

CONFERENCE REPORT BY  
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# Practicing Asylum

EXPERT WITNESS TESTIMONY IN  
LATIN AMERICAN ASYLUM CASES

A RICHARD E. GREENLEAF CONFERENCE ON LATIN AMERICA  
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## **INTRODUCTION**

This conference, organized by Dr. Kimberly Gauderman and Dr. Elizabeth Hutchison under the auspices of the University of New Mexico's Latin American & Iberian Institute, stemmed from the organizers' experience as teachers, scholars of Latin America, and advocates for human rights. At the time of this conference, Gauderman had worked for seven years as an expert witness, testifying for immigrants seeking asylum in the United States and experiencing both the challenges and opportunities of working as an expert witness while employed in an academic setting. Even with the growing number of academics engaged in this work, the greatest challenge is the urgent need for more expert witnesses who are prepared to assist attorneys working on these cases.

In the spirit of growing this network of experts, facilitating collaboration between attorneys and experts, and making the work of expert witnesses more sustainable, Gauderman and Hutchison brought together academics, organizers, and attorneys from across the country. Panelists came from a variety of backgrounds: academics from the disciplines of anthropology, history, and political science who contribute to asylum work in a number of ways; organizers from large research centers as well as grassroots community groups; and attorneys from both small self-founded firms, as well as from large legal firms with entire departments dedicated to human rights. This diversity amongst the panelists assured a variety of perspectives and experiences, all working towards the common goals of increasing the pool of expert witnesses, facilitating collaboration among attorneys, organizers, and academics, and making the work of providing expert witness more sustainable.

The conference was designed to provide a variety of opportunities for discussion and community participation. Rather than presenting written papers or statements, panelists took part in guided discussions on prepared questions, followed by a question and answer period. This format allowed for more organic and meaningful interaction both among panelists and between panelists and audience members. Each day of the conference, two panels were convened, one in the morning and one in the afternoon, followed by closing comments and discussion. The themes and questions posed to each panel covered a range of issues, but spoke to several central goals of the conference: to provide a space for dialogue between academics, organizers, and attorneys; to discuss best practices on various aspects of asylum work; to develop methods for growing this network, recruiting, and training new expert witnesses; and to make this work overall more sustainable. Gauderman and Hutchison also have the specific goal of publishing an open-access handbook, written by academic experts and attorneys, to guide and support the work of expert witnesses and asylum attorneys.

## **ASYLUM LAW: BACKGROUND AND THE LEGAL PROCESS**

The first set of questions posed to panelists concerned the particularities of asylum law and how this form of relief differs from other forms of relief available to individuals crossing the U.S. border. As outlined and discussed by various attorneys and experts, asylum claims must meet several specific

requirements. First, generally an individual must file for asylum within one year of his/her arrival to the United States. The government can recognize exceptions to this rule because of “either the existence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing an application.” Second, in order to be eligible for asylum in the United States, individuals must meet the definition of a refugee, meaning that they experienced past persecution in their home country or that they have a well-founded fear—in the case of asylum, a ten percent (10%) probability—of future persecution should they return to their home country. If an individual has experienced past persecution, the legal assumption is that the individual would also face future persecution. This well-founded fear must be both subjective, meaning that fear of persecution and grounds for that persecution are clearly expressed by the applicant, and objective, in that attorney and experts must demonstrate that it is objectively possible for that individual to be persecuted based on those grounds. Third, this persecution must be shown to derive from immutable characteristics connected to five protected grounds: race, religion, nationality, political opinion, or membership in a particular social group. Characteristics such as political opinion or membership in a particular social group may be expressed by the individual, or they may in fact be imputed to an individual through characteristics ascribed to him/her by other members of society. Fourth, eligibility for asylum also depends on proving that persecution was either committed by a state actor—such as a police officer or member of the military—or that the government was either unwilling or unable to protect the individual. Due to the fact that asylum is not granted based solely on violence or persecution, asylum applicants must demonstrate that the perpetrator targeted them because of one (or more) of the protected grounds and that the government failed to protect them from this persecution.<sup>1</sup>

The other forms of relief most often discussed in asylum law are known as Withholding of Removal (Withholding) and Convention Against Torture (CAT). Both these forms of relief are based on international accords that prohibit nations from returning refugees to countries where they would face persecution, as stipulated in the United Nations’ “Convention Relating to the Status of Refugees Protocol” (ratified by the U.S. in 1968) and its “Convention Against Torture” (ratified by the U.S. in 1994). These forms of relief are mandatory, meaning that an applicant cannot be denied if eligibility criteria are met. Applicants may apply for relief under Withholding or CAT at any time (no one-year limit), but must show that it is “more likely than not” that they would face persecution or torture in their countries of origin. The criteria for Withholding are for the most part the same as for asylum; individuals must show that they are refugees who face persecution on account of one of the five protected grounds described above. Under CAT, none of the bars to asylum apply, but applicants must show that the harm feared

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<sup>1</sup> See “Preserving the One-Year Filing Deadline for Asylum Cases Stuck in the Immigration Court Backlog,” American Immigration Council, 12/2015, [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/preserving\\_the\\_one-year\\_filing\\_deadline\\_for\\_asylum\\_cases\\_stuck\\_in\\_the\\_immigration\\_court\\_backlog\\_practice\\_advisory.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/preserving_the_one-year_filing_deadline_for_asylum_cases_stuck_in_the_immigration_court_backlog_practice_advisory.pdf); “Applying for Asylum,” Immigration Equality, <http://www.immigrationequality.org/get-legal-help/our-legal-resources/asylum/applying-for-asylum/>.

risers to the level of torture, though this torture does not need to be on account of one of the five protected grounds.

Similar to grants of asylum, Withholding and CAT protect individuals from being sent back to their home countries. However, these forms of relief are limited in several ways that asylum grants are not. First, asylum is a permanent form of relief that provides a road forward to citizenship. A person granted Withholding or relief through CAT, however, cannot apply for a green card or for U.S. citizenship. Second, asylum applicants may include their spouse and young children on their claims, whereas Withholding or relief through CAT does not extend relief to family members. Third, a person granted asylum may apply for travel documents and travel outside of the United States, whereas individuals granted relief through Withholding or CAT cannot leave the United States. Finally, in cases of Withholding or CAT, there is the chance that the U.S. government will decide to deport an individual back to the country of origin -- if it is determined that conditions have changed -- or to a safe third country. Due to these limitations, as well as the higher threshold of well-founded fear for both Withholding and CAT, asylum is typically viewed as the preferred form of relief from persecution.<sup>2</sup> Attorneys usually can and do, however, file for all three of these forms of relief simultaneously.

Legal assistance for asylum seekers comes from a variety of sources, ranging from smaller law firms that focus on immigration law to larger corporate forms with internal teams dedicated to human rights and immigration law. These larger firms commit substantial attorney hours and other resources to asylum work—often either pro-bono or at significantly reduced costs—for a number of reasons. Sarah Wolff, a partner in the Chicago law firm Reed Smith, explained that the leadership of these firms is often genuinely interested in and committed to providing these services, which may also be of interest to incoming lawyers as they begin to build their careers within the company. Wolff has increasingly witnessed a moral- or service-focused alignment among clients, law partners, and incoming lawyers, who seek to work with others motivated by these shared concerns. These larger firms often partner with legal organizations such as the National Immigrant Justice Center (NIJC) and the American Immigration Lawyers Association (AILA), as well as academic centers such as the Stanford Human Rights Center and Penn State’s Immigrants’ Rights Clinic. These partnerships and collaborations are one of the key ways that attorneys working on asylum cases are able to develop and gather resources and identify potential expert witnesses.<sup>3</sup>

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<sup>2</sup> See “Withholding of Removal and CAT,” Immigration Equality, <http://www.immigrationequality.org/get-legal-help/our-legal-resources/asylum/withholding-of-removal-and-cat/>; . “Differences Between Asylum, Withholding of Removal, and Protection Under Convention Against Torture,” NOLO, <http://www.nolo.com/legal-encyclopedia/differences-asylum-withholding-removal-protection-convention-against-torture.html>.

