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MIGRANT CROSSINGS

Witnessing Human Trafficking in the U.S.

Annie Isabel Fukushima

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4 WITNESSING LEGAL NARRATIVES, COURT PERFORMANCES, AND TRANSLATIONS OF PERUVIAN DOMESTIC WORK

IN 2010, IN *UNITED STATES V. DANN*, Dann was convicted for trafficking “Liliana”¹ into domestic servitude from Peru to Walnut Creek, California, on five different counts: conspiracy to commit visa fraud, visa fraud, forced labor and attempted forced labor, unlawful conduct regarding documents in furtherance of servitude, and harboring an illegal alien for private financial gain.² *United States v. Dann* embodies homosocial violence between coethnics: Dann, a Peruvian (naturalized U.S. citizen) female employer, and Liliana, a Peruvian female (migrant) domestic worker employed by Dann, were both propelled into the public eye of the media and the law when the district attorney charged (and then convicted) Dann on trafficking-related violations. The case received national and international media coverage as the “first” in Northern California legal history to have jury trial ensue for a human trafficking case in the region.³ In spite of sharing national origins and gender, Dann and Liliana’s racialization in Peru carried over into a U.S. context, interacting with U.S. ideologies of race. Regardless of the complexities of race and class, the case reinforced legal definitions of human trafficking, and it was prosecuted “successfully” as such.⁴ From the earliest media coverage of the case to its closing, headline news included titles such as “Peruvian Nanny Exploited in Shocking ICE Case,”⁵ “Walnut Creek Woman Convicted of Enslaving Nanny,”⁶ and “Coco Real Estate Agent Convicted of Forced Labor.”⁷ Dann’s seemingly upper-class status in the United States as a real estate agent contrasted the invisibility of her race. As Dann’s profession mattered, so too did it matter for Liliana. However, in addition to being described as a nanny, Liliana’s migratory status and victimization also mattered, where descriptors of her experience

included slavery and exploitation. Human trafficking is an elusive concept.⁸ It is determined by legal definitions,⁹ defined by concepts of victimhood,¹⁰ contextualized as a problem that must be interrogated and recognized in structures of race and citizenship,¹¹ seen as a contemporary slavery issue,¹² and understood as a problem of labor and migration,¹³ of gender,¹⁴ and of rights.¹⁵ In spite of the varied definitions and meanings of human trafficking, I argue human trafficking is both determined by modern transnational economic structures that are reified through local settings (i.e., performances in the courtroom) and also embedded in perceptions of the particularities of the industry one is trafficked into, the industry in the case of *United States v. Dann* being servitude.

At what point does an experience become witnessed as trafficking—how does one cross into being seen as “trafficked”? How do migrants, their employers, and actors in the legal system perform expectations of race, gender, and class to enable a witnessing of trafficking (or not)? Examining *United States v. Dann* as coethnic violence enables witnessing beyond binaries (victim/criminal, illegal/legal, citizen/noncitizen) and shifts away from Othering who the trafficker/trafficked person is. For migrants working in a culture of servitude, their ability to cross into being seen as trafficked/the trafficker cannot be separated from perceptions of citizenship, social movements, sociopolitical processes, and culture. Focusing on the process of witnessing how one is determined as trafficked or a trafficker through court cases like *United States v. Dann* enables seeing migrants for their complex personhood and the limits (and possibilities) of what can be witnessed. In many ways Liliana represents the benefits of prosecutorial discretion.¹⁶ While she had participated in visa fraud (a criminalized act), the humanitarian efforts of immigration attorneys and homeland security allowed her to be seen as a person to be protected from removal.

This chapter begins with a summary of the theoretical underpinnings regarding the witnessing of migration, gender, and servitude. This is followed by a transnational narrative of the *United States v. Dann*, to decenter U.S.-centric perspectives. I actualize an unsettled witnessing of migration into (involuntary) servitude within the U.S. context through examining the “Othering” that occurs in U.S. law and media (as also countered by migrants themselves), the performance of translation (and what is unknown), and the significance of breaking moments as events (like crying) that produce legibility as trafficking.

THEORETICAL FRAMING: WITNESSING LABOR MIGRATION INTO SERVITUDE

Servitude, “to be at one’s service,” in the United States is at times viewed as analogous to slavery and trafficking, albeit it is distinguished through language of voluntary versus involuntary.¹⁷ And it is codified through legal industries that carry various names—babysitter, nanny, caregiver, domestic worker, domestic service, and housekeeper. Servitude, or domestic work, is a form of reproductive labor.¹⁸ Reproductive labor has been divided historically along racial and gender lines, where minority groups (due to sociopolitical inequalities) find themselves working in reproductive care. Domestic work must be studied because it raises a challenge to “sisterhood.”¹⁹ An analysis of domestic work, gender, and work is vital for understanding the complex social relations between public and private lives that cut across racial and national lines in homosocial relations. This chapter builds upon existing research on race and gender, where gendered migration and global capitalism and global flows are understood through micro- and macroanalyses.²⁰ A race, gender, and global economic lens enables one to make sense of how a visible number of women who work as paid domestic workers are from Mexico, Central America, and the Caribbean.²¹ Influenced by the sociological work of Glenn, Hondagneu-Sotelo, Parreñas, Rollins, and Romero, I am interested in examining the complex dynamic in which servitude for a migrant laborer becomes witnessed as involuntary servitude. For some scholars, domestic work is a part of the cultures of servitude, the belief systems and practices that govern a society’s practices, policies, and attitudes to service. As described by Qayum and Ray, a “traveling culture of servitude” impacts migrant laborers and their employers, as the laborers carry with them to the destination country cultural perceptions of servitude derived from their “homeland.”²² Likewise, the countries migrants enter into as laborers shape their experiences and understandings of domestic work.²³ If, as Nicole Constable frames it, globalization defines new spaces, meanings, and expressions of intimacy, what can be learned from understanding homosocial relations and servitude that cross into visibility as trafficking? And how may one understand servitude in the context of transnational circuits? U.S. legal responses to domestic service reflect dominant ideologies about service in the modern economic world order²⁴—some laborers are in need of rescue, whereas others continue to be marginalized as fulfilling affordable labor demands in capitalist industries. But, the process of moving from being seen as

trafficked (in this case, from involuntary servitude) must be further examined. To capture the nuance of a witnessing, I examine *United States v. Dann*.

