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Empathy and Expertise: Case Workers and Immigration/Asylum Applicants in London

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ABSTRACT

Under recent reforms, the UK Government has eroded state funding for civil legal aid. Funding cuts affect asylum and immigration law as produced, practiced and mediated in the course of interactions between case workers and their clients in legal aid-funded Law Centers in South London. The paper explores the contradictory character of one-on-one relationships between caseworkers and clients. Despite pressure to quantify their work in “value for money” terms, the empathy which often motivates caseworkers drives them to provide exceptional levels of aid to their clients in facing an arbitrary bureaucracy. Such personalized commitment may persuade applicants to accept the decisions of that bureaucracy, thus reinforcing a hegemonic understanding of the power of the law. The paper, however, challenges the assumption that, in attempting to shape immigrant/refugees as model—albeit second-class—citizens, case worker/client interactions necessarily subscribe to the categories and assumptions that underpin UK immigration and asylum law.

INTRODUCTION

In the space between “law” and “administration”, legal aid-funded law practitioners and paralegal case workers in the offices of the UK’s Law Centers interact with their clients to provide them with advice. In the course of these interactions, the realities of immigration and asylum law are conveyed, mediated, and actualized, but also challenged. Taking place at a mostly administrative level, such interactions may parallel, refract, or contest formulations of the law when cases are referred upwards, to more formal legal settings, such as that of the Immigration Appeal Tribunal (IAT), where the law is normally seen as being played out. But the decisions of the Home Office are anticipated, and sometimes circumvented or disputed, by case workers. Giving inordinate attention and levels of commitment to their clients’ needs, case workers in part enforce, while also enabling the circumvention by helping their clients to evade the arbitrary application of, the normative conformities that underlie immigration and asylum law. Their ability to do so, especially by bringing cases to the attention of the courts and thus within the ambit of the mainstream judicial system, is however being hampered by recent funding cuts. The resulting time pressures, the requirement for case workers to perform extensive tasks of billing and administration, and the withholding of payment until cases are closed, all take their toll on the empathy and compassion with which case workers characteristically approach their task of giving advice. The combination of such empathy with expertise, under conditions which now gradually erode the capacity to provide either, provides the context within which the complexities involved in “actually existing” asylum and immigration law must be understood.

Analyses of similar processes elsewhere acknowledge contradiction and complexity, but tend to subsume these within totalizing and hegemonic understandings of the power of the law. Immigrants and refugees to the United States, in interactions with state welfare and other officers, are incorporated as citizens into disciplinary regimes, but simultaneously nonetheless marked off as separate, culturally “other” and even second-class (Rudrappa 2004; Ong 2003). Even where those interacting with immigrants are not seen to be acting directly on behalf of the state and its legal order, a similar style of analysis has been used. It is difficult to draw on “the law’s potential for resistance without simultaneously invoking its capacity to oppress,” as Coutin (1994, 283) demonstrates in her discussion of the activities of concerned members of the public who wish to extend the government’s offering of sanctuary to refugees in the United States. Even those with well-meaning intentions who challenge state asylum policies on behalf of refugees, Coutin shows, nevertheless implicitly subscribe to the categories—and hence validate the power relations—“intrinsic to the legal notions” that they resist (295). Although it is central to Coutin’s analysis that “complexity and political ambiguity are intrinsic to ... immigration law,” such

ambiguities are subsumed within an overarching logic, in which social “meanings and practices form a discourse that both derives from and produces written law” (284). In this paper we explore some of these complexities in the British case, mounting a muted challenge to the totalizing style of socio-legal analysis which sees contradictory practices as automatically, and of necessity, contributing to such a discourse.

Countering the idea that it is hegemonic legal discourses that serve to differentiate second-class citizens from mainstream British society (Rudrappa 2004; Ong 2003), we maintain that what really disadvantages such applicants is the withdrawal of the advice that might enable the possibility of citizenship of any kind. We explore criticisms of funding cuts by activists and commentators who claim that disadvantaged, marginal, and often illiterate people, especially those from foreign countries, need well-informed, expert advice to equip them for their encounters with the personnel and decisions of the Home Office. Receiving such advice has been shown to affect individuals’ chances and, when taken to higher levels, even to enable the challenging of the law as presently constituted. It is this possibility of expert advice which is threatened by the recent market-oriented reforms and funding cuts.

Such expert advice, which nonetheless continues to be offered by case workers in the course of their one-on-one encounters with applicants, is underpinned by the sentiments of compassion which often motivate them to undertake their work. Such sentiments can, however, undermine the sustainability of their enterprise by preventing them from giving attention to the more formal, less emotion-driven, activities necessary to secure funding streams. Commitment and fellow-feeling, a necessary substitute for or complement to such funding streams in situations of financial stress, is what enables case workers better to achieve their twin goals: of molding their clients in line with Home Office expectations and/or, sometimes simultaneously, of helping them to evade such requirements. But the resulting emotional overload has driven some to leave this arena in search of alternative—more formal—types of work. Intensity of feeling, while apparently essential in motivating paralegal case workers who wish to oppose the system and simultaneously to help their clients, even challenging the accepted legal order in doing so, is thus both facilitator and hindrance. Contradictorily, it is the fellow-feeling case workers deploy that has been said, by commentators attempting to defend this realm of legal advice, to give their work real “value for money”: yet without money it is impossible to sustain.

IMMIGRATION AND ASYLUM

UK and EU Policy and Practice

In what has been called “fortress Europe” there is an ongoing ethical and political tension between the imperative of respecting human rights on the one hand, and that of maintaining border control on the other. Conflicting tendencies are evident “between the discourses and practices of compassion and repression in the policies of immigration” (Bloch and Schuster 2002, cited in Fassin 2005, 365). The many inconsistencies in Britain’s immigration system, described as “reactive and *ad hoc*” (Gibney 2003, 109), have been attributed to the British state’s conflicting historical and contemporary demands as the representative of a particular political community, a member of the Commonwealth and the EU, and a capitalist state (108). Responding to the fact that as the rights of individuals to remain have been respected, and extended further once they have remained in the country for any length of time (Gibney and Hansen 2003), the UK’s Home Office has become ever more determined to limit the possibility of their entering in the first place.¹

Although some describe the policy landscape as conflicted—extreme forms of control over asylum combine with benign and chaotic neglect of other areas such as immigration (*Analysis*, BBC Radio 4, February 8, 2010)—there are counter-claims that the policy innovations have been used “carefully and consciously to pursue [policy makers’] ends without directly violating liberal norms” (Gibney 2008, 158). In 1997 the incoming Labour government seemed to suggest that its new attitude to immigration would be a proactive one inasmuch as it would “make a decisive break with previous policies and attitudes toward immigration” by promoting migration as an economic, social, cultural, and demographic asset (Coleman and Rowthorn 2004, 580), but policy has taken an increasingly restrictive direction in subsequent years, particularly since 2004. Later, after the general election of 2010, the Conservative/Liberal Democrat coalition intensified this trend, for example by restricting numbers of student visas while nonetheless—out of sheer practical necessity—granting a “silent amnesty” to hundreds of thousands of asylum seekers already inside the country.²

This approach means letting fewer people in, making faster decisions, and actively deporting some immigration and asylum applicants, while turning a blind eye to the presence of others. Successive

governments' "talking tough" on immigration and asylum, and reducing state funding for the legal aid to help advise them, have the effect of driving case-workers to greater lengths in their efforts to advise clients in the fairest possible manner while putting greater pressure on them to complete cases in record time. At the same time, however, rapid changes in the law, and the inefficiencies of lower-level staff in the Home Office, open up arenas where case worker/client interactions at the legal "interface" (Long and Villareal 1994) might genuinely change the course of events. Such contradictions in the day-to-day work of case workers are the topic of this paper.