<sup>3</sup> See National Immigrant Justice Center, <http://www.immigrantjustice.org/news-research>; American Immigration Lawyers Association (AILA), <http://www.aila.org/>; Advocates for Human Rights, <http://www.theadvocatesforhumanrights.org/asylumattorneys>; Capital Area Immigrant Rights (CAIR) Coalition, <https://www.caircoalition.org/for-pro-bono-attorneys>; Reed Smith NIJC Human Rights Award: <https://www.reedsmith.com/en/news/2017/06/reed-smith-wins-njic-human-rights-award-for-pro-bono--us-immigration-rights>

Attorneys at this conference discussed how they call on expert witnesses with increasing frequency in order to help mitigate several growing challenges within the asylum legal process. These challenges are coming from Congress, the courts, and from enforcement agencies that promote and use restrictive measures to limit the number of people eligible for asylum. Immigration Judges have increased their rates of denial of asylum claims and immigrants are increasingly prevented from applying for asylum. Several panelists spoke about the creation of what are referred to as “asylum-free zones” in which roughly ninety-five percent of asylum claims are denied, making it almost impossible for applicants to receive asylum in specific regions of the U.S. According to Blaine Bookey, the Co-Legal Director of the Center for Gender and Refugee Studies, this includes specific judges who have high rates of denial, as well as entire courts: courts in Atlanta, Georgia, Eloy, Arizona, and Charlotte, North Carolina have some of the highest denial rates in the country. According to Bookey, these high denial rates have less to do with the substance of the claims than with the immigration judges and officials’ evident biases, which can be compounded by an applicant’s inability to provide the higher levels of evidence and documentation required by those same immigration judges.<sup>4</sup> In this context, expert witness testimony becomes an especially important mechanism for challenging existing biases and compensating for gaps in available documentation.

The asylum process is also always changing in real time: attorneys and experts now report that judges have narrowed the criteria for creating particular social groups. As briefly discussed earlier, documenting an individual’s membership in a particular social group as grounds for persecution is the major element to winning asylum. For asylum cases dating back to 1985 (*Matter of Acosta*), a particular social group was defined by an immutable characteristic such as an innate characteristic like race or nationality, or a fundamental characteristic, such as religion, that a person should not be required to change. However, as Bookey explained, for roughly the past decade asylum seekers have been required to prove not only that the social group shares a common immutable characteristic, but also that the group in question is defined with sufficient “particularity” and has “social distinction” within the larger society. For example, one way to prove those new elements would be by showing that the individuals in the group are subjected to higher rates of persecution in the home country.<sup>5</sup>

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<sup>4</sup> See “Asylum Free Zones,” Center for Gender and Refugee Studies, <https://cgrs.uchastings.edu/our-work/right-asylum-united-states%E2%80%9494%E2%80%9C9C asylum-free-zones%E2%80%9D>; “These Jurisdictions have become Asylum Free Zones,” *The Nation*, John Washington, 1/18/2017, <https://www.thenation.com/article/these-jurisdictions-have-become-asylum-free-zones/>; “Judge-by-Judge Asylum Decisions,” TRAC Immigration, <http://trac.syr.edu/immigration/reports/447/include/denialrates.html>; “Discretion to Deny,” Borderland Immigration Council, 2/2017, <https://www.hopeborder.org/discretion-to-deny>; “Expedited Removal Practice Advisory,” American Immigration Council, 2/20/2017, [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/final\\_expedited\\_removal\\_advisory\\_updated\\_2-21-17.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/final_expedited_removal_advisory_updated_2-21-17.pdf).

<sup>5</sup> See “Particular Social Group Practice Advisory: Applying for Asylum After *Matter of M-E-V-G-* and *Matter of W-G-R*,” NIJC,

Secondly, immigration judges are increasingly requiring asylum applicants to document the connection (nexus) between persecution and the particular social group described in the case. This requires evidence that concretely demonstrates that the individual's possession of a certain characteristic, such as gender identity, sexual orientation, ethnicity, etc. was at least one central reason the perpetrator carried out violence against the individual. Unable to call on perpetrator testimony and often unable to provide documentation that convincingly demonstrates the perpetrator's specific motivations, attorneys have increasingly turned to expert witnesses to establish the circumstantial evidence of conditions in an individual's home country that demonstrates why persecutors have targeted or are likely to target specific individuals.<sup>6</sup>

In addition, asylum judges are now with greater frequency asking attorneys to demonstrate the state's role in the persecution. To win asylum, a case must demonstrate that the individual was either persecuted by a state actor—typically a police officer or member of the military—or that the individual was persecuted by a private actor and the government was unwilling or unable to protect the individual from that violence. However, because persecution often goes unreported in the home country, it is usually difficult to document the state's unwillingness or inability to provide protection. In these cases, attorneys often ask experts to discuss existing disincentives to reporting such violence to authorities, such as the retaliation from perpetrators or inaction on the part of state officials.<sup>7</sup>

Finally, attorneys working on asylum cases reported that many courts have recently implemented a heightened standard for corroborating evidence. In past years, corroboration requirements took into consideration the fact that asylum seekers fleeing their home countries typically do not arrive in the United States with physical documentation of their persecution; if officials deemed a witness account credible, this was sufficient to establish eligibility for asylum. However, Natalie Hansen—co-founder of a law firm in Austin, TX and former Director of Pro Bono Programs at American Gateways—explained that the standards for corroboration requirements were raised after passage of the Immigration Reform Act of 2006. Now a judge can require, without prior notice, that an applicant provide additional corroborating documentation; failure to do so can result in immediate dismissal of the case. In the absence of concrete documentation, expert witness testimony provides an additional level of corroboration for an applicant's declaration, thereby helping attorneys to meet the higher burden of proof now required by many judges.<sup>8</sup>

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<http://www.immigrantjustice.org/sites/default/files/PSG%2520Practice%2520Advisory%2520and%2520Appendices-Final-1.22.16.pdf>.

<sup>6</sup> See "Proving Nexus," NOLO, <http://www.nolo.com/legal-encyclopedia/proving-the-nexus-reason-asylum-claimants-persecution.html>.

<sup>7</sup> See "Domestic Violence Based Asylum Cases: CGRS Practice Advisory," 9/12/2014, [https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Domestic%20Violence-Based%20Asylum%20Claims%20\(Sept%202012,%202014\).pdf](https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Domestic%20Violence-Based%20Asylum%20Claims%20(Sept%202012,%202014).pdf).)

<sup>8</sup> See "Immigration Basics: Real ID Act," <http://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/immigration-basics-real-id-act/>.

For all of these reasons, attorneys are increasingly calling on expert witnesses to provide written affidavits and oral testimony. This testimony can be provided in two ways: through an affidavit that addresses the case and circumstances of a specific individual—in which case, the expert witness is typically involved for the duration of the asylum process—or by means of a global affidavit that documents the specific historical context of a group of people experiencing particular forms of persecution or harm in a particular country. The second, more general type of affidavit can be used in a range of cases, whereas the first is tailored for a specific, individual case. In both types of affidavits, the expert witness provides key assistance to the attorney who seeks to build, document, and contextualize the facts of the case.<sup>9</sup>

One interesting debate that emerged among attorneys during the conference concerned the increasing use of expert witness testimony to secure positive asylum decisions. Some participants argued that this greater reliance on expert witnesses in some cases, particularly when the individual's membership in a PSG was easy to establish, risks raising the already high expectations of immigration judges to have expert witnesses made available for every asylum case, an expectation that would clearly be impossible to fulfill. For example, Aaron Morris—an immigration and LGBTQ rights attorney and Executive Director of Immigration Equality—remarked that he often reserves expert witnesses for cases or judges where that testimony is vital. Additionally, some conference participants worried that the increasing use of expert witnesses will limit the ability of asylum seekers to represent themselves effectively in immigration court.<sup>10</sup> On the other hand, because expert witness testimony will always make a case stronger, choosing to forgo such testimony may damage an individual's case for asylum.<sup>11</sup> Though the conference participants did not reach consensus on this matter, all recognized the importance of considering the unintended consequences that may result from increasing use of expert witnesses in asylum cases.

