

Defender, Spokesperson, Therapist: Representing the True Interest of the Client in Therapeutic Law

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Abstract

The aim of this article is to analyse the role of the legal representative in therapeutic law, specifically in Swedish administrative court hearings relating to compulsory care. Data are collected from three types of cases where a health or social welfare authority argues that it is necessary to apply coercion to a citizen: The Care of Young Persons (Special Provisions) ACT (LVU), the Care of Alcohol and Drug Abusers (Special Provisions) Act (LVM) and the Compulsory Psychiatric Care Act (LPT). The data consist of audio-recordings from 39 hearings, supplemented by 28 interviews with participants in these hearings, and court documents. Three primary roles of the legal representatives are identified: defender, spokesperson and therapist. We show how the primary role of the attorney becomes that of the spokesperson, but also that the role of the therapist takes precedence over that of the defender.

1 Introduction

In a democratic state, a citizen has the right to legal representation if she faces a legal procedure where her liberty is at stake. In this article we explore the workings of such legal protection in the context of *therapeutic law*, i.e. legislation and legal practice that is designed to facilitate for authorities to provide treatment or other support to individuals perceived to be in need (Bean, 1980; Hollander & Marklund, 1983; Sjöström, 1997).¹ This focus on the welfare of the individual is reflected in legislation, but also in legal processes, e.g. in arranging special courts or tribunals to manage cases involving psychiatric patients or young offenders.

The specific context of our analysis is Swedish administrative court hearings relating to coercive interventions. We examine three different kinds of cases where a health or social welfare authority in Sweden argues that it is necessary to apply coercion to a citizen: the Care of Young Persons (Special Provisions) Act (LVU), the Care of Alcohol and Drug Abusers (Special Provisions) Act (LVM), and the Compulsory Psychiatric Care Act (LPT). When an application for coercive intervention is filed according to any of these acts, the citizen affected is entitled to a legal representative. However, the role of this legal representative is quite different to what is the case in ‘normal’ criminal or litigation cases, which make up the majority of instances when lawyers represent clients in court proceedings. Firstly, the case is set in a *therapeutic* context where the well-being of his/her client is the very reason for the court hearing. Should the legal representative really ‘defend’ against measures that are designed specifically to benefit his/her client? Secondly, compulsory care is often applied partly because the client is seen to be unfit to decide what is in her own best interests. Thus, the legal representative may face a dilemma in interpreting directives from the client.

1 The notion of therapeutic law is similar to that of therapeutic jurisprudence as described in Wexler (1990).

In Sweden, there are no strict formal requirements that qualify a person to become a legal representative. However, almost exclusively, lawyers will be appointed as legal representatives in therapeutic cases. The obligations of the representative are only partly stipulated in legislation. Various laws specify that the attorney should 'protect the interests of the client', 'gain his/her confidence', 'make his/her assess his/her own situation realistically', but also help the client 'understand the legitimacy and purposefulness of decisions that are made'. The law also refers to the ethical standards of the Swedish Bar Association as a guideline. In these guidelines, the lawyer's first priority should be to 'protect the interests of the client'. The meaning of 'the interest of the client' is not further defined. These guidelines were designed primarily with criminal and civil litigation cases in mind, a context with no self-evident relevance for therapeutic law. It seems that legal representatives will face a conflict between therapeutic values of helping those in need and legal values of preventing undue coercive intervention.

Boccaccini, Boothby and Brodsky (2004: 213), writing in the context of criminal law, observed that until recently our knowledge of the working relationship between attorneys and clients has been largely anecdotal and descriptive. Similarly, the literature on therapeutic law (and therapeutic jurisprudence) has seldom explicitly focussed on the role of legal representatives. In their study of a mental health court in Florida, Boothroyd, Poythress, McGaha and Pettilä (2003: 67) found that 'there is little that reflects traditional "lawyering" as the attorneys are relegated to relatively minor roles in the hearings'. Taking a child perspective, Masson and Winn Oakley (1999) described how solicitors and guardians *ad litem* failed to fully protect the legal rights of children within the legal process, and also how children frequently were frustrated from not being provided with adequate information about the legal situation. Mattsson (2002) has similarly found that legal representatives of Swedish children seldom inform their clients that the information they provide their social workers with may be used as evidence in support of coercive intervention in legal proceedings. Regarding mental health law, several authors have noted how legal representatives avoid taking an adversarial approach to the cases, instead favouring a more therapeutic point of view (Hiday, 1982; Sjöström, 1997; Warren, 1982). Decker (1987) provides a rare example of attorneys actually performing adversarial questioning of psychiatrists. However, these attorneys are strongly disadvantaged in the argument because of psychiatrists' monopoly over organisationally-situated knowledge about patients' behaviour and other biographical evidence.