Overlapping Fields of Law and Practice

Applications for both immigration and asylum are dealt with by the UK's Border Agency (formerly the Immigration and Nationality Directorate) of the Home Office. While each of these two areas is in theory governed by a single legal framework, this framework changes frequently, and is also administered in widely differing ways depending on whether claims are made at the port of entry (for asylum), in retrospect by those who have entered the country illegally (for both), or in a variety of other ways. One factor which affects the behavior of the officers who interview asylum applicants at the port of entry is a suspicion that they are using this as a ruse to circumvent immigration procedures (Crawley 1999, 23; Good 2004, 100). Likewise, failed asylum applicants may switch tactics, applying for immigrant status where conditions allow this. Applications for immigration are often made in retrospect, sometimes by those who entered on student or visitor visas but whose visas have subsequently expired, or those who have subsequently married UK citizens. The outcome of such applications is in many cases the issuing of a deportation order, or the detaining of an applicant in a detention center pending the outcome of an appeal. There is a range of voluntary and not-for-profit organizations dedicated to providing bail, refuge, and other forms of support to applicants. But, whether making an initial claim, or appealing against a deportation or detention decision, what is of crucial importance is expert advice to help applicants in their encounters with the authorities. It is in giving advice of this kind that Law Center case workers in immigration and asylum law specialize.

Processes of asylum and immigration, although formally distinguished in law, thus often overlap in practice. Such overlap was readily discernible when we explored the logics and commonalities that underpinned the diverse array of nationalities of which the Law Center's client base was formed. In the case of asylum seekers, clusterings of applicants were associated with increased military tension in parts of the world—whether Commonwealth countries, those affected by Britain's more recent neo-imperial escapades, or other settings of civil strife—from whence they had come (see Good 2004, 7-8). Several Somalis claiming asylum had been going through protracted appeals, often lasting for years. Sri Lankans, Zimbabweans, Iraqis and Afghans, similarly fleeing from conflict, were either applying to become immigrants or seeking asylum, or switching from one tactic to the other. Also present were people from various parts of Latin America, not directly connected to the UK in any historic or imperial relationship, but the place from which one of London's most recent wave of immigrants has hailed, often arriving via Spain.

RESEARCHING CASEWORKER/CLIENT INTERACTIONS

Our research took the form of a collaborative arrangement with the South West London Law Centers (SWLLC). Like affiliated centers around the UK, they are a key point of contact for those on low incomes requiring help with a range of matters: housing, access to welfare benefits, debt, and the like. Central among their clientele, and the particular focus of our study, were immigrants and asylum seekers.³ Immigration and asylum law was a key specialism in the Law Centers, with case workers accredited under the Law Society's Immigration & Asylum Accreditation Scheme (IAAS), which required them to pass written assessments of competence in this branch of the law. When claimants needed advice on an area which fell outside the particular remit of their expertise, such as access to housing or welfare benefits, they were referred to a different case worker with the relevant expertise.

We obtained permission to shadow the client consultations of case workers who worked on immigration and asylum, sitting in on a total of thirty-two individual cases over the course of eight months in different branches of the SWLLC. We interviewed paralegals in more depth, followed up on particular cases, sat in on hearings in the courts of the IAT in five cases, and attended consultations with a barrister in one case. While permission from the Law Centers and their case workers was arranged prior to the start of the project, informed consent was gained from clients on our first contact with them, when

the nature of the research and its implications were explained and their permission requested for one of us to attend this and follow-up meetings. This informed consent was renewed at every subsequent meeting, making it clear that participants could withdraw from the research should they wish to do so. Further collaboration involved holding a feedback workshop where findings were presented, addressing the Annual General Meeting of the SWLLC, asking caseworkers for feedback on articles submitted for publication, and later facilitating the use of unpublished and published findings to aid Law Center requests for emergency funding when they were threatened with closure.

Despite our initial interest, within a single public law organization, in investigating interactions between lawyers and a variety of claimants from different countries, thus escaping from the region-specific orientation of many anthropological studies of immigration and asylum, we soon found that a logic of home region was in operation. People from the same place of origin were often drawn to a particular branch of the Law Center, partly because of their residential clustering in proximate areas of London, but also owing to ethnic recruitment processes. Conscious of the fact that these processes often involved private gain, in contrast to their own motivation which they characterized in terms of public good, Law Center staff tended to disparage them. “People tend to go to their own communities,” said one. “It is sometimes difficult to convince people that this is a bad idea.” What here sounds overly judgmental nonetheless had some justification. Interpreters employed by the centers, for example, sometimes acted as unofficial brokers, often illicitly pocketing a commission in return for introducing an applicant. One case worker discovered in retrospect that a translator, in addition to being paid for his services, was charging his unofficial “clients” two hundred pounds for this privilege. In other cases, the Law Center stood as the final point in a chain of referral which began when Tamil, Somali or Zimbabwean migrant associations introduced their members to local “High Street” solicitors hailing from the same background. These occasionally turned out to be under- or unqualified, thus necessitating further onward referral. From the point of view of Law Center staff, this unnecessary stage might have been better circumvented.

Other networks of referral were those within the NGO (non-governmental organization) and non-profit community. Staff in organizations like the Helen Bamber Foundation, with its focus on helping victims of torture, often tended to engage with particular case workers in helping asylum seekers. Funneled through these varied routes, clients from different parts of the world found themselves sitting in the waiting rooms of the Law Center with appointments to speak to one of its case workers. This was where we encountered them.

LAW CENTERS UNDER FIRE

Case workers were caught in the middle between various economic, social, ethical and political pressures. Under a regime of financial austerity, they were faced in their everyday work with the contradictory imperatives of giving out sympathy and vitally important advice to clients who may have been defined as “genuinely deserving” on one hand while being required to check up on those considered “opportunist” on the other. Given the context of legal and budgetary reforms, and in a setting where state and market forces were combining in unforeseen ways and with often unintended consequences, they were sometimes forced to move beyond existing competencies to become actuaries, even judges: roles of which they neither approved nor envisaged as part of their professional life. They preferred rather to characterize their work as a combination of expertise with empathy, while acknowledging that the two sometimes pulled in opposite directions.

Empathy, defined as an internalized understanding of or identification with the state of suffering by others (Moyn 2006, cited in Kelly 2011), was what motivated many of these case workers, the majority of whom were women, to work in this sector. But such motivation needed to be complemented either by formal qualifications in law, or the knowledge gained through paralegal training. Even when combined with these, excessive empathy or “emotional labor,” often associated with female roles, carried the risk of burnout in some cases (see Hochschild 1983, 187), and in others meant too little attention to the more mundane necessities of administrative tasks. Some had an oppositional stance toward the government of the day, convinced that without their intervention injustices would certainly be perpetrated.

One, Tamara,⁴ was a qualified solicitor who, like many “cause lawyers”, was motivated to switch to Law Center work by its collegiality, non-profit ethos, and lack of hierarchy, as well her strongly-felt commitment to social justice and a conviction that the Law Centers’ “most important role is as a

challenge to the government, to stop its worst excesses against individuals” (see Sarat and Sheingold 1998). Another, Penny, aimed to practice as a barrister but had failed to secure a full-time pupillage after completing her law degree, and was working part-time both here and in the private sector to gain experience. She too found it refreshing to be in an environment where profit was not the prime consideration. Ana, also qualified in law, took a more businesslike and professional approach, seeing excessive empathy as detracting from the serious business of legal advice. Still others, like Frances, had not completed university-level training in law, but had considerable experience in the non-profit sector. She had formerly worked in an NGO giving advice to immigrants, but found her duties there unsatisfactorily fragmented, and switched to the Law Center in the conviction that this would give her more time to work on cases and to follow them through to appeal if necessary. Although not, as she explained to clients, a solicitor, she, like her colleagues, was required to sit regular examinations in immigration and asylum law through the Law Society’s accreditation scheme, which qualified her to advise on these matters.

This sense of commitment, however, had its negative side. As the director put it, “underneath the apparent present success is the fact that the case workers have to work very long hours, often giving lots of time for free.” Particularly given the new financial constraints and the pressure to work faster and deal with more clients, case workers were often forced to work at weekends and into the evening, in a manner that proved unsustainable. Stringent funding reforms recently imposed by the state’s provider of legal aid funding, the Legal Services Commission (LSC), revealed as increasingly irreconcilable the increased emphasis on value for money, on the one hand, and the claim that case workers were carrying out their work in an arena beyond the constraints of the market and impervious to its imperatives, on the other.

