

Antagonizing Bogota

Troy E. Elder*

I remember my first face-to-face encounter with FARC rebels. While I was driving away from my home in Bogota, three men dressed in camouflage and wearing FARC bracelets intercepted me. The men surrounded my vehicle, and one forced me out of my car by my hair. He threw me face-first onto the ground and jarred his foot into my back. The man identified himself as Commander Julian from the Fifth Front of the FARC. He insulted me for my work in support of the Colombian government and told me that I was "an enemy of the people." He warned me that I would be killed if I were caught again. After the incident, I was taken to the hospital and treated for wounds to my face and back.

This encounter prompted me to move to a new apartment in Bogota, which I had fitted with a bulletproof front door. However, I then began to receive phone threats at my parents' Bogota home, to which I once returned to find defaced with threatening red graffiti. The threats and attacks against me continued for several months. The following year, FARC invaded my home. Because I was not there, the guerrillas tortured and then killed my ground-skeeper, who refused to disclose my location. However, I was undeterred in my advocacy.

A few days later, I stopped by my grocery store. I found the owner unusually quiet, yet nervously attempting to communicate something to me. At that point, a man who had been loitering in the store stepped up and shot the store owner. Approximately nine other men appeared. They identified themselves as members of FARC and read aloud a list of four wanted individuals, including me. After identifying me, one said, "We've told you not to show yourself again, you bourgeois governmental bitch."

The men took me into the back, forced me onto the ground, and began beating me with the butts of their guns. I was then forced into the back of a van and told I was being taken to the mountains, where I would meet a FARC official and be executed. However, the Colombian military inter-

* Clinical Assistant Professor of Law, Florida International University. I would like to thank the organizers of and participants in "Property, the Environment, and Cultural Diversity in Colombia," which was held in and around Bogota, Colombia in March 2008.

*cepted the van before it had left the city. During the ensuing clash, I was freed by a soldier. I was ultimately airlifted by helicopter to a Bogota hospital, where I was treated for trauma and wounds to my face and thorax. I fled to the United States a few months later.*¹

In their work on storytelling in law practice,² scholars have long appreciated that scene-setting is crucial to the production of a persuasive narrative.³ In some cases, however, the law seems to push the setting itself to the foreground. In the above narrative, for example, a Colombian asylum seeker recounts horrific acts of violence committed against her by leftist guerrillas. But to prove her claim and find safety in a country of refuge, she must, under international refugee law, indict "Bogota" as a participant in her persecution, be it through governmental indifference or as a willing co-victimizer.⁴ In case after case before asylum adjudicators around the world, Bogotanos who have fled Colombia are called upon to cast their city both as the situs of pain and as an accomplice of their persecutors. Over time and through the medium of tens of thousands of asylum claims,⁵ Bogota emerges as a recidi-

1. See *Santamaria v. U.S. Att'y Gen.*, 525 F.3d 999, 1004-05 (11th Cir. 2008). For purposes of this article, the author relied on the facts from this case to create a first-person account of the incident.

2. Over the last twenty years, scholarship about legal narrative has originated from various corners of the academy. See, e.g., Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989); John Batt, *Symposium on Pedagogy of Narrative*, 40 J. LEGAL EDUC. 1 (1990); Symposium, *Applied Legal Storytelling*, 14 LEG. WRITING 3 (2008).

3. See, e.g., W. LANCE BENNETT & MARTHA S. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE 89 (1981) ("[T]he way in which a story is told will have considerable bearing on its perceived credibility regardless of the actual truth status of the story. This means that the symbols chosen, the structured elements (scene, act, agent, agency, and purpose) that are defined and left undefined, and the amount of detail provided to facilitate connections between story symbols, will all have a significant bearing on audience judgments about stories . . .").

4. To qualify as "persecution," violence by "non-state actors" such as the FARC and other Colombian guerrilla or paramilitary groups must be "knowingly tolerated by the authorities, or [be violence against which] authorities refuse, or prove unable, to offer effective protection." U.N. Comm. on Human Rights [hereinafter UNHCR], *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1 (Reedited, Geneva, January 1992, UNHCR 1979), available at <http://www.unhcr.org/publ/PUBU3d58e13b4.pdf>.