To examine how human trafficking is witnessed is to situate this particular case in the context of multiple anti-trafficking narratives. The voices through which human trafficking is narrated occur in a rhizomatic fashion. The survivor, the witness, and the nonwitness collectively create a rhizome. Gilles Deleuze and Felix Guattari explain that a rhizome, unlike a structure, is an assemblage connected to another assemblage through lines where connections are made possible through semiotic chains and power.²⁵ A rhizome cannot be reduced to the one or the multiple. Therefore, a rhizomatic narration of human trafficking connects one story to another through semiotic chains (i.e., the legal system, the media, history, academic publications, anti-trafficking trainings, etc.), and is defined by multiple power relations (i.e., race, gender, class, nationality, ability). And, like ants, the chains can be broken but will reemerge elsewhere, still connected. I situate anti-trafficking narrations as a rhizome that can be mapped through individual and collective cases; the rhizomatic narration of human trafficking informs popular understandings of human trafficking (i.e., labor, migration, criminal justice, human rights, gender, and citizenship), whereby the semiological affects are transnationally deployed. As such, to witness a laboring experience as trafficking is to understand how it is relationally constituted.²⁶ Nonprofits, governmental agencies, law enforcement, academics, community-based organizations and their members, and religious entities act collectively as translators; it is never the survivor alone speaking, but rather the multiplicity of a movement speaking about the trafficked experience across time/space. During the trial for *United States v. Dann*, the audience comprised law students, lawyers (immigration and civil), social service providers, DHS agents, FBI agents, family members, friends, advocates, students—a diverse group, whose common circumstance was to witness the development of the case. The case traveled into news networks, is archived in court records, and is reinforced by the spaces in which it does not appear. Human trafficking is exploitive, socially and legally defined as such, where an advocate, a lawyer, a community member, and all the other components that together comprise an anti-trafficking movement, define that person, a person like Lili-ana, as “trafficked.”²⁷ And in the case of *United States v. Dann*, Lili-ana also then sees herself as trafficked and narrates her story as such. The affirmation of a person as trafficked solidifies the definition of human trafficking and the “anti-trafficking movement.” Lili-ana was defined as trafficked when she “met [her]

caseworker at SAGE.”²⁸ She later describes her relationship with SAGE in the cross-examination: “The organization SAGE helped me, helped me with the basic things, morally, doctor, food, clothes, because that was the most important thing right then.”²⁹ At this point Liliana’s story shifts into being named and witnessed as human trafficking, interpreted by a myriad of witnesses, including myself. However, I argue it is important to further understand that how one becomes witnessed as trafficked is a multifaceted process.

Multiple forms of witnessing take place in this chapter—the witness who takes the stand in a legal system, my role as a witness to the case, the reader’s role in reading my witnessing, and so forth. However, I am calling for a particular type of witnessing, specifically an unsettled witnessing of experiences determined as human trafficking. An unsettled witnessing is an invocation of María Lugones’s concept of “faithful witnessing,” or a witnessing against power.³⁰ However, in witnessing through the legal system, I call attention to the possibility of a decolonial witnessing, but also to a reconciliation of what seems impossible with witnessing, whereby memory of violence is “approachable and unmasterable.”³¹

TRANSNATIONAL PERSPECTIVES

There is a story that unravels before the story in the United States, and that is the transnational histories that have defined the relationship between the United States and Latin America, in particular Peru. Beginning in 2002, Dann frequently asked Liliana to move to the United States to be a nanny for Dann’s children.³² Liliana repeatedly refused. However, she eventually agreed when Dann started to experience difficulties in her marriage, and pled with Liliana to migrate to the United States. Dann promised Liliana the opportunity to learn English and learn how to drive, both important skills for Liliana, who wished to succeed in Peru’s tourist industry. Dann was a naturalized American citizen of Peruvian descent who had graduated from the Haas School of Business at the University of California, Berkeley.³³ A divorcee, she began her relationship with Liliana long distance, as delineated in a letter she sent to Liliana:

I hope you are well. Here, I’m trying to do everything possible to get ahead all alone with the responsibility of three children. As you probably know, my divorce will be finalized very soon. Now the judge has ordered that I must go out and work. And I need more help than ever. . . . I’m going try and see how to bring you over here. As you probably know, a man that my brother is acquainted

with is going to get in touch with you very soon and will try to bring you. Don't tell anyone from your family.³⁴

