2005): 392-405.

- . “Knowledge about Law.” *Cornell Legal Studies Research Paper* 05-034 (2007): 885-888.
- . “Property as Legal Knowledge: Means and Ends.” *The Journal of the Royal Anthropological Institute* 10, no. 4 (2004): 775-795.
- Rose, Nicolas. “Law, Rights and Psychiatry.” In *The Power of Psychiatry*, edited by Peter Miller and Nicolas Rose, 177-213. Cambridge: Polity Press, 1986.
- Sałajewski, Dariusz. “Not a Breakthrough, but an Important Date” [“Nie przełom, lecz ważna data”]. *Radca Prawny* 160 (2015): 4.
- Sarat, Austin, and Stuart Scheingold. “Cause Lawyering and the Reproduction of Professional Authority: An Introduction.” In *Cause Lawyering: Political Commitments and Professional Responsibilities*, edited by Austin Sarat and Stuart Scheingold, 3-28. Oxford: Oxford University Press, 1998.
- , eds. *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford: Oxford University Press, 1998.
- Sęk, Tomasz, and Ryszard Sowiński. “Prognosis for the Market for Legal Services [Prognoza Rynku Usług Prawniczych].” In *The Modern Law Firm Blog* 2014 (3 March).
- Senat Rzeczypospolitej Polskiej. “Patient’s Rights in the Mental Health Protection Act [Prawa Pacjenta W Ustawie Psychiatrycznej (Seminar Held 5 September 1994).” Warsaw: Biuro Studiów i Analiz Kancelarii Senatu, 1994.
- Shields, Stuart. “Transnational Social Forces and the Configuration of Polish Transition: Noe-Liberalism Revisited.” *Irish Studies in International Affairs* 12, no. 1 (2001): 21-37.
- Skuczyński, Paweł. “Lawyers’ Paternalism and the Identity of Polish Legal Culture [Paternalizm Prawniczy a Tożsamość Polskiej Kultury Prawnej].” *Filizofia Publiczna I Edukacja Demokratyczna* 2, no. 2 (2013): 202-09.
- Smith, Dorothy E. *The Conceptual Practices of Power*. Boston: Northeastern University Press, 1990.
- . *The Everyday World as Problematic: A Feminist Sociology*. Boston: Northeastern University Press, 1987.
- . “Incorporating Texts into Ethnographic Practice.” In *Institutional Ethnography as Practice*, edited by Dorothy E. Smith, 65-88. Lanham: Rowman & Littlefield, 2006.

- . *Institutional Ethnography: A Sociology for People*. Lanham, MD: AltaMira Press, 2005.
- . “Institutional Ethnography: From a Sociology for Women to a Sociology for People.” In *Handbook of Feminist Research: Theory and Praxis*, edited by Sharlene Nagy Hesse-Biber, 409-16. Thousand Oaks: Sage Publications, 2007.
- . “Introduction.” In *Institutional Ethnography as Practice*, edited by Dorothy E. Smith, 1-11. Lanham: Rowman & Littlefield, 2006.
- . “Making Change from Below.” *Socialist Studies* 3, no. 2 (2007): 7-30.
- . “Texts and the Ontology of Organizations and Institutions” *Studies in Cultures, Organizations and Societies* 7, no. 2 (2007): 159-98.
- Smith, Dorothy E., and Susan Marie Turner. *Incorporating Texts into Institutional Ethnographies*. Toronto: University of Toronto Press, 2014.
- Smith, George W. “Policing the Gay Community: An Inquiry into Textually Mediated Relations.” *International Journal of Sociology and the Law* 16 (1988): 163-83.
- . “Policing the Gay Community: An Inquiry into Textually-Mediated Social Relations.” In *Incorporating Texts into Institutional Ethnographies*, edited by Dorothy E. Smith and Susan Marie Turner. Toronto: University of Toronto Press, 2014.
- . “Political Activist as Ethnographer.” In *Sociology for Changing the World*, edited by Caelie Frampton, Gary Kinsman, A. K. Thompson and Kate Tilliczek, 44-70. Halifax: Fernwood Publishing, 2006.
- Smith, George W., Eric Mykhalovskiy, and Douglas Weatherbee. “Getting “Hooked Up:” An Organizational Study of the Problems People with HIV/Aids Have Accessing Social Services.” In *Institutional Ethnography as Practice*, edited by Dorothy E. Smith, 166-79. Lanham, MD: Rowman & Littlefield, 2006.
- Strzelecki, Zbigniew, Duszczuk; Maciej, Andrzej Gałazka, Jolanta Kurkiewicz, Ireneusz Kuropka, Napierała Joanna, Alina Potrykowska, and Sobczak Izydor. *Demographic Situation of Poland [Sytuacja Demograficzna Polski]*. Warszawa: Rządowa Rada Ludnościowa, 2011.
- Supera, Łukasz. “Attorney for Three Kilograms of Good Quality Sausage” [“Adwokat za trzy kilo lepszej kiełbasy”]. *Rzeczpospolita*, 12 June 2013.
- . “Few Words Per Introduction [Parę Słów Wstepu].” In *Proceedings of the Tariffs<Life Conference [Publikacja Pokonferencyjna Stawki<Życie]*, 5-7. Warszawa: Łukasz Supera, 2016.

