

Infighting in San Francisco: Anthropology in Family Court, Or: A Study in Cultural Misunderstanding¹

Barbara Joans²

Abstract

Working with Native Americans eighteen years ago, sharing their indigenous knowledge, I represented six Bannock Shoshoni women in court. I was their expert witness in a dispute concerning land and fraud, and we went to court and won. At the beginning of 1997 in San Francisco, working with an Italian Greek American extended family, sharing indigenous knowledge, I represented the father as an expert witness in a child custody case. The dispute involved parental rights and court concepts of "correct" American families. My credibility as a knowledgeable anthropologist had to be established on the stand to be accepted as an expert witness. It was. But nevertheless, we lost the case. For anthropologists, however, a precedent was indeed set for anthropologists to serve as expert witnesses in California courts concerning child custody law and related family matters. Child custody law is a whole new field for applied cultural knowledge. This paper is about the anthropologist as expert witness in the culture of the family, learning new roles and rules in a tough arena of court procedures, strategies, and tactics. When deciding to accept a case or not, ethical judgments are critical considerations based, on balance, on indigenous knowledge, but once the anthropologist as expert witness takes the case, no room exists for ambiguity or ambivalence. Anthropology is pushing at its applied boundaries, as we anthropologists go to court as expert witnesses in this relatively new area.

Introduction

Eighteen years ago I represented six Bannock-Shoshoni [American Indian] women in court. I was their expert witness and convinced the presiding judge that the women had not committed fraud, had not lied to the social service departments and had not taken rent money on bad faith. They had misunderstood the language. They had misunderstood the directions given to them by the Pocatello, Idaho, agencies. There was cultural misunderstanding. We went to court. We won all six of our cases. The women were cleared of even the hint of misconduct and I published the account in *Practicing Anthropology* (Joans 1984).

This year we were not so fortunate. I went one on one with a court appointed psychologist and lost. In October of 1996, a San Francisco lawyer asked if I had ever testified as an expert court witness. After outlining my Pocatello cases, that lawyer handed me a psychologist's custody and visitation evaluation report and asked for my opinion. This type of report is court ordered and court supported. Since neither party, in a custody dispute, pays for the report, it is considered value neutral and objective. It is a weighty document. It is rarely disputed. Since the psychologist, is hired by the court and has no monetary dealings with either client, the psychologist is considered impartial and these reports have unassailable status. They are not to be trifled with.

I read the report and choked. It took me thirty seconds to decide to take the case. Here was one of the most blatant cases of cultural misunderstanding ever written. The psychologist had come out in favor of the mother inspite of strong evidence that the father provided a better environment. Here was a case begging for anthropological interpretation.

Background

Within the early years of marriage, soon after their child was born, the mother left the country taking the baby girl with her. She did not inform the father. He found them halfway around the world, sued for his daughter's return and received temporary custody of the child. The mother followed them back to the States, fourth husband candidate in tow and pregnant with this new man's child. She wanted sole custody of the daughter and wished to return to her new home, halfway around the world. The father wanted joint custody. This would have necessitated the mother remaining in the United States. It was the father's first marriage and first child. It was the mother's third marriage and first child. She is in her late twenties. He is on the far side of thirty. During the several months that the father had custody of his daughter, the mother called the child on the phone, had several supervised visits and complained bitterly of her separation from the child.

At this point the court stepped in and hired a clinical psychologist to assess both the mother's and father's bid for custody. The psychologist was to evaluate each parent in terms of the child's best interests. This psychologist, often hired by the court, was familiar with child-custody law, the circumstances guiding "best interest" rulings, and general family health issues. It was assumed, since he was a court hire, that his opinions and recommendations would be objective.

The Problem

The psychologist interviewed both mother and father, in their respective homes. Since the child stayed with the father, the psychologist reviewed that environment with special care. He found both parents to have strengths and weaknesses and considered the child acceptably "average" for her age. What tipped his decision in favor of the mother and what he later based his professional opinion on, was the family unit. The mother was offering the child a "traditional" type nuclear family. The father was offering the child an extended one. The psychologist understood the benefits of the first type of family arrangements but did not understand the advantages of the second.

