

An Anthropologist in Court and out of Place: A Rejoinder to Wiersinga

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Abstract

In this rejoinder to Wiersinga's article which deals with my role as an Expert Witness in a Dutch terrorism trial, I will respond based upon my notes at the time and my subsequent reflections about it. As I will show, the anthropologist and the judge can, and should, meet but this also turns the neutrality of the researcher into a matter debate. Furthermore, in this meeting anthropological knowledge becomes entangled with other logics and methods which raises many ethical questions as Wiersinga has rightfully pointed out. These questions and issues are not specific for the case I was involved in but has a bearing on the issue of cultural expertise in a broader sense for the time. I end my contribution with two pleas: one for more reflection among anthropologists on ethical issues in relation to cultural expertise and another to academic institutions to support their scholars in court.

It is a pleasant surprise to be given the opportunity to respond to Wiersinga's article and take part in a discussion on the position of expert witnesses and the use of cultural expertise in court appearances. In her article on the meeting between judges and anthropologists in court, Wiersinga makes the important point that, albeit with different methods and different goals, both have a shared interest in the narratives of individuals. Yet, as she sets out to explain, there is also another way of looking at narratives and contextual matters, an "opposite way of looking by judges and anthropologists". To substantiate her argument, she describes a court case in the Netherlands that has come to be known as the Context case: "It was about jihadis, travelling to Syria to fight with terrorist groups, or staying at home, encouraging others

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to go.” Wiersinga’s particular interest was the role of an anthropologist expert’s witness testimony. That anthropologist happens to be me.

As Feldman (1980, p. 246) notes in his article about an Alaskan trial and his work as an expert witness in that trial, “A fundamental incongruence appears between anthropological (and science) research methods and evidentiary rules of our court system.” According to Feldman, ethnographers rely on the verbal accounts given by participants which may be set aside in court as ‘hearsay’, but also, and more fundamentally I think, what Rosen points to in his seminal article from 1977 is the following: expert testimonies in courts are performed in adversarial contexts in which a reconstruction of truths is made based upon evidence which, through judicial reasoning, legal precedents and the court’s assessment of what it regards as facts, has to lead to a clear verdict of guilty or not guilty, win or lose, proven or unproven (Rosen, 1977). This is obviously quite different from how anthropologists and other social scientists ideally work: focusing on contingencies, ambiguities, a person in her or his socio-political context, a suspension of value judgements, and so on. Another issue Rosen (1977, p. 557; Rosen, 2020) points out is the mutual effect that courts and anthropologists have on each other and the anthropologist’s own conception of his or her role in the proceedings:

“Are anthropologists really the providers of information from which judgments are actually derived, or are they merely personages whose presence in court is simply useful for rationalizing judgments founded on other, perhaps judicially less palatable, bases? How, if at all, should anthropology as a profession approach the ethical implications of expert testimony?”

I think the court case that I was involved in, and Wiersinga’s reflections on it, are a good starting point to explore these questions as they provide some insight into the ‘laws of anthropological expertise’ (Zenker, 2016). In this contribution, I will respond to Wiersinga’s remarks about my role in the case, in particular, and then I will try to relate this to some of the ideas and critiques I have about the idea of cultural expertise itself and connect this to the theme of this special issue. I will draw from some of the reflections I wrote about the research that was done with my colleagues Carmen Becker and Ineke Roex, in particular about my role in court (de Koning, 2020a) and the use of academic knowledge in this particular court case (de Koning, 2018). First,

however, I will use this opportunity to give some explanation about the research project I conducted with Carmen Becker and Ineke Roex which will draw from our Dutch research report (de Koning *et al.*, 2014) and the revised and updated version that was published in our book (de Koning *et al.*, 2020).

Project Islamic Mission: Research on Jihadism and Militant Activism

Now, one could argue, of course, that every anthropologist is an expert witness. Part of the anthropological method is to be where our interlocutors are, to talk with them in informal ways and make observations within a particular context, and base our analyses on this. As such, an anthropologist is, by definition, a witness and an expert. This was no different in our Project Islamic Mission.

We started our research in 2011 after Ineke Roex and I noticed that we had ‘lost’ some of the interlocutors we had interviewed during our previous work on Dutch Salafism (Roex, 2014, 2013; de Koning, 2013) and that they had resurfaced in the networks of Sharia4Belgium in Belgium and Behind Bars in the Netherlands. Both networks engaged in what we call ‘spectacle activism’, albeit in different ways. We use this term to describe a type of activism that is meant to create situations to which third parties are almost forced to respond. The aim is to create controversy through spectacle and to relay their vision through, and because of, the spectacle. On wider examination, we found similar spectacles occurring in Germany too and, with Carmen Becker and a student assistant, we started a small project looking at these three countries. The project was funded by Radboud University, the National Coordinator for Counter-Terrorism and Security (Nationale Coördinator voor Terrorisme en Veiligheid - NCTV) and The Dutch Research Council (NWO) via the Forces that Bind and/or Divide Project of the University of Amsterdam.