The pressure experienced by case workers as a result of feelings of personalized moral obligation and responsibility that accompanied their work was palpable, and was rendered more intense by the funding cuts. Tamara recounted the case of a Sri Lankan Tamil woman whose son had been put in detention and was about to be deported. The woman threw herself at Tamara’s feet asking for help and saying “You are like a god to us,” giving her an almost insupportable sense of being a supplicant’s sole defender against the arbitrary forces of a heartless bureaucracy, and the sole guarantor of that supplicant’s family’s future. Despite later declaring that she found her work in the Law Center more rewarding than her subsequent role in the corporate sector, she had nonetheless switched to working in the latter because she found unbearable the feeling of responsibility for the wellbeing of such disadvantaged people.

In the setting of a dehumanizing bureaucracy, lawyers and paralegal case workers thus not only played a vital role in making expertise available to applicants, as will be discussed below, but almost inevitably combined this with kindness, commitment and understanding. This served as motivation but often caused them, when frustrated, to give up in despair, or to suffer “compassion fatigue” (Cohen 2001, 199). Nonetheless, the human face or emotional labor of legal advice (Hochschild 1983) should not simply be dismissed as an irrelevance. Where the few points which *are* conceded in court in immigration cases have been described as mere “episodes of compassion,” which “appear as privileged moments of collective redemption eluding the common law of their repression” (Fassin 2005, 375), we maintain that compassion, here a feature of case worker interactions with clients, requires more serious consideration. It is not, in other words, merely one of the “meanings and practices” forming “a discourse that both derives from and produces written law” (Coutin 1994, 284). Nor is it, as some might infer, a simple instance of the outsourcing of state functions associated with “neoliberal governmentality” (Miller and Rose 1990; see Kipnis 2008). Finally, to view it with skepticism, as some human rights actors and analysts have been inclined to do about their own field of activity (see Riles 2006), is to ignore its complex and contradictory character.

On the one hand, funding cuts and the increasing number of clients per case worker are eroding empathy through increased stress, uncertainty of reimbursement, and administrative work of case workers. Compassion fatigue or burnout is threatened through the cutting of legal aid funding, which threatens both the sense of self-worth of these workers and the actual value of their work.

On the other, compassion serves to initiate, motivate and sustain the work of paralegals and case workers. In enabling them to gain an important degree of trust from their clients, it then allows them to reshape their clients into particular molds, as well as sorting and screening potential applicants for eligibility under asylum and immigration law. Emotional labor can here be measured as having a particular efficiency value, even “exchange value” (Hochschild 1983, 7): something latched onto by supporters of the Law Center in their attempt to defend it against closure, as we discuss later. Yet by

helping to motivate case workers' *challenges*, on their clients' behalf, to the arbitrariness of the Home Office, its value is broader than that of mere exchange.

Legal Aid Budget Cuts

Legal reforms and budget cuts which began in the 1990s and started to take effect most stringently in 2004 are part of a grander project to scale down or recalibrate the UK's welfare state. The restructuring of legal aid, implemented in the last few years by the LSC and aimed mainly at limiting the burgeoning costs of legal aid for criminal cases which go through the courts, has also left civil legal aid underfunded, not only affecting the possibilities of paying for classic cases of courtroom justice under the UK's adversarial system, but also reducing funds for the giving out of advice. Law Centers which offer such advice, such as the SWLLC, have narrowly missed falling prey to such cuts, and continue to be vulnerable to them. Even while they survive, the reach and remit of case workers' advice is progressively curtailed.

The new efficiency arrangements have established a range of economic restrictions and incentives, with payment now given in chunks of specific sizes, rather than being allocated on the basis of the time spent on a case. A division has been put in place between cases giving short and simple "acts of assistance," and ones which are much more complex and would require more substantial funding to bring them into line with mainstream justice—for example, by being taken to the High Court.

The details of the new regime are complex. Funding is administered by the LSC in compliance with strict new criteria relating to clients' maximum income and assets. The earlier hourly rate was replaced in April 2004 by fixed fees. Instead of remunerating the Center for the exact amount of time spent on a case, which, at a preliminary level, could include thirty minutes of advice to all applicants, eligibility was now to be confirmed beforehand and cases paid for on a "threshold" basis. All eligible cases would, in the first instance, be paid a flat fee of two hundred and sixty pounds.⁵ If a case was likely to cost more than this and was deemed to merit the extra time involved, practitioners would be able to claim the next threshold of seven hundred and sixty five pounds—but they must be able to make a claim for this full amount. Practitioners, rather than being allowed to "self-authorize," would have to seek authorization from the LSC to apply for funding under this higher threshold, and for any further extra amounts. All clients would also be forced to prove their financial eligibility before any advice was given, after which a full file must be opened for each to allow the Center to claim the full flat fee. The Center would be reimbursed by the LSC for its work on a case only once the file was closed. Clients would no longer be eligible to have a quick preliminary assessment, since the funding regime did not provide for this. Other categories of payment, such as the hourly rate, applied in a very few cases, such as those taken to appeal. But only those deemed more than 60 percent likely to win would be deemed eligible.

Providers like the SWLLC complain that the threshold sums paid for simple cases are too low, whereas payment for complicated, and possibly precedent-setting cases, which are allowed to be billed on an hourly basis, may be collected only after they have been completed—a lengthy and drawn-out process. Both lead to cash flow problems in the interim.

These changes to funding structures are, in effect, encouraging advisers to limit the amount of time spent on each client, and to "cherry pick" cases on the basis of their estimated likelihood to succeed. Case workers are pressured to select which cases they take, with the more complicated cases that may supply potential legal landmarks often considered too risky and failing to find representation. At the same time, fewer citizens are able to qualify for legal aid because the income thresholds are set unrealistically low. There is little evidence of legal firms stepping in to help fulfill this demand through pro bono work. Although the pro bono sector is growing, these professionals tend to take more challenging cases, whilst more run-of-the-mill cases tend to fall through the cracks. Some organizations, like Refugee and Migrant Justice in June 2010, have gone under altogether, leaving yet more pressure on those that remain.⁶

The system, then, sets up a structure of economic restrictions and incentives. In such settings, the director of the SWLLC told us, case workers' sympathy and their sense of commitment to face-to-face contact and round-the-clock service to people in trouble tends to become unsustainable. As he put it, the most committed case workers are too busy to do "the billing or the administration." Yet, especially under the new funding regime, it is only by attending to the billing and the administration that the Centers can continue to run. These funding arrangements apply pressure to reshape advice as a technical, administrative matter, rather than allowing for each client to be considered as an individual with his or her own specific and detailed experiences.

Market Efficiencies

There has been much public disputation about these funding cuts. Justifying the tighter criteria for the funding of immigration and asylum cases in particular, the LSC and Department for Constitutional Affairs (DCA) characterized the previous system as “an increasingly expensive ‘gray train’ enabling legal aid lawyers to carry out low quality and unnecessary work on the cases of people who would not, in the end, turn out to be eligible to win the right to remain in the UK” (Bail for Immigrant Detainees [BID] 2005, 5).

The growing demand for help and the fact that our budget is limited means fundamental change is necessary. We must move to a system that pays for services delivered for clients rather than hours worked. We need to make sure that legal aid remains available to those who need it (LSC, 2011).

Underpinning these reforms was the perceived need to abolish inefficiency, and to operate a slimmed-down market-driven system. Advocates of the reform spoke of the over-supply of “High Street lawyers” which were being kept in business by the indiscriminate availability of legal aid funding. Suggesting that “market forces” should weed out these unnecessary excesses, Carolyn Regan, Chair of the LSC, said: “you drive down some High Streets, and you see a Citizens Advice Bureau, a Law Center, and three firms, all in a row and all with overheads,” and insisted that the proposed reforms would make for greater efficiency (*Unreliable Evidence*, BBC Radio 4, December 5, 2007).