### **THE EXPERT WITNESS**

Another major discussion developed through this conference focused on the definition, qualifications, and responsibilities of the expert witness, including: what roles and responsibilities an expert witness takes on when participating in an asylum case; the key role expert witnesses serve in constructing country condition affidavits and outlining the particular social groups in which asylum applicants claim membership; and how the role of expert witness corresponds with the roles performed

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<sup>9</sup> See “Preparing and Presenting Expert Evidence in Immigration Court,” CGRS, 5/1/2016, <https://www.sfbarr.org/forms/lawyerreferrals/immigration/expert-evidence-training-materials.pdf>

<sup>10</sup> See “Increasing Reliance on Expert Witnesses in Immigration Cases: A Catch-22?” The Expert Institute, 2/28/2017, <https://www.theexpertinstitute.com/increasing-reliance-expert-witnesses-immigration-cases-catch-22/>.

<sup>11</sup> “Increasing Reliance on Expert Witnesses in Immigration Cases: A Catch 22?” The Expert Institute, 2/28/2017, <https://www.theexpertinstitute.com/increasing-reliance-expert-witnesses-immigration-cases-catch-22/>.



by scholars employed in higher education. Attorneys and scholar-experts shared their thoughts on the nature of their collaboration, as well as their different expectations of what this type of work entailed.<sup>12</sup>

Serving as an expert witness comes with several key responsibilities and required roles. According to Kimberly Gauderman, conference organizer and Associate Professor of History who has served as an expert witness on numerous cases, one of the initial responsibilities of the expert is to determine the accuracy of the applicant's claim and to assist the attorney in developing case theory if needed. The expert begins to determine the basic facts of the case by first holding an initial conversation with the attorney, and then reviews the asylum seeker's declaration, which documents the individual's life and acts of persecution that the individual has experienced, as well as fear of harm in the future. During this initial stage, the expert witness must determine whether the facts of the case align with the expert's own understanding of country conditions and/or the expert's field of expertise. Once an expert determines that an applicant's claim is credible, the expert needs to consider whether there are any elements of the case that require further explanation in order to fully illuminate the particular situation of this individual and the country in question. At this point, the expert may recommend to the attorney certain questions that can be posed to the client, specific areas of strength or weakness in the case, and research reports and studies that the attorney can reference as corroborating documentation.

One of the most time-consuming responsibilities for scholars who serve as expert witnesses is that of research on particular country conditions. Gauderman explained that expert witnesses must be prepared to research each aspect of the case, documenting the facts as presented by the applicant in his/her declaration. This research lends itself directly to developing two key components of expert witness testimony, both written and oral: first, a country conditions affidavit written by the expert witness, and second, a documented argument for the particular social group to which the applicant belongs. These two elements constitute the two most important aspects of testimony provided by the expert witness for any given case.

The country conditions affidavit is a written document created by the expert witness to corroborate and contextualize the applicant's declaration. The affidavit can contain any information that is probative and relevant to the case at hand, but according to Natalie Hansen it is generally the attorney's role to help set the scope of the affidavit and to help determine which elements to emphasize. Bookey and Hansen explained that typically the first section of an expert's country conditions affidavit is the expert's narrative CV, which explains the basis of the expertise and presents the argument for qualification as an expert. The following section of the affidavit lays out the expert's understanding of the asylum seeker's case, including the facts of the individual's life, the specific types of persecution experienced or anticipated, as well as an argument for the credibility of the individual's declaration.

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<sup>12</sup> See "Expert Witnesses in Immigration Proceedings," Gary Malphrus, *Immigration Law Advisory*, U.S. Department of Justice, 5/2010, <https://www.justice.gov/sites/default/files/eoir/legacy/2010/06/07/vol4no5.pdf>

The bulk of the affidavit is then devoted to documenting and contextualizing country conditions that pertain to the types of persecution the individual has and would continue to face upon return. Due to the circumstances under which many asylum seekers arrive to the U.S. border—often with few or no belongings and often without any documentation of life or persecution in their home country—the expert’s affidavit of country conditions serves as one of the key methods of introducing and contextualizing evidence. Gauderman explained that, as an expert, she uses scholarly research, reports by governments and non-governmental organizations, recent events, as well as personal knowledge and experiences to ground the asylum seeker’s declaration in the specific local, historical and social contexts. Experts must be able to demonstrate that this individual was persecuted or has a well-founded fear of future persecution based on membership within a particular social group. Additionally, the expert must demonstrate that the state is unable or unwilling to protect that individual from persecution. Experts are also called upon to explain why relocation within the country—and in some cases within the region—is not a feasible or humane option for a particular applicant. The country conditions affidavit should be constructed so that attorneys and judges with little to no knowledge of the country in question are able to clearly understand the implications of membership in a particular social group and connect that membership with persecution.

All of this research must be done with the particular social group in mind. Because the attorney typically makes an initial determination to frame an individual’s claim to asylum within a particular social group, Hansen and Gauderman explained, it is vital for expert witnesses to regularly consult with the attorney from start to finish of the case. Because successful asylum claims can depend on effective framing and sufficient documentation of the particular social group, it is imperative that experts be made aware of any corroborating evidence or factual developments in the case. Asylum is not granted based on private crimes of violence or persecution, but rather because an individual is a member in a particular social group, which has led to his/her being denied certain rights and/or protections afforded to other citizens of society. Gauderman, Torres, and Morris also spoke about the need to create a particular social group broad enough to include a sufficient number of applicants, but also specific enough to curb fears evident among immigration officials and members of the public about “opening the floodgates” of asylum.<sup>13</sup>

Participants in the conference also discussed two recurring specific challenges they have faced in trying to establish particular social groups for LGBT individuals and those suffering domestic violence. While Aaron Morris commented on the advantages of having LGBT status largely established as a particular social group, he also pointed to persistent and significant limitations as to how immigration judges and officials often understand sexual orientation and gender identity. This is particularly true for transgender, bisexual, and lesbian asylum seekers. Attorneys Bookey and Hansen, as well as experts and advocates Morris, Gauderman, and Torres, all remarked on the continuing difficulty they faced in

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<sup>13</sup> See “Getting to Group under Asylum Law,” Jillian Blake, *Notre Dame Law Review Online*, [90:3:2 (4/2015)], [http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1014&context=ndlr\\_online](http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1014&context=ndlr_online)

convincing judges that sexual and gender identity was an immutable characteristic, much like religion, and that individuals should be able to perform their sexual and gender identity publicly without fear of violence or persecution.<sup>14</sup>

Judges' lack of understanding in LGBT and domestic violence cases is typically compounded by the severe obstacles to providing sufficient documentation on the status of bisexual or lesbian women in Latin American countries. Many of the public spaces for ritual and socialization—bars, for example—are male dominated and oriented. As explained by Gauderman, who is often called on to provide testimony for cases involving LGBT individuals, women who publicly identify as lesbian or bisexual in their home countries would face serious forms of harm and persecution. For this reason, she says, it is often difficult to find the documentary evidence judges require to demonstrate that a lesbian woman is at risk. According to Gauderman, this thin body of evidence can further contribute to an immigration judge's belief that a lesbian woman can, in fact, remain closeted in her own home: that she can simply pretend to be heterosexual, thereby mitigating the threat of harm. In these situations, expert witnesses can use research on sexual and gender identities to provide testimony about how women identifying as lesbians are treated, or speak to other forms of gender oppression that may shape their willingness to express their gender identity or sexual orientation in public spaces.<sup>15</sup>