The point of departure for our project was the daily reality of the lives of members of networks of European Muslim militant activists in Belgium, the Netherlands and Germany during a crucial, but underexamined, period of time in their existence, namely, the years before their departure to Syria. We focussed on the activists who remained in (or returned to) Belgium, Germany and the Netherlands. Our aim was not to analyse why people migrated to Syria, or how and why a potential radicalization process took place, or who might be responsible for this. What we wanted to know

was how the activism of the militant networks from 2009 to 2014 interacted with the practices of, and the attention given by, the state and media. Our research perspective focused on a particular form of activism and resistance: counter-conduct (Davidson, 2011; Death, 2010; Odysseos *et al*, 2016). This redirected our attention toward the less visible practices of resistance and to those that are very visible as deviant acts to the public and the state but which do not appear to follow an obvious political agenda with clear demands and objectives. Instead of looking at claims-making, collective identities, and trajectories of radicalization, we focused on the practices, mentalities and subjectivities of resistance, and on the interaction between power/conformity and resistance/dissent. In particular, we interrogated specific dissenting practices often categorised by the state and media as repugnant, dangerous or unacceptable that aim to resist the governance of Muslims in Belgium, the Netherlands and Germany.

In so doing, we were able to analyse how Muslim militant activists in Belgium, the Netherlands and Germany (often having become the principal targets of counter-radicalization policies) understand and constitute themselves as Muslims and as activists. This perspective allowed us to examine people's agency and active participation without imposing a particular set of positions on them (such as moderate or radical, Salafi or otherwise) and gave us the opportunity to take into account the ambiguous, ambivalent and, at times, contradictory positionalities that people adopt. Our focus on counter-conduct also meant that we moved away from heroic, emancipatory interpretations (or claims) of resistance and revealed the unstable, contradictory, and sometimes downright intolerant and aggressive practices and subjectivities. Furthermore, our focus has not just been on the protests of militant activists against the regulation of Muslims but also on activism which centred on finding alternative ways of engagement and the care of the self that comes with it: how people fashion themselves as 'steadfast' Muslims and activists. The internal disputes and social control, the differences of opinion and practices toward unbelievers, how to dress oneself, how to convey a message, are all parts of this 'care of the self' that is created through interaction with the state and media.

After many of our interlocutors left for Syria to join the violent struggles in 2012 and 2013, we decided to maintain our research focus on activism. But (or perhaps therefore) we became caught up in the politicization and securitization of our interlocutors and our work. In our book, we focused on academic boundary maintenance, complicity, and on the ethical questions which emerged during, and in the aftermath of, the project, when many of our interlocutors were either dead, missing or still active in Syria,

and others had been arrested and were facing charges of being members of a criminal organization with terrorist intent in the Netherlands. The Dutch Syria volunteers were not simply a marginal group anymore but were considered to be a direct threat to national security.

They had become, to use Harding's (1991) famous phrase: the 'repugnant cultural other'. In her article, Harding argued that fundamentalist Christians had become the anthropologist's Other. According to her, these cultural others should be studied with the same care and consideration as other minority positions based on class, race, gender and sexual orientation. During her research on fundamentalist American Christians, Harding noted something which was similar to what happened to us during our project. Not only did her colleagues question her topic of choice, but she also felt scrutinized and interrogated by them for perhaps being 'one of them'. Interestingly, the three of us, as white non-Muslim academics were not questioned about being 'one of them' but definitely about being 'too close to them'.

Entering the trial

In this rejoinder, I will deal mostly with the first so-called Context trial, as Wiersinga's points are related to that trial (although, by raising some broader issues, they also pertain to the appeal). Two of my colleagues, at my request, were amongst the audience during the public sessions to provide me with critical feedback and Roex, Becker and Aarns reviewed and commented upon my Expert Witness Report before its submission to court. The trial itself can be divided into the formal and informal part. I will focus on the formal part of the trial, but a few notes on the informal part are useful too, I think, to provide a clear picture of the scene I found myself in.

The trial took place in a separate courthouse, the so-called Bunker in Amsterdam, where high-profile cases requiring stringent security measures take place. Upon entering the building everyone was searched and then went into a common room where journalists, experts and witnesses, defendants who were not incarcerated, lawyers, police officers, family and friends of the defendants and others who were interested in the case, could freely mingle: only the judges were not present there.

