

*METHODS OF HUMANIZATION:*  
CENTER FOR ETHNOGRAPHY “PARA-SITE” REPORT

Background

On the face of it, the practice of death penalty mitigation appears to be quite ethnographic as a matter of method. Here is the participation, there is the observation. Interviews are conducted, archives pored through, informant networks established. Strands of thought begin to weave themselves through unlikely places, and fieldwork becomes recursive. Notes accumulate. The ends of defense advocates may differ from those of academic anthropology, but the tools of data collection seem more or less the same.

What can anthropological method, and the data that it produces, become when the folks you study do very much what you do? In my project, I approach these similarities as opportunities for a kind of interaction that recognizes mitigation’s practitioners to be more than informants, mere sources of data. This methodological orientation that I share with mitigation’s practitioners—premised on the idea that data collection is heavily empirical, and that in general the more forms it takes on, the better—becomes rich ground for critical dialogue. This is a different sort of field engagement. As interlocutors, we use these points of affinity as springboards to elaborate on ideas that are interesting to us, and to generate new ones. Some of this collaboration may inspire thoughts that advance academic knowledge production. Other parts of it might offer insights that speak directly to legal strategy itself, or perhaps to self-understandings about advocacy’s own processes.

Throughout the course of my fieldwork, this dialogue has been cobbled together, piecemeal, through hit-and-miss improvisations—my participation in casework, reflective memos that triggered email exchanges, one-on-one interviews, deliberately provocative presentations on culture to various audiences, informal chats with attorneys on the ride to jail. The “para-site” was a chance to incorporate into my fieldwork a space of exchange, one that was less piecemeal, more formal, and at least somewhat designed. I would get to see how practitioners respond to a setting in which the goals and practices of capital defense had to be articulated, and not assumed. And I would learn what it is about mitigation, if anything, that intrigues academics and makes them want to learn more about it, from a vantage point informed by their own various commitments and concerns.

Participants

The first challenge was to enlist participants from the advocacy community. They had to be curious, intellectually generous, and brave.

The first person to agree was Scharlette Holdman—the recognized guru of mitigation as it is now practiced, the executive director of the nonprofit organization that

is my primary fieldsite, and an anthropologist who trained under Colin Turnbull, to boot. Through her, my early fieldwork benefited from steady input from three individuals: Russ Stetler, the federal government's point person for all things mitigation-related; George Woods, a psychiatrist and testifying expert; and Ben Wolff, a law student who had worked as a defense investigator and victim liaison. All attended the event.

The other participants were advocates whom I had met during the course of my research. I had done casework with Jackie Walsh, a lawyer from Seattle who takes seriously creative approaches to mitigation. Denny LeBoeuf formerly headed an organization in New Orleans that brings *habeas corpus* challenges to death convictions. And Judy Clarke was counsel in Ted Kaczynski's trial, in which the defense effectively investigated and portrayed his mental illness to achieve a life sentence.

### Conceptual design

The event was titled *Methods of Humanization: Death Penalty Mitigation and Ethnography as Antidiscipline*. In promotional materials, I set up the dialogue with a quote from the legal scholar David Westbrook. As he sees it, the capitalist world order operates according to a logic that “does not express many things important to being human.” He holds ethnography out to be an “antidiscipline,” an academic sanctuary for fugitive knowledges that would resist the impoverished grammar of the globalized market. Mitigation is one of them. But I suggested that mitigation, too, is an antidiscipline in its own right, an incubator of advocative potential for knowledges that would subvert the dominant grammar from within. Ethnography might be one of these.

I wanted to explore the concept of humanization as something relevant to both ethnography and mitigation. Everyone needed to have a stake in the dialogue. The main danger, it seemed to me, was that once everyone got together in the same room, there would be nothing to talk about—that advocates would reject ideas that appeared too theoretical or impractical, and that academics would bristle at the bastardization or dumbing-down of their knowledge. The notion of the human, I thought, seemed good for all of us to chew on. It is worked into the *anthropos* of anthropology just as it is into the social of the social history, and yet it is not such a term of art for either camp that anyone would feel too territorial about it. With respect to the focus on method, I hoped this would afford a point of departure based on concrete action—what we do—that could segue into a discussion about the human, and its purchase as a working idea in different arenas.