Other especially challenging particular social groups for attorneys and experts to build successfully are those for individuals fleeing rape and/or domestic violence. Despite plenty of evidence and US case law to the contrary, judges still consider rape and domestic violence as private crimes rather than as forms of persecution that merit granting asylum. In cases based on sexual and domestic violence, attorneys and expert witnesses have had to be creative with their formations of particular social groups, with some success. Gauderman, for example, explained how experts have begun to link rape to the reporting of rape by constructing the particular social group “women who are raped and then report that rape to authorities.” Thus, experts are able to build a group by linking a seemingly private crime to a public action. Additionally, Gabriela Torres—a Professor of Anthropology who serves as an expert witness for asylum cases from Guatemala—discussed a case in which a woman won asylum based on the particular social group of “Married women in Guatemala who are unable to leave their relationship” (*Matter of ARCG*, 2014). This represented a major step forward for attorneys and experts working on domestic violence cases, but one with some significant limitations: this social group was

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<sup>14</sup> See “Immigration Basics: Challenging Asylum Cases,” Immigration Equality, <http://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/immigration-basics-challenging-asylum-cases/>; “Asylum Decisions,” Immigration Equality, <http://www.immigrationequality.org/get-legal-help/our-legal-resources/asylum/asylum-decisions/>; “Supporting LGBT Asylum Seekers in the United States,” National LGBTQ Task Force and Human Rights Campaign Foundation, 10/2015, [http://assets.hrc.org/files/assets/resources/LGBT\\_Asylum\\_Seekers\\_FINAL.pdf?\\_ga=2.194968811.771009387.1498505479-615316808.1498505479](http://assets.hrc.org/files/assets/resources/LGBT_Asylum_Seekers_FINAL.pdf?_ga=2.194968811.771009387.1498505479-615316808.1498505479).

<sup>15</sup> See “The Challenges to Successful Lesbian Asylum Cases,” National Center for Lesbian Rights, [http://www.nclrights.org/wp-content/uploads/2013/04/Resources\\_Challenges\\_Lesbian\\_Asylum\\_Claims.pdf](http://www.nclrights.org/wp-content/uploads/2013/04/Resources_Challenges_Lesbian_Asylum_Claims.pdf);

limited specifically to women in Guatemala and to women who were married, which is problematic because so many couples in Latin America never enter into formal marriages. The challenge in this case, then, is to find ways to open this category to include a wider geographical region and to include women who are not married but face the same constraints as married women. In a recent case, Torres has had some success with this strategy: by producing research that documents cases in which marriage actually commences with an act of rape, she has been able to demonstrate that even when couples may not be officially married, the community treats the couple as married due to dominant cultural norms regarding male-female relationships.<sup>16</sup>

In defining what constitutes expertise and who can act as an expert witness, panelists discussed the broad and flexible nature of these classifications. According to one participant, immigration courts define as an expert anyone with technical, scientific, or other specialized knowledge that can assist either with understanding the evidence surrounding an applicant's claim or in determining the facts or issues at hand. It is possible to have a witness qualified by demonstrating experience-based expertise—such as years spent living in a particular country or working in a field relevant to the testimony, such as law, medicine, social work, or non-government/non-profit work. It is also common for expert witnesses to be academics with research-based expertise in a particular field, and who can reference specific academic credentials, such as a doctoral degree, published research, or affiliation with a particular university or research center. Natalie Hansen, Kimberly Gauderman, and Gabriela Torres each commented on how experts are often called upon to extrapolate from the facts of the case, drawing of course on their research and other expertise to testify to likely motives for violence, likely outcomes for reporting violence, likely effects of membership in a particular social group, etc.<sup>17</sup> The expert's academic credentials and affiliation with a university or research center confirms the academic's authority as an expert capable of making such judgements about relevant conditions in a given country or region. The courts' willingness to recognize academic credentials as a fundamental qualification for expertise, as well as the pool of academics likely qualified to provide expert testimony, are two of the most important reasons that this conference focused on how academics are uniquely prepared and situated to serve as expert witnesses.

The issue of expertise—both in terms of who is an expert and how to define oneself as an expert—came into conversations throughout the two-day conference. Academics from the fields of

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<sup>16</sup> See “Gender-Based Asylum Post-*Matter of A-R-C-G*: Evolving Standards and Fair Application of the Law,” Blaine Bookey, CGRS, 2016, <https://cgrs.uchastings.edu/sites/default/files/Gender-Based%20Asylum%20Post-Matter%20of%20A-R-C-G-%20Evolving%20Standards%20and%20Fair%20Application%20of%20the%20Law%20O.pdf>. Also, Rape and Asylum: “U.S. Court Rules Rape is Grounds for Aylum / Guatemalan Granted a New Hearing before Immigration Board,” Tyche Hendricks, *SFGATE*, 6/16/2004, <http://www.sfgate.com/news/article/U-S-court-rules-rape-is-grounds-for-asylum-2713723.php>; “Rape and Asylum Claims: Credibility and the Construction of Vulnerability.” Helen Baillot, Sharon Cowan, Vanessa Mjnro, *openDemocracy*, 9/16/2015, <https://www.opendemocracy.net/beyondslavery/vanessa-munro-sharon-cowan-helen-baillot/rape-and-asylum-claims-credibility-and-constr>

<sup>17</sup> See “Drafting Expert Witness Reports: Pitfalls and Best Practices,” Joseph B. Evans, The Expert Institute, 1/31/2017, <https://www.theexpertinstitute.com/drafting-expert-witness-reports-pitfalls-best-practices/>

anthropology, history, and political science spoke about their initial doubts about serving as expert witnesses. Much of this initial hesitation had to do with identifying themselves as “experts” in a non-academic setting, and doubts they harbored about the utility of their academic work to the asylum process. Natalie Hansen commented that, in her experience, one of the most difficult first steps for asylum attorneys is convincing academic professionals of their expertise. Hansen related how she often has to explain to academics that their current status and level of expertise is sufficient to inform immigration judges who hold only a very basic understanding of country conditions, of gender identity and sexual orientation, and other related topics.

In discussing the nature of experts and expertise, academics seemed divided on how to best define the scope of their particular expertise. Some academics choose to define their expertise in a narrow fashion, only serving as witnesses for those asylum cases that fall within the limits of their published or ongoing research. Practically speaking, this makes serving as an expert witness more feasible for the academic in that relatively little additional research is required to construct expert testimony. However, this approach is also self-limiting, restricting the number of cases for which their testimony may be relevant. Other academic witnesses choose to define their expertise more broadly, including larger geographical regions and linking to cases via particular research topics, such as gender or race. Kimberly Gauderman, for example, explained that even though her earlier academic research focused on gender in the colonial Andes, through both university teaching and expert witness work she has expanded her expertise to include gender in Modern Latin America and Central America in addition to the Andes. The expansion of one’s areas of expertise can require more extensive cross-disciplinary research, but this does significantly expand the number of asylum cases for which an expert can provide critical expert testimony.

A common theme that emerged during conversations about the construction of expertise was academics’ realization that as expert witnesses, academics were simply engaging skills they already had in research, analysis, and cross-cultural education. As Torres remarked, at its very core the role of the expert witness is to research an individual’s worldview and then translate that worldview for someone outside that culture who possesses little to no understanding of that culture. This role of expert witness as cultural translator for immigration judges and attorneys was emphasized repeatedly throughout the conference. This type of translation and education covers a wide range of topics from the religious or political climate of a particular country, to the basic definition of what it means to be transgender, to how violence can operate as part of a social relationship. As the panelists explained, a strong cross-cultural translation will produce a more effective narrative for the judge, which will result in a more convincing argument for granting asylum. As Galya Ben-Arieh remarked, the immigration judge is hearing a story: the more cohesive and engaging the narrative being told by the expert witness, the more likely a judge is to grant asylum.

