

Putting Expertise to Work

Best Practices for Academic Expert Witnesses

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As a historian and an expert witness in Latin American asylum cases, I struggle against indifference. As a scholar of Latin American history, I repeatedly share historical narratives with my students, often wishing that these stories had different endings. As an expert witness, I strategize about how to change an individual's future. The stark reality of the human experience of injustice is daunting, and the practice of repeatedly going into dark places, and not becoming indifferent to them, requires devotion to sources, the art of storytelling, and stamina. It also necessitates answering your emails.

When I got the first email from an attorney asking me to be an expert witness, I ignored it. I had lectures to prepare, exams to grade, and meetings to attend. I thought the email must have been misdirected: Why would someone ask me, a historian of early Latin America, to be an expert witness in an asylum case? When I later went back to clean up my emails, I read the attorney's message more carefully and saw that, indeed, it was directed to me. I called my friend and mentor, Thomas M. Davies Jr., who served for decades as an expert witness, to ask him if he thought I could be helpful as an expert in asylum cases. As a fellow historian, he understood my background as a scholar, encouraged me to take that first case, and mentored me in my first affidavits.

Twelve years later, I continue to serve as an expert witness, documenting the gender-based, sexual, and gang violence that forces women, children, and LGBTQ+ persons to choose between persecution and possible death and flight to the U.S. I use my years of teaching experience to educate attorneys and judges that these individuals are not just fleeing private crimes rooted in an imagined, inexorable cycle of third world violence. Instead, asylum seekers and applicants for withholding of removal and relief under the Convention Against Torture (CAT)

are survivors of specific forms of mistreatment and violence by perpetrators who are not held accountable by their governments.¹ My work as an expert witness has, in turn, transformed my scholarship by broadening my community-engaged research, allowing me to design new courses and to engage with a national community of scholars from many disciplines and legal professionals.

My practice as an expert witness has changed over these years. When I began, I was already tenured and thus had a stable position, a teaching portfolio of established courses, and a national scholarly profile as a specialist in Indigenous-Spanish relations and gender and sexuality in early Latin America. Still, at first I accepted relatively few cases and maintained a narrow focus on LGBTQ+ cases in the Andes. As I gained greater understanding of asylum law and experience as an expert witness, I expanded the geographic and thematic scope of my research, taking on cases from the Northern Triangle (Guatemala, El Salvador, Honduras), as well as those involving gang violence.

There is an ebb and flow to the workload, one that obeys not the patterns of the academic calendar but rather the seemingly arbitrary scheduling, postponements, and cancellations of the immigration courts. A new affidavit requires intensive research and writing, usually followed by a quiet period of weeks or months before the scheduled hearing. I am careful not to accept cases with scheduled hearings that conflict with my teaching schedule or other prior obligations. While I have gradually increased the number of cases I accept, I have also taken breaks from expert witnessing because of increased teaching and service obligations at my university. In addition, while work as an expert witness is compelling, it can be emotionally draining. It is healthy to pause from this work for a period of weeks or months to avoid or heal from compassion fatigue. When I have taken breaks, I determine the amount of time, and when requests arrive during that period, I do not read the case details but inform the attorney that I am currently not taking new cases and indicate the date that I expect to resume this work.²

WHAT IS EXPERTISE?

Expert witnesses are not permanently designated as qualified to submit affidavits and to testify in immigration courts; rather, the credentials of an expert witness are evaluated in each hearing by the immigration judge (IJ). Immigration proceedings are administrative rather than judicial hearings; however, the Federal Rules of Evidence guide immigration judges, who have discretion to evaluate a variety of documents and testimony submitted by applicants to substantiate their claims, including information and opinions provided by expert witnesses. Expert witnesses are those who have “scientific, technical, or other specialized knowledge” that “will help the trier of fact to understand the evidence or to determine a fact in issue.”³ While attorneys advocate for asylum applicants, expert witnesses must maintain objectivity by providing accurate and documented affidavits as the basis for their professional

opinions.⁴ The strength of expert witnesses depends on their ability to critically analyze the experiences of the applicant and to demonstrate whether and how those experiences reflect both general and specific country conditions. Academics may qualify as country conditions experts based on research, teaching, and other relevant experience, such as field research and travel in relevant countries and regions.⁵

Scholars are particularly well equipped to serve as country conditions experts in asylum cases. University and college professors have status, skills, expertise, and experience that prepare them to serve as expert witnesses. Faculty members have earned doctoral degrees that qualify them to teach in their institutions. Tenured faculty members have been nationally evaluated and vetted by their institutions, and tenure's safeguard of academic freedom supports their intellectual independence and objectivity as scholars and expert witnesses. Disciplinary training in the humanities and social sciences provides scholars with research skills and methodologies for evaluating and critically analyzing sources. Scholars also bring their theoretical expertise in areas such as law, human rights, gender relations, and sexual violence, for example, to bear on the individual experiences and country conditions of each asylum case. Finally, as experienced teachers, scholars are able to counsel immigration attorneys, draft affidavits, and provide hearing testimony in ways that make legible the causes and consequences of the violence that asylum seekers have experienced or fear experiencing in their countries of origin.

