

4-29-2020

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Recommended Citation

Burns, Allan F. (2020) "The Work of Expert Testimony: Central Americans, Human Rights Defenders, and Immigration Courts," *Maya America: Journal of Essays, Commentary, and Analysis*: Vol. 2 : Iss. 1 , Article 15.

DOI: 10.32727/26.2021.19

Available at: <https://digitalcommons.kennesaw.edu/mayaamerica/vol2/iss1/15>

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The Work of Expert Testimony: Central Americans, Human Rights Defenders, and Immigration Courts

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Abstract: Anthropologists have worked in legal arenas as experts on civil, criminal, and asylum cases throughout the history of the discipline. Today expert witnesses give opinions on the conditions of countries where immigrants flee, and that work includes ethnographic interviewing, research into the causes of political and social violence, and appearing in court through written affidavits and personal testimony. Expert testimony today includes helping in the defense of people fleeing intimate partner violence, persecution based on sexual orientation, threats and violence by gangs, and those whose political opinions put them at risk. Immigrants in the United States face institutional culture shock, structural violence, and criminalization of their lives. Case studies of immigration, civil, and criminal cases illustrate how theory and practice intersect in the harsh light of court cases.

Keywords: immigration, Central America, Maya, expert testimony, criminalization

Introduction

“You don’t mind interviewing someone in shackles, do you?” was the question from a defense attorney representing a young man² up for sentencing and afterwards deportation from the United States. I had never been asked that question, and the very question shocked me out of my insular world of academic anthropology. The young man had been arrested for driving without a license on his way to his job and now faced a mandatory federal prison term, not for driving without a license, but for the felony of returning to the United States after being deported. “Francisco” had come to the United States when he was seven years old with his mother and lived in a Western state. Today, he might have been considered for legal status under the DREAM act, but he was not

¹ This article is based on experiences working in civil, criminal, and immigration courts with immigration lawyers working in non-profit settings, public defenders, and lawyers from major law firms doing pro-bono work with immigration. I am grateful to all of the people I have worked with to provide affidavits and testimony regarding the social, political, and cultural conditions of Mexico and Central American countries, most especially those who have applied for asylum or related legal status in the United States.

² All people described here have been given pseudonyms, their cases altered, and names of locations disguised to respect the privacy and confidentiality of all involved.

that lucky. He was arrested with some friends when he was 17 years old for shoplifting in a mall, and since he did not have legal papers, he was put into detention and awaited his removal from the United States. His first time in detention was traumatic, as he was of slight build and young which made him vulnerable to sexual attacks. Others in detention said that he could protect himself by having some “prison tattoos” drawn on his arms. He told me that he wanted to look “tough” in order not to be assaulted. His tattoos included several of the Virgin Mary, a fancy car, and the name of his mother. After he was released, he was deported back to Central America. He went back to a city where a distant uncle lived, in a country he barely knew. Without work or anything to do, he was hanging out in front of a convenience store when a car drove by and shot him several times, leaving him severely injured. He recalled from the hospital bed that the shooting was carried out by people in dark uniforms like the police wear. He asked, “why did they shoot me?” but he had no answer. He was released from the hospital a month later and spent a year in a wheelchair. This was in a time of the “Iron Fist” (Mano Dura) in Central America where solution to gang violence was seen in harsh, even lethal, treatment of suspected gang members. Francisco was at risk, so he returned to the United States and found work laying tile with a construction company. He did well, supporting his mother and doing his best to be part of an immigrant community. But without prospects of obtaining a driver’s license, he drove to work each day, hoping not to be stopped by the police. His older van was recognizable as the type of vehicle used by immigrant workers, and one day he was pulled over for not fully stopping at a stop sign. He was judged to be a felon by the courts for crossing the border twice without papers and was sent to detention until his court date could be scheduled to sentence him for the crime of driving without a license and the moving violation.