This article aims to analyse the role of the legal representative in therapeutic law, specifically in administrative court hearings relating to compulsory care. We assume that attorneys are affected by organisational, legal and ethical factors. This will most likely put the attorney in a position of conflicting roles. How do attorneys handle conflicting tasks during the proceedings? In particular, we are interested in what it means to represent the client.

2 The Practical Context

Administrative courts in Sweden usually do not hold hearings. Decisions are based primarily on documents. Cases about compulsory care make an exception in that hearings are mandatory. However, the hearings are only complementary to the written documents. Technically, hearings are treated as adversarial. The *official party* is the authority who files the application for coercive intervention – either a chief psychiatrist or a social welfare board (typically represented by a social worker or sometimes a lawyer assisted by a social worker), whereas the *citizen party* is the person whom the application is about.

To understand the work of attorneys, it is not enough to know the formal rules guiding the legal proceedings. We also need to take into account how participants in the hearings define the situation (Goffman, 1959), an enterprise that takes place in the realm of everyday legal practice. This means that it becomes important to realise what extra-legal tasks the legal representative is facing. Legal representatives participate in a *community of practice* where a complex mix of legal, organisational, cultural, professional, ethical and other circumstances all have an impact on how individual cases will be approached (Mather, McEwen & Maiman, 2001).

Aside from our main endeavour to understand the meaning of representing the client, two tasks appear central to the attorney's undertaking: to make the client satisfied and to contribute to making the hearings run efficiently. The first task is about making the client feel that the attorney has done his/her best. This is particularly important in cases such as these, where clients only occasionally end up 'winning' the case. Note that what satisfies a particular client may have nothing at all to do with the attorney's stated legal function. The attorney also has to acknowledge that he/she is part of a legal system. Therefore, the second central task is to facilitate the legal process. The attorneys need to demonstrate to others that they fulfil their part in safeguarding the legal rights of the client. But they also have to adapt skilfully to the practical and organisational circumstances of the hearings, e.g. time constraints. Attorneys need to be responsive to expectations from other professional participants, not the least because the court decides on which attorneys to assign in future cases.

Looking at the attorneys' work from this practice-oriented perspective, we realise that there may be conflicts between different tasks: the attorney may define the client's interest in a fashion that obstructs the efforts to satisfy the client; if the attorney represents the interest of the client by stubbornly questioning everything put forth by the adverse (opposing) party, the court hearings may become too time- and resource-consuming.

2.1 *Representing the Best Interest of the Client*

We have identified three crucial aspects of what it means to represent the client:

- 1) to 'win' the case (Defender)
- 2) to give voice to the client (Spokesperson)
- 3) to aim for the 'best outcome' (Therapist)

The roles we have attached to each of these alternatives should be regarded as ideal types created for analytical purposes. In reality, these roles overlap. An attorney may move between different roles at different stages of the process. Moreover, the very same act may be consistent with two or three of these roles at the same time.

