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Critical Folkloristics, Free Speech, and the “War on Terror”

In 2008, five affiliates of the Holy Land Foundation for Relief and Development (HLF) were convicted of conspiring to supply “material support” to the terrorist organization Hamas. One of the convicted was a folksinger, included in the indictment due to a series of music performances given at HLF fundraisers. In this article, I critically interrogate the history and development of the HLF trial, arguing for the development of an activist-oriented critical folkloristics as a powerful tool with which to respond to Islamophobic discourses at the heart of the American “War on Terror.”

Keywords

AFS ETHNOGRAPHIC THESAURUS: Social activism, critical theory, public folklore, Islamophobia, humanitarian assistance

IN NOVEMBER OF 2008, FIVE AFFILIATES of the Holy Land Foundation for Relief and Development (HLF) were convicted of, among other things, conspiring to supply material support to the Designated Foreign Terrorist Organization (DFTO) Hamas. In what amounted to the largest terrorism-financing trial in American history, each of the HLF5 were sentenced to between 15 and 65 years in federal prison (Kovach 2008). One of the five defendants, Mufid AbdulQader, was included in the indictment due to a series of music and dance performances given at HLF fundraisers. At trial, prosecutors argued that these performances of Palestinian folk songs, protest songs, and political skits constituted prosecutorial evidence of material support for and affiliation with Hamas, effectively winning over the “hearts and minds” of Palestinians in support of terror.

Building from ongoing ethnographic research with the HLF5, their families, and the larger Palestinian American community of Dallas, Texas, in this article I consider the larger impact of this trial on issues of free speech and free association, the “materiality” of performance, and the potential role of folklore in confronting the American “War on Terror.” In particular, I argue for the development of an activist-oriented critical folkloristics as a means to extend the impact of more conventional

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applied methods and to further open new spaces for the creation of emancipatory knowledge, critical discourse analysis, and the pursuit of social justice. I argue that folklore offers a powerful tool with which to advance the public good via a critical analysis of, and intervention into, larger systemic forms of objective violence shaping the present political moment (Žižek 2008). A critical folkloristics offers significant potential for social intervention by bringing together critical discourse analysis, collaborative/participatory action, and deep ethnographic engagement with populations experiencing trauma, precarity, and marginalization.

What I am labeling here an activist-oriented critical folkloristics advances the underlying premises of applied and public practice folklore, albeit in new directions and drawing from a different set of theoretical and methodological tools. Fully recognizing the long history of applied and public practice work, with this article I argue in support of a complementary approach: one similarly based in direct engagement with practical problems in the pursuit of social justice, but dedicated explicitly toward the amelioration of underlying systemic forms of violence through which contemporary experiences of precarity and marginalization occur. This approach critically interrogates the discursive premises of precarity, while offering alternative (emancipatory) possibilities in the service of activist ideals. I believe this approach to be an essential means to revitalize the relevance of the discipline, enhance our positive impact within the communities in which we work, and expand the potentials of folklore to contribute to the public good. At a time of widespread global conflict and violence, economic inequity, environmental devastation, and unprecedented forced migration, our training as critical scholars who uncover and redress structural inequalities based in on-the-ground experience has never been more needed. Seeking collaborative, critical, and activist approaches to these global challenges not only enhances the impact of our research but, more importantly, restores the relevance of the discipline among local stakeholders and distant policymakers. More than simply raising awareness or promoting advocacy, in this article I investigate what it means to conduct an activist-oriented critical folkloristics in the American "War on Terror."

The Holy Land Foundation for Relief and Development

Originally founded in 1989, the Holy Land Foundation for Relief and Development (HLF) was established to provide aid to Palestinian refugee communities in the West Bank and Gaza Strip. In 1991 the HLF moved its headquarters from San Diego, California, to Richardson, Texas, a tech-oriented suburb of Northern Dallas with a significantly large Muslim population. At the time, American Muslims, particularly devout Muslims, were in need of a US-based *zakāt*-eligible organization with which to perform their religiously mandated charitable donations (*zakāt*).¹ And in that capacity, the HLF provided a professionally operated, vertically integrated platform for supporting causes that alleviated the suffering of Muslims trapped in conflict zones. The HLF not only collected donations; it also handled shipping and set up onsite distribution through a network of on-the-ground charitable organizations called *zakāt* committees.

At its height in 2001, the Holy Land Foundation had an annual budget of approximately \$14 million.² With that budget, the HLF provided over 8,000 Palestinian orphans and host families with ongoing monthly stipends. Its health services division provided medicine, equipment, and ambulances to hospitals in the West Bank and Gaza Strip. Its education division built and furnished schools; provided financial aid and scholarships; and distributed books, uniforms, and supplies to young children. And its economic development division funded job training and computer literacy classes. Throughout its development in the 1990s, the organization expanded its reach, setting up food banks in American cities and providing disaster relief in Oklahoma, Texas, and Louisiana. Likewise, the HLF established relief efforts for Muslim communities recovering from ethnic cleansing during the Yugoslav Wars (1991–1999). As a result of these efforts, the HLF very quickly grew to become the single largest Muslim charity in the United States.

Donations to the HLF were solicited via a robust network of public and private fundraising events, print/digital media, and online platforms. During its early years, however, the HLF solicited donations at the annual meetings of Muslim American organizations such as the Muslim American Youth Association (MAYA) and the Islamic Society of North America (ISNA). Equal parts telethon, cultural festival, religious revival, and political rally, these events provided essential opportunities for American Muslims to come together around shared interests and collective needs. Invited panelists would discuss religious, legal, and cultural challenges facing Muslims in America. Keynote speakers would discuss current issues and events and, later, a diverse repertoire of music and dance would be performed. At the end of each meeting, HLF representatives would solicit donations from the audience, focusing on alleviating the suffering of Palestinians living under Israeli occupation and supporting the ongoing Palestinian Intifada (1987–1993).