Law Centre practitioners acknowledge the validity of several of these claims. It was not the bid for efficiency itself, but rather the assumption behind these reforms that a market driven approach is appropriate for what would normally be a state-funded project, that—along with the press and other involved parties—they decry.⁷ Similarly lamented is the fact that, alongside the often very opportunistic High Street law firms referred to above, more legitimate and professional practitioners would also be threatened. Replacing individual Law Centers or Citizens Advice Bureaux, it was now intended that consortia would tender competitively for a package of work in a given territorial locality. This proposal evoked a strident query from Des Hudson at the 2007 Law Centers Federation conference, concerning the future “competitiveness” of such an arrangement, given that the awarding of a contract of three or four years’ duration to one such consortium in a specific location would make it impossible for any rivals to bid competitively on the second bidding round.⁸ The laudable-sounding aims of the reforms have been to enable sustainability and to cut waste, but the regrettable effect—after a single episode of market-based “competition”—would be to replace expertise with low-paid “Macjobs,” alongside the production of enforced self-regulation, as the Law Center director pointed out to us.

An important argument against the funding cuts concerned the adversarial and hence unusually expensive character of the British legal system, and hence the need to ensure fair access to all.⁹ The director of the SWLLC summed up the situation thus:

If I am a person with unlimited means, I can pay to have my day in court. This, in theory, is paralleled by the public/legal aid system... the difference is that, under the new funding regime, we will only take your case on if we judge your case to be likely to win. Thus the underlying assumption is unfounded.

This point, however, has a somewhat limited application to the present case. Inasmuch as much of the advice given by Law Centers to immigration and asylum applicants was aimed at helping applicants to complete paperwork, frame their self-presentation in a manner likely to be acceptable to the Home Office, and other similar tasks, it fell more squarely within the category of administration than that of law in the strictest sense. Like many other kinds of advice given in the Law Centers, such as that concerning access to welfare benefits, housing, and the like, it certainly required detailed knowledge of relevant aspects of the law. In a majority of cases, however, it was unlikely to lead to having a day in court. Instead, the quote above about judging a case to be likely to win refers mostly to case workers’ need to assess in advance whether a paper application on which advice is to be given will be more than 60 percent likely to be accepted by the Home Office. If it is, this in theory would justify the state funding that was spent on paying for the case worker’s time.

In effect, funding cuts were putting legal aid practitioners under pressure to parallel, or even anticipate, the judgments of the Home Office. Prior to the first meeting, a financial eligibility test was conducted, either in person or over the phone. Such meetings, while necessary to exclude fraud in some

cases as Law Center staff conceded, were experienced by applicants as reducing them to their particular economic status, or giving priority to this status over the urgency of their problems. At the first meeting the key consideration concerned the potential merit of the case: the key criterion for gaining access to LSC funding beyond the lowest threshold. Case workers bemoaned the fact that this process was asking them to prejudge cases rather than allowing them to be advocates of their clients.

Engaging with these reforms, case workers found themselves in a contradictory situation. Increasingly required to make judgments in advance, they were both reshaping clients' practice and experience to bring them in line with what the Home Office wanted, while simultaneously contesting the arbitrary, and sometimes incompetently inconsistent, judgments of under-trained Home Office staff on their clients' behalf, to bring such judgments in line with fairer/official policy.

PROFESSIONALISM AND HUMAN FEELING

Reshaping the Client

Regardless of whether one subscribes to analyses which foreground the hegemonic law-driven processes mentioned earlier, it is widely acknowledged that lawyers act to shape the relational and contingent narratives of ordinary social life into a "rule-oriented" one for the courts (Conley and O'Barr 1990b, ix, 61, cited in Good 2004, 20-1). Such shaping may be experienced as particularly draconian where recipients of legal advice are uneducated, or are from foreign places and cultural backgrounds, or both, as is the case for many asylum and immigration applicants. Again, while it may be true that legal and social discourses ultimately serve to shape incomers as second-class or differentiated citizens (Rudrappa 2004; Ong 2003), the pressures to approximate the characteristics of the undifferentiated and fully-fledged citizen may nonetheless be considerable. "The production of migrant stories" for legal institutions adjudicating on human trafficking has been seen as "a means of creating citizens—those who are recognized as members of a community and adhere to its diverse bureaucratic logics" (Giordano 2008, 588). These shaping processes may be experienced as pressures to comply with particular images of the good citizen in a more general sense. In the United States, Coutin (2003) notes how those petitioning for the suspension of deportation must prove that they fit such a model.

Such processes occur not only in the courts or in preparation for court appearances, but also in advice offices such as those of the SWLLC, where case workers mediate between their clients—who will likely never have their day in court—and the Home Office. Much of this involves attempting where possible to bring these clients into line with Home Office expectations, often framed in terms of "normal" family relationships. The law frames, and advice is given in such a way as to imply, a view of what proper family life entails. The remit of case workers is to advise on "what the law demands" and to help their clients make the correct type of application or appeal in the prescribed manner. In so doing they in part enforce, but also in part enable the circumvention of, particular sets of conformities that underlie the government's regulations.

Asylum and immigration law enshrines the idea of "independent families," defined in terms of the middle-class British ideal of a mother and father and their own children. Extended families of the kind common in other national and cultural settings are routinely rejected by the Home Office as having any legitimacy (see Good 2004), and rules—such as the one allowing a prospective immigrant to be sponsored by an individual, third party sponsor, but not by an extended family or church—show a particular ideology that centers on nuclear family life.

The suspicion with which extended family arrangements were viewed was evident in a protracted case involving a female Somali asylum applicant, Awa. The case was suddenly thrown into disarray when a DNA test suggested that the "sister" with whom she had grown up and who had already been granted asylum might not be her full biological sister. Rather than accepting both women's testimony that they had been raised as sisters, Home Office officials stressed the need to prove a strictly biological relationship. The judges noted that their interest in the DNA test stemmed from the fact that Awa's claim was founded on her membership of a minority clan, on which basis her sister had already been granted asylum. As clanship is inherited patrilineally, if Awa and her sister had different fathers then Awa's clan membership might differ from that of her sister, thus rendering her own claim unjustified. As the case worker advised Awa on this, she sought a way to reconcile her concern—to build a convincing case—with Awa's—to defend what she saw as an attack on her mother's honor. It was evident that the fact that any other father would likely be someone from the same clan, or that the blood purity of clans may in fact

be something of a “social fiction” (see Good 2004, 178-81), had not been considered. Awa continued to insist on her father’s fidelity, and on the need to procure a second, more reliable, DNA test.

This nuclear family-oriented ideology is similarly evident in the Home Office’s antipathy to forced marriages, particularly those contracted by people from South Asia. In one case, an Afghan man had recently gained Indefinite Leave to Remain (ILR)—that is, permanent residence—for himself, and now wanted to bring his wife over from Pakistan. The case worker advised him to emphasize that he had already met and married his wife, and to find ways of proving that he was already supporting her in Pakistan. Failure to do so would arouse Home Office suspicions that this was an arranged, or even forced, marriage, and might result in the rejection of her application. Thus counseled, he stated his willingness to collude in what amounted to a deception.