- Taekema, Sanne, Bart van Klink, and Wouter De Been. *Facts and Norms in Law: Interdisciplinary Reflections on Legal Method*. Cheltenham: Edward Elgar, 2016.
- Teghtsoonian, Katherine. "Methods, Discourse, Activism: Comparing Institutional Ethnography and Governmentality." *Critical Policy Studies* 10, no. 3 (2016): 330-47.
- Townsend, Elizabeth. *Good Intentions Overruled: A Critique of Empowerment in the Routine Organization of Mental Health Services*. Toronto: University of Toronto Press, 1998.
- Trela, Jacek. "Voice in the Discussion [Głos W Dyskusji]." In *Proceedings of the Tariffs<Life Conference, [Publikacja Pokonferencyjna Stawki<Życie]*, 62-66. Warszawa: Łukasz Supera, 2016.
- Tummons, Jonathan. "Professional Standards in Teacher Education: Tracing Discourses of Professionalism through the Analysis of Textbooks." *Research in Post-Compulsory Education* 19, no. 4 (2014): 417-32.
- Turner, Susan Marie. "Mapping Institutions as Work and Texts." In *Institutional Ethnography as Practice*, edited by D. E. Smith, 139-61. Lanham, Md.: Rowman & Littlefield, 2006.
- Valverde, Mariana. "Jurisdiction and Scale: Legal 'Technicalities' as Resources for Theory." *Social & Legal Studies* 18, no. 2 (2009): 139-58.
- . "Studying the Governance of Crime and Security: Space, Time and Jurisdiction." *Criminology and Criminal Justice* 14 (2014): 379-91.
- Valverde, Mariana, Ron Levi, and Dawn Moore. "Legal Knowledges of Risk." In *Law and Risk*, edited by Law Commission of Canada, 86-120. Vancouver: UBC Press, 2005.
- Walby, Kevin. "Institutional Ethnography and Data Analysis: Making Sense of Data Dialogues." *International Journal of Social Research Methodology* 16, no. 2 (2013): 141-54.
- . "On the Social Relations of Research: A Critical Assessment of Institutional Ethnography." *Qualitative Inquiry* 13, no. 7 (2007): 1008-30.
- Warner, Joanne. "Inquiry Reports as Active Texts and Their Function in Relation to Professional Practice in Mental Health." *Health, Risk & Society* 8, no. 3 (2006): 223-37.
- Warren, Carol A.B. *The Court of Last Resort: Mental Illness and the Law*. Chicago: The University of Chicago Press, 1982.

- Watt, Lisa. "(Un)Safe at School: Parents' Work of Securing Nursing Care and Coordinating School Health Support Services Delivery for Children with Diabetes in Ontario Schools." *The Journal of Sociology & Social Welfare* 42, no. 2 (2015): 114-19.
- Wciórka, Bogna, and Jacek Wciórka. "The Attitudes of Poles toward Mental Disorders and Mentally Ill People [Polacy Wobec Chorób Psychiczych I Osób Chorych Psychicznie]." *Katalog Komunikatów CBOS* 118, no. 1 (2005): 1-23.
- . "Mentally Ill People in Society [Osoby Chore Psychicznie W Społeczeństwie]." *Katalog Komunikatów CBOS* 124, no. 1 (2008): 1-33.
- Wilson, Alex, and Ellen Pence. "U.S. Legal Interventions in the Lives of Battered Women: An Indigenous Assessment." In *Institutional Ethnography as Practice*, edited by Dorothy E. Smith, 199-225. Lanham, MD.: Rowman & Littlefield, 2006.
- Winick, Bruce J. "Therapeutic Jurisprudence and the Treatment of People with Mental Illness in Eastern Europe: Construing International Human Rights Law." *New York Law School Journal of International and Comparative Law* 21 (2002): 537-72.
- Witkowska, Sylwia. "Market Verifies Lawyers [Rynek Weryfikuje Prawników]." *Gazeta Wyborcza*. 17 August 2015. <http://wyborcza.pl/1,75248,18579639,rynek-weryfikuje-prawnikow.html?disableRedirects=true>.
- Wójcikiewicz, Józef, ed. *Expert Opinion: Selected Issues [Ekspertyza Sądowa: Wybrane Zagadnienia]*. Warszawa: Oficyna a Wolters Kluwer Business, 2007.
- World Health Organization. "Chapter V: Mental and Behavioural Disorders (F00-F99)." *International Statistical Classification of Diseases and Related Health Problems* (10th Revision, 2016). <http://apps.who.int/classifications/icd10/browse/2010/en#/V>.
- Zajackowska, Agnieszka. "New Paradigm, Same Dilemma: Civil Commitment Reforms in Poland (1997-1994)." MA Thesis, Simon Fraser University, 2011.
- Zbrojewska, Monika. "Response of the Minister of Justice to the Document Submitted by the Senator Ryszard Knosala and Forwarded from the Senate to the Ministry of Justice [Odpowiedź Ministra Sprawiedliwości Na Pismo Przekazane Z Senatu Do Ministerstwa Sprawiedliwości Dotyczące Oświadczenia Senatora Ryszarda Knosale]." http://www.senat.gov.pl/gfx/senat/userfiles/_public/k8/dokumenty/stenogram/oswiadczenia/knosala/62020.pdf.
- Zbyszewska, Ania. "Women in Research and Academic Labour Markets: Revisiting the Issue Ten Years On." In *Festschrift till Ann Numhauser-Henning*, edited by Mia Rönnmar and Jenny Julén Votinius, 939-953. Lund: Juristförlaget, 2017.