Academics are also particularly well prepared to situate the narrative of the asylum seeker in local histories and social contexts. Nara Milanich, an Associate Professor of History at Barnard College who works closely with women in detention centers, raised a concern of how advocacy on immigrant or

asylum rights might unwittingly facilitate static stereotypes of Latin America as a region plagued by general violence, a construct that rang untrue to her academic training. Academics who had worked as experts agreed, arguing reinforcing these stereotypes also harms individual asylum claims, which rely heavily on documenting particular forms of persecution committed by specific people against particular social groups. As Torres and Gauderman explained, in their affidavits they explain the specific historical and cultural context for the violence detailed in the case, in order demonstrate that this individual seeking asylum is not the victim of generalized violence but rather of violence that is specific to certain social, political, and economic situations that have developed in specific temporal contexts.

Furthermore, just as academic training informs work as an expert witness, so too does the experience of preparing and delivering testimony shape the work of academics, especially in their roles as teachers. In talking about her work as a translator in the South Texas Family Residential Center—a detention center located in Dilley, TX—Milanich, emphasized as her “most important work” the communication of her experiences to the general public and to her students. Milanich discussed several ways she directly incorporated her work in the Dilley detention center into her role as an educator. This included organizing and having her students write about a campus event with lawyers involved with family detention, advocacy directors, and former detainees. Her students have gone on to volunteer with advocacy and representation groups, to collect oral histories of people in detention, and to incorporate these histories as well as their own experiences into their academic work. To Milanich, this work stems from a self-imposed responsibility to educate her students about the realities of family detention centers, as well as to train the next generation of advocates and activists.

In addition to expanding their students’ exposure to the issues of detention and asylum, professors also discussed how work in the asylum field had produced fundamental changes in their teaching. Gauderman, explained that since beginning her work as an expert witness for asylum cases, she has expanded the types of students she teaches and has reevaluated the ways academics typically approach and frame research questions. While she continues to teach classes on Latin American history, Gauderman began co-teaching with law professors and mentoring students in law school immigration clinics around the country. Working with this new group of students led Gauderman to become more attentive to the ways that culture and identity are considered by academics—as contextually flexible and developed over the long *durée*—and how they are developed by attorneys—as specific and fixed blocs that can be used in legal analysis.

Gauderman additionally remarked that teaching skills developed in a classroom are extraordinarily useful in a courtroom setting. The skills one utilizes as a teacher are the same ones that will convince a judge during the hearing process. By “teaching” a court audience through a convincing narrative, academic expert witnesses can clearly explain to a judge why asylum should be granted. Gauderman gave the example of one immigration judge who, during the course of a case hearing, expressed his own confusion about gender identity and sexual orientation. After hearing Gauderman’s explanation on the topic, and the example provided by the individual applicant’s experience, the judge granted asylum. Gauderman explained that, as in this case, an immigration judge grants asylum because

he or she learns something about what it is like to be a member of a particular social group in a particular country. The more effective the expert's affidavit and testimony are in constructing a narrative that illuminates the situation of a particular social group, the more likely the judge is to grant asylum, not just in this case but in other similar cases as well.

### **ADVOCATES AND ORGANIZERS**

This conference also provided space for organizations and groups focused on the issue of asylum to discuss their support and advocacy for asylum seekers and facilitated collaboration between attorneys, advocates, and expert witnesses. Representatives of three organizations—the Center for Gender & Refugee Studies (CGRS) from the University of California at Hastings, the Santa Fe Dreamers Project, and the Hope Border Institute—spoke about their work and the challenges they face.

Blaine Bookey, the Co-Legal Director of CGRS, spoke about the current work of the CGRS in providing support and resources for attorneys working on asylum cases. The CGRS offers a variety of resources for attorneys working with refugees fleeing gender violence in their home countries, with a specific focus on women, children, and LGBT persons. The Center acts as a resource and knowledge bank on issues related to gender asylum cases, engages in prominent legal battles, and provides assistance to non-profit organizations, attorneys, and expert witnesses working on asylum cases. One of the tools built by CGRS is the Asylum Expert Witness Database, an online database of resources available for attorneys, health professionals, and expert witnesses involved in asylum and refugee cases. Attorneys are able to submit a request for assistance or resources and, after reviewing the specifics of the individual case, CGRS is able to respond with relevant model briefs, manuals, as well as unpublished immigration and asylum court decisions. In some cases, CGRS is also able to provide individualized consultations with attorneys to assist in building trial strategy and case theory and in reviewing case materials. As Bookey explained, CGRS uses the information provided by attorneys to track and analyze the outcome of particular cases which, in turn, enables them to provide better and more complete resources and consultation for attorneys. As a result of its intensive work on asylum law, the CGRS is an organization known for its sophisticated engagement with asylum law and its ongoing efforts to effect policy changes through impact litigation.

Bookey also discussed the CGRS's current project: creating an asylum expert witness database. Many attorneys at the conference confirmed the haphazard manner by which they currently recruit and maintain expert witnesses without such a tool: Natalie Hansen, for example, talked about cold-calling professors based on their online university profiles, a practice echoed by several attorneys in the room. CGRS is working to fill this void by compiling a list of available expert witnesses, providing information on their qualifications and areas of expertise, and vetting and then serving as a reference for the expert. This database project continued to be a point of discussion and ongoing brainstorming throughout the conference, particularly in terms of how expert witnesses could also interact with and use the database. Participants suggested including ways for experts to indicate if they are currently active and taking on cases; to suggest experts for cases for which they themselves are unable to provide testimony; and to

connect to new expert witnesses to provide guidance and insight on how to best prepare their testimony.<sup>18</sup>

Speaking from a grassroots perspective, Allegra Love, attorney and founder of the Santa Fe Dreamers Project, talked about her organization, which provides free legal representation to immigrants—particularly undocumented immigrants—living in New Mexican communities. Love emphasized her organization's focus on the educational and economic progress of immigrants in New Mexico, thereby facilitating their participation in community development. The Dreamers Project provides a number of local, free, client-centered legal services. These services include weekly walk-in clinics in Santa Fe and Albuquerque (these clinics serve residents of fourteen New Mexican counties as well as three neighboring states); a mobile clinic known as Dreams on Wheels that aims to provide legal services to rural areas in southern New Mexico; representation for immigrant survivors of violence who qualify for U-visas; as well as a defense fund that focuses on children and families in danger of being deported to Central America's Northern Triangle region.<sup>19</sup>

Love also spoke about her ongoing struggle to defend and advocate for immigrants being held in detention centers, which has increased since 2014, with a focus on children and mothers in Artesia, New Mexico and Dilley, Texas. After a new detention facility opened recently in Cibola County, NM, the Dreamers Project partnered with the New Mexico Immigrant Law Center in order to provide legal representation and support to asylum seekers and other immigrants being held there. Love explained that due to limited staff and resources, they are only able to provide legal representation to a tiny percentage of detained immigrants. According to Love, the challenge of limited resources in addressing the growing problem of detention is an almost overwhelming obstacle. Love attributes the severely limited amount of resources available for asylum and detention work to negative propaganda, the growing anti-immigrant sentiment in this country, and a lack of public awareness of the conditions in these facilities. As Love explains, the shuffling of detention center management between federal organizations, as well as the increasing role of private corporations in managing these facilities, effectively hides family detention centers from public view and critique, subsequently diffusing public sympathies for this cause.