Although Dann needed Liliana, their relationship was defined by a power dynamic surrounding class and race, even before Liliana entered the United States. The sociohistorical development of racism in Peru shapes the lives of Peruvians both in Peru and in the United States. Racist perceptions of indigenous peoples associate them as “backward” and rural, in contrast to whiteness, which is associated with modern and urban areas, solidifying the need to take into consideration race, class, and migrant status.³⁵ Liliana was relegated to a racialized lower-class migrant originally from Cuzco, Peru, who had internally migrated to Lima, Peru, to attend high school, landing her a job as domestic worker for Dann's sister. When Liliana migrated to the United States, she is described as coming from “limited means.”³⁶ Dann was reported as referring to Liliana in derogatory ways as a “little girl” and “shit”—derogatory terms that were a reminder of their difference. And when challenged about worker rights, Dann was quoted in court records as telling Liliana, “You're a peasant. I'm giving you an opportunity here in this country.”³⁷ In contrast to Liliana, Dann, originally from Lima, migrated to California to attend the University of California's business school. Dann became a real-estate agent, promoting that she spoke three languages: Spanish, French, and German.³⁸ Where she migrated from did not matter for the prosecution, but rather what she became perceived as—upper class, educated, someone who should have “known better.” However, it is necessary to situate their raced and class difference in a transnational context to understand the significance of their relationship in the United States as raced, classed, and determined by different legal statuses (citizen/noncitizen).

Like many migrants, Liliana's reason for emigration was economic. She was promised six hundred dollars per month, the equivalent of three dollars and seventy-five cents per hour. Liliana continued to stay with her employer, Dann, even though her below-minimum-wage pay “ballooned” to a debt of fifteen thousand dollars.³⁹ A majority of the women in domestic service reflect a lower class of women.⁴⁰ Peru has reduced its poverty rates by 15 percent⁴¹ since 2002 and opened trade internationally,⁴² yet large numbers of Peruvians live and work abroad, suggesting that there is a need to go abroad to work to send home remittances. In 2010, approximately 10 percent of households in Peru had a family member who worked abroad.⁴³ Peru is increasingly dependent on

migrants sending home remittances. During a ten-year period (1999–2009), remittances increased from 670 million dollars to 2.4 billion dollars. The International Office of Migration attributed this increase in remittances to imbalances between supply and demand for jobs and to large wage disparities. It is estimated that 70 percent of Peruvians who have migrated in the last decade have done so for economic reasons. The need to send remittances to family members impacts why one migrates; sending remittances changes a migrant's social status in their home country, even if that labor is devalued in the other country.⁴⁴ As migrants are figured in the United States as laborers, they exist in “shadows of affluence,” in which globalization is creating “new regimes of inequalities.”⁴⁵ However, reasons to migrate and the industries one migrates into are not merely economically determined, but also defined by raced/gendered ideologies.

I refer to Liliana and Dann as Latinas, not to homogenize their experience but rather to illustrate the diverse making and meaning behind racial categories in homosocial relations. Latina/o/x is a geographic reference that begins with Mexico and ends with the tip of Chile.⁴⁶ The shared geographic history is one that is defined by complex interpretations of race that travel and interact with U.S. perceptions of race. Latinas/os/x are historically situated in a complex relationship with migration and colonization as a complex group; Latinas/os/x are heterogeneous, multiple, and hybrid.⁴⁷ Cases like *United States v. Dann* point to how Latinas/os/x are homogenized and seen as all the same. Othering perceptions and the historic raced and gendered archetypes of Latinas/os/x, specifically of Peruvians, are a part of ongoing colonialism that may be traced back to U.S. romanticization of Peru as a tourist destination in the early twentieth century. The discovery of the “Lost City of the Incas” led to the Western imagining of Machu Picchu as “mythical” and a “must-see” on the South American grand tour.⁴⁸ The “mystery” of Peru and Latin America perpetuates the Latina/o/x as exotic. After the 1980s economic crisis, the Peruvian economy relied on exporting labor to the United States and other parts of the first world.⁴⁹ Therefore, not only is Peru exoticized in the global imaginary, but also the Othering of Peruvians has reimagined Peruvian Latinas/os/x as homogeneous, racialized brown bodies for cheap labor in the United States. Some scholars refer to this as the Mexicanization of other Latinas/os/x.⁵⁰ Colonial racisms homogenize Latinas/os/x as all the same, in spite of their unique histories and identifications.⁵¹ And, Spanish is assumed to be the language all Latinas/os/x speak, ignoring indigenous languages spoken by many of the people who live south of the U.S. border.⁵²

The homogenization of Latinas/os/x reinforces racialized modes of production that siphon them into low-wage industries. Immigrant labor in the United States, although valuable, is devalued, enabling the United States to reap the benefits of unequal relations of power in the modern global economic system. The devaluing of domestic work is not unique to migrant domestic workers; rather, it reflects sociopolitical realities within and between particular nation-states. The demand for cheap, flexible labor augmented by social constraints (race and gender glass ceilings) explains why migrants work in laboring industries in the United States and carry low status. Currently, 24 percent of undocumented laborers in the United States are from Central and South America.⁵³

Dann and Liliana migrated to the United States with Peruvian ideologies of race and class. Liliana worked as a “nanny” for Dann’s sister in Lima. Liliana, originally from Cuzco, identifies as a *mestizo*. “*Mestizo*” in the United States carries a meaning very different to in Peru. In the United States, it represents the intermixing of Spaniards and American Indians, as a new culture that is a product of the “transfer of cultural and spiritual values.”⁵⁴ *Mestizo* represents a hybrid identity that challenges identity itself⁵⁵ that even is fetishized and privileged in U.S. discourse.⁵⁶ In contrast to Chicanas/os/x, in which “*mestizo*” is inextricably tied to culture, in Peru it is characterized as “a terrain of political contestation and dialogic reformulations in which elite and grassroots intellectuals dispute meanings of identity labels and rights to equal citizenship.”⁵⁷ “*Mestizo*” refers to an indigenous person as literate, as enjoying job success, and as having a ranking that differs from *indios*, who in contrast to *mestizos* are indigenous individuals who are rural and illiterate. As the *mestizo* connotes a shift toward a different class, a movement toward being educated and having job access, a *limeño*, a person from Lima who is not indigenous, is a class situated as socially white. Therefore, the *mestiza/o* and *limeña/o* are cultural interpretations of race. Although they are both racialized subjects in the legal case, their class formation was also essential in reifying their difference.