However, unbeknownst to its directors and employees, the HLF had been under near constant surveillance by the FBI since at least 1993. Working from information provided by the Israeli Mossad, the FBI began investigating the HLF and its directors, employees, and affiliates for potential ties to the Palestinian resistance group Hamas. For over a decade, the FBI wiretapped every phone call and every conversation, collected every piece of mail, every fax, searched (without warrants) employees' homes, and followed HLF directors in their daily lives. However, despite these years of surveillance, the FBI could not piece together enough evidence to shut down the HLF using existing US laws. While the investigation revealed financial and familial ties between HLF personnel and known Hamas members, investigators could not link any HLF aid to Hamas or to any specific acts of terrorism, nor could the government demonstrate knowledge or intent of HLF directors to support Hamas in any way.³

Indictment

This all changed after 9/11. Acting once again at the behest of the Israeli government, in December of 2001, then-President George W. Bush formally shut down the HLF, seized its assets, and designated the charity as a terrorist organization (Executive

Order 13224).⁴ Speaking from the White House Rose Garden, President Bush proudly announced:

Our action today is another step in the war on terrorism. It's not the final step. There are more terrorist networks of global reach and more front groups who use deceit to support them. The net is closing. Today it just got tighter. (Allen 2001)

This action was the centerpiece of President Bush's newly proposed "War on Terror," whereby counterterrorism efforts would be directed toward *prevention* rather than *response*. Attorney General John Ashcroft labeled it the "preventative paradigm," explaining that, following 9/11, the government would work to prevent future terrorist attacks by investigating, arresting, and prosecuting *suspected* terrorists *before* an act of violence was ever carried out (Cole 2008). "Preventing terrorist attacks," Ashcroft said, "was now more important than punishing crimes after the fact" (quoted in Liptak 2011). As part of this approach, the FBI began applying rarely used federal "material support" statutes to investigate and charge individuals and groups with suspected ties to terrorist organizations.⁵

These statutes had been on the books since 1995 but were rarely ever used. Following 9/11, the material support statutes became a key tool in the "War on Terror," allowing law enforcement to increase surveillance and scrutiny of suspected terrorists with little (to no) actual proof of criminal conduct. Publicly, this move was touted as a key tool in the global fight against terrorism. However, given that the laws were only selectively applied to Palestinian and Muslim individuals and organizations, several legal scholars have argued that the material support statutes were deployed solely in the hopes of ending support for Palestinians living under Israeli occupation (Comerford 2004; Cole 2008; Aziz 2011).

In announcing the action against HLF, President Bush made public an investigation that had been ongoing for over a decade. In that time the FBI pieced together a narrative that alleged that the HLF had been operating, since its inception, as a clandestine fundraising apparatus for Hamas.⁶ The HLF, according to Treasury Secretary Paul O'Neill, "masquerades as a charity, while its primary purpose is to fund Hamas" (quoted in Allen 2001). Creatively applying the material support statutes, the case against the HLF was one of the Bush Administration's first attempts to prosecute humanitarian aid as a form of "material support" for terrorism (Cole 2008; Said 2011).

For over a decade the HLF had been under investigation, but it wasn't until after the material support statutes were rewritten and expanded in 2004 that the government could move forward with an indictment. As they were originally written in 1995, the material support statutes imposed criminal liability on individuals who "knowingly provided material support or resources to a foreign terrorist organization (DFTO)," or conspired to do so.⁷ These statutes required the government to prove someone "knowingly" contributed to a DFTO and that their support was *intended* to further terrorist activity. After 9/11, the statutes were significantly rewritten (2001 and 2004) such that prosecutors were no longer burdened with proving knowledge or intent (Said 2015). Moreover, the new statutes removed exclusions for humanitarian, medical, and charitable aid. The Bush administration justified these changes based on the idea

that any support or assistance sent to a terrorist organization, even for charitable or humanitarian purposes, is fungible in that it potentially frees up resources to be used for terrorist activity. Under this logic, prosecutors could now make the case that any form of support (humanitarian, educational, charitable) could be prosecuted under the statutes (Van Bergen 2004; Adelsberg, Pitts, and Shebaya 2012). Humanitarian aid such as books, clothing, food, and medicine were effectively criminalized.

After 2004 the rewritten material support statutes criminalized an entire range of activities that, were it not for the special designation of the recipient, would be entirely lawful. Even aid directly intended to stop terrorist activity and promote non-violence, such as educational materials and legal counsel, was constitutionally punishable. As ruled in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), a case where the HLP was providing legal counsel to designated terrorist groups on ways of achieving their goals through non-violence and international law, the Supreme Court ruled that speech intended to end terrorism could be punished as a form of “material support” if it was directed by, or done in coordination with, a DFTO (Zerwas 2010). This ruling radically transformed free speech protections and terrorism prosecution in at least two ways. First, it affirmed that speech could be criminalized as a form of material support without regard to the character or intent of the support provided and without regard to the effect of the support in question. And second, the ruling established that aid having nothing to do with terrorism (humanitarian aid, medical aid, etc.), even aid specifically designed to discourage terrorism, could be considered a punishable form of material support (Huq 2012). Taken further, the fungibility doctrine further enabled federal prosecutors to argue that material support need not be sent directly to a terrorist organization at all (Aziz 2011). In instances where a terrorist organization is known to provide humanitarian assistance to the local community, any aid given directly to that community ostensibly supports the terrorist organization. Accordingly, any form of humanitarian aid provided to noncombatant civilians or charitable organizations not affiliated with a terrorist organization operating in areas where a DFTO is (or has been) active can be prosecuted under the material support statutes (Ward 2008).