5. Between 2000 and 2006, over 100,000 Colombian nationals sought asylum in other countries. See UNHCR, *The State of The World's Refugees 2006: Human Displacement in the New Millennium*, 170 (April 19, 2006), available at <http://www.unhcr.org/cgi-bin/texis/vtx/template?page=publ&src=static/sowr2006/toceng.htm>. Colombians constitute one of the largest groups of asylum seekers in a number of

vist. In the parlance of legal storytelling, the law demands that Bogotanos seeking refuge abroad erect and invoke Bogota as a "stock" character.⁶ Put differently, in the narratives of its now-legion erstwhile residents, Bogota itself has been antagonized.

Given the way the human psyche orders the world,⁷ such a development might have been inevitable. Asylum seekers, their lawyers, adjudicators, and other stakeholders in the system of refugee admissions likely welcome it: stock settings play a valuable role in narrative production, providing an archetypal location from which the specifics of case storytelling can proceed. Think, for example, in tort litigation, of the standard diagram of an intersection where a traffic accident occurs, or a drawing of two neighboring parcels of land in a dispute over an easement or property line. Moreover, repeated narrative *characterization* (as antagonist or otherwise) might seem particularly legitimate for a physical place, one ostensibly reducible to an identifiable expanse of real property and its distinct, privileged legal status as the embodiment of all that is finite, tangible, and stable. Put more bluntly, and with all due respect to the late Jacques Derrida, when it comes to a "real" physical location, at least, it would seem that perhaps there *is* something outside the text-or at least *someplace*.

Yet like Derrida and his poststructuralist fellow travelers, critical legal theory is generally skeptical of overarching narratives that claim global validity. Critical Legal Studies (CLS) (and now, its heirs) ought to thus resist the production and deployment of stock stories (think of the oft-assailed "reasonable man") in

refuge countries. In 2005, for example, Colombians constituted the third-largest group of asylum-seekers in both Canada and in the United States and the largest group in both Spain and Brazil. See UNHCR, *Statistical Yearbook 2006: Trends in Displacement, Protection, and Solutions* (Dec. 2007), available at <http://www.unhcr.org/statistics/STATISTICS/478cda572.html>. In 2007, the number of Colombian asylum seekers in Canada almost doubled, from 1,400 in 2006 to 3,200 in 2007. See UNHCR, *Asylum Levels and Trends in Industrialized Countries 2007*, (2008), available at <http://www.unhcr.org/statistics/STATISTICS/47daae862.pdf>. In the United States over the past five years, Colombians, after the Chinese, have constituted the largest nationality granted asylum by immigration judges. See EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPT OF JUSTICE, FY 2007 STATISTICAL YEAR BOOK A1 (2008), www.usdoj.gov/eoir/statspub/fy07syb.pdf.

6. See, e.g., BERNARD S. JACKSON, *LAW, FACT, AND NARRATIVE COHERENCE* 99 (1988) ("Social action is intelligible because we compare what we see with a stock of socially transmitted narrative models, each one of them accompanied by a particular social evaluation."); Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 2 (1984) (stock stories as persuasive).

7. See generally JACKSON, *supra* note 6.

favor of smaller, localized narratives that reflect a multiplicity of viewpoints. Indeed, a hallmark of poststructuralist jurisprudence has been narrative-based standpoint epistemology. What role, then, to ascribe to this stock antagonist, Santa Fe de Bogota? Analytically, how might critical theory account for this "Bogota metanarrative," so to speak, to which, I submit, thousands of exiled Bogotanos contribute through every asylum application?⁸

Let's return to the narrative above. It is the story of Ximena Sanz de Santamaria, a lawyer and activist who has waged a seven-year campaign to win asylum in the United States.⁹ Santamaria, who lived in Bogota, was active in a political movement that worked to promote democracy in Colombia.¹⁰ In her bid for asylum,¹¹ Santamaria invokes Bogota as the situs of personal

8. As a matter of critical lawyering theory, this presents a practical or at least taxonomical concern; for legal philosophers, an epistemological one. I'll leave the latter for another work. The former subsumes a number of related questions, such as: at what point does a frequently reproduced story become a metanarrative? Another: can a "physical" place – here, a Latin American "mega city" of undeniable current geopolitical interest – constitute one? In the few pages I have here, I limit myself to a consideration of Bogota's role as an ostensibly pure, iconic, or ideal antagonist. For a taste of the now classic deconstructivist assault on notions of purity, see generally JACQUES DERRIDA, *DISSEMINATION* (Barbara Johnson trans., 1981).