Liliana and Dann’s raced and classed differences persevered in the U.S. context. In the United States, the relationship between Liliana and Dann is defined by normalized power imbalances, even if superficially, their racialization is similar—as Latinas. However, it is not merely a story about transnational economies that produce and give rise to the construction of a human trafficking subject.

**UNITED STATES V. DANN: AN ANTI-TRAFFICKING STORY
AND LILIANA AS THE ANTI-FROG**

Migrants cross not only national borders but also the spheres of public and private life. Many cases like *United States v. Dann* are referred to as “hidden behind closed doors.”⁵⁸ However, domestic work does not solely occur in the private sphere; workers move out of the private into the public physically, culturally (e.g., in filmic representation), and politically (e.g., nannies as lovers,⁵⁹ as trafficked, or as political activists⁶⁰). In 2005 Liliana migrated to the United States to work for Dann. For two years Liliana dropped off Dann’s children at school. Because she was able to leave the house, in spite of Dann’s requirements that Liliana not speak to anyone, Liliana was able to build a relationship with employees at Dann’s children’s school. And in 2007, with the help of eight community members, Liliana was able to leave her employer. Liliana’s departure from the Dann home was facilitated by the connections she built with other individuals outside of the home, individuals who worked at Dann’s children’s elementary school (a gardener and a custodian) and another parent. A bilingual custodian reached out to speak with Liliana, and eventually Liliana left items with the custodian, things she wanted to keep safe: newspaper clippings, phone cards, postings, and money she made on the side by secretly selling chocolates to survive.

The court’s portrayal of Dann and Liliana produce two diverging images. The U.S. attorney, the prosecutor, constructed for the courts an image of Dann as a person who went to great lengths to exploit Liliana, violating immigration, labor, and criminal laws. The U.S. attorney’s opening statement summarized the case as a story about “exploitation and betrayal.”⁶¹ The day Liliana left Dann she hid under a blanket in the back seat of a car: “[Dann] never pays her. She only has to keep [Liliana] scared enough so that she does not leave.” He continued to describe Liliana’s journey from Cuzco “to the back seat of a car in Walnut Creek,” where Liliana “cower[ed] under a blanket and in fear of the defendant [Dann].”⁶² As described in the closing statements made by the U.S. attorney, “both claim Peru as their homeland, but you can’t think of two more different kind of people.”⁶³ The story of Dann and Liliana reinforces their difference in the United States, in spite of their shared national origins—a dichotomous imagining of good and bad migrants. In contrast, the defense portrayed Dann as a person who treated Liliana like a family member and as a victim of Liliana’s lies and attempts to receive immigration relief at Dann’s expense: “This

is a case of an overworked, stressed out, single mother and a nanny with ulterior motives.”⁶⁴ In general, Dann’s defense depicted Liliana as a person whose character was to lie; Liliana lied to enter the United States in 2004, and therefore she also defrauded the government to receive immigration relief via a T-Visa.⁶⁵ A T-Visa provides immigration relief to migrants identified as trafficked. Dann’s public defender described Liliana and Dann’s relationship as a sisterly bond:

Ultimately they came to live together, to work together, and even play together as a family. Not as master and servant, not as dominator and slave, but almost as sisters. . . . One did betray the other. But as you listen to the evidence in this case, what you’re going to discover is it was the nanny with ulterior motives that betrayed Dann, not the other way around.⁶⁶

Neither the prosecution nor the defense resisted a simplistic narrative of good/bad migrants; in fact, both depended on perpetuating dichotomous images of immigrants. At the closing of the case, the prosecution’s representation of Dann through the witnesses and supporting evidence produced a conviction on all five counts.

In order to facilitate a narrative of victimhood, the defense focused on the fraudulent means by which Liliana entered the United States; therefore, *United States v. Dann* is a story not only about trafficking and forced labor but also about immigration. In 2004, Dann arranged to have Liliana enter the United States by fraudulent means. Liliana arrived in Northern California by fraudulently obtaining a B1 visa, a visitor/tourist visa.⁶⁷ Her intention was to stay and work for Dann without proper work authorization, a process orchestrated by Dann.⁶⁸ Dann created a narrative according to which Liliana was to pretend to help a friend of Dann’s, Silvana. Silvana, who also was in on the fraud, pretended to be frail with cancer and in need of Liliana’s caretaking to convince the U.S. government to issue a tourist visa for Liliana to enter the United States. The prosecution emphasized that the scheme was Dann’s design; Liliana’s participation in visa fraud was of Dann’s design and a central part of Dann’s scheme to ultimately traffic Liliana, even though Liliana was fully complicit. It was made clear in the court hearings that the plan was Dann’s. The need to disaggregate perpetrator/victim or criminal/victim often breaks down in actual cases. Central evidence in the court proceeding was the federal investigation’s discovery of Liliana’s passport hidden in Dann’s drawer, reinforcing Liliana’s claim that her identification had been withheld. Although Dann herself is a

migrant, her immigration story was less central to the narrative produced in the court hearings. To focus on Dann's complex subjectivity as also including her immigration history was marginal in the legal case. Dann's story was only acknowledged by her origins and a brief reference to her family in the presentencing hearing.⁶⁹ Although the courts produced an image that the scheme to be smuggled into the United States through visa fraud was Dann's design, the inability to see Liliana as an active agent is problematic and limiting, and also emphasizes the passivity of victims.