### Event summary

I started with some introductory remarks about the conceptual design of the dialogue. To get the discussion rolling, I played three videoclips from casework that I have been involved in as part of my field research. These were snippets of an interview that I conducted with the client's father in Ukraine. I asked the legal advocates to comment on these clips, elaborating on what was interesting about the footage, what further questions and investigative measures it prompted them to consider, and why they

were relevant in the work of humanization. I then asked Leo Chavez and Roxanne Varzi from the anthropology department to offer their thoughts on the clips as they saw fit.

The prominent feature of the morning discussion was how seductive the ends of legal advocacy seemed to be. Primarily, we spoke either about how mitigation might be done better, or what anthropology and its concepts could or could not offer to the strategic goals of mitigation. Humanization was an endeavor that mitigation was presumed to do; it was accepted as a good in itself. To me, the tenor of the dialogue began to shift when Bill Maurer suggested that humanization, as it manifests in legal advocacy, seems to involve three ideas: first, the notion of building up, whereby context is continually added to make information unwieldy; second, the notion of stripping down, whereby irrelevancies are taken away to arrive at some human essence; and finally, the various tools and conceptual vocabularies that are employed to achieve either the first or the second or some mixture of the two, and that muddle all of the above in strategic fashion. This set up Denny LeBoeuf's observation that muddling is, in fact, good for advocacy, because it discourages trigger-happy strategizing. In her view, this enables mitigation investigations to more properly take on the character of nonjudgmental reception.

Gabriele Schwab's concluding remarks for the morning emphasized the virtues of fuzziness as a means of advocacy. If we cannot distinguish between what is mitigable and what is not, can there ever be a moral death penalty? What does it mean for humanity that humanization and pathologization seem to bleed into each other so easily? When we talk about individuals and cultures and power relations and events, how can we ever draw the line to decide who to put on trial? Uncertainty was very much on our minds as we broke for lunch. We returned. I showed video footage from work on another case (these clips featured hop fields in Washington state). And discussion turned to what, exactly, the substance and procedure of mitigation entailed such that muddling could take on such provocative effect.

George Marcus asked some questions about the nuts and bolts of mitigation within the framework of law. Russ Stetler explained that capital trials are divided into a guilt/innocence phase and a sentencing phase. According to legal doctrine, mitigation applies to the latter, after the defendant has been found guilty of a crime eligible for the death penalty. The better advocates attempt to incorporate mitigating considerations in the earlier stages of a trial, in a practice that they call "frontloading." Maurer would later point out that that this element of anticipation has a certain parallel with ethnography: both produce stores of knowledge that seem to exceed what is necessary for immediate concerns, but this knowledge reserve somehow becomes important for responding to unexpected developments down the line. We explored various issues during the second part of the day—Simon Cole's observations about expertise and reflexivity, Woods' comments on the desirable "knottiness" of mitigating knowledge, Marcus' thoughts about the place of ethnography as mediating "high" theory and "local" discourse—but for the purposes of my project, it was this parallel that was perhaps the key insight of the day.

Implications for research

For me, the event crystallized quite dramatically how I, as an academic ethnographer, could access a knowledge practice whose mechanics of method appear so similar to anthropology's own. This methodological similarity arises from a shared stance of anticipation. We share a certain cynicism about ourselves. Our present theories and concerns, we suspect, may later turn out not to be as serviceable as we thought. We thus hold on to a generous view of what is potentially relevant, gobbling up data—rapaciously, unapologetically, empirically—to store in already-pregnant caches of peripheral memory.

From this recognition of the disposition to “frontload,” it is a short step to ask what it is that our respective knowledge practices do with these hordes of data. Maurer took this step in his concluding comments of the day. Much of the work of mitigation, he said, takes effect through the production of perspectival shifts—something that academic anthropology does all the time. We use the considerable stores of knowledge at our disposal to repackage information, frame discourses in innovative ways, and draw uncanny connections that intrigue, dazzle (as the anthropologist Marilyn Strathern would put it), and thereby engage.

Engagement, of course, is one of the things that advocacy endeavors to do, and so it is that the “para-site” event helped to bring into focus the nub of my research: the need to understand advocacy in the practice of mitigation by elucidating the relationship between frontloading and frame-shifting. To be effective as advocacy, mitigation's knowledge employs certain frames that intrigue, dazzle, and persuade. The task of my project is to account for *why* mitigation's knowledge is effective as advocacy. Thus, I will employ not the same frames of mitigation strategy, but different frames of anthropological analysis—frames that surprise, dazzle, and explain. By incorporating the structured space of a consciously staged dialogue into the middle of fieldwork, I have been able to clarify the central question of my dissertation: to provide an account of *Life, Frontloaded: Anticipation and Advocacy in Death Penalty Mitigation*.