I was asked by a public defender to write an affidavit about the conditions of his home country and to later appear in court to support the petition for a lower sentence for Francisco. I wrote a twenty-five-page report about the conditions of his home country. After I talked with Francisco for forty-five minutes about his life and fear of being deported again, the Public Defender and I accompanied him into the court. We sat through two other capital cases involving drugs and severe violence. I was sworn in by the judge as an expert on the “social, political, and cultural situation in Mexico and Central America,” and proceeded to describe the lives of young people in Central America today. I have carried out research in Mexico, Guatemala, Honduras, and El Salvador throughout my career, and because I am in those countries four or five times a year, my knowledge of contemporary life in the region was deemed as “expert” for the sentencing. The attorney for the government questioned me about any violence I had seen and if I had known the

young man before I was asked to testify. I described urban violence in the countries, including that which I had experienced, and stated that I did not know the client until I met him that morning. “But why does he have tattoos?” asked the government lawyer. I argued that it was a protective response to prison. When it came time to plead for reduced sentencing, the judge was sympathetic, but said he was bound by mandatory minimum sentencing regulations. At the end of the hearing the judge thanked me and gave the young man the minimum sentence of five years, after which he would be deported. When the judge asked if Francisco had anything to say, he expressed sorrow that he had been driving without a license and for not fully stopping at a stop sign. He asked if he could be sentenced to serve his time in another state where his mother lived so that she could come and visit him regularly. The judge said he would do what he could. Francisco was led out of court in his orange jump suit and shackles, and the Public Defender and I took the elevator down to the first floor with the government attorneys. “It’s too bad someone doesn’t tell them not to get tattoos,” one of the attorneys said. “It’s hard for a judge to have any sympathy for guys like that with tattoos.” I remember thinking of how many college students on the campus where I teach have tattoos and yet they are not assumed to be criminals like Francisco.

Institutional Culture Shock

Maya people from Mexico, Guatemala, Belize, and Honduras and their non-Maya neighbors now living in the United States and Canada face institutional culture shocks. Institutional culture shock is in the court room where previous cases of murder, drugs, and other crimes influence judges and attorneys when they see young men like Francisco on the stand. Institutional culture shock is the danger faced in prisons and other detention centers where being young and frightened leads to sexual violence. Institutional culture shock is the difference between the reputation of “El Norte” as a place of opportunity and safety and the reality of distrust, hatred, and oppression that pervades the lives of immigrants. A Maya friend who had worked in a chicken processing plant, cutting up meat all day, wounding his hands and fingers in the process, asked if I could help him make a video about the United States. He said he wanted to show people back in Guatemala what life is really like here. Institutional culture shocks in the criminal justice system are especially common given the differences in legal systems between Maya communities, Mexico, Central America and U.S. case law, and the number of lawyers, interpreters, court officers, and expert witnesses involved in proceedings.

Expert Testimony

I have had the opportunity to work as an expert witness in civil, criminal, human trafficking, asylum, and deportation cases. I have helped with cases over a hundred times; about a third of these cases involve Maya individuals or families. The rest are people from cities and communities where indigenous identity has long since disappeared or who simply know they are from a place where they left as a child. Today there are many young men and women who were orphaned or came to the United States as unaccompanied children and became parts of immigrant communities.

Anthropologists have worked in legal fields since the beginnings of the discipline, and expert testimony work by anthropologists has a tradition that includes Robert Redfield, who was a lawyer as well as an anthropologist. He successfully argued that there is no scientific basis for segregation of schools in the Supreme Court case, *Sweat vs. Painter* (Van Willigan 1980). Those arguments were later used in the landmark Supreme Court case, *Brown vs. Topeka Board of Education*, that made it unconstitutional to have segregated schools in the United States. Among many other anthropologists who worked as expert witnesses is Henry (Hank) Dobyns, whose testimony led to formal U.S. Government recognition of the Hualapai people in Arizona and their claims to traditional lands (McMillan 2007). Dobyns and others who worked as expert witnesses in favor of American Indian rights and recognition met together in 1954 to hold the American Indian Ethnohistoric Conference. That conference led to the founding of the American Society for Ethnohistory and the journal, *Ethnohistory* (Jones, 2010). The conflicts of Central America in the last half of the 20th century led to an increase in anthropologists working as expert witnesses, among them, James Loucky, Debra Rodman, Lynn Stephens, and Elizabeth Kennedy. There are many, many others working to apply their knowledge of different parts of the world in favor of just treatment of immigrants.