With this legal framework in place, five HLF affiliates were formally indicted on over 100 charges of money laundering and conspiracy to provide material support to a DTFO in July 2004. Although the HLF and its representatives were never accused of violence, or of direct links to terrorism, or even of *intending* to support a terrorist organization, under the recently expanded material support statutes, the government pursued a conviction simply on the grounds that the HLF sent humanitarian aid to charities (zakāt committees) operating in areas where Hamas was known to be active or staffed by suspected Hamas members.⁸ The government’s case hinged on two fundamental assertions. First, any charitable donations given to organizations in Palestine indirectly aided Hamas by freeing up resources that could be re-allocated toward terrorist activity.⁹ And second, HLF aid supported Hamas by legitimizing its presence as a proto-state entity, in effect, “winning over the hearts and minds” of local Palestinians in Palestine.¹⁰ The indictment sought conviction via the idea that any effort to alleviate the suffering of Palestinians living under Israeli occupation only strengthened the image and legitimacy of Hamas. Regardless of the kind of support given, the intent, or impact, any form of humanitarian aid could be prosecuted as a form of material support in that it might legitimize Hamas.¹¹

Mufid AbdulQader

The five men listed in the indictment were HLF co-founders Shukri Abu Baker and Ghassan Elashi; HLF chief fundraiser Mohammed ElMezain; New Jersey Office Representative AbduRahman Odeh; and volunteer Mufid AbdulQader.¹² Unlike the other defendants, however, Mufid AbdulQader was never employed by the HLF. Mufid was never a leader of, or even a donor to, the HLF, nor did he ever serve in an administrative or leadership capacity. Nevertheless, Mufid was included in the indictment and charged with 32 counts of conspiracy based on a series of music performances he gave at HLF-linked events. He was simply a singer in a Palestinian band who, over the years, volunteered his services performing at the national meetings of MAYA, ISNA, and the HLF.

With Mufid, however, the government alleged that the songs and dances he performed constituted a kind of material support for, and affiliation with, Hamas. Twisting the material support statutes one step further, the government argued that not only did these songs prove an intent to commit conspiracy, but that they served to “win over the hearts and minds” of potential donors, hence increasing the amount of donations given.¹³ Among the materials included in the indictment were a series of videos depicting Mufid and his bandmates performing a wide repertoire of Palestinian folk songs, protest songs, and political skits.¹⁴ As these performances occurred during the Intifada (1989–1993), many of these songs extolled the virtues of Hamas and the importance of collective resistance, and openly encouraged the use of violence against Israeli occupation forces. During one such performance, Mufid is shown performing the role of a Hamas member involved in a violent altercation with an Israeli soldier. While these performances openly supported Palestinian resistance during the Intifada, none took place after Hamas was formally designated a terrorist organization in January 1995, at which point such public support was criminalized.

With the indictment of these five men, the US government dramatically transformed existing protections of free speech and free association by reconceptualizing the *materiality* of “speech” and the *impact* of “association” such that speech (and in this case, song) could be criminalized as a form of *material* support for terrorism (Cherminsky 2011; Margulies 2011; Said 2011). With regard to Mufid, federal prosecutors argued that the performance of Palestinian folk songs constituted a form of material support for Hamas in that it was done on behalf of, and in coordination with, the terrorist organization. At trial, prosecutors argued that these performances were not simply evidence of intent, but rather that these performances constituted the offense. Songs were, in fact, the instrumentality of the crime.

Free Speech and the Materiality of Performance

One might assume that performances such as Mufid’s would be protected forms of free speech and free association under both the First and Fifth Amendments to the US Constitution. As set out in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court ruled in 1969 that the US government could not punish inflammatory speech unless that speech is directed to inciting, and is likely to incite, imminent lawless action (Cole 2003). Similarly, in *Scales v. the United States*, 367 U.S. 203 (1961), the courts

ruled in 1960 that Congress could not punish membership in the Communist Party absent proof that an individual specifically intended to further the party's unlawful ends (Cole 2003). These two rulings form a bedrock of American case law, suggesting that the First and Fifth Amendments limit the government's ability to criminalize speech on the grounds that it might lead to harmful conduct, and that for speech to be unhindered, individuals must enjoy the right to affiliate with like-minded others and to advocate for and work toward common goals. Even if Mufid AbdulQader supported Hamas after January of 1995 (which he repeatedly claims he did not) and chose to associate with like-minded others, such actions were perfectly legal unless they could be proven to directly further Hamas' imminent criminal (i.e., terrorist) activity (AbdulQader 2018; Caddedu 2015).

At trial, federal prosecutors made no attempt to prove that these music performances directly furthered imminent terrorist activity. They did not need to. Using the material support statutes, federal prosecutors circumvented First and Fifth Amendment protections by arguing that the performance of protest songs and political skits constituted a form of material support in that it was done in coordination with the terrorist organization, serving "to win over the hearts and minds" of potential donors and, by extension, increasing donations.¹⁵ At the root of the preventative paradigm lies an amalgam of tactics with which the government can circumvent First and Fifth Amendment protections based not on proof of past wrongdoing or on imminent threat but on *speculative* fears about what suspected terrorists *might* do in the future (Margulies 2011). In the case of the Holy Land Foundation, these statutes radically redefined the "materiality" of speech such that humanitarian and charitable aid, even expressive cultural performances of Palestinian folk songs and dances, could be prosecuted as acts of conspiracy to support terrorism. They met the law's definition of materiality in that they each provided a "service" for the terrorist organization.

HLF Trial(s)

In October of 2007, the HLF5 were tried, resulting in a mistrial (Eaton 2007). After more than a month of deliberations, the jury returned a problematic verdict. Senior District Judge A. Joe Fish, of the US District Court for the Northern District of Texas, opened the sealed envelope only to find that many of the jury forms were left blank.¹⁶ The jury had unanimously determined Mufid AbdulQader to be "not guilty" on all 32 charges. But the forms, for three of the other defendants, were only partially completed. Two other defendants were found "not guilty" on all but two charges, which were left blank, while the remaining jury forms were submitted without any verdicts recorded at all. After reading aloud the findings of the jury, including Mufid AbdulQader's acquittal, Judge Fish polled the jurors individually. Juror #6 indicated that she did not agree with the verdict as it was recorded.¹⁷ The remaining jurors were agreed that the not guilty verdicts recorded in the forms should stand, and two other jurors stated that all five defendants should be found not guilty on all charges. Needing a unanimous decision for all defendants on all charges, the judge sent the jurors back into the jury room. After an hour of additional deliberations, the jurors were unable to reach consensus. While eleven of the jurors felt that the defendants were not guilty on all charges, juror #6 refused. Judge Fish then declared a mistrial,

rendering the initial unanimous decision to acquit Mufid AbdulQader null and void. Prosecutors immediately vowed to retry the case, and approximately one year later, a second trial commenced.

