

**Exploring the Fourth Reality:
Cultural Anthropologists' Reflections on Expert
Witnessing in Asylum Cases**

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ABSTRACT

This thesis seeks to contribute to the small but growing literature on anthropology and expert witnessing by conducting ethnographic research with anthropologists who have worked as expert witnesses. The goal of this project is to illuminate how anthropologists reflect on the production of knowledge, ethics, and their identity in the realm of expert witnessing. Through twelve online questionnaires and six follow-up interviews, this research discusses how ten anthropologists and two political scientists conceived of the “Fourth Reality,” or “the reflexive awareness of the expert witness as an expert witness” (Phillips 2017: 42) throughout the asylum process. This thesis covers: 1) the participants’ beginnings as expert witnesses and their motivations; 2) their feelings on compensation in relation to ethics, motivations, reciprocity; 3) their experiences and role throughout expert testimony including how they are contacted, their views on truth in testimony, and their vulnerabilities as experts during in-person testimony; and 4) their reflections on what happens after a court case including their decisions about whether and how to publish about expert witnessing and their participation in networks of other academics who expert witness in asylum cases. The thesis also considers how they discussed their roles as expert witnesses in relation to their subject positions as researchers in different types of employment and as mostly white professionals who were citizens of the host countries. In the conclusion, I also make suggestions for further research including widening the sample size to gain more understanding of race, ethnicity, and nationality in relation to the Fourth Reality and issues related to compensation for expert witnessing.

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CHAPTER ONE

INTRODUCTION AND CONTEXT FOR THE FOURTH REALITY

Legal reforms throughout North America and Europe during the 1980s that transitioned the asylum process from “behind closed doors” into a more open process increased the need for evidence and expert witnessing. Although the intention of such reforms was to create a more transparent and fair system, the increased need for evidence further complicated the asylum process for asylum seekers as the burden of proof now lies solely with them and they must engage with legal expertise and navigate the legal process though they have may limited means. More so, asylum seekers must do this with the threat of drastic consequences should their story be disbelieved and found not credible. If an asylum seeker has legal representation, their lawyers must regularly seek expert witnesses to ensure the “high-quality representation” needed to clearly and fully articulate and support claims to adjudicators as “adjudicators increasingly demand proof beyond the applicant’s testimony” (Ardalan 2015:1004). Asylum seekers "cannot, for obvious reasons, produce corroborative evidence of their ill-treatment, much less call their persecutors as a witness" (Good 2004: 113). Cultural anthropologists and other academic researchers often serve as country experts who speak to specific sociopolitical and cultural environments that bolster an individual’s claim for credible fear. Asylum courts "depend heavily" upon asylum seekers' credibility and "on the plausibility of their stories" in relation to country reports submitted by expert witnesses (Good 2004: 113). Expert witnesses attempt to “bridge the gap” between generalized knowledge of the country and the asylum seeker’s narrative (Gallagher 2018: 119).

Since the 1980s, the relationship between asylum courts and expert witnessing has strengthened in two ways. First, as asylum courts have transitioned away from basing decisions on generalized country knowledge and an inherent trust in the asylum seeker, expert testimony provides country conditions and "objective evidence" (Berger et. al 2015: 7). Second, asylum seekers and their lawyers use expert testimony to substantiate the individual asylum narrative if documentary evidence for claims of persecution is "insufficient, nonexistent, or imperiled by questions of credibility" due to a climate of suspicion (Berger et. al 2015: 7). Suspicion of fraudulent asylum claims has increased the adversarial nature of asylum courts and has been on

the rise since the 1980s; exacerbated and heightened by 9/11, after which for the next two decades, the path to asylum became more difficult to traverse. So, the need for anthropologists as expert witnesses increased as the asylum process became more evidence-based and adversarial (Ardalan 2015: 1014; Lawrance and Ruffer 2015: 1).

A rise in the use of expert testimony was met with a rise in critical reflections on expert testimony and the stakes involved. Modern states enact sovereignty by determining who is included and excluded in a state's population through processes such as the asylum system. To control these refugee bodies, states tend to reduce them to biopolitical subjects that are nothing more than potentially dangerous bodies (Fassin 2011; Berger et. al 2015; Holmes and Castañeda 2016). The fears and suspicions surrounding asylum seekers culminated in a substantial attack on the asylum system under the Trump Administration. There was even more to lose yet it was more difficult to participate in what many perceived to be a corrupt and broken system. As the United States transitions to the Biden Administration, the asylum process is in limbo. Will the Biden Administration return the process to its original state, not reverse controversial Trump Administration policies, or work to renew and improve the asylum process? Regardless of what happens, it is clear that expert witnesses are faced with critical challenges surrounding their motivations and participation in the asylum process.

This research examines the “fourth reality” of anthropologists who have served as expert witnesses in asylum cases as the need for legal representation and expert witnesses was becoming increasingly relevant and vital to the asylum process. As described by James Phillips (2018: 42), the fourth reality is “the reflexive awareness of the expert witness as an expert witness in a particular situation.” Consequently, how does this reflexive awareness, this “fourth reality,” shape an anthropologist’s approach to serving as an expert witness? Especially in the current political reality, how do anthropologists as ethnographic subjects view their positioning concerning expert witnessing when the “consequences of being disbelieved” carry great weight (Good 2004: 113)?

The goal of this project is to build an ethnographic understanding of anthropologists who serve as expert witnesses through their perceived “fourth reality.” For anthropologists, how does their reflexive awareness of their positioning influence their views on:

- Their relationship to their anthropological training and ethics during expert witnessing

- Their perception of their identity and/or how they represent themselves during expert witnessing
- Their motivations and hesitations to expert witnessing
- Perspectives on compensation
- Their relationship with the law, the asylum process, and global political realities with expert witnessing
- Their relationship to advocacy and applied anthropology

In addition, how does this reflexive awareness, or “fourth reality,” shape an anthropologist’s methods and approaches to expert witnessing that could aid in successfully adjudicating asylum seeker’s claims?

A Brief History of the Asylum Process in the United States

The term “refugee” is a legal status first outlined in the UN’s 1951 Convention Relating to the Status of Refugees and pertains to a person who cannot return to their home country due to a credible fear of persecution.¹ Displaced people become “refugees” if they have crossed international borders and are recognized by a government or the United Nations, while “asylee” describes a person who applies for refugee status in a host country due to a fear of persecution (UNHCR n.d.). Asylum seekers must be outside of their home country to apply for asylum in the host country unless they are stateless or do not hold citizenship. Subsequently, both asylees and refugees must be recognized as such by either a country or an international organization such as the United Nations High Commissioner for Refugees (UNHCR).² However, recognition does not

¹ The 1951 Convention applied mainly to refugees from Europe and excluded African, Central and South American, and Middle Eastern refugees. The U.N. expanded the 1951 Convention in the 1967 Protocol to the Refugee Convention to include those originally excluded i.e. all “non-European” refugees and asylum seekers (Gatrell 2015: 85; Tague 2015). Even with the 1967 Protocol, the U.N. definitions of refugees and asylum seekers did not fully represent the global refugee population. Thus, representative groups from Africa and Central and South America established legal declarations, the 1969 OAU Convention and the 1984 Cartagena Declaration respectively, to address their growing refugee crises.

² Nation-states and the UNHCR also recognize some groups (and occasionally individuals) as “prima facie” refugees, which means “at first appearance” or “on the face of it.” Under this recognition, States and the UNHCR automatically “[acknowledge] that those fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition... individual status determination is impractical, impossible or unnecessary in large-

guarantee a grant of asylum in the host country or resettlement of refugees in a third country. Asylum seekers depend on the host country's authority and a fair asylum process to recognize their status as refugees and allow them to remain.

To qualify as an asylee in the United States one must fit the requirements of a refugee defined in Section 208 of the Immigration and Nationality Act (INA) of 1965, which Congress amended to match the U.N. definitions with the 1980 Refugee Act (Gallagher 2018: 118; NAF n.d.) (See the Appendix A for a detailed timeline of legal acts that affected immigration, refugees, and asylum in the U.S.).³ There are two avenues for obtaining asylum in the United States: affirmatively and defensively.⁴ In the affirmative process, an asylum seeker must apply within one year of entering the United States or at a port of entry through a United States Citizenship and Immigration Services (USCIS) asylum officer—who will ultimately decide on their case—and pass a credible fear interview. If denied asylum through the affirmative process, an asylum seeker will enter deportation proceedings but will have a chance to appeal the decision through the defensive process. An asylum request also may be used during removal procedures as a defense—hence the defensive process—due to a well-founded fear of returning to a home country.⁵ The decision during the defensive process is made by a judge in the Department of Justice's Executive Office for Immigration Review (EOIR). Both decisions are often made arbitrarily and according to the personal experiences, biases, and opinions of the adjudicators as well as the whim of U.S. foreign policy (Berger et. al 2015; Bohmer and Shuman 2015; Einhorn and Berthold 2015; Luongo 2015; Leaf 2018). Those filing for asylum in the US are not granted a lawyer and have to either pay for one or locate pro bono representation. There are full-time,

scale situations. A prima facie approach may also be applied to other examples of group departure, for example, where the refugee character of a group of similarly situated persons is apparent." (UNHCR 2015: 2).

³ Following the Refugee Act, the INA states: "The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

⁴ The affirmative process begins when a person applies for asylum through a USCIS officer by filling out the twelve-page I-589 Form which is only available and must be submitted, in English. The 14-page supplementary pamphlet with instructions and explanations is also only available in English

⁵ If the USCIS denies an asylum application of someone who is undocumented or has an expired visa, they will immediately go into removal proceedings where any information on the I-589 document can then be used as evidence for deportation.

government attorneys who present a defense against an asylum seeker and their claim during defensive proceedings and can sometimes be adversarial. Their job is “to question an expert’s qualifications, sources of information, and opinions about social conditions... and that questioning is often done with aggressive disdain” (Burns 2020: 25). While nonprofit and other organizations “fill the gap” of legal representation, they often provide “confusing and contradictory legal advice” which do not make the asylum process less difficult to navigate (Pine 2020: 203). In 2016, 20.6% of decided asylum cases did not have legal representation, and cases with representation were five times more likely to be granted asylum (TRAC Immigration 2017).⁶

In the academic literature on the asylum process, the "climate of suspicion" refers to the assumptions in the global asylum regime that asylum seekers are inherently untrustworthy and “taking advantage” of a host country (Berger et. al 2015; Lawrance and Ruffer 2015; Holmes and Castañeda 2016; Cohen and Trask 2018; Hepner 2019; among others). Contrary to criminal court’s “innocent until proven guilty,” asylum seekers are “incredible until proven credible” (Smith et. al 2015).⁷ This is due in part to, as stated above, a transition from adjudicating cases with generalized country data to adjudicating cases by assessing the credibility of individual narratives. Individual narratives and experiences as well as impersonal “government reports and data” are no longer sufficient to adjudicate asylum claims (Fassin and Rechtman 2009: 274; Lawrance et al. 2015: 1). Thus, the asylum process became more evidence-based and combative, and adjudicators scrutinize every word and action taken or not taken by asylum seekers (Ardalan 2015: 1014; Lawrance and Ruffer 2015: 1).

Personal narratives and testimonies from asylum seekers are always under scrutiny. As Carol Bohmer and Amy Shuman (2015) term it, "cultural silences" appear in asylum narratives for a myriad of reasons, or gaps, such as post-traumatic stress disorder (PTSD), a lack of understanding on the official's part, the process of interrogation itself, or misinterpretation from an interpreter (Good 2004 and 2007; Bohmer and Shuman 2015: 157; Einhorn and Berthold 2015). Anthony Good (2004; 2007) examines how cultural dissonances about story-telling and

⁶ Adrienne Pine (2020) calls these statistics misleading as most asylum cases by the time they make it to the courtroom have been “cherry picked” by lawyers due to the strength of the case.

⁷ Many academics attribute this discrepancy to the racialized logic of borders and asylum seekers (Holmes and Castañeda 2016; Rosas 2017, 2019; Yeh 2017; Pope and Garrett (2013), among others).

narratives as well as individual opinions on what is "important" can change testimonies over time. However, dissonances or gaps are viewed negatively and judged against asylum seeker's credibility rather than on a poor interpreter, lack of context, issues surrounding trauma, or the mere fact that retold stories are subject to change (Bohmer and Shuman 2015; Einhorn and Berthold 2015). High-profile cases of fraudulent asylum claims, which are more likely to be remembered than non-fraudulent claims, permeate the minds of the public and adjudicators (Berger 2015). In this space, expert witnesses can help mitigate issues surrounding cultural silences, gaps, and inconsistencies (Good 2015).

Beginning in the 1990s, the legislative tone began to reflect suspicions and negative opinions surrounding asylum seekers and immigration in general. Under the Clinton Administration, two controversial policies were passed: Operation Gatekeeper in 1994 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Though the administration lauded Operation Gatekeeper's success, human rights groups condemned the operation's tightening of the southern border and connected it with thousands of deaths of refugees, asylum seekers, and migrants who were forced to take more dangerous routes through the desert (Massey, Durand, and Malone 2002; CFR n.d.; de Leon 2015). In 1996, The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) furthered heightened border control and also made sweeping changes to immigration. In all, legislation throughout the 1990s made it more difficult for immigrants to gain permanent residence and for asylum seekers crossing the southern border to gain asylum.

Given its long history, the legal definition of asylum would appear straightforward and clear, however, politics, policy, and opinions often influence the interpretation of the law, which has led some asylum seekers to construct and exaggerate their testimonies to fit the desired narrative. Asylum trends and immigration acts as well as definitions of who "deserves" asylum often mirror U.S. foreign policy and global politics. For example, during the 1970s and 1980s due to the Cold War, a "vast majority" of asylum seekers who obtained asylum came from Communist regimes. In contrast, the United States often termed asylum seekers from "U.S-backed right-wing regimes" as "economic migrants" and subsequently rejected their claims (The Week 2019). During the 1980s with much of Central America involved in civil conflicts and wars, the United States approved only 3% of asylum cases fleeing right-wing governments in Guatemala and El

Salvador (The Week 2019) whereas the U.S. approved many cases from Nicaraguan migrants fleeing the communist Sandinista regime (Gzesh 2016). According to anti-immigrant rhetoric, economic migrants did not deserve asylum because they would be a drain on the American taxpayers. “Disparities in the success rate of petitioners,” says Burns (2020: 32), is due to “the political slant of the U.S. and other governments” on what “were considered ‘friendly’ vs. ‘unfriendly regimes.’” The asylum system grew to “require [applicants]... to expose their suffering” (Fassin 2011: 82) yet subjectively determined correct suffering and “humanitarian reason” on U.S. foreign policy.

Another example provided by Meredith Terretta (2015) reveals how current political opinions regarding deservingness and asylum affect asylum trends. Terretta describes how, after initially accepting many asylum applications from Cameroonians, the United States began to craft the narrative that Cameroonian refugees were not deserving political asylum seekers but economic migrants defrauding the system. Terretta criticizes the global asylum process for failing to adapt to evolving political and economic realities. The divide between economic and political asylum seekers is arbitrary and should be challenged because economic refugees are as deserving as political.⁸ As the global opinion of Cameroonians shifted to view their asylum applications as fraudulent and more applications were denied, Cameroonians were, ironically, pushed to reclaim their agency through corruption such as bribery and fraudulent narratives. This continued politicization of asylum seekers into “economic migrants” reflects a growing suspicion and exclusionary practices surrounding asylum seekers. The adversarial policies and the need for legal representation and expert witnesses have been exacerbated since 2017 when the Trump Administration eviscerated the asylum process by limiting the annual number of refugees per year and by criminalizing asylum seekers at the southern border.

⁸ The division between “political asylum” and “economic migrant” stems from the antiquated asylum definitions in countries such as the United States, Israel, Canada, and the United Kingdom as well as inter-governmental organizations like the United Nations. Their asylum definitions are a response to the refugee crisis following WWII and do not accurately represent the displacement seen today. Other declarations like the Cartagena Declaration on Refugees in 1984 signed by 14 Latin-American countries or the Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa in 1969 incorporate more contemporary realities into asylum definitions such as displacement due to economics or natural disasters. Furthermore, “economic migrant” is a powerful political term used in the West, particularly the United States, to invalidate claims to asylum. This is discussed more in Chapter 2: Literature Review.

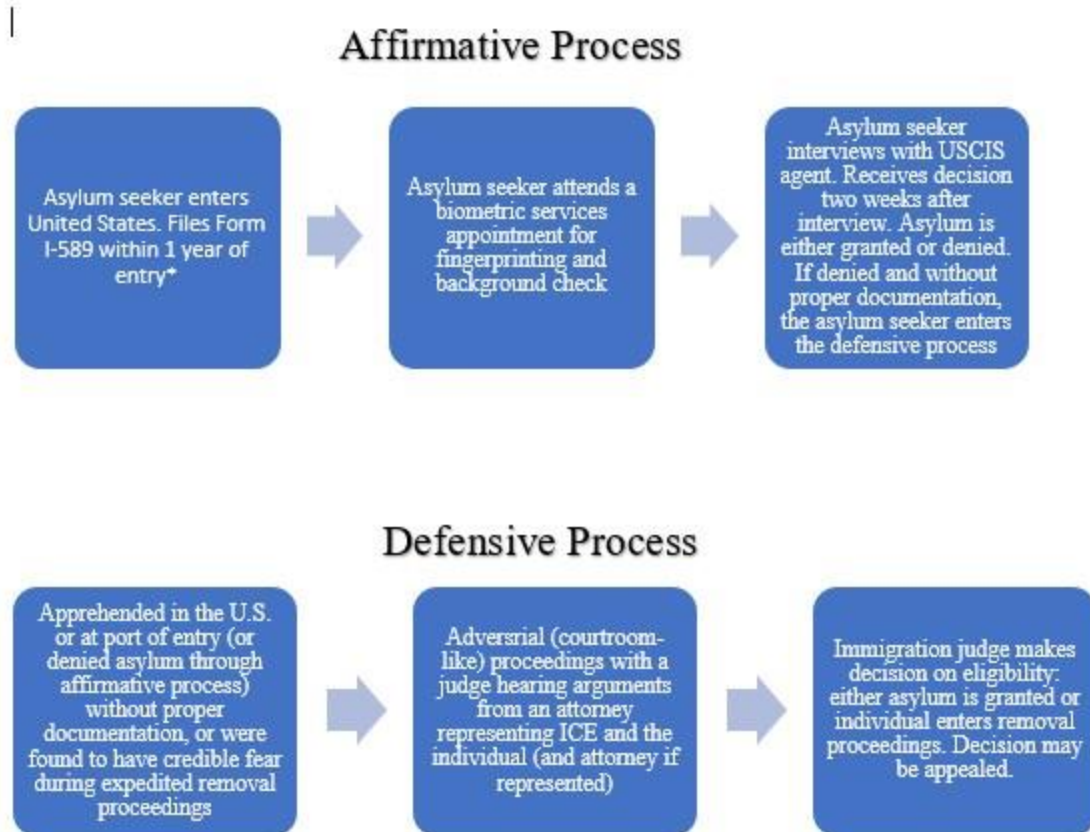


Figure 1.1: U.S. Asylum Process

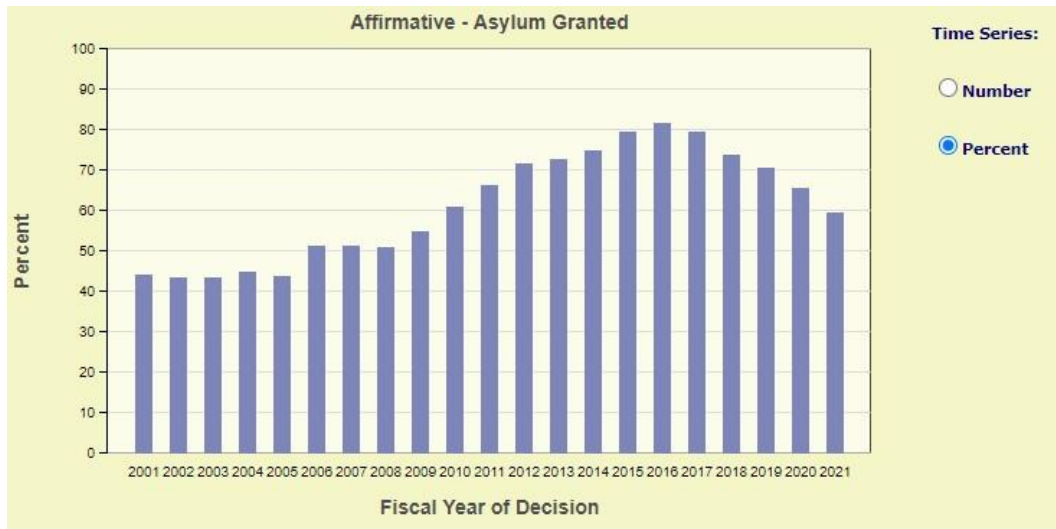


Figure 1.2: Percent of Affirmative Asylum Cases Granted

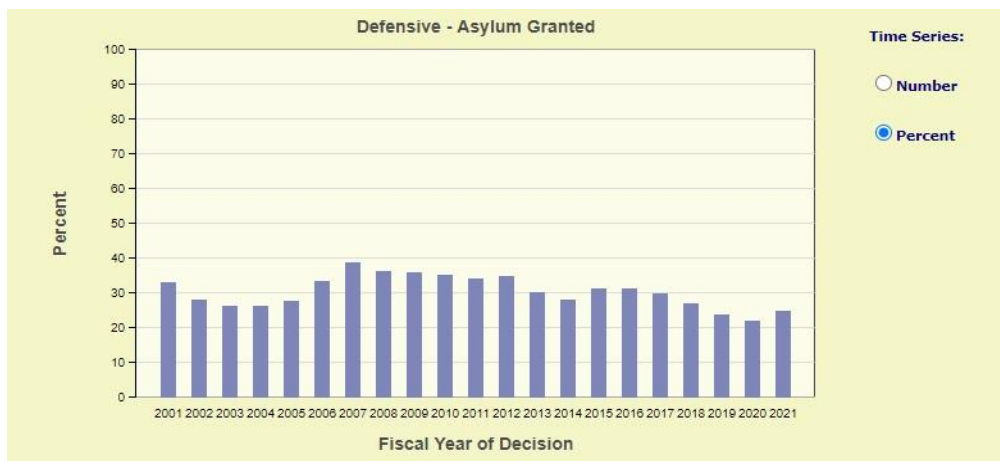


Figure 1.3: Percent of Defensive Asylum Cases Granted

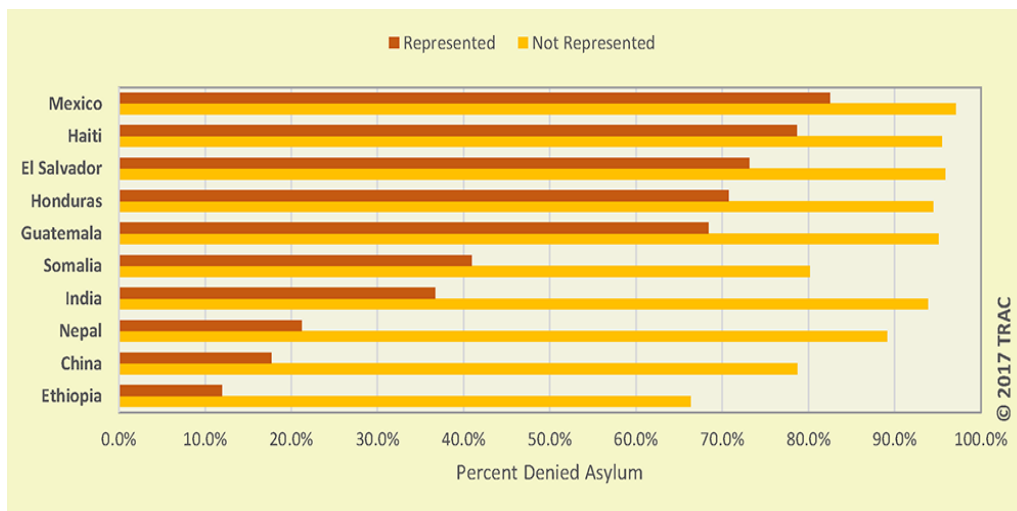


Figure 1.4. Asylum rates by nationality and representation for 2012-2017 from TRAC Immigration⁹

⁹ This chart also represents the relationship between U.S. foreign policy and politics with the politics of asylum. Asylum seekers El Salvador, Honduras, and Guatemala have very low chances of gaining asylum even with representation. This is due to the U.S. dismissing these claims as “economic migrants” reflecting the historical ideal that asylum seekers should come from communist and not right-wing and U.S.-backed regimes.