Zemishlany, Zvi. "Involuntary Hospitalization and Treatment: The Interface between Psychiatry and Law." *Harefuah* 146, no. 8 (2007): 602-04.

Zgliczyński, Wojciech Stefan. *Alcohol in Poland [Alkohol W Polsce]*. Warszawa: Biuro Analiz Sejmowych, 2016.

Zielińska, Eleonora. *Statute on the Professions of a Physician and of a Dentist: Commentary [Ustawa o Zawodach Lekarza i Lekarza Dentysty: Komentarz]*. Warszawa: ABC Wolters Kluwer, 2008.

Zoll, Andrzej. "Patients' Consent as Warrant for Legal Medical Treatment" ["Zgoda Pacjenta jako Warunek Legalności Leczenia"]. In *The Patient's Rights and the Physician's Stance on It [Prawa Pacjenta a Postawa Lekarza]*, edited by Anna Wiekłuk, 9-17. Krakow: Polska Akademia Umiejetności, 1996.

Appendices

Appendix A – Ethics Approval

Certificate of Approval



Human Research Ethics Board
 Office of Research Services
 Administrative Services Building
 PO Box 1700 STN CSC
 Victoria British Columbia V8W 2Y2 Canada
 Tel 250-472-4545, Fax 250-721-8960
 Email ethics@uvic.ca Web www.research.uvic.ca

Certificate of Approval

PRINCIPAL INVESTIGATOR	Agnieszka Doll	ETHICS PROTOCOL NUMBER	12-173
UVic STATUS:	Ph.D. Student	ORIGINAL APPROVAL DATE:	02-Aug-12
UVic DEPARTMENT:	LAWF	APPROVED ON:	02-Aug-12
SUPERVISOR:	Maneesha Deckha	APPROVAL EXPIRY DATE:	01-Aug-13
PROJECT TITLE: Law, texts, and women's madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland			
RESEARCH TEAM MEMBERS: None			
DECLARED PROJECT FUNDING: Graduate Travel Research Funding; Association for Women in Slavic Studies; European Union Centre of Excellence			
CONDITIONS OF APPROVAL			
This Certificate of Approval is valid for the above term provided there is no change in the protocol.			
Modifications To make any changes to the approved research procedures in your study, please submit a "Request for Modification" form. You must receive ethics approval before proceeding with your modified protocol.			
Renewals Your ethics approval must be current for the period during which you are recruiting participants or collecting data. To renew your protocol, please submit a "Request for Renewal" form before the expiry date on your certificate. You will be sent an emailed reminder prompting you to renew your protocol about six weeks before your expiry date.			
Project Closures When you have completed all data collection activities and will have no further contact with participants, please notify the Human Research Ethics Board by submitting a "Notice of Project Completion" form.			
Certification			
This certifies that the UVic Human Research Ethics Board has examined this research protocol and concluded that, in all respects, the proposed research meets the appropriate standards of ethics as outlined by the University of Victoria Research Regulations Involving Human Participants.			
<hr/> Dr. Rachael Scarth Associate Vice-President, Research			

Certificate Issued On: 02-Aug-12

Modification of an Approved Protocol



Human Research Ethics Board
 Office of Research Services
 Administrative Services Building
 PO Box 1700 STN CSC
 Victoria British Columbia V8W 2Y2 Canada
 Tel 250-472-4545, Fax 250-721-8960
 ethics@uvic.ca www.research.uvic.ca

Modification of an Approved Protocol

PRINCIPAL INVESTIGATOR Agnieszka Doll UVic STATUS: Ph.D. Student UVic DEPARTMENT: LAWF SUPERVISOR: Maneesha Deckha	ETHICS PROTOCOL NUMBER 12-173 ORIGINAL APPROVAL DATE: 02-Aug-12 MODIFIED ON: 24-Jan-13 APPROVAL EXPIRY DATE: 01-Aug-13
PROJECT TITLE: Law, texts, and women's madness: An Institutional ethnography of psychiatric emergency admission and civil commitment in Poland RESEARCH TEAM MEMBERS: None	
DECLARED PROJECT FUNDING: Graduate Travel Research Funding; Association for Women in Slavic Studies; European Union Centre of Excellence	
CONDITIONS OF APPROVAL	
<p>This Certificate of Approval is valid for the above term provided there is no change in the protocol.</p> <p>Modifications To make any changes to the approved research procedures in your study, please submit a "Request for Modification" form. You must receive ethics approval before proceeding with your modified protocol.</p> <p>Renewals Your ethics approval must be current for the period during which you are recruiting participants or collecting data. To renew your protocol, please submit a "Request for Renewal" form before the expiry date on your certificate. You will be sent an emailed reminder prompting you to renew your protocol about six weeks before your expiry date.</p> <p>Project Closures When you have completed all data collection activities and will have no further contact with participants, please notify the Human Research Ethics Board by submitting a "Notice of Project Completion" form.</p>	
Certification	
This certifies that the UVic Human Research Ethics Board has examined this research protocol and concluded that, in all respects, the proposed research meets the appropriate standards of ethics as outlined by the University of Victoria Research Regulations Involving Human Participants.	
<hr style="width: 20%; margin: auto;"/> Dr. Rachael Scarth Associate Vice-President, Research	

