

SEVEN AMBIGUITIES: LAWYERS AND THE MAKING OF *WELL- FOUNDED FEAR*, A LAW-GENRE DOCUMENTARY

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When you embark on the odyssey of making a documentary film, you never really know what you are getting into, certainly not in terms of the specifics. When we began making *Well-Founded Fear*,¹ it never crossed our minds that we would be creating a law-genre documentary. As it turned out, however, that classification is appropriate.

Our target audience for the film was the general public—this was not to be a didactic film for attorneys. We began the project with the idea of aiding people in understanding the institution of asylum and believing that it is a worthy practice for this country. A surprising development was some unique relationships with lawyers that arose in the process of making the film. With apologies to William Empson's *Seven Types of Ambiguities*,² we can count seven types of ambiguities in those relationships.

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¹ *WELL-FOUNDED FEAR* (The Epidavros Project, Inc., 2000). The film follows applicants for political asylum, their lawyers, translators, and the asylum officers working in the Newark and New York City offices of the Immigration and Naturalization Service who pass judgment on the applicants' petitions to remain in the United States.

² WILLIAM EMPSON, *SEVEN TYPES OF AMBIGUITIES* (1930). William Empson's *SEVEN TYPES OF AMBIGUITY* has long been recognized as a landmark in the history of English literary criticism. For Empson, an ambiguity is any nuance, however slight, which leaves room for alternate reactions. His concern was with ambiguity within a piece of language; for us it is between the roles of filmmaker and lawyer.

The film originated as an idea for a six-part PBS-type series about refugees and the migration of people all over the world after the end of the Cold War. The concept was a great hit with those who envisioned the program as a teaching tool, but it fell very short of impressing anyone at the television networks. After a frustrating period during which we had many ideas and nowhere to go with them, a friend became an asylum officer and suddenly a window was opened into a place that was a microcosm of everything we had wanted to put into that more didactic series. We reimagined the series as a feature-length film about human rights and the relationship of the United States and the American people to the rest of the world. The waiting room at the Asylum Office proved to be a place where we could explore those themes in full.

The problem was that no one had ever before penetrated the asylum office in order to record what went on there; even print journalists with only pens or pencils in hand had not been allowed in. So the access question, usually one of the very first in documentary film-making, was present for us immediately. As in many other situations, it was a combination of luck and some skill that got us past it.

The luck had begun even before we realized it, back when we had been planning the six-part television series. We had a board of advisors that included an office-mate of the then-sitting Commissioner of the Immigration and Naturalization Service (INS). We convinced our advisory board member to take the Commissioner a letter from us stating that most Americans had no idea what the asylum program was, but would have many reasons to be heartened by its existence if they knew about it. Miraculously, our little two paragraph letter worked and the Commissioner directed us to present ourselves at the Newark asylum office to begin work on our project. We considered ourselves very lucky indeed.

The skill kicked in when we had to win over, one by one, every person that we encountered in the office, from asylum officers to guards to—eventually—lawyers. We worked on fundraising for nine months and during this period, we spent a huge amount of time at the asylum office. We were able to sit in on and observe

fifty cases. We learned a great deal about how the office worked, and we created relationships with many of the asylum officers. The attorneys and clients, however, would usually be there for only one day. It was not until we had raised the money to actually shoot the film that we began to understand what it is like to make a film with and about lawyers.

The first ambiguity we must acknowledge is that while lawyers were an important part of our subject, they do not appear in the film very much. The finished product focuses more on the asylum officers and the applicants. In fact, some of the lawyers bitterly complained later on that they were not given their due as subjects.

Another interesting aspect of this relationship was that with regard to us, the lawyers tended to act as gatekeepers. Filmmakers often find that professionals of any kind try to be gatekeepers. In our case, asylum was the territory the lawyers felt they knew very well; they were living their lives and making their livings in it. The assumption that filmmakers who enter into their arena are both lazy and dumb was an easy one to make. Certainly that sentiment is off-putting if one is the filmmaker, but it is not always unfair. Part of our initial struggle on this project, then, was to convince attorneys who were engaged in this field that we understood the subject and that our activities were not merely intrusions with no clear direction.