As a specialist in Palestinian protest song, I was contracted by the US District Court for the Northern District of Texas to testify on behalf of the defense during the second trial. In that role, I was asked to analyze the prosecution's evidence and provide cultural translation and explanation of the dominant themes and issues therein. The assembled materials contained video recordings of 12 extended music performances and approximately 40 hours of other HLF-related material (transcripts, indictments, court documents, and other evidentiary material). These performances were largely drawn from annual meetings of various Muslim American organizations (MAYA, ISNA) wherein the HLF would often solicit donations. My analysis included transcribing, coding, and analyzing the various performances, correcting government translations, and indexing dominant themes and ideas. Given that these performances were entered into evidence as acts of conspiracy to commit terrorism, my 2-day testimony was the core of Mufid AbdulQader's defense.

My testimony directly contradicted the prosecution's narrative by demonstrating a clear shift in aesthetics and performance practice away from supporting Hamas prior to its formal designation as a terrorist organization in January 1995. While prosecutors argued that these folk songs were evidence of anti-Semitism, terrorist intent, and conspiracy to support Hamas, I was able to provide cultural translation of dominant themes and gestures presented in the videos. Against the objection of the prosecution, I was unexpectedly allowed to enter into the court record dominant historical markers of Palestinian history: the 1936 revolt against British colonial occupation; the dispossession of nearly 1 million Palestinians in the founding of the state of Israel in 1948; the beginning of the occupation of the West Bank and Gaza Strip in 1967; the rise of Hamas in the Intifada in 1987; and the escalation of Palestinian suicide bombings during the second Al-Aqsa Intifada in 2002. Using analysis of each of the theatrical skits, I was able to humanize Palestinian resistance and to unpack culturally difficult concepts (like suicide bombing, settler expansion, and anti-Zionism). And it seemed to me that the jury was sincerely interested in what I had to say. As a specialist in Palestinian expressive culture, my role was to humanize Palestinian experiences of exile and dispossession. Through contextualization of expressive cultural practices, I provided an oppositional narrative that explained the history of Palestinian resistance to Israeli colonization. Following my testimony, the defense attorneys were elated that, via music and dance, they were able to "surreptitiously present the Palestinian story to the jury" (Moreno 2012).

Unfortunately, our optimism was premature. Although the first trial ended with unanimous acquittals for Mufid AbdulQader, the second trial resulted in sweeping convictions for all defendants on all counts. There are many theories as to why the second trial resulted in the exact opposite verdict to the first. The prosecution pursued a very different strategy of juror selection.¹⁸ They streamlined their argument to be less complicated. They successfully entered into evidence materials that were disallowed during the first trial. And they were able to use the testimony of two "anonymous" witnesses: two Israeli Mossad agents whose identity could not be revealed for reasons of "national security" (Said 2011). But more than anything, the prosecution was at a

significant advantage during the second trial in that they had already seen the defense strategy (Caddedu 2012b). Prosecutors knew how the defense would respond to every witness and every piece of evidence, and they successfully used this knowledge to their advantage. Following their convictions, the HLF5, as they came to be known, received sentences ranging from 15 to 65 years in federal prison. Given that each of the defendants was in his late fifties or sixties at the time, the longer of these penalties amounted to life sentences. For years, the appeals process continued. On December 7, 2011, the Fifth Circuit Federal Court of Appeals affirmed the convictions and the sentences. The court found that while there were significant problems with the second trial, including the admission of problematic evidence and the testimony of two anonymous witnesses, none of these problems would have affected the outcome of the trial. On October 29, 2012, the US Supreme Court denied the defendants' petition for *writ of certiorari*, letting stand the previous ruling and formally ending the appeals process. As a result, only presidential pardons will now prevent the HLF5 from serving their full sentences in federal prison.

Post-Trial Research

In the weeks following the trial, I struggled to understand how I could possibly be of service to the HLF5. As an expert witness for the defense during the second trial, I felt invested, obligated to respond. After the trial, I worked closely with the families of the defendants and the local community in their efforts to confront the intense media scrutiny brought about by the trial. Nationalist anxieties and widespread Islamophobia had thrust these families and the larger Arab and Muslim communities of Dallas/Fort Worth into a contentious public debate on the very nature of what it means to be "American" in the post-9/11 era. And strangely enough, my expertise as a folklorist was useful in their plight to raise awareness. Folklorists have long advocated on behalf of vulnerable populations before the courts, legislative committees, and in the media, and in this instance, I found myself thrust into an unexpected role.¹⁹

Building from these initial projects, I spent time getting to know the families. I listened to their stories and struggles. Oral history is the conceit of folklore, and I used my training to full advantage. As Elliott Oring notes, "it is only by coming to terms with memories, traditions, and values that folklorists can begin to penetrate some of the mysteries of their informants' knowledge and art" (2006:207). Through oral history, I learned of the families' experiences living as Palestinians in Texas after 9/11: stories of harassment, violence, threats, racism, and Islamophobia. I learned of the HLF's many humanitarian efforts to alleviate child poverty and support orphanages in Israel/Palestine. I learned of the families' efforts to assert their American-ness by volunteering in the local community to promote dialogue and multi-cultural understanding. Through very difficult communication channels with the US Bureau of Prisons, I have remained in regular contact with three of the defendants via email, learning about their experiences in "Guantánamo North," the Communications Management Units (CMU) designated for terrorist prisoners, and their ongoing lives in federal prison.²⁰

In bearing witness to these experiences, I felt obligated to respond. If my skills were to be of use, however, it would require abandoning traditional academic research models in favor of direct political intervention. Like many applied projects, my work

began not with a question but with a problem. Working explicitly for the release of the HLF5, I had to reorient and drastically reconceptualize my personal and professional relationships with the defendants and their families. I relinquished my "outside researcher" status and instead offered my time and expertise in the pursuit of shared goals. For while I may have preferred the production of a conventional ethnography as an appropriate means of advocacy (as well as a means of benefitting my own career), such an endeavor carried little weight among local stakeholders who were far more interested in public programming: speaking events, fundraising, and political action campaigns. In my role as a folklorist, I began working with the defense team and allied political organizations such as the Muslim Legal Fund of America (MLFA), the Council on American and Islamic Relations (CAIR), and the National Coalition to Protect Civil Freedoms (NCPCF). Pooling resources, I then began researching the legalities of the trial, documenting other incidents of terrorism prosecution after 9/11. I interviewed local Muslim community leaders and collected oral histories of the defendants and their families. Five of the defendants' daughters spoke publicly about the trial and their experiences on local college campuses. These talks were disseminated via YouTube and other online platforms. Noor Elashi, daughter of Ghassan Elashi, held press conferences, went on speaking tours, appeared on *Democracy Now!*, and published several articles on progressive news sites. The defendants' families also created a website to raise awareness, to coordinate grassroots action, and to mobilize their narrative (freedomtogive.com). Throughout this work, my role was simply to assist in data collection, to brainstorm ideas, and to facilitate communication.