Certificate Issued On: 24-Jan-13

12-173 Doll, Agnieszka

Appendix B – Recruitment Materials

Initial Contact Script

<p>REVISED AUG 01 2012</p>

APPENDIX 1 (A): Recruitment materials

Sample of the initial email/letter/phone contact

“Law, texts, and women’s madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland”

** I will use a Polish-language version of this letter for contacting participants at the national (trans-local) level.*

*** The letter will be tailored to reflect the role of the participant.*

Dear Madame/Sir,

My name is Agnieszka Doll and I am emailing you because of your position with the government ministry, professional organization/body, or non-profit/human rights organization and your potential knowledge/involvement in the processes of standardization/supervision/regulation of psychiatric involuntary admission to Polish hospital or psychiatric clinics.

I am a PhD Candidate at the University of Victoria (Canada), Faculty of Law, and I am currently researching and planning to write a dissertation on the social organization of involuntary admission of women in Poland. I am particularly interested in the legal aspect of this process, and the structural and institutional arrangements that impact the decision-making processes and professional practice at the local level. I plan to conduct interviews with as many such representatives as possible in the fall/winter of this year (October 2012- February 2013) in order to get a better understanding on the trans-local organization of civil commitment processes in local sites and on the organization of the psychiatric/judicial systems.

I would very much appreciate hearing from you as to whether you would be willing to meet with me to discuss your knowledge or involvement in the civil commitment processes, standardization procedures, practices of local supervision, policies that regulate the organization of health care and legal systems, as well as organizational challenges that you see to those systems’ functioning. If you are willing to meet I can send you a preliminary list of questions and the informed consent form and we can arrange to meet at a time that is convenient for you within the time frame that I indicated above (October 2012-February 2013).

I look forward to hearing from you.

Kind regards,

Agnieszka Doll, PhD Candidate
University of Victoria

Invitation Letter

APPENDIX 1 (B): Recruitment materials

<p>REVISED AUG 01 2012</p>

Invitation to participate in the study

“Law, texts, and women’s madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland”

** I will use a Polish-language version of this letter for contacting participants at the local level.*

Good morning/Good afternoon

My name is Agnieszka Doll and I am a PhD Candidate at the University of Victoria (Canada), Faculty of Law and I am currently conducting a doctoral research project on the organization and practice of the process of involuntary admission of women to psychiatric hospitals in Poland. I am particularly interested in the legal aspect of this process, and how the structural and institutional arrangements impact the decision-making processes and professional practice at the local level. Between August-November 2012, I plan to observe and conduct informal conversations and formal interviews with professionals working in psychiatric and judicial institutions that are involved in processing involuntary admission cases. I am interested in learning from their first-hand experience how the process actually works: how involuntary admission cases are processed, what work activities are involved in or related to processing those cases, how documents are produced and which documents are consulted within that process, etc. Also I hope to learn about challenges that professionals encounter in their work directed toward processing involuntary admission cases.

This research is important because psychiatric hospitalization carries severe social and legal consequences; particularly for women in Poland where in public opinion psychiatric hospitalization diminishes women’s capacity to fulfill care-giving roles (2002, 2005 Reports of the Centre for Social Survey). Thus, the history of psychiatric hospitalization may affect women’s legal position and undermine their legal claims in custody, divorce and gender violence criminal cases. By exploring complex relations between professional practices, organization of psychiatric and legal systems, and economic and social processes, I aim to provide meaningful assessment of the practice of Polish mental health law in the context of women’s admission to psychiatric hospitals. Specifically I will try to map elements of that process which may not work for the benefit of women when broader (emotional, psychical, material, legal and social) needs are taken into consideration.

If you agree to voluntarily take part in my research, your participation will include allowing me to observe your work processes and participating in informal conversations. Formal interviews may be scheduled by appointment at a later time. Informal talks may when I observe your work and would like to learn more about it. The point of each interaction is, among other issues, to broaden my understanding of your work practices, work routine, material conditions in which you work, your work interactions with other

professionals involved in processing cases. My questions will focus on your working knowledge and work activities related to the course of involuntary hospitalization. My research is not to judge how professionals do their work but to understand how the process of involuntary admission is organized and coordinated through various policies, laws, internal directives, professional knowledge, etc. in a way that may or may not work for institutionalized women.