Country conditions expert witnesses will often determine the scope of their expertise, at times to secure their standing before immigration courts and at times to limit what can quickly become an unsustainable workload. Some scholars choose to narrowly focus their expertise on a single country and specific forms of violence inflicted on a particular population, for example, gender-based and sexual violence perpetrated against women in Guatemala. Others choose a multicountry and thematic approach, such as the impact of gender-based, sexual, and gang violence on women and LGBTQ+ persons in the Northern Triangle. Based on continuing research and teaching interests, scholars may expand or constrict the focus of their expertise. In the course of my work, for example, early on I expanded my research on LGBTQ+ persons in the Andes to include gender-based and sexual violence against cisgender women and violence perpetrated against Indigenous peoples and Afro-Andeans. This geographic and thematic focus in my expert witness work, which I maintained for several years, reflected my scholarly and teaching profile in my department.

After gaining experience in researching and writing affidavits and providing testimony in immigration hearings, I determined to broaden the geographic scope of my expertise. As a faculty member associated with the Latin American Studies Program, my profile also included interdisciplinary and comparative research on Latin America, specifically including Central America. I maintained my thematic focus on gender norms, sexuality, and race/ethnicity but expanded my expert witness work geographically first to Guatemala, then to El Salvador, and finally to Honduras. Because gang members are often perpetrators of violence in these Northern Triangle countries, I added gang violence as a critical topic in

my research. Specific cases, moreover, may require experts to conduct additional research in new areas. For example, prompted by individual cases, I have conducted research on the status of children, persons with disabilities, and those with specific psychological or medical diagnoses, such as clinical depression or HIV.

Maintaining and expanding one's geographic or thematic focus as an expert witness requires an ethical commitment to engage in the research necessary for this work. To expand my expertise on country conditions in Honduras, for example, I compiled a bibliography of scholarly works on Honduras and conducted primary research that included reports by the U.S. and Honduran governments, UN entities, and nongovernmental organizations (NGOs). Each case requires targeted research on topics specific to the case, as well as updated country conditions. I have established google alerts for the countries I work on and daily receive dozens of news articles on current events in each country. I also monitor blogs, such as the AULA Blog produced by the Latin American and Caribbean Center at American University, and reports by InSight Crime, a research foundation that focuses on organized crime in the Americas. This research builds on my decades of experience as a scholar of Latin America. It is critical that expert witnesses carefully consider their current academic profile and their capacity for further research in determining whether to work on specific cases. Being clear on one's scope of expertise and refusing to work on cases outside of that scope can also save lives because an expert witness's affidavit and hearing testimony play a critical role in the determination of whether an applicant receives a form of relief or is deported.

Because of the time investment and the emotional toll that this work entails, academics regularly pause their work as expert witnesses. In periods in which I limit the number of cases I am working on, I sometimes restrict them geographically, accepting cases only from the Andes or from the Northern Triangle. I also limit my caseload thematically, for example, only accepting LGBTQ+ cases as it is often more difficult to find expert witnesses qualified for these cases. And while country conditions experts may choose to temporarily or permanently broaden or narrow the scope of their expertise, they should not feel pressured by attorneys to conduct research or offer professional opinions outside of their defined scope of expertise. Scholars of Latin America also bring linguistic skills to their expert witnessing, such as knowledge of Spanish, Portuguese, or Indigenous languages. However, expert witnesses are not responsible for facilitating communication with the applicant or translating documents for the attorney.⁶

LEVERAGING EXPERTISE

An expert witness not only provides a critical component of the asylum seeker's case—the country conditions affidavit and corresponding testimony—but can also influence how attorneys evaluate possible legal arguments and shape how judges and government attorneys evaluate the legitimacy of asylum claims. A scholar's academic status and expertise, as well as experience as an expert witness, should

inform their consultations with attorneys and can be used in immigration courts, the Bureau of Immigration Appeals (BIA), and federal circuit courts.⁷ As expert witnesses, scholars continue to deepen their understanding of historical and current conditions in their countries of focus through ongoing research for individual affidavits. In addition, expert witnesses fill a critical role in strengthening due process in hearing proceedings; through their consultations with attorneys, authoring of affidavits, and provision of hearing testimony, scholars acquire knowledge about asylum law and procedures. Scholars may leverage this research and experience as expert witnesses in work that is directed to public engagement by publishing articles in disciplinary journals and engaging with the media.