The third organization—the Hope Border Institute (HBI)—best represented the effort to connect legal efforts and advocacy outreach. HBI is an independent community organization group that, as its founding director Dylan Corbett explained, focuses on connecting attorneys with community advocates. Corbett highlighted these two main strategies—coalition building and advocacy—as the backbone of HBI. HBI formed a coalition along the border known as the Borderland Immigration Council which consists of community organizations in El Paso, Ciudad Juárez, and Las Cruces. The goal of this coalition is to better connect attorneys and advocates because, as Corbett explained, attorneys need advocates

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<sup>18</sup> Center for Gender and Refugee Studies, Hastings School of Law, <https://cgrrs.uchastings.edu/>

<sup>19</sup> See “This Woman Is Changing Undocumented Immigrants’ Lives in Under an Hour,” *Marie Claire*, 3/30/2017, <http://www.marieclaire.com/culture/news/a26235/dreams-on-wheels/>



to shine spotlights on what is happening to their clients, and advocates rely on attorneys for access to this group of people that have, as Corbett put it, been “invisibilized” in the asylum and detention processes.

According to Corbett, three major elements have developed from this community coalition of attorneys and advocates. First, the Borderland Immigration Council has spotlighted emblematic cases that show what is happening along the U.S.-Mexico border. Second, the Council has provided growing opportunities for legal training, particularly through continued legal education (CLEs) for attorneys to develop knowledge and skill in suing the government, drafting habeas corpus cases, making legal claims, etc. and by expanding the pool of people who are able to draft habeas corpus claims. Third, the coalition has increased emphasis on research and collecting statistics on U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), two groups notoriously lacking in transparency. Corbett explains that collecting statistics on the number of individuals approaching the border, of individuals being detained, of the different cases and attorneys working on cases, etc. contribute to a growing body of information that help HBI and the Borderland Immigration Council (BIC) to hold CBP and ICE accountable.

This building of networks, stronger legal education, and more thorough research contributes directly to increased community and advocacy outreach. Corbett related several instances of communities, advocates, and attorneys joining together as a single force to challenge intentional and systematic separation of families seeking asylum, the increasing denial of parole, and an increase in both the numbers of people being detained and the length of their detention. In response, the Borderland Immigration Council released two reports, one documenting the frequency of parole and asylum denials as well as incidents of family separation, and the second on the conditions of detention. This second report, titled *Discretion to Deny*, revealed regular and pervasive physical, mental, and verbal abuse; the inhumane use of solitary confinement; the denial of medical care, pre-natal care, and psychological care; unsanitary food and living conditions; and prolonged detention periods. Using this report and the ongoing efforts of community advocates and organizers, HBI and BIC work to hold CBP and ICE accountable and to make recommendations as regards border control measures and respect for human dignity and rights.<sup>20</sup>

## **CHALLENGES AND OPPORTUNITIES**

In discussing the asylum process and best practices for expert witnesses and attorneys, conference participants explored recent changes, challenges, and opportunities in asylum work. Participants shared their concerns regarding the future of asylum work in the current political climate, particularly in light of the increasing criminalization of migrants and the militarization of the border. While migrants to the United States have long been singled out and targeted, Dylan Corbett and other participants explained that in recent years—and particularly with the release of several new executive

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<sup>20</sup> Hope Border Institute, <https://www.hopeborder.org/>

orders in early 2017—the criminality of migrants has expanded into the asylum process despite the fact that, as Bookey and Ben-Arieh pointed out, migrants have the legal right to seek asylum.

Corbett outlined three distinct forms that this criminalization takes along the border. First, advocates and attorneys are witnessing an increasing number of asylum seekers and immigrants being turned away. For the past few decades—and intensified in 2014 by President Obama—the United States has followed a “strategy of deterrence” that discourages migrants from making the trip to the U.S. border and that preemptively turns migrants away before they are able to enter the country. Second, with the executive orders issued by President Trump early in 2017, more migrants are being subjected to criminal prosecutions and expedited removal. According to Corbett, ICE and BCP agents are focusing more closely on illegal entries and reentries into the country, and are prosecuting people for their multiple reentries into the United States, which can be considered felonies. This directly affects asylum seekers who, despite expressing fear, may not even get to the credible fear interview point in the asylum process. Instead, they are increasingly subjected to felony charges or expedited removal before they have had the chance to make an asylum claim. Corbett explains that under this new administration, expedited removal is expanding, both because it is used more often along the border and because other regions across the country are turning to this practice. Third, immigration officials increasing use detention as a tool of deterrence in order to discourage migrants from approaching the border. More individuals are being kept in detention and they are being kept in detention longer, often for six months or more. At the same time, the United States is expanding its network of detention centers and increasing detention capacity through its use of private immigration detention centers run by the corporations GEO and CoreCivic.<sup>21</sup>

Panelists and audience members also voiced their concern over the increasingly dire situation in detention centers, as well as their bewilderment at a lack of public outcry over these centers. Throughout the two days of this conference, numerous attorneys and witnesses spoke about the deplorable conditions of the detention centers and the inhumane treatment of the people being held there, which many would describe as human rights violations. Dylan Corbett explained that, largely as a result of recent executive orders for “heightened” interviews, the credible fear interviews are more akin to interrogations: there are often armed officials present, interviews are often lengthy and exhaustive, and interviewers try catch applicants off guard in order to trip them up in details. Nara Milanich spoke about the holding cells colloquially referred to as *hieleras*, or iceboxes. These *hieleras* are extremely cold cement cells which lack any type of bed, food, water, or medical care; they are generally overcrowded; and individuals are often kept here for days at a time.<sup>22</sup> Blane Bookey spoke about the Advisory

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<sup>21</sup> “Private Prison Companies Ready to Cash In on Throwing Out Immigrants,” *The Daily Beast*, 11/18/2016, <http://www.thedailybeast.com/private-prison-companies-ready-to-cash-in-on-throwing-out-immigrants>; “The Private Prison Industry is Licking its Chops Over Trump’s Deportation Plans,” *Mother Jones*, 2/21/2017, <http://www.motherjones.com/politics/2017/02/trumps-immigration-detention-center-expansion/>.

<sup>22</sup> See Guillermo Cantor, “Hieleras (Iceboxes) in the Rio Grande Valley Sector: Lengthy Detention, Deplorable Conditions, and Abuse in CBP Holding Cells” American Immigration Council, December 17 2015 <https://www.americanimmigrationcouncil.org/research/hieleras-iceboxes-rio-grande-valley-sector>

Committee on Family Residential Centers (ACFRC) established by ICE in July 2015 in order to address concerns about the conditions in detention centers; the committee included rights advocates, lawyers, doctors, child psychologists, a number of other experts. The primary conclusion of the report published in September 2016 was that “detention is generally neither appropriate nor necessary for families – and that detention or the separation of families for purposes of immigration enforcement or management, or detention is never in the best interest of children.”<sup>23</sup> Despite these recommendations, as well as a public hearing to discuss these findings, the practice of detaining migrants in “family residential centers” continued during the Obama administration and continues apace under the Trump administration.

Along with their outrage at the conditions in these facilities, conference-goers expressed their shock at the lack of public outcry. More than one person wondered at the failure of this issue to capture the public’s mind, imagination, and outrage. Most speculated that this had to do more with a lack of general public awareness than anything else. All present felt that if the general public knew of the dire circumstances in which many asylum seekers and detainees are currently living, there would be an outpouring of anger and compassion. To help raise public awareness and better spark the compassion of the American public about not only the detention centers but also the growing urgency of asylum cases, conference participants advocated “hacking the message,” addressing the general public, and expanding the use of social media.

Nara Milanich in particular advocated this method of engagement and activism. Unlike other academics at this conference who provide expert witness testimony, Milanich serves as a translator for individuals—primarily women and children—held in the family detention center at Dilley, TX. Milanich soon realized that this was not simply a translation exercise but also a cultural one as she often found herself explaining to attorneys the social and cultural patterns being narrated by the client. Milanich describes this work as a “transformative experience” and entering the detention center as “descending into the heart of darkness.” Milanich related that not only has she been struck by the stories told by women fleeing their home countries, but even more so by the stories they tell of their lives in detention. Although as a Latin American historian she is relatively familiar with the violence of that region, she explained that she had no expectation to hear what people told her about their experiences after crossing the border.