In 2017, the Trump Administration decreased the number of refugees allowed into the US by 59%, from 110,000 under the Obama Administration to 45,000 in 2018 (Rose 2017). In contrast, the number of displaced peoples worldwide reached 70.8 million in 2018—an increase of 2.3 million from 2017—with a record breaking 25.8 million refugees and 3.5 million asylum seekers (UNHCR). In 2020, the Trump Administration announced that the cap on refugee admissions would be 18,000, an all-time low (BBC 2020). While the United States sets a ceiling for refugees resettled per year,¹⁰ there is no limit to the number of asylum seekers who may apply, though the Trump Administration appeared to have attempted to limit the number of asylum cases granted in 2020 by conflating refugee caps with the asylum process in press releases (BBC 2019; De Peña and La Corte 2019).

Previously, while not all cases of asylum seekers arriving at the southern border went into the defensive process, under the Trump Administration, any asylum seeker crossing the southern border automatically entered into the defensive process regardless of the type of entry, was put in detention or sent back to Mexico, and ultimately treated as a criminal (Narea 2020).¹¹ This was due to the Trump Administration's "Zero-Tolerance" border policy.¹² These actions increased an asylum seeker's risk of harm, as "layer by layer, a series of impediments in Central America, at the border, in detention centers, and in the immigration courts... [had] made obtaining asylum nearly impossible" (Narea 2020). Denial rates also skyrocketed between 2017 and 2020; in 2016, just over 50% of cases tried ended with denials whereas in 2019 that number rose to 70% (TRAC Immigration 2020). Additionally, unrepresented asylum seekers have a lower rate of confirmed asylum applications as only 16% received asylum and about 90% of denials were unrepresented cases for 2019 (TRAC Immigration 2018; TRAC Immigration 2020). More asylum cases are heard each year. The global refugee crisis worsens. And, it becomes increasingly difficult to be

¹⁰ The ceiling is set by the president and is "the maximum number of refugees who may enter the country in a fiscal year" (Krogstad 2019).

¹¹ Any asylum seeker crossing the southern border was either detained or made to wait in Mexico under dangerous and precarious situations if they were from Guatemala, Honduras, and El Salvador. New restrictions also stated that any asylum seeker in the United States would be ineligible unless they applied for asylum in "the first safe country" they arrived in before the United States and were denied, akin to the Dublin Regulation III. Additionally, the Trump Administration released plans to deport asylum seekers from Honduras and El Salvador to Guatemala—and were considering deporting Mexican citizens there too as a "deterrent" (BBC 2020).

¹² The Zero-Tolerance policy states that all people crossing the border "illegally," as the United States defines it, will be criminally prosecuted whereas, previously, some people were shown leniency and released from custody to return to Mexico (Human Rights Watch 2018).

granted asylum due to the culmination of decades of adversarial policies and the climate of suspicion. As stated before, the "consequences of disbelief" grow direr (Good 2004: 113).

A Brief History of Expert Witnessing in the Asylum Process

As previously stated, the asylum process is now more adversarial as courts increasingly place not only the burden of proof on the asylum seeker but also operate under a growing climate of suspicion (Lawrance et al. 2015: 1). Allan Burns notes how “both immigrants appearing in court and expert witnesses quickly learn that immigration law is an adversarial system” where “truth is expected to arise out of confrontational arguments, harsh cross-examination, and adversarial opinions” (2020: 25). The goal of expert testimony is to support the asylum seekers’ claims of a well-founded fear of persecution if they were to return to their home country. The five protected categories are race, religion, nationality, membership in a particular social group, or political opinion; often, asylum claims on gender, family, and LGBTQ-based persecution are argued as inclusion into a social group. For this reason, expert witnesses must review the past to testify on the future (McDougall 2015). Expert testimony is increasingly important in an asylum case as expert witnesses lend credibility to claims by using their authority to support asylees’ narratives (Ardalan 2015: 1037). Expert witnesses can testify to the conditions of the home country to "clarify and illuminate complex issues that arise in trials" by presenting their "specialized knowledge" (Rodriguez 2018: 3).

Additionally, expert witnesses promote cross-cultural competency and resolve cultural and psychological dissonances that arise between courts and asylum seekers (Einhorn and Berthold 2015). And, with the passage of the REAL ID Act in 2005, expert witnesses typically speak to what evidence can be "reasonably" obtained, and, due to evolving precedents of group inclusion, expert witnesses must speak to an asylum seeker’s inclusion into group definitions (Musalo 2015: 84).¹³

¹³ The REAL ID Act of 2005 was a federal law pertaining to the authentication of identification documents and a number of immigrant-related policies pertaining to terrorism. According to Immigration Equity (<https://immigrationequity.org/asylum/asylum-manual/immigration-basics-real-id-act/>), the REAL ID Act complicated the asylum process in a number of ways including: placing the burden of proof to establish group identity in relation to persecution on the asylum seeker and increasing the level of evidence and made it more easy for judges to dismiss asylum seekers’ credibility.

Table 1. Immigration Court Asylum Decisions by Fiscal Year and Representation Status

Fiscal Year	Number of Asylum Decisions			Percent Denied Asylum		
	All	Not Represented	Represented	All	Not Represented	Represented
1996	30,342	16,909	13,433	83.0%	91.9%	71.9%
1997	28,307	14,222	14,085	76.8%	87.9%	65.5%
1998	27,521	13,644	13,877	73.4%	86.8%	60.3%
1999	26,578	10,556	16,022	68.3%	82.2%	59.2%
2000	25,265	8,225	17,040	63.5%	77.8%	56.5%
2001	25,036	7,025	18,011	60.0%	73.2%	54.9%
2002	29,357	7,579	21,778	62.6%	76.7%	57.7%
2003	35,782	8,447	27,335	62.6%	77.2%	58.1%
2004	33,896	7,786	26,110	61.6%	78.9%	56.4%
2005	30,743	6,289	24,454	61.9%	81.6%	56.8%
2006	29,780	4,683	25,097	55.3%	81.8%	50.4%
2007	27,733	3,767	23,966	53.7%	85.6%	48.6%
2008	24,067	3,501	20,566	54.8%	87.1%	49.3%
2009	21,604	3,310	18,294	52.5%	87.1%	46.2%
2010	19,450	3,190	16,260	49.2%	87.0%	41.8%
2011	22,045	3,716	18,329	47.9%	89.8%	39.4%
2012	21,536	3,403	18,133	44.5%	90.6%	35.8%
2013	20,947	3,713	17,234	47.2%	92.2%	37.5%
2014	19,779	4,585	15,194	51.0%	92.5%	38.5%
2015	18,592	4,124	14,468	51.4%	90.4%	40.3%
2016	22,312	4,843	17,469	56.5%	90.5%	47.0%
2017	30,179	6,228	23,951	61.8%	90.0%	54.4%

Figure 1.5. U.S. Immigration Court Asylum Decisions by Fiscal Year and Representation Status (TRAC Immigration)

Anthropologists who work as expert witnesses typically draw on their knowledge of a country, their years of research, and methods such as ethnography and thick description (Ngin 2018) to prepare and compile their written reports and oral testimony. Some anthropologists like Leila Rodriguez (2014) will conduct unique research for specific cases for which they give expert testimony.¹⁴

In general, the climate of suspicion and adversarial treatment of asylum seekers also starts affecting the expert witnesses who support asylum seekers' claims. Lawyers, who are focused on truth in the asylum process, clash with anthropological ideas in the last four decades that have questioned the power relations entailed in claims regarding objectivity, facts, and expert opinions. While this discrepancy between law and anthropology will be explored more in-depth in the following chapter, it is important to note here how a focus on objectivity and truth affects the treatment of expert witnesses in courts. Good (2004) outlines the narrow path expert witnesses tread in court. Their place is to give "facts" that lawyers and judges use to establish credibility. Due to this emphasis on objective fact and truth, expert witnesses also have their credibility assessed. Though "expert" evidence tends to be viewed as more objective, any perceived bias threatens an expert witness's credibility in the courtroom. Rodriguez recounts how she was "warned by others not to be a 'hired gun'" for the defense, and the attorney clarified that their expectations for Rodriguez was for her to establish whether their clients' actions were "reflective of [the client's] culture" (2014: 7).

Expert witnesses are not there to speak to the credibility of the asylum seeker or provide claims of truth (Good 2004: 120; McGranahan 2020). Governmental lawyers will question the validity of testimony that includes an expert witness's "opinions" of truth. More so, if expert witnesses appear engaged with an asylum seeker's history, it often taints their testimony as unbelievable. Expert witness testimony appears tainted just by the fact that they were called by an asylum seeker's lawyer. It no longer appears neutral—though testimony can never truly be neutral (McDougall 2015; Tague 2015) and this does not apply solely to anthropologists or

¹⁴ For example, Rodriguez's (2017) first experience expert witnessing was in a criminal trial where a stepfather was accused of fondling his stepdaughter while they were co-sleeping in a bed where the defendant's biological son also slept. His defense was that the inappropriate contact happened while he was asleep and that co-sleeping was common in Mexican culture. Rodriguez conducted a survey on co-sleeping opinions to establish the practice's acceptance in Mexican and American culture.

country experts. Medical doctors are also subject to assessments of credibility and bias (Good 2004; Good 2007). Lawyers arguing against asylum claims will question the objectivity of the doctor and thereby the truth and validity of the testimony if medical testimony includes "more than... [was] consistent with the asylum seeker's account" or even if a personal medical history is taken at the time of examination¹⁵ (Good 2004: 121)¹⁶. During cross-examination, lawyers attempt to "destroy" rather than "discredit" expert testimony (Good 2007:133).

The question that an expert witness might be an "advocate" further clashes with legal ideals of objectivity and truth. In the eyes of the law, if an expert witness is an advocate for asylum, then their testimony will be biased. The word "advocate" is often used by government lawyers in an attempt to discredit expert testimony. Carol McGranahan (2020: 103-104) recounts a time when a Department of Homeland Security (DHS) attorney was "annoyed" that an asylum seeker had an expert witness as it would bolster their asylum claim. In an attempt to discredit her testimony, the lawyer repeatedly referred to her as a "so-called expert" and asked, "with disdain," if she considered herself an "activist" (ibid). Lawyers have been known to read expert witnesses' published works and use their statements of solidarity in an attempt to discredit testimony. Regardless of feelings towards activism, anthropologists must perform as objective testifiers in order not to taint their testimony with bias (Good 2004, 2007; Holden 2019; Rosas 2019).

Although cultural anthropologists are critical of structures and institutions surrounding immigration and asylum because there is dissonance between concepts and epistemologies in anthropology and law, they continue to participate in them (Cohen and Trask 2018; Good 2015). For example, concepts such as identity or race accepted by anthropologists as subjective or contextual are treated as objective evidence in courts; thereby creating tension around how anthropologists must represent such concepts during expert testimony (Ngin 2018). Next, there are ethical and structural dilemmas (Hepner 2019), such as asylum seekers' lack of access to legal representation.¹⁷ Even fewer have access to expert witness testimony (Ardalan 2015: 1002). Even more so, asylum seekers represent a small minority of the global refugee population, and

¹⁵ Taking a personal history is a routine and expected procedure and not indicative of bias.

¹⁶ Medical doctors and forensic psychologists/psychiatrists testify to confirm possible physical or psychological trauma that is consistent with an asylum seeker's claim for asylum.

¹⁷ Most countries do not provide free legal counsel to asylum seekers therefore only a small number of asylum seekers can afford lawyers or have access to pro-bono work (NPR 2018).

"such options are rarely, if ever, available for the masses of refugees awaiting a durable solution overseas" (Berger et. al 2015: 14). Consequently, does participating in this system reify these issues? Tricia Hepner (2019) calls these concerns "troubling elements" of expert witnessing that complicate the practice of pragmatic solidarity (Farmer 2003: 220) or using authority and knowledge to facilitate social justice goals. Anthropologists question the efficacy of participating in an inherently unjust institution that reproduces social, economic, and racial inequality, and reinforces inefficient bureaucratic procedures prone to failure (Lawrance et al. 2015; Cohen and Trask 2018).

Outline of the Thesis

This thesis will consist of eight chapters, including this introduction. Chapter Two will be a literature review outlining previous anthropological discussion and debates on anthropology and law and expert witnessing and asylum cases. It will further break down the arguments into four sections: dissonances between legal and anthropological concepts; essentializing culture, identity, and race; structural and ethical dilemmas; and what this literature means for the "fourth reality." Chapter Three will discuss the methods and participants of this research project. Chapters Four, Five, Six, and Seven will review discuss the data. Chapter Eight will offer a brief conclusion and parting thoughts. This thesis takes the reader through: 1) the participants beginnings as expert witnesses and their motivations; 2) their feelings on compensation; 3) their experiences and role throughout expert testimony including how they are contacted, their views on truth in testimony, and their vulnerabilities as experts during in-person testimony; and 4) their reflections on what happens after a court case including their subject positions and publishing about and organizing around academics who expert witness in asylum cases. After a brief conclusion, this paper makes suggestions for further research including widening the sample size to gain a better understanding of race, ethnicity, and nationality in relation to the Fourth Reality and issues related to accepting compensation for expert witnessing. Also included are appendices that provides a timeline of U.S. immigration and asylum policies and this project's on-line questionnaire.

CHAPTER TWO

LITERATURE REVIEW

To understand the relationship between anthropology, expert witnessing, and asylum cases it is important to review anthropology's relationship and history to law and expert witnessing in general. Anthropologists' relationship with and participation in law has a long and complicated history, though “the involvement of anthropologists as expert witnesses has overall remained an under-the-radar phenomenon” (Holden 2019: 3). Particularly, anthropologists are critical of the use of applied methods and knowledge in legal practices. This is due in part to anthropology's historical applications within colonial and imperial structures. Following a review of the literature surrounding anthropology and law, this chapter will review of anthropology and expert witnessing in asylum courts. Contemporary interactions between anthropology and asylum courts reveal the differing definitions, conceptualizations, and approaches between anthropology and law, issues around essentialization of culture and identities, and ethical and structural dilemmas (Phillips 2018: 43-45). Additionally, this chapter will review the literature on emotions and reflections that arise when anthropologists serve as expert witnesses based on their experiences and subject positions.

Anthropology and Law

While social scientists and anthropologists serve as expert witnesses throughout the world, this literature will focus mainly on the United States and Great Britain due to the scope of this research project.¹⁸ Anthropologists have always used their expertise and knowledge in applied situations. Consequently, much of the history and critique of applied anthropology is the same history and critiques that have emerged within anthropology as a whole, and particularly within cultural anthropology. Additionally, anthropology and law have long been intertwined, and anthropologists have provided expert testimony in more than just asylum cases. Livia Holden (2019: 2) states that “for good or for bad” the use of “anthropological knowledge for

¹⁸ This research consisted of twelve online questionnaires and six follow-up interviews and recruited participants from organizations primarily based in the United States and Great Britain—see Chapter 3 “Methods and Materials” for more information.

dispute resolution, lawmaking, and governance... has been frequent through the history of anthropology." Arguably, anthropology and law's relationship began with the conception of the discipline as anthropologist's involvement in political and legal institutions emerged with anthropology's theoretical beginnings. Even more, social scientists who were precursors to anthropologists engaged in expert witnessing long "before anthropology was anthropology" (Holden 2019: 2). Anthony Good (2007: 15) refers to anthropology and law as "cognate" disciplines as many early social scientists and/or anthropologists were also lawyers. John Campbell describes law and anthropology as "mutually constitutive even though many legal professionals perceive their role as being neutral, objective, and independent of cultural concerns and many anthropologists argue that anthropological evidence on cultural issues is routinely rejected by law" (2020: 1).

The application of anthropological practices and expertise, particularly in legal settings, has been a major part of the discipline. Many critiques of the discipline's history and beginnings come from how anthropological knowledge was applied in non-academic settings. One definition for applied anthropology is "the use of anthropology beyond the usual academic disciplinary concerns for research and teaching to solve practical problems by providing information, creating policy, or taking direct action" (Barfield 1997: 21). Historically, this definition fits what many anthropologists in the 20th century were doing. In the United States, early interactions between anthropology, governance, and law emerged with the rise of "salvage anthropology." Salvage anthropology is the term often used to refer to the anthropology pioneered mainly by Franz Boas and his contemporaries and students¹⁹ which attempted to document "as much as possible about non-Western cultures before the spread of European colonialism destroyed them" (Barfield 1997: 44). Boas's impact on his students influenced many of them to attempt to preserve or "salvage" Native American and First Nation cultures through meticulous data collection. Some did so at the behest of the government. Founded in 1879, the Bureau of

¹⁹ Franz Boas and his students are associated with the school of historical-particularism. The term "salvage anthropology" was coined later. This school rejected the psychic unity of man-kind and unilinear evolutionary models that were popular at the time and saw cultures as products of their histories. Other notable "salvage anthropologists" include Alfred Kroeber who was the first student awarded a Ph.D. in Anthropology from Columbia University where Boas was a professor and who was the first professor in U.C. Berkley's Department of Anthropology.

American Ethnology's purpose was to transfer data collected on Native Americans by the Department of Interior to the Smithsonian Institution. Also, the United States' courts used anthropological expertise "as early as 1895 with *Choctaws v. the United States*" for "Indian" tribal claims (Holden 2019: 2) and their uses of anthropological expertise continued well into the 20th century. Lawrence Rosen (1977) recounted the involvement of anthropologists in a number of U.S. court cases between the 1950s and 1970s that attempted to end segregation. Rosen (1977) also reviews "expert testimony on behalf of indigenous groups" which is "one of the most enduring ways in which anthropological knowledge has been utilized outside academy" (Campbell, Slack, and Diedrich 2017: 326).

In Britain, many early anthropologists and their works dealt with the relationship between law and society. The first "use of anthropologists as expert-witnesses for policymaking" began in the 20th century in Britain (Holden 2019: 2). In fact, the first use of the term "applied anthropology" came from a 1906 Cambridge University article detailing the training of colonial administrators (Barfield 1997: 21). Though Bronislaw Malinowski, a Polish-British anthropologist, called for anthropologists to use their work in defense of subjected peoples, there are many cases where governments and colonial powers used anthropological expertise to further their agenda (Holden 2019: 3). Colonial administrations "recognized the possibilities of [early] anthropological research" for "advice in their programs" (Foster 1969: 14). By the end of the 19th century, Great Britain and their colonial administrations "had consolidated the practice to fund applied research," therefore "social scientists and anthropologists, in particular, shifted toward applied anthropology and became consciously involved with policy making and colonial ruling" (Holden 2019: 2). British colonial administration "in varying degrees" used social and cultural anthropologists to aid in "native administration" due to "anthropological knowledge of the period [being] pertinent to the rule of dependent tribal peoples," the availability of British anthropologists in colonial settings, and the willingness of "colonial and home office governments" to finance and provide "practical... and moral support to anthropological investigations" (Foster 1969: 16). British anthropological expertise was used to better understand how to build colonial institutions in conquered lands (Good 2007; Holden 2019). Britain founded the Colonial Social Sciences Research Council in 1944 "to allocate funds to anthropological research connected with colonial administration" (Holden 2019: 3). Many pivotal figures to

British anthropology such as E.E. Evans-Pritchard and Raymond Firth worked with and were funded by colonial administrations during their fieldwork. Eventually, the relationship between anthropology and law in Britain fades for a bit due to the decline of structural-functionalism²⁰ in the 1960s (Good 2007: 17).

In the United States, anthropologists, some of whom were students of Franz Boas, were aiding the United States government on foreign policy and war during the 20th century.²¹ The United States commissioned one of the most famous works of anthropology at the time. Ruth Benedict, of the cultural and personality school,²² wrote *The Chrysanthemum and the Sword* (1946) at the behest of the United States Office of War “with the intent to predict Japanese behavior” following World War II (Holden 2019: 3). In fact, the United States Office of War Information employed “thirty specialists in anthropology, sociology, psychology, and Japanese language and culture” to better understand Japanese culture and “how best to prosecute war” and “how best to set surrender and occupation terms” (Foster 1969: 34). Later in 1964, the United States government contracted anthropologists and other social scientists in Project Camelot. Project Camelot was a study of counterinsurgencies that attempted “to facilitate specific political changes in developing countries” (Holden 2019: 3). The intention was to attempt to stop the spread of communism in Latin America and other countries in what we now call the Global South. It is now well-known that many American anthropologists attributed “to the World War II effort” such as Ruth Benedict and Margaret Mead while others such as Glifford Geertz and Samuel Lothrop were informants for intelligence organizations like the CIA, or “spies,” wartime (Price 2000, 2011).²³

²⁰ Structural-functionalism, also known as “British social anthropology,” was a school of thought that viewed society as a complex system (or structure) that maintains stability through functional parts. Sometimes structural-functionalism is grouped with Malinowskian or psychological functionalism into a category known as “functionalism.”