Commodification, Ethics, and Payment for Services as an Expert Witness

I do not charge for reports or testimony as an expert witness. In part this is based on my own belief that the arguments I put forth in cases should not be monetized or in Marxist terms, “commodified” into objects for sale. Some law firms are so surprised that I do not charge for my time that they have me sign agreements that I won’t charge them in the future, but most accept that pro bono testimony is best for the cases. I once asked an attorney from a large firm where the funds would come from if I asked for an honorarium. He said that they would charge the clients and that when experts charge for

their affidavits and testimony, families and others donate to pay the expert. I understand that other experts do charge for their help, but in my case, I believe that my knowledge and support is more effective when it is not done for money. I always enjoy telling judges and government attorneys who ask how much I am receiving for my testimony that I am not receiving anything at all.

The Courts

Court appearances are common among Maya and other Central American and Mexican immigrants to the United States. These interactions with the justice system are part of the every-day fabric of immigrant lives, and experiences with police, jails, lawyers, interpreters, and judges are as much a part of the culture of immigrants as are employment opportunities, religion, family, and housing. People like me who serve as expert witnesses are part of that institutional scenery that immigrants become familiar with in the United States. Other experts might be psychologists, medical doctors, and experts from the countries who have knowledge of conditions there.

From the standpoint of jurisprudence and the activities of all involved, there are clear distinctions between different courts: civil, criminal, local, state, and federal, as well as the kinds of proceedings, including hearings, trials, sentencing phases, appeals, to name a few. And while it is clear to Maya and other Central American immigrants that something like a capital crime is different than an asylum hearing, the institutional contexts of the judicial system is similar. Courtrooms look similar, the protagonists (judges, lawyers, clients, witnesses, bailiffs, and the public) are spatially arranged in similar ways, and the formality of power and authority predominates in speech and action. Both immigrants appearing in court and expert witnesses quickly learn that immigration law is an adversarial system: truth is expected to arise out of confrontational arguments, harsh cross-examinations, and adversarial opinions. An expert witness gives “opinions,” and not testimony, because an expert witness does not have firsthand knowledge of events that happened that led a person to flee their home. It is the work of the government attorneys to question an expert’s qualifications, sources of information, and opinions about social conditions in a country, and that questioning is often done with aggressive disdain. Judges, too, can join in the adversarial interrogation of an expert. I once had a judge ask if I knew anything about Nigeria. When I answered that I did not, he said, “but child abuse in Nigeria has to be much worse than what you claim is the case for Mexico! After all, it was in Nigeria where an entire school of female students was kidnapped a few years ago.” Lawyers working as human rights defenders take the time to prepare experts

for the style of courtroom argument. Those fleeing their homes and seeking asylum are subject to this same style of courtroom argument by lawyers and immigration judges. Immigration judges are in all but a few cases impartial, but their impartiality is often imbued with skepticism about the experiences of asylum seekers.

Structural Violence and the Courts

“Pilar” was a young, mono-lingual Maya woman who came to the United States from Guatemala when she was fifteen years old. Pilar became married at eighteen and a year later had her first child. She was living in a farm working community on the East Coast with a preponderance of Mayan speakers and so she had little opportunity to speak anything other than Mayan.

Two days after she gave birth, Pilar was put into a psychiatric ward of a hospital a hundred miles from where she lived. She had experienced severe post-partum depression and had wandered away from her home with her baby. When the police approached her walking on the side of the road, she was crying and speaking Mayan. The police were unfamiliar with the Maya community and so brought her to a hospital where she was remanded to a psychiatric ward for “babbling and speaking in tongues” and unable to communicate with the nurses or other hospital staff. She was admitted to the psychiatric ward under the “Baker Act” of the State of Florida that allows for psychiatric care if someone is incoherent and is considered a threat to themselves or others. The Circuit Court of Okeechobee, Florida describes it as follows:

What is a Baker Act?

A Baker Act is a means of providing individuals with emergency services and temporary detention for mental health evaluation and treatment when required, either on a voluntary or an involuntary basis.