On the first day of the public hearings, most of the friends of the defendants were there as well; I was not entirely sure then if I should go up to them to greet them as I did not

know what kind of impression that would make. But then, as one of them stepped up to me, shook my hand and greeted me, I decided to greet the rest as well. During the breaks I kept distant from them but on a few occasions, they approached me to inquire how I was doing and what I thought about the proceedings so far.

On the morning of the first public hearing, I was asked to come to the judges' room. They wanted to discuss the proceedings with me, make clear (as they said) that I had understood everything about how things would go and if I had a preference for the order in which they would address the themes they wanted to discuss with me. I told them I preferred to start with the methodological questions, including distance and proximity and requested that I be given ample time to basically give a lecture on the anthropological methods. They agreed. The meeting took place at a large table, with coffee and biscuits and the judges sitting in their chairs leaning forwards on the table.

After that I returned to the common room and was then called into the courtroom. There everything happened in strict accordance with the formal procedure and agreements. I was sitting on my own at a separate table, with the judges directly in front of me. The prosecution team were also in front, but to the left, and the defendants and their lawyers at their own tables directly on my right and behind me.

What is he doing there?

This, admittedly, brief introduction into the court proceedings provides some clue to the sense of alienation I was experiencing. I was forced to talk to the judges about my interlocutors while they were in the same room. And, as well as questions from the judges, at the end of the hearing, the lawyers and defendants could also ask me questions. So – that is the background; let me now turn to the specific issues Wiersinga raised about my role in the court procedures.

“(1) First remarkable point: during the process, the appointed witness and expert De Koning were forced to talk about individuals, mentioning names.” It is completely correct that Wiersinga should raise this issue. Testifying in court and writing the Expert Witness Report in which I had to answer an extensive list of questions, were both difficult decisions to make. After all, I had promised my interlocutors full anonymity and that I would protect their privacy. Even though their lawyers asked me to testify, I told them that I would only do so (or consider it) if their clients allowed it. And if

they would, I would have to be able to disclose all I knew about the defendants as I regarded giving a more opaque testimony as undermining my own credibility. But more importantly, and I had discussed this extensively with my colleagues in the research project and with others I work with, I questioned whether I should do this at all in the first place? The anthropological principle of 'do no harm' guided all my decisions, but it did not determine one particular outcome. As the defendants were accused of forming a terrorist organization, and anticipating a lack of control over my own testimony, would testifying harm them? Probably. But not testifying could also harm them as that would mean that specific details which may have exonerated them from particular charges, or reduced their culpability, would be left undisclosed. And there was no way of telling what exactly would happen. Furthermore, one could argue that an academic also has a responsibility to society and that testifying about a group of interlocutors who were seen by many Muslims as tarnishing the name of Islam and whose aggressive and intolerant practices also damaged society, was an ethical obligation. And, moreover, as social scientists have no legal professional privilege, I was obliged to testify. Of course, I could have chosen to appear in court and remain silent, but I decided that that would be a last resort option. After discussing it with my colleagues and getting permission from several defendants (not all of them were my interlocutors) I decided to go ahead and start writing my Expert Witness Report, which was subsequently checked by, and discussed with, my colleagues in the project.

Although the questions in the Expert Witness Report did not relate to specific individuals (with the exception of one) I did realize, contrary to what Wiersinga implies, that I would be asked about my interlocutors as individuals during the closed and public hearings. In both hearings I provided information that I had about their public performances and details of my observations and informal talks and interviews with them. The specific occasion Wiersinga points out in her note 5 is important though as it relates to a number of questions asked by the Public Prosecutor, in particular, that I refused to answer. And Wiersinga definitely has a point when she qualifies my initial strategy as a "rearguard action". The questions concerned the identity of the person who made a video in which a pledge of allegiance to IS was inserted in a report about a demonstration in The Hague (when no such pledge was made). The person who made the video was among my interlocutors but not among the defendants. I did not have his permission to disclose his identity and I therefore refused to do so on two occasions during the trial. After the first, however, I was quite annoyed. First of all, with myself, as I realized I was completely unprepared for these questions and had struggled to find

a good answer when put ‘on the spot’ while I realized I should and could have seen this coming. “Rearguard action” is an apt description here, to my own annoyance. Secondly, I did not believe that the Public Prosecutor did not know who the video maker was, so

I was wondering what their aim here was. After being asked the first time I rehearsed this question in the evening after the hearing so that I would be better prepared for the next day. Which I was, although I found the question from the court intimidating as I knew that it was possible for me to be ‘taken hostage’ by the court. It was one those moments I felt ‘out of place’ but, in the end, the court decided not to pursue it.