²¹ Anthropologists are still used by the government during wartime as seen during the war in Afghanistan and Iraq with the Human Terrain System.

²² Mainly students of Franz Boas, most famously Margaret Mead, Ruth Benedict, and Edward Sapir, founded and pioneered the culture and personality school which attempted to marry culture, psychology/psychiatry, and human behavior.

²³ This was also a hotly debated topic with prominent anthropologists such as Franz Boas publicly speaking out against the practice and the American Anthropological Association censuring him on the issue and essentially taking a public stand for the practice.

While these early uses of anthropology do not appear to have aligned themselves with under-privileged and disempowered groups, that does not mean that there were not anthropologists who spoke out against these applications of anthropological knowledge for warfare and colonial administration. Many American anthropologists rejected the use of anthropological expertise in warfare (Holden 2019: 3). And, in the 1970s, many anthropologists engaged in legal disputes concerning Native American land and the right to practice religion (Stewart 1979). Malinowski, as mentioned above, advocated for the use of anthropological research to aid those they studied—i.e., the “natives.” In the 1960s-1970s and onwards, “trends from inside and outside” the discipline denounced the use of “conceptual and theoretical models that justified colonial powers... and racism,” and anthropologists for “not engaging against colonial powers” (Holden 2019: 4). Anthropologists began to advocate for marginalized and vulnerable groups. For example, there have been cases of anthropologists using their expertise to aid vulnerable populations, such as the Ann-Arbor trial in 1979 where linguistic anthropologists argued against discrimination directed towards African American children in the education system, or in *Mashpee Tribe v. New Seabury Corp*, also in 1979, where the Mashpee people attempted to prove their tribal status with the aid of anthropologists (Holden 2019: 4). Applied anthropology in relation to warfare and governmental use also came under attack “for being suspected of unethical alliances” (Holden 2019: 5) and, overall, started to lose favor in the discipline (Barfield 1997: 21; Speed 2006; Stuesse 2016: 234) with the rise of post-colonial, feminist, and critical race theorists.

Though anthropology was closely intertwined with governance and policy at its conception, the discipline began to move away from the term “applied anthropology” (in terms of the uses described above) and many anthropologists attempted to distance themselves from the use of the anthropological expertise in warfare, colonial administration, and justification of systems of inequality. The uses of anthropology in applied situations remain a contentious and debated practice. The current relationship between applied anthropology and anthropologists is complicated. Additionally, applied anthropology is often critiqued for contributing little to theoretical production in the discipline (Holden 2019: 4) e.g., “all method and no theory.” Other anthropologists would say that applied anthropology is more of a by-product of anthropological research and not their whole practice (Barfield 1996: 21). In terms of expert witnessing, Carole

McGranahan states: “If ethnography is a form of theoretical storytelling... then expert witnessing is an applied, non-academic example of that” (2019: 103). In that sense, anthropology has not moved away from the use of anthropological expertise in practical or applied situations.

Most anthropologists feel that they should “give back” in some way to the communities they study. This takes the form of something as simple as providing rides during fieldwork or something larger like advocating for communities through publications, public communication, and attempts to influence public policy. Furthermore, in a poststructuralist discipline, many anthropologists advocate that “research and political engagement can be mutually enriching” (Hale 2008: 2). Some anthropologists now use the term “engaged” or “practicing” anthropology (Barfield 1997: 21) while others use the term “activist anthropology” (Speed 2006; Stuesse 2016: 235; Hepner 2017) or “collaborative” or “action anthropology” as a “research advocate (Besteman 2010, 2016: 305n).²⁴ Besteman describes collaborating “with marginalized communities that may not envision themselves as activist but who have community goals for how to define their place in broader society” as an “add-on” to academic work and the challenges that anthropologists face when they engage with public policy (2010: 407 and 413). Activist anthropology’s unique feature is the focus “on long-term collaboration” with vulnerable communities at each stage of research in an attempt to “address long-standing power inequalities” (Stuesse 2016: 235-236). Other anthropologists have practiced a community-based participatory research where researchers such as anthropologists work to develop equitable partnerships, research, and develop common goals collaboratively with communities. João Vargas writes on how his “training in anthropology and [his] involvement with organizations working against anti-Black racism and for social justice have generated a blueprint for ethnography that does not shy away from project explicit political involvement” (2008: 164). Shannon Speed (2006: 71) advocates for *critically engaged activist research* having a “shared political goal” with participants while conducting a critical cultural analysis. But, the term “applied anthropology” also is still used today.

George M. Foster (1969: vii) defined applied anthropology as “[when] anthropologists utilize their theoretical concepts, factual knowledge, and research methodologies in programs

²⁴ Hale (2008: 3) lists the “array of specific names” given to activist scholarship: “action research, participatory action research, collaborative research, grounded theory, public intellectual work, engaged research, and the like.”

meant to *ameliorate contemporary, social, economic, and technological problems*" (emphasis added). While this definition does not free applied anthropology from the issues or problems written about above and was written before the exposé of Project Camelot, it does hint at what anthropologists hoped the practice would be. The nature of research in cultural anthropology, embedding oneself into a community, lends itself to a type of engaged anthropology, whether it is conceived of as activist, collaborative, applied, or theoretical. As referenced above, engaged, applied, and activist/advocate anthropology can be seen as a by-product of anthropological practice. Ralph Grillo (2017: 4 bullets added) provides a few examples of engaged anthropology in relation to law:

- "contributing to public knowledge and understanding of matters of contemporary social or political concern; researching issues known to be of interest to policymakers or users while keeping a distance from policymaking;"
- "problem-oriented research undertaken on a customer-contractor basis; researching and participating in policy formation;"
- "acting as an expert witness; mediating, brokering, or speaking on behalf of a particular community or interest;"
- "advocacy;" and
- "committed activism."

Cultural anthropologists often find their work positions them to be expert witnesses in asylum cases as they are both experts in country conditions and connected to communities and people who apply for asylum. Many view expert witnessing as one way to "give back" to communities that helped them build academic careers through the applied/activist/engaged/collaborative/etc. anthropology.

Expert Witnessing and Asylum Cases

Given the history of applied uses of anthropology in collaboration with colonial and other government, military, and corporate agendas, anthropologists today are aware of the problems and issues that can arise during engaged anthropology. Cultural anthropology's positioning

means that anthropologists can aid in elevating issues but can also reify unjust structures and power inequalities. Just by participating in the asylum process, cultural anthropologists are engaging in arenas of authority, credibility, and legitimacy. Allan F. Burns notes that “serving as an expert witness in civil, criminal, asylum, and other proceedings is an activity that gives a glimpse into the world of institutional culture shock, structural violence, and the interplay of personal and cultural knowledge and behavior” (2020: 35). No matter how critical anthropologists are, they are still acting within dominant forms of knowledge production and power structures and produce "ghosts" of marginalized voices (Cabot 2016). For example, anthropologists are often “unsettled” (McGranahan 2012a: 19) by the arbitrary nature of the asylum process (Leaf 2018; Burns 2020; Campbell 2020). Grillo (2017: 13-18 bullets added) lists a few "engaged anthropological" fears which encompass many of the sentiments mentioned above:

- Fear of co-optation;
- Fear of essentializing culture;
- Dilemmas (or lack thereof) when engaging with different approaches to knowledge;
- Fear of normativity and judgment;
- Fear of whether anyone will listen.

Across multiple disciplines, academics now address the growing need for “holistic asylum representation” to combat the climate of suspicion around asylum seekers and “judicial ethnocentrism” (Ardalan 2015; Hepner 2019: 2). Yet, expert witnessing and academia are not completely complimentary. Particularly, anthropologists who act as expert witnesses grapple with the tensions that appear during the process, as mentioned above. In the context of the asylum process, certain tensions between anthropology and law become more salient. Questions arise surrounding the dynamic relationship between law, anthropology, and asylum as well as the role of culture in the legal process. These often reflect the fears listed by Grillo, enumerated above (2017). Anthropologists most often reflect on:

- The dissonance between concepts and assumptions in law and anthropology;
- The role and construction of narratives surrounding essentialization, culture, identity, and race;

- The structural and ethical dilemmas of participating in expert witnessing due to questions of power, privilege, and subject positioning; and
- How these reflections affect an anthropologist's "fourth reality."

Dissonances Between Legal and Anthropological Concepts²⁵

At the heart of discussions about anthropology engaged with the law are the differing definitions, conceptualizations, and approaches of the disciplines (Phillips 2018: 43-45). Though, more current literature appears to be growing weary of this subject. One participant described this discussion as "over-stated." Campbell (2020: 1) called it "unhelpful and unproductive." However, for the sake of performing a good literature review, I will give a brief discussion on the topic. More so, anthropologists have expressed concerns about how lawyers and judges have a "home court advantage" through judicial hegemony which determines what is objective, truth, and credible (Good 2007: 208-209). Tricia Redeker-Hepner (2019: 5) defines a core tension between anthropology and law as the tension between "subjectivity, nuance, and context" and objectivity, positivism, and reduction. Good (2004) further expands on the difference between legal and anthropological thought in the asylum process. First, while lawyers seek to locate individual responsibility, anthropologists "seek to explain socio-cultural reality" in a more nuanced and contextual manner (Good 2004: 130). Lawyers also place causality within individual motive whereas "anthropologists see causality as multiple and ultimately systematic" (Good 2004: 130). Second, lawyers normatively assess "acts and their consequences" whereas anthropologists "generally maintain a stance of pragmatic... relativism" (Good 2004: 130). Third, "lawyers deductively apply abstract principles to decide specific cases," while "anthropologists study specific cases inductively to construct abstract models" (Good 2004: 130). Lastly, "truth" lies in different places for lawyers and anthropologists. For the law, "truth" arises from testimony and objective evidence. "Facts" are "unproblematic" to lawyers, but many anthropologists remain hesitant to speak to objective truths and facts (Good 2004: 130).

²⁵ Part of this section was developed in Dr. Redeker-Hepner's course "ANTH 510: Cultural Theory and Method" at the University of Tennessee, Knoxville in Spring 2019 for a critical analysis of epistemologies in cultural anthropology.

The core difference between anthropology and law is a difference in epistemologies, or how one decides what is truth and knowledge (Moberg 2013: 6). In anthropology following the Critical Turn,²⁶ anthropologists approached "truth" as a subjective reality; there is not a universal understanding of what is the "truth," rather a contextual one. Anthropological research could only uncover what James Clifford (1986) called "partial truths" because anthropologists can never truly know everything about their subjects. All conclusions, "truths," drawn from the research are filtered through an anthropologist and are then subject to opinions, biases, systems, and powers that an anthropologist "cannot fully control" (Clifford 1986: 7). They cannot remove themselves from outside influence and be objective. These are "anti-positivist" approaches, with "positivist" meaning an approach to social science that "seeks generalizations about" the whole of "human behavior" (Moberg 2013: 13). "Anti-positivist," hence, is an approach that does not seek to generalize whole truths about human behavior.

Therefore, the law as an "objectivist, positivist, and reductive" discipline conflicts with anthropology. Anthropologists as expert witnesses are left to translate subjective and anti-positivist anthropological knowledge into legal concepts. Iris Berger, Benjamin N. Lawrance, Tricia Redeker-Hepner, Joanna T. Tague, and Meredith Terretta (2015: 10-11) recognize "the mastery of cultural nuance [as] a much-needed skill in asylum cases," yet note how anthropologists are often asked to make objective statements and predictions as expert witnesses. This sentiment was also expressed by this project's participants. As an expert witness, anthropologists must translate events and identities from across the globe and situate them within the bounds of a legal framework, all the while navigating the dissonances which arise between anthropology and law (Gallagher 2018). In fact, many anthropologists feel uncomfortable at being called "an expert of ____ culture" because "no anthropologist is truly an expert on every aspect of a particular culture" (Rodriguez 2014: 6). Good notes the reluctance of law to acknowledge the contextual nature of identity and knowledge (2007: 224). Anthropologists have

²⁶ The Critical Turn, an anthropological movement in the larger post-modern tradition, is immensely significant to the field of anthropology as anthropologists began to ask questions around the production of knowledge and inequality rather than creating grand metatheories or describing emic situations. Following the Critical Turn, critical epistemologies such as postcolonial, feminist, or critical race theories adopted a more interpretive, anti-positivist approach which focused on emic perspectives while shifting from an idealist towards a materialist view that centered on inequality and production of knowledge and beliefs.

also pointed out the hypocritical nature of law as well. Rosen states that “to argue that courtroom procedures and the expression of opinions are wholly divorced, and that the former stand neutral with reference to the latter, is a basic misunderstanding of the American law of evidence and procedure” (1979: 112).

Furthermore, anthropologists must translate their empirical evidence, which anthropology acknowledges to be subjective, into objective testimony. Asylum cases depend heavily on expert testimony which speaks to an asylum seeker's credibility of a well-founded fear of persecution based on race, nationality, political opinion, ethnic group, or inclusion in a social group. Campbell et al. support this idea by arguing that “academic experts should make ‘good enough’ arguments in order to pragmatically defend [their] clients” (2017: 332). As mentioned in the previous chapter, experts cannot speak to an individual’s credibility; that is not their place, and that can make experts seem as if they are biased and not objective. When the law does acknowledge subjectivity and interpretation, it places the responsibility of interpretation with the judge and not the expert witness or asylum seekers (Good 2004: 130). Expert witnesses do not judge authenticity but rather provide knowledge for the judge to do just that (McGranahan 2012b). Their place is to give “facts” that lawyers and judges use to establish credibility. Adjudicators do not want experts' opinions on “claims of truth” regarding the asylum seeker (Good 2004: 120). However, anthropologists can use this to their advantage. Testimony that appears objective and uses ethnographic authority²⁷ can “carve out a space of authority, claiming... to grant readers a direct access to the voices of victims, with the accompanying promise to produce usable knowledge” (Cabot 2016: 659).

Additionally, the epistemological tension between anthropology and law expands to perceptions of asylum seekers and country conditions as well. Anthropologists serving as expert witnesses often have to contend with “simplistic assumptions about the social, cultural, and linguistic contexts from which asylum seekers arrive” (Grillo 2017: 12). They must boil down nuanced and subjective understandings of country conditions and asylum seekers’ identities into objective and simplistic narratives for legal consumption (Rosas 2019). Additionally, expert

²⁷ Ethnographic authority, according to Heath Cabot (2016: 653), is an author’s “tendency at the heart of ethnography [to assert,] in no uncertain terms,” their authority over knowledge production due to their closeness to the subject and their critical analysis.

witnesses must often find the common ground between their empirical evidence and testimony and the narratives and metanarratives used by actors in the legal system (McDougall 2015). These subjects will be further in the next section of this chapter, *Essentializing Culture, Identity, and Race as an Expert Witness*.

The take-away from this discussion is that anthropologists as expert witnesses must navigate issues surrounding objectivity and truth in the legal asylum process and must translate nuanced and contextual anthropological concepts into the legal discourse. More so, as discussed in the following sections, expert witnesses must also translate asylum seekers' claims into accepted legal narratives. As Carol McGranahan (2012b: 21) states:

“The truths they tell in asylum court rest on an always contingent set of situated realities on state, structure of understandings of how to narrate one’s life, and on political discourses of truth, rights, and hope.”

Essentializing Culture, Identity, and Race as an Expert Witness

In legal procedures, identity becomes evidence. Thus, expert witnesses must present not on identities as being socially, culturally, and situationally constructed, but on identities as objective evidence. A common theme among anthropologists who serve as expert witnesses is the translation or reconfiguring of reality and narratives within asylum and refugee cases. Anthropologists often struggle to balance the need to construct a certain narrative or identity for asylum seekers within the asylum process and anthropological concepts that “de-essentialize” identity and culture. Anthropologists, lawyers, and asylum seekers are highly aware of the disciplinary power of institutions and how this can affect narratives.

James Phillips (2018: 41-43) and Hepner (2019: 5) note how anthropologists and asylum seekers must “shape” reality to fit into a legal and humanitarian framework to support claims of well-founded fears (see also, Besteman 2016). When acting as expert witnesses, anthropologists “enter a contested terrain on which law and culture intersect and on which [anthropologists’] roles are frequently those of cultural interpreter and cultural mediator” (Grillo 2017: 7-8). Grillo (2017: 12) further notes how anthropologists can sometimes assist lawyers and asylum seekers by translating narratives into something “digestible” to adjudicators.

Iris Berger (2015), Ann McDougall (2015), Terretta (2015), and Charlotte Walker-Said (2015) note the “fraudulent” construction of narratives by some asylum seekers to make them more palatable to asylum officers and judges. Walker-Said explores the evolution of narratives from sexual minorities in Africa as lawyers and asylum seekers pigeon-hole the claimant’s sexual identity into the existing hegemony of Western legal and human rights concepts. Through this configuration, asylum seekers and refugees become “ghosts” of themselves (Cabot 2016): “sexual identity and orientation,” Walker-Said says, “are not necessarily transhistorical, mutually identifiable, and universal” (2015: 219). Consequently, anthropologists must engage in practices that make “ghosts” of refugees when they act as expert witnesses.

In terms of race and identity, the global asylum and refugee system, not just the United States’ asylum process, requires the essentialization of race and identity. Besteman (2016: 92-93) discusses the “creating and conforming to a coherent ethnic identity” of the Somali Bantu ethnicity during the Somali Civil War. International and Somali workers in refugee camps would put refugees through a series of “tests,” often related to physical appearance, to confirm if they were “really” Somali Bantu. One such test, deemed the “pencil test,” would see interviewers and camp workers pass a pencil through the hair of refugees: if the pencil caught, they were Bantu, but if it moved smoothly through their hair, they were not. Specific to American asylum cases, ChorSwang Ngin (2018) highlights the tension between anthropologists wanting to provide nuance and context while running the risk of alienating legal practitioners and derailing an asylum case when asked to prove and thus essentialize a defendant’s race. Ngin faces the dilemma of either harming the defendant by not producing materials in her case or endorsing race as an objective concept.²⁸ Accordingly, she chooses to use anthropological methods such as oral histories, ethnographic interviews, and analyzing kinship terminology in an attempt to authenticate the identity of a Chinese Indonesian without essentializing culture.

Expert witnesses must essentialize culture and identity to some degree during asylum cases as they present their testimony as objective knowledge and engage with legal arguments

²⁸ Anthropologists use critical race theory to define race as a product of society, culture, politics, and the economy and not biology (Hurstun 1928; Harrison 1998; Mullings 2005).

such as the “cultural defense” (Crabbe 2018).²⁹ While the cultural defense is typically seen as an equalizing measure in law, anthropologists sometimes must use an iteration of it to argue for a well-founded fear, so playing into a racist and imperialist notion of savage states and unchanging, traditional cultures persecuting and repressing agency-less victims that modern nation-states must save (Mutua 2002: 205). Berger (2015) poses the question of whether asylum seekers’ use of these stereotypes as well as anthropological expertise to support asylum claims creates a generalized and dangerous vision of Africa as the “Dark Continent,” a place people must flee to be safe and live a happy life. Repeatedly, political asylum claims are shoe-horned and reframed into Western legal frameworks that often uphold the idea of “Third World Countries” as primitive and dangerous and Western countries as shining utopias (Berger 2015: 213). Many anthropologists who expert witness grapple with this dilemma.

Gilberto Rosas (2019) also writes about feeling conflicted in how he must represent Mexico in the asylum court and how anthropologists must perform as expert witnesses and make the asylum seekers they represent “dead” to “live.” In order to successfully adjudicate asylum claims, Rosas must paint Mexico as a violent and backward country. Asylum seekers and expert witnesses must represent asylum seekers and countries of origin as “dead” in order for them to find “life.” This builds off of Achille Mbembe’s “Necropolitics” (2003). In “Necropolitics,” Mbembe problematizes the sole use of biopolitics³⁰ by sovereigns in the modern era by positing that the truth of a subject is not reason but life and death. Mbembe introduces his answer to this insufficiency: necropolitics and necropower—the sovereign decision that one group may live but another must die. Rosas (2019) argues that this sovereign power extends to representation of asylum seekers, countries of origin, and host countries in the United States’ asylum process.

Essentially, anthropologists must affirm imperialist and racialized beliefs by portraying home countries as “war-torn” and “third-world” and host countries as “beacons of hope” and “utopian.” And anthropologists can be complicit in this essentializing and stereotyping through their expert testimony that supports these narratives. McDougall (2015: 135) notes that an

²⁹ The cultural defense or “the defense asserted by immigrants, refugees, and indigenous people based on customs or customary law” (Renteln 1993: 439 quoted in Rodriguez 2018: 2) ensures that legal decisions include a discussion of cultural background to provide context and avoid ethnocentrism in legal decisions.

³⁰ Biopower is the production of biopolitics and an act of sovereign power over the physical body that disciplines the individual body and regulate populations through a series of institutions and ideologies (Foucault 1990).

affidavit, one avenue of expert testimony, "has to transform history into a probable future, one that suggests to the court that the claimant's human rights would be violated if he or she were deported." But, by doing so, are anthropologists engaging in the construction and reification of metanarratives that push asylum seekers to embellish claims? Yet, as Liisa Malkki (1996) and the authors above note, the rejection of such a framework can lead to questions about the authenticity of refugee and asylum seeker's identities and claims regarding persecution based on their identity. Michel Agier (2008: 103) also discusses this, but from a refugee's perspective. Refugees can reclaim their lives and agency and reject a simplified identity through political and symbolic action. But they run the risk of losing their identity as "refugee" or "asylum seeker" and being deemed undesirable. All of the ethical implications regarding the essentializing and stereotyping often needed to successfully adjudicate asylum claims, as well as anthropologists' interaction with and possible complicity in, will be discussed in the following section.

Structural and Ethical Dilemmas of Expert Witnessing

McDougall (2015) raises the issue of ethics surrounding the translation of narratives and testimonies in asylum cases as well as essentialization. As an expert witness who understands the gross misrepresentations of these narratives, where do expert witnesses' ethics lie? In reproducing positivist notions of "the Truth" (or what anthropologists can know through empirical evidence) or with aiding in the successful adjudication of asylum cases? It is the "ethical elephant in the room" (McDougall 2015: 130). Expert witnesses must negotiate a middle ground that supports both asylum seekers' narratives and an anthropologist's knowledge of country conditions that treads an ethical line (McDougall 2015: 132). In her study of indigenous groups in Mexico working to gain legal status, Speed (2006: 71) poses the question of whether short-term goals such as advocating for vulnerable populations in the legal realm reinforce existing structures of inequality. However, Speed asserts that sometimes "strategic essentialism" is a useful tool for anthropologists advocating for vulnerable populations such as indigenous groups in Chiapas, Mexico, in the legal realm. This argument extends to those testifying on behalf of asylum seekers. Speed eventually agrees that tensions surrounding essentialization and power will remain unresolved, but that anthropologists must remain critically engaged.