For many expert witnesses, most work will entail the preparation of affidavits used in immigration hearings for applicants applying for relief through the defensive process, which includes individuals who were apprehended at the border or within the U.S. without a valid immigration status or who have a valid immigration status but have been convicted of certain crimes.⁸ (Applicants pursuing an “affirmative process” following the overstay of a visa, for example, may apply directly to the U.S. Citizen and Immigration Services [USCIS], for which they may also require a country conditions affidavit.)⁹ Noncitizens in the defensive process have received a Notice to Appear (NTA), a charging document in which the Department of Homeland Security (DHS) alleges that the noncitizen should be deported because the individual lacks valid immigration status to remain in the U.S. The NTA indicates the factual allegations against the individual, the section of the law that the DHS alleges supports deportation, and a date to appear in immigration court.¹⁰ In a hearing before an immigration judge, noncitizens have an opportunity to defend themselves from deportation by arguing that they have a legal reason to remain in the U.S., which includes claims for asylum and other forms of relief.¹¹

Expert witnesses share their knowledge with attorneys, who have varying degrees of familiarity with the applicant’s country of origin, through consulting as well as through writing affidavits. Through their work, expert witnesses can draw attorneys’ attention to aspects of the applicant’s situation that reflect specific country conditions that may restrict or extend grounds for relief. For example, in one case I worked on, the applicant was called a racial epithet in one instance. The attorney believed that this racial slur indicated that the individual was perceived as a racial minority and that therefore race could be considered an additional ground of relief. However, I knew that in this country such terms were not always directed at racial minorities but could be used to denigrate any individual. In consultation with the attorney, I was able to explain the context for the usage of this term and, as there was no other supporting information in the record that the individual was perceived as a racial minority, the perceived racial status of the individual did not contribute to the applicant’s persecution in this case. It is perjury for an expert witness to knowingly substantiate false claims.

In other cases, my research for affidavits has provided new information to attorneys that substantiated applicants' inability to relocate within their countries of origin to escape violence. In one situation, the perpetrator was a convicted rapist who threatened future harm to the applicant, who survived this rape and gave birth to her child. My research showed that in this country, rapists, like all other criminally convicted persons, retain custodial rights over children and that therefore legally the applicant would be obligated to share her location with him if he were to assert custodial rights. Because my research also indicated that abusive men regularly assert control over children as leverage against the mother, this additional information from the penal code substantiated the applicant's claim that she would be endangered anywhere in the country because the perpetrator would have access to information on her location.

As Dr. Davies explained in chapter 1, the courtroom is another venue for education. Country conditions experts are becoming increasingly necessary due to policies that have increased the burden on asylum applicants to substantiate their claims for relief. Expert testimony provides immigration judges with objective information for evaluating an individual applicant's fear of persecution, but what judges learn from one case may continue to guide them in subsequent cases as well. For example, in one hearing, I testified to the cultural conditions, forms and levels of violence, and lack of government protection for transgender women in Guatemala. The immigration judge granted asylum in that case. Months later, I was scheduled to testify in a similar case with a different attorney in front of the same judge. The attorney I was working with called to inform me that once the judge saw that I was the expert witness, the judge determined that it would be more expedient to grant asylum in that case as well. As in the classroom, effective teaching informed by research and critical analysis can have a lasting impact; experienced scholars in the courtroom provide relevant facts and interpretation that may assist immigration judges to evaluate future cases.¹²

Providing hearing testimony is demanding. Experts often endure long, stressful waits on the day of the hearing to offer their testimony and may face aggressive questioning from DHS attorneys, who regularly seek to disqualify witnesses and undermine the credibility of their affidavits through cross-examination. Immigration hearings are adversarial, insofar as the government has charged the applicant (known as "respondent" in the hearing) with unlawful status in the U.S., and it is the role of the DHS attorney to present the government's case that the respondent should be deported.¹³ The stakes for these hearings are high, but scholars who prepare well for their expert testimony can withstand such challenges by the government. Because of scholars' professional standing, depth of research, and preparation for the specific hearing, no one in that courtroom is more able to explain to the judge how persecution, torture, and impunity are grounded in country conditions, as well as the likely consequences of deportation for the applicant. However, expert witnesses are not responsible for the outcome of the hearing;

our role is to convey, to the best of our ability, accurate information on country conditions and our informed professional opinion on the risks the applicant likely faces in the home country or, if the individual is stateless, in the last country of residence.

It is helpful to remember that the DHS attorney's potentially aggressive tactics are not personal attacks. As an example, in one hearing, I was rigorously interrogated by a DHS attorney on my qualifications. Her objections focused on my lack of personal experience in the country, my record of publication, and the quality of my research. The immigration judge qualified me as an expert witness over the DHS attorney's objections. Because of the length of time the DHS attorney spent challenging my expertise and cross-examining my testimony, the hearing was continued to the following day. Further testimony from me was not necessary, but, even though I was not present, the DHS attorney tried again to disqualify me. The judge again overruled her objections and ultimately granted asylum to the applicant. Months later, I was contacted by a different attorney for a case in the same court. The immigration judge assigned to the case was the newly appointed former DHS attorney who had rigorously opposed my testimony in that previous hearing. I at first declined the case. As I explained to the attorney, based on my previous experience with this former DHS attorney who had rejected my professional qualifications, I would be an ineffective expert witness in this new case. However, with the support of the attorney I agreed to work on the case.