I sought ways of applying my training in folklore toward the solution of practical problems (see Hufford 1985). Through my data collection, I was able to document the public framing of the trial in its various dimensions. For many, this trial was a great success, the crowning achievement in the "War on Terror." George W. Bush and John Ashcroft each claimed the trial was the centerpiece of the economic front in the "War on Terror" (Bush 2001). For others, the trial signaled a xenophobic assault on civil liberties in the name of neocolonial interests (Cole 2003). In my work, I attempted to acknowledge and understand the discursive positioning that informed each of these perspectives and, from that knowledge, devise research strategies for engaging with multiple and diverse constituencies. This work included analyzing the various competing narratives of the trial and crafting rhetorical strategies for disseminating knowledge to the public. To increase awareness and to solicit public support, it was essential to circulate the necessary information, skills, and action opportunities among stakeholders and potential allies. My goals were to provide the necessary information to transform public policy and initiate direct action in order to positively improve the circumstances of the HLF5 and their families (cf. Jones 1994). As a cultural worker with a deep understanding of Palestinian lifeways and experiences, I believed that I could effectively contribute to improving the lives of my interlocutors and the local community through public engagement and direct political action (Shuldiner et al. 1998).

Over time, however, I grew increasingly frustrated with this work. I knew that I wanted to tell the story of the trial, but conventional forms of applied work seemed horribly insufficient. Public programming, speaking events, fundraisers, and political action campaigns were all effective ways to raise awareness about immediate local concerns, but I struggled to see how this approach addressed the larger social, political,

and legal contexts within which the trial took place. Addressing the immediate needs of the HLF5 and their families was an important first step. But such efforts seemed analgesic, treating the symptoms of injustice without addressing the larger systemic forms of objective violence from which the trial emerged. Raising awareness simply wasn't enough. Disheartened, I began to pivot away from conventional public and applied methodologies toward a more critical stance: not simply to tell the story of the trial, but rather to interrogate the discourses that rendered the trial (and its verdict) necessary in the first place; to propose and amplify oppositional knowledge; and to mobilize this knowledge in the pursuit of social justice.

Throughout the history of folklore, there have been many such declarations of commitment to social justice, activism, and policy change. And it would be folly to assert my own without fully acknowledging the work of others who, throughout their careers, have confronted similar challenges. Jane Beck's 1996 Presidential Address to the American Folklore Society clearly demonstrates that oppositional politics and social justice imperatives are key motivating factors for the discipline (Beck 1997). Folklorists, and in particular those who identify as public folklorists, "set things right" in their pursuit of "equity and justice" (Kodish quoted in Oring 2006:206). Moreover, it would be equally naïve to ignore the long (and at times confrontational) discussion on the dynamics of academic, public, applied, and activist work in folklore (see Dorson 1971; Hymes 1974; Oring 2006; Kodish 2011). Within these discussions, I humbly wish to suggest a potential area of inquiry and action, aimed not at merely confronting the effects of injustice, but rather at the discursive fields that render such injustice possible, commonsensical, and, in this case, patriotic. Here, I make no claims to have (re)invented the wheel, only to have perhaps propelled it further along its path.

Toward an Activist-Oriented Critical Folkloristics

Drawing inspiration from folklorists, critical theorists, feminists, and other engaged scholars, I decided to approach the trial from a different perspective (see Hale 2008; Butler 2010; Madison 2010; Delgado and Stefancic 2017). Rather than applying folklore toward the amelioration of my interlocutors' immediate practical needs, I began looking at the trial as the logical, even commonsensical, effect of discourse. To that end, I began interrogating the discursive dimensions of the trial—the ways in which conventional knowledge and normative attitudes were deployed across various contexts in the service of dominant political ideology (Iisahunter, Emerald, and Martin 2013). Applying critical discourse analysis (CDA) techniques, I directed my attention toward processes of knowledge creation and the pathways through which discourse structures normative thought and action. Using my previous ethnographic work with the HLF5 and their families, I then sought out diverse ways of knowing and experiencing America post 9/11, to develop from this information oppositional approaches to thinking about established relations of domination and subordination (see Hale 2006; Brown and Strega 2005; Lipsitz 2008).

Approaching the HLF trial through critical discourse analysis involved creating a corpus of oppositional knowledge with which to destabilize the underlying premises of the trial and its verdict. Foremost among these was the prevailing discourse of "Islamic Terrorism" through which the logic of this trial was deemed appropriate, justifiable,

and commonsensical. Following the attacks on 9/11, the discourse of "Islamic Terrorism" informed a panoply of reactionary mechanisms through which Arab and Muslim bodies were rendered abject, violent, and a threat to national security (Salaita 2006; Shaheen 2008; Lean 2012). Subsequent waves of Islamophobia and xenophobia were each informed and justified by the discursive positioning of Arabs and Muslims as violent zealots determined to destroy "the West" (Kumar 2012; Kundnani 2014). The HLF trial, its verdicts, and the legal system within which both occurred, even the "War on Terror," were each residual effects, symptoms, of the larger discourse of "Islamic Terrorism." They were each the tangible outcomes of a discursive logic premised in the abjection of Arab and Muslim bodies, lifeways, and experiences, in contrast to the enlightenment, modernity, and civility of "the West."