To commit to witnessing Liliana and Dann's complex-personhood necessitates a recalling of how, in spite of efforts to raise awareness about the dehumanizing nature of human trafficking, anti-traffickers are also complicit in such rhetoric (intentionally or not).⁷⁰ Liliana's experience was described by one of the prosecuting attorneys as a slow "cook of a frog." Describing what he meant by this, he likened the case to a question his mentor had posed during a government-facilitated training on human trafficking: "How do you cook a frog?"⁷¹ He had responded, "You put it in a pot." The mentor had clarified that to cook a frog, the frog is placed into a pot. But if you put the frog in a hot pot, it will jump out of the pot. Therefore, the "trick" is to place the frog in a cool pot and raise the temperature slowly until you have a cooked frog. The assistant U.S. attorney described the slow cook of a frog as similar to the dynamic between the trafficker/victim in cases such as *United States v. Dann*. The cook is the trafficker, and the frog is the trafficked.

Using nonhuman images of trafficked people is a common strategy that reinforces the point that human trafficking is dehumanizing. The discourse reinforcing the dehumanizing imagery of human trafficking is illustrated in the reproduction of language to describe groups of trafficked people as a "stable";⁷² in the reinforcement of images that refer to the sex trafficking of people as "fresh meat";⁷³ and in images of trafficked people shackled, bound, gagged, or behind barbed or cage-like bars, or of disembodied body parts placed on display. Not only are trafficked people Othered, so too are people convicted as traffickers.⁷⁴ The prosecuting attorney's comparing Liliana to a frog reflects dominant understandings of human trafficking and the trafficked through subhuman descriptors—human trafficking is viewed as dehumanizing, and the discourse that paints human trafficking (intentionally or not) also reproduces dehumanizing logics of individuals who figure in anti-trafficking narratives. Liliana's experience epitomized a slow cook, until she was able to leave; therefore, while Liliana was painted as a frog, I call her the anti-frog. Because even though the

U.S. attorney's interpretation of the case suggests that a slow cook describes her, Liliana left the pot. And, as the public consumed her story in the news, Liliana also participated in her own public display through her testimony in the court and her public shots in news coverage.⁷⁵

Although victim narratives are used in anti-trafficking strategies (the images of force, fraud, and coercion),⁷⁶ violence and abuse experienced by domestic workers like Liliana is not new.⁷⁷ In fact, no one asked why Liliana was seen yet not *seen* for two years, and not paid (from July 2006 through April 2008).⁷⁸ Therefore, what was it about Liliana's experience that moved it from conventional domestic work to unconventional or conventional human trafficking? The prosecution's emphasis included reminding the jurors that Dann instilled fear (coercion) in Liliana through threats by showing her newspaper clippings that highlighted what the United States does to undocumented migrants; that Dann forced Liliana to stay in her service by tearing up Liliana's return ticket to Peru (preventing her from leaving) and also by withholding Liliana's passport; and that Dann forced Liliana to labor without pay and to "toil" under "intolerable conditions" for fifteen-hour workdays⁷⁹ by controlling Liliana's communication with the outside world,⁸⁰ and by instilling fear in Liliana by describing what would happen to Dann's children if Liliana left her services.⁸¹ The story of Dann's inhumane treatment of Liliana extended beyond the courtroom into the media. Newspaper coverage of the case emphasized how Liliana was forced to sleep on the floor in the living room next to the window. Her food was rationed; Dann would weigh meat purchased and keep "a strict count of fruit in the house."⁸² Eggs and bread also were counted, to ensure that Liliana did not eat "more than her ration."⁸³ Stories of Liliana's resistance to her own exploitation were painted by the prosecution through a narrative of resilience, in spite of experiencing destitution. In order to survive, Liliana picked fruits from trees on the way home from walking the children to school. In spite of being starved by her trafficker, she found ways to subsist, even if it was still insufficient.

Liliana's first public appearance for her testimony during the trial best illustrates how one may witness her active role in the legal system in being presented as trafficked; however, she also resisted the expectations of the legal structures. During her employment with Dann, Liliana was witnessed as looking disheveled. She wore poorly fitting clothes, she smelled because she was not able to regularly shower, and her teeth were rotting. She testified to the stigma and shame in wearing the ill-fitting clothes. On the day Liliana testified in court, she wore her hair in a ponytail, a bright striped sweater with pink,

black, and yellow, with a fitted denim skirt and black stiletto shoes, even though it was recommended that she dress down rather than up. Liliana dressed in a way that went against even the recommendations of the prosecution.⁸⁴ The story narrated regarding Liliana's two years of employment included the absence of pay, malnutrition, and isolation from the wider community. After leaving Dann's employment, Liliana embodied a person who looked well and healthy—one would never have known that she was someone who had been “put in a pot.” Although the legal system emphasizes narratives of victimhood that are performed, and even though Liliana narrated a story of exploitation during her testimonial, she also resisted perpetuating what one would expect a “victim” to look like.