Additionally, Speed raises another important issue for anthropologists engaging with law: Members of a specific group often do not have the authority to bolster their claims, but the expert witness does; and, ultimately, state and legal institutions hold the power to recognize and legitimize such claims. On one hand, anthropologists can bear witness to the trauma suffered by asylum seekers. Adrienne Pine (2020: 212) notes how her credentials and testimony was “less frequently interrogated” as her career advanced. Her symbolic capital increased with her experience and “research background” (Pine 2020: 211). On the other hand, this means that anthropologists are participating in the “regime of truth” where only experts can “confirm or invalidate a truth” (Fassin and Rechtman 2009: 226, 270). Expert witnesses might not judge the credibility of asylum seekers in court—and usually are asked not to—but they still produce the knowledge on which judges will base their decisions (McGranahan 2012b: 21). Heath Cabot (2016) and Speed (2006) both call for anthropologists to stay reflexive, critical, and aware of power structures that affect work. Cabot goes as far as to remind anthropologists that even though they are reflexive about their work, they are not so unlike the humanitarian and legal frameworks of which they are critical. Ultimately, anthropologists still have power in decisions about whom they study, whom they do not, and how they choose to represent their participants’ voices.

More so, just by participating as expert witnesses, anthropologists reinforce and reify power stratifications and assumptions of authority, consequently this structural dilemma presents itself as an ethical dilemma (Lawrance et al. 2015: 15; Leaf 2018). Testifying is an inherently political act that makes judgments not only on the country of origin (Berger 2015; McDougall 2015; Hepner 2019: 5; Rosas 2019) but also on the validity and innocence of the asylum seeker, which in turn reinforces the climate of suspicion that asylum seekers are inherently guilty and “taking advantage” of a host country (Cohen and Trask 2018). Burns says “the experience of serving as an expert witness puts structural violence in clear relief” (2020: 28). There is an “uncomfortable contradiction” where the production of knowledge for asylum cases to “substantiate and validate” an asylum seeker’s claims “reinforces the authority and power of a routinely unjust and unfair refugee claim assessment apparatus” (Lawrance et al. 2015: 6) as decisions are often arbitrarily made by officials with little to no knowledge of the countries of origin (McGranahan 2021b; Leaf 2018). Furthermore, by the time an asylum seeker and/or their

lawyer can employ an expert witness, nonprofit organizations and pro bono lawyers have already vetted and “cherry picked” cases they think will have a chance (Pine 2020: 205). This means that, on top of the “overseas” masses of refugees who do not have the same options as asylum seekers, there is another mass of asylum seekers in the United States who will not have the chance of employing expert witnesses.

What This Means for the Fourth Reality

With this understanding, how do anthropologists reflect on these issues as well as their positioning as an expert witness? In the past few years, it has become more common for anthropologists to write about their experiences as expert witnesses (Rosen 1977; Good 2004, 2007; McGranahan 2012a, 2012b, 2020; Berger et al 2015; Lawrance and Ruffer 2015; Grillo 2017; Sarat 2018; Hepner 2019; Rosas 2019, to name a few). This is a relatively new and emerging field. While there have been studies on the efficacy of expert witnessing (Holden 2019); the interaction between adjudicators, courtrooms, and expert witnesses (Good 2004, 2007; Burns 2020); and theoretical, practical, and ethical explorations of expert witnessing (Berger et al 2015; Lawrance and Ruffer 2015; Hepner 2019; Rosas 2019); there has been little written on the emotion surrounding expert witnessing or ethnographic explorations into anthropologists who serve as expert witnesses. There has been little exploring into the “fourth reality,” or “the reflexive awareness of the expert witness as an expert witness in a particular situation” (Phillips 2018: 42).

While most works speak to the fourth reality, few are dedicated to exploring anthropologists' reflections on their subject positions concerning their role as an expert witness. Rodriguez's article “A Cultural Anthropologist as Expert Witness: A Lesson in Asking the Rights Questions” fills part of this gap. In this piece, Rodriguez discusses how she came to the practice and her first journey through it. Following this experience, she (2014: 10) advises anthropologists to take two steps to ensure they have a “positive experience” when expert witnessing. One is to “ask the right questions” and communicate and manage expectations about roles and produced work. Not only will the attorney provide clarity to the expert witness on “the procedures involved,” the expert witness can also provide clarity to the attorney “on what anthropology and culture means” to expert witnesses. Second is “answering the right questions”

with your testimony and research by remaining “objective” and trying not to “determine anything beyond what you are hired to do.”

While Rodriguez’s article is a great resource for practical questions and issues in expert witnessing, it does not delve into analyzing positions. Thus, there still appears to be a gap on reflections of subject position in relation to anthropology and expert witnessing. In critical anthropology, it has become standard practice to consider the implications of the ideas that everyone is subject to social classifications (gender, sex, race, age, religion, ethnicity, class, etc.) and rankings due to that classification. Anthropologists writing on expert witnessing acknowledge their power based on their authority to give testimony, as discussed above. But only a few have explored their own roles through an intersectional lens, that takes into consideration their own gender, sex, race, age, ethnicity, and national citizenship.

McGranahan’s pieces (2012a, 2012b, and 2020) offer some insight into the emotions surrounding expert witnessing. She describes feeling nervousness during her testimony, then humility, excitement, and feeling “unsettled” following a granting of asylum (2012a: 19). In her 2020 article “Ethnographic Witnessing: Or, hope is the first anthropological emotion,” McGranahan reflects on the emotions that surround the asylum process and anthropologists who act as expert witnesses. To McGranahan, the first anthropological emotion is hope. And, “serving as an expert witness in political asylum cases is a form of ethnographic witnessing” which in turn is a form of “moral optimism” (2020: 101). It is a choice to pursue hope in a sea of normalized uncertainty, anger, fear, war, violence, and obstruction of justice. McGranahan argues that hope is not just a feeling in expert witnessing but a way of knowing; it is a “form of knowledge with different cultural, philosophical, and temporal configurations” (2020: 108). So, when anthropologists use ethnography in expert witnessing, it is an exercise of hope and knowledge to change someone’s situation for the better. In this sense, expert witnessing is an act of applied ethnography and anthropology (and, dare we say, activism). It is an exercise of “privilege and compassion” (McGranahan 2020: 107).

Hope, however, is not the only emotion expert witnesses feel. Anthropologists who serve as expert witnesses also recount negative experiences and emotions. Gilberto Rosas (2019) also writes on emotions during expert witnessing through his writing and invokes a less hopeful and optimistic view of expert witnessing. He describes the conflicting emotions he felt as he testified

at an asylum hearing for a Mexican couple. Rosas “consciously summons the demons” of Mexico with “blood pooling on [his] tongue” to validate the couple’s claim while internally wishing he could expand his statement to include the United States’ sordid role in the whole affair (2019: 308-309). He observes: “There is little place for complexity” (2019: 308). Expanding would not only hurt the couple’s case, but it would also be outside the scope of his testimony.

McDougall also discusses negative feelings in asylum cases. McDougall (2015: 136-137) notes that being “singled out by [a] judge as ‘not being sufficient’ in their decision to deny a claim of asylum. This “left” her feeling like she had failed in her efforts to help the asylum seeker because she had failed to effectively straddle the line between an anthropologist and expert witness. These feelings around success and failure were common themes among the expert witnesses who participated in this research.

What Rosas and McDougall suggest is that an anthropologist can step into a different role while acting as expert witnesses. McGranahan also discusses this in “An Anthropologist in Political Asylum Court, Part 1” (2012a). She states that she “is no longer an ethnographer” but a “participant” while testifying. She “claims the status of expert witness.” Much like Rosas, McGranahan describes that her role is not to provide nuance and subjective understandings of the history and conditions in a country that lead someone to claim asylum. Rather, as discussed above, the role of the expert witness is to be clear, concise, and command “ethnographic authority” by performing as a good ethnographer (Cabot 2016). Pine (2020: 212) refers to this as an “embodied performance of expertise” in the asylum court.

The questions drawn to mind here go a bit farther into roles during testimony. Do anthropologists who serve as expert witnesses view their role while testifying as separate from their role as an anthropologist? Or, is it related? Is it, as some of this literature would suggest, performative?

Many anthropologists view their role as expert witnesses as an extension of the American Anthropological Association’s Code of Ethics and subsequently as an extension of their role as an anthropologist. Cynthia Mahmood (1996: 493) states that “becoming actively involved in the sphere of public policy can be as ethically justifiable for an anthropologist as retaining the more traditional stance of neutrality and distance.” And, asylum cases are “critical arenas in which...

scholarship truly matters” (Lawrance et al. 2015: 15; Hepner 2015; Tague 2015). While there are ethical dilemmas surrounding expert witnessing, Kathleen Gallagher (2018: 129) argues that anthropologists must view their work as expert witnesses “with the most elevated principle in the anthropologists’ professional code of ethics, the entreaty to do no harm.” Concerning expert testimony in asylum cases, anthropologists are moving past “do no harm” to situations to situations that have the potential to prevent possible harm.

Consequently, the issue of authority, knowledge, and harm comes to mind again. How clear is it that expert witnessing proactively mitigates harm? As some of the literature has shown, participating in the asylum process has risks of harm. With regards to publishing and harm, we can extend Cabot’s (2016) argument in regards to publishing and potential harm, mentioned above, to the act of expert testimony. Cabot concludes that anthropologists must stay actively engaged in reflecting on their privileged and powered positioning as expert witnesses. Anthropologists “still make additional claims to truth that also carry the potential for epistemic violence” (Cabot 2016: 653). And, essentializing identity and using stereotypes during expert witnessing carries this potential. It is not enough to merely go through the motions of performing a “good ethnography,”—i.e., expressing intimacy, depth, sensitivity, rapport, collaboration, and post-colonial critical sentiments that every anthropologist must do now, “critique and self-critique.” After expert witnessing, do anthropologists perform “good witnessing” afterward when they reflect and write on their expert testimony to remove themselves from the possibility of epistemic violence their claims of authority could have? Or are they weighing the possibilities of harm to the possibilities of good justice?

As discussed, anthropology in applied situations has had a less-than-stellar history concerning ethics. Law and anthropology have fundamentally different epistemologies that produce dissonances when anthropologists engage with the law. The construction of narratives and testimony in the asylum process use essentialization and stereotyping that play upon racist and imperialist divides between the Global North and South. Taken together, these points produce a myriad of ethical and structural dilemmas that anthropologists must grapple with when they serve as expert witnesses. There remains space in the literature to conduct additional research about the “fourth reality,” or anthropologists’ reflections on their subject position, emotions, role, and relationship to anthropology and ethics during expert witnessing.

CHAPTER THREE

RESEARCH METHODS

This project began during an independent study of anthropological literature on refugees. After coming to terms that my original idea for a master's thesis to study the Rohingya was not possible with my limited time and resources, I struggled to find a new topic that I not only liked but in which would be invested. I knew I wanted a topic related to refugees and, preferably, law. During one of my classes, the professor, Dr. Tricia Redeker-Hepner, and I discussed the construction of refugee and asylum seeker's narratives during legal cases. She then brought up how she served as an expert witness in asylum cases. We began to discuss the subject with enthusiasm. While I do not exactly remember how I decided to study the fourth reality, the conversation probably went like this: Me: "I find this so fascinating!" Her: "Well, why don't you study it for your master's thesis?"

There was more than academic interest that drew me to this topic. First, studying up (Nader 1972) addressed a lot of the dilemmas I had with my first topic.³¹ While I wanted to work with and study refugee populations, I could not shake the feeling that it would be exploitative on some level. My strongest intentions for this research, when I was being honest with myself, was mastering anthropological research and obtaining a master's degree. And I was not in a place to use my work to advocate for vulnerable populations. I felt I would not have quite enough symbolic capital to use my platform and voice to make meaningful contributions. To me, that is a critical piece of practicing anthropology (see discussion in Chapter 2). I could not shake the feeling that I would be just another white and educated person coopting stories from vulnerable populations for my own benefit.

Second, interviewing expert witnesses afforded me flexibility with participants. Another major concern I had was affording fieldwork as well as finding the time and resources to do the fieldwork. In fall of 2019 when I was making these decisions, I was acutely aware of how much money my soon-to-be husband and I already owed in student loans. I did not want to take out

³¹ "Studying Up" uses research to contextualize and situate field sites and field work in relation power and institutions rather than view studies in isolation of socioeconomic and political structures.

any bigger loans. I also did not want to have to do the alternative to afford fieldwork: work a full-time job while researching. With this topic, I could use digital media such as online communities, video conferencing, and survey software to seek participants and gather data. This choice was also a little prophetic. Had I planned to do in-person fieldwork, I would have had to postpone and reevaluate when the COVID-19 pandemic hit in early 2020. This project would have been strengthened if I had been able to observe law clinics and firms and shadow lawyers working on asylum cases; attending asylum court would not have been a possibility as it is closed. I was able to attend virtual workshops hosted by LASA, the Latin American Studies Association, on expert witnessing.

Ethnographic methods provide an opportunity to study how anthropologists engage and analyze the legal realm and asylum cases (Ngin 2018). The data collected applied mainly to the research questions surrounding anthropologists' motivations, perspectives on their roles as experts, and perceived tensions in applying their expertise in asylum procedures as well as reflections upon ethics and areas for activism. Specifically, this research sought to answer the following questions:

1. What motivates and what troubles anthropologists about serving as expert witnesses in asylum cases?
2. How are anthropologists reflecting on strategic essentialization and pressures to represent culture as traditional and unchanging? Do their reflections shape their practices as expert witnesses, and how so?
3. How and why do anthropologists' perceptions of ethics influence their motivations?
4. How do anthropologists weigh the ethical choice to aid vulnerable populations by participating in legal institutions that reinforce those vulnerabilities and inherent power inequalities?

I created an online survey to address these questions and sent invitations to participate to various anthropologists that I identified through several list serves and through recommendations by anthropologists who knew of people who had served as expert witnesses. The questions used in the online survey are provided in Appendix B. Follow-up interviews over Zoom were used to further expand upon ideas and themes identified in the written responses to the questionnaire.

Questionnaires and transcribed interviews were then uploaded into NVivo and hand-coded to classify and organize data. The goal was to better understand the dissonances between legal and anthropological concepts, and between personal and professional motivations to participate in asylum cases, and how these are intertwined. I hope that this research will accomplish:

- To serve as an aid to anthropologists who currently serve or want to serve as an expert witness
- To open discussions on more difficult and debated topics in expert witnessing

How can this aid anthropologists who currently serve or want to serve as expert witnesses? How can critical reflection on the role of expert witnessing make room for different understandings and ways of activism for anthropologists?

Based on the literature about anthropology and expert witnessing, I expected to find that anthropologists had reflected a great deal on the tensions and dissonances arising from expert witnessing in asylum cases, and that these tensions would include concerns about the essentialization of culture and identity as well as the difficulties of reconciling differences in legal and anthropological definitions, narratives, and objective versus subjective approaches. It was also expected that anthropologists would have reflected on how the social, legal, and political structures surrounding asylum cases affect narratives and realities in addition to the anthropologist's role. My findings typically fit these expectations, though I was surprised at other common themes such as compensation, organizing in the expert witnessing community, and a more complex role surrounding the role of the expert witness in relation to truth and testimony.

Research Methods

There were three main methods used to gather data during this research: an online questionnaire (see Appendix B), a video-conference interview, and literature on the topic. The questionnaire and interview followed a two-step process “beginning with open-ended questions in an exploratory...phase,” in the questionnaire, and “integrating those results into a second phase using structured or systematic interviewing techniques” (Weller 2015, n.p.). The questionnaire was used to elicit an understanding of “relevant themes, questions, and responses

for further study” (ibid). The online questionnaire consisted of fourteen questions. Some were yes/no options with open-ended questions for expansion. The rest were open-ended questions designed to answer my original research questions and explore:

- How participants’ opinions of common themes would match with the literature; and
- What the relationship was between an individual’s anthropological training and ethics and their role as an expert witness.

Using an online questionnaire obviously differs from a questionnaire delivered in person. I found that there were disadvantages and advantages to this format:

Advantages:

- Geographic scope: By seeking participants for an online question, I had a larger geographic scope to reach possible participants. I was not restricted to a single area for ethnographic fieldwork.
- Textual analysis: I believed that written questionnaires would provide emotive and opinionated choices for textual analysis as writing is a deliberate and active choice. I also thought written questionnaires might result in more thorough and structured responses as participants would not feel pressured to answer immediately. They would have time to think through and write down a response.
- Mitigating memory bias: By allowing participants time between recruitment and participation to think about the subject as well as allowing time for them to think about their answers, I felt, perhaps, that an online questionnaire might help with mitigating a memory bias, or when “people can recall fewer items... [during]...a spontaneous, unstructured request for information [when they] may not [be able to] retrieve complete information” (Weller 2015: n.p.).
- Flexibility: By allowing participants to take the questionnaire at their convenience, I did not have to worry about scheduling conflicts or time constraints.
- Confidence: Throughout my research, I was nervous about asking more experienced, fully-trained anthropologists who probably held Ph.D.’s to

participate in my research—especially since some of my participants might be cited in my literature and research. How would they feel about me studying up? Would they agree with the conclusions I drew? Beginning with online questionnaires and mainly electronic communication allowed me to make measured and confident approaches as well as “find my footing,” so to speak, before engaging in one-on-one interviews.

Disadvantages:

- Kinesics, paralanguage, and proxemics (Eller 2016: 74): In anthropology, how something is said and what is not said is often just as important as what is said (Pratt Ewing 2016). Ethnographic researchers can use a participant’s delivery, tone, and pace of speech (paralanguage) and the movements, gestures, and facial expressions (kinesics) to reveal or reinforce different meanings and understandings of what is said. Furthermore, placement of bodies (proxemics) can also add depth and understanding to responses. These extralinguistic features would generally not be conveyed through an online survey.
- Small talk: Small talk during ethnographic fieldwork “is a central, yet taken-for-granted, ingredient” (Driessen and Jansen 2013). Small talk can reveal a wealth of knowledge and data. This was not possible during online questionnaires, but it was possible during the follow-up interviews.
- Follow-ups and clarifications: With online questionnaires, neither a participant nor a researcher can ask for clarifications. In hindsight, as there were two instances where participants indicated that they did not understand a question, there should have been a mechanism for them to contact me for clarification.

Some of these disadvantages were mitigated by the follow-up interviews over a video-conferencing software. However, proxemics is more difficult to gauge on Zoom. Nevertheless, as it turned out, this format became necessary since this research was carried out during the COVID-19 pandemic.

Following the collection and analysis of questionnaires, I began to construct the interview. I decided that I would use both a structured interview and open-ended questions. Given that I did not have the option for longer, more traditional ethnographic research, the follow-up interviews allowed me to gain a more nuanced understanding of issues that were raised in the questionnaire answers.

Participants

The project had a total of twelve participants who completed the questionnaire, and six who participated in follow-up interviews. Following the questionnaire, participants were prompted with the option to self-report and write in their demographic data. While this project originally set out to recruit cultural anthropologists, the networks available to me also included other social scientists. Therefore, I included political scientists in the data set. Two of the participants held Ph.Ds. in political science, ten held Ph.Ds. in anthropology, and two were Ph.D. candidates in anthropology. Of the six who participated in follow up interviews, one held a Ph.D. in political science and the other five held Ph.Ds. in anthropology. Reported demographic data can be found on the following pages.

A majority of my participants were white woman who held Ph.Ds. Two-thirds were women. Following that, the next majority were white males with Ph.Ds. One third were male. Most participants were over forty years-old and were tenured professors. All participants who reported race/ethnicity reported as “white;” two participants did not self-report race and age. While most participants limited their testimony to a single country or subregions within larger regions, such as Africa, Asia, the Middle East, two gave testimony in one or more geographic areas. This was in part due to their research extending to one or more countries/geographic scopes and because some expert witnesses will give testimony outside of their main fields of research. This will be discussed more in later sections. All participants had post-secondary degrees.

For confidentiality, pseudonyms will be used to refer to all twelve participants and I will use third-person plural pronouns and possessive pronouns. All references to gender and geographic scope will be removed when using pseudonyms. Quotes that pertain to certain geographic areas, age, race, or gender, will be referred to generically and will not be attributed to

Table 3.1. Self-Reported Data on Participants

	Ethnicity/Race		Age	
Number who reported	Total	10	Total	10
Number who did not report	Total	2	Total	2
Categories Reported	White	8	Under 40	2
	White not Hispanic/LatinX	2	40-49	4
			Over 50	4

Table 3.2. Self-Reported Data on Participants (con.)

	Professional Title		Gender/Sex	
Number who reported	Total	12	Total	11
Number who did not report	Total	0	Total	1
Categories Reported	Tenured Professor (Ph.D.)	8	Female	6
	Consultant (Ph.D.)	1	Cis-Female/Woman	2
	PhD Candidate	2	Male	2
	Retired with Ph.D.	1	Cis-Male	1

Table 3.3. Geographic Scope of Expert Testimony

North Africa/Middle East	2
Sub-Saharan Africa	5
Latin America	6
Asia	1

Table 3.4. Number of Times Participants Served as an Expert Witness

	Submitted Country Reports	On-Call for Court Proceedings and Did Not Testify	Testified in Court	Range of Years
Dr. Garcia	0	0	1	1-5
Maslin	7	7	1	1-5
Kouma	5	0	2 (about to be 3)	1-5
Dr. Grosh	About 15	1	3 to 4	1-5
Dr. Parra	132	40 to 50	10 to 12	1-5
Dr. Lyon	70+	60+	15+	1-5
Dr. Chen	175	Approx. 35	Approx. 25	5-10
Dr. Quintero	About 50	About 5	About 10	5-10
Dr. Tinsley	About 350	About 150	About 20-25	15-20
Dr. Hoelich	Not provided	About 15	About 15	15-20
Dr. Ali	Approx. 8-10	4	1	15-20
Dr. Akashiya	600+	600+	10 to 15	20+

Table 3.5. Contact Methods for Participants' First Case

	Contacted by Attorney	Contacted by Asylum Seeker	Contacted by a Colleague	Learned of practice and became publicly listed through database
Total	6	1	3	2

a pseudonym. While most participants were comfortable with having some or all quotes attributed to them, I felt it best to use pseudonyms. This reasoning will become clearer in the following sections, but it was mainly to avoid any misuse of findings or quotes.

CHAPTER FOUR

“I ARRIVED”

Much like the clichéd yet needed ethnographic literary device, it is no surprise that each expert witness had an “I arrived” story. Ethnographers must justify their involvement in and experience of their research; it is the basis of the expertise that they then leverage in the asylum process. “I arrived” shows their journey, acceptance, and inclusion that grounds them in a community. It grounds them in the ethnographic methods that make up the core of anthropological research: in the participant observation, in the interviews, in the lived experience of their subjects, and in the trust that they build with their interlocutors that leads to “I was there.” “I was there” is a powerful statement in the production of knowledge, academic work, and expertise. If they lived it, in a sense, then who can question their expertise? This establishes their ethnographic authority, and their authority as an expert witness.

