

Opinion

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Political Asylum, Anthropology and the Role of the Expert Witness

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INTRODUCTION

When I took my first course in anthropology in 1961, I was a student of biology (major) at Bucknell University, Lewisburg, PA, USA. When I went to Africa for the first time in 1964 to build a school and teach biology, or when I was studying Yoruba social organization at Temple University from 1966 to 1968, or when I did my PhD research on Nubian ethnography at Northwestern, I had never imagined that this trail through Africa would conceivably lead me to become an Expert Witness in political asylum cases. Probably, in those years there were no anthropology courses on such a topic although law schools dealing with immigration law certainly had a role for this professional need. Indeed, in those Cold War years, immigration was a minor national issue and there was only a relative trickle of refugees coming from conflict zones of Africa and the Middle East.

Now, I have had asylum cases on 4 continents, testified and consulted in scores and scores of asylum cases and have read and followed the British Ikarian Reefer guidelines, as well as Practice Directions 10 and 35 on the role of Experts and Assessors for First-Tier Tribunal and Upper Tribunals. In addition, I am familiar with the United Kingdom (UK) Asylum and Immigration Tribunal document of November 4th, 2009 and the points, 3.10.2 and 3.10.3 arose about Non-Arab Darfur which state 65 different ethnic groups in Darfur especially those referenced in Operation Guidance Notes. Furthermore, I am familiar with the role of the Expert Country Evidence in Asylum and Immigrations Cases in the UK; Best Practices Guide, of July 2013. As well, in the USA I have studied the legal grounds for political asylum (vs. economic refugees), the United Nations Convention Against Torture, worked with and, sometimes against, the Immigration and Naturalization Service (INS), Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) as well as provisions for asylum proscribed by the United Nations. In many cases, I have not met the asylum claimants, but I have also found them among personal friends, and helped folks across borders and to sanctuary.

This is a long step from being an undergraduate biology and anthropology student to part-time Expert Witness. But the four fields of holistic American anthropology led me to non-western Studies, to language acquisition (especially Arabic dialects and Nilo-Saharan languages). Long-term residence in Africa, as part of participant observations led me to explore, learn and know about country conditions. Cultural relativism brought me to humanistic concern and understanding for others. Ethics in anthropology taught me about the principles of 'do no harm' and 'informed consent' while membership in Human Rights Watch and Amnesty International kept me abreast of current issues in this field. Studying war, directly on the ground as an embedded journalist in several African conflicts, in Sudan, South Sudan, Eritrea, and Guinea-Bissau gave me practical understanding of the tactical, strategic, and personal complexities of conflicts. Assassinations and executions of friends and associates only tempered the steel needed to venture further into this domain. Finally, working as a civilian professor for a military college showed me the importance of pre-empting conflict, shortening conflict, and reconstructing after conflict to address the fundamental reasons for desperate people to flee for their lives and seek asylum in the first place.

What is Required to be an Expert Witness?

The basic requirement to be considered as an Expert Witness is to be formally and academically credentialed by appropriate degrees and with pertinent publications on regions and countries which have produced asylum seekers. Thus, most in this role are in middle or late career positions. Also, it is required that one is very current in the country conditions which have caused flight or prevent return. As a 'news junkie', this is pretty easy for me, and as a teacher of security and counter-terrorism issues for the military, my American and foreign military students are assigned as "desk officers" for specific nations that are already on the insecurity or failed state horizon. So, I can convince lawyers and judges that I am credentialed and informed about present country conditions.

Since my testimony is sworn and notarized against charges of perjury, I must '*tell the truth, the whole truth, and nothing but the truth*'. All questions and my answers must have total fidelity to the facts as best as I know them. I have had cases when my testimony is by CCTV to jails and detention centers and the client is freed from orange jump suits, to cases where the claimant finally is awarded a green card and freedom, to cases where my testimony kept a claimant in prison, to cases where clients had committed minor or very serious felonies and was not worthy of asylum but deportation should be withheld until governance by civil law may be restored in their home nation.

"Typical" Cases

Each case is an individual trapped in circumstances they did not usually cause, and, in fact, will not be considered for asylum if they served in a violent way for or against their enemies. I am generally familiar with the circumstances of the clients by their affidavits. Usually, I have not met in person but have learned of his or her situation through his attorneys and sometimes interviewed by telephone and Skype. We discuss various topics in colloquial Arabic, French or English to get a better understanding of their claim and for me to be confident of their personal veracity and to confirm their credibility. While I do not speak the many minority languages used in ethnically plural Africa, I have sometimes used published lexicons to determine their protected ethnic status. I must be confident, and will confirm, that the client understood my Arabic. I am able to differentiate Egyptian Arabic, from Classical and Quranic Arabic, Tunisian Arabic from southern Sudanese and Darfur accents and as well I can follow a dictionary in KiNubi (Kenya) with some of its cognates in Ki-Swahili. I took courses on Arabic at Northwestern University, Harvard University and American University in Cairo. I have conducted research and guided tours in Sudan and Egypt in Arabic without a translator for almost half a century. I mention this because this is helpful to determine

speakers' origins even when they are speaking their versions of Arabic even when they are not speaking their native non-Arabic languages (Rotana).

With the above considerations in mind, I must be convinced about their reasonable depth of knowledge about their home land in terms of local events, kinship, ethnicity, local sub-tribes, environmental conditions, numbers and types of livestock, regional history, cultural and local and some national politics in their country of origin for someone of their age at that time. As long as I find, by these means, that there were no inconsistencies, I could voice support for the claims that were being made. The complexities of racio-ethnic and linguistic identities in Africa are such that they are thousands of people (most often refugees from war) residing in refugee camps, prisons and fleeing across the Sahara to grave dangers in Libya and crossing the Atlantic or Mediterranean, I can verify that I have no professional doubt with the specific and contextual evidence that the client is, who they say they are, and has experienced what they claim that may include arbitrary arrest, lack of legal defense, arbitrary detention, no habeas corpus, held incommunicado ill treatment, notorious prison conditions, beatings, torture, lack of transparency, accountability or appeal and immunity from prosecution and much worse that are all well-known and documented for failed states and military regimes.

Finally, I, formally declare that "I understand that it is not my duty to assess credibility, but feel confident about his or her straightforward honesty. He or She is furthermore at serious to grave risk if forced to return. I also confirm that insofar as the facts stated in my report are within my own knowledge. I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion. I have endeavored to include in my report those matters, which I have knowledge of, or of which I have been made aware, that might adversely affect the validity of my opinion. I have indicated the possible sources of all information I have used. I have not (without forming an independent view) included or excluded anything which has been suggested to me by others. I can confirm that I have not entered into any agreement where the amount or payment of fees is in any way dependent on the outcome of the case."

Very respectfully,

Then, I step off the stand or away from the telephone and the immigration judge determines the fate of the claimant. I am not sure if I almost always win these cases because my testimony is so convincing, or if the reputation of the countries at hand is so bad, but I give a supporting voice to the needy and desperate and that is the biggest satisfaction of all.