In that hearing, the newly installed judge was respectful, qualified me as an expert, and granted asylum to the applicant. In these two hearings, the same individual evaluated my qualifications as an expert in radically different ways that depended on her role in the hearing procedures. Her reaction to me was not personal but based on her professional objectives. As a DHS attorney, she believed her role was to disqualify me in order to weaken the applicant's asylum claim; as a judge, she found my research and opinion helpful to her evaluation of the case. However aggressive DHS attorneys are, it is critical to remember that their role in the proceedings is usually adversarial and that challenges to an expert's credentials may be a strategy to undermine the respondent's claims rather than an objective evaluation of the expert witness's background and experience. A negative hearing experience is neither reflective of an academic's status as a scholar in their field, nor does it diminish the valuable contributions that the expert witness can make in other hearings.

A common question posed by DHS attorneys, intended to challenge an expert witness's qualifications, concerns whether an expert witness has personal experience in the country of expertise. The question of experience cuts both ways: DHS attorneys may accuse an expert witness who has spent considerable time in a country of bias or—taking the opposite approach—accuse an expert who has not recently or never visited the country of ignorance. There is no preferable answer, but in any case, the more important basis of expertise—according to judges who

have regularly certified my work as an expert—is the scholarly credentials and research abilities of the expert witness. Contrary to what is argued by many DHS attorneys, immigration judges rarely qualify experts based on the witness’s physical presence in a country. An example from a historian’s perspective is instructive here. As a historian, for example, the scope of my expertise includes seventeenth-century Quito; however, I have never physically been present in colonial Quito. Although I lived in modern Quito for several years, my expertise on its past is based on archival research, not my observations and experience during my stay in Ecuador to conduct my research. The documents I needed were only available in that national archive, so I traveled there. For countries I focus on as an expert witness, by contrast, including modern Ecuador, there is a sufficient digital archive to support my research, including reports and analysis by U.S. and foreign governments, UN entities, NGOs, research institutes, and media. Curating a digital archive for research purposes is not unique to academics. Researchers for the Congressional Research Service (CRS), a public policy institute that exclusively provides research and analysis to the U.S. Congress, also primarily use sources that are digitally available rather than personally conducting field research in specific countries. In a hearing, an expert must be prepared to explain the basis of expertise, which may or may not include physical presence in the country of focus. Because I conduct deep research using digital sources and can explain the relevance of that research, I have always been qualified as an expert regardless of whether I have visited the applicant’s country.

When the immigration hearing has concluded, the expert witness’s work on the case is completed, but the expert witness’s affidavit—which becomes part of the permanent record of the case—may continue to shape the future of the applicant and play a critical role in changing legal standards. If the immigration judge denies the applicant’s claim, the negative decision may be appealed to the Bureau of Immigration Appeals, an appellate court that, like the immigration court, is under the authority of the Executive Office for Immigration Review (EOIR) within the Department of Justice. At the BIA level, the expert witness’s affidavit used in immigration court is a permanent part of the evidentiary record. Expert witnesses typically do not provide new affidavits or hearing testimony in these appellate hearings.

If a particular ruling is appealed to the BIA, the EOIR provides that court with a full record of proceedings from the immigration court, including the expert witness’s affidavit and all other evidence. The BIA is not a fact-finding body; it is charged to review the immigration judge’s decisions for factual or legal errors. Typically, the BIA does not accept new evidence.¹⁴ The court, at its discretion, may accept amicus briefs, which are documents written by individuals or organizations (called *amicus curiae*, or friends of the court) that are not party to the case but can offer information, expertise, and insight that can inform the proceedings. As a scholar and an expert witness on the status of LGBTQ+ persons in Latin America,

for example, I have consulted with and provided research to attorneys charged with writing amicus briefs on behalf of organizations.¹⁵