For Milanich then, this became a different type of witnessing, one that involved her observing what was occurring around her, thinking about how to translate that to a broader public, and then providing her personal *testimonio* about what she saw and heard in the detention center, about the interactions between and among facility employees, detainees, attorneys, and ICE agents. Part of this, Milanich said, is to maintain her own sense of shock at what is happening and to communicate that to a wider audience. She explained that it is not enough to write for leftist-leaning audiences; as Milanich put it, in those cases we are speaking to the already converted. Instead, advocates and academics must

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<sup>23</sup> “Report of the DHS Advisory Committee on Family Residential Centers” September 30, 2016. Page 2. <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>;

write for a broader and more mainstream audiences. Milanich called on participants to use op-eds, essays, blog posts, and social media to educate the general public and to generate wider publicity for the issues of asylum and detention.<sup>24</sup>

The most pressing challenge to the work of gaining asylum for individuals, however, is that it is currently unsustainable, largely due to the limited pool of current expert witnesses, who find their ability to participate constrained by a lack of academic institutional support. Attorneys at the conference spoke about the frequent practice of repeatedly relying on the same few experts for their cases. Natalie Hansen, an attorney who founded her own immigration firm in Austin, TX, explained that once attorneys find an expert who can provide witness testimony for particular types of cases, they typically continue to use the same witness until they are no longer able to work on cases or until they refer someone else who can also provide testimony. Academics who have worked as expert witnesses spoke to the toll that this type of approach can take on their ability to provide testimony. Both witnesses and attorneys spoke about the high potential for overloading expert witnesses in ways that, in turn, leads more quickly to expert ‘burn out.’

One suggestion for helping to alleviate expert witness ‘burn out’ and to expand the pool of expertise available to attorneys was that we increase our focus on universities. Galya Ben-Arieh, a Political Science professor at Northwestern University and founding director of its Center for Forced Migration Studies, was a strong proponent of this idea. Ben-Arieh explained that as academic institutions, universities can serve as objective places for knowledge production. Attorneys could delineate which specific pieces of their case require expert testimony, and which pieces are more general and therefore might be supplied by a university research center or institute. By producing general reports or topic summaries, Ben-Arieh argued, universities can lessen the burden placed on academic expert witnesses to provide those more general and basic pieces of testimony.

Along these lines, Nara Milanich suggested the creation of a listserv system. Attorneys would be able to circulate pointed, empirical questions that repeatedly come up during asylum cases, and academics could respond as they are able or could further circulate questions among their own academic networks. This type of system has the capacity to address two related issues concerning recruiting academic experts. First, a listserv has the simple ability to reach greater numbers of academics. Natalie Hansen and Sarah Wolff spoke about the way attorneys circulated questions or requests for expert referrals among legal networks, but remarked that this practice typically leads to relying on the same few experts who ultimately find themselves overloaded with requests. By expanding asylum attorney listservs to incorporate academics, they conclude, we can increase opportunities for academics to respond themselves or to forward requests to a colleague better suited to provide a response. Secondly, this system has the potential to make providing expert testimony more

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<sup>24</sup> “Nations Have Separated Children from Parents Before: It Never Ends Well,” Nara Milanich, *The Washington Post*, 3/17/2017, [https://www.washingtonpost.com/posteverything/wp/2017/03/17/nations-have-separated-children-from-parents-before-it-never-ends-well/?utm\\_term=.a44548dbe0c9](https://www.washingtonpost.com/posteverything/wp/2017/03/17/nations-have-separated-children-from-parents-before-it-never-ends-well/?utm_term=.a44548dbe0c9)

accessible to academics. As several expert witnesses at the conference noted, many academics are hesitant to provide testimony because they feel unable to commit themselves to an entire asylum case. However, as suggested by Milanich, academics might be more willing to answer a single, pointed question that only requires a short affidavit, thereby lessening the burden placed on experts providing more tailored testimony for the duration of the case.

Several conference participants advocated including graduate students in the production of expert testimony. Galya Ben-Arieh spoke about the various ways she included her own students at Northwestern University in the asylum process, either by having them produce affidavits on general topics or on country conditions, assisting in recruiting additional experts for cases, or including them in summer training institutes for expert witnesses. Others suggested that graduate students might be able to assist in updating and maintaining online prepared reports or statements that attorneys could then call on to supplement more specialized expert witness testimony. While many agreed that there are benefits to involving graduate students in asylum work, Elizabeth Hutchison, a Professor of History at the University of New Mexico, sounded a note of caution. Hutchison explained that academic faculty should be cognizant of whether engaging in asylum work actually aligns with an individual student's academic, intellectual, and professional aspirations, as well as the degree to which this work is feasible for students already facing academic and economic burdens.

Hutchison also raised the point—echoed by Kimberly Gauderman, Gabriela Torres, and other academics who serve as expert witnesses—that academic institutions are not designed to reward academics for providing expert testimony. The work that an academic puts into researching and constructing expert witness testimony for any particular case is, as Hutchison put it, for the most part invisible to academia. Academics touched on the tenure promotion system as one that does not recognize this work as part of an academic's production of scholarship; instead, it is thought of as a form of service, as part of a professor's work with students, or as professional consulting or an extracurricular activity. Academic review procedures typically do not include expert witness testimony in their considerations for tenure and promotion, which results in low professional returns for the work of constructing expert witness testimony. Conference participants agreed that normalizing this work within the academy will be an important step toward expanding the pool of scholar-experts.

In order to address this challenge and to help grow the pool of expert witnesses, academics at this conference suggested using professional associations to build support for scholar-expert recognition in the academy. Gabriela Torres spoke about the new advocacy-oriented administration of the American Anthropological Association and the potential there for development.<sup>25</sup> Torres suggested using annual meetings for holding workshops on asylum work and on effective witness testimony as a

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<sup>25</sup> See the American Anthropology Association Guidelines for tenure and promotion review: <http://www.americananthro.org/AdvanceYourCareer/Content.aspx?ItemNumber=21713&navItemNumber=582> and <http://www.anthropology-news.org/index.php/2017/05/01/getting-credit/>

way of normalizing this work within the field of anthropology. Kimberly Gauderman explained that this approach has met with positive results at academic and law conferences where she has presented on her asylum work and its connection to her academic work. In looking forward, Elizabeth Hutchison spoke about creating more formal and sustainable collaborations between groups such as the American Immigration Lawyers Association (AILA), the CGRS, and the Latin American Studies Association (LASA). Increased collaboration among professional and academic organizations, as well as more frequent exposure to academics working as expert witnesses, should help to normalize this work within the academy and increase the number of academics willing to serve as expert witnesses.