The community of asylum lawyers is a huge and varied one. In the asylum office waiting room with their clients were some of the most heroic figures one can imagine, as well as some of the sleaziest. Each saw herself or himself as needing to protect her or his own territory in a specific way, similar to the way an anthropologist would protect a village in India that she was studying. The main concern of the attorneys was that we would not understand or respect the confidentiality of everyone involved in the process. The attorneys were not the only ones who expressed this concern; the asylum officers themselves harped on it. Ironically, we had our own code of confidentiality and a feeling that our ultimate responsibility was to the people who allowed us to film them. We were absolutely not going to reveal anything we knew. We trained our crew very carefully to make sure that they were of the same mind.

In truth, however, because we had been around the office for nine months doing careful field work, we had acquired a huge amount of knowledge about the process and the personnel. This was ambiguity number two: while many attorneys felt obliged to act as gatekeepers, it was fairly clear to us that we sometimes knew more than they did.

The third ambiguity we encountered—and this is true in every film—centers around the complex question of how the presence of a camera would change the course of events. We recognized that some of the lawyers viewed us as co-conspirators. They believed that the camera could work to their advantage since it would probably influence the officers to be more careful and fair and thus produce a more favorable outcome for their clients. Clearly, this way of thinking was advantageous to us because attorneys who believed this were willing to allow us to film during asylum interviews with their clients. And we felt that it was great if the camera did in fact influence the officers to consider each story more carefully, because perhaps a few deserving people would get asylum who might not have otherwise. In contrast, some attorneys were concerned that the presence of the camera might make their clients more nervous and agitated. We did not film their clients, but overall the experience of those applicants we did film did not confirm the lawyers' concerns.

To lessen “the effect of the camera,” and because filming somebody is always a personal interaction, as well as to reduce any possible adverse affect from filming, we tried to get to know clients before their interviews. In many instances, however, it was not possible to make contact in advance since the INS, quite rightly, refused to give us any information on who was going to be interviewed. We attempted to contact prospective interviewees by various means, including providing a toll-free (1-800) phone number and handing out flyers on the street; in the end, these efforts mostly failed.

We came to realize that simply by spending long hours in the waiting room we became fixtures of a sort. The regular translators who were there often got to know us and soon began introducing us to applicants on the very day of their appointments. We learned that even a ten-minute conversation in the waiting room can be

extremely relaxing to a person about to be filmed. In such many cases, the applicants were not represented by attorney. In some cases, the applicants for asylum were glad that we were filming because they felt as if they had an ally in the room.

The fourth ambiguity arose when some of the lawyers began to notice that we were moving through the electronic doors leading to the restricted areas quite a bit. We were filming with many different asylum officers, and almost any shred of information about them could be very useful to a lawyer waiting with a client. Some lawyers acted as interrogators, attempting to debrief us every time we came out of the restricted area into the waiting room. It was a smart strategy. One lawyer whom we were eager to film questioned us regarding the name of, the background and any other information we had about each officer who appeared in the waiting room. We liked and admired this attorney immensely. He worked on a *pro bono* basis and had won many hard cases, but we grew nervous about sitting down with him because he had a pad and pencil and wrote down everything we said. Because of both our ethical responsibility to everyone involved and because we would have been kicked out in a second if the INS thought we were disclosing any secrets, we distanced ourselves from this man. This attorney was absolutely correct, however, in assuming we had a lot of information that could have been useful to him.