If the BIA affirms the immigration judge's denial of the applicant's claim, the case can be appealed to the Federal Circuit Courts of Appeal. The federal circuit court only has discretion to deny or accept an appeal; like the BIA, the federal circuit court is not a fact-finding body. It reviews constitutional claims and facts of law by reviewing the evidentiary record of the immigration and BIA hearings.¹⁶ As in BIA proceedings, expert witnesses may consult with and provide research to assist in amicus briefs.¹⁷ Judicial decisions at this level are precedential; that is, the federal circuit court's decision on the case will change legal standards for future cases. The expert witness's original affidavit continues to be a critical document at this level. Davies, for example, was the country conditions expert witness in the 2000 asylum hearing of applicant Hernández Montiel, a "gay man with a female sexual identity" from Mexico. The immigration judge denied the applicant's asylum claim, and the BIA affirmed the immigration judge's denial. The case was appealed to the Ninth Circuit Court of Appeals. Federal circuit judges extensively cited Davies's affidavit in the decision to grant asylum to Hernández Montiel in 2000. This decision significantly broadened the particular social group (PSG) for gender-nonconforming persons to specifically include "gay men with female characteristics" and continues to protect transgender and gender-fluid applicants seeking relief today.¹⁸

In addition to case-specific affidavits and testimony and research for amicus briefs submitted during appeals, country conditions experts may—if they so choose—provide critical support at the federal level in litigation against executive branch actions to restrict immigration and asylum. Research by expert witnesses may support amicus briefs, and expert witnesses may author or coauthor generalized affidavits used to support litigation. For example, M. Gabriela Torres, a contributor to this volume, coauthored an affidavit on the status of women in Guatemala that was introduced as evidence by the American Civil Liberties Union (ACLU) and the Center for Gender and Refugee Studies (CGRS) in *Grace v. Whitaker*.¹⁹ In 2018, the ACLU and CGRS challenged Attorney General Jeff Sessions's decision in *Matter of A-B-* that restricted domestic violence as a basis for asylum relief.²⁰ Because of Sessions's decision, the USCIS issued a policy memo that directed immigration officers to deny the claims of survivors of domestic violence in credible fear interviews to prevent these women from continuing the asylum process.²¹ Torres's coauthored affidavit contributed to the success of this litigation in the U.S. District Court for the District of Columbia that resulted in an injunction against the USCIS from using this policy.²²

Country condition expertise can also be effective in other venues at the federal level. For example, expert witnesses may author affidavits (referred to as "reports") and provide oral testimony in Hague Convention cases. The Hague Abduction Convention is an international treaty that provides procedures through U.S.

federal courts for determining whether children under the age of sixteen have been abducted internationally and if a child is determined to have been abducted, for the return of that child to the country of habitual residence.²³ While distinct from the asylum process, the respondents in these cases may also be asylum seekers. This was the circumstance in one asylum case for which I was an expert witness: the respondent was a woman who had fled with her child from her home country because of domestic abuse and had applied for asylum on behalf of herself and her child. The father of this child had already applied to the U.S. government under the Hague Convention for the return of the child to his custody in his home country. If he had been successful in this request, although the mother would not have been legally required to return to her home country, she indicated that she would feel compelled to return to protect her child from the father's abuse. As I argued in my report, abusive men assert authority and even abuse children to control the mother, and this man's motive was more likely not the well-being of the child but rather to force the woman to return so that he could carry out his violent threats against her. My report included research on the status of children in that country, demonstrating that the government did not protect children from violence. Because the father had a history of violent behavior, I argued that the child would likely be endangered if returned to the country of origin. The case was resolved through settlement, and the woman and her child continued the asylum process in the U.S.

Affidavits are powerful documents that illustrate and document the historical and cultural context and actual occurrence of distinct forms of violence and mistreatment in specific countries. Expert witnesses usually tailor their research to explain those factors that are relevant to the status and claims of an individual applicant, and the affidavit is submitted as evidence for that individual's case. However, expert witnesses may also craft general, or universal, affidavits that may be submitted in several cases. The research for this type of affidavit usually focuses on a specific population, women domestic violence survivors in Honduras, for example, or specific perpetrators, such as gangs in Guatemala. Universal affidavits are helpful in cases in which it is difficult to find an expert witness, either because of the general shortage of expert witnesses or because the applicant's hearing has been expedited and there is not sufficient time for an expert witness to provide an individualized affidavit. Universal affidavits also assist other expert witnesses and can be cited as evidence in their affidavits. The CGRS, for example, sponsors and shares universal affidavits with attorneys and expert witnesses to inform briefs and affidavits and to submit as evidence in specific cases. In my work, I have provided universal affidavits used in cases for detained applicants with expedited hearings. I have also provided universal affidavits to be used for populations for which there is a chronic shortage of expert witnesses, such as LGBTQ+ persons. On one occasion, I crafted a universal affidavit on the status of transgender women in El Salvador that documented an increase in violence against this population since

2005. This affidavit substantiated the claim that there was a change of circumstances for transgender women in El Salvador since that time, and it was submitted by an attorney as evidence to reopen a number of cases.