The privileging of normal/nuclear family arrangements merges unevenly with newer, more liberal models of the individual choice-making citizen. Some assumptions date from long-established British mores of legitimacy and appropriate behavior. It has only been since November 2002, for example, that illegitimate children have been able to claim British citizenship through their fathers, while people born before this date still may not claim it retroactively. Latterly the need to align with acceptable and preordained categories of citizenship has been mediated by rights-driven ideas about the freedom of autonomous individuals to follow the dictates of their own sexuality. At the time of the research, Home Office guidelines allowed the claiming of asylum if one was identifiably homosexual in appearance and/or demeanor, was unable to conceal this sexuality, and had suffered persecution because of this. Case workers suggested that in practice this meant that homosexual individuals were more likely to win their cases if they fitted with certain stereotypical ideas about the appearance and behavior of homosexuals.¹⁰

In one case, a Jamaican woman, who was seeking asylum based on her fear of persecution for being a lesbian, was advised that her claim was unlikely to succeed because she was not “obviously” gay. The case worker, in subsequent reflection, contrasted her case with that of a Jamaican man whose asylum claim had been speedily granted after a processing interview at which the Home Office interviewer decided that he did fulfill this criterion, based on his clothing, demeanor and even speaking style—he was deaf and the Home Office’s signing translator had noted that he signed “in a feminine manner.” His susceptibility to persecution in Jamaica on these grounds had thus been definitively proved, whereas hers was in doubt.

The encouragement to approximate the model of the individualized, choice-making citizen also occurred when individuals first presented themselves to the Law Centers and were obliged to demonstrate their eligibility for legal aid. On being told that the income of partners would be included in financial assessments, people very quickly learned to downplay the nature of their relationships with, and dependencies upon, others. In one case, someone presented herself at one branch of the SWLLC with a financial profile that fitted the eligibility test—by obscuring the fact of financial support from other family members—after shortly beforehand having been rejected from another on the grounds that she was ineligible by virtue of such support. Here was evidence that clients, as much as their advisers, were able to respond to the rules in innovative and tactical ways.

In particular cases, the efforts made by case workers in pursuit of justice for their clients effected not only a strategic reshaping, but a seemingly more deep-seated realization on the part of the client that she had indeed, in reality, come to approximate these new visions and models of the rights-bearing citizen. In one of the few cases we monitored which had succeeded in being taken to the High Court, a young Pakistani woman—Fatma—had come to the UK to fulfill her parents’ arrangements for her marriage to a Pakistani man resident in the UK who had later started to beat and abuse her. Many hours were spent in consultation with the case worker who was required to document and detail evidence of this abuse. After one such emotionally-charged session, during which Fatma was frequently in tears, she exclaimed that she had only recently realized the meaning of domestic violence—a category under which a woman may claim the right to remain in her own right under asylum law—simultaneously coming to understand that she herself was a victim of it.¹¹ This involved repudiating certain kinds of extended family ties and obligations, and embracing a different vision of family and of the autonomous and rights-bearing individual: a process we observed gradually unfolding in the course of her consultations with the case worker and the barrister (see Giordano 2008, 588-99). Had she remained in Pakistan, of course, she might well have benefited from the many NGOs and other organizations in that country, and arrived at a similar state of self-realization. Her situation as an immigrant to the UK, the associated isolation from neighbors and friends, and thus her total dependence upon her husband’s family were what had initially

stood in the way of realizing the status—as abused—which her case worker and barrister had subsequently helped her to mold. Although not, apparently, cynically engaged in, this recognition did look to be in her best interests in the long term.

It is clear from our work that such realizations and help for clients can only occur in the situations of relatively sustained contact that case workers are currently able to have with their clients. In this regime it is not enough for the facts of the case to be dealt with; rather those very facts are the result of interpersonal exchanges that transform different registers of understanding into a script that official channels will recognize.

“Proper family life” lies at the heart of UK immigration law. Its enforcers and implementers in the Home Office lay equal stress on this ideal. Law Center case workers find themselves having to emphasize such values and to ensure that their clients comply with them when applying for the right to remain or to reside in the UK. A British citizen, Michael, who had been living and working as a teacher in Zimbabwe, had hurriedly left that country accompanied by his two small children, having experienced a range of threats against him for having married a Zimbabwean woman. He was seeking a visa for her so that she could join them in the UK, and was advised of the importance of proving beforehand that he had accommodation “suitable for a nuclear family.” This, ironically, would force him in the short term to neglect his children: he would need to take on extra jobs and put his children in childcare in order to be able to afford to rent a flat larger than the one-bedroom premises he was currently occupying. His case worker, Frances, emphasized that beyond the basic regulations governing immigration applications there was an underlying preference for people of “good character,” sound financial means and with stable, nuclear families. Applicants must align themselves with the relevant categories in order to be accepted; and she found herself advising her client about how best to achieve this fit, in order that the application for his wife’s visa might succeed.

Frances revealed her feelings of ambivalence in discussion with us after Michael had left the office. She often is forced, she said, to advise people that they might need to think about living in reduced circumstances for a period. She felt awkward about doing so, given that someone like Michael was old enough to be her own father. But if Michael was serious about getting his wife here to live with him he would have to make some stringent adjustments in the meantime. This could include farming out his sons to relatives, or getting part-time babysitting which would enable him to take on a number of part time jobs. It seemed impudent, she said, to have to advise someone who has had a professional career—as a teacher—of the necessity to find work in the low-paid sector. She had the sense of “lecturing” people, of instructing them on how best to live in order to comply with government regulations. She was, in effect, an instructor in compliance. But if she was to procure a favorable outcome for her client she had little alternative. While we were not able to follow through on Michael’s case, Frances’ experience had taught her that such steps were usually successful in ensuring that the Home Office would look favorably on applicants, and applicants once realizing this were willing to undertake whatever pretenses were necessary.

Families in Limbo

The story, mentioned earlier, of the distraught mother throwing herself at Tamara’s feet in a bid to prevent her son’s deportation, evokes images of domesticity threatened, and of caring and compassion as appropriate responses. It seems to represent the flip side—the human face—of many media portrayals which depict uncontrolled hordes of desperate and unlawful immigrants clamoring to cross the border. In direct contrast to this stereotype, what came to the fore in our research was that many applicants had lived in the UK for years, often establishing relationships and starting families while residing here. Any change would have far-reaching consequences for intimate—though complicated—family relationships. Deportation or detention would be devastating. But even regularizing of legal status might have negative consequences, by threatening the delicately maintained status quo of a heretofore “illegal” existence. Many cases we witnessed were of people who had established long-term ties to the country and its inhabitants, and had even become parents to Britons. They belied the image of the recently-arrived “illicit border-crosser.” Despite their lengthy periods of residence, however, complex and ambiguous circumstances had suddenly come to light, making it impossible for them and thus their families to enjoy the full rights of residence, and often interfering with the trust and intimacy upon which family life was based. It was these circumstances that had driven them to seek help and advice.

In one case, a young woman had approached the Law Center seeking help to acquire a passport and driving license. She had been born in Ghana but had travelled with her aunt to join her mother, already living in Britain, at the age of five. Years later, as she approached adulthood, her mother had applied on her behalf for a passport. She had just discovered, however, that her mother was not her mother after all but rather a more remote relative, and thus that the earlier application for a passport would have been fraudulent. She was a stateless person, “in limbo” as the case worker put it.

We sat in on another interview with a mother and her son. The mother had come to the UK twenty two years earlier as a student from a then war-torn Nigeria, and had managed to remain legal by repeatedly renewing her student visa. When, after matters had worsened in Nigeria, she was no longer able to prove that she was, as a student, being supported from elsewhere, she ceased renewing her visa and “dropped off the radar” of the Home Office. She had settled down with a long-term partner and had two children, but had been reluctant to register their births because of her wish to remain below the radar of the state. She had avoided telling them about their status, but one of them, an eighteen-year-old boy, was now planning to go on a trip abroad with his football team and had grown suspicious when his mother had refused him permission to apply for a passport, and when the government failed to send him a National Insurance number on turning sixteen. On being confronted with this, his mother admitted that he was unregistered, and thus technically illegal.¹² For both the Ghanaian daughter/niece and the British born son of this Nigerian mother, legal advice was now being sought to help regularize their status. For both, although the applications were costly at four hundred pounds, this would be a relatively straightforward process as they had been living in the UK for well over the required minimum period.

While these cases looked to be uncomplicated, if expensive, others in a similar vein were less so. At a feedback session, Frances described one such case to us, illustrating the limbo in which people without legally recognized immigration status live.