How are voluntary and involuntary Baker Act Admissions different?

A voluntary Baker Act is when a person 18 years of age or older, or a parent or guardian of a person age 17 or under, makes application for admission to a facility for observation, diagnosis or treatment.

An involuntary Baker Act is when a person is taken to a receiving facility for involuntary examination when there is reason to believe that he or she is mentally ill and because of his or her mental illness, the person has refused

voluntary examination; the person is unable to determine for himself or herself whether examination is necessary and without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself and such refusal could pose a threat of harm to his or her well being; and there is a substantial likelihood that without care or treatment, the person will cause serious bodily harm to himself, herself or others in the near future as evidenced by recent behavior.

Are there other criteria to know if a Baker Act is appropriate?

Yes, there is an additional criterion for a voluntary and involuntary Baker Act not included here. For example, a law enforcement officer may transport an individual to a facility for evaluation if there is reason to believe that the individual's behavior meets statutory guidelines for involuntary examination. (Circuit Court of Okeechobee, 2015)

One of the Spanish speaking staff at the admitting hospital called a local church. Someone there contacted a Maya association in the area as her Guatemalan Mayan blouse and skirt suggested that she was part of the indigenous immigrant community. One of the leaders of that association called me and asked if I could help talk with the hospital. Neither the doctor nor others knew that the Mayan language was still spoken, that there were Maya people in the state, and that many Mayan speakers are monolingual in their language with only a cursory knowledge if any of Spanish, or even less, of English.

Pilar was not seeking asylum, nor was she in the court system under formal arrest or detention. Still, she met the U.S. criminal justice system through the police, who did not put her in jail, but rather effectively incarcerated her, by referring her to the psychiatric ward. This kind of detention, and the treatment of "Francisco" described earlier are ways in which the history of immigrant experiences with the criminal justice system in the United States becomes transformed into institutional culture shock. This culture shock becomes part of the fabric of everyday life in immigrant communities.

Structural Violence in Immigrant Communities

Individual police, lawyers, judges and those of us who serve as expert witnesses are the agents of these institutional culture shocks, but behind the individual cases is the structural violence against Maya communities throughout the history of Mexico and Central America. Paul Farmer discusses the characteristics of structural violence and

how even well-meaning members of the society like expert witnesses, are, in fact part of it:

Structural violence is violence exerted systematically—that is, indirectly—by everyone who belongs to a certain social order: hence the discomfort these ideas provoke in a moral economy still geared to pinning praise or blame on individual actors. In short, the concept of structural violence is intended to inform the study of the social machinery of oppression. Oppression is a result of many conditions, not the least of which reside in consciousness. (Farmer, 2004, p. 307)

The experience of serving as an expert witness puts structural violence in clear relief. In the case of Francisco, the sentencing judge had sympathy for his experiences, including the relatively minor crime of shoplifting something of very little value, the violence he met when he was deported back to a country he did not know, and the circumstances of being arrested on a traffic violation while he was gainfully employed. Still, the structural violence Francisco experienced required a sentence of five years in federal prison. The case of Pilar illustrates how the existence of Mayan language, society, and communities has been systematically “erased” from the history, especially the popular history, of Mexico and Central America. As Farmer puts it, “Erasing history is perhaps the most common explanatory sleight-of-hand relied upon by the architects of structural violence. Erasure or distortion of history is part of the process of desocialization necessary for the emergence of hegemonic accounts of what happened and why (Farmer, 2004, p. 308).”

“Diana” was a young woman who came from an indigenous community and suffered a sexual assault when she was fourteen years old in the United States. The baby was born stillborn and premature in the bathroom of a gasoline station. She was overcome with fear and tragedy and was ashamed of her ordeal. She put the corpse of the baby in a garbage bag and left it in the bathroom. Once it was discovered, and her identity discovered as well, she was arrested for murder and confined for more than a year in jail while she awaited trial. She said she didn’t even know she was pregnant. Her Public Defender contacted me and asked for a written affidavit about whatever I might provide to shed light on the case. The report of her arrest included a description by the police that she had put toilet paper in the nose and ears of the baby, evidence to them that she had committed murder. I had attended several funerals in Mexico and Central America, and knew that there, as well as many other parts of the world, especially in Muslim communities (Mosque, 2015), cotton is put in the orifices of the deceased to stem the “odor of death.” I happened to be

traveling to Central America at this time, and so while there I asked a fifteen-year-old young woman what one does when a baby dies. She said that to combat the “ajillo” literally “garlic” or odor of death, cotton or small pieces of cloth are put into the nose and ears of the baby after death. Diana was released due to the medical review of case as well as the description of practices surrounding death in Maya communities.