2.2 *Winning the Case – the Defender*

In criminal cases, it is usually taken for granted that the attorney's primary task is to achieve an outcome where the defendant is declared 'not guilty' (Silbersky, 1995: 46). Whether or not the client is guilty of the crime for which he/she is accused is not particularly relevant in this perspective. The defender serves his/her function in the legal system by aggressively fighting for the legal rights of the client and the possibility that the client is innocent. The defender uses his/her creativity to question evidence and arguments put forth by the adversary. The defender can safely ignore a more balanced approach knowing that someone else – a prosecutor – will fulfil the role of persuading the court that the defendant is guilty. In therapeutic law, the equivalent approach would be for the legal representative to always strive towards demonstrating that the arguments of the official party (social worker or chief psychiatrist) fail to satisfy the necessary legal criteria. The defender should therefore look for any flaws in the documentation and try to persuade the court to dismiss the application for compulsory care. This approach takes the adversarial relation between the parties seriously. If the adverse party has done a good enough job, the court will still come to the right decision if compulsory care is called for. A difference between therapeutic law and criminal law is that the outcome in court is either/or in the former: there is no room for the defender to look for a 'second best' outcome such as admitting to a lesser offence, or to try to achieve a shorter sentence by referring to mitigating circumstances. To other participants, a skilled defender can be quite annoying. In her study of Mental Health Tribunals in England and Wales, Perkins (2003: 73) reports that tribunal presidents generally expected legal representatives to take such a role. In the context of child protection hearings in England, Masson and Winn Oakley (1999) came to the contrary finding that raising critical issues in court was seen as counter-productive as it might delay the therapeutic intervention and increase conflict with social services (cf. Holstein, 1993).

2.3 *Giving Voice to the Client – the Spokesperson*

By giving voice to the client, we mean situations where the attorney's actions are guided by what the client says, regardless of how this affects the legal outcome. For an individual who stands before the court, it may be more important to feel that he/she has presented his/her own version of a course of events, regardless of the legal relevance of his/her story. This may be problematic if the attorney believes that the client's wishes obstruct the chances of winning the case. In such cases, the attorney has three possible lines of action: 1) to try to persuade the client to change his/her strategy; 2) to follow the directions of the client; or 3) to resign.

Within the context of Swedish legislation, Ebervall (2002) raises the question of to what extent the public defender has to follow the instructions of the client in criminal cases. She points to two types of dilemmas. The first arises when the client admits or hints that he/she is guilty but wants to plead innocent in court. A somewhat opposite situation occurs when the client admits committing a crime in order to protect someone else. Ebervall observes that different attorneys approach such situations in different ways depending on their value base. In therapeutic law, the spokesperson role contains special dilemmas, since the client's ability to form rational judgements cannot be taken for granted.

2.4 Aiming for the Best Outcome – the Therapist

The court's ruling in a case concerning compulsory care is critical to the citizen party. Therefore, attorneys may ask themselves: what outcome is preferable? This question may be seen as particularly relevant when the attorney believes the client to be incapable of rational decision-making. A possible, but probably rare, parallel in criminal cases would be a public defender who works under the assumption that serving a sentence would be beneficial as a means for the client to expiate his/her crime. The therapeutic perspective can also be extended to a more communal level, where concerns about others may become relevant to the legal representative. The existence of such a therapeutic approach has been demonstrated in research on court proceedings relating to compulsory psychiatric care. For example, Sjöström (1997: 235-240) discusses an example where a legal representative refrains from encouraging a client to appeal a decision, even if the attorney himself believed that the decision was highly questionable. Regarding child protection cases, Hollander (1985) has shown how legal representatives of children generally share the views of the social authorities. This explains why these attorneys seldom challenged evidence and statements from experts or contributed with new evidence. However, when the children were older than 15 years of age, the attorney's approach seemed to shift towards being a defender.

3 Methodology

Primary data for our analysis consist of 28 interviews (six legal representatives, four judges, ten official parties, four citizen parties, two court-appointed psychiatrists and two lay judges) and 39 court hearings (12 LPT, 13 LVM, 14 LVU), gathered from two different county administrative courts in Sweden. A total of 53 legal representatives appear in the hearings.² All written documents used and produced by the courts have been used as complementary data.

The two courts were chosen to represent on the one hand a large metropolitan area and on the other a mid-sized city. We have not observed any noteworthy differences between the different courts. Legal cases have been

2 The number of legal representatives exceeds the number of hearings because children and parents have different representatives in child protection cases.

sampled by including all cases that we have been able to record from each court after randomly chosen starting points.