9. Santamaria's testimony is summarized by the Eleventh Circuit Court of Appeals in a recent decision vindicating her claim of past persecution. In finding that Ms. Santamaria had demonstrated past persecution, the court overruled both the immigration judge who had heard Ms. Santamaria's case and the Board of Immigration Appeals (the administrative body that hears appeals of asylum denials that occur in the deportation context). As a result, the court found that Ms. Santamaria was entitled to "a rebuttable presumption that she has demonstrated a well-founded fear of future persecution." *See Santamaria v. U.S. Atty Gen.*, *supra* note 1, at 1012. It remanded the case to the immigration judge for an inquiry into whether "conditions in Colombia had changed or that Ms. Santamaria could avoid future persecution by relocating within Colombia." *Id.*

10. *See id.*

11. Under international law, a person with a well-founded fear of persecution may obtain asylum on the basis of specific, relatively narrow criteria. A "refugee" is any "person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6223, 189 U.N.T.S. 137, available at <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>. Countries adhering to the international system of refugee protection have largely incorporated this definition into domestic legislation. In the United States, for example, an asylum seeker must prove that he or she is a "refugee" within in the meaning of the Immigration and Nationality Act. Under 8 U.S.C. § 1158(b)(1)(A) a "refugee" is defined as "any person who is outside such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the

terror. As she recounted to a judge in the United States, her work in a town on the fringes of the capital brought her into deadly confrontation with the FARC, Colombia's largest guerrilla group.¹² Because Santamaria alleges mistreatment at the hands of private (rather than state) actors, asylum law requires her to prove that she was a victim not only of the FARC, but also of BogotaY

As a practical matter, asylum procedure also dictates the primary format in which this narrative unfolds: the personal statement or asylum affidavit, a written document through which an asylum seeker initially tells her story.¹⁴ Generally the object of close attorney-client collaboration, the affidavit constitutes an asylum seeker's principal medium for establishing a prima facie claim to refuge. According to some theorists, the affidavit thus ought to follow proven narrative conventions in order to be successful,¹⁵ where success translates into persuading an adjudicator of the narrative's credibility.

As the protagonist of her story, a Colombian asylum seeker like Santamaria requires a (governmental) antagonist. She thus only wins relief by constructing and adroitly conveying meaning

protection of, that country because of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1101(a)(42)(A).

12. The FARC originated as a reaction to a period of Colombian intra-party strife in the 1950s known as *la violencia*. Pervasive disparities between rich and poor, lopsided distribution of landownership (in recent estimates, over 60 percent of the rural land is owned by less than half of one percent of the population), and other social conditions have sustained it for some forty years. See, e.g., INTERNAL DISPLACEMENT MONITORING CENTER, CoLOMBIA: GoVERNMENT PEACE PRocEss CEMENTS INJUSTICE FOR IDPs 8, 10 (JUNE 30, 2006), available at www.intemal-displacement.org (follow "Americas" link under countries tab; then follow "Colombia" hyperlink). In recent months, however, with the death of one of its key leaders and a spectacular, globally celebrated hostage rescue in July 2008, FARC's continued vitality has fallen into question. See, e.g., Tim Padgett, *Colombia's Stunning Hostage Rescue*, TIME, Jul. 2, 2008, available at www.time.com/time/world/article/0,8599,1819862,00.html.

13. See, e.g., *Harutyunyan v. Gonzales*, 421 F.3d 64, 68 (1st Cir. 2005) ("persecution always implies some connection to government action or inaction"); *Santosa v. Mukasey*, 528 F.3d 88, 93 (1st Cir. 2008) (denial appropriate where asylum applicant "failed to demonstrate that the government was complicit in any of the incidents he described").

14. In the United States, the affidavit is normally appended to an asylum application. The application instructs the applicant to "provide a detailed and specific account of the basis of your claim to asylum or other protection." See U.S. Dept. of Homeland Security, U.S. Citizenship and Immigration Services, 1-589, Application for Asylum and for Withholding of Removal, available at www.uscis.gov/files/form11-589.pdf.