Within the discourse of "Islamic Terrorism," the HLF5 were marked as "terrorists" long before there were laws available to prove such claims. Advancing the cause of Palestinian self-determination through charitable aid was a criminal act within a prevailing discourse that fails to recognize Palestinians as worthy of humanitarian intervention. To recognize Palestinians as deserving of support, as persons worthy of personhood, as "grievable lives" becomes an oppositional (even criminal) act when such a move endangers conventional knowledge (Butler 2010). And within the post 9/11 sphere, conventional knowledge assumes (and demands) unconditional support for Israeli colonization of Palestine based in a "special relationship" of mutual vulnerability, shared interests, and "Western" culture. Throughout the post 9/11 era, Israel and the United States have asserted a shared experience of vulnerability to "radical Islamic terrorism." That perceived vulnerability has proven to be an effective tool in justifying and legitimizing American and Israeli imperialism in the Arab and Islamic worlds. To recognize Palestinian vulnerability to Israeli colonization, to humanize Palestinians as worthy of protection, would endanger the conventional understanding of Israelis as "righteous victims" (Morris 2001). Such a move would further compel a reassessment of American imperialism in the wake of 9/11, destabilizing the logic that led to the invasion and occupation of Iraq and Afghanistan. Providing charitable aid to Palestinians living under foreign occupation not only undermined the doctrine of collective punishment at the root of Israeli-Palestinian diplomacy, but, more importantly, it undermined the very premise of "Islamic terrorism" itself. For the discourse to endure, Palestinians could only be seen as violent, radical zealots locked in an eternal battle to destroy the modern, civilized "Western" world. It is not merely that Palestinian precarity in the context of Israeli colonization is not seen or heard, but that within the discourse of "Islamic Terrorism," Palestinians are profoundly unseeable, unhearable objects, denied the "right to have rights" (Cacho 2012). For these reasons, US laws were rewritten to align legal practice with conventional political discourse. The laws were changed to "fit" the crime. The HLF5's criminality was strategically necessary to reinforce the pre-established tenets of "Islamic Terrorism," where even acts of charity can be framed as conspiracy, as subterfuge, as terrorism. As such, the convictions of the HLF5 were both product and pre-condition of a discourse strategically deployed to advance American imperial interests and to quiet critique of Israeli colonization of Palestine.

As a folklorist, my efforts were therefore to collect and mobilize oppositional knowledge that worked against the discourse of "Islamic Terrorism." My approach, following the work of other scholars, was to humanize the HLF5 and their families

and hence give voice to their experiences of dispossession and exile (see Abraham and Shryock 2000; Jamal and Naber 2008; Lornell and Rasmussen 2016). In this process, it was essential to reimagine Arab and Muslim communities as distinctly “American.” Post-9/11, Arab and Muslim Americans found themselves embroiled in a contentious national debate on the nature of citizenship. Wanton acts of anti-Arab racism and xenophobia demanded a reconceptualization of American citizenship that was inclusive of racial and religious minorities (Jamal and Naber 2008). My approach was not simply to object to the dominant logic of “Islamic Terrorism,” but rather to understand how things might be different and to propose an explanation for why existing knowledge frameworks do not recognize alternative possibilities. Most importantly, my goal was to identify exactly whose interests conventional knowledge serves. Who stands to benefit from the dehumanization of Arabs and Muslims in post-9/11 America? In whose interests does the discourse of Islamic Terrorism work? Who do the material support statutes really protect, and for what purpose?

The story of the Holy Land Foundation provides an excellent opportunity for thinking about the potential role of critical folkloristics in understanding and ultimately transcending the discourses of power and control that rendered this trial (and its verdict) possible. I argue that an activist-oriented critical folkloristics offers an effective tool with which to interrogate the xenophobic discourses at the heart of this trial, while attending to the affective and agential capacities of expressive cultural practice to shape subjectivity, to humanize experience, and ultimately to transcend the objective violence of Islamophobia and anti-Arab racism. Second, the HLF trial offers fertile ground for theorizing the many crises and contradictions that arise when we as researchers align ourselves (or become aligned) with the political movements of those with whom we work. What are the professional consequences for pursuing activist research? And how might such an approach reshape the discipline of folklore? Finally, this case study offers an opportunity to invest our deep ethnographic knowledge base in efforts to preserve and protect freedoms of speech and association. As researchers of expressive culture, attuned to the performativity of self and the dynamics of social life, folklorists offer an important, if not essential, perspective on conceptualizing the “materiality” of performance and the humanization of oppositional lifeways. We have the conceptual tools to speak about the dynamics of performance and political engagement as well as the ethnographic acumen to reveal the on-the-ground impact of legal policy. Combined, our diverse skill set can make a difference in confronting the objective violence of state-sponsored xenophobia while working to preserve coveted protections of free speech and free association.

Critical Folkloristics

I imagine critical folkloristics as a problem-centered and participatory mode of inquiry that foregrounds the affective, communicative, and performative capacities of human behavior to mobilize oppositional and emancipatory knowledge in the pursuit of social justice. While this definition builds upon established public and applied methodologies, it attempts to carve out an intellectual space for thinking about critical research outside the canon of applied and public practice work. In this approach, structural and systemic forms of objective violence are displaced through the mobilization of

oppositional knowledge, lifeways, and experiences. Rather than attending to the experience of precarity and marginalization, critical folkloristics uses ethnographic methods to address the larger systemic forms of objective violence from which precarity and marginalization emerge. Informed by critical theory, critical folkloristics is governed by a larger ideological approach and concern for the processes through which conventional knowledge, values, and beliefs are constructed and ultimately transformed. Critical folkloristics seeks, therefore, to uncover the possibilities for change and transformation inherent in any social institution: first, by critically interrogating its discursive positioning; and second, by mobilizing oppositional narratives and action-research methodologies. From this, the existing social order is both theoretically critiqued and methodologically acted upon. Critical folkloristics thus brings together critical discourse analysis, participatory action, and deep ethnographic engagement with marginalized and precarious communities.