THE SIGNIFICANCE OF TEARS, A LEGAL FRAMING, AND BREAKING MOMENTS

Sara Ahmed conveys that in affective economies, “emotions do *things*,”⁸⁵ aligning individuals with communities that are more than psychological dispositions. Therefore, crying is also a form of an affective economy salient in anti-trafficking and human rights discourses. There was only one physical altercation between Liliana and Dann during the two years of Liliana's employment. The court evidence shows how Dann's abuse of Liliana was primarily verbal. Liliana marked on a calendar the verbal abuse she suffered at Dann's hands.⁸⁶ But an aspect of the story, as subtle as it seemed to the prosecutors during their early interviews of Liliana, offered a major turning point in the story—the breaking of a radio. Dann broke Liliana's radio. It was at this point that Liliana was described as crying during her interviews with law enforcement. Roland Barthes's *A Lover's Discourse* is useful here for examining tears:

By weeping, I want to impress someone, to bring pressure to bear upon someone (“Look what you have done to me”) . . . By my tears, I tell a story, I produce a myth of *grief*, and *henceforth* I adjust myself to it: I can live with it, because, by weeping, I give myself an emphatic interlocutor who receives the ‘truest’ of messages, that of my body, not that of my speech: “Words, what are they? One tear will say more than all of them.”⁸⁷

Through fragments of discourse (called figures) supported by texts, friends, and his own memory and philosophical insights, Barthes offers an understanding of the lover at work. The nuance of Barthes's lover's argument for crying conveys that there is a complex repertoire of images at work when one cries. Tears

have the ability to say more than words, even to speak in ways that words are unable to. The manifestation of a crying survivor is a necessity in creating a successful anti-trafficking narrative and performing victimization. *United States v. Dann* illustrates how anti-trafficking discourse includes in the meta-narrative of human trafficking the significance of subtle methods of control as characteristic of human trafficking.⁸⁸ In *United States v. Dann*, the defining event was when Dann broke Liliana's radio, one of the few objects that Liliana personally owned. The legal recognition of a breaking point, the breaking of a radio, makes legible how a witness like the district attorney determines an experience as trafficking. Without these moments, the juror's ability to understand how one's lived experiences are traumatic as trafficking is elusive and impossible; therefore, even Liliana participated in performances of recounting the specificities of traumatic moments and performing through crying the significance of such moments.⁸⁹

Although crying can be a solitary act, to have witnesses to one's crying matters in an anti-trafficking narration. Whether the crying is tears caused by having to narrate one's own experience (as in the victim's case) or tears of empathy (as from a witness), crying is not merely an emotional response to something traumatic. This is especially true when words may mask a person's experience or are inadequate for describing it. Human trafficking invokes emotional and physical responses to trauma and traumatic events. Crying makes legible to the nonbeliever, the witness, and the anti-trafficker, an experience of violence whereby tears enable abstract series of events (human trafficking) to become legible to the nontrafficked person through understandings of sadness and grief. And it is also performed in the courtroom; a natural response or a forced act invokes the witness (the jurors, the judge, the attorneys, and the audience) to empathize with the narrative. Tears produce a performance of believability and truth in a narrative. Liliana describes a specific moment when she cried and when others witnessed her crying. It was the day she told the other witnesses about her experience (who exactly, it is unclear). It was the day that Liliana learned that Dann was going to open a day-care center, and she expected Liliana to work there. This meant that Liliana would never leave the house. As Liliana described during her court testimony, "I told them that day, 7th [April 7, 2007], I went there crying. And I went there and I told them the whole truth. By then, I didn't care if . . . everybody looked at me. . . . I was always discreet. . . . At that time, there were more people there. And they started seeing—they started seeing me crying." Just as crying mattered for the U.S.

attorney to pick up the case, it also mattered for the witnesses who saw Liliana working as a domestic worker—to recognize one’s working conditions as abusive necessitates the witnessing of sadness. Can a witness understand sadness without the presence of tears? In *United States v. Dann*, the answer is no.

Understanding how one crosses into visibility as a trafficked person necessitates an examination of breaking moments for the witness (in the legal case, the U.S. attorney). According to prosecuting assistant U.S. attorney, the breaking moment in the case for the U.S. attorney arrived when Liliana narrated losing access to a radio. When the AUSA described the case, he emphasized how he did not witness Liliana cry until she described what happened with her radio, emphasizing that the tears came pouring down as she said, “And then she [Dann] broke my radio.” The U.S. attorney submitted as evidence the significance of the breaking of Liliana’s radio: “The complainant alleges Dann smashed [Liliana’s] radio and a television set, to prevent her from listening to Spanish language programs that would, quote ‘put ideas in her head.’”⁹⁰ After the breaking of the radio, Dann told Liliana, “When you come to the United States, you must suffer.”⁹¹ The district attorney/prosecutor has the power to create meaning for individuals witnessed as trafficked; therefore, it is essential to understand the breaking moment, the moment in which it is clear to the nonbeliever that what Liliana experienced was “suffering.” The radio signified the last connection Liliana had with a Latina/o community, with the outside world. It was also the only item she was able to buy while living with Dann. The break of communication with the outside world perpetuated Liliana’s social isolation. And, for Liliana, it was at this point that the tears fell, for despite the fact a radio is only an object, it was her last means of knowing anything about the “outside” world. For the prosecutor, the incident was moving enough to compel him to take the case to trial. However, just as compelling are the moments that Liliana did not cry—an absence of tears is just as central to an anti-trafficking narrative. Throughout much of Liliana’s testimony during the hearings, she did not cry. Instead, her story was narrated through dips and rises in the loudness of her voice, and a shifting pace, suggesting urgency, movement, and an intention to move the story forward. And yet, while crying reinforces an assumption of authenticity, the moments in which one does not cry accentuate that which is “sad.” However, whether her tears were natural or forced, does not matter. What matters in *United States v. Dann* is that Liliana cried. Affect is a central part of translation work—where emotions, sentiments, and experience are translated—from the self-witness to the

witness of the story. Affect in the court is also performed. The challenge is that people respond differently to traumatic events, where not all feelings of sadness translate into tears. Sometimes, a person can respond with a smile, laughter, apathy, anger, and a range of responses that can in some instances signify pain, loss, and suffering.