15. See, e.g., Stacy Caplow, *Putting the "I" in Wr*+*ng: Drafting an A/Effective Personal Statement to Tell a Winning Refugee Story*, 14 LEG. WRIT. 249 (2008).

about an antagonistic Bogota. Through a rather conventional text, she summons and attempts to make present an idea, a center, a foundation, *logos*, or truth about Bogota. In the end, she invites the adjudicator to *decide* Bogota.

But therein lies the rub. Begeta (here borrowing the Heideggerian notational device)¹⁶ is not so settled. In Santamaria's narrative, Begeta resists antagonization. Both protagonist and antagonist, Begeta is never entirely either, never entirely neither. To have a claim to meaning, Begeta depends on its differentiation from other, often conflicting narratives emanating from Bogotanos and from others, both in Colombia and elsewhere. Any attempt to endow Begeta with the antagonistic identity that Santamaria must seek, necessarily directs attention to those alternative narratives. Though actively pursued, the Begeta *qua* antagonist that Santamaria beckons is infinitely elusive – Derrida might say *deferred*- and thus, it escapes her.

Who authors these alternative narratives? Within Begeta, elites claiming an entitlement to speak for the city (even if implicitly) tell a story of renewal and optimism. Political leaders extol strides made in transportation and massive public works projects/⁸ public-mindedness,¹⁹ and urban aesthetics.²⁰ From a different vector, international human rights observers decry vio-

16. See MARTIN HEIDEGGER, THE QUESTION OF BEING 82-83 (Jean T. Wilde & William Kluback trans., Rowman & Littlefield 1958) (1955).

17. See, e.g., Daniel Bonilla Maldonado, *Extralegal Property, Legal Monism, and Pluralism*, 40 U. MIAMI INTER-AM. L. REV. 213 (2009); Foster, *Urban Informality as a Common Dilemma*, 40 U. Miami Inter-Am. L. Rev. 261 (2009).

18. See, e.g., Ricardo Montezuma, *Promoting Active Lifestyles and Healthy Urban Spaces: The Cultural and Spatial Transformation of Bogota, Colombia*, in NUTRITION AND THE ACTIVE LIFE: FROM KNOWLEDGE TO ACTION 173 (Wilma B. Freire ed., 2005) (campaign platform and signature accomplishments of mayor Enrique Pefialosa, elected in 1997, were "megaprojects" in mass transportation, street construction, parks, and libraries), available at http://publications.paho.org/english/PROMOTING_ACTIVE_LIFESTYLES_SP+612.pdf (paywall-protected).

19. See Montezuma, *supra* note 18, at 167 ("Elected officials have taken important, innovative actions in favor of the redefinition of community participation and the use of public space."). In contrast to the bricks-and-mortar ambitions of many mayors, the most enduring legacy of professor Antanas Mockus, Bogota's first mayor elected by popular vote, has been to propose-successfully-that Bogotanos engage in a dramatic retelling of their civic narrative. *Id.*, at 168 n.13, 172 (change in thinking "in the mind of the imaginary Bogota dweller" produced during Mockus's first term was one of the most profound changes in the capital's recent history).

20. See Montezuma, *supra* note 18, at 173 (Pefialosa's "discourse and actions from 1998 to 2000 were punctuated by an overarching invitation to the inhabitants of Bogota to envision a new city, to move discussion on the city beyond the subject of potholes and security, so that we will become aware that we can build anything we imagine.").

lence by government-backed right-wing paramilitaries against leftist guerrillas like the FARC, thereby disrupting the coherence of the state/non-state dyad upon which Santamaria's characterization relies. Similarly, the protagonizing of former guerrillas through reconciliation processes like those chronicled in Constanza Ardila Galvis' *The Heart of the War in Colombia*,²¹ for example, erodes the status of Begeta's putative confederates, thereby undermining its role as antagonist-in-chief.