Analysis has been carried out using the computer software NVivo. Analytical categories have mainly been derived from theory (the three roles of attorneys and four interpretive repertoires). To illuminate how attorneys interact with other participants in court, we have applied a framework inspired from discourse psychology (Potter & Wetherell, 1987). In particular, we have analysed the contributions of the attorneys in terms of interpretive repertoires (Gilbert & Mulkay, 1984; Wetherell & Potter, 1992). This approach was chosen to highlight concrete levels of conversation, to capture how participants strategically choose certain forms of speech to achieve goals, such as influencing others and presenting themselves as skilful. We are thus interested both in *what* participants say and *how* they say it. Aside from transcriptions of the actual hearings, interviews with the participants provide an understanding of how participants conceptualise the role of legal representatives.

We have followed established ethical procedures including informed consent and changing the names of participants and places. The ethical aspects of the research were considered when the Swedish Council for Working Life and Social Research (FAS) decided to fund the project (Project No. 2001-1054).

4 The Practice of Legal Representation

4.1 The Court Room Context

Before going into the analysis of the attorneys, it is necessary to provide some background about the context of the court hearings. Usually, the court appoints a legal representative to the citizen party, although some citizen parties occasionally apply for a particular attorney. The legal representatives of minors in child protection cases have a proxy status, meaning that they have increased powers to act on behalf of the client.

The attorney's mission is circumscribed by various practical obstacles. One of the attorneys we interviewed observes that there are implicit rules of conduct that attorneys need to abide by. It is important that the court's timetable is kept, which means that an attorney cannot be overly litigious. All of our attorneys stress the time constraints. Often, there is little time between being appointed to the case and the hearing. In psychiatry and drug abuse cases, there is usually not time for more than a read-through of the documents and at best a brief meeting with the client prior to the hearing. However, in some child protection cases, the attorneys are provided with better opportunities for preparation. The attorneys are also critical of their fees being too low to allow for ambitious involvement. One attorney complained that the court does not take into account that it may take time to build a relation and gain confidence with people who suffer from mental illness.

It is often difficult for the legal representative to challenge information in the written documentation. Every attorney we interviewed found it particularly difficult to criticise medical assessments. The official party generally has a more extended, personal knowledge of the case, which puts the attorney at disadvantage. In therapeutic law, this gap of information may be further widened

since the client is not always capable of assisting his/her legal representative with relevant facts or opinions.

Child protection and drug abuse cases are held at the courthouse, whereas psychiatry hearings are held in a conference room at the hospital. The setup is quite similar, with all participants sitting around a large, oval or rectangular table. The court resides on one side of the table, with other participants scattered along the other side. The hearings usually follow a relative straightforward structure of phases.

- 1) Introduction
- 2) Declaration of claims
- 3) Presentation of the parties' arguments
- 4) Questions are asked
- 5) Statement from the appointed psychiatrist (only in psychiatry hearings)
- 6) Closing arguments

There are some differences between types of cases. The court always appoints an independent psychiatrist in psychiatry hearings. In child protection hearings, each parent and the child may have different attorneys. Table 1 shows the considerable difference in the length of hearings:

	Child protection	Drug Abuse	Psychiatry
Shortest	20 min	20 min	20 min
Average	90 min	35 min	30 min
Longest	5 hrs	1 hr 15 min	50 min
Time estimate for attorney's fee	8 hrs	3 hrs 45 min	1 hr 40 min

Table 1. Length of hearings and time estimates for attorneys' fee.

The child protection cases stand out as the longest. Note also the difference in time estimates for drug abuse and psychiatry cases.

	Child protection	Drug Abuse	Psychiatry
Legal representative	40	33	22
Citizen party ⁴	23	26	24
Official party	26	26	21
Appointed Psychiatrist	-	-	19
Judge	7	15	9
Family/Others	4	0	5
³ Based on 32 hearings due to technical problems. ⁴ In 3 hearings (one of each type), the citizen party was not present.			

Table 2. Percentage of number of words of participants within each type of case.³

When it comes to how much different participants talk, Table 2 reveals that the different types of cases appear quite similar. The citizen party, in conjunction with his/her attorney, is responsible for about half of the amount of talk in the hearings. The higher figure for attorneys in child protection hearings is because there are several representatives.