COURT PERFORMANCES AND TRANSLATIONS

The testimony and its translation are vital to conceptualizing human trafficking in *United States v. Dann*. The testimony is narrated by Liliana and represented in translation. Language translation takes place from Spanish to English. Liliana's testimony is performed in Spanish. However, her Cuzco origins and the diversity of languages in Lima (where Dann and Liliana were connected) invoke the possibility that Liliana's native language may not be Spanish, but rather Quechua.⁹² Regardless, the court proceedings occurred in Spanish and English. Translation involves fragments of a "greater language."⁹³ The greater language in this narration contributes to the metanarrative of human trafficking. Translation is a mode by which the meaning of an "original" is conveyed. And, through the translator, the receiver of a translation learns to understand not only the "Other" being translated but also the translator as "self."⁹⁴

The testimony is situated as legally authoritative, in that the witness is sworn to/affirms to tell the truth. To testify is to know one's story, a story that otherwise would be buried. The significance of a testimony is that it creates a sequence of events, a history. This type of oral history, which forms part of the public record and state archives, is one of the many forms of testimonials or *testimonios*.⁹⁵ John Beverly describes the *testimonio* as a form of autobiography, autobiographical novel, oral history, memoir, confession, diary, interview, eyewitness report, life history, novella-testimonio, nonfiction novel, or "factographic" literature. Testimonials include sound and video recordings that cannot take place in solitude, where "the witnesses are talking to somebody."⁹⁶

It is impossible to summarize in a courtroom two years of labor trafficking.⁹⁷ The narrative is constructed over time as information is lost, remembered, and forgotten again, and some details are never recounted. Liliana's testimony is in itself new: it is her ability to recount in a linear narrative that which she may want to forget, or that which she remembers in too many significant details, a sequence of events in her life becomes a part of a larger narrative of an anti-trafficking movement. Liliana's testimony enables her narrative as a survivor

to enter into historical record,⁹⁸ with the possibility that information is lost in translation.

During the *United States v. Dann* trial, a male interpreter translated Liliana's story. In fact, the jury was instructed to base their decisions on the translation—even if some of the jurors understood Spanish, the English translation was the authoritative text, so as to have all jurors consider the “same evidence.”⁹⁹

The interpreter's credibility was heightened by his ability to mimic Liliana's intonation, gestures, and pace. The illusion and attempts to delineate the real were often disrupted during the court hearing by the translator interjecting when Liliana spoke. The interpreter repeatedly stated throughout Liliana's testimonial, “Your honor, the interpreter needs to ask for a repetition,” “Your honor can we slow down a bit,” and even during Liliana's narration of the breaking point, the interpreter exclaimed, “Wait, wait!”¹⁰⁰ These moments included the point in Liliana's narrative when she was asked to describe how things had changed a year after living with Dann; the point in Liliana's narrative when she described the increase in her tasks after Christmas (a list was created that Liliana needed to complete);¹⁰¹ when she described what happened when she was witnessed speaking to a schoolteacher; and the moment she decided she could no longer stay at Dann's home.¹⁰² The interpreter often paused, asking Liliana to wait for the translation to take place. Multiple times he requested the judge order Liliana to slow her testimony down, thus breaking the storytelling with pauses and shifts in voice. Robert Wechsler likens the process of a literary translator to that of a musician taking a composition and performing it in his/her own special way. Like the literary translator, the court translator has one performance.¹⁰³ Through the male voice and in English, Liliana's narrative is made legible and intelligible to a non-Spanish-speaking audience. During *United States v. Dann* voices shifted, Spanish to English to English to Spanish—a back and forth. For those who did not understand, the authoritative voice was not Liliana's but rather the interpreter's. The untrained ear does not catch any slippages. And to solidify the legitimacy of court translations, in this case, the interpreter's skills were not on trial and were never questioned. In fact, all evidence examined was to be done through the translation (even if one knew Spanish and noticed a slippage in translation).

What does it mean to translate that which someone may or may not desire to forget, and memories that are haunted by hyper memory and forgetting? The testimony is constructed out of memories that are at best fragmented, misremembered, and then constructed as linear. The time-space of memories is

dependent on a visual, sensory, and conceptual recollection of moments in the *past*. Suppressing memory of violence so that one can avoid living in the past of traumatic memories, or the desire to live in such memories through hyper memory of a past, impacts the narrative of a testimony. The testimony is a frozen document that has weight in the legal sense, as a means to construct a narrative of trauma and memories of human trafficking. The testimony may be written or oral, and when performed for trial, the facts in the oral testimony must correlate with the written. What counts in the courtroom is the proper construction, even if memories are fragmented and distorted and include (re)envisioning. The trafficked person can be a self-witness. Their testimony in court, however, disciplines their memories through a narration that requires the retelling of events linearly, with no contradictions, no points of disjuncture. Memories that are unclear, fragmented, and filled with gaps are forced into a neat, linear narrative. How does one remember that which one has survived by forgetting? How does one remember in a climate in which a particular type of remembering—a story of exploitation—is necessary for one’s survival (otherwise, Liliana and migrants like Liliana face deportation, imprisonment, or are forgotten because of the devaluation of immigrants in the United States)? The court performance in *United States v. Dann* leads to questions surrounding not only authority but also the process of translation.