Indeed, we came to know the asylum officers extremely well. There were times when a particular officer would come into the waiting room to call an applicant, and we found ourselves wishing that we could tell the applicant not to answer, to feign a stomachache, and to go home, that is, do anything to avoid interviewing with that officer whom we knew did not often grant asylum requests. In fact, that is what good lawyers do. The knowledge posed a difficult issue for us, and one of the more uncomfortable aspects of making this film.

Another ambiguity popped up when—we encountered lawyers who essentially wanted to be in a movie. Some of them took it even further; they were seeking publicity. It was understandable, perhaps, that the very good lawyers might want to be immortalized and appear in a national broadcast. The surprise was that it was some of the biggest crooks who were the most helpful; allowing

and encouraging us to shoot interviews with their clients and always making sure that we met them in advance. There was even a firm we knew from the scuttlebutt was about to be indicted that we ended up shooting a lot. It was clear from their behavior that their motto was: “Any publicity is good publicity.”

A documentary filmmaker is constantly “casting” when he or she makes a *vérité* or observational film on any topic. There is a complicated relationship between the nature of the truth as you see it, the message you are interested in communicating, and who is available to best embody that. In the course of doing field work, the filmmaker must compare the ideal in his or her head—“this is what a good lawyer should look like, and I’ve found one, and this is the one that I am going to film.”—with the range of actual characters who fit into the subject category. You need to think about whether the person who steps forward as the most wonderful example really represents the reality in that place.

The sixth ambiguity that emerged in this process was the lawyer as film critic. Before we finished *Well-Founded Fear*, we showed it to all the people who appeared in it. The harshest critics were the *pro bono* attorneys, some of the very people we admired the most. We were crushed. It was difficult to communicate to them that we were not making an advocate’s film. If you are a *pro bono* attorney, you turn down more potential clients than the INS does as you try to pick good cases and win them. Given that many of them had been doing it for a long time and had seen some really horrible asylum officers, and some real injustice done, it was not surprising that they were angry at us for depicting a broader reality.

Our target for *Well-Founded Fear* was a general audience—we chose not to adopt as the message of our film that the system, including the people in it, is rotten. Our goal was to get people to believe in the institution of asylum and to believe that it is a worthy goal for this country. We were trying to say, “These asylum officers are you. The job is hard. It could be better, but the job is worth doing.”

This message left an admirable community of lawyers very unhappy. In fact, there was a small campaign within the American Bar Association’s Immigration Committee to suppress the film. There was a concern that any hint that any asylum seeker wasn’t

telling the absolute truth all the time would be dangerous for the public to see. It might turn people against granting asylum to anyone at all. The concern was bolstered by the example of the negative impact depictions of fraud have on the public's opinion of welfare. This group of critics seemed to think that *Well-Founded Fear* was fine for professionals, but simply too risky for a general audience. However, the very fact that the film does not mask the inevitable lies that some of the applicants tell causes it to be more realistic, and makes the search for truly deserving asylum seekers much more compelling.

The seventh and final ambiguity stems from the role of lawyers as clients—our clients. Happily, *Well-Founded Fear* is now widely used as a teaching tool for law students and practicing attorneys. Law schools, private firms, small legal clinics, and many asylum seekers have ordered the film. Because of the interest in using the film for didactic purposes, we created a set of training materials using footage from the archives of the original film. We are now distributing a videotape and a guide geared towards the needs of attorneys, including specific scenarios and discussing legal technicalities from asylum interviews. A second new videotape features five individual stories taken directly from asylum interviews, with a discussion guide that suggests several different ways to analyze each narrative. These materials are available on our web site.³

In an ironic and unexpected way, this project has come full circle for us. Lawyers, with whom we had such a tortured relationship while we were making the film, have become one of our primary audience groups. Although we did not originally envision the film as a law-genre documentary that could be used for teaching, because it has become such, we are happily meeting our original goal of aiding people in understanding and supporting the institution of asylum.

³ "Practicing Asylum Law" and "Tales From Real Life" are available at www.wellfoundedfear.org (last visited Apr. 20, 2006).