We have identified four interpretive repertoires applied by attorneys in these hearings: the defending, voice-giving and therapeutic repertoires correspond to the roles discussed earlier. In addition, we have identified a legalistic repertoire, which we will describe in conjunction with the defending repertoire. *The defending repertoire* is characterised by challenges of the official party's argumentation with the goal to relieve the citizen party from coercion. When the attorney makes use of legal notions and refers explicitly to legal criteria, he/she applies a *legalistic repertoire*. When using the *voice-giving repertoire*, the attorney reiterates viewpoints that the client wants to highlight, regardless of whether they are beneficiary to 'winning' the case. The *therapeutic repertoire* is defined by the attorney acting upon his/her own assessment of what the client needs. The repertoires are not mutually exclusive and attorneys may apply different repertoires simultaneously.

4.2 The Defender

The defending repertoire appears only occasionally. In fact, it is rare that legal representatives pose any questions at all to official parties. Two citizen parties complained during the interviews that they were disappointed with the way in which their representatives had defended them. They felt that the attorneys had failed to pursue important aspects of their cases. One attorney illustrates how difficult it is to apply a defending repertoire when telling about a hearing in which she tried to challenge the social welfare board's documentation of a medical assessment.

LVM Concerning Mr. Martin Sjöberg, Attorney Tina Pellbrant

Attorney: I think it's easier to get through in child protection cases. The circumstances are better. In the psychiatry cases, you object that there is no severe mental disorder, they rarely listen /.../ In one child protection case we actually tried to raise a medical objection that there was no evident risk at hand. Even though we felt that we could indicate threshold values, certificates from the hospital that thresholds were normal, despite that we didn't succeed in making the argument. Then you feel what else can I do? It's enough for the social welfare board to simply say that there has been a certain number of visits to the doctor and a number of admissions and so on. But the concrete stuff we submitted in terms of blood samples, liver status, it wasn't considered. Without even refuting it. At those times I have to say it's frustrating to be a legal representative.

When attorneys do raise issues from the documents, they generally do so by asking their clients questions. The following examples are gathered from a drug abuse case (LVM concerning Mr. Ove Jonsson, attorney Sven-Erik Johansson):

There has been talk about sniffing glue in the documents. What about that, is that something you have exercised?

There is information in the documents that you acquired burns around the mouth in August this year?

And then this issue with alcohol use. There is information in the documents that you use alcohol. That you drink during the weekends. Can you tell us what kind of consumption?

Then there is information also that you've had certain mental problems. For instance, you have been to Bert Grönros at the hospital. Is there a connection between you feeling bad and your drinking?

You admitted yourself to the psychiatric addiction unit in August, according to the documents. What was the reason you did that?

Such questions could possibly be understood as a first step in a defending argument. The answers from the client could be used to challenge arguments and evidence put forth by the official party. But that rarely happens. There is an obvious risk that the way in which open ended questions are asked without follow-up have a rather opposite effect; if clients cannot see the purpose of the questions, their contribution might appear confused and they might also talk about matters that are harmful to their goals. Despite the appearance of 'defence', this method of asking questions seems to fill primarily a voice-giving function.

In the few instances it occurs, the defending repertoire is typically accompanied by a legalistic repertoire characterised by legal language and references to the law and legal criteria. Even though two of the official parties in the interviews criticised attorneys in general for using too many legal terms, we could detect only occasional examples of a legalistic repertoire. When it appears, the legalistic repertoire is used in the short introductory phase in which the parties present their formal claims. However, the legal representatives do not provide any concrete arguments supporting general assertions that particular legal criteria are not met. This means that it is typically quite difficult to discern the legal relevance of contributions from attorneys. In the following excerpt,

which is part of the closing arguments, we can observe a rare example of a more developed defending repertoire:

LPT Concerning Mr. Muhammad Jahri, Attorney Hanna Karlsson

Attorney: Muhammad is ill and he has insight into the fact that he is ill. The court's assignment is to consider his need of care as it is today. Just because someone is ill, because someone has a severe mental disorder, does not mean that this person should be treated involuntarily. There are provisions in the third section that tell us which criteria need to be met in order to approve an application for compulsory care. These criteria are lacking in this case. They lack because Muhammad is not opposed to the necessary treatment. The need of care he needs can be provided on a voluntary basis /.../ We have heard from the appointed psychiatrist that Muhammad lacks an ability to make considered judgements about his need of care. I believe that nobody has listened to what he has said. He has given a clear and lucid account of what his illness looks like and its course and what need of care he has.