The defense’s closing statement in *United States v. Dann* suggests that there is a limit to translation beyond language, but even across ideological institutions. Dann’s public defender’s closing statement is useful as a point of departure for what can be translated within and what one can never translate:

You’ll recall that my colleague, Mr. Smock, cross-examined agent Vergara on the stand about Agent Vergara’s involvement in the special smuggling and forced trafficking unit. It was their goal to spread it far and wide this type of crime going on. They utilized all means available to them. They contacted local law enforcement to say, ‘be on the lookout, this type of stuff is going on. You need to be aware of it.’ They tried to make the public aware of it. The media was used, television, radio, newspapers. They did outreach . . . when [Liliana], she came onto their radar screen, that was their opportunity. That was what they needed to show that they could make one of these cases stick. And once they got into the case, prodded by the immigration attorney that [Liliana] hired to go forward, she’s got something to say, ‘please take this thing forward,’ they ran with it.

As the defense attorney called the jurors to recognize the politics of an anti-trafficking movement as translating for the masses that “This is trafficking,”

and to acknowledge the role of the government in such initiatives, the jurors could not see within legal structures, as they were also called to use the structure to decide justice for Liliana or an acquittal for Dann. The limits of translation are not merely across language; the translation (and the opportunities of mistranslation) are also inclusive of one being able to make a particular set of meanings legible across experience; it encompasses an array of translating meaning.

CLOSING: (IM)POSSIBLE RECONCILIATIONS

In examining Liliana and Dann's legal case as a witness interrogating witnessing, I am left with recognition of my own limits of witnessing, and of the process of witnessing in general. However, to examine witnessing and homosocial violence has multiple interventions in anti-trafficking discourse, feminist theory, and practice; what it means to witness cannot be taken for granted or naturalized. What is at stake for feminisms, theories in decolonization, and transnational framings is that to move beyond victim/criminal paradigms is to interrogate the mode of witnessing in itself and call for a new form of witnessing—an unsettled witnessing.

As Liliana's story is made visible, and legible, to those who witnessed her story in the legal system and in the media, an unsettled witnessing informed by decolonial practice begins with recognizing the boundaries of witnessing within colonial structures. In the anti-trafficking narrative, how Liliana matters is always, and only, in relation to her experience of human trafficking. Liliana's history in Cuzco, her transnational relationship with her boyfriend, her family (to whom she sent remittances), and her life in the United States, as well as other aspects of one's life that illustrate the complex humanity that one inhabits, are absent in the media, suggesting that what mattered was how Liliana was exploited, not how she lives.

To close, I end with a Dann who never speaks—therefore what was witnessed was her silence and mediation through other actors. Dann is an immigrant, a *limeña* Peruvian, a mother of three children, a divorcee, a former real-estate agent, a Berkeley alumna, and now a convicted felon who served time in jail. (January 2010 was the start of her five years in jail.) Dann's story is always mediated through other actors—through the U.S. attorney, the public defender, and the witnesses who took to the stand such as Liliana, a homeland security agent, an interviewer for the U.S. embassy, a senior security representative for American Airlines, officers of Walnut Police Department (two in total), a computer forensic agent, parents from the school her children attended (two

in total), the head custodian at that school, a gardener, the gardener's employer, a property manager for the apartment building Dann, her children, and Liliana resided in, Dann's ex-boyfriend, her brother, and her brother's girlfriend. The courts never heard Dann's narration of her own story, even though witnesses described moments of choice even at the moment of arrest: prior to her arrest, Dann requested to be taken to the hospital to have a medical checkup.¹⁰⁴ Although she was arrested, it was on her terms, albeit limited. Similar to Liliana, Dann is always represented through other witnesses. But in contrast to Liliana, Dann never takes the stand. In a way, although problematic, how the media described Dann best illuminates how she is witnessed: "On Monday, Dann saw KTVU's camera and covered her face with what appeared to be a ski mask and goggles as she took her children to school."¹⁰⁵ A person attempting to live a life beyond the eye of the public, she was always in it and interpreted by it—covered yet on display.

Through an unsettled witnessing of *United States v. Dann*, I am left with a witnessing that is bound to possibility and irreconcilable tensions. As the Department of Justice has taken the center in the anti-trafficking movement with prosecuting human trafficking cases, *United States v. Dann* highlights that an anti-trafficking narrative is equated with the legal system—arresting trafficker(s). However, how this has enabled rights for Liliana is unclear. By the time of her trial, she only made \$1,100 a month and lived in a shelter.¹⁰⁶ Although she is owed money, it is not clear if Liliana will ever see the restitution and civil claims ordered by the courts.¹⁰⁷ Liliana conveyed during her testimonial that she wanted an "American justice." Dann's arrest and conviction may or may not represent justice for Liliana, but it is an American justice, leaving one to wonder what is a Peruvian justice, a woman-of-color justice, or even a decolonized justice. As anti-traffickers are called to witness Liliana and Dann, one is left with a contradiction surrounding how one witnesses the legal system and how individual experiences are framed by U.S. perceptions of victims/criminals and colonial limitations. However, the possibility of what seems impossible—reconciliation with the limitations, and an imagining of a witnessing beyond what is seen—is an important decolonial maneuver because in the global modern economic system, working for a radical witnessing within the confines of colonial systems must be imagined and enacted. This matters where human trafficking is witnessed regularly through a range of contexts: on the Internet, in film, in the news, in schools, even in conversations where stories are passed down from one witness to another, both locally and transnationally.