Trustworthiness, expertise and the expert

The second important point Wiersinga raises pertains to the “trustworthiness of the expert.” She quotes:

“The defence has announced that the Public Prosecutor will reproach you for not keeping enough distance from the suspects. With hindsight, do you agree?” (The answer is: “No: not at all” (...)) De Koning had to explain that the position of the anthropologist during fieldwork is subject to constant debate between anthropologists; that everybody in the field was aware of the danger of ‘going native’ and that he himself had to justify his conduct and actions to his colleagues.”

Interestingly, as an anthropologist, my work – to some extent - involves being where my interlocutors are. This allows me not only to talk with them about how they think they act, and how they think they should act, but also to observe their actions. In short, being a witness is part of the job and the reason that I was asked to attend court to testify. But being a witness means having proximity to one’s interlocutors which provided the grounds for the Public Prosecutor to attack me for ‘being too close’. I was prepared for this line of questioning as it had been an important line of inquiry in several media reports published before the case began and all of the colleagues with whom I discussed the case had warned me about it.

So, I took a defensive line with the Public Prosecutor, basically arguing that ‘closeness’ is always important and that, in fact, I had not been close enough: my access to their private circles was limited and although I knew who travelled to Syria no one

ever disclosed their plans before their departure. With the judges I had a different conversation, and I was able to take the opportunity (clearly granted by the judges) to explain anthropological methods and ethics. In this rejoinder, I will briefly highlight a particular perspective on distance and proximity which we explained in our book (De Koning *et al*, 2014, pp. 20-39; 321-3) and which I believe is relevant to how cultural expertise works in a courtroom: complicity. In discussing the issue of ethics, trust and representation, Marcus (1997) points to the other side of rapport:

“Despite their very different values and commitments, the ethnographer and his subjects in this project are nevertheless broadly engaged in a pursuit of knowledge with resemblances in form and context that they can recognize. This constitutes the most provocative and potentially troubling sense of complicity in the fieldwork relationship.” (Marcus, 1997, p. 103).

What matters here, in court, is that ethnographers and interlocutors are embedded within a broader framework which not only acknowledges the affinities between the ethnographer and the interlocutor but also their interaction with an external ‘third’ (Marcus 1997, p. 100). One may argue, as Marcus does, that ethnographers and interlocutors share a ‘speculative wonder’ (Marcus 1997, p. 103) for particular themes in different, but also familiar, ways. As researchers, we shared a deconstructive logic about particular events, with a critical perspective on authority and the state; a logic which married together my interlocutors’ “illicit discourse” (Holmes, 1993) and my aim for academic knowledge production. Yet, I would suggest, during the proceedings in a courtroom, the external third (which, for example, could be the state) is no longer external. In court procedures, the judges, the Public Prosecutor, the lawyers, the defendants, the journalists, family and friends and other people in the audience, all share this ‘speculative wonder’ and try to work out what is ‘really’ going on.

This shared ‘speculative wonder’, however, does not negate the fact that the production and use of knowledge by the parties involved differs. The academic knowledge about the defendants, or about the Islamic branch of Salafism which played an important role, which was volunteered during the trial was re-appropriated into legal knowledge in a process where legal fact-finding and achieving a verdict of guilty, or not guilty, were the essential primary goals rather than gaining insight into the workings of militant activism and its interaction with state and media. The differences in analyses and interpretations made by Van Koningsveldt and Peters (the second and third expert witnesses) and me

were not treated as part of an academic debate but were re-appropriated and absorbed into the logic of the judicial process. A short example will make this point a bit clearer.

As Schiffauer (2014, p. 201) points out, academic knowledge is constructed in ways which are very different to those employed in the construction of bureaucratic knowledge which emphasises political and policy-oriented usability and accountability.² Categorization is, as Schiffauer shows in the case of the *Verfassungsschutz* and its focus on Islamism, an inevitable part of political and policy-oriented knowledge: first a distinction between Islam (as a religion) and Islamism (as an abuse of religion) is made, then a distinction between different levels of danger is determined and the networks put into subcategories. Finally, the size of the organization is estimated. During the Context trial, prosecutors followed a similar path. First, they clearly stated that “It is not Islam that is on trial, but the actions of nine defendants because of their interpretation of the Quran and the hadith”.³ They pointed out that the nine defendants constituted an organization whose aim was to recruit people for a ‘violent jihad struggle’ and that:

“This struggle is not waged by ‘Islam’ or by ‘Muslims’, but by a limited fundamentalist Jihadist current which is not representative of Islam or of the Muslim community here in the Netherlands and the rest of the world. It is about inciting, stimulating and calling for violence and terror. These are serious punishable facts.” (PPCS, p. 3)