How did You Become Involved in Expert Witnessing?

Ethnographers typically write about their discovery and interest in a region or people or culture and their journey to an “other” place. Correspondingly, an anthropologist’s journey into expert witnessing begins with how they discovered the practice. Expert witnesses find their way through colleagues, mentors, or peers. Others were contacted directly by asylum seekers and their families. Some discovered the practice through professional networking, organizations, and listservs. Dr. Hoelich recounts that “an asylum seeker found [them] because the Immigration Officer asked them to find an anthropologist who knew about ‘race’.” Dr. Tinsley “inherited [their] first case from a deceased professor of mine” and then was “asked by family members of an [sic] asylum seeker to assist.” Dr. Parra recounted that “a colleague wrote and asked if [they] would be interested in writing expert witness declarations” as the colleague “had more requests than he could handle.” Kouma “saw a call for expert witnesses on a professional listserv.” Maslin was forwarded a lawyer’s email by a mentor from “a listserv she was on” that “subsequently [they] registered” for. Dr. Lyon became involved mainly through an organization after they “learned about others doing it and was asked to do it.”

It is also common for attorneys to seek out expert witnesses through listservs on larger organizations like American Anthropological Association (AAA, pronounced “Triple A”) and the Latin America Studies Association (LASA)³², organizations that publicly list expert witnesses like Rights in Exile and University of California at Hastings’ (UC Hastings’) Center for Gender and Refugee Studies (UCHCGR), word of mouth, legal publications, and general online searching for local academics. Both Dr. Grosh and Dr. Akashiya were initially contacted by attorneys. “Attorneys started coming” to Dr. Grosh “simultaneously” after a presentation they had given “got a little bit of press coverage.” This was at a time when the violence levels in their area of study were “escalating” and the “flow of refugees... increased.” So, a “combination of increased visibility and an increased number of cases” led to an attorney reaching out. Dr. Garcia recounts:

Lawyers of [my field site’s] clients were looking for country experts to assist in their client cases at a time when many [from my field site] were facing deportation. There is a widespread lack of knowledge about the country and its political and social conditions, and my lengthy in-country experience and research provides me with the ability to provide in-depth context on those country conditions.

Professionally, first cases are introductions into the world of expert witnessing, so they tend to stick in the minds of anthropologists and other social scientists. Many social scientists find issues that are oft-written on and sometimes “over-stated” tensions between anthropology/social science and law and professional tensions and issues discussed in the introduction and literature review. But, first cases are often memorable for a variety of reasons that are often very human as this research has found. For Dr. Tinsley, their first case was memorable not only in the way it was “inherited,” but also due to its timing related to their dissertation and in relation to their area of study:

³² LASA is an interdisciplinary organization comprised of many social scientists such as political scientists, sociologists, and anthropologists (among others). <https://lasaweb.org/en/>.

Yeah. So, when I was still a grad student and finishing my dissertation, one of my professors could not take the case for personal reasons]. And that was how I got the first case [that] ever came to me was because [they] had been working on a case, and it was a pretty- It was a case that had been in the system for, like, over a decade. And it was pretty complicated. And it was, interestingly, like, right within the crux of everything I had been studying in my dissertation in terms of political opposition... So, um, so the claim made a lot of sense to me, the person's experience made a lot of sense to me. And so, that was the first case I ever worked on. And, it was already at, like, had already been through multiple appeals, it was a circuit court level.

*... Obviously, I'm not a lawyer. And so, I don't know all the ins and outs, but certain cases that that reach a high level of appeal and become significant for either for the level of review they've gone through or because something about the judge's ruling is like a precedent setting, right. So, they become incorporated in case law, and documented as such. And so, this is one of those cases. **So, it was like my first case, I got it from this professor, it was a really involved case, but it was specifically in my expertise. And then it, it ended up being said, like my, my engagement with the case ended up being reflected like the findings, or the testimony that I provided in the case, was even reflected in the circuit court decision.***

For Dr. Lyon, their introduction to expert witnessing was memorable because they found an outlet to use their “expertise beyond only academic scholarship” and could “apply [their] knowledge to the real world.” Through professional connections, they learned about expert witnessing and “subsequently registered” on a public database. Dr. Lyon continued:

I don't think graduate programs, in any discipline, are really connecting the dots in terms of how to use disciplinary expertise, and the students are applied way... I have none of that background as I was doing my doctoral work, and finished my PhD... And then it took me like another- several years to figure out how to apply it in this way. And it was mostly through my connection to [an anthropologist who did expert witnessing] and other people like her, to scholars that I had worked really closely on in my graduate

work, you know, read a lot of work. And then by connecting with them at conferences, just realize that this [expert witnessing] is a thing that people do, and once I put myself into [an expert witnesses] database, that was like an irreversible step, because my inbox started being flooded with requests to actually do the work.

For Dr. Akashiya, the newness of the practice made it memorable as well as the circumstances of the case:

It was a particularly strong memory because it was the very first time I'd ever been contacted. I had no idea that there was such a thing as an expert witness. And normally, in this country, [lawyers] don't contact academics with this kind of information. Usually if they're instructing a solicitor or caseworker. In this case it was somebody who became quite a prominent immigration [lawyer]. So, we had, we had an exchange of email, and I had only a week to, to put the case together which was for unaccompanied male child. So that was the very first case and it took me. It took me almost the entire time to figure out what I wanted to do with it and to find the information. But it was interesting. Unfortunately for the boy. It was not supposedly valid; he told the officials that he had no relatives in the [country]. But when his appeal began, relatives appeared. And it was—the hearing was abandoned. And I never did hear what was the final result.

Dr. Akashiya's example reveals how initial cases can be memorable due to the newness of the practice. Expert witnessing is a way to discover of different methods and procedures and presents fresh cases for research. Dr. Quintero said that "every case is like a new detective story." There is a lot of excitement found through human experiences and discoveries about the process.

These examples show the journey of expert witnesses from "I Arrived" to "I was there." Some of these expert witnesses mentioned memorable first cases that they associated with negative experiences or strong emotions, which is not unlike some of the fieldwork stories about which anthropologists have written. Continuing on this mirrored ethnographic path, once the participants started expert witnessing, many experienced the trials and tribulations and/or cultural

“faux pas” that anthropologists face and overcome before they become immersed in a culture. Students of anthropology all read how Clifford Geertz overcame his exclusion from the Balinese community by fleeing with them from the police after a cock fight (1988). This shared act of illegality, resistance, and cultural practice brought him into the community. Only then could he truly study it in true anthropological fashion as if he were a member of the community.

Mentors were also common theme. Many participants looked to others for advice. Kouma “reached out to a friend,” who also serves as a conduit for cases, “who is an immigration lawyer for guidance/advice.” Dr. Quintero recounts being very nervous at the beginning of their tenure as an expert witness—possibly remembering their disastrous first time recounted on the following page—before asking friends who were lawyers for advice:

they were like, “all that you have to remember is that they are the expert on law, [and you are the expert on your field site] and they have no idea what you know, they have no ability to do what you do.” Yeah, right. And that was like a really valuable piece of advice for me, like, and so from that point forward, I very much held my ground as the authority in the room on what it is that I'm speaking about.

Dr. Ali recounts a story where they were contacted as a graduate student by a law student working at an immigration law clinic (2021a). Their “first experience [was] very different than everything [they have] done since. Rather than write the brief, “the law student interviewed me about the country conditions, and about things relevant to their client’s case” before the lawyer wrote the affidavit. Dr. Ali then “reviewed” their statement and signed it.

Well, definitely my, I think for me the reason I initially became involved like even that very first case, I was like, ‘I'm not qualified’ and they convinced me that I was, including a faculty member who was my senior, was one of my mentors said, “You're totally qualified to do this and it's important that you share your knowledge.” For me, like, I was a human rights activist since I was in high school and I came to anthropology through that, for the human rights, in essence. And so, I have a deep commitment to lifelong commitment to human rights...

“Now, this is where it gets complicated,” Dr. Grosh told me in the midst of describing their first case during our follow-up interview. After giving oral testimony for this case, Dr. Grosh was invited back by the defending lawyer to write a brief supporting the asylum seeker’s inclusion in a protected group. They had been vigorously researching and preparing the brief with a group of students enrolled in a human rights course when the complications began. “Two weeks before this brief was due ..., I was hospitalized. My class was reassigned... But my students continued [to work on the case]. And so, from a hospital bed, I oversaw this process where the students assigned two of them the task of arguing against our representations of what a group was and two of them argued in favor of.”

Basically, we won the case! We ended up creating a new group we made in that case... We found a book [written by social scientists] ... We were able to build the argument that this is a distinct group that hits all the qualifiers of that they are socially recognized, all the legal requirements... The judge accepted it and granted the asylum. We won the case. So yeah, that was my introduction, it was a weird one because of all the grad students and a hospital bed and so on and so forth.

Dr. Quintero initially stated that they were recruited by a “colleague during an employment transition.” However, in the interview, Dr. Quintero recounted their “real first experience” that happened some years earlier:

[W]hen I was a master’s degree student, a PhD student... I was brought into testify on a subject that I probably didn’t know that I should have said no to, which had to do with the etymology of a surname. And I also probably didn’t, wasn’t sufficiently credentialed. So, I was rapidly dismissed form that very first experience... Rapidly dismissed by the judge as an ‘unqualified’ expert.”

Surprised, I asked if Dr. Quintero was contacted by a lawyer. I thought that surely a lawyer would have screened an expert thoroughly and not chosen one who could be dismissed as

“unqualified” and possibly hurt their client’s case. Almost as if guessing my assumption, Dr. Quintero replied: “I find that most of the lawyers ... who contact me are really early career lawyers. This seems to be, like, a way for law firms to educate lawyers.”

What Motivates Your Participation?

Just as Malinowski was stranded in the Trobriand Islands by the geopolitical climate of World War I, anthropologists find themselves drawn by an outside force to expert witnessing. Anthropologists feel motivated to become expert witnesses and to overcome their issues and fears of participating in an unjust system, fraught with structural violence against immigrant communities (Burns 2020), for a variety of reasons. A review done by John Campbell (2020) revealed that “experts have quite different reasons for engaging with the courts ranging from the desire to protect subaltern peoples to profiting from their work” (2020: 20).

First, a majority of the participants in some form or another discussed “duty and commitment” to field site, including seeing expert witnessing as a “pursuit of some kind of indirect reciprocity,” which many anthropologists regard as a principle of anthropological research. These expert witnesses felt they were “in debt” to their community of study, and expert witnessing provided an outlet for them to repay that debt. For Dr. Akashiya, “my desire to do this work grew, in part, from my feelings of indebtedness to the friends and interlocutors from my fieldwork as an anthropologist.” Dr. Garcia stated, “my experiences in [my field site] have had a profound effect on my life.” And continued:

The tremendous amount of support and goodwill I have received from the thousands of [people from my field site] I have encountered has motivated me to do what I can to work with and support [those] in need.

Others express indebtedness through the language of “solidarity” or “responsibility” to their field site. Dr Tinsley felt that expert witnessing “is a professional responsibility” as well as “an important way for me to express solidarity and provide some reciprocal benefit to a population on whose lives my anthropological knowledge and career has depended.”

Three participants discussed how their experiences of conditions in their field sites motivate their work as expert witnesses. Dr. Akashiya talked about how experiences with poverty and slums at their field site paired with the generosity of the people gave them an “obligation to the people who come” to seek asylum. It also troubles Dr. Akashiya that there are those to whom they “can never repay [the debt]” “because they will never reach” the [host country]. For Maslin, expert witnessing was a “gratifying” use of “the authority granted” to them by their “academic credentials whether or not those should in fact give [them] such authority to support people escaping the terrible situations [they] have seen firsthand.” Dr. Garcia said that:

Morally, I am aware of the hardships that [they] left behind and the risks they would face remaining in their home countries, given the social contexts. I know that many who leave did so because they thought it was the only way for them to survive. In this sense, sending individuals back to the place they fled is cruel and unjust.

Participants typically saw expert witnessing as an avenue for reciprocity because expert witnessing is a “direct” and “valuable” application of knowledge “that can help people in a very direct and powerful way.” Dr. Parra stated that expert witnessing “enables me to use knowledge acquired over 40+ years of doing research.” Dr. Lyon echoed these sentiments, saying that expert witnessing was a use of “my expertise beyond academic scholarship;” it is a space where “I can apply my knowledge to the real world.” Kouma was driven by “a desire to make my research useful in a direct way.”

Nine participants cited a “sense of responsibility and a principled commitment” to human rights, social justice, humanitarianism, the asylum system, and/or helping people in need as a motivation for expert witnessing. To Dr. Tinsley, as the asylum system comes under attack both in the United States and on a global scale, expert witnessing was a way to support the right of asylum:

As the institutions that protect the right of asylum have increasingly eroded, it's important to try to defend what we have left. It is easier for the courts and for

immigration officials to deny and to violate the rights of asylum seekers when experts and lawyers are less involved.

Dr. Grosh's participation is an attempt "to help in the face of a humanitarian disaster" whereas Dr. Lyon's practice is "a grounded assessment of individual human vulnerability to human rights violations." Dr. Akashiya "initially" got involved in expert witnessing due to "curiosity, but subsequently it was a sense of injustice at how asylum claims are decided" that motivated their participation. Dr. Hoelich also cited "curiosity" as a motivation as well as "to help individual asylum seekers."

Dr. Chen categorized expert witnessing as "public engagement as an academic [for] justice." Dr. Garcia was politically motivated through a commitment to "immigrant communities and their rights" and support for "open borders and freedom of movement." For Dr. Kouma, motivations included "[a] desire to support asylum seekers at a time when they are under attack." Simply stated, Dr. Ali's motivation was a way "to help people in need."

Compensation (discussed in more depth in Chapter 5) is another motivation, albeit a debated one. Two participants mentioned compensation as a motivation. For one participant, expert witnessing was a motivation in that the money supplemented their "limited income... as a retired academic... [and] enables [them] to travel at least once a year... to do research related to" their expert witnessing cases. Dr. Quintero stated that expert witnessing "has offered a financial 'side gig' opportunity that [they] can easily do."

Lastly, four participants cited that a sense of gratification and/or a positive feeling was part of their motivations. While I had originally planned to discuss emotions in an independent section of this thesis, it quickly became apparent while I was outlining that, like life, emotions permeated almost every area of discussion. Therefore, I decided to let the emotional analysis flow throughout the discussion. Burns calls "the work of expert testimony" challenging (2020: 36). However, "researching and writing affidavits that are compelling but not simple advocacy diatribes is a creative task that is rewarding even when the conditions that are being discussed are tragic" (ibid). Especially in immigration court, anthropologists can feel pride and joy at successful testimony due to the arbitrary nature of decisions. They can feel like their testimony convinced a suspicious judge or immigration officer to grant a claimant asylum.

Dr. Grosh discussed that they often privilege expert witnessing work over academic pursuits like publishing because of expert witnessing's "tangible" impact.

A lot of the writing I do are cases—asylum cases—not academic journals. But, just in terms of measuring the impact on the world out there, an academic article that will be read by 20 people or save somebody's life? It's a no brainer. It has been satisfying, because I know when 80% of the cases I work... Knowing the impact that it has on people's lives. It's rare within academia to be able to make such a tangible impact. It's always... It's quite satisfying.

The most memorable cases "were the most satisfying" like a case when a young girl threatened by human trafficking was granted asylum. Dr. Parra found "great pleasure and satisfaction" in knowing that they are "hopefully ...helping to save a life or lives and giving people the opportunity for a better life." Other anthropologists have written about the feelings of "saving lives" (Burns 2017). Kouma felt that expert witnessing and their anthropological training "converge in the goal of using knowledge production as a tool to improve the lives of those who are the subjects of that knowledge and in constructing substantiated arguments." Burns (2020: 36) compared his feelings after being told his testimony saved lives to the famous last line of *Shindler's List*: "Whoever saves one life saves the world."

Nevertheless, the adverse of this is also true as seen when McDougall's testimony (2015), when he was singled-out by a judge as "insufficient." With so much at stake in the asylum process, participants feel "haunted" by cases "I lost." Participants put a lot of stake on their testimony. Many participants framed success and failures in court as "I won/lost" or "we won/lost." This constructs an explicit tie to their solidarity with the claimant.

Motivations are often multifaceted and varied. To many, it is a sense of duty or responsibility based in their fieldwork and research experiences. To others, it is a way to reciprocate the generosity they found at their field sites. Expert witnessing is also an avenue to participate in humanitarian action or the fight supporting social justice and human rights. It is a way to apply expertise, knowledge, and research in the "real world" and outside academia. In that sense, some expert witnesses find this application deeply gratifying because of the impact it

has on aiding people. When “successful,” the asylum process is rewarding through a sense of satisfaction, gratification, and positive emotion. Anthropologists must set aside some of their worries to make a tangible impact. Campbell et al. describe how doing “good enough” to defend their clients requires them to set aside “anthropologists’ typical deconstructive approach to reified essentialist cultural tropes... and [redirect] them to a legal context,” but that is “not to say that our sense of ethics will not be pushed and twisted” (2020: 332).

Some motivations are controversial like compensation or advocacy. These will be discussed more in the sections that follow. Saying you are committed and driven by human rights opens you up to being disqualified by overly eager Department of Homeland Security (DHS) attorneys or immigration judges which will be discussed in Chapter Six: “Testimony.” Anthropologists want to advocate but cannot do so publicly or they undermine their ability to advocate. In addition, when money gets involved, it can complicate things.

CHAPTER FIVE

“ANTHROPOLOGISTS CAN GET VERY WEIRD ABOUT THE ECONOMICS OF IT”

Compensation was, by far, one of the most interesting and unexpected themes of this research. Compensation is also one of the more controversial topics in the “small,” “tight-knit” expert witnessing community. I largely began asking about it due to responses in my questionnaire where compensation came up spontaneously. I did not explicitly ask about it in the questionnaires. Compensation came up in discussions about ethics, professional responsibility, and motivations. One participant, in fact, even suggested that I ask about compensation. They were “curious about how many anthropologists charge fees for their work.”

Of this research’s participants, nine brought up compensation spontaneously in their questionnaire responses. Therefore, in the six interviews I asked about compensation. The findings are as follows: Five participants reported that they had accepted money or compensation at some time; four reported receiving compensation a majority of the time, two reported taking compensation only part of the time, and one said they had never taken money for expert witnessing. Of the four that reported taking compensation for a majority of their cases: one was a consultant, one was a retired professor, and two were tenured professors. Both participants who reported taking money or some other form of compensation (to be discussed below) once in a while, were tenured professors. The one person who recounted never taking money was a tenured professor. It could not be determined from the one other participant’s responses whether they took compensation though they did mention “questions about pay” as an ethical dilemma. The last person who spontaneously brought up compensation in their answers to the questionnaire mentioned that they were interested in researching forms of compensation from sources other than the asylum seeker, such as grants from non-profits. There were three participants with whom I did not do a follow-up interview who did not mention compensation in their questionnaires.

The research participants had very strong opinions about compensation. Some participants thought that: “The “motivation to make money at expert witnessing is ethically

problematic.” Dr. Lyon, who described compensation as “a pretty controversial topic within the small community,” feels:

[P]retty strongly that people who have made our names based on people in these countries and generously giving their time and sharing their stories with us so that we can produce our academic work, it's the right thing to do to give back and not extract money from people.

One participant said that their colleagues “definitely don’t consider [expert witnessing] to be a professional service” because they were paid for the practice. This participant added, “Anthropologists, in particular, can get very weird about the economics” of expert witnessing. Yet, this participant listed expert witnessing “under the professional service” on their CV and does not “hide it if [they] were paid.”

This quote reveals a prominent debate that I found during my research: Should expert witnesses be paid for their work. If “indirect reciprocity” is a major “part of anthropological research,” if social scientists like these participants feel that they have a responsibility to give back to a community or people where they did their fieldwork, is it reciprocity if they profit off of the giving back? Participants expressed that it would be wrong to benefit from expert witnessing due to the nature of their work as anthropologists and the circumstances of the asylum process. When I brought up compensation, one participant stated that:

I would look with considerable skepticism on anybody who builds their career on the misery of others. That just in principle I can't profit on somebody else's misery.

Thus, some anthropologists hesitated at the idea of listing compensated expert testimony as a professional service since professional services do help with achieving tenure.

My advisor pointed out that academics being compensated for expert witnessing is not that different than being compensated or reimbursed for other professional services such as being invited to speak at a department or a conference. However, it appears that compensation for these strictly academic activities (which also are generally based on the person’s expertise) do not

seem to raise the same ethical flags, in terms of being listed on an academic CV or being counted as an accomplishment that helps the person get tenure.

The responses by the participants in this research suggest that the source of the money may be the issue to many academics. Some said they did not want to accept money if they thought that impoverished asylum seekers were going to have to pay for their services. Nevertheless, as this research has found, the compensation often goes right back into helping asylum seekers as it funds further research. One participant mentioned using the money that they received from expert witnessing to pay students to help research cases. Four participants noted that most of the compensation they do receive is from large law firms who take cases pro bono. Does this mean that accepting money for expert witnessing from large law firms is more equivalent to accepting money from a large university to speak at an event?

Rodriguez discussed this issue in her article after she came to a “conundrum” of whether she “should charge for her services.” At first, she was hesitant but later came to realize that asking for compensation “reflected [her] valuation of [her] own work” and anthropology (Rodriguez 2014: 7). She thought of “setting a standard” for future anthropologists involved in expert witnessing. Also, Rodriguez considered the implications of “taking pennies” for compensation in the legal culture where people expect to charge fees for expertise. How seriously would they take them? Dr. Tinsley echoed these sentiments in their interview. Not taking compensation means an attorney can dismiss you as “an advocate.” On the other hand, an expert receiving compensation can also be spun that they are a “hired gun.”

Four participants stated that they are not motivated by the money—though this did not exclude them from receiving compensation. As one participant said, “But like, I mean, I honestly don't. I honestly really don't care whether I get paid or not.” This ties in closely to the motivations discussed in “I Arrived.” For example, although Dr. Ali does accept payment, they stated that “I am not in it [expert witnessing] for the money.” The sentiment was that academics should be giving back to those they studied and not the other way around. Dr. Lyon (see full

quote below) sums this sentiment up well: “the appropriate flow of resources feels like, for me, should go to” the people who helped expert witnesses build a career.³³

Dr. Lyon does not usually accept compensation “in part, because [they] have a day job as a professor” and in part because their tenured position “is related to the work that [they have] been able to do in [their field site].” They continue:

So, in some ways to then charge people for the statement, where I got the credentials to make the statement based on people voluntarily responding to my questions as a researcher throughout the course of my career just feels more questionable... Because the appropriate flow of resources feels like, for me, should go to them.