This brand of activist scholarship offers more than mere critique of accepted hierarchies of truth and power. It also seeks more than mere policy change. Rather, critical folkloristics, as I imagine it here, is a project aimed at producing oppositional knowledge structures and integrating that knowledge with concrete political action while continually advancing opportunities for deep ethnographic engagement. This form of activist scholarship seeks policy change through observation, discovery, analysis, and presentation of oppositional narratives, lifeways, and experiences. It argues for the recognition of peripheral, marginalized, and illegible groups unseen in conventional discourse. As a result, critical folkloristics remains mired in the politics of recognition and representation. It is an act of direct intervention into the processes of worldview construction, transforming normative knowledge through storytelling and other expressive cultural practice (Delgado 1989). It mobilizes research by seeking ways of resisting and replacing normative knowledge production networks through ethnographic methods.

For a discipline that prides itself on understanding, preserving, and articulating the lifeways of marginalized and other precarious populations, this call for a critical folkloristics might ring hollow without acknowledging the long history of similar activist-oriented approaches. The Politics, Folklore, and Social Justice Section of the American Folklore Society, for example, has been quite active since its founding in 1992, providing "resource organization for folklorists working at the intersections of cultural studies [, folklore,] and social justice."²¹ And without question, my understanding of critical folkloristics builds upon and draws from the activism of section members such as William Westerman (1995, 2008), David Shuldiner et al. (1998), Debora Kodish (2011), Frank Proschan (1992), and many others. Likewise, I am moved by Robert Cantwell's call for all folklorists to "move candidly beyond documentation, memorialization, and preservation towards active creation, forging a politics of cultural transformation" (2000:66). An essential plank of critical folkloristics involves what Cantwell describes as "capturing essences, inventing unrealized histories, redrawing boundaries, absorbing influences, [and] playing with new possibilities" (66). My humble contribution to this literature aspires only to (re)direct activist-oriented folklore methodologies toward the objective forms of systemic violence that render possible (even inevitable) the many crises of the contemporary moment. This is an activism-oriented approach that critically analyzes the underlying

discursive scaffolding of violence, questioning the commonsensical, the normative, and the objective ways in which violence articulates throughout society.

Activism, Intervention, and the Obligation of Response

Critics of activist scholarship often contend that explicit politicization renders research somehow biased, tainted, or otherwise less rigorous than “traditional” forms (Oring 2004). Richard Dorson famously wrote that “it is no business of the folklorist to engage in social reform, that he is unequipped to reshape institutions, and that he will become the poorer scholar and folklorist if he turns activist” (1971:40). Dorson’s polemic speaks to an uneasiness with activist research as ineffective, biased, and academically compromised. Elliott Oring similarly argues for a separation of “academic” and “public” folklore based on the idea that social justice pursuits “are rooted not in critical assessment but in ethical response” (2006:209). The ethical approach, which Oring defines as one that “puts the pursuits of social justice before knowledge,” imperils the objective distance necessary for folklorists to effectively “criticize, respond to criticism, and produce knowledge” (213). Oring argues that folklorists must remain autonomous from the needs of their interlocutors; they must place “inquiry before empathy, before equity, and before healing” in order to preserve the intellectual mission of the discipline (209).

To be sure, the concept of intervention and advocacy in ethnographic research can be fraught, presenting several challenges. Throughout my career working with Palestinian protest singers and political prisoners, it has been suggested that I refrain from explicitly “politicizing my research,” as if doing so would somehow compromise its theoretical heft, methodological ethics, and/or put my career at risk. And while I heeded this advice for many years, to these critics I would point out that intervention (political or otherwise) is not, nor has it ever been, a choice. As David Whisnant eloquently wrote, “the question is not whether we shall intervene, but how and with what effects, amid what particular set of historical, cultural, and political circumstances, and in the service of what values and social vision” (Whisnant 1988 quoted in Goldstein 2015:138). Intervention is the product of, and central to, the ethnographic encounter. To deny the political nature of ethnographic research, or any research for that matter, only perpetuates the illusion of objectivity, of autonomy, of distance. In explicitly pursuing activist research we, at the very least, position our politics front and center, for all to assess and, hopefully, to collaborate.

The argument over ethics and intervention in folklore has been rehearsed many times over. My contribution to that discussion revolves around rethinking the ethnographic encounter as a crucial site of engagement comprising myriad implicit and explicit obligations, each with deeply political consequences. As ethnographers we bear full responsibility for how and where we direct our attention, the questions we ask, the events we attend, and to what ends we deploy our expertise and analytical skills. Our intellectual pursuits are inherently ethical pursuits, and vice versa. We bear witness to the lives of others. In the process we strive for deep listening and thick description, to know the other so as to know the self. It is our single greatest data source, and as such, it is our single greatest debt. For as we bear witness, we must never forget that this act of witnessing is itself a *political* act.

Emmanuel Levinas refers to these obligations as an “ethics of responsibility” (Levinas, Kearney, and Cohen 1986; see also Morgan 2011:238). First among these obligations is that of mutual care. As we bear witness to the other, we are held hostage in the obligation to respond. To respond fully is to recognize, to seek justice for, to assume responsibility for, and ultimately to embrace the mutual vulnerability of the other. By fully yielding to the obligations of the ethnographic encounter, we commit ourselves to a more ethical and empathetic stance. By fully investing in the struggles of our collaborators, and by committing our expertise in the service of social justice, we dramatically enhance the depth of our ethnographic relationships and, hence, the quality of our data. By letting go of our own research agendas and the discourses from which they emerge, we open ourselves up to alternative and oppositional knowledge networks. By actively intervening in pressing social problems, we position ourselves to better understand experiences of precarity, generating new theoretical insights and overcoming the intellectual tendency to reproduce discourses detached from practical concerns. All of these, it would seem, contribute directly to the creation of better, more “rigorous” research. But it’s not only about creating better research. Rather, critical folkloristics is about deep engagement, an openness to diverse lifeways, and the mobilization of oppositional knowledge in the pursuit of social justice.