The Public Prosecutor’s use of the distinction between Islam and a ‘limited fundamentalist Jihadist current’ can be seen as an attempt to avoid stigmatizing the entire Muslim community and to enable people’s actions to be connected to their beliefs and to interpret that action through a particular security perspective on those beliefs. The Public Prosecutor makes a distinction between Islam and ‘Jihadism’ to make it absolutely clear that the trial was not against Islam and Muslims in general (as the defendants’ lawyers claimed). In a more academic analysis, however, the Public Prosecutor’s perspective could be discussed in terms of how the problematic distinction between an acceptable and unacceptable Islam forms part and parcel of the legal and security logic (de Koning, 2018; Mamdani, 2005). Furthermore, while the Public Prosecutor tried to make the case that the defendants were part of a criminal

2 This could be different depending on the academic disciplines.

3 The author has the full text. I will refer to it as PPCS.

organisation with terrorist intent, my colleagues and I consistently dealt with them from the perspective of spectacle activism, resistance (counter-conduct) and converted the state's views and actions into 'one of the parties' involved in shaping and interacting with the militant actions of our interlocutors. This was regarded by several (both in and out of court) as apologetic as these people were 'terrorists'. Our rebuttal, namely, that this 'game' of labelling was part of our analysis rather than using one label as an analytical tool, was regarded as problematic and, by the Public Prosecutor, as a sign of being too close. The court however, as Wiersinga rightfully points out, saw my testimony as highly trustworthy, factual and insightful. But here, we can also see an appropriation of academic knowledge as Wiersinga's third point makes painfully clear.

Expertise and techniques of assemblage

Wiersinga's third point refers to the court's use of my explanation that the groups involved could not be seen as an organization in the classical sense (of having a clear identity, division of tasks and hierarchy) to argue that they did constitute an organization in a legal sense. It was an important issue in the verdict. Several other accusations (pertaining to incitement and recruitment) were rejected by the court but this was the main charge and the court argued that there was sufficient proof that the defendants were members of an organization. In particular, my analysis of the communication, the loosely-coupled network that they had, and my contextualisation of their ideological thoughts in relation to Salafi preachers and ideas about Jihad, were used for that purpose.

And to be fair and balanced, the defendants and their lawyers did exactly the same, for example, by using my report and labelling as tools to argue that they were not jihadis or that they were 'peaceful jihadi Salafi activists'. It is here that we see a difference between the legal 'speculative wonder' about an issue and the anthropological 'speculative wonder' related to the same issue. Wiersinga aptly articulates the confusion and surprise I felt during an interview shortly after the verdict.⁴⁴ The academic knowledge about the defendants, or the Salafism phenomenon itself, which was volunteered during the trial was re-appropriated into legal knowledge in a process where legal fact-finding and achieving a verdict of guilty, or not guilty, were the essential primary goals, and not the

4 Interview with De Koning, published in NRC 12 December 2015, <https://www.nrc.nl/nieuws/2015/12/12/ja-ik-voetbal-met-jihadisten/>

gaining of insight into the workings of militant activism and its interaction with state and media.

In the end, to reach a verdict, the court relied upon my testimony and the other witness testimonies as well as the evidence provided by the Public Prosecutor. My academic knowledge and that of my colleagues was reframed as expertise in order to determine a guilty/not guilty verdict. As such it became part of what the historian and terrorism researcher de Graaf (2019) calls, 'the techniques of assemblage' which are used by the court to determine whether a criminal act with terrorist intent is being planned:

“combining associative reasoning and premeditation (invoking virtual violent futures) to build a unified body of evidence out of a disparate and inchoate set of activities and acts (social media postings, legal acts (marriage), utterances, leafleting, possession of IS flags). This assemblage is forged together by suggesting a ‘reinforcement’ and cumulation of a series of illegal and legal activities alike.” (De Graaf, 2019, p. 111)

De Graaf regards the Context trial as an exemplary trial in which evidence was based on the idea of preparatory actions. Although Wiersinga rightfully criticizes De Graaf for suggesting that this is a new development, what is more important here is that De Graaf's exploration and analysis of the Context trial explains what happens to academic knowledge when it is passed through the changing legal logics of a trial focused on security and terrorism. And, in particular, how referring to the spectre and spectacle of terrorism can play such an important role. The reference to terrorism is significant in itself, in the sense that it is the security and terrorism frame that has enabled a (if you will, further) transformation of the penal law, according to Graaf, who also based her

conclusion upon two other landmark trials. In the Context trial, the verdict of the judges is telling in this regard. After the judges made it very clear that sympathizing with Al Qaeda or IS, gathering for da'wa activities, attending demonstrations and so on, were not illegal in themselves, they stated:

“The court also wishes to make sure that there is no misunderstanding that criminal law, subject to the freedoms referred to above, plays a limited but important role in countering terrorism. From an international point of view, terrorism is one of the worst crimes and it is incumbent upon all states to combat it. Criminal law is instrumental

in both preventing acts of terrorism as much as possible and in prosecuting and trying them.” (Verdict, my translation).