Dr. Grosh stated that “part of [their] job is to disseminate the information” gathered at their field site during their research because their job was publicly funded through a state university.

Dr. Tinsley specified that they do not bring up compensation first; they wait until the lawyer or claimant does first. However, Dr. Tinsley is resistant to accept money and sometimes suggests “something in-kind... if [asylum seekers or lawyers] insist.” This is due to Dr. Tinsley’s feelings that:

[Asylum seekers] can't afford it, like they're paying their lawyer. Right? Their legal bills. Yeah. Because a lot of these cases do come to me through my research networks, their friends and family of people who I know. I'm not going to exploit them.

Dr. Tinsley continued and told me about “a time where they were sent a cheesecake.”

Sometimes, they accept textiles like homemade clothes or a blanket.

Though Dr. Tinsley personally had strong feelings, they did state that they knew people who made a living off of expert witnessing:

³³ My advisor rightly pointed out that this question expands beyond expert witnessing. The ethical dilemma of who should receive income from the results of research is not limited to expert witnessing. For example, anthropologists have to decide what to do with publishing royalties.

I mean, I know people. So, I have a colleague... who's, he's done a ton of expert witness work. And he's always patched together a career. I mean, he's an amazing researcher. But he's not a conventional like university researcher. And there was a time when most of his income was coming from expert witness work on [cases from his field site]. And I had another friend who had a [family member] with a health condition, and he paid almost all of those medical bills by doing expert witness work.

Dr. Tinsley concluded that they did not think the practice “is so horrible,” just that “we [expert witnesses] need to be careful and think it through.”

It is important to note that geography plays an important role in compensation and expert witnessing. In the United States, as previously stated, asylum seekers are not guaranteed public representation under the law. Consequently, there is no public money going to asylum seekers’ attorneys or expert witnesses. Many cases are done pro bono or by non-profits; a vast majority of asylum seekers do not have legal representation in the United States. In the United Kingdom and European Union, asylum seekers do have state-funded legal representation. Thus, it is more common and less of an ethical dilemma for expert witnesses in these countries to charge fees. In American cases, expert witnesses are usually either being paid by the asylum seeker, a non-profit, or a law firm taking the case pro bono.

The data suggest that subject position and employment were factors affecting whether or not someone received compensation. For two participants, expert witnessing supplemented their income. “Day jobs,” as several participants pointed out, allow expert witnesses to offer their services at free or reduced prices. For those who not have a day job to support them, expert witnessing can be a good source of income. For the participants that were a retired professor and a consultant, it was a steady source of income. As previously noted, for the participant who was a “retired academic” on a “limited income,” expert witnessing provided funds for them to travel back to their field site to stay up to date. This participant then uses these data in subsequent expert testimonies. One participant stated that compensation “is one of the reasons why” they expert witness. They began the practice “during a period of unemployment” and now work as a consultant, not at an academic institution.

For a report, participants typically charged between \$700 to \$800 and tailored the fee's currency to the country. That would be about £500 to £578 and €589 to €673. One participant who told me that they charged \$200 an hour, or £144 and €168. Another participant charged, "probably one of the lowest rates in the" U.K., £50 or, about \$70 and €58, per hour. Rodriguez describes charging "three times the amount [she] was originally offered" after consulting with colleagues (2014: 7). One told her that they charged \$400 an hour while another said that if Rodriguez did not charge more than \$250 an hour, she "was being exploited" (ibid).

The consultant usually charges an additional \$200 to \$400 for the oral testimony since "it does tend to take up a lot time between prep which is honestly more like prepping the lawyers...And... then... waiting around time for the judge to get" to the expert witness. Also, it is "frequent" for rescheduling to happen. One participant told me during an interview that a prominent academic in the community fully makes a living off of expert witnessing: "He charges almost everyone, from what I understand, because he doesn't have a university appointment; he doesn't have that day job."

Even with a "day job," one participant noted that they found need to charge. I was not surprised by this. I came to understand that regardless of intention or dedication to human rights the participants live in a capitalist system where many cannot afford to donate time to being an expert witness. Dr. Ali discussed that they did not charge when they began expert witnessing. Dr. Ali did not "understand... the economic framework around immigration law in the United States and around expert witnessing." The pro bono work partly "limited [them] in the beginning." However, a "lawyer friend... enlightened [them]" on how big law firms must do a certain amount of pro bono work to stay in good standing with the Bar. It is not out of the "goodness of their hearts." And, the lawyer continued that "lawyers should be paying you for the affidavits," not the asylum seeker. A participant who was a Ph.D. candidate mentioned that they would be interested in forms of compensation. As they "gain experience," they are "more interested in seeking remunerated work when those are covered by third parties (i.e., like grants) to help offset the cost of my time."

This theme also appeared in my discussion with Dr. Lyon who previously discussed the correct "flow of resources" for expert witnessing. Dr. Lyon noted that they usually do cases for free. When the pay is not "coming from the" asylum seeker and rather from a large firm "as a pro

bono case... that usually [has] an expense account,” they “will accept those cases” and payment. However, Dr. Lyon says these types of cases are “few and far between”:

most of the [cases] that I take are for small nonprofits that have very little budget, and those ones I do for free. I feel really strongly that people who have gone through the amount of trauma and the financial hardships that the folks who are claiming asylum have gone through, that they don't need to fork over more money to pay for my services and expert witness

To these participants, the fact that law firms with “expense accounts” would take on asylum cases pro bono removed some of the questions about morals and ethics and the correct “flow of resources.”

A common theme in the literature and my research was that day jobs can be demanding. Academic jobs are challenging. Tenure track and research-based positions are notoriously demanding and notoriously underpaid, and non-tenure-track jobs and graduate assistantships, even more so. Academics do not always have the time to donate to pro bono cases. Compensation provided a motivation for them to do additional work on top of the demands of their “day jobs.”

Having a “day job” can be limiting, though, if one does not accept compensation on principle. Dr. Grosh stated that, “I just on principle will not take money for it... On the one hand, I want to help, but I've got a day job. I'm doing this on the side. There are limits [to what you can do.]” For this participant, compensation was not on the table. Thus, compensation did not provide further motivation to take on more work. Moreover, conflicts of interest can make accepting money technically difficult. Dr. Grosh continued: “It's a lot of work to take money [with all the conflict-of-interest forms from the home institution and all the tax documents...] aside from the principle of it.” Dr. Grosh has done about 15 cases of written testimony over 5 years.

One participant recounted that they had tried to lower their fees “in situations where people kind of begged” them. However, they found that these cases “tend to ask for really, really extremely extensive testimony” that has “a really high demand” and “threshold” of work, more than on a typical case.

And, honestly, what I do normally has, you know, get, gives people a stay on deportation, it works. So, you know, for it to be like way excessive, like I, there's something that happens, there's something that seems to be like, I don't know, if it's psychological or whatever, but like, when you don't ask people to pay you, they do seem to take advantage of you, you know, which is a problem. It also seems to... I think it maybe just sort of like impacts their perception of your expertise.

This quote shows that in some cases charging money sets expectations for the amount and quality of work it is possible to produce for a single case.

CHAPTER SIX

THE PROCESS

Initial Contact

Official organizations and networks have formed in the small community of expert witnesses. Larger organizations such as Rights in Exile, the American Anthropological Association, the UC Hastings Center for Gender and Refugee Studies, and the Latin American Studies Association have registries, listings, and sub-groups centered on expert testimony in asylum cases. Lawyers and asylum seekers can access these public listings to find expert witnesses. Many of the participants are involved with one or more of these groups; and, as previously discussed in “I Arrived,” some found their way to expert witnessing through these groups.

Another interesting mode of connecting was through word of mouth and networking. This appears to be common practice. Dr. Ali told me that:

People find me, either through word of mouth or because like some of my affidavits have been published on various law sites so they might find me that way.

One person I spoke to during my research mentioned that they were once contacted by an attorney to give expert testimony during asylum case, but they did not feel comfortable giving the testimony. So, they gave the lawyer the name of a prominent anthropologist who they thought might be willing to serve as an expert witness. Many participants mentioned getting cases from or passing cases to people they know. Sometimes, it was because they were too busy with their “day job;” other times, it was because their expertise did not match. Dr. Tinsley jokingly discussed interactions they had had with a colleague., that they “bumped” a case back and forth due to time constraints.

A majority of the participants cited not having enough time as a barrier to expert witnessing.

Dr. Tinsley: "If I don't feel that I have the specific expertise on the core issues, then I will not participate (e.g., if the fit between the case and my knowledge/experience is not a good one). Most often I turn down cases because I don't have the time to do them (either in my schedule or because the needs of the case have too short a timeline for me to fit in the extra work)."

Likewise, to my question about whether there were some things that had prevented them from serving as an expert witness, both Dr.Chen and Kouma responded, "Time constraints."

Testimony

The most common form of expert witnessing in an asylum process is written testimony. These are affidavits and country reports submitted to judges or asylum officers. Expert witnesses use a variety of resources to draft these reports: interlocutors, past and current research, international reports by sources such as Amnesty International, Human Rights Watch, and the State Department of the United States, and academic literature. Dr. Grosh kept a very detailed database on violence that they then used to provide detail in expert testimony. Dr. Lyon, Dr. Quintero, and Dr. Ali mentioned that they keep templates of different types of cases—i.e., geography, gender-based violence, violence against children, torture, mental health, political violence, etc.—that help them cut down on the time and resources they need to dedicate to a case. It makes their process more time and cost efficient.

Additionally, most oral testimony is telephonic. Most expert witnesses prefer to give oral testimony over the phone because they are not called most of the time. Dr. Tinsley recounts their first time being on-call to give oral testimony:

There's only one case that I, the reason why I don't testify in person is because the first time I was asked to testify, they flew me from [my residence to another place], to show up in court to testify. And they didn't call my testimony. So, the firm had gone to the expense of flying me I had, I had gone to the trouble of going out there for a couple of days, just to sit outside a courtroom for three hours and be told, oh, your testimony is not needed.

So that's why I just don't travel anymore. I'm like carbon footprint, expense, time, [they're] not worth it

In the interviews, when I asked participants about memorable cases. Several people told stories about the adversarial nature of the asylum process, which are legendary in this small community. For example, Dr. Tinsley told a memorable story about a U.S. Department of Homeland Security attorney trying to break “their kneecaps” during cross examination:

This DHS attorney really decided to grill me about all of these different details in my CV. Most DHS attorneys are like overworked and they don't bother to even read the case material. And, you know, with cases, they know they're probably going to lose anyway, the government will lose. In other words, the person will get asylum because the claims are just so well evidenced. But this guy really decided he was going to go after me. And he did. I mean, he really tried to break my kneecaps in this cross examination. And I mean, I don't mean to sound arrogant, but there's like almost nothing that these people can throw at me that I can't, that I can't, that I can't field, just because I know the context so well, but in this case, he was picking on things that were like that were more personal, right? They were like more personal about. So, this was like, where they were asking about the [international] stuff, or like the work, or, I mean, just all kinds of things. And he was being really aggressive and like adversarial about the whole thing. So that was terrible. And I was like, “Wow, that was, he was, he was a jerk.”

The next day, though, Dr. Tinsley heard a surprising voicemail:

But then the part that made it really memorable was this guy called me on the phone. The next day, like personally, and apologized to me. I was like, That's weird. Like, he called me on the phone. And he left—I didn't speak to him live, he left me a detailed voicemail on my university voicemail, and he said, I don't even remember exactly what he said. But he was basically just saying, like, you know, “I just want you to know that I really respect you as a scholar, and your knowledge is not the issue. Like I was trying to do my job. And

I apologize if I came across. Like, if it was too personal, or—" like he just gave me this apology. That was like, really weird.

Following this, I joked "Alright, so, 'cause, it's his job to try to deny people [asylum]." Dr. Tinsley replied "Yeah! It was basically like: 'I was an asshole, but I was just doing my job. Right, which speaks volumes about the adversariness of the asylum process.'"

Dr. Lyon shared a similar story about an attorney being "an asshole just to do his job":

The DHS attorney kept challenging my credentials, and I just, I kept it totally together and I was like, "Okay, you want to walk through my CV" in my mind. I was like, "sure, let's walk through my CV. Yes, I wrote a book on violence, political violence in [my field site]. Yes, I've written numerous articles about gender and political violence in [my field site]. Yes, I regularly teach classes on gender and political life", just like the DHS attorneys are really looking for any possible way to disqualify people and remove them people who volunteer to be experts who might have questionable credentials, but I think for me like anyone that looked at my CV and my research and writing outfit, it's just so clear that I am an expert in this field. I mean, I think it was memorable. And then I was able to stay really calm and not get upset at really just sort of a running clock strategy by on the part of the attorney to try to waste everybody's time. ultimately the court, again, for all of the cases that are done, declare me an expert. It's always interesting to see the way that DHS attorneys make drama, where there is no drama.

Dr. Quintero reported a thought-provoking experience not with an attorney but with a judge:

My most memorable testimony was a court case that involved a man with severe mental illness from [my field site] who had been detained for I think, pretty minor criminal violation and had been picked up by ICE [and entered into deportation proceedings and therefore the defensive process for asylum] ... the court presentation itself was memorable because the judge was particularly hostile and was extremely frustrated that I

was advocating for non-deportation of this individual... And, at one point, the judge was really pushing on me. And he was basically like, “aren't you just saying that anybody who wanted to return... like the EU would discourage anyone, for any reason for returning to [my field site]?” I said, “No, I'm like, there are a lot of people who go back to [my field site], who want to resume lives with their families who want to serve their governments, who want to serve the police forces, the teachers run businesses, clearly in the beautiful country, you know, and by all means, people should pursue their passions. But [my field site], this is a dangerous, violent and lethal place for this particular individual.”

When prompted about memorable cases, participants discussed intense moments on the stand that involved legal authorities questioning their credentials. After my first interview, I began to specifically ask about intense attorneys or moments like this on the stand. Based on the literature, the strong emotions that come with intense interactions like the ones recounted above are linked to the feeling of “judicial hegemony” in the courtroom. This also reflects what Burns called “the work of government attorneys... [judges, too, can join]” to question experts with “aggressive disdain” (2020: 25). Academics who serve as expert witnesses step out of the realm where they hold authority and power as professors and into one where they must reestablish their credentials and expertise. This evokes an emotional response. And, being able to hold your ground and establish authority evokes yet another response.

Being on call can have a powerful emotional and physical response. While many of the participants (seven) reported that a majority of the time that they had been on call to testify, they had not testified, but there is always a chance that you could testify. The waiting and anticipation invoke a powerful response. Dr. Lyon recalls the feeling of adrenaline pumping as they waited for the phone to ring.

Yeah, I mean, for testifying, I've been on call for all 72 cases in court, which means in addition to the 15 times, I've actually been able to testify, I've waited around on my phone, that would be adrenaline pumping, thinking, “am I going to get called in all of those other cases”, the vast majority of the time times allotted for asylum cases, is so

small that a judge ends up ruling that they will read a declaration in lieu of additional oral testimony.

Carole McGranahan (2012a: 19) also recounts how every time she testifies, she finds the act “anxiety-producing.” Her “palms sweat” and her “heart pounds.” McGranahan attributes this anxiety to the fact that “someone’s life hangs in the balance” (ibid).

One participant highlighted how telephonic testimony can be a little ridiculous, “stupid,” and “weird” in its performance especially when parties cannot see each other. Over the phone, the court “makes you hold your hand up... and swear, they’re like ‘hold up your right hand.’”

And sometimes, I’ll just be goofy. I’ll be like [mimes holding their arm and hand over their head in an exaggerated manner] or I’ll refuse to do it, like, they don’t know... They’re expecting me to stand there with my hand up and swear that I’m going to tell the truth, the whole truth, and nothing but the truth. Meanwhile, we’re on the phone!... So, there’s that sort of performance. And there is the sort of expectation that... I’m going to use the words, “Your Honor,” and... “counsel” ... Just, the kind of terms that you use are formal. Yeah, there’s a weird, there’s weird performative dimensions to it for sure.

The experiences of constantly being on-call without testifying also open expert witnesses up to very human experiences:

It’s... it’s a very human story. And I’ll share it with you just because it’s a very human story. You know, I had been on call for a case in [region of the country], to do telephonic testimony. So, you know, the telephony testimony, like I don’t travel for testimony, I’ll be on call for that three-hour window. And usually, the court doesn’t call and usually the lawyer will text me, you know, a couple hours in and be like, “we’re not going to need you.” And, sometimes cases run long. Sometimes they don’t know, they can’t anticipate it. The court can come at any time, and you really do have to be ready. So, I was supposed to testify. And of course, in this case was in [in that region], and it was going on and on and on. And I wasn’t hearing anything from the lawyer. And we were well past the three-

hour window. And it was now like six or seven o'clock, it was probably 7 pm. And I just, I figured I wasn't needed and you know, cracked open a bottle of wine. You know, a friend called me on the phone, we started chatting and drinking together. And I was like, legit beyond tipsy, and then the court calls. And I'm like, "Oh, my God, I'm like, I'm drunk." And now I've got to testify in court. And this was like, a kind of a hard case. And the attorney was like, really high-strung about the whole thing. And she'd been back and forth me a ton of times. And I could not believe it, and I was not going to not take the call, because, I mean, the stakes are too high. Right? So, I basically had to testify while I was like intoxicated, and I and it was horrible. I don't remember how it went. I mean, we won the case, but it was like really bad. The lawyer was like, No, you did great. I was like, [sarcastically] "Maybe, I should get drunk." But yeah, it was, that was memorable.

Participants also discussed the difference between giving testimony in the United States and other countries. One said that when comparing giving testimony in the "U.S., Canada, Netherlands, Australia, New Zealand, and South Africa" only the United States is "not comparable." The rest are like "sister systems... because [they are] commonwealths." The process is more formal. Another participant said "never again" after taking a case in the U.K:

It's this incredibly formal, detailed document, like the initial email that you get, like here, and this is partly cultural, I think, England, there's a number of reasons for it. Like, of course, British society is more formal and hierarchical American culture, we're more informal with one another... in the US, you'll get the informal email from the lawyer, hey, we've got this, especially if it's somebody I've worked with before we've got this case. Can I chat with you about it, you know, there'll be a back and forth, when you get like a UK email...? It's like, really, it's like a formal letter on letterhead. And they, they use language like we've been instructed to. to employ you as an expert, in this case, like just the very language they use is like, really, it's kind of intimidating, you know, like, you feel like you're entering into some kind of like, really formalistic process. And they provide a lot of information about the case directly in the email, which is also something that American attorneys generally don't do... It was a shit ton of work..."

A participant graciously forwarded me a letter of instruction from a U.K. immigration barrister. I can confirm that it was a very detailed and formalized document that clearly articulated the expectation for the expert testimony. It also provided a mass of documents for the expert witness to use to craft their report.

Dr. Quintero also discussed the difference between the U.S. and U.K. systems. They described the level of detail and research that went into the documents:

And the appeal document... the results from the Home Office [U.K. government department], were like, really well researched... their research was way better than my research. And I was like, wow... They are really spending a lot of time trying to... They're spending a lot of time on research to make it possible for them to repatriate individuals [deny people asylum]

I, too, was forwarded a Home Office decision. It was 73 pages long and did have an incredible amount of detail.

Testimony is a complicated process though it can appear straightforward. An anthropologist stated in the first LASA workshop that you had to write with certainty so you could not be challenged yet still try to “speak the truth.” As the literature review detailed, this is no easy feat. Anthropologists want to help, to “give back.” However, they want to stay true to their data and facts. Honesty is important. One, they are constantly worried that their position as an expert will be questioned. They balance testimony between neutrality, advocacy, personal principles, and truth. Dr. Garcia noted that “presenting information and perspective under the legal oath” and “working with lawyers while avoiding witness tampering” presents ethical challenges. Yet, this does not affect their approach “very much”:

A similar prerogative to tell the truth [in law] underlines academic work. I do read my statements carefully before signing them to make sure I feel justified in presenting them.

Truth and Testimony

Truth is a fascinating concept in expert witnessing. As stated in the literature review, anthropology and law are often at odds of what “truth” is. Anthropologists who serve as expert witnesses have also debated whether there can be objective truth in testimony (Rosen 1977 and 1979; Stewart 1979). Dr. Akashiya summarized this well in their questionnaire: “Lawyers (and judges) seek clear answers to legal questions, often when no such clarify can be provided [from the expert].” Expert witnesses are somewhat used to this and are comfortable navigating the tensions. Kouma stated that:

I am not that conflicted about the dilemma over the fixity of culture in expert witnessing vs. its expansiveness and flexibility in anthropology, because I see expert witnessing as an instrumental activity that operates within a system that only see claims as legible if they are cast in the terms of the former and believe that this can be done without entirely foreclosing the possibility of a more expansive framing of culture at the same time.

Dr. Chen specified that:

I recognize legal language is different than social-science language and try to reframe what I am doing as part of a different genre... I recognize that the courtroom is another cultural realm—albeit one with power.

And, finally, Maslin discussed their role “as anthropologist:”

... as helping the immigration judge see how ethnographically observable data points scale up to broader phenomena. I provide both first-hand vignettes and link them together with country conditions reports, quantitative data, and news accounts to show how persecution plays out. This then serves as the basis for determining credibility and likelihoods of future persecution.

It is thought-provoking to see how anthropologists who serve as expert witnesses leverage the anthropological and legal views of truth in their testimonies. While they understand that truth is subjective, the participants very clearly demonstrated how anthropological knowledge can use legal concepts to their advantage. Dr. Chen:

They are different genres, different ways of thinking, answerable to different authorities/gatekeepers. The tension is obvious. But there is also tension between journalism and anthropology; economics and anthropology; public health and medical anthropology, etc. As noted, I recognize that I am operating in a different realm. Anthropology is hardly universal. It comprises a particular set of research/analysis practices, historically linked to colonialism and re-imagined over time -- just as the law is.

As Dr. Tinsley noted, anthropologists as expert witnesses have “the capacity to challenge the law” and to set legal precedents which can influence future decisions, adding that law is not “entirely impervious to change but it is extremely resistant to it.” An “increase in participation of scholars in immigration cases could have an enormous impact on the court system” (Campbell et al 2017: 333).

However, as Rosen (1979: 112) warned, anthropological involvement in law does not happen in a legal vacuum and could have detrimental effects. One participant expressed concern over their expert testimony in that:

I worry a lot about making a strong case for the individual at hand without foreclosing or weakening future cases for other asylum seekers... I try to be painstakingly careful about how I word things and to think about the implications of what I am saying on future cases.

This just echoes the literature in that anthropologists can act on behalf of asylum seekers and others in the legal system, but they must remain critical of their engagement.