Critical folkloristics, as I imagine it here, strives to ethically respond to the obligations we incur in the act of bearing witness. Inasmuch as we create knowledge, we implicitly develop interpretive frameworks for understanding self and other. This work has direct and meaningful consequences for folklorists and the communities with whom we work. We must be willing to critically interrogate our role as witnesses to the subjective and objective violence of the field. And this role must be reimaged, not simply with reference to or recognition of the positionality of the researcher and the researched, but specifically with reference to the obligations that emerge in the very act of encounter. With this article, I propose a set of theoretical precepts and methodological practices that might fully respond to the (intellectual and ethical) obligations of the ethnographic encounter. This involves more than simply acknowledging the problematics of representation. It goes beyond seeking reciprocity. Rather, it involves the formulation of new frameworks for thinking about our discipline that yield to the responsibilities we assume for those with whom we bear witness. I believe that an activist-oriented critical folkloristics best responds to these obligations.

Conclusion

In my ongoing work with the HLF5, I’ve had the tremendous opportunity to bear witness to the lifeways and experiences of Palestinian Americans working to alleviate the traumas of exile while unjustly targeted, criminalized, and imprisoned under the pretense of the “War on Terror.” This work has revealed important insights into the dynamics of music and violence and has further created spaces for critically thinking about the affective and agential capacities of music to shape and transform political bodies. But beyond capturing profound ethnographic experiences of trauma and loss, my work with the HLF5 has pushed me to consider a critical folkloristics, one that is committed to empowering oppositional narratives and refusing to accept (post)

colonial violence and the dehumanization of difference. This work is important. Not for its academic rigor alone, but for its radical refusal of the given world in favor of what Cacho has called “unthinkable politics” and possibilities (2012:31).

In this struggle for “unthinkable politics,” we must first conceive of a discipline that both recognizes and refuses to accept the normative violence that has shaped the present and, in turn, mobilizes ethnographic inquiry as a transgressive act of imagining possible futures. In telling the story of the HLF5, I not only refuse to accept the dehumanization of Palestinian (and other indigenous) bodies, but also demand a radical reimagining of the frameworks through which such bodies are rendered unintelligible in the first place.

I am confident that an activist-oriented critical folkloristics offers an important tool for “winning over hearts and minds” on behalf of the HLF5 and all those targeted by fear, xenophobia, and intolerance. It is my hope that in telling this story, others will join me in this endeavor.

Notes

1. Zakāt-eligible organizations are those that have met strict guidelines for the collection and distribution of charitable aid in keeping with the tenets of Islamic practice.

2. Background information on Holy Land Foundation activities was ascertained from my independent research, document analysis, legal discovery, courtroom testimony, and ongoing interviews with HLF employees and their attorneys. This research will be presented in the forthcoming book, *The Holy Land Foundation: Criminalizing Aid in the War on Terror*.

3. Hamas official Mousa Abu Marzouk was related by marriage to HLF co-founder Ghasan Elashi. Marzouk was also an early donor to the HLF as well as to Elashi’s technology firm, InfoCom. Superseding Indictment, United States v. Holy Land Foundation for Relief and Development, 3:04-CR-240-G (N.D. tex. July 26, 2004).

4. The day before the announcement, President George W. Bush met privately with Israeli Prime Minister Ariel Sharon to discuss “security issues.” Executive Order 13224—Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism. Federal Register. Vol. 66, no. 186. September 25, 2001.

5. Antiterrorism and effective death penalty act of 1996, Pub. L. No. 104-132, 303(a), 110 Stat. 1250 (codified as amended at 18 U.S.C. 2339B.)

6. Superseding Indictment, United States v. Holy Land Foundation for Relief and Development, 3:04-CR-240-G (N.D. tex. July 26, 2004).

7. Antiterrorism and effective death penalty act of 1996, Pub. L. No. 104-132, 303(a), 110 Stat. 1250 (codified as amended at 18 U.S.C. 2339B.)

8. Here, it is worth mentioning that none of the on-the-ground charities, or zakāt committees, in question were listed as DFTOs and that several US government agencies, including USAID (United States Agency for International Development) and the International Red Cross also supported these same charities during the years in question. Transcript of Trial, United States v. Holy Land Foundation for Relief and Development, 3:04-240-G, vol. 25 (September 5, 2007).

9. Superseding Indictment, United States v. Holy Land Foundation for Relief and Development, 3:04-CR-240-G (N.D. tex. July 26, 2004).

10. Superseding Indictment, United States v. Holy Land Foundation for Relief and Development, 3:04-CR-240-G (N.D. tex. July 26, 2004).

11. Superseding Indictment, United States v. Holy Land Foundation for Relief and Development, 3:04-CR-240-G (N.D. tex. July 26, 2004).

12. Throughout this article, I refer to the defendants by their preferred names based on our ongoing correspondence.

13. Superseding Indictment, United States v. Holy Land Foundation for Relief and Development, 3:04-CR-240-G (N.D. Tex. July 26, 2004).

14. None of Mufid AbdulQader's approximately 15 bandmates were included in the indictment. Given this, Mufid and his attorneys believe that he was indicted based on his relation to Hamas Political Bureau Chief, Khalid Meshal. AbdulQader and Meshal are half-brothers, sharing the same father (Caddedu 2012a).

15. Superseding Indictment, United States v. Holy Land Foundation for Relief and Development, 3:04-CR-240-G (N.D. Tex. July 26, 2004).

16. For each defendant, the jury must fill out verdict forms, indicating "guilty" or "not guilty" for each charge included in the indictment.

17. Transcript of Trial, United States v. Holy Land Foundation for Relief and Development, 3:04-240-G, vol. 33 (October 22, 2007).

18. In the jury in the second trial, all jurors were without a college education, experience traveling outside the United States, or exposure to different cultural and religious groups (Caddedu 2012a).

19. Here, it is worth mentioning the long-standing work of folklorists in support of indigenous rights and sovereignty. I connect my experiences with a long list of folklore allies who have offered assistance involving public testimony to courts or legislative committees. Much of this work has been in areas of land rights, environmental preservation, and natural resource management. See in particular Cederström et al. (2016), Frandy and Cederström (2017), Welsch (2011), and Vrooman (2012).

20. See also Malek (2011); Shane (2011); Communications Management Units: New Documents Detail Due Process Violations, Center for Constitutional Rights, July 9, 2014, <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/cmu-2014-documents-detail-due-process>.

21. American Folklore Society, Politics, Folklore, and Social Justice Section, <https://www.afsnet.org/page/Politics/Politics-Folklore-and-Social-Justice-Section.htm>.

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