Scholars with expert witness experience can also make an impact in their contributions to disciplinary journals on emergent issues and by engaging with the media. Disciplinary societies with dedicated academic journals, such as the Society for Cultural Anthropology, devote issues to current events. Torres, for example, based on her scholarly background and her experience as an expert witness, contributed an article on gender-based violence in Guatemala and the U.S. asylum system in an issue of *Fieldsights* that was motivated by the migrant caravans that left the Northern Triangle of Central America throughout 2018. This issue of *Fieldsights* brought together articles by ethnographers, many of whom are also practicing expert witnesses, to discuss the conditions in these countries that motivated migrants in the caravans to leave their homes and seek safety in the U.S.²⁴

Newspapers with national circulation, such as the *Los Angeles Times*, also offer platforms for scholarly expert witnesses to share their expertise. Reflective of this practice, Torres coauthored an op-ed in the *Los Angeles Times* with Cecilia Menjívar, another expert witness and scholar on gender-based and state violence in Guatemala, that disputed the government's designation of Guatemala in July 2019 as a "safe third country." Torres and Menjívar argued that citizens from other Central American countries should not be forced to apply for asylum in Guatemala before making an application to the U.S. because Guatemala is a dangerous country due to gang violence and government corruption.²⁵ An organization that assists academics to connect their scholarship and experience to policy makers, civic groups, and the media is the Scholars Strategy Network at the Center for American Political Studies, Harvard University. The Institute of Latin American Studies (ILAS) at Columbia University has established the Regional Expert Papers Series, which publishes peer-reviewed research papers by U.S. researchers and academics on contemporary conditions in Latin American countries.

EXPERT WITNESSING IN THE ACADEMY

Tenure and promotion at colleges and universities are usually based on three weighted criteria: scholarship, teaching, and service. Because country conditions expert witnesses provide predominantly pro bono assistance and produce writings that, while extensive, are neither peer-reviewed nor published, most departments and institutions consider this work in the category of service, if it is considered at all. However, as discussed throughout this book, your qualification as an expert witness relies on your reputation and experience as a researcher and teacher at your institution. Country conditions affidavits are intensively researched documents that are vetted by legal professionals and immigration judges before being admitted into the judicial record. The immigration court hearing is another venue for

teaching; and research for affidavits and experience as an expert witness can also be used as the basis for designing new courses or enhancing the existing curriculum. The work of expert witnesses is community-engaged scholarship that should be given due weight in career advancement decisions.

These changes are slowly taking hold in university tenure review processes and in how professional associations and foundations value community-based research in higher education. The American Council of Learned Societies (ACLS) and the Mellon Foundation, for example, recognized the value of community-engaged scholarship and inaugurated the Scholars and Society Fellowship in 2019. This fellowship supports humanities faculty in PhD-granting institutions who are engaged in projects that link their disciplinary training to significant societal issues.²⁶ Professional associations, such as the American Historical Association (AHA) and the American Anthropological Association (AAA), have made firm commitments to promote publicly engaged scholarship and teaching by revising tenure and promotion guidelines. The AHA incorporated recommendations by the Working Group on Evaluating Public History Scholarship in 2017. Traditional criteria for career advancement privilege published scholarship, which may discourage scholars from engaging in research and teaching connected to projects that address local, national, and global challenges. According to the AHA, however, “publicly engaged projects can bring funding and prestige to departments and fulfill institutional missions.” These new guidelines recognize that historians are increasingly participating in community-engaged work and urge institutions to formalize mechanisms that recognize and promote civic engagement.²⁷ The AHA acknowledges that the work of expert witnesses is a “disciplined learned practice” in its criteria for valid community-engaged scholarship, which include “preparing reports for government bodies, academic institutions, and nonprofits” and “providing expertise, advice, and consultation for . . . governmental and nongovernmental agencies[] and community groups.” Because expert witness affidavits are assessed by attorneys, judges, and government officials, these documents also meet the guidelines for peer-reviewed scholarship, which can include “a broader and more diverse group of peers, many from outside traditional academic departments.”

The AAA has recognized since 2004 that anthropologists are increasingly involved in community-engaged research and in 2011 issued guidelines that specifically included expert witnessing as a valid form of scholarship to be evaluated in tenure and promotion decisions.²⁸ In 2017, the AAA issued guidelines for tenure and promotion committees that urge institutions to “acknowledge the value of public forms of communicating, writing and publishing as Scholarship.”²⁹ Like the field of history, anthropology traditionally privileges published scholarship in career advancement decisions; however, the AAA recognizes that “public scholarship communicates the insights and value of anthropology beyond the academy.” To evaluate publicly engaged scholarship, the AAA also recommends

that external reviewers may include nonacademics, such as “community or organizational partners.” For both the AHA and the AAA, scholarship is a process and not a product that exclusively manifests as a published article or book that is peer reviewed by other academics. Expert witness affidavits require disciplinary methodologies and practice and are reviewed by legal professionals and scholars, as well as government-appointed attorneys and immigration judges.