This reasoning illustrates how criminal law works in regard to terrorism and risk. This preventive aspect of criminal law is an important feature of securitisation which does not only operate within or outside the law, or suspends or creates new laws (Butler, 2006), but also transforms the already existing law (de Goede, 2008). Furthermore, it also expands the idea of what security is and, therefore, how it can be protected, as already noted by Bigo (2002) in his critique on the securitisation of migration. In this particular case, what security is and what it is not is (at least in the framing by the Public Prosecutor) directly related to what is an ‘acceptable’ or ‘unacceptable’ religion. The latter in particular refers to his understanding of ‘Salafism’ and ‘Jihadism’.

Although many of the statements made by the defendants in the Context trial were not, by definition, illegal, the judge concluded (following the prosecution) that the purpose of the network extended beyond ‘mere’ propaganda. The aim, according to the court, was to incite, recruit, finance and facilitate young people to travel to Syria and join the Jihadist factions. Something, by the way, that our research did not say much about as it was only a minor part of our research material. Two of the defendants were indeed still living with foreign fighters in Syria and two had returned. The court argued that, if their documents, social media postings, WhatsApp messages, and public statements on websites and in the media, were taken together, these (often legal) acts ‘reinforced’ one another and prepared the hearts and minds of the targeted young people for a violent struggle (18.87, Verdict).

Although several individuals had their charges of recruitment dropped, the continuous flow of messages of support that they sent to IS and Jahbat al-Nusra were also considered to be a mode of recruiting, according to the judges and the Public Prosecutor. Although no one committed any violence in the Netherlands and while there was no evidence to suggest they were planning anything to that effect, the court believed that their actions could lead to possible violence in the future. By invoking the possibility of terror attacks, the prospect of a potentially violent future was created which legitimizes and allows legal activities in the present to be curbed (ranging from borrowing money, lending and reading books, bragging or writing provocative material) (de Graaf, 2019). The activities we analysed as part of people’s activism, were now taken as proof of the possibility of terror attacks.

When knowledge becomes culturalizing

All in all, I think we can see that the Context case, and the points brought forward by Wiersinga and my rejoinder, show some of the complexities of providing cultural expertise in legal cases. In this instance, academic knowledge about one theme (the interaction between the state, media and militant activists in Belgium, Germany and the Netherlands, from the perspective of the activists) was reframed into another logic (deciding whether or not the individuals were guilty of the crimes, in the Netherlands and Syria, that they were accused of) and from one method (ethnography) into another (legal fact-finding). The transformation is, I suggest, related to other issues that arise when giving evidence in court as an expert witness (Goldberg, 2002; Good, 2008; Loperena *et al* , 2020; Wilson, 2016). For example, the ‘scientific objectivity’ of an expert may be attacked (as I was) and, therefore, lawyers, and even the expert, may be tempted to conceal the particularistic nature of academic knowledge, hiding the social construction of concepts when necessary and highlighting it when convenient, glossing over the ambiguities and complexities of everyday real-life situations in favour of presenting a decontextualized pattern that fits the ‘proven guilty or not’ horizon. Culture and religion are, however, often not the cause of particular behaviour but a framework for meaning-making (as inconsistent as it may be) that is not predictive in any way even though some correlation between behaviour and culture and/or religion may be proven. However, such a constructionist view could be detrimental to people’s human rights and the quest for justice.

Furthermore, I actually hesitate to qualify my testimony as a form of cultural expertise. Because what is meant by that in this particular setting? What kind of culture was I talking or writing about? The culture of activism? The culture of a bunch of young guys, most of whom came from the region of The Hague in the West of the Netherlands? Or does it have something to do with Islam, as other experts were also asked to discuss aspects of Islamic traditions and Salafism? The idea of ‘cultural expertise’ is often used in relation to groups who are deemed to be the ‘cultural Other’ in relation to the dominant majority in a given society. What stands out here is that the defendants in the Context case consist of a group of Dutch citizens who are highly racialized and securitized as an ontological security risk, not only in relation to the risk of potential clandestine political violence that they pose but also as a part of religion. In many debates, Islam is regarded as not yet incompatible or even an incommensurable threat to Dutch identity and core values (de Koning, 2020b; van Liere, 2014). Categorizing my testimony not just as a form of expertise but as cultural expertise taps into those processes of Othering

and may exacerbate it. Yet, as Wiersinga makes clear at the same time bringing in such knowledge may indeed help the courts to reach a fair and balanced verdict, informed by an analysis of people's daily lives and processes of meaning-making which could be beyond the court's frameworks of understanding and expertise. Interestingly, I believe several of the papers in this special issue illustrate this tension between cultural expertise as challenging the taken-for-granted frameworks of the courts and the tendency to reify and essentialize cultural differences which may reinforce certain pre-existing stereotypes and patterns of racialization.