I have someone ... who has been here almost thirty years. The first five were legal, the next twenty five were illegal. He cannot make up his mind as to whether to ... become legal. He is in a relationship with someone who does not know he is illegal. His partner is his carer and it would be very complicated at this point to shift his circumstances around; it would be simpler to continue this life he has set up. The longer one remains in such a situation, the more difficult it becomes to change it. Changing it might bring changes to relationship problems, accusations of benefit fraud ... and in the end one stays with the status quo.

Living beyond the registers of state legibility (Scott 1998) can have considerable drawbacks in the long term, as these cases demonstrate. UK immigration law does make provision for those who have been in the country illegally—for fifteen years in the case of adults, seven years in the case of children under eighteen—to regularize their circumstances. When applicants in consultation with their case workers deliberate on the prospects of becoming legal, their decision may hinge upon the complex family and other circumstances such a move will likely affect. The cases above demonstrate that it is not only case workers who influence or mold their clients’ behaviors. On the contrary, clients, once informed, often take the lead, resolving for example to remain in limbo rather than risking excessive disruption to family life.

Clients’ decisions about how to proceed are also influenced by other factors. They often hinge on the availability of concrete evidence, as will be discussed below.

Being “Afraid of the Form”

We were sitting in on a case with Helene who was helping a family fill out an application for a family residence permit. “Don’t be afraid of the form,” she said, suggesting that if their case did not exactly fit the categories and choices listed they should feel free to write an explanation. Her advice struck us, and the clients, as counter-intuitive; lay people experience exactly such fear when confronting bureaucracy and officialdom (see Navaro-Yashin 2007). Since failing to fill in a form correctly might mean deportation, clients expressed great anxiety about whether they were complying with the exact requirements of the law.

Immigration case workers such as Helene, however, understood themselves as professionals addressing their counterparts in the Home Office. Having a precise knowledge of the requirements, they were aiming to present their clients in a manner which these counterparts would appreciate and comprehend. In the case of the boy whose Nigerian mother had been illegally settled in the UK and was now attempting to regularize his status, it was clear that under the seven-year residence rules for children

under eighteen years, gaining residency and then citizenship ought to be a simple matter. But although the case-worker saw his as a straightforward case she told us that she would nonetheless write a covering letter, “to lay out what documents are included and show how they prove his long-term residence.” She pointed out that such letters are, in effect, substituting for the form, with one professional talking directly to another and laying out the facts of the case clearly and in the manner needed. (Such assumptions are not, however, always justified in the case of Home Office employees, as will be discussed below. Their inadequacies may in fact make the necessity for the letter even more pressing.) Case workers—like officers everywhere—may circumvent the form in apparent disregard of the bureaucratic niceties. They emphasize certain aspects of applicants’ characteristics and situations while downplaying those that Home Office officials will see in a negative light.

Their clients are initially unaware of these unofficial schemas. Their sense of ignorance makes them unduly respectful, even fearful, of the form while simultaneously making them feel extremely reliant on the competent advice—and the professionally-written letters—with which only a case worker can furnish them. Once cognizant of the possibility that case workers’ expertise and personal acquaintance with officials might give them an advantage, they begin to see matters with less circumspection and more bold conviction, and to engage as equal participants in the exercise.

Bureaucracy: Resignation and Hope

Interviews we shadowed revealed how clients experienced immigration and asylum law as an impenetrable yet arbitrary bureaucracy: a common perception of bureaucracies (Hummel 1987, Herzfeld 1993) and one particularly pertinent in the present case. Although effectively hidden behind a mask of forms and micro-procedures, many Home Office decisions were ill-informed, often coming down to the decision of anonymous individuals with “no formal legal qualifications” who are “not very skilled” (Good 2004, 106, 112). Case workers echoed this negative view of Home Office staff. Ana, for example, pointed out that when she had earlier worked in a bar while studying, one of her fellow workers left to take up a position as a low-level bureaucrat at the Home Office: sure proof, she said, that “you need no brains to work there.”¹³

Substantiating such perceptions, clients consulting with case workers often expressed deep suspicions about the kinds of decisions made, despair in the face of the apparently unreasonable decisions taken by “the government,” and frustration about its incapacity to keep track of paperwork and to keep the intricacies of their case in view. Sarah, a sixty-year-old woman born in the West Indies, was faced with finding the documents to prove that she had been resident in the UK for fifteen years. In a series of earlier dealings with the Home Office, she had already submitted documents on several occasions.

Sarah: ...The government has all this information, my address and everything.

Ana explained to her that the onus was on her to prove that she had been living in the UK for the period in question, and that to do so she would need bank statements, doctors’ letters, and the like.

Sarah: These people have all the information, for God’s sake. They have everything there.

Ana: Yes, but those files get sent out and kept elsewhere, not at the Home Office. It is a huge organization. ...

In an attempt to seek for sources of proof for her client’s length of sojourn, Ana established that the client had belonged to a succession of churches in the course of her stay in the capital. She advised Sarah that it would be necessary to compile all this evidence.

Ana: Go to your old church, then to your new church, and get letters from both to show that you have been here all along. ... This must be done by the 13th February. The Home Office is very strict.

Sarah: It’s so difficult, Ana. They have had my documents, kept them, lost them. ...

Ana: Don’t take it personally. This *is* the best route. Otherwise you’ll keep applying and applying, forever.

The apparent arbitrariness of bureaucrats, while generating resignation, can equally be a source of hope: that the unpredictability of the system will in the end work in one’s favor. Case workers and their clients, using a similar language and symbolic framework, were here endeavoring to make the best of a bureaucracy which both in different ways believed to be arbitrary (see Herzfeld 1993). Resignation and hope, and the tension between them, are exacerbated by the apparent arbitrariness of the law, frequent changes to it, and the inconsistent way it is often applied by low-level Home Office staff. In the face of changes and the escalating costs which accompany each new set of laws—the application fee for the type of case above, which Sarah hoped that her son would provide, had recently risen to seven

hundred and fifty pounds—“taking it personally” may be the most obvious response of the illegal immigrant or asylum seeker who feels herself faced with an unassailable body of inflexible rules.

Some client/worker interactions demonstrated that, while empathy, compassion and opposition to the inhumanities of the system were of considerable importance, they could sometimes intrude on efficient decision-making. It was the aim of achieving this efficiency, and the need to eliminate time-wasting and ultimately unsuccessful cases, that had of course underpinned the funding cuts. Case workers such as Ana were inclined, where this seemed inevitable, to explain to their clients that there were insufficient grounds for offering them advice or taking on their cases. Where, on the other hand, there *were* grounds to judge that the case had a chance of success, she would counter her clients’ recalcitrance and non-acceptance of the rigidities of the rapidly-changing legal framework by offering statements of hard-hitting fact—albeit with tact and delicacy. Such a case was that of Abasiofon, a Nigerian woman, and her husband Abayomi, a man of Nigerian descent who was legally resident in the UK. On their first visit to the Law Center, in February 2008, they explained their predicament. Abasiofon had arrived on a visitor’s visa and the couple had later married. They had two children, and their mother now wanted to claim leave to remain in the UK as a spouse. The case worker advised her that the Home Office was likely to refuse her claim on the grounds that, since her intention was to stay all along, her arrival in the UK was illegal. She ought to have come on a spouse or fiancée visa. Or, when her visa ran out, she ought to have gone home to Nigeria and returned on a spousal or fiancée visa. Her husband said that it was his fault, as it was he who had suggested she stay. Because of the cost of flights back to Nigeria he thought it would be too costly to return there.

Ana: ...the Home Office can say that you made an illegal entrance. The second problem you have is that the rules have changed. From the 1st April 2008, if you leave the UK and go to your home country to apply for a new visa, then you have to stay out of the UK for one year before reapplying.

Endorsing the perception that applicants might well feel confused by the array of regulation, the SWLLC director pointed out at one of our feedback sessions that “any law *could* be enforced at any point. Since 1997 there have been 555 new ways created in which you could be illegal. They are not all enforced—but they could be.” Confirming this, Kelly makes the point that “one of the most salient features of the process” is “its very indeterminacy and apparent arbitrariness” (2011, 24).