Throughout the report, the psychologist made comments about the strangeness of the father's living circumstances. He questioned the father's ability to rear a child successfully within a multigenerational extended kindred. He questioned the father's home furnishings and artistic values. The fact that the furniture was old, comfortable, and extremely child-friendly was seen as careless housekeeping and sloppy home management. The mother's temporary home was described in terms of elegance and spaciousness. Her uncluttered, child-free home was seen as a model of good taste.

In short, the mother's upper-middle-class Anglo heritage fared far better in the psychologist's view than the father's working-class Italian ancestry. He was seen as the less-effective parent.

Psychologists, court appointed or otherwise, are neither neutral nor value free. They, like the rest of the social science professional community, carry their socialization within. Since they rarely challenge the assumptions of class or family structure, they do their custody evaluations with a set of cultural stereotypes firmly in place. Important among these stereotypes is that the nuclear family is superior to other kinds of

arrangements and that the mother-child bond is the best bond within the familial group.

Problem Solving: The Case

The father's lawyer came to me after hearing that I had won all my cases. She knew, however, that I had not testified in California and had not worked on a child custody case before. Far from viewing this as a disadvantage, this was seen as an advantage.

The court had enjoined both sides against hiring another outside psychologist with a competing evaluation. By hiring an anthropologist, the lawyer hoped to uphold that ruling, but bring in another kind of expert witness.

Since I had many criticisms of the psychologist's report, it seemed the best place to start. Here was abundant evidence for demonstrating cultural misunderstanding.

As an anthropologist, I immediately situated myself within the center of the family. I spent a number of hours visiting, practicing participant observation, talking with the entire extended kindred, and generally evaluating the child's behavior in her paternal home. Looking at the case through an anthropological lens resulted in a completely different analysis of the family situation, a thorough re-evaluation of the extended kindred and the resulting recommendation that the child remain with her father.

The father lived within close driving distance of all his primary kindred. His siblings and parents lived within close walking distance. His mother and father had an active role in the child's upbringing. Both of the father's siblings had children and they formed a natural, familial play group. When at work the father hired a full-time nanny to supervise the child during her daytime activities. I was viewing a close-knit, interactive, cooperative, and sharing extended family. They not only shared ritual events such as birthdays, anniversaries and national holidays but the important small everyday events as well. They often ate and visited together. The cousins played well with one another and were comfortable in each other's homes. The nanny was a constant, dependable, loving influence on the child's life.

In contrast, the mother, pregnant with her next husband-to-be's child, could, at best, offer her daughter

space in a blended family where she could quickly become the family stepchild. Taken to another country, it would be unlikely that she would ever see her extended kindred again and would be able to see her father for only short periods of time.

ProblemSolving: The Strategy

In order to show the court the strengths of the father's family situation, I spent one month researching and documenting American families. I created an extensive bibliography. I provided a cultural analysis showing that the "typical" nuclear family represented less than one fourth of the country's households. The extended kindred's represented just over one fourth of all American families. In communities where extended kin existed, they are considered very valuable.

I critiqued the psychologist's report, showing that social scientists who rely on nuclear family models as "typical" or "normal" are themselves unconsciously projecting a cultural bias. Extended families are every bit as normal in America as nuclear ones, and a bit more common. I assessed the strengths and weakness of both family systems and drew attention to the tremendous strengths of extended kindreds and the tremendous vulnerabilities of the nuclear family. The casual, relaxed, messy-looking, frequently noisy atmosphere of the extended kin play group does sharply contrast with the far more quiet, controlled, and adult-centered nuclear home. But what is critical is the care-giving qualities of the adults involved, not the structures of the family units.