In the interview, Dr. Grosh said, “I am not an advocate; the attorney’s job is to advocate.” However, anthropologists and other social scientists do keep the attorney’s argument in mind when drafting their testimony:

As an expert witness, my job is to verify the credibility of the threat and to talk about the [sic] state’s ability to provide protection. And so, I go through with both these issues, in my report with an eye toward knowing the attorney is going to be making an argument about the group. I don’t want to say anything that’s going to jeopardize the attorney’s argument, you know, if I can help it... Whatever I—what I ask them for is editorial comment on that issue, I say “is anything here that’s going to jeopardize your group argument?”

For Kouma, their “role [is] an advocate and accompaniment for the asylum seeker, as support and a resource for their legal team.” They continued:

Meanwhile, in my role as an expert witness (and as coached by lawyers) I am compelled to instrumentalize knowledge to make definitive and unambiguous statements about the nature of reality, strategically mobilizing data to argue for a specific predetermined (constructed but genuine) point of view about that reality, and to make the most confident claims

Dr. Garcia views expert witnessing as “a legal statement or set of statements... [as] a tool for the asylum client to help make their case.” Dr. Quintero said that they “use [their positioning] aggressively as a neutral analyst of the facts in legal contexts” because “they see themselves as an ally.” Similarly, Maslin noted that:

expert witnessing reminds me that sometimes the stakes call for painting an incomplete picture... I find that my anthropological expertise typically involves much more complexity than can be communicated to judges in asylum cases. I try to balance providing full context for the phenomena that create the conditions from which asylum

seekers have fled with accessible enough language and short enough length that it will maximize the likelihood of the asylum seekers' cases succeeding.

Therefore, we see that many expert witnesses feel that it is in their purview to support asylum seeker's claims through testimony and structure their testimony to support cases. While this may at first appear like an ethical violation or bias, the participants felt comfortable taking this position for a variety of reasons. One is because they have already vetted the asylum seekers claims hence, they do not feel that they are crossing an ethical boundary. Most participants were very clear about where they draw the line in their legal testimony between truth supporting asylum seeker's claims, truth, and deception. Dr. Quintero said that I "do not take cases in which I would experience an ethical dilemma. I refuse cases frequently." Dr. Ali echoed these sentiments:

In general, I reject cases where I believe the client has made false statements. I always review their [I-589] statements before deciding whether to take a case or not.

When asked if there was anything that prevented them serving as an expert witness, Dr. Parra answered:

In one case, I knew, from my own past research, that the client was lying about at least part of his story...

Dr. Grosh very clearly stated:

And if so, can I be true to the facts. I'm not gonna lie. Tell everybody 'I'm not gonna lie. I'm not gonna—I'm not going to go beyond what my data allow me to say.'"

The truthfulness of asylum seekers testimony is an important aspect in cases. Expert witnesses personally weigh the ethical considerations of asylum seekers and fraud.

This finding does have a thought-provoking friction that contradicts Rodriguez's take on the role of the expert witness and the credibility of the asylum seeker/defendant. Rodriguez (2014: 9-10), while providing expert testimony in a criminal court, describes feeling unsure about the defendant's innocence or guilt. Rodriguez describes her "biggest ethical challenge" as an expert witness in a criminal case "involved objectivity" as she struggled not to judge the defendant's guilt or innocence (2014: 9). She had discussed expectations with the attorney about what her role as an expert witness was. The attorney assured her that her job was to simply provide evidence and that the attorney would then use it to prove credibility. If as an expert witness, she produced evidence that did not support their defense, the lawyer told her that they would not use it. Yet, she "had to constantly remind [herself] that" determining his innocence or guilt was not her "job." Rodriguez writes that she felt "relief" when the attorney admitted that she had no idea about the defendant's guilt. Yet, at the end of the day, that was not her job.

This reaction stood out to me because it highlights two opinions surrounding the role of the expert witness in relation to the credibility of the asylum seeker/defendant. As stated above, four participants conveyed that they would not take or continue with cases where they believed that the asylum seeker was being untruthful. Others, like Dr. Tinsley, however, do not view that as their role. Dr. Tinsley told me that:

I'm still going to privilege the asylum seekers, testimony themselves, I'm not going to participate in the politics of suspicion.

One participant, as a "memory scholar," they "inherently have to trust the public facing version" of the truth that "people present." They all too well understand how human memory works and how susceptible it can be to influence. They "do not feel it is their job to discern" the level of detail in an asylum seeker's testimony. "My job is to accept that the story they are telling is their truth... as long as" the facts match their data and information. Rodriguez appears to have a similar stance. As noted above, as the expert witness producing research, Rodriguez "was not testing a hypothesis about the defendant's guilt," and understood "that was a mental job" throughout the process. Therefore, for some expert witnesses, this research would suggest that

some of them weigh the credibility of asylum seekers into their decision to accept a case while others view that role as outside of their role as an expert witness.

Next, concerns about fraudulent claims and truthfulness do not always stem from a concern about people “duping” the system. The participants often attributed inconsistencies or possibly fabrications as by-products of the asylum system. For Dr. Tinsley, “sometimes it is only a matter of clarification.” It is common for inconsistencies to appear within testimony when multiple people—often with multiple interpreters—interview an asylum seeker. While Dr. Lyon “has not taken a case” where they were “skeptical of the truth from the claimant,” they cannot say whether they “refused a case because of the question of truthfulness. “[U]sually,” they “refuse cases because they don't quite fit [their] expertise.” They continued:

Fact patterns and occasionally, like one of the, one of the situations when I asked to speak to the client, a woman [who had] run for political office and been prosecuted on the basis of running for political office against a local strongman in her community. And it wasn't clear from her statement which political parties that people were aligned with... That wasn't that she was wasn't telling the truth in her statement. [The statement] didn't provide enough of the details for me to be able to check them, I then had to go back to [the woman] or to her attorneys and ask for clarification on things. It's never felt like someone was... like they were being untrue.

As reviewed in the Chapter 2, asylum seekers with legitimate cases default to fraud because they believe it will aid them in their claims. However, as Dr. Ali observes:

Sometimes witnesses have already given untrue testimony which can make it very difficult to help them even when they still may have a legitimate case.

Others are less concerned about fraudulence, because it “is not their problem as an expert.” And for some, while they “do not want to [testify for] people being fraudulent,” they are “sympathetic to the reasons why people feel like they have to fabricate something” and they believe that many fabricators have a legitimate claim to asylum. Compassion, or asylum, is only

granted to certain types of suffering. As Didier Fassin (2011) argues, humanitarian governments that judge the truthfulness of mental and physical suffering like granting asylum are used to uphold Western hegemony and global inequality. The “humanitarian reasoning” of governments that supposedly acts on compassion furthers the suffering of others. Therefore, asylum seekers must forgo their own stories of suffering and adopt new stories in an attempt to find the correct narratives that lead to compassion.

However, a lack of concern over fabrication does depend on geography and context of the situation. To some participants, there is some danger in potentially fraudulent claims. An asylum seeker from Burundi could say they are Rwandan because they believe being from Rwanda would better their chances for asylum and not because they do not have a well-founded fear of persecution. In other contexts, fraudulence is a more of an issue, particularly in Latin America. Some participants are wary that perpetrators of violence such as gang members will try to “game” the system. One participant who studied Latin America stated: “I will not write a declaration for a gang member. An ex-gang member, yes, if there is strong evidence that s/he has renounced his/her past life.” Another Latin America expert recounted a time when they had “become convinced” that a “person was knowingly providing false information, almost certainly because she was involved [in political violence] and was trying to hide her involvement.”

Another element about expert witnesses’ reflections on truthfulness is reputation.

Dr. Tinsley: I can sense that this person may not be credible, and I don't want to put my reputation on the line (as it would diminish my ability to help others) for a case that it isn't genuine.

This quote reveals a concern that many expert witnesses have: that a challenge to their credibility and reputation would undermine their ability to aid others. The participants were wary about how Department of Homeland Security (DHS) attorneys could use possibly this project to undermine their expertise on the stand. Though in-person or telephonic testimony is not common practice with a lot of expert witnesses and a lot of DHS attorneys are “overworked and do not “even bother to read the case material,” there are enough first-hand accounts and anecdotes to cause concern in the small community of expert witnesses

The Expertise Paradox

Academics are in a precarious position when it comes to their work. As Dr. Grosh said, anthropologists love details “down to the street corner,” and ethnography “is all about complexity.” When asked how they view their role as an anthropologist in relation to that as an expert witness, Dr. Chen said: “I hold expertise... through ethnographic fieldwork... Ethnographic methodology entails long-term participation and observation in communities.” Maslin specified that due to their anthropological training, they try “to provide as much thickness as possible to the ethnographic components of my reports and to keep people, rather than abstracted phenomena, at the center of my testimony.” Anthropological and ethnographic methods allow anthropologists to give substantial and successful expert testimony. What they do “works.” However, this long-term nearness to a community or people can also mean that anthropologists are “too close” to a subject. One participant recounted that their mentor had had their book read to them on the stand in an attempt to undermine their ability to be an expert witness.

Similarly, Dr. Tinsley said:

My research work has always been the basis of my legitimacy in the court. But, like, occasionally, I'll have a DHS attorney, or even a judge sometimes, who likes to pick through my CV and pokes me on issues associated with my affiliation with, say [an international human rights group] or, you know, [a center at an affiliated university] ... Like, they'll pick things like that out, and they'll try to say, you know, “What, aren't you just like an activist?” Or, “aren't you biased...” they'll find these clues in my CV or my background to suggest that I'm really an activist, and therefore, there's something problematic about both my participation and my scholarship ... They'll try to undermine my credibility that way.

This is something that I had been musing on quite a bit throughout this study. I deemed it, somewhat in jest, the “Expertise Paradox.” The very thing that serves as the basis for their

expertise also serves as the basis for arguments that undermine their expertise. “I was there” can transform from a statement that grants authority into a statement deemed to be a vulnerability. Other participants recounted similar stories about when attorneys and judges would get “hostile.” Dr. Ali mentioned their first and only time testifying in front of a court:

It was a difficult situation, because I had a personal relationship with the claimant. The attorney was aware of, and that I had said, “Don't you think it's going to be a problem before the courts that we have a personal relationship?” And she said “well, it's not documented anywhere... [so it wouldn't be a problem].” I thought it'd be a problem. Well, it was a problem because it was a case where the ICE attorney had actually really done a lot of homework on the case. So, he was—and I was on vacation with my family, so it was like it was a very tense. It was a very contentious sort of atmosphere. Because [the] ICE attorney was asking very hostile questions. But what I did to, to sort of legitimate, what I solicited so to give greater legitimacy... to my affidavit and my testimony. I explained my process which is that for writing the affidavit—[that] I had taken an affidavit I had written for someone else. And literally copy and pasted from it into the person's affidavit, and that I hadn't actually done any additional research because it wasn't necessary, like it was like a short enough span of time. And basically, the outcome of that case was found in favor of the asylee, but that is entirely only because [they] lucked out in which judge [they] got assigned to.

This story is a good representation of the “Expertise Paradox.” Dr. Ali’s personal relationship with the asylum seekers is a manifestation of the relationships that anthropologists build during their field work. Rather than a strength, however, in the courtroom it can become a weakness as DHS attorneys can attempt to position expert witnesses as biased or unobjective. This is due, in part, to law and anthropology’s epistemological difference. In anthropology, as we understand truth to be subjective, it does not undermine credibility for anthropologists to discuss their positioning and solidarity with their research subjects. Law, however, believes in objective truth and therefore any positioning is seen as bias and negative. And, in a court of law, there is

judicial hegemony. In the end, the judge holds the power to determine credibility of expert testimony.

CHAPTER SEVEN

REFLECTIONS ON EXPERT WITNESSING

Subject Positions

Unsurprisingly, a majority of participants reported that they reflect on their positioning in court. Most participants reported feeling troubled, mindful, or even “vexed” at the authority granted them in court. One participant said that “no doubt this is derived at least in part from my race and my nationality: a white American is viewed as more ‘an expert’ and ‘unbiased’ than [asylum seekers] in the American asylum system.” Another participant echoes these sentiments. She said that she “has immense privilege as a tenured professor and a white American.” While another participant stated:

As a white man from the US with academic credentials, I know that part of my perceived expertise comes from my positionality within the white supremacist capitalist patriarchy. I often fear that the work of expert witnessing reinforces that association between my expertise and people of my positionality.

He later follows up with “As a middle-class, white man with U.S. citizenship, I know that I fit with ideas of what an unmarked 'expert' looks like” and his “recognition as an expert... reinscribes” this idea. Another one thinks that “being a white, highly educated male gives [him] sufficient assurance to question officials.”

These quotes illustrate that class, race and education play an important role in in-person testimony. The participants knew that in a courtroom that they would have an equal amount of education—if not more—than the attorneys and judges in the courtroom. As previously discussed, judicial hegemony can invoke feelings of anxiety and nervousness; nevertheless, the authority invested in expert witnesses through their education and credentials empowers them to stand their ground in the courtroom. As Dr. Quintero’s lawyer friend told them, even though the judge and attorneys are the legal experts, the expert witness is the expert on their field site. They

are telling the legal authorities what they should know. These respondents also were cognizant that not only had their own privileges of class and race enabled them to obtain their educations, but that they shared the privileges of class and race with most of the lawyers and judges involved in the asylum process.

Though, participants expressed that they try to use this authority, deserved or otherwise, to aid in the adjudication of asylum cases. Expert witnesses have “access to power” through their “privileged subject positions.” One participant “freely [leverages her] position of race, class, gender, nationality, and elite training to support the legal claims of marginalized” people. She “aggressively uses” her positioning as a “neutral analyst of the facts in legal courts.” Another participant feels his subject position gives him “a sense of responsibility to serve as an expert witness even if it is inconvenient to do so.”

The participants also felt solidarity through their subject positioning. A participant stated that she “has great sympathy” for women in the asylum process. Another participant said:

As a queer woman, I have spent my life dedicated to feminist projects of justice and fighting for LGBTQ and women's rights. Cases on behalf of those individuals are a natural extension of my political commitments, which are of course in part motivated by my own identities and experiences.

While many of the participants discussed the authority arising from their position as an expert and academic credentialing, a few did raise points about when subject position does not affect their experience. One participant stated that “personally [they had not] felt like [their] life has been so limited or shaped by gender discrimination, including in these [expert witnessing] instances.” One theme I found fascinating throughout my research was the experiential dimension—thank you to a participant for that term—of testifying. More than that, I found the experiential dimension of written testimony fascinating. In some ways; written testimony has a neutralizing affect. One participant stated that she was not “sure” subject position affected approach or experience. She states that when she writes a report there is something “valuable” in being represented by paper because there is “absolutely... a performative aspect... especially as a female, you know, confronting, frankly, usually a male judge.”

Like there is something I think that's been very valuable about having the document represent me in... as a person in the courtroom, you know, because of that, [it] has to do with a document rather than a female... a woman. And definitely go and think on that a little bit... So, when they're looking at me, they're looking at paper.

Other participants mirrored this theme. Another participant stated that if she “Just issues a written report” not much may be known “about [her] identity.” In this case, her “credibility is derived largely from... institutional affiliations and credentials” and not phenotypic characteristics. Another participant has only given oral testimony once over the phone. And another stated that he mostly files written reports thus “aside from [his] name and title, not much about [him] figures into the cases.”

Obviously, this would not always be the case for nationality, ethnicity, or race if someone’s name were perceived to be female or non-white or non- “American” (or non- “British,” or non- “Canadian”). It is important to note that all participants mentioned in this section self-reported as “white” on my questionnaire. Therefore, their names remain “unmarked” like Tinsley, Lyon, Grosh, Smith, Fisher, Hilton, etc. This would not be the experience of people whose names would be perceived non-White or as been from non- “American” (or non- “British” or non- “Canadian”) cultures like Kouma, Singh, Kimathi, Abebe, Kim. Seeing their name written on paper would not remove parts of their subject position. Rather, the lawyers and judges who see their written names could assume parts of their subject position. One participant makes a good point when she says:

I think if I were a man, I would be considered more objective—but if I were POC, even less so.

I also am interested in the intersection of race/nationality, class and gender and sexuality and emotion. As this thesis reviewed in Chapter Two and then mentioned in Chapters Four, Five, Six and Seven, there a lot of emotions tied to expert witnessing. Some participants are partially motivated by the positive emotions of success and find distress in failure. One participant is

saddened by the need for expert witnessing. While one participant discussed solidarity with women and another with the LGBTQ+ community, no participants discussed the racial/nationalistic aspects of their emotions. No participants reported having to deal with racialized ideas during the asylum process, such as the feelings mentioned by Rosas (2019), who said he felt conflicted about how he must portray Mexico in part due to his Mexican descent. Although the voluntary sample in this small study was mostly white, in the future more research should be done on anthropologists who have familial ties to their areas of expertise and how they feel about the portrayals of their field sites in asylum cases.

Another important aspect of in-person and oral testimony is the performative nature of court. Even when testimony is given over the phone, there is a performative aspect. One participant recounts the time she testified in-court while on holiday. In addition to her feelings and experience with the DHS attorney using their personal relationship with the asylum seeker to undermine their testimony, the case was memorable due to the “bodily practices” of their telephonic testimony. Even though they were “on vacation,” they “got dressed in business clothes and sat at a desk” to help “reinforce” and to “have the right internal state for the situation.”

Dr. Quintero recounts that they will sit by the phone with their testimony and sources pulled up to reaffirm and clarify their statements in case DHS attorneys will “cherry-pick quotations” from the written testimony. There’s a “bullying” attitude that is “very much like bull-fighting, like, with words and research in public display.” And:

the truth is that academics are not trained [to] be performative in that way, right? It's very different. It's very masculine, its very testosterone driven. And a lot of times, all of the posturing is what's also really interesting, right? Is that, like, it's not on video. It's all being done over the phone. Right. So, all of the posturing is being done through speech and intonation.

Dr. Ali recounts using their “professorial voice” while testifying rather than “my [spouse] voice, my yelling at my kids voice, or my hanging out with friends voice.” McGranahan describes avoiding “circuitous ‘professor-speak’” by testifying in a “clear and succinct” manner (2012a:

19). There are a wide range of experiences for oral and in-person testimony. For one participant, there was a very powerful aspect in her use of voice:

But like imagine like they're asking you questions and like your voice is filling the courtroom. It's like God. Like, you have to think about like the experiential dimension of like, having your voice like ring out with like, authoritative speech.

This small group of respondents did not explicitly mention it, but it appears that none of them were worried that their speech would be marked by accents that could cause them to be racialized as non-white over the phone in ways that might cause their authority as an expert to be questioned.

Expert Witnessing as a Site for Fieldwork

As the literature surrounding expert witnessing grows, so do the debates on what should be researched and published about the process itself. At least four of my participants have published on expert witnessing while two expressed desires to publish. There are “volumes” of affidavits and legal documents, “mounds” of research, and a myriad of experiences that could be used for research and publications. Publications are a “by-product” of asylum work. One participant classified their engagement as “critically engaged activist research.” Another participant even mentioned that they ask all parties involved in a case if it is okay to use this as research. If they agree, they sign a waiver.

However, not all participants expressed a desire to utilize expert witnessing as a site for research. Some “do not use expert witnessing as an opportunity for critical or ethnographic inquiry.” They continued:

Also, God knows I have enough research to do without this, you know? I just, I don't need it.

One participant stated that they “didn’t really feel like [they] have enough autonomy, or information, or access, to be engaging in research activities.” And, “the client hasn’t authorized participation in research... [so that’s] an ethical violation” to use this information without their informed consent “for the purposes of... professional advancement.”

Furthermore, those who do research on and publish about expert witnessing do not have a consensus on what should be studied and published. Some topics can be harmful to asylum seekers, such as writing on the fraudulence and honesty of asylum seekers. One participant expressed their apprehension around a growing trend in asylum literature that “fixates on the question of fraudulence”:

Some of the asylum research. I worry about, too. That fixates on this question of fraudulence. Right, because I really do feel like you're feeding the beast, and some things are just better not—Like, have you really supported the asylum system? Let's not, let's not document all the ways that people manipulate and use it in a corrupt fashion... Asylum seekers are already treated like they're lying all the time anyway. I'm not going to participate in exacerbating that trend.

One participant expressed that what should be “front and center” is “preserving” the refugee and asylum system. However, is writing about their personal and public dedication to social justice and human rights a beneficial practice?

Another issue that the participants raised regarding publishing is whether any publication will be used against an expert witness as “proof” of bias. Here again we come upon the worry that so many expert witnesses have: losing credibility on the stand. For example, one participant said:

This is a controversial thing within a group of expert witnesses, because on the one hand, many of them were drawn to work because of the commitment to the protection of human rights. And on the other, if we write about that, or say that publicly, some sort of assertive way, then the DHS attorneys will try to label us activists and try to get us disqualified.

Overwhelmingly, this project's participants associated their work with human rights, social justice, or a commitment to helping vulnerable groups. There is no question that this is a major motivation. However, while it may be possible to state these commitments in a general sense with respect to work written about one's field site, it seems that analyzing or suggesting possible asylum system reforms cannot be publicly stated as a major motivation. In the initial questionnaire before I made the decision to keep everything confidential, participants had the option to indicate which questions they would like to keep confidential. Six participants wanted all answers kept confidential, four for all to be attributed, and two wanted some questions to be kept confidential and some attributed to them. Interestingly, the question asking about changes they would like to see in the asylum process were asked to be kept confidential.

These participants reported that DHS attorneys have attempted to dismiss expertise by claiming "an expert witness is just an activist." One participant noted that DHS attorneys like to use the fact that they were not paid for their work to prove that they are an "activist" and therefore biased. When asked if they had participated in efforts to change the asylum system, five participants said yes. Four answers included working with legal entities to provide information to governments or trainings to government officials for more informed decisions. One participant signed a petition. However, I will note that one participant who said "No" explained that "since I began witnessing, I do not want to impugn my credibility as an endeavor to do my best to help individuals." I got the sense that participants could publicly advocate for changes in countries other than the United States. Changes to the United States' system, however, appeared to be "off limits" in terms of maintaining their reputation as an expert witness.

While DHS attorneys "hardly have time to read court documents" or look up expert witnesses, the threat is there. And the stakes of having expertise dismissed is not just a loss in a court case but a possible loss of human life. "To work as an expert witness is to be part of efforts to save lives" (Burns 2020: 36). My first interview made this aspect very clear to me. In it, the participant said:

I can speak a little more candidly, this is absolutely a part of social justice work for me. I just have to be, I just [laughs] want you to be careful in quoting me in whatever public

statement this goes into because it's so nerve wracking right now to have that [social justice] label. I have spent my life documenting the way that people are harmed by institutions and by individuals. And then, this is a way where I am able to intervene and not harm in some way. It's part of an explicit positive. I'm giving back in some way, recognizing that it's not fair to just learn about and then write books for other academics, about the harm that comes to certain kinds of people. And not do anything further.