In a legalistic repertoire, this attorney begins by stating to the court what legal aspects it ought to consider. The terms 'need of care', 'opposed to necessary treatment' and 'ability to make considered judgements' reference two of the three criteria that are relevant according to the compulsory psychiatric care act. The attorney takes a defending role when questioning the arguments of the official party and their bearing on the legal criteria. When, the attorney explains 'because Muhammad does not oppose...', she makes an allusion to some new and probably vital information that she presented at an earlier stage of the hearing. This exceptional exhibition of defence takes place in one of the two cases where the court denies the application for continued involuntary treatment.

Despite our findings, a few of the official parties complain that attorneys at times adapt too much of a defending role:

Psychiatrist Patrik Engkvist: It's funny when the attorney wants to get the patient out at any cost. Then somehow the consideration that this is a person who needs help just disappears /.../ Occasionally I have felt that it's almost a matter of prestige for the attorney that 'I'm going to win this at any cost'. Then you feel that they somehow miss the target.

We suggest that rather than representing an account of the true state of affairs, such expressions indicate that legal representatives work in a community of practice that is prohibitive of aggressively pursuing the legal rights of citizen parties. Moreover, in cases where the individual attorney assesses the chances to win the case as being remote, he/she cannot – like the lawyer in a criminal case – choose a strategy that involves achieving a 'second best' outcome.

4.3 The Spokesperson

There are many examples of the voice-giving repertoire in the hearings. This repertoire takes two different forms. In the first, attorneys simply pose questions to their clients rather than to the adverse party. The topics attorneys take up with clients appear to have little relevance to the legal decision. The other form of

voice-giving is when attorneys make it visible that they want their clients to tell their stories:

LPT Concerning Ms. Vera Andersson, Attorney Arne Hedman

Attorney: Vera, to avoid any kind of misunderstanding. These points you submitted to the court, is there any of those points you want us to give a little extra emphasis? So you won't feel, like I just said, so you won't feel that there was something that you weren't able to raise, Vera. Because I know how eager you were to really produce a full background.

Citizen party: Yes, exactly this issue with original case files, it's quite interesting I think. Because it's simply wrong, factual errors that arise when they make a little summary. I think the whole picture needs to be lifted, I still think so.

Attorney: And do you think that we have managed to do that now? Do you think that we have managed to produce this now?

Citizen party: Mm, I think so.

By stressing his concern that the client is satisfied with his contribution, the legal representative can demonstrate his commitment in front of the client as well as the other participants. Also, note the personal tone and how the attorney uses the client's first name. Another aspect of giving voice is when the attorneys make it clear that their words are a direct expression of the client's views and wishes. Generally, this occurs in the closing arguments, as in the following case where the entire closing argument is included.

| *LVM concerning Ms. Mari Hansson, attorney Tina Karlberg*

Attorney: Well, yes I suppose I can say a few words in conclusion. You know I have met Mari here since, since the investigation began and we have gone through it together and Mari tells me here that, and what she says today in court, that she has realised the seriousness, and the reading this is no walk in the park, what's in the application and the police reports. But she says, 'I understand that things are bad' and that she has to face the situation. Yet she does maintain that it is too intervening that she has to stay at Bergavik [a treatment home], you know she maintains that she has had a contact at the advice center for quite some time, you know. There have been interruptions, but she has this contact person, Hjördis, you know. And she believes that this has been a good thing and she is prepared to re-establish this relation. And you know she also has this psychiatric contact that she also has seen as positive. And you know, it's Mari's conviction that if she gets that support, and also now considering that she has realised how serious this is and motivation, try to change her situation, so she maintains that this is enough to confront her problems.