It was when faced with these ever-tightening restrictions, the increasing costs of becoming legal, the sense that they might be living in defiance of the law despite their best intentions, and the fear that some unknown law might suddenly be enforced, that many clients did, in the end, feel intimidated by the form. Many eventually opted simply to remain in limbo. Law Center case workers persuaded clients, where this was feasible, to follow the rules, while simultaneously taking advantage of whatever flexibility existed by helping their clients to challenge the decisions of often under-educated Home Office staff. At the same time, case workers, aware of the complexity of an applicant’s motivations for petitioning (or avoiding) the strictures of the Home Office, were wary of being deceived. Even though they have empathy for individuals and understand why they might have waited to apply for legal residency, they are in effect being required—particularly in these straitened circumstances—to ferret out who is eligible and who is not. Here, compassion was balanced against considerations brought into play by the formalities of legal training, and the recognition that due process must be followed.

ARBITRARINESS, EXPERTISE AND FUNDING CUTS

The extent to which case workers—in part as a result of the funding reforms—were experiencing themselves as increasingly operating within a separate tier of justice was evident in many of the cases we observed. Case workers, who often preferred to take on more challenging and engaging complex cases, which were those which they deemed to be more helpful to clients undergoing hardship and which might have ended up in court, were under pressure simply to handle short and simple acts of assistance—of the kind involving spouse and student visas.

The case of Fatma, referred to earlier, demonstrates how the arbitrariness of Home Office decisions, and inadequacy of funding to challenge these, was contributing to the tendency for this discrete and fenced-off arena of justice to become separated from the mainstream. The case had been taken on before the onset of the new funding regime. Later it was judged to be one of the more complex ones which might lead to a landmark judgment in court. Still later, under the new funding regime, it was indeed deemed worthy—because it passed the threshold in terms of its relative prospect of success—of being taken to the High Court. Had the case been heard, it might have set an important precedent in

asylum law, thus moving beyond the restrictions of the simple acts of assistance model underpinned by the new funding regime. After many hours of traumatic consultation had been spent in investigating the details of the domestic abuse she had suffered at the hands of her husband and his family, however, the Home Office “decided out of the blue to grant . . . asylum” to Fatma. Despite this welcome success, the case worker, Penny, had suspicions about the motive: was asylum granted in this particular case so as to avoid the establishment of a new legal principle? Her concerns also turned immediately to the financial consequences. Had the case met the three times over the limit threshold, thus entitling it to go back into hourly rates? It would easily have fitted into this threshold had there been a *full hearing* on the case, but “the worst scenario would be that we are a few hours short and so will only get payment equivalent to a third of the work carried out.” As the case worker said, “there is no allowance in the LSC rules for the fact that it was the Home Office that withdrew at the last moment.”

From case workers’ point of view, the possibility of a case emerging from an increasingly “separate” part of the justice system to join its main stream was here being obstructed. But failure in one register (the anxiety created by the decision vis-à-vis funding, the possibility that the Law Center would not be reimbursed for the many hours spent thus far, and the inability to establish an important precedent in asylum law) was accompanied by success in another (the client’s achieving her objective of asylum, and her successful “reshaping” not into a “second class” citizen, but a fully-fledged one aware of her rights).

This particular case was one in which an extremely experienced barrister had been briefed. But funding cuts were now generally making it difficult to procure such services. Summing up the general sense of frustration, Frances told us during a feedback session

People are not getting access. Can one get the best barrister? No—one can only get the cheapest, junior ones . . . just because of funding. But failing this there is no way of accessing justice *at all*—so everyone has to carry on playing the game.

This reflection illuminates a broader point: the practice of creating lesser rights is sometimes justified by arguing that more people will have access to these, but this does not address the question of why more people cannot have access to greater rights.

Such failures and frustrations, on their own, might have been bearable, but the funding crisis was threatening the SWLLC and other similar organizations. It was forced to close two of its branches during the period of research, and narrowly avoided being closed altogether in late 2009.¹⁴

COLLABORATIVE DISCUSSIONS AND COMPASSIONATE ENCOUNTERS

If the themes detailed here, emerging in the course of our observation of the interface where clients and case workers engage with each other, represent one part of our findings, the collaborative character of our research project inevitably led us further to reveal other aspects. After circulating a paper to SWLLC personnel and academic colleagues to be discussed at a feedback workshop, we submitted it for publication (James and Killick 2010). Shortly thereafter, SWLLC experienced its most acute funding crisis, prompting various private law firms, non-profit organizations, charitable trusts and other funding bodies to club together, galvanizing themselves into action in an attempt to shore up the organization as well as to secure the long term future of other Law Centers in the Federation. The Ministry of Justice was persuaded to provide emergency interim funding, while other funds were used to enable the commissioning of research into the worthiness of such Centers. In an attempt to persuade power-holders and policy-makers of the need to keep them operational, and somewhat bizarrely echoing the spirit of the original funding cuts, the strategy followed in the resulting report was that of attempting to give a monetary value to case worker/client interactions in order to prove their indispensability (NEF 2009).

What was stressed in this report and others like it was the quality of these interactions—as much as or even more than the accuracy of the advice given or the final outcome. A further report, commissioned by the then Prime Minister, Gordon Brown (Council on Social Action 2009) and based on interviews with both advisors and clients at the Law Center, cited our draft article (22, 26) in support of its claim that “the quality of the human relationship between the person delivering public services and the person using public services is an important factor” (32). What was stressed, from the case workers’ point of view, was “the role of a good relationship in gathering ‘good information’ from clients” and its importance “for the efficient and effective ‘progress of the case’” (18). Establishing such a relationship was said to require “skills on the part of the advisor to draw information out, as well as time.” It was said to contribute

to the “process of empowerment” for a client, increasing skills and confidence to deal with problems without the need for external help, so that “even if the legal outcome is not what the client wanted,” there has still been some benefit.

It was also said to give “scope for broader outcomes” beyond the immediacies of case worker/client interaction (18): a point substantiated by one of the clients:

Without (my advisor’s) help and support I would have had a breakdown and my family torn apart. I will always (be) truly grateful to her. (19)

Conversely, where negative comments were made, they often related to the poor quality of the communication. One client complained about being “dealt with in a very abrupt manner by the receptionist. This ... shaped her entire experience” (ibid.).

Alongside this set of interviews, our research was cited to support the general claim that the quality of interaction was important, not only in its own terms but also in securing broader goals. These included securing fairer outcomes to initial requests for asylum, and ensuring that applicants—even failed ones—were more likely to accept these rather than initiating lengthy and costly appeal procedures. The argument being advanced was that these case worker/applicant relationships had quantifiable and commensurable value, and that the Ministry of Justice and the LSC should thus attempt to reduce the negative impact of the new fixed fee arrangements on the quality of this important “relationship between advisors and their clients” (31).

As an academic researcher, one might be predisposed to view with suspicion such attempts to place a monetary value on the quality of communication between Law Center personnel and their clients (NEF 2009). Critical colleagues might also disparage the quasi-monetary valorization of human relationships, viewing this as propaganda at worst and Pollyanna-ish at best. Further, they might be tempted to see such empathetic relationships as the bearers of neoliberal government in a situation of outsourcing. But this would be too cynical. Collaborative research requires one to take seriously the need to engage in earnest, and perhaps to suspend disbelief. One should be open to have one’s findings fed into broader perspectives and debates on what is valuable and worthwhile in the public domain, even where attempts at quantification seem to be at odds with one’s convictions about the inappropriateness of subjecting such a domain to market forces or measuring it in market terms.

CONCLUSION

Attempts to defend the Law Centers from budget cuts that threaten their closure have, then, used our research in a bid to support continued funding. Implicit in their claim about the importance of the quality of the encounter between case workers and immigrant applicants is that case workers may increase efficiency by sorting and screening potential applicants for eligibility under the law. To make a cost-effectiveness argument and defend against budget cuts, these reports maintain that the empathy and commitment actually makes the efficiency possible, thereby justifying the role of case workers and placing an instrumental value on their empathy and relationship-building role.