Diana’s case is made up of the structural gender violence against women in Maya communities coupled with the structural violence of immigrants facing the U.S. criminal justice system. One criticism that can be made of the concept of structural violence is that it removes the blame from individuals and places it on society and history writ large, while at the same time not allowing for individuals, like Public Defenders or perhaps us expert witnesses, who work to combat the harm that structural violence does to real people within the criminal justice system. A more effective way to define structural violence in these and other cases is to see it as constructed out of real events with a constellation of people who are seeking a resolution to a problem. That resolution results from the articulation of the knowledge, information, and arguments of people with quite distinct roles: the clients, arresting officers, defending and opposing attorneys, judges, interpreters, families, and experts called to help in explain a case on both the side of the defense and the prosecution. This theory asserts that culture is constructed everyday out of the articulation of difference rather than the replication of uniformity (Wallace, 2003, p. 213). The articulation of diversity within the criminal and civil justice system means that arguments, conflicts, adversarial positions and the like are the building blocks of resolving conflicts, even large and historically long conflicts such as structural violence. Applied work like working as an expert witness is not acquiescing to the system of oppression of Maya people, but highlighting and emphasizing the diversity that leads to structural changes.

Cultural Competency

One of the concepts that judges and especially expert witnesses from the field of psychology use extensively is the competency of a defendant to stand trial (Miller, 2012, p. 28). Generally described as “psychological competency,” the ability of someone to assist with their defense, understand the charges and proceedings against them, and testify truthfully are within the larger context of assessing mental illness not only at the time of an event, but also during court proceedings. “Jorge,” a Maya immigrant who committed a felony offense, was set to go to trial after spending over a year in jail awaiting trial. I was contacted by a Public Defender to talk with the defendant

and testify on his behalf in court because, according to the Public Defender, Jorge did not seem to understand anything that was happening to him. The Public Defender also contacted three psychologists to ascertain Jorge's fitness to stand trial. I traveled to the state where Jorge was being held and interviewed him several times. Jorge had learned "Jail-yard Spanish" while incarcerated, and his first and most fluent language was one of the Mayan languages of Guatemala. I interviewed him in a combination of Mayan and Spanish, using my own knowledge of a related Mayan language and a list of terms and concepts concerning behavior, blame, and Maya Law in Guatemala (Hessbruegge, 2015). I learned by talking with the victim's family and others in the Maya community that his transgression had been forgiven by the victim, the family, and the Maya community in both Guatemala and the U.S.

Jorge was born in a community in the Northwestern Highlands of Guatemala that was particularly brutalized during the Guatemalan civil war (1960-1996). His village was subject to several massacres of residents by the Guatemalan military (Schirmer, 1998), and his parents had escaped during the 1980s, leaving him under the care of elderly and monolingual grandparents. His experience with criminal justice while growing up consisted of watching a young man covered with gasoline and then burned alive by the mayor of the town for a relatively minor offense. His home village was very traditional, and he knew that offenses were mitigated by having guilty parties "shamed" by carrying rocks around the town square or doing menial public jobs in front of villagers.

"Cultural competence" is most often described as something that care givers such as physicians or counselors (Sue, 2009), or judges learn in order to be sensitive to the backgrounds of people from different countries as they confront institutions (Tusan, 2015). Arguing that it is a characteristic of indigenous people, especially Maya people who have struggled to have Maya Law recognized by the Guatemalan constitution, was difficult considering the years of tradition in the U.S. court system that only recognizes psychological competency. At the hearing about competency the three expert witnesses and I testified that Jorge could not understand the trial nor help in his own defense. The three psychologists had some difficulty as two of them found him not competent based on psychological tests that they administered through a Spanish speaking interpreter, and the third found him marginally competent through assessment via an interview, also with an interpreter. I described how Maya Law (based on community cohesion), Guatemalan Law (based on French Civil Law), and U.S. Common Law all had very different principles, procedures, and logics. Added to this was Jorge's experiences during the times of violence in Guatemala, his lack of any formal education, and his orphaned status in Guatemala.