Fathers as primary care-givers was the next topic of significance. There has been a ground swell of interest, in the past twenty years, in fathering. Men are no longer content to stand in the shadows of parenting. I documented the new styles of paternal parenting along with extensive quotes from leading psychologists.

I wrote a court document (anthropological brief) summarizing my findings, explained why my analysis was different from that of the psychologist, and rewrote my vita to include all my expert witnessing experiences. I also wrote out questions for the lawyer to ask me. These questions would allow me to reveal both my own analysis of the situation and all of the new fathering materials I had uncovered.

ProblemSolving: The Trial

Before going to trial, I visited several courtroom situations to see what was considered appropriate attire for professional women these days. Working in the academy, it is easy to lose touch with what Corporate America wears. My first comment to the woman lawyer who hired me, as we met for coffee in her home was, "Take me to your wardrobe!" Turning myself into a respectable, fully professional-looking, court-appearing expert witness took another two weeks of work, lots of patience -- and all of the money received from the retainer. Professional clothes, for women, as opposed to academic type clothes, cost a lot of money. But the make-over was considerably more extensive than the buying of an upscale suit, it involved a completely different presentation of self. In order to be taken seriously, by the judge, I had to look the professional part and if that required relearning how to walk in high heels and stockings, with newly shaved legs, so be it. If it required relearning to wear the brassiere I thought I left behind when I burned it twenty-five years earlier, I would do it. My husband and I laughed as I practiced walking and talking, (without expressive hand motions), in the new mode. The final transformation came when I cut the long, wild, unruly hair that had become my personal trademark. (Fortunately, hair grows back)

As I walked into court I looked exactly like every other professional woman in that courtroom: sleek, sharp, well groomed, rich, and respectable. And it was a good thing too, because it took well over an hour to convince the judge that I should be allowed to give testimony.

The opposing lawyer objected each time I spoke. According to her, I was not a credible witness. Who ever heard of an anthropologist giving testimony in a child custody case? Actually, it was a good argument. While I had functioned successfully in the past as an expert witness, the disputes were over land tenure, agency politics and cultural/linguistic misunderstandings. This was my first custody case, and it took much convincing before the judge decided that I should be permitted to speak in court. To establish my credentials I submitted the vita that presented my experience as a cultural interpreter. I also presented arguments on the merits of anthropological interpretation -- both methodological and cultural. So, I had two major arguments in favor of my giving testimony.

The Methodological Argument, Participant Observation

Anthropologists go into situations with a broad focus. Participant observation requires that we look at the total environment and at the specific circumstances of particular peoples. By approaching the human situation from such an inclusive perspective, it is often possible to get answers to questions that we had not even thought of asking. This, I claimed, was precisely what had happened. When I observed the total picture of the child's living situation I discovered a smooth, well functioning extended family that had been thriving for several generations.

The Cultural Argument and Anthropological Theory

When a professional, like a psychologist, asks specific questions, people usually answer truthfully. But every Anthropologist knows that what people say they do and what they actually do are two very different things. People do not often deliberately lie to psychologists, but their *views* of how they behave, and how they actually behave, are quite different. As an anthropologist, I was in the position to both *hear* what the persons said they were doing and *see* what they were actually doing. It is the methodology of participant observation that permits anthropologists to discover actual behavior and analyze specific situations.

The arguments worked. The judge allowed my testimony. The judge also permitted the research bibliography and my *curriculum vitae* to be submitted as evidence of my competency to testify. He refused, however, to allow my anthropological brief to be submitted. He felt that this would have been in violation of the initial agreement, which stipulated that only one social science professional, i.e., the court appointed clinical psychologist, would be permitted to compose a written evaluation. My inability to have my cultural analysis introduced as evidence greatly weakened the case. In essence, as an expert witness, I had become a paper tiger. I had won the ability to speak, but I had lost access to my cultural analysis. I won the anthropological battle but lost the case.