Beyond the basic point that sympathetic case workers try to find as many options as possible to assist clients, which may or may not lead to the most efficient processing of cases, such claims however reveal competing expectations about the roles of case workers. Recognizing however that a strategic and selective presentation of the nature of such roles will not necessarily reveal these contradictions, we have highlighted them in the present article, documenting and analyzing how they play out when legal advice is given to immigration and asylum applicants. Among other things, we have shown that both parties to the interaction leave their mark, in however small a fashion. At the interface where people from different arenas and possessing divergent levels of expertise come into contact, the dialogue between such actors enables not simply the top-down implementation of policy/law but also, “often at the same time”, and in small and piecemeal ways, its transformation (Long 2001, 191).

At this interface (Long and Villareal 1994), applicants are encouraged, even “lectured”, to reshape themselves in line with images of the “good citizen,” thus complying with the bureaucratic regulations as far as necessary. But, in collusion with their advisors, they also take advantage of flexibilities that exist, in part, as a result of the arbitrary application of immigration and asylum law, particularly by low-level bureaucrats. The effectiveness of these joint processes is reliant on expert advice. It also depends on affective aspects, including case worker commitment and client receptivity to and positive perceptions of this; aspects that in turn are refracted through continuous changes in the law and shaped by the increased restrictiveness of legal aid funding cuts. While case workers are increasingly

encouraged to cherry-pick cases, to redeploy as risk-assessing actuaries and judges-before-the-event, and in effect to keep as many cases out of the courts as possible, their advice and sympathy plays a key role in mediating the rules and even, in some sense, in “making” the law at the local level. The danger of which case workers continually reminded us and which press reports decried, however, was that the inflexible yet inconsistent decisions of the Home Office and some of the assumptions that underlie its notions of legitimacy and proper behavior would increasingly go unchallenged in the courts. Funding cuts, they said, threaten to restrict access to the legal resource of expertise, essential to applicants in finding their way around the arbitrariness of the bureaucracy. Access to justice would thus be compromised.

We return to our initial discussion. If case workers in the non-profit sector serve in some measure as enforcers of Home Office regulations, in part through second-guessing the inconsistent decisions of its staff, this is not necessarily a direct outcome of some over-arching policy design in which ends have been “carefully and consciously” pursued “without directly violating liberal norms” (Gibney 2008, 158) or, more broadly and subtly, a means of outsourcing, through neoliberal governmental processes, the implementation of some totalizing (if internally contradictory) regime of law. If their role of providing expertise, thus adding efficiency and value to the processing of applications, is both motivated and tempered by affective qualities such as empathy and compassion, it would be too skeptical to see these as representing mere “privileged moments” which cannot ultimately “elude” repressive laws (Fassin 2005, 375). A commitment to collaborative research forces anthropological investigators to abandon such skepticism about “do good-ism” and human rights (Riles 2006), and requires them to moderate their critical tendency to seek for grand schemes which posit hegemonic explanations. A more complex picture reveals a range of divergent, even incommensurable effects: the need for expertise, the imperative to deliver such expertise with empathy, the excessive emotional pressures and financial strictures which might lead to compassion fatigue and drive case workers into less onerous forms of employment, and the feedback loop which validates affective characteristics in terms that market-driven policy makers might understand, thus aspiring to secure further funding which might keep alive the possibility of this expert advice and empathy. All would seem to validate our claim that these contradictions require detailed exploration, and that they point to conclusions more complex than that “the law’s potential for resistance” cannot be invoked “without simultaneously invoking its capacity to oppress” (Coutin 1994, 283).

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CASE LIST

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ENDNOTES

¹ Note here the recent High Court ruling that current laws preventing an Eritrean asylum seeker from taking a job are incompatible with the European Convention on Human Rights, *The Observer*, December 14, 2008.

² See, for example, Immigration Minister Denies Asylum Amnesty, *The Guardian*, June 2, 2011.

³ A recent survey of legal advice throughout the UK shows that the majority of queries concerned immigration, followed by homelessness and mental health, with domestic violence and relationship breakdown coming relatively low on the scale (UK Ministry of Justice 2009).

⁴ Names have been changed.

⁵ At the time, GBP 1 = USD 1.97

⁶ See Migrant charity in administration amid cash problems, BBC News, Tuesday, June 15, 2010. For the background on funding to Centers like SWLLC over the past decade, see Richard Lloyd, Letter from London. Good Show: Pro Bono Takes Root in the U.K. But Firms Don't Want to Pick Up The Slack for Government Cuts in Legal Aid. *The American Lawyer*, July 1, 2007. For more on the background to asylum in the UK and its handling in the courts over the last decade, see Good (2004, 5-10, 99-108).

⁷ See, for example, Madeleine Bunting, Labour's Handling of Legal Aid Makes a Mockery of its Rhetoric on Fairness. *The Guardian*, March 10, 2008.

⁸ This approach resembled the one applied to the National Health Service by the New Labour Government (see Pollock 2005): one which looked set to be further pursued by the coalition Conservative/Liberal Democrat Government after 2010.

⁹ Access to justice in Britain is dependent upon having either side able to access excellent legal advice and representation, somewhat in contrast to France with its inquisitorial system in which the magistrate is required to do much of the gathering of evidence, or the United States with its public defender's office, The US Public Defender's Office is, as much research has shown, plagued with low-paid, over-worked and, sometimes, wholly incompetent and sometimes negligent legal advice. Thanks to one of the manuscript reviewers for pointing this out. Des Hudson, Chief executive of the Law Society, pointed out in a discussion on Radio 4's *Unreliable Evidence*: "the fact that three quarters of the population in this country are deemed ineligible for legal aid creates ... a real worry about how well this system will deliver justice. ... The importance of making sure it works is paramount, those losing out will be the unvoiced. It is about the quality of our society and the democratic processes." (December 5, 2007). See Marcel Berlins, The Hidden Cost of Cutting the Legal Aid Bill *The Guardian*, October 1, 2007.

¹⁰ The official Home Office guidelines have since been amended in response to a Supreme Court ruling on the case of *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31. This ruling overturned various previously denied appeals as well as the Secretary of State's original ruling that while the two men were practicing homosexuals they would be able to avoid persecution in their home countries by concealing their sexual identities (http://www.supremecourt.gov.uk/docs/UKSC_2009_0054_Judgment.pdf, accessed September 16, 2011). In response the Home Office has now issued new Asylum Policy Guidelines that include the statement:

“stereotypical ideas of people — such as an ‘effeminate’ demeanor in gay men or a masculine appearance in lesbians (or the absence of such features) should not influence the assessment of credibility” (10-11) Home Office. 2010. *Sexual Orientation and Gender Identity in the Asylum Claim*.

(<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/sexual-orientation-gender-ident?view=Binary>, accessed September 16, 2011.)

¹¹ This is not to deny that there are many NGOs and other organisations in Pakistan which would have enabled a woman like Fatma to engage in similar such recognitions in her own country. Indeed, it appears to have been precisely her status as an immigrant, the associated isolation from neighbours and friends, and thus her total dependence upon her husband’s family which stood in the way of realizing such a status while in the UK.

¹² The term illegal was recognized and used by both case workers and their clients to refer to individuals who would be deemed by the Home Office not to have legally recognized immigration status in the UK.

¹³ These remarks refer to Home Office Presenting Officers in the IAT system, in particular. It would have been illuminating to interview Home Office personnel in the course of this research, but colleagues on parallel projects attempting to do so found it impossible to gain access. Tony Good did succeed in building good relationships with senior personnel in the Tribunal system, but notes the lack of skill and training among those further down the hierarchy (2004, 106, 112).

¹⁴ For further details, see Tracy Cook, Timed Out, *The Guardian*, August 8, 2007, and Madeleine Bunting, Labour’s Handling of Legal Aid Makes a Mockery of its Rhetoric on Fairness, *The Guardian*, March 10, 2008.