For the critical theorist, Santamaria's Begeta narrative itself invites review, but with a self-conscious openness to its potential for undecidability.²² Accepting the nod from the Study Space organizers²³ (but fully aware of my vulnerability to charges of preciousness), I will again take a cue from Derrida.²⁴ Reproduced on the left below is Santamaria's asylum narrative, annotated with two sets of what one might call "metafictive" commentaries.²⁵ The first set, displayed as footnotes at the end of each paragraph, might easily have been made by the author⁶ of the narrative:

21. CONSTANZA ARDILA GALVRS, GUERREROS CIEAOS: EL CONFLICTO ARMADO EN COLOMBIA (1998). Galvis' narrators—for the most part, former members of FARC—complicate the meaning of Bogota in different ways.

22. See CHRISTOPHER NORRIS, DERRIDA 19 (1987) ("What these consist in, very briefly, is the dismantling of conceptual oppositions, the taking apart of hierarchical systems of thought which can then be *reinscribed* within a different order of textual signification. Or again: Deconstruction is the vigilant seeking out of those *aporias*, blindspots or moments of self-contradiction where a text involuntarily betrays the tension between rhetoric and logic, between what it manifestly *means to say* and what it is nonetheless *constrained to mean*. To 'deconstruct' a piece of writing is therefore to operate a kind of strategic reversal, seizing on precisely those unregarded details (casual metaphors, footnotes, incidental turns of argument) which are always, and necessarily, passed over by interpreters of a more orthodox persuasion.").

23. "Participants are encouraged to experiment with innovative formats and styles (including, e.g., images or artwork) that depart from the most traditional forms of scholarship." Application for Symposium, *Multicultural Colombia: Urban & Rural Lands, Rights of Self-Governance and Cultural Difference* (2008), http://www.law.du.edu/lattcrit/PortfolioOfProjects/AcadCom/StudySpace/SSII_Colombia_2007/Study_Space_II_Draft.pdf.

24. See JACQUES DERRIDA, GLAS (John P. Leavey, Jr., and Richard Rand trans., University of Nebraska Press ed. 1986) (1974). Aesthetically similar, to a point, is JACQUES DERRIDA, *The Double Session*, in DISSEMINATION, *supra* note 8, at 173.

25. For a classic example of one type of metafiction, see generally ITALO CALVINO, IF ON A WINTER'S NIGHT A TRAVELER (William Weaver trans., Harcourt Brace Jovanovich 1981) (1979). I explore the metafictional aspects of legal narrative, and some of their epistemological consequences, in Troy E. Elder, *Metafiction, Client Narrative, and Epistemic Commitment* (forthcoming 2009) (manuscript on file with author).

26. Scholars associated with the critical poverty lawyering, collaborative lawyering, and rebellious lawyering movements have extensively examined lawyer domination of clients, thereby problematizing the notion of the ownership or authorship of a client's narrative. See, e.g., GERALD P. LOPEZ, REBELLIOUS LAWYERING

Santamaria herself, or, more likely, her asylum lawyer. The second set, which appears as commentary on the right-hand side of the page, introduces an alternative, destabilizing counter-narrative, keyed to core concepts in Santamaria's story:

I remember my first face-to-face encounter with FARC rebels. While I was driving away from my home in Bogota, three men dressed in camouflage and wearing FARC bracelets intercepted me. The men surrounded my vehicle, and one forced me out of my car by my hair. He threw me face-first onto the ground, and jarred his foot into my back. The man identified himself as Commander Julian from the Fifth Front of the FARC, insulted me for my work in support of the Colombian government, and told me that I was "an enemy of the people." He warned me that I would be killed if I were caught again. After the incident, I was taken to the hospital and treated for wounds to my face and back.²⁷

By a wide margin the greatest burden of armed violence in Colombia comes not from conflict, but from organised crime (including narco-trafficking) and petty violence. Since 1979, more than 475,000 people have been violently killed in so-called "crime", most of them young men. In a country of around 45 million, 19,000 to 22,000 victims per year have made Colombia the most violent country in the world for several years running. This violence is a primarily urban phenomenon, with the large cities of Bogota, Medellin, Cali and Barranquilla accounting for more than a third of the total. Conflict violence, on the other hand,

(1992); Gerald P. Lopez, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315 (1996); Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 813 (1998); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994); Lucie E. White, *Seeking". . . The Faces of Otherness": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499 (1992); Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994); Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HARV. L.J. 769 (1992); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88); Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415 (1996). ■ recently explored one aspect of the tension over lawyer-client voice in Troy E. Elder, *Poor Clients, Informed Consent, and the Ethics of Rejection*, 20 GEO. J. LEG. ETHICS 989 (2007) (applying theoretics to rejection of prospective clients in legal aid intake setting). ■ examine other consequences of narrative production in Elder, *Metafiction*, *supra* note 25.