What Went Right

Many things went right with this case. Anthropology established a foothold in a professional courtroom

setting that had heretofore belonged only to psychologists. Anthropological analysis was seen as clearly appropriate in understanding child custody issues. The community of lawyers, once the judge ruled that I could speak, looked favorably upon the entrance of another professional into their domain.

What Went Wrong

We lost. It does not get any more wrong than that. Anthropology still has a long way to go before legal professionals view our field with the same kind of respect they award psychologists.

We also lost because I made some tactical errors. I did not adequately prepare the lawyer. I gave her a list of questions which should have permitted me to answer in such a way as to explain the benefits of an extended family and the weaknesses of a nuclear one. The questions should have drawn out my observations of the father-child bond and permitted me to discuss the child's play group, her cousin visits, her loving nanny, her affectionate aunts and uncles and the participation of her paternal grandparents in her everyday life. There was no way I could have addressed these issues *without* the direct questioning of the lawyer. But I had not sufficiently impressed upon the lawyer the importance of asking me *all* the questions I had listed. I could only answer when spoken to. I could not initiate speech. When the lawyer stopped asking me questions, my time was over. I could volunteer nothing. Even though there was much more to say, I had no way of saying it. For an academic to be unable to speak at will is torturous.

The Future: Pro Bono and Beyond

When the judge handed the child over to the mother I, as well as the father, was stunned. I felt the decision reflected a gross misunderstanding of family life and a complete miscarriage of justice. I immediately called the father, offered my sympathies and then offered the rest of my services pro bono. He had paid me well to help him win. Unlike the lawyers involved, I had not developed the hardened skin that allows legal professionals to disengage from their clients' verdicts. I had let him down, although I had worked hard and long in research, analysis, preparation and presentation. The man lost his only child, and we had all been unable to prevent it. For weeks after the case I felt sick. I still do.

Conclusion

Child-custody law is a whole new game. As I now consider taking other cases, I realize that I am going to have to become very skilled, very quickly, in court room infighting. Learning the rules of this arena is tough because the battle field is tough, and the losers really do lose all. The rules are simple. You play to win. To some extent these rules can stand in contrast to anthropological ethics. All pretense at neutral analysis is gone. Advocacy is primary and the harder hitting the advocate, the better chance for victory. When the anthropologist is deciding to accept a case, ethical and moral judgments are critical considerations, but once the expert witness takes the case and goes to court, there is no room for ambiguity or ambivalence. Theoretical considerations are not the targets here. In this arena, the targets are human lives.

Notes

1. This paper by Barbara Joans was first published in *Practicing Anthropology* in the fall of 1997 (see Joans 1997) under the title "Infighting in San Francisco: Anthropology in Family Court." It is essentially reprinted here in grateful appreciation with the permission of the publisher, The Society for Applied Anthropology. A version of this paper was presented on November 23, 1997, at the 96th Annual Meeting of the American Anthropological Association in Washington,

District of Columbia, in the session, "Grounds for Indigenous Knowledge," under the title "Infighting in San Francisco: A Study in Cultural Misunderstanding."

2. Barbara Joans holds a Ph.D. in anthropology from the Graduate School of the City University of New York. She is an Americanist specializing in urban and legal anthropology and the anthropology of subcultures. She has established qualifications as an expert witness in cases of child custody and Native American land disputes. She directs the Merritt Museum of Anthropology and serves as chair of the Anthropology Department at Merritt College, 12500 Campus Drive, Oakland, CA 94619 USA; 415-922-0952; (104347.13@compuserve.com). A current research interest is the California motorcycle community. Last fall on November 22, 1997, she received the Mayfield Teaching Award of the American Anthropological Association.

References Cited

- Joans, Barbara
1984 Problems in Pocatello [Idaho]: A Study in Linguistic Misunderstanding. *Practicing Anthropology* 6:3 & 4.
- 1997 Infighting in San Francisco: Anthropology in Family Court. *Practicing Anthropology* 19:4:10-13.