Highlighting the client's view can have different effects. In a context where the client's capacity may be questioned, this could be a means to construe the client as an active party in the discussions. It may also possibly bring authority to factual accounts, and remind the court that its decision concerns a real person. A quite contrary interpretation is that the attorney tries to distance herself from the client's statements in a fashion that the client hardly can complain about.

Attorney Tina Pellbrant: Subconsciously you indicate that this isn't my view by saying 'my client wants ...'. That's classic. When you really believe in it or share the client's view, it's very easy to say 'I think' /.../ I don't think that anyone, anytime, has said that 'Oh, I'm so disappointed because I didn't get to speak or say what I thought'. I tend to think that everyone really is quite satisfied with being allowed to speak and present their opinions.

Our interviews indicate that other participants are sensitive to this mode of speaking, assuming that the attorney really believes that his/her client needs compulsory care.

Giving voice to the client may be more relevant in this context of an administrative legal process where hearings are an exception: it provides a stronger reason to allow the citizen party to react to the written material that is the foundation for the court's ruling. The voice-giving repertoire can also have a therapeutic function. The citizen party has been provided with an opportunity to express him-/herself in a public context where people have listened. The flip side is that the agenda shifts from a legal assessment of the evidence to a therapeutically motivated discussion of problems in the citizen's situation.

4.4 The Therapist

In our interviews, several attorneys address how difficult it is to argue against involuntary intervention when they really believe that the client needs help. Two attorneys relate how they try to solve this prior to the hearing by suggesting to the client that he/she ought to take the advice of the social worker or psychiatrist. Another attorney tells us that his strategy in one hearing was to minimise the risk for the client to continue abusing drugs/alcohol. In other words, he felt that his role extended beyond a narrowly defined legal assignment. The therapeutic repertoire sometimes converges with the voice-giving repertoire when attorneys pose questions to their clients.

LPT concerning Mr. Börje Ek, Attorney Arne Hedman

Attorney: And it doesn't work you think on this ward, you don't like it?

Citizen party: No, I don't like it at this ward.

Attorney: No.

Citizen party: Well, you know things were better at the adults' unit at Broby.

Attorney: Mm.

Citizen party: You were allowed to take part in washing the dishes and cooking and everything.

Attorney: Now, that's-

Citizen party: Now, that was nice.

Attorney: What do you do here during the day, are you mostly lying in your room?

Citizen party: No, actually I do go out to smoke.

Attorney: Mm. That's all you do?

Citizen party: It is, it becomes (inaudible) perhaps there are, that's the only thing there is. (Inaudible) Play ping pong upstairs would be fun, but, it's, it's only because I can't see (inaudible) and can play (inaudible). (Inaudible) my sailing boat you know. Out in the sea and worked on it every year, but (inaudible).

Attorney: Mm. Yes, thank you. [to judge:] I'll stop there.

This piece of conversation has an informal and personal character. Following a typical pattern, the questions focus on the client, the content has little relevance for the legal decision and is never related to for example a critical discussion of the purpose of the stay at the treatment home or why involuntary treatment is necessary. The therapeutic role of the attorneys is also identified by other participants:

Social Worker Susanne Elvin: Sometimes you can spot that the attorney believes that compulsory care is the best option. Even if he is sitting there defending. Occasionally we have felt that the attorney has been on our side. Then the client has accepted compulsory care.

Judge Hilding Andrén: /.../ you know, the role of the lawyer is, also, to see to what is best for the client, so to speak. You can't, a lawyer can't take it too far. You know, I've been involved in cases where you realised that he wouldn't manage, it was psychiatric care, well the patient wouldn't manage this, staying as a voluntary. And like you'd imagine he commits suicide the following day, and then, you know, it's like the whole function of the legal representative is misunderstood, so to speak. /.../ here too, the legal representative has a double role, so to speak. /.../ They learn, the legal representatives, they won't pursue things too far.

The judge above seems to hold that experienced legal representatives learn to apply the voice-giving repertoire with a therapeutic purpose. This relieves the attorney from confronting the client with a differing opinion.