In this study informants are recruited informally, generally by the word of mouth, using a snowball technique. One person in the hospital or in the court refers me to another person who "knows about" or who "knows *more* about" work processes related to how patients enter a psychiatric hospital, move through civil commitment process and how the decisions regarding their admission are made. People may "self refer" into the study when, during the course of everyday interactions, I talk about my research. Many professionals have stories to tell about their experiences of working in the psychiatric and judicial systems or of specifically processing the cases of involuntary admission and they are eager to share those stories for the purpose of research to further institutional change. I have already encountered interest from professionals in discussing their work processes and relations with boards, professional regulatory bodies, etc. Participation in the observation or informal conversation shall not cause inconvenience to you. I will make every effort not to interrupt your workplace duties or work activities.

If you agree to voluntarily participate in this research, information you give me about your work process will be anonymously noted in field notes. For the sake of protecting your anonymity in all research writing, references to individuals or names of particular institutions will be anonymous. The research writings will refer to informants in generic terms, such as "a staff nurse" or "regional coordinator." Contextual details will be changed or omitted to provide individual or agency anonymity. I will make every effort to protect confidentiality.

I would very much appreciate if you agree to participate in my study. If you have any further questions regarding my project or your involvement please do not hesitate to contact me.

I look forward to working with you

Agnieszka Doll, PhD Candidate
University of Victoria, Faculty of Law

Appendix C – Consent Forms

Local Level Consent Form

APPENDIX 3 (A): Participant consent form for participants (local level)

REVISED
JUL 26 2012

Consent for participation in formal research interviews

You are being invited to participate in a study entitled **Law, texts, and women's madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland** that is being conducted by **Agnieszka Doll**.

I am a doctoral student in the Faculty of Law at the University of Victoria and you may contact me if you have further questions

My research is being conducted under the supervision of Professor Maneesha Deckha (Faculty of Law), whom you may contact at 250-721-8175, or by e-mail at mdeckha@uvic.ca. University of Victoria Graduate Studies, University of Victoria European Union Centre of Excellence, and Association of Women in Slavic Studies' grants fund this research.

Purpose of this research:

My research aims to explicate ways in which the legal process of involuntary admission to psychiatric hospitals in Poland is practiced in cases of women and how this practice is organized by ideological discourses, institutional arrangements and related work routine, professional knowledge as well as broader social, political, and economic processes, among other factors. Through my ethnographic study I seek to explore how the process actually happens within the context of lived actualities of psychiatric and legal practitioners' work. Yet, the goal of my analysis is not to judge how professionals do their work but instead I am interested in understanding how the work professionals do is organized and coordinated in a way that may neither serve women's interests and needs nor allows professionals to provide quality of care or services they would like to provide.

Importance of this research:

This research is important because psychiatric hospitalization carries severe social and legal consequences, particularly for women in Poland where in public opinion (2002, 2005 Reports of the Centre for Social Survey) psychiatric hospitalization diminishes women's capacity to fulfill care-giving roles. Thus, the history of psychiatric hospitalization may affect women's legal position and undermine their legal claims in custody, divorce, and gender violence criminal cases.

Participants selection:

You are being asked to participate in this study because of your involvement in the process of involuntary admission and of your knowledge about the organization and the functioning of involuntary admission in Poland. The purpose of this interview is to learn about your work activities involved in processing involuntary admission cases, institutional work routine, material conditions in which practitioners do your work, and challenges they encounter in your practice due to the organization of your work.

If you agree to participate in this research, your participation will include an audiotaped conversation that will be approximately between one to two hours at a time and place mutually convenient. Interviews will be audio taped. Afterwards the taped

conversations will be transcribed into note form. All identifying information (such as names used during the interview, or other identifiable references) will be omitted from the transcript. The tape will be kept in a secure location and will be available only to the researcher.

Voluntary participation:

Your participation in this research is completely voluntary. If you decide to participate you may withdraw from the study at any time without any consequences and without any explanation. If you withdraw your data will not be cited in the research findings unless you give me permission to use that data.

On-going consent:

To make sure that you continue to consent to participate in this research, each following time you participate in research activities I will ask you that review the initial consent form and to affix an additional dated signature to it. I will ensure that you are aware of your right to decline further participation at any time.

Anonymity and confidentiality:

I will take steps to protect confidentiality by providing in my writing anonymized accounts of events e.g. not referring to informant's name or other characteristics that could provide identifiable details. In my field notes and in my writing I will refer to informants in generic terms such, as a doctor, a nurse, etc. Your name will be kept confidential. In case you provide a story/narrative that is particularly relevant for the understanding of the process or institutional arrangements they will be given a fictional name in the writing of that narrative. However, there are limits to full confidentiality due to the referral procedure (informants help identify others suitable for interviewing).

The context of research due to the involvement of institutions that are limited in numbers in Poland may cause a limitation to full confidentiality. In order to ensure your anonymity I am planning to expand my research sites to more than one court or a psychiatric clinic. In addition to it, a description of the location of the research site will be provided also in generic terms in relation to sites' geographical location, for example a court in in the southern-eastern Poland. Contextual details will be changed or omitted to provide anonymity of the involved institutions.

Inconvenience:

Participation shall not cause inconvenience to you. The only inconvenience may include the time required to participate in the initial interview or any follow up interviews should they be required.