After testifying, the Public Defender thought that the judge would not accept my

argument for a lack of cultural competency. This was in part due to the weight of the testimony of the three psychologists, even though their testimony was not conclusive, but more because I was asking the judge to set a case precedent of the concept of “cultural competency” of defendants that would be used in proceedings across the country. Several weeks later the judge ruled that Jorge was not “competent” to understand the court proceedings nor assist in his own defense. The judge did not state whether this was due to his mental state or cultural knowledge, but he did rule that Jorge had to receive “cultural training” in U.S. jurisprudence before his trial could begin. I was able to find an attorney who spoke the same Mayan language as Jorge and according to the judge’s ruling, was able to educate Jorge on U.S. courtroom expectations and procedures.

During the trial, a critical issue arose as I listened to the proceedings. Jorge sat with two young women from the Maya immigrant community who had been certified as interpreters in court. The proceedings were complicated, and it did not appear that the interpreters were explaining the adversarial positions of the attorneys in much depth. The Public Defender also noticed this and asked for a delay in the trial while the transcripts of the interpreters talking with Jorge were sent to the U.S. Department of Justice. The Department of Justice reviewed the transcripts with several native Maya speakers and ruled that the interpreters were not competent in understanding and translating the legal language of the courtroom. Jorge received a reduction in what very well could have been a life sentence that had been proposed by the prosecuting attorney to one of eight years.

The judge in this case came very close to ruling that cultural competence of clients was an important part of the proceedings but stopped before actually citing the concept. During my testimony the prosecuting attorney interrogated me about the concept of culture, whether cultures change, and whether an individual can learn a new culture. The hesitancy on the part of the final ruling of the judge was in part based on the long-established precedent of “psychological competency” with the forensic tools of psychologists available for determining the mental state and abilities of those involved in court proceedings. A second reason for hesitancy to cite the concept was that my argument had been based on the existence in the Guatemalan constitution of “Maya Law.” If competency in this regard had been accepted, then anyone growing up under any other legal system could be deemed not culturally competent. Unlike a mental illness, one can be culturally competent in more than one system (just as someone can speak more than one language), and someone can also learn to be competent in a different system under which one lives. But by ruling that Jorge had to be educated to understanding U.S. laws and court behavior, the judge approved of the concept without setting a legal precedent for future cases.

Jorge’ criminal case hearing and trial and my involvement in them illustrate that

work as an expert witness involves academic, social, and legal relationships with many people: the person involved, sometimes their family, expert witnesses from different academic backgrounds, prosecuting attorneys, and defense attorneys, including public defense lawyers. To put it simply, this can be a messy business. The clients are often responsible for some sort of transgression, expert witnesses, especially those who have been doing such work for many years, can be antagonistic towards specialists from other fields like anthropology, prosecuting attorneys have years of experience in adversarial interrogation, and public defenders are so overworked that little attention can be given to the subtleties of each case.

Asylum

Political asylum historically has been granted to members of identifiable groups who face a well-founded fear of persecution based on their religious, political, or social beliefs or affiliation. The U.S. Citizenship and Immigration Services web site describes asylum for immigrants as follows:

“Every year people come to the United States seeking protection because they have suffered persecution or fear that they will suffer persecution due to: Race, Religion, Nationality, Membership in a particular social group, Political opinion (United States Citizenship and Immigration Services, 2015).”

Many anthropologists who have worked in war-torn areas such as Central America have been asked to write affidavits or give testimony in asylum hearings, especially during the times when armed conflicts were in full force. The physical violence of wars, massacres, and large-scale violence was well documented in both scholarly articles and books as well as news media, and so serving as an expert witness in those cases was straightforward. The political slant of the U.S. and other governments often led to disparities in the success rate of petitioners from what were considered “friendly” vs. “unfriendly” regimes, but even given the role of political ideology, evidence of torture and persecution of groups of people like the Maya of Guatemala was available.