The AHA offers recommendations for historians involved in publicly engaged research that are applicable to all academic expert witnesses. First, clearly document your expert witnessing and explain the ways your work qualifies as scholarship within your discipline. Keep careful records of each case, noting the country focus, the basis of the claim (e.g., sexual violence, LGBTQ+, police torture), the court location, the legal provider (private attorney, legal aid society, law school clinic, etc.), and the outcome. I have found it helpful to provide redacted affidavits to my department so that my colleagues can see the level of research involved in these cases. I include information on my cases in my curriculum vitae used for evaluation and promotion in my university. Expert witnesses also acquire specialized knowledge about immigration and asylum law and policies and legal argumentation. Organizations such as the Center for Gender and Refugee Studies and Tahirih Justice Center offer webinars that provide guidance for managing specific legal challenges. I participate in and document these trainings, noting the topic and date for each webinar. Finally, presentations on your research and experience as an expert witness to professional organizations will reinforce that this work is valued by the academy.

Second, the AHA recommends that scholars work with their departments to establish criteria for career advancement that reflect publicly engaged scholarship, which could include adjustments to workload distribution and expectations for publication. In addition to conversations with my department chair, I have found it helpful to participate in department-wide discussions about expert witnessing to educate my colleagues on the scope of this work and its value to our academic mission. Public presentations within the department, in the university at large, and at local community groups, as well as guest lectures in colleagues’ classes, can inform and generate enthusiasm for acknowledging this work as a form of publicly engaged scholarship that should be recognized in academic institutions. Some departments evaluate faculty yearly based on scholarship, teaching, and service. These evaluations are an opportunity to explain and document the value of expert witnessing as a form of scholarship.

Expert witnessing contributes to the teaching mission of institutions of higher education. Teaching skills are used in hearing testimony, but more concretely, country-specific research can be incorporated into existing courses, while experience and specialized knowledge acquired as an expert witness can be the basis for designing a new curriculum. Research I conducted on the status of Indigenous women in Ecuador in the context of asylum claims, for example,

broadened the scope of my courses on Indigenous peoples in Latin America to include information and discussion on gender norms within Indigenous customary legal practices. Based on my work as an expert witness, I have also created new undergraduate and graduate courses that focus on Latin American immigrants and refugees and the history and current practice of U.S. immigration and asylum laws. These courses have attracted students from across the campus, thereby increasing enrollment and expanding departmental outreach throughout the university, including the law school. Embedding research and practice as an expert witness in the curriculum also augments your qualifications as an expert in immigration hearings.

Looking back on my years as a professor and an expert witness, I recognize that expert witnessing is consistent with my journey as a scholar. As a first-generation college graduate, I have always viewed research and teaching in the university system as an avenue for social change. The academy has never been an Ivory Tower, a pejorative accusation insinuating that scholars are disconnected and irrelevant to society; rather faculty members and their scholarship are embedded in and transformed by the world around them.³⁰ My work as an expert witness would not be possible without my faculty position in the university. Scholars have a unique status and skill set that enable them to be effective expert witnesses.

CONCLUSION

Expert witnessing has transformed my scholarship, expanded the communities I engage with, and augmented my commitment to research and teaching. It is true that I am busier; the level of my research has increased as I monitor current events in my countries of focus and delve deeply into topics relevant to specific cases. However, my work as an expert witness is compatible with my academic obligations and, indeed, has enhanced my profile as a scholar in my university and nationally.

As an expert witness, I am strengthened by the bravery and resilience of individuals who, despite the terrors and abuse they have survived in their home countries, believe that our country will honor its pledge to provide refuge for the persecuted. My heart is crowded with their stories. Each hearing with a successful outcome is a reminder that justice is possible and sometimes manifests one person at a time.

NOTES

1. Asylum, withholding of removal, and relief under the Convention Against Torture are distinct forms of relief that halt deportation but offer different levels of protection. Generally, applicants apply for all three forms of relief simultaneously. See chapter 6 of this volume for further information.

2. Applicants for relief are usually survivors of physical, sexual, and/or mental trauma. Expert witnesses, like attorneys, may experience compassion fatigue, which is a state, sometimes described as “burnout,” that includes symptoms of secondary trauma. See chapter 9 of this volume for further information.

3. Federal Rules of Evidence, Dec. 1, 2017, Rule 702 Testimony by Expert Witnesses.

4. USCIS Policy Manual, vol. 1, chap. 6, “Evidence,” Nov. 23, 2021.

5. This chapter focuses on the role of academics as country conditions experts. Academics also engage in immigration court proceedings as medical, psychological, and forensic experts. Professional associations, such as the American Medical Association, the American Psychological Association, and the American Anthropological Association, offer information on expert witnessing in these fields.