### **CONFERENCE PARTICIPANTS**

**Maria Baldini:** Maria is the founder of Maria Baldini-Poterman & Associates, PC. Maria has been recognized nationally as a leading immigration attorney. In June 2013, she was awarded an American Immigration Lawyers Association (AILA) President's Commendation, "For Always Fighting for What's Right." In July 2010, AILA awarded Maria the Edith Lowenstein Award for Excellence in Advancing the Practice of Immigration Law. Since 2004, she has been recognized as a Leading Lawyer in Illinois in the area of immigration law. (<http://www.baldini-poterman.com/our-staff/our-attorneys/?lang=en>)

**Dr. Galya Ben-Arieh** is the founding Director of the Center for Forced Migration Studies at the Buffett Institute for Global Studies, Northwestern University. Her research centers on refugee rights and protection, addressing the relationship between international human rights and processes of justice. She has recently launched a research program on refugee resettlement and has been awarded grants from the National Science Foundation, the Social Science Research Council and the Kellogg Center for Dispute Resolution and is a Senior Fellow at the Kate Hamburger Kolleg/Centre for Global Cooperation Research (University of Duisburg-Essen). She has published on testimony and justice, asylum law and policy, refugee protection in a digital age, human rights litigation in transnational courts and immigrant incorporation and integration in Europe, with a recent book, *Adjudicating Refugee and Asylum Status: The Role of Witness, Expertise, and Testimony* (co-edited with Benjamin Lawrance, Cambridge University Press 2015). She is part of the forced Migration Upwards Mobility Project, serves on the executive committee of the International Association for the Study of Forced Migration, and has worked as an immigration attorney representing political asylum claimants. She holds a J.D. from Northwestern University and a Ph.D. from the University of Pennsylvania. (<http://buffett.northwestern.edu/programs/migration/people/galya-ruffer.html>)

**Blaine Bookey:** Blaine is the Co-Legal Director of the Hastings Law School Center for Gender and Refugee Studies. Blaine is involved in many aspects of the Center's work including appellate litigation, international human rights, and research and policy analysis. In addition, Blaine is an Adjunct Professor at UC Hastings and is Co-Chair of the Board of Directors for the international women's rights organization MADRE. Prior to joining CGRS, Blaine served as a law clerk to the Honorable Dolores K. Sloviter, United States Court of Appeals for the Third Circuit, and as a fellow with the Institute for Justice & Democracy in Haiti/Bureau des Avocats Internationaux in Port au Prince. Blaine received the

2016 David Carliner Public Interest Award for her work on behalf of marginalized communities. (<https://cgrs.uchastings.edu/about/bio/blaine-boockey>)

**Dylan Corbett** : Dylan is the founding director of the Hope Border Institute. Dylan formerly worked as a staffer at the US Conference of Catholic Bishops on issues of justice, peace and human development as well as with the Campaign for Human Development, the national anti-poverty and social justice program of the USCCB. He has worked in the international development and nonprofit sectors in Washington, DC, Central America and South Asia, and has studied at the Catholic University of America in Washington, DC, and the Pontifical Gregorian University in Rome, Italy. (<https://www.hopeborder.org/our-team>)

**Dr. Thomas Davies, Jr.:** Tom attended UNM between 1964 and 1966, receiving his Ph.D. in Latin American History. He was active in the Civil Rights and anti-war movements and worked as a Lecturer in Latin American History for the Peace Corps at UNM, then moved on to a long academic career at San Diego State University, where he was a founder of the Center for Latin American Studies and served as its director for 23 years. Tom collaborated with political scientist Brian Loveman to produce edited collections on Latin American authoritarian and revolutionary movements that continue to be widely used in Latin American Studies courses. Tom began another long career as an expert witness in 2001 for asylum cases, focusing on LGBTI persecution, gang violence, and domestic violence cases from Latin America. His early affidavits, focusing mostly on LGBTI based asylum, are held as the “Tom M. Davies, Jr. Papers” at SDSU. (<http://digital.sdsu.edu/view-item?i=300244&WINID=1509074222799>)

**Natalie Hansen:** Natalie is co-founder of Hansen & Taylor, PLLC, in Austin, Texas. She is a Portland, Oregon native, graduated from Seattle University School of Law in 2009 cum laude. Prior to opening Hansen & Taylor, PLLC, she was the Director of Pro Bono Programs at American Gateways. As Pro Bono Director, she mentored volunteer attorneys on asylum cases before the Executive Office for Immigration Review and on crime victims' visas before U.S. Citizenship and Immigration Services. She is a member of the Oregon State Bar. Natalie is now a staff attorney with Northwest Immigrant Rights Project in Seattle, Washington. (<https://www.nwirp.org/about-nwirp/staff/>)

**Allegra Love:** Allegra is an attorney and director of the Santa Fe Dreamers Project. She began her career at Santa Fe Public Schools in 2005 as a bilingual elementary school teacher and followed her passion for working with immigrants to law school. After graduating from the University of New Mexico School of Law, she came to work for the Adelante program of Santa Fe Public Schools, where she founded Santa Fe Dreamers project. She volunteers extensively, both in her community and elsewhere, for organizations like the Santa Fe Youth Commission, No More Deaths, and New Mexico Dreamers in Action (NM-DIA). Most recently, she has worked to defend Central American women and children detained on the US border. She is a member of the American Immigration Lawyers Association (AILA). She has a BA from Dartmouth College, a JD from the University of New Mexico School of Law, and is a licensed teacher in the state of New Mexico. (<http://www.santafedreamersproject.org/who-we-are/>)

**Dr. Nara Milanich:** Nara is a professor in the History Department of Barnard College, Columbia University. The focus of her research is Latin American history; comparative history of family and kinship; childhood; gender and reproduction; law; social inequality. Nara serves on the Editorial Board of the *Hispanic American Historical Review* and *Historia* (Pontificia Universidad Católica de Chile). She is a founding member of REHIAL, Red de Estudios de Historia de las Infancias en América Latina. She is also a cofounder of the Dream Act Faculty Alliance, a network of NYC-area faculty that supports undocumented students. She has served as an expert witness and interpreter in political asylum cases, and travelled to volunteer at the family detention center in Dilly, Texas.

(<https://barnard.edu/profiles/nara-milanich>)

**Aaron Morris:** Aaron is Executive Director of Immigration Equality, the nation's leading LGBTQ immigrant rights organization. Prior to becoming Executive Director, Aaron led the organization's law and policy programs. He has supervised Immigration Equality's legal services, impact litigation, policy advocacy, and lobbying efforts. During his eight years with Immigration Equality, Aaron has built close relationships with members of Congress, with top government agents at the State Department and the Department of Homeland Security, and with the White House. In addition to his work as an advocate in the United States, Aaron has traveled internationally, including to Russia and Jamaica, to speak about LGBTQ human rights at the invitation of local activists. (<http://www.immigrationequality.org/our-staff/aaron-morris/>)

**Dr. M. Gabriela Torres:** Gabriela is a professor of Anthropology and Co-Director of the Wheaton Institute for the Interdisciplinary Humanities at Wheaton College, Massachusetts. She is a specialist in the anthropology of violence and the state, with research experience in the study of gender, memory and migration. Her research and publications are focused around theoretical questions of the nature and practice of violence, gendered effects of violence, the development of the state, urban development and identity formation. She has served as an expert witness in gender-based asylum cases.

(<https://wheatoncollege.edu/academics/faculty-directory/m-gabriela-torres/>)

**Dr. Ericka Verba:** Ericka is Director and Professor of Latin American Studies at California State University, Los Angeles. She is currently researching the biography of Chilean folklorist, musician, artist, and "mother" of the new song movement, Violeta Parra (1917-1967). Her prior research activities and publications focused on the intersection of gender and class politics in Chile in the early twentieth century and includes the book *Catholic Feminism and the Social Question in Chile, 1910-1917* (2003). She was previously a member of the History Department at California State University, Dominguez Hills (2004-2015). She is also an accomplished musician and was a founding member of the Los Angeles-based new song groups Sabiá and Desborde. (<http://www.calstatela.edu/academic/las/faculty.php>)

**Sarah Wolff:** Sarah is a partner in the legal firm Reed Smith in Chicago. Sarah is the co-chair of the Securities Litigation and Enforcement Group. Her areas of expertise include the anti-fraud provisions of the securities statutes, including insider trading matters, as well as the Foreign Corrupt Practices Act. She was named one of "America's Top 50 Women Litigators" by The National Law Journal, in December



2001, and has been selected by her peers for inclusion in The Best Lawyers in America for Commercial Business Litigation (2001-2016) and Illinois Super Lawyers for Securities Litigation (2001-2016). She has represented asylum applicants on a pro-bono basis for Reed Smith. Reed Smith won the American Lawyer's 2016 "Grand Prize for Global Citizenship" which recognizes pro bono work on behalf of refugees. (<https://www.reedsmith.com/en/professionals/w/wolff-sarah-r>)