Closing remarks

The Context case in appeal went much the same way as the first trial. My role, however, was much smaller as I appeared at only one public hearing for half a day. During this hearing, the Public Prosecutor did not ask any questions but the court itself had many, mostly on the order and interpretation of specific facts and events. As I had ample opportunity to explain my findings and methods, as well as to engage in a discussion with the court and with the defendants, and because it had much less media attention, the issues of politicization and securitization seemed to play a less obvious role here.

In the first case, as Wiersinga's comments also make clear, the issue of neutrality was important. But the case also shows how neutrality is in and of itself politicized (Holden, 2011). In a heavily politicized field, the issue of loyalty and taking sides is important and especially in a court case where the basic framework is about guilty and not guilty, this two-party frame almost, by definition, implies that your neutrality will be questioned.

Note however, that no one dared to question my neutrality based upon beliefs, descent or gender. We know by now that this situation is very different for people racialized as black or Muslim or both and definitely also for women. Another court case in which I played a very minor role serves as an example of this. In this case, a junior researcher with whom I (together with my colleague Annelies Moors) cooperated in a project on marriages among female migrants to IS held areas, was falsely accused of being sympathetic to IS. It was clear that her identity as a Muslim played a major role in creating this suspicion. The worldviews and religiosity that Annelies and I had were never an issue (Moors, 2019).

When we want to draw a distinction between academic knowledge (as produced in, and through, scientific methods) and expertise (as produced, in this case, with a specific legal objective in mind through the court's procedures), we can see that predicting how academic knowledge will be used and assessed is impossible because this knowledge immediately becomes part of an assemblage of different types of knowledge. This also creates potential epistemological clashes regarding the interpretation of ethnographic data by anthropologists, judges, the Public Prosecutor and lawyers. All parties in the trial tried to create hermetically sealed categories that opposed the other side's claims and everyone did this, at least partly, on the basis of my Expert Witness Report.

I would like to end this rejoinder with two appeals. The way academic knowledge is used in policies and during trials tends to transform knowledge in such a way that it serves the purposes of that policy or trial. Even knowledge that is not intended to be used in this way can be appropriated with grave consequences for the people we work with. This is not meant to say we should not conduct research with Muslims who affiliate themselves with ISIS or Al Qaeda, or that we should not act as Expert Witnesses. But it is to say that we need to reflect deeply on the complicated ethical, strategic and methodological issues of this research and our efforts to create a public impact. Related to that is my second call. Our funders, universities and research institutions all want academics to play a public role and to make an impact. And I completely agree with this, but it should also be clear that the Public Prosecutor, in attacking not just my work itself, but my academic integrity, shows that public exposure like this in a high profile case can be detrimental and even dangerous for researchers. Strong support from academic colleagues and institutions is therefore necessary, certainly for those among us who are less well positioned than I am as a white, male academic with tenure. I regard Wiersinga's article and the special issue as a welcoming and necessary intervention with regard to both appeals and I would like to thank the editor Holden and Wiersinga for this opportunity to engage.

Bibliography

Bigo, D. (2002) 'Security and Immigration: Toward a Critique of the Governmentality of Unease', *Alternatives: Global, Local, Political*, 27(1_suppl), 63–92.

Butler, J. (2006) *Precarious Life: The Powers of Mourning and Violence*. London: Verso.

Davidson, A. I. (2011) 'In praise of counter-conduct', *History of the Human Sciences*, 24(4), 25–41.

de Goede, M. (2008) 'The Politics of Preemption and the War on Terror in Europe', *European Journal of International Relations*, 14(1), 161–85.

de Graaf, B. (2019). 'Foreign fighters on trial: Sentencing risk'. *Radicalization in Belgium and the Netherlands: Critical Perspectives on Violence and Security*. de Koning, M., Fadil, N., & Ragazzi, F. (ed.). London: I.B. Tauris, 97–130.

de Koning, M. (2013) 'The moral maze: Dutch Salafis and the construction of a moral community of the faithful', *Contemporary Islam*, 7(1), 71–83.