6. It is my personal policy to not speak with the applicant. My rationale is that as a historian, my expertise is based on the analysis of documents; the inclusion of information given orally could introduce bias in my research. Some expert witnesses who are certified translators, for example, do speak with the applicant in exceptional circumstances. Expert witnesses from other disciplines, such as anthropology, may also be more inclined to consider speaking with the applicant. This is discussed further in chapters 2 and 6 of this volume.

7. Decisions by immigration judges may be appealed to the BIA. Immigration courts and the BIA are under the authority of the Department of Justice. Decisions by the BIA may be appealed to U.S. Courts of Appeal, organized into twelve regional circuits, under the authority of the federal judiciary.

8. For a discussion of the distinctions in forms of relief included in asylum, withholding of removal, and the Convention Against Torture, see chapters 4 and 7 of this volume.

9. USCIS, “Obtaining Asylum in the U.S.” See also chapter 4 of this volume.

10. 8 USC 1229: Initiation of Removal Proceedings.

11. For an overview of the asylum process, see American Immigration Council, “Asylum in the United States,” June 11, 2020.

12. For an analysis of the roles of expert witnesses in immigration hearings by a former attorney and immigration judge, see Jeffrey S. Chase, “The Importance of Expert Witnesses,” *Opinions/Analysis on Immigration Law* (blog), Aug. 24, 2017. Andrew I. Schoenholtz et al., “Refugee Roulette: Disparities in Asylum Adjudication,” *Stanford Law Review* 60:25 (2007): 295–412, discusses the authority of adjudicators in immigration proceedings and analyzes the disparity in adjudicators’ approval rate in DHS, immigration hearings, BIA, and federal circuit courts.

13. For an overview of the mission and scope of the EOIR, including immigration hearing procedures, see “Executive Office for Immigration Review: An Agency Guide,” U.S. Department of Justice, Dec. 2017.

14. 8 CFR § 1003.1—“Organization, jurisdiction, and powers of the Board of Immigration Appeals.”

15. For an example of an amicus brief filed with the BIA, see Catholic Legal Immigration Network, Inc., “CLINIC Files Amicus Brief on BIA Appeal for Transgender Honduran,” Mar. 25, 2020.

16. U.S. Code Title 8. ALIENS AND NATIONALITY Chapter 12. IMMIGRATION AND NATIONALITY Subchapter II. IMMIGRATION Part V. Adjustment and Change of Status Section 1252. Judicial review of orders of removal.

17. For an example of an amicus brief filed in the Ninth Circuit Court of Appeals, see *Maldonado Lopez v. Holder*, CGRS Amicus Brief, June 6, 2013.

18. See chapters 1 and 5 of this volume and *Hernandez-Montiel v. INS*, Aug. 24, 2000.

19. *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018).

20. For a discussion of gender-based asylum, including *Matter of A-B-*, see chapter 4.

21. Credible fear interviews are the first step in the asylum process. They occur after the noncitizen is apprehended, usually at the border. Noncitizens must show that they have a reasonable likelihood of establishing in an immigration hearing that they have been persecuted or have a well-founded fear of future persecution based on at least one of the protected grounds. If a noncitizen is denied during the credible fear interview, they risk expedited removal. Credible fear interviews are explained more fully in chapter 7 of this volume.

22. For a discussion of the significance of *Grace v. Whitaker*, see Richard A. Boswell and Elisa Vari, “*Grace v. Whitaker*: Advancing Refugee Rights beyond the Credible Fear Interview,” *Bender’s Immigration Bulletin* 24:685 (2019); Jeffery S. Chase, “How Far Reaching Is the Impact of *Grace v. Whitaker*?” Dec. 24, 2018.
23. Hague Conference on Private International Law (HCCH), “Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.”
24. Jennifer Burrell and Ellen Moodie, “Behind the Migrant Caravan: Ethnographic Updates from Central America,” Hot Spots, *Fieldsights*, Jan. 23, 2019.
25. Cecilia Menjívar and M. Gabriela Torres, “Op-Ed: Trump May Wish Guatemala Were a Safe Place for Asylum Applicants to Wait, But It’s Not,” *Los Angeles Times*, July 25, 2019.
26. American Council of Learned Societies, Mellon/ACLS Scholars and Society Fellowships. Based on my research and experience as an expert witness, I was awarded a Scholars and Society Fellowship in 2019, its inaugural year.
27. AHA, “Tenure, Promotion, and the Publicly Engaged Academic Historian,” 2017.
28. AAA, “Guidelines for Evaluating Scholarship in the Realm of Practicing, Applied, and Public Interest in Anthropology for Academic Promotion and Tenure,” 2011.
29. AAA, “American Anthropological Association Guidelines for Tenure and Promotion Review: Communicating Public Scholarship in Anthropology,” 2017.
30. Steven Shapin, “The Ivory Tower: The History of a Figure of Speech and Its Cultural Uses,” *British Journal for the History of Science* 45:1 (2012): 1–27.