Recently, however, asylum petitions have become more common for LGBT people, especially as their status as members of a vulnerable and persecuted group is more and more recognized. But making a case for political asylum based on LGBT status is difficult. In the case of Honduras, an upswing in assassinations and violence against LGBT people

occurred after the government of President Zelaya was overthrown in 2009. Linking prejudice, discrimination, and persecution to political repression makes asylum based on LGBT affiliation more likely.

“Samuel” was with his partner in a major city of Honduras when his car was stopped, his partner abducted and later found murdered on a side street in the city. Samuel received threatening phone calls and notes, warning him that he was next for having a homosexual relationship. He fled to the United States and applied for asylum, seeking the help of a university law school clinic for his case. I was asked to write an affidavit in support of his petition, even though my own work in Honduras and Central America was not focused on LGBT issues. I discussed the role of the political climate in my affidavit:

The Coup d’etat of 2009 and Violence against LGBT People

The elected president of Honduras, Jose Manuel Zelaya, was removed from office in a violent coup d’etat on June 28th, 2009. Zelaya was a populist president who had encouraged ethnic group self-expression, women’s group formation, educational reform, and a national dialogue on human rights of LGBT people in Honduras. The aftermath of the coup led to a violent and lawless time in Honduras where the constitution and criminal codes were not in full force. LGBT people were especially vulnerable to attacks, harassment, and murder. In the first six months after the coup in 2009, 19 LGBT people were killed. Although hate crimes that targeted LGBT people were common before then, this spike in death threats and death marked a change where LGBT people were particularly targeted as a group in Honduras. The social openings for ethnic groups, gay activist organizations, and journalism that characterized the populist regime of Zelaya quickly became the focus of repression. It was during 2009-2010 that Human Rights Watch and other international organizations began to highlight the fear, intimidation, and violence that LGBT people face in the country (Affidavit of Allan Burns).

A complicating factor with the petition of Samuel was that he also had a wife and children. This was potentially a risk for Samuel, as his status as someone persecuted for being a member of the LGBT community could be questioned. I wrote in my affidavit that:

People in Honduras, as in other Central American countries, live in a complicated world of values, fears, and behaviors that surround sexuality. Honduras has no provisions for LGBT couples to marry, nor can they adopt

children. As mentioned earlier, any expression of same-sex affection or similar behavior is subject to police detention based on the criminal code that give police the authority to define public morality. The Catholic Church and other institutions likewise have strong negative reactions to LGBT beliefs or values. As a result, it is common for LGBT people to remain in the closet or to have “marriages of convenience” with other LGBT people. These clandestine couples, as they are known, are able to survive the brutality of Honduran social, cultural, and police reactions to being LGBT. Admitting one’s sexuality as LGBT or “coming out” is relatively rare, and when it does happen, responses are swift and often violent. For example, when the Inter-American Commission on Human Rights requested that the government provide protective measures to LGBT activists, the response was a full-page story in the national newspaper publicizing the names of individual activists. This suggests that institutions such as newspapers are quick to reinforce intimidating tactics against LGBT people in Honduras (Affidavit of Allan Burns).³

Along with LGBT violence and persecution, more and more asylum and other petitioners are basing their requests for safety and stopping removal proceedings on rape and the threats of rape and murder. “Antonia” is a woman from Central America whose husband came to the United States in order to support her and her two young children, one who was disabled. She was extorted by members of a gang for “renta” (rent) because she had a relative in the United States. She refused and both of her children were threatened. A few days later four men came to her home and knocked her unconscious and then gang raped her in front of her child. She escaped to the United States and sought protection as a victim of rape and violence by virtue of her belonging to a recognized social group, that of women who refuse extortion by gangs in Central America. Antonia was from an indigenous community, and the gang members who raped her were from that same community. In this case, it could not be argued that a government had been responsible for the “well-founded fear of persecution,” but rather her fear was based on the actions of an extremely violent gang whose brazen and horrible acts were done without any attempts at hiding their identity.