Risks:

There are no known or anticipated risks to you related to your participation in the research.

Potential benefits of the research:

By exploring complex relations between professional practices, organization of psychiatric and legal systems, and economic and social processes, I aim to provide

meaningful assessment of the practice of Polish mental health law in the context of women's admission to psychiatric hospitals. Specifically I will try to map elements of that process which may or may not work for the benefits of women when broader (emotional, psychical, material, legal and social) needs are taken into consideration.

Dissemination of results:

It is anticipated that the results of this study will be shared with others in the following ways: dissertation and/or published articles or a published monograph, presentations at scholarly meetings or preparation of policy report.

Disposal of data:

The data will be stored in a locked cabinet in my residence and on her personal (with password) until the completion of the Ph.D. dissertation and publication of article/monograph. The consent forms, tapes, and transcripts will be kept separately to ensure anonymity. After five years post the completion of the dissertation all data will be digitalized, paper copies of interviews will be shredded. The electronic files will be stored in a locked cabinet in the residence of the investigator's residence.

Contacts

Individuals that may be contacted regarding this study include Ms. Doll, the principal investigator, and the project supervisor, Prof. Maneesha Deckha. Contact information for both has been provided on page one of this consent form.

In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study, that you have had the opportunity to have your questions answered by the researchers, and that you agree to participate in this research project.

Name

Informant Signature

Date

Request for the future use of data:

Given the richness of the observations and interview data, I plan in the future to re-visit all data at some point to see how the processes have shifted over time and to see the impact of any legal changes on the practice of civil commitment. I would anticipate that future analysis would focus on the same theme, that is, civil commitment. However, I cannot say for sure. For example, given the way in which laws change, it may be appropriate to re-visit these data to see how civil commitment changes over time to a process involving a different set of professionals in emergency situations. In this sense,

the data would be analyzed in a comparative sense. So, the data could possibly be analyzed in other contexts.

Please select statement:

I agree to the use of my data in future research: _____ (Participant to provide initials)

I **do not** agree to the use of my data in future research: _____ (Participant to provide initials)

I agree to be contacted in the event that my data is requested for future research:
_____ (Participant to provide initials)

A copy of this consent will be left with you, and a copy will be taken by the researcher

National Level Consent Form

REVISED JUL 26 2012

APPENDIX 3(C): Participant consent form for participants (national level)

Consent for participation in formal research interviews

You are being invited to participate in a study entitled **Law, texts, and women's madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland** that is being conducted by Agnieszka Doll.

I am a doctoral student in the Faculty of Law at the University of Victoria and you may contact me if you have further questions by phone 536 308 232 or by e-mail at zajacz@uvic.ca or amzajaczkowska2@gmail.com My research is being conducted under the supervision of Professor Maneesha Deckha (Faculty of Law) and you may contact her at 250-721-8175, or by e-mail at mdeckha@uvic.ca. University of Victoria Graduate Studies, University of Victoria European Union Centre of Excellence, and Association of Women in Slavic Studies' grants fund this research.

Purpose of this research:

My research aims to explicate ways in which the legal process of involuntary admission to psychiatric hospitals in Poland is practiced in cases of women and how this practice is organized by ideological discourses, institutional arrangements and related work routine, professional knowledge as well as broader social, political, and economic processes, among other factors. Through my ethnographic study I seek to explore how the process actually happens within the context of lived actualities of psychiatric and legal practitioners work. Yet, the goal of my analysis is not to judge how professionals do their work but instead I am interested in understanding how the work professionals do is organized and coordinated in a way that may neither serve women's interests and needs nor allows professionals to provide quality of care or services they would like to provide.

Importance of this research:

This research is important because psychiatric hospitalization carries severe social and legal consequences, particularly for women in Poland where in public opinion (2002, 2005 Reports of the Centre for Social Survey) psychiatric hospitalization diminishes women's capacity to fulfill care-giving roles. Thus, the history of psychiatric hospitalization may affect women's legal position and undermine their legal claims in custody, divorce, and gender violence criminal cases.

Participants selection:

You are being asked to participate in this study because of your involvement in the standardization and organization of the process of involuntary admission in Poland. I am particularly interested in the legal aspect of this process, and the structural and institutional arrangements and trans-local coordination that impact the decision-making processes and professional practice at the local level.

If you agree to participate in this research, your participation will include an audiotaped conversation that will be approximately between one to two hours at a time and place mutually convenient. Interviews will be audio taped. Afterwards the taped

If you agree to voluntarily participate in this research, your participation will include your participation in my observations of work processes and in informal conversation. During my observations I may engage with informal conversations with you to gain initial insights about your knowledgeable engagement in institutional processes. Such conversation will primarily focus on your work related to the course of involuntary hospitalization. Formal interviews may be scheduled by appointment in later time.

Voluntary participation:

Your participation in this research is completely voluntary. If you decide to participate you may withdraw from the study at any time without any consequences and without any explanation. If you withdraw your data will not be cited in the research findings unless you give me permission to use that data.