When the legal representative takes the therapist role, she indirectly engages in cooperation with the adverse party of the client. Social workers sometimes get in touch with the legal representative before a hearing. One social worker described the benefit of arranging a joint meeting with the client and her attorney. Another example of this collaborative culture occurred after a drug abuse hearing, when the attorney and a social worker jointly tried to calm down the disappointed citizen party. Both pointed out that compulsory care in fact was the best solution.

5 Concluding Discussion

Legal representatives in therapeutic law face expectations on their role that are partly conflicting. We have identified three primary roles, in the hearings expressed as interpretive repertoires. The application of these repertoires is similar between the types of cases. We have shown how the primary role of the attorney becomes that of the Spokesperson, but also that the role of the Therapist takes precedence over that of the Defender. Accordingly, the official party's application for compulsory care was approved in 37 of our 39 hearings (one drug abuse case and one psychiatry case).

The three roles are subtly interrelated. In the vast majority of cases, the legal representative cannot – or will not – persuade the court to reject the application

for compulsory care. The therapeutic role prevents attorneys from pursuing such goals. The main feature of the therapeutic repertoire is the reluctance to pose critical questions to the official party and to challenge evidence and arguments in the written documents. General questions to the citizen party concerning his/her situation and need of care shifts the agenda from the legal cause. Seemingly, the attorneys are thus guided by their own view that clients generally benefit from compulsory care. But if that is the case, the attorneys face a dilemma: How can they reproduce their professional status if their contribution in the courtroom is reduced to largely supporting the arguments of the adverse party of their client? This is where the voice-giving repertoire becomes relevant. Through it, the attorney can make a contribution that satisfies the client's wishes to be listened to. A side effect is that the client is more likely to reconcile with the court's decision to approve of involuntary care. To be able to speak and be listened to is indeed a fundamental democratic right, particularly for people who could be described as disadvantaged (children, the disabled, ethnic minorities etc). The rationale for this is that it provides people with some power to affect their situation. But in the court hearings we have investigated, the information provided by citizen parties seldom has any real effect. The value of being enabled to speak is given only an intrinsic value – whether someone actually listens or is affected is not relevant.

In a previous study of court-appointed psychiatrists' (APs) contributions to psychiatry hearings, we have reached similar conclusions as those regarding the legal representatives (Sjöström, Jacobsson & Hollander, 2002). The APs hardly ever present any genuine challenge to the evidence and arguments from the chief psychiatrists. Instead, APs appear to be occupied with three concerns:

(i) further reinforcing the official party's depiction of the citizen party as mentally ill; (ii) mediating in the conflict between treating psychiatrist and patient; and (iii) giving the citizen party advice in therapeutic matters.

The strong emphasis on the roles of spokesperson and therapist can partly be explained by the practical obstacles to the legal representatives' defending role: (insufficient time for preparation, being disadvantaged in knowledge of the case in comparison with the official party, the attorney's expected part in facilitating the legal procedure etc). But there is also support for claiming that the retreat from a defending role has to do with a culture that is developed within the context of therapeutic law. Contrary to how the North American divorce attorneys studied by Mather et al. (2001) form a professional community of practice, the legal representatives in the Swedish therapeutic law hearings do not appear to form a community of practice among fellow attorneys. Rather, they seem to engage in an inter-professional community of practice together with their adverse parties, court experts and judges. This community of practice rests upon therapeutic and paternalistic values, and regardless of their formal role, professionals work jointly to achieve reasonable solutions to the serious problems faced by the citizen party. It is hardly surprising that such values develop across professional boundaries, given the fact that the legislation that provides the grounds and reason for the hearings is therapeutic in its nature. The formation of values within this inter-professional community may reflect values of the Scandinavian model for a welfare state, with emphasis on state/authority intervention, social rights and open-ended welfare laws (see e.g. Esping-

Andersen, 1990). But given the similar findings from across different welfare models, there are strong reasons to also consider Warren's (1982) assertion that commitment hearings are premised on a common-sense model of mental illness shared by society at large.

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