Politically motivated asylum claims continue to appear. The infamous “maras” or gangs of Central America have established themselves as de-facto governments in large

³ Samuel did receive asylum status and is now living and working in the United States.

portions of Central American countries. They control territory, extract taxes through extortion, have a system of justice based on organizational structures and roles, and even negotiate with governments at local and national levels. A person can be at risk for the political opinion they have when they refuse gang hegemony through membership in a church, refusing to give up children to gangs, and refusing to pay “la renta” or the tax demanded by gangs. Institutional governments are often unable to protect citizens from reprisals by these non-governmental actors, and so the opinions of experts about country conditions can be based on understanding the rise of “shadow governments” in local communities, regions, and countries.

“Maya Law” is recognized in Guatemala as a legal structure (Hessbruegge 2014), and as such is used in Maya communities there to settle disputes and safeguard the lives of citizens. “Alejandro” was an elected leader in a predominantly Maya speaking Guatemalan town, a town where Maya Law was in effect. A dispute by an outsider who took over lands of one of the town’s citizens led Alejandro to call the perpetrator to a meeting with elders. The outsider was found guilty and was told to return the lands to their rightful owner and to publicly apologize for the land invasion. The outsider, however, was not Maya but Ladino. He refused to apologize and abide by the decision, and instead formed a gang and attacked Alejandro, severely beating him. After Alejandro was released from the hospital, the outsider threatened him with murder. Alejandro fled and eventually came to the United States. The expert report that I wrote included a discussion of Maya jurisprudence, the relationship with Guatemalan national law, and conflict resolution in Maya communities. Alejandro was granted asylum because of his political opinion that Maya Law in Guatemala was a fundamental institution in his village.

Conclusions

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. While immigration is often described in terms of pull and push factors, adaption to new communities, and transnational worlds, immigration has a darker side of violence and judicial proceedings that become part of the everyday world of new immigrants. The cases are sometimes tragic: immigrants commit crimes, some of them capital offenses, and as one Public Defender mentioned, “not all immigrants are saints.” But even in those cases, equal protection under the law can mean the difference between a life sentence and something less. Sometimes asylum and criminal proceedings become intertwined. Someone who has

achieved political asylum and later applies for and is granted a “green card” or permanent residency, can be deported back to their country of origin if they commit a crime, even a relatively minor one. Their protection under asylum is lost when they become permanent residents.

Mayan and other immigrants from Mexico and Central America are not prone to violence or other activities any more than other people. But at the same time, they are more vulnerable to the court system because of their experiences in their home countries, their status as both documented and undocumented immigrants to the United States, and their poverty (Burns, 1993).

What reasons are there for bearing witness as an expert in cases involving Mexican and Central American people? Researching, writing, and testifying as an expert is one way to lessen the tragedies of violence and dislocation among immigrants. Collaborating with organizations such as “Human Rights First” or the “Hastings Center” puts an expert witness in contact with a network of human rights defenders who are doing extraordinary work.

The work of expert testimony is challenging. 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. I began adding photos from news media from Mexico and Central America in my reports to show what communities looked like, and the conditions of urban neighborhoods controlled by gangs. I include maps showing the size of countries in relationship to places in the United States to give a perspective on whether someone can be sent back and seek refuge in another part of a country. Honduras, for example, is approximately the size of Ohio, and so internal displacement when someone is being pursued is very difficult. I telephone colleagues and human rights lawyers in the countries where I work to determine conditions in prisons, the treatment of LGBTQ people, and experiences with police. Early affidavits that I wrote were five or six pages long; now they range from 25-30 pages. If the reports are accepted, they are entered into permanent record and can be used in other cases. The work of preparing a report and then testifying uses skills in social science and combines those skills with strategies for courtroom success.

To work as an expert witness is to be part of efforts to save lives. In one case, a family of 14 people were granted asylum. All of whom were at a high risk of being murdered if they were returned to their home country. The human rights lawyer I worked with said that I had saved lives after completing my testimony. I thought about a phrase made famous as the last line in the film *Shindler's List* - “Whoever saves one life saves the world” (YouTube 2013).

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