de Koning, M. (2018). 'Ethnographie und der Sicherheitsblick: Akademische Forschung mit >>salafistischen<< Muslimen in den Niederlanden'. *Der inspizierte Muslim: Zur Politisierung der Islamforschung in Europa*. Amir-Moazami, S. (ed.). Bielefeld: Transcript Verlag, 335–66.

de Koning, M. (2020a) "'For them it is just a story, for me it is my life.'" Ethnography and the Security Gaze', *Journal of Muslims in Europe*, 9(2), 220–39.

de Koning, M. (2020b) 'The racialization of danger: patterns and ambiguities in the relation between Islam, security and secularism in the Netherlands', *Patterns of Prejudice*, 54(1-2), 123–35.

de Koning, M., Becker, C., & Roex, I. (2014) "'Eilanden in een zee van ongeloof' - Het verzet van activistische dacwa-netwerken in België, Nederland en Duitsland', *IMES Report Series*.

de Koning, M. & Roex, I and Becker, C. (2020) *Islamic Militant Activism in Belgium, the Netherlands and Germany - 'Islands in a sea of disbelief'*. London: Palgrave Macmillan.

Death, C. (2010) 'Counter-conducts: A Foucauldian Analytics of Protest', *Social Movement Studies*, 9(3), 235–51.

Feldman, K. D. (1980) 'Ethnohistory and the Anthropologist as Expert Witness in Legal Disputes: A Southwestern Alaska Case', *Journal of Anthropological Research*, 36(2), 245–57.

Goldberg, S. B. (2002) 'On Making Anti-Essentialist and Social Constructionist Arguments in Court Social Justice Movements and LatCrit Community', *Oregon Law Review*, 81, p. 629.

Good, A. (2008) 'Cultural evidence in courts of law', *Journal of the Royal Anthropological Institute*, 14(s1), S47–S60.

Harding, S. (1991) 'Representing Fundamentalism: The Problem of the Repugnant Cultural Other', *Social Research*, 58(2), 373–93.

Holden, L. (2011) *Cultural expertise and litigation: Patterns, conflicts, narratives*. Abingdon: Routledge.

Holmes, D. R. (1993). 'Illicit discourse'. *Perilous states: Conversations on culture, politics and nation*. Marcus, G. E. (ed.). Chicago: Late Editions, 255–81.

Loperena, C., Mora, M., & Hernández-Castillo, R. A. (2020) 'Cultural Expertise? Anthropologist as Witness in Defense of Indigenous and Afro-Descendant Rights', *American Anthropologist*, 122(3), 588–94.

Mamdani, M. (2005) *Good Muslim, bad Muslim: America, the Cold War, and the roots of terror*. New York: Three Leaves Press Doubleday.

Marcus, G. E. (1997) 'The uses of complicity in the changing mise-en-scene of anthropological fieldwork', *Representations*, 59, 85–108.

Moors, A. (2019) 'The trouble with transparency: Reconnecting ethics, integrity, epistemology, and power', *Ethnography*, 20(2), 149–69.

Odysseos, L., Death, C., & Malmvig, H. (2016) 'Interrogating Michel Foucault's Counter-Conduct: Theorising the Subjects and Practices of Resistance', *Global Society*, 30(2), 151–6.

Roex, I. (2013) *Leven als de profeet in Nederland: Over de salafi-beweging en democratie*. Amsterdam: Amsterdam University Press.

Roex, I. (2014) 'Should we be Scared of all Salafists in Europe? A Dutch Case Study', *Perspectives on Terrorism*, 8(3), 51–63.

Rosen, L. (1977) 'The Anthropologist as Expert Witness', *American Anthropologist*, 79(3), 555–78.

Rosen, L. (2020) 'Expert Testimony in the Social Sciences: A Historical Overview of Contemporary Issues', *Law and History Review*, 38(1), 123–42.

Schiffauer, W. (2014). 'Vor Dem Gesetz. Der Staatliche Umgang Mit Dem Legalistischen Islamismus'. *Subjektbildung. Interdisziplinäre Analysen Der Migrationsgesellschaft*. Bielefeld: Transcript Verlag.

van Liere, L. (2014) 'Teasing 'Islam': 'Islam' as the Other Side of 'Tolerance' in Contemporary Dutch Politics', *Journal of Contemporary Religion*, 29(2), 187–202.

Wilson, R. A. (2016) 'Expert evidence on trial: Social researchers in the international criminal courtroom', *American Ethnologist*, 43(4), 730–44.

Zenker, O. (2016) 'Anthropology on trial: exploring the laws of anthropological expertise', *International Journal of Law in Context*, 12(3), 293–311.