Ongoing consent

To make sure that you continue to consent to participate in this research, each following time you participate in research activities I will ask you to review the initial consent form and to affix an additional dated signature to it. I will ensure that you are aware of your right to decline further participation at any time.

Anonymity and confidentiality:

I will take steps to protect confidentiality by providing in my writing anonymized accounts of events e.g. not referring to informant's name or other characteristics that could provide identifiable details. In my field notes and in my writing I will refer to informants in generic terms such, as a doctor, a nurse, etc. Your name will be kept confidential. However, in case you provide a story/narrative that is particularly relevant for the understanding of the process or institutional arrangements they will be given a fictional name in the writing of that narrative. However, there are limits to full confidentiality due to the referral procedure (informants help identify others suitable for interviewing).

The context of research due to the involvement of institutions that are limited in numbers in Poland may cause a limitation to full confidentiality. In order to ensure your anonymity I am planning to expand my research sites to more than one court or a psychiatric clinic. In addition to it, a description of the location of the research site will be provided also in generic terms in relation to sites' geographical location, for example a court in in the southern-eastern Poland. Contextual details will be changed or omitted to provide anonymity of the involved institutions.

Inconvenience:

Participation in the observation or informal conversation shall not cause inconvenience to you. I will put in effort not to interrupt your workplace duties or work activities.

Risks:

There are no known or anticipated risks to you related to your participation in the research.

Potential benefits of the research:

By exploring complex relations between professional practices, organization of psychiatric and legal systems, and economic and social processes, I aim to provide meaningful assessment of the practice of Polish mental health law in the context of women's admission to psychiatric hospitals. Specifically I will try to map elements of that process which may or may not work for the benefits of women when broader (emotional, psychical, material, legal and social) needs are taken into consideration.

Dissemination of results:

It is anticipated that the results of this study will be shared with others in the following ways: dissertation and/or published articles or a published monograph, presentations at scholarly meetings or preparation of policy report.

Disposal of data:

The data will be stored in a locked cabinet in the principal investigator's residence and on her personal computer (with password) until the completion of the Ph.D. dissertation and publication of articles/monograph. The consent forms and field notes will be kept separately to ensure anonymity. Five years after the completion of the dissertation all data will be digitalized, paper copies of interview and field notes will be shredded. The electronic files will be stored in a locked cabinet in the residence of the investigator's residence.

Contacts:

Individuals that may be contacted regarding this study include Ms. Doll, the principal investigator, and the project supervisor, Prof. Mancesha Deckha. Contact information for both has been provided on page one of this consent form. In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study, that you have had the opportunity to have your questions answered by the researchers, and that you agree to participate in this research project.

Informant Signature

Date

Request for the future use of data:

Given the richness of the observations and interview data, I plan in the future to re-visit all data at some point to see how the processes have shifted over time and to see the impact of any legal changes on the practice of civil commitment. I would anticipate that

future analysis would focus on the same theme, that is, civil commitment. However, I cannot say for sure. For example, given the way in which laws change, it may be appropriate to re-visit these data to see how civil commitment changes over time to a process involving a different set of professionals in emergency situations. In this sense, the data would be analyzed in a comparative sense. So, the data could possibly be analyzed in other contexts.

Please select statement:

I agree to the use of my data in future research: _____ (Participant to provide initials)

I **do not** agree to the use of my data in future research: _____ (Participant to provide initials)

I agree to be contacted in the event that my data is requested for future research: _____ (Participant to provide initials)

A copy of this consent will be left with you, and a copy will be taken by the researcher

Patient Observation Consent Form

<p>REVISED JUL 26 2012</p>

APPENDIX 3 (E): Patients consent script

Patient's consent for participation in observations

My name is Agnieszka Doll and I am a graduate student in the Faculty of Law at the University of Victoria. I am conducting a study entitled Law, texts, and women's madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland. If you have further questions you may contact me by phone at +48 536 308 232 or by e-mail at zajacz@uvic.ca or my supervisor, Professor Maneesha Deckha by phone at +1 250 721 8175, or by e-mail at mdeckha@uvic.ca

Purpose of this research:

- The aim of my research is to learn how the process of involuntary admission of women happens in practice. I will try to map what elements of this process may or may not serve women's interests and needs or/and prevent professionals to provide desirable quality of services.

Importance of this research:

- My study will benefit a broader group of involuntarily admitted patients. Psychiatric hospitalization can have severe consequences on person's social position and identity due to the stigma attached to mental illness. Furthermore, a person's legal standing can be scarified as law assesses person's rights bearing capacity on mental capacity as a result of involuntary hospitalization.

What is involved:

- If you agree to voluntarily participate in this research, I will observe your meeting with the doctor/judge/personnel to understand how the process of civil commitment is preceded and how your concerns and stories are written up into institutional forms. The focus of my observation is not to learn about your health concerns but rather to understand how your interaction with the doctor/judge/personnel is occurring in reality and is guided by texts and how professionals inscribe the reality of your everyday life into institutional standardized forms.
- My observations will be recorded in my field notes.