Academics who serve as expert witnesses know that publishing on their work as expert witnesses can be productive because it is thought-provoking and others might want to know about expert witnessing. Nevertheless, they also are aware that publishing could hurt their credibility or might undermine their efforts to legitimize asylum seekers' claims, give platforms to growing suspicions about fraudulence, and possibly do harm to an asylum seeker.

Organizing and Networking of Expert Witnesses

Of this research's twelve participants, nine of them were involved with one or more organizations or chapters of organizations dedicated to expert witnessing. These nine are also listed publicly as country experts on sites dedicated to the legal aid of refugee and asylum seeker. Two said that they chose not to list their names publicly; these two did not receive steady compensation for their work and are both tenured professors. On top of the growing literature, one way that the expert witnessing community hopes to expand its numbers is by organizing, networking, and advertising. One of the biggest questions I had when beginning this research was how lawyers and asylum seekers found expert witnesses and how academics found their way to expert witnessing. I wrongly assumed it would be a straightforward answer, something that was more of a general curiosity than a site for research. Rather, I found that it may be essential to think about how social networks operate in the expert witness community. Most importantly, with these groups comes a wealth of institutional and individual knowledge on the "nuts and bolts" of expert witnessing.

Here, academics can find resources to help them navigate expert witnessing. I attended two virtual workshops on these topics. The first included four speakers who discussed their

beginnings in expert witnessing, the asylum process as a whole, and their experiences during the process. It covered a wide variety of topics ranging from emotional implications, pay, ethical considerations, and best practices. It also provided a list of resources. The second workshop covered written testimony and affidavits. It was a wonderful resource for anyone interested in expert witnessing. It ultimately helped participants understand how to format written testimony and what to include. It provided aid to navigating the practice of expert witnessing and gave guidance on how to navigate interactions within the legal realm. “It’s a powerful group,” one member said.

I spoke to one of the founding members of the Latin American Studies Association’s Expert Witnessing section. She discussed the hard work that went into forming the section and the effort that went into finding enough members to start the section. But then again that does not mean that the work is over yet. While “there are groups mobilizing,” they are still “a pretty small group of people.” They expressed their hope that the beginning “professionalization of the world of expert witnessing... will really grow.” That there will be “more of a professional community in terms of resource sharing and staying up to date on changes in immigration law and how that affects the courts.”

It is interesting that two participants explicitly chose not to “advertise” their services as expert witnesses. I could not end this piece without profiling why one of the anthropologists was hesitant to advertise their services. Dr. Grosh said that they avoid publicity because they do not want attorneys to contact them—maybe due to the onslaught of cases they experienced that led to their discovery of the practice. In their initial responses to the questionnaire, Dr. Grosh indicated that they did not want to continue expert witnessing. It was something they felt they must do due to the current conditions at their field site. They continued:

I feel like when journalists reach out to me, it's not because something good is happening where I work. It's not because something good is happening [to] people I know [at my field site], something bad is happening [to them]. So, to have my career and my public visibility to hang on the misery of others, it is not something—I don't want that to be happening. I want life [at my field site] to return to [normal], you know, it's already

changed. It'll never be the same. Time has devastated communities that I work at ... But as long as it keeps going...

This was a sentiment that Dr. Grosh expressed throughout the questionnaire and interview. During our interview, I got the sense that Dr. Grosh was saddened and troubled by “how” and “why” they came to be an expert witness. They were a reluctant expert witness. Dr. Grosh later detailed how violence in their field site, in some ways, disrupted their career and area of study. Originally, when they visited their field site, their work was based around culture and history. But “before long,” they “became an expert in violence” as conditions deteriorated because Dr. Grosh began to track the violence at the field site.

But I maintain a database of all known instances of legal violence, a GIS database, a map-based interface. And I've got 25, almost 25,000 killings in the last decade from publicly available sources... I know that the body of a 25-year-old male... was found on a side walk here [mimes pointing to a specific spot] ... to decapitated and dismembered bodies spread through this neighborhood or whatever. I've got the details... I can build a very detailed portrait of what's happening at any given moment in any given location. So, when I get a declaration for the asylum applicant the first thing I do [is check my database] ... Again, I'm an anthropologist, I want fine-grained information down to the street corner.

They explain how they “go about [their] daily life,” yet “between classes [they] are updating [their] database” and are “just immersed in images of violence and of gore.” The transition of their research focus due to the rise of violence at their field site is what qualifies them to be an expert witness. Expert witnessing is a tangible way to make a difference, yes. Nonetheless, it is also a constant reminder that the people, community, and place they grew close to is not the same. That those they befriended have experienced great losses or are lost themselves.

CHAPTER EIGHT

CONCLUSION AND PARTING THOUGHTS

Though the scope of this project was relatively small, the findings present an interesting picture of the “Fourth Reality” of anthropologists and a few other social scientists who serve as expert witnesses. The anthropologists and political scientists who made up the participants of this research have thought a great deal about the process. From their “I Arrived” stories to memorable cases to their contemplations of ethics, there are both professional and personal reflections and dimensions to expert witnessing.

These participants discovered expert witnessing in several different ways. They were contacted by attorneys and asylum seekers or had cases passed on to them by colleagues. They saw postings on listservs and some have “advertised” their services on public listings. Some sought out the practice after learning about expert witnessing as they were motivated by a sense of “giving back” to the communities on which they built their careers. Others found motivation in the experiences in their field sites. Many cited commitments to humanitarianism, social justice, and human rights as well as a wish to apply their research and abilities to the “real world.” A third of this study’s participants said that the positive results and feelings of making a tangible change in someone’s life motivated their participation.

This research found a strong correlation between employment and compensation. Of the five participants who confirmed that they receive compensation, four received compensation a majority of the time. Of these four:

- Three received a steady income from compensation.
- Of these three, one was a retired academic, one was a consultant, and the third was a tenured professor in the U.K. (where the government has set aside funds to pay for the asylum-seeking process).
- The fourth was a tenured professor in the U.S. who did not receive a steady income from expert witnessing.

The two participants who reported doing a majority of their cases pro bono were tenured professors in the U.S. One indicated that they often received in-kind donations such as food or textiles as compensation. The one participant who reported that they never received

compensation also was a tenured professor in the U.S. In the U.S., asylum seekers have to pay for the legal expenses associated with their petitions, unless they manage to obtain assistance from non-profits or a private law firm decides to take their case as a pro-bono case.

This research found that there is a debate among social scientists who expert witness about the “proper flow of resources.” Two of my participants expressed the belief that expert witnesses typically should not receive compensation if it comes from the asylum seeker. They were less concerned about the ethical implications if it came from a lawyer. One participant expressed hesitancy at receiving money at all—regardless of its source. They clearly stated that they were skeptical of anyone who made a living off of expert witness i.e., “the misery of others.” Another participant was mostly ambivalent though somewhat critical.

I will interject here to offer my own opinion on the “proper flow of resources.” Based on this research, I found that compensation often flows back into aiding asylum seekers as compensation can fund current and future research that supports expert testimony. For example, the retired professor used some of the funds from her expert witnessing to travel to their field site for further research on country conditions that had the potential to benefit other asylum seekers. The consultant also supported their research through these funds. And, a majority of participants who receive money refuse compensation if asylum seekers or non-profits are funding the case but were willing to accept compensation when large firms take a case pro bono. Subsequently, the ethical implications around receiving compensation can ebb in light of this.

This research covered the experiences of two forms of expert testimony: written and oral. One of the most salient themes was credibility in the eyes of the court. Three participants recounted times when legal officials such as DHS attorneys and immigration judges became frustrated or hostile and directly or indirectly questioned their credibility during their testimony yet the participants remained calm and refuted this positioning. Dr. Quintero talked about an immigration judge who expressed frustration that they were arguing against deportation of the individual. He accused them of claiming that all people from the country should never be deported, to which Dr. Quintero promptly responded that the individual belonged to a group who would be killed on return. The two DHS attorneys questioned the credibility, objectivity, and authority of the testimony. For Dr. Ali, their personal relationship with the asylum seeker came under attack. However, Dr. Ali was able to show that their written testimony was no different

than that used for other asylum seekers and that this meant that their personal relationship had not affected their testimony.

Dr. Ali's experience highlights a vulnerability that social scientists who expert witness may experience: that their closeness to research subjects, which forms the basis of their authority, can also be questioned by attorneys and judges. I have termed this the "Expertise Paradox." It is the "I was there" statements that provide the basis for expertise, especially in anthropology. Anthropologists love fine-grained and "down to the street corner" detail. But "I was there" also allows an attorney to try to position them as biased or un-objective. Dr. Quintero stated that they had experienced attempts "to position" them in court but that they were proactive at resisting these attempts. And, it is not just anthropologists who face this dilemma. One participant who was a political scientist discussed many of the same themes that anthropologists discussed such as closeness to their field site and community, "giving back" rather than profiting from their field site, the ethics of compensation, and the issues around advocacy, human rights, and credibility. Both political scientists were also quite active in the expert witnessing community and were therefore familiar with the discussions happening and had done fieldwork. Thus, the similarities between the two disciplines lead to the participants experiencing the same issues and dilemmas.

Most participants were clear that they were not "hired guns" for asylum seekers and that they would not testify outside of the purview of their data. As Dr. Grosh stated: "I am not going to lie." However, at least five participants recounted how they often wrote their testimonies with the legal argument in mind. They provide the needed evidence and narrative for the attorney to use to advocate. Participants appear to feel comfortable doing this because they understand that their role is not to judge the credibility of the asylum seeker though some participants did in practice to avoid ethical dilemmas or possible harm to their reputations. Nevertheless, this manifested itself in different ways. Four participants mentioned that they would not accept cases where they would question the credibility of the asylum seeker to avoid ethical dilemmas. If they questioned that asylum seeker's story, they could not in good faith write their testimony. On the other hand, one participant and Rodriguez (2017) removed themselves completely from that judgement. Their approach was that their research will support what their research will support. These practices, as this research would suggest, are a measure to ensure that participants could

continue to successfully aid people through the asylum process. The motivation behind this is to “give back.” It would be interesting to follow-up here was well to discuss whether expert witnesses keep in mind the inequity of asylum granting in relation to foreign policy and geography when writing, or even if it motivates them. But, wanting expert testimony to be supportive of a legal argument could also be tied to income. Lawyer’s might not want to hire an expert witness who has a reputation of writing against a legal argument.

Another prominent theme was the experiential dimension of written and oral testimony. For one participant, the sound of her voice filling the room was a powerful experience. Two participants discussed the nature of telephonic testimony which sometimes bordered on ridiculousness in the performance of legal procedures, such as the participant who discussed the perils of being on call, several delays, and wine. Another participant appreciated the fact that paper testimony could represent her in court and remove the gendered dimension of direct interactions with mostly male attorneys and judges. Another participant did not feel that gender had affected her experience in court. More work needs to be done on the experiential dimension in relation to race of the expert witnesses as this research could only offer reflections by expert witnesses who were white and citizens of the host countries, such as the United States, Canada, and Britain. As suggested by the work of Rosas (2017), experts of color and/or experts from immigrant backgrounds may have different experiences and emotions during testimony, particularly in relation to how they must represent home countries or heritage cultures in relation to host countries.

This research also discussed actions taken after testimony like publishing. Two expressed no desire to use expert witnessing as a space for ethnographic or critical research because of ethical dilemmas of informed consent and due to time constraints. Four participants had published on the subject. Two expressed a desire to use their expert testimony and related court documents for research and publishing; one even has attorneys and claimants sign informed consent forms. Beyond the ethical implications of informed consent and power, research topics are a complicated matter. One participant expressed concern on the growing literature about asylum seekers and fraudulence. And, the participants expressed concerns about publishing anything in solidarity with asylum seekers and/or the people with whom they work. As one participant said, social scientists who serve as expert witnesses have a difficult time deciding

whether to write or say publicly that they are committed to human rights or changing the asylum process. Then, “DHS attorneys [could] try to label” them “activists” and get them “disqualified.”

As for organization, nine participants were either involved with an expert witnessing organization or a chapter of an organization and/or were publicly listed on a refugee and asylum resource site. Two stated that they do not publicize their work. While this small community is “strong” and “growing,” it is going to take work to keep the momentum going and reach expert witnesses acting independently and other social scientists who may be qualified for the work. Organizations such as the expert witnessing chapter of LASA are now holding workshops that detail the “nuts and bolts” of expert witnessing and are available to academics interested in expert witnessing.

I want to mention here something that was brought to my attention, but I did not feel that I had enough data and information to write on confidently. At one of the LASA workshops I attended, it was briefly mentioned that some expert witnesses expand their services past their original area of expertise. One participant later discussed how they do not “agree with some of [their] colleagues” about this:

we should not take cases for countries and issues on which we have little prior knowledge or expertise, simply because our methods and training allow us to quickly 'do the work' required... I think what gives our expertise and more importantly our testimony such power is that we already have a depth of knowledge and experience and can engage that in our evaluation and interpretation of a claim. It is what makes us 'experts' as opposed to hired consultants.

My advisor and I discussed the difference between the research methods used by anthropologists, political scientists, and other social scientists. While anthropological expertise typically comes after years of in-depth research in one area, other social sciences as well as some anthropologists use rapid assessments as part of their research methods. Therefore, it may be that these social scientists feel more comfortable with doing research and writing a country report on an area about which they do not have a lot of prior knowledge. Consultants, whether trained as anthropologists or as other social scientists, often do rapid-assessment research. I would like to

see this dichotomy of “expert” versus “hired consult” fleshed out more in future research to see how common certain practices are such as the use of rapid assessments for expert witness testimony.

A possible area of future research could be a larger study that would hopefully include expert witnesses with more variations in terms of characteristics such as age, occupation, gender/sex, ethnicity/race, and nationality. In light of this research and past literature, I believe that this information would be useful in understanding the positioning of expert witnesses. I would also like to see a large-scale survey done on compensation. I believe it would be helpful for other anthropologists interested in serving as expert witnesses to find readily available data on how common the practice is, the demographics of who receives compensation, and the average amount that people charge. A more open discussion of compensation might help remove some of the presumptions and hesitations people have on discussing payment for their work.

Another area of future research is exploring the emotional tax of expert witnessing. After reviewing the questionnaire and follow-up interviews, my committee and I realized that the phrasing of questions such as “What makes you hopeful about the process,” “What makes you want to continue expert witnessing,” and “Do you find there are ethical dilemmas to expert witnessing” did not create a space for participants to discuss the emotional drain of expert witnessing. Asylum seekers’ narratives are harrowing accounts of violence. In the discussion during my defense about emotions, Dr. Hepner recounted throwing up due to the details of an asylum seeker’s case. She suggested that the negative emotions and physiological responses to graphic narratives is a major issue for expert witnesses. Many of my respondents discussed the positive feelings invoked by the questioning, such as. This adds other emotions to the “hope” discussed by McGranahan. Dr. Grosh recap the emotions they mentioned. In future research, I would be interested to learn more about how many expert witnesses experience burn-out or hesitation, particularly those who do it frequently.

What this research has led me to conclude is that, like academia and anthropology and political science, expert witnessing is not a homogenous practice. There were a variety of opinions and procedures expressed in this small study. I hope that this thesis generates discussion on some of the more difficult, complex, and controversial issues such as compensation and publishing on expert witnessing. One contribution that this study can make to the literature in

anthropology about expert witnessing is the analysis of the concerns about compensation that emerged from the online questionnaires that were further explored in the online interviews. Some of the research participants did identify compensation as a motivation, but debates about the ethics of compensation also emerged.

Lastly, I want to return to the question I posed in Chapter Three: How can critical reflection on the role of expert witnessing make room for different understandings and ways of activism for anthropologists? More so, how can the personal exploration of a cultural anthropologist as an expert witness, the Fourth Reality, inform the understanding of actors in a larger political field and how actors might enact change within it? The Fourth Reality is where the ethical meets the political. In “Subject Positions,” I discussed how participants leveraged their privileged positioning and appearance as a neutral expert in order to aid asylum seekers. In other words, the participants in this study were aware of their position as political subjects. A strong theme throughout this research into the Fourth Reality was the conclusion that expert witnessing is a way to give back to a community and make tangible changes in lives. Giving back was seen as a moral and ethical obligation. This leads me to conclude that the anthropologists and other social scientists in this study were taking their Fourth Reality into account as they were preparing expert witness reports and testifying in asylum cases.

I wanted to end with a quote that I felt summed up many of the sentiments expressed in my research. When asked how expert witnessing has influenced their values as an anthropologist, Kouma stated:

It has given me a greater sense of purpose and satisfaction in my research work. I sometimes feel skeptical or cynical about the value or usefulness of academic work/publication, but expert witnessing makes me feel that (1) my research can have a positive, even life-changing effect on real lives and realities (direct even if very limited, i.e. to an individual and maybe their family) in ways that I am unsure of in my publications; and (2) that the pain and sacrifice required to acquire this badge of belonging in scientific or academic authority (i.e. a PhD) (even when I also critique it) is worth it, because I can capitalize on it in this way that helps actual people.

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APPENDIX

Appendix A: United States Immigration and Asylum Policy Timeline:

- 1965: Immigration and Nationality Act (INA)
- 1980: Refugee Act
- 1986: Congress passed the Immigration Reform and Control Act (IRCA) to address a large number of undocumented refugees and immigrants; undocumented people arriving before 1982 could apply for permanent residence before May 1988. It also increased funding for border control, and instituted legal penalties for employers who “knowingly” hired undocumented workers.
- 1994: Bill Clinton’s administration began “Operation Gatekeeper” to deter “illegal” immigration from Mexico. Though the administration lauded Operation Gatekeeper’s success, human rights groups condemned the operation and connected it with thousands of deaths as refugees and migrants were forced to take more dangerous routes through the desert (Massey, Durand, and Malone 2002; CFR n.d.; de Leon 2015; among others).
- 1995: the U.S. implements the "Wet Foot, Dry Foot" Policy for Cubans. Unlike Cubans who made it to U.S. soil, Cuban refugees who are intercepted by the Coast Guard at sea would not be granted a path to citizenship.
- 1996: The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) heightened border control and stipulated that undocumented immigrants found to be unlawfully present in the U.S. for 180 days but under a year must remain outside the U.S. for three years. Undocumented immigrants who had been in the U.S. for over one year and subsequently were deported had to remain outside the U.S. for ten years. It also allows for the deportation of lawful permanent residents if they had committed certain crimes, that also could be applied retroactively. This law also restricted lawful permanent residents from receiving any public aid for the first five years they were in the country. The practical impact of this provision was to limit the ability of poor people to sponsor relatives for applications for lawful permanent resident, because they were required to show that they earned sufficient income to support that family member during those first five years.

- 2004 and 2010: Congress introduces the DREAM (Development, Relief, and Education for Alien Minors) Act which creates pathways towards citizenship for young migrants and refugees who are undocumented. It fails to pass.
- 2012: The Obama Administration implements the Deferred Action for Childhood Arrivals (DACA) Policy.
- 2015: Secretary of State John Kerry responds to the global migrant crisis and pledges to admit more refugees.
- 2017: President Trump signs executive orders halting the refugee program for 120 days and decreasing the refugee ceiling and limiting entries from several Muslim countries.
- 2017: The Trump Administration announces that it will end the DACA program, which is challenged in court by multiple organizations.
- 2018: The Trump Administration enacts a zero-tolerance policy at the Southern border and further restricts asylum criteria.
- 2019: Supreme Court agrees to hear arguments against the ending of the DACA program.
- 2020: The Trump Administration decreases the refugee ceiling to 18,000.
- 2020: The Supreme Court rules that the Trump Administration cannot end the DACA program

Appendix B: On-line Questionnaire

1. Professional Title
2. How many times have you served as an expert witness?
3. How many times have you submitted country reports?
4. How many times have you been on call for in-court proceedings but have not testified?
5. How many times have you testified in a court proceeding?
6. What is the range of years where you served in these capacities as an expert witness?
7. For people belonging to which countries or groups?
8. How did you become involved in expert witnessing?
9. What motivates your participation?
10. Have your motivations changed through your participation in the asylum process, and if so, in what ways?
11. Is there anything that has prevented you from serving as an expert witness?
12. How do you view your role as an anthropologist while expert witnessing?
13. Have your values and training as an anthropologist influenced your perception and approach to expert witnessing? If so, why and how?
14. Has expert witnessing influenced your values as an anthropologist? If so, why and how?
15. Have you found that there are ethical dilemmas during expert witnessing?
16. If yes, has this affected your approach to asylum cases? Why or why not, and how?

17. From an anthropological perspective, how do you view the act of expert witnessing?
18. How does your subject position (i.e., race, gender, class, nationality, religion, etc.) affect your approach to expert witnessing for asylum seekers?
19. What differences or tensions are there between law and anthropology in your experience and how do you navigate them?
20. What are some things that make you want to continue serving as an expert witness and why?
21. What are changes you would like to see in the asylum process?
22. Have you participated in efforts to try to change the asylum process?
23. Is there anything else you would like to add that you think I should understand about the relationship between anthropology and expert witnessing?

VITA

Mary Ruth Wossum-Fisher was born in Nashville, TN and grew up in Pulaski, TN. After graduating from Giles County High School, she went to Mary Baldwin University's (previously Mary Baldwin College) Mary Baldwin College for Women in Staunton, VA to study anthropology/sociology and international affairs. While there, she served for one and half years as an Honor Council Representative and served for two years as Honor Council Chair and on the Executive Committee of the Student Government Association. She worked at the Spencer Center for Civic and Global Engagement as an office manager for a year as well.

While at Mary Baldwin, Mary Ruth became interested in anthropology, political/state violence, and law. For her senior theses, she studied the Rohingya and wrote *The Dark Side of Myanmar's Democracy: The Murderous Ethnic Cleansing of the Rohingya* and *Contextualizing the Murderous Ethnic Cleansing of the Rohingya: Discourse and Rhetoric* for her international affairs and anthropology/sociology majors respectively. She presented *Contextualizing the Murderous Ethnic Cleansing of the Rohingya* in 2018 at the Society for Applied Anthropology's (SFAA) 78th Annual Meeting and Mary Baldwin University's Capstone Festival. She also presented *The Dark Side of Myanmar's Democracy* at the Pi Sigma Alpha 2018 Annual Conference.

Following graduation, Mary Ruth came to the University of Tennessee's Department of Anthropology and began the Master's in Cultural Anthropology and the graduate certificate in Disasters, Displacement, and Human Rights. As a full-time student, Mary Ruth had the pleasure of working as a graduate teaching assistant for Dr. Pendry. In July of 2020, she became a part-time student and worked as a grant writer for a Boys & Girls Club. Her graduation is set for July 2021.