Voluntary participation:

- Your consent to this observation is completely voluntary. You may withdraw your consent at any time without any consequences or without any explanation. If you withdraw from the study your data will not be cited in the research findings unless you agree to it. The field notes of the observation and conversations will be destroyed unless you agree to have the previous data that involve you to be used in my research in spite of your withdrawal. In cases where the observed events involved also other informants, upon your request and with your help I will find and deleted statements that were made by you.

On-going consent

separately to ensure anonymity. Five years after the completion of the dissertation all data will be digitalized, paper copies of interview and field notes will be shredded. The electronic files will be stored in a locked cabinet in my residence.

Contacts

- Individuals that may be contacted regarding this study include Ms. Doll, the principal investigator, and the project supervisor, Prof. Maneesha Deckha. Contact information for both has been provided on page one of this consent form.
- In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).
- Your verbal agreement indicates that you understand the above conditions of this verbal consent and that you have had the opportunity to have your questions answered by the researcher and that you agree to participate in this research project.

Request for the future use of data:

- I plan in the future to re-visit all data at some point to see how the processes have shifted over time and to see the impact of any legal changes on the practice of civil commitment. I would anticipate that future analysis would focus on the same theme, that is, civil commitment. However, I cannot say for sure. For example, given the way in which laws change, it may be appropriate to re-visit these data to see how civil commitment changes over time to a process involving a different set of professionals in emergency situations. In this sense, the data would be analyzed in a comparative sense. So, the data could possibly be analyzed in other contexts.

Please select statement:

I agree to the use of my data in future research:

I **do not** agree to the use of my data in future research

I agree to be contacted in the event my data is requested for future research:

A copy of this consent will be left with you

Appendix D – Data Collection Materials

Interview Questions: Local Level

APPENDIX 2(A): Data Collection Methods

Sample Questions – local level

Law, texts, and women's madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland

Participant's position:
Institutional affiliation:

*NOTE: The questions will be tailored to reflect the participants' role. There is not a specific order in which those questions may be asked in the practice of interviews or informal conversations.

Position:

1. How long have you worked in the psychiatric care/judicial system?
2. What is your position in the system of psychiatric care/judicial system?
3. How long have you worked in this position?
4. What are the responsibilities attached to your position?

Tasks:

5. Are you involved in the process of involuntary commitment?
6. How are you involved?
7. What do you do as a part of your involvement?
8. If you were to teach me as an intern assigned to you what would you say that I need to know to do the work involved in the civil commitment properly?

Follow up Questions:

- a. How would I know what to do?
- b. How would I know to do things in a specific way?
- c. What about if I get confused, who do I consult with? Who do ask for assistance?
- d. What sources should I consult?

Forms:

9. Do you need to fill out any forms as a part of your duty?
10. What is the role of this form in the process of civil commitment?

11. If you were to teach me as an intern assigned to you what would you say I need to know to fill out this/these form/s?

Follow up Questions:

- a. How do I know how to fill out the blanks on the forms?
 - b. Where do I get a copy of this form?
 - c. Where do I pass it afterwards?
 - d. How do I know that I need to fill out this form?
12. Can I see how you fill this form out in practice?
 13. Do you know who has access to this form later?
 14. Have you ever had problems with filling out this form?
 15. Do you remember when the first time was that you were asked to fill out this form?

Summary:

16. Is there anything more that you think will be important for me as an "intern" to know about the civil commitment process?

Interview Questions: National Level

APPENDIX 2(B): Data Collection Materials

Sample Questions – national level

Law, texts, and women's madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland

Participant's position:
Institutional affiliation:

*NOTE: The questions will be tailored to reflect the participants' role.

Position:

1. What is your position in the system of psychiatric care/judicial system?
2. What are the responsibilities attached to your position?
3. How long have you worked in the psychiatric care/judicial system?
4. How long have you worked in this position?

Tasks:

5. Are you involved in the process of involuntary commitment?
6. How are you involved?
7. What do you do as a part of your involvement?

Texts:

Structural arrangements:

8. What polices/law/texts you would list as important to understand the organization of the psychiatric/judicial system?
9. What policies/laws/texts do I need to consult to understand the organization of the civil commitment process?

Standardization:

10. How are those polices implemented internally? Is there any internal guidance for professionals?
11. What forms come to you from local sites?
12. What is the role of those forms? What are they used for?
13. Who designs them?
14. How do people know how to use and fill them?

Interview Progress Report

APPENDIX 2(D): Data Collection Materials

Interview progress report

Law, texts, and women's madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland

* This research log will be filled out daily to record interview and informal conversation activities. This will serve as a calendar that will help me locate the course of action of my research and situate in context the activities to which I will refer in the the writing up phase.

Date and Time Duration of episode	Type of interaction	Location/Brief Site Description	Subject(s)- Who was present?	Comments

Reflexivity/Transparency Log Form

APPENDIX 2(E): Data Collection Materials (observation tools)

Reflexivity/transparency logs

Law, texts, and women's madness: An institutional ethnography of psychiatric emergency admission and civil commitment in Poland

This research log will be filled out daily to record my decisions/research concerns. These logs will serve to account for my decisions as a researcher and thus increase transparency and accountability of my research.

Date and Time	Type of interaction	Decision/Activity	Problems encountered	Comments