27. "To establish a well-founded fear of persecution because of my political opinion, ■ need to show that the FARC acted against me because it considered my

is overwhelmingly rural

28

This encounter prompted me to move a new apartment in Bogota, which I fitted with a bulletproof front door. However, I then began to receive phone threats at my parents' Bogota home, to which I once returned to find defaced with threatening red graffiti. The threats and attacks against me continued for several months. The following year, FARC invaded my home. Because I was not there, the guerrillas tortured and then killed my groundskeeper, who refused to disclose my location. I was undeterred in my advocacy, however.²⁹

A few days later, I stopped by my grocery store. I found the owner unusually quiet, but nervously attempting to

The United Nations High Commission for Refugees (UNHCR) generally advises against the application of the notion of a relocation alternative in the context of the current situation in Colombia, which is characterized by . . . a continuing conflict, which is highly volatile and is spreading into urban areas In addition, it is important to bear in mind the risks inherent in traveling in Colombia Decisionmakers are generally advised not to apply the notion of internal relocation alternative when assessing international protection claims in relation to Colombia.³⁰

Seven years and \$4.35 billion since the advent of a massive U.S. aid program, the Colombian military has been

beliefs and actions to be political in nature." *See, e.g., Desir v. Hebert*, 840 F.2d 723, 729 (9th Cir. 1988) (stating that the court must look to the political beliefs of the victim from the perspective of the persecutor).

28. *See* INTERNAL DISPLACEMENT MONITORING CTR., COLOMBIA: RESISTING DISPLACEMENT BY COMBATANTS AND DEVELOPERS: HUMANITARIAN ZONES IN NORTH-WEST COLOMBIA 166 (2007), available at <http://www.internal-displacement.org> (follow "Americas" link under countries tab; then follow "Colombia" hyperlink; then choose "Read Special Country Report").

29. "I need to show that, no matter where I go, I won't be safe." *See, e.g., In re D-I-M*, 241. & N. Dec. 448, Interim Decision 3599, 2008 WL 368851 (B.I.A. 2008) ("If the applicant has established past persecution, there is a presumption of a well-founded fear of persecution in the future and the burden shifts to the Department of Homeland Security to prove by a preponderance of the evidence that . . . the applicant could avoid future persecution by relocating, and that it would be reasonable to do so under all of the circumstances.").

30. UNHCR, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, 1 September 2002, available at <http://www.unhcr.org/refworld/docid/3d92d4204.html>.

communicate something to me. At that point, a man who had been loitering in the store stepped up and shot the store owner. Approximately nine other men appeared. They identified themselves as members of FARC and read aloud a list of four wanted individuals, including me. After identifying me, one said, "We've told you not to show yourself again you bourgeois governmental bitch."³¹

The men took me into the back, forced me onto the ground, and began beating me with the butts of their guns. I was then forced into the back of a van and told I was being taken to the mountains, where I would meet a FARC official and be executed. However, the Colombian military intercepted the van before it had left the city. During the ensuing clash, I was freed by a soldier. I was ultimately airlifted by helicopter to a Bogota hospital, where I was treated for trauma and wounds to my face and thorax. I fled to the United States a few months later.³³

transformed from an outmatched "garrison force" that had yielded huge swaths of terrain to leftist guerrillas, to an aggressive force that has won back territory. The transformation, however, has had a dark side. Soldiers and police officers have committed rising numbers of human rights abuses, even as U.S. training intensifies, rights groups charge. During the five-year period that ended in June 2006, extrajudicial killings increased by more than 50% over the previous five years, according to figures compiled by human rights groups.³²

The dramatic rescue of 15 hostages this month by Colombia's special forces underscored how far Colombia has progressed — with the strong support of the United States — from a nation under siege by narcoterrorists and paramilitary vigilantes to one poised to become a linchpin of security and prosperity in South America Today the most dangerous and vicious of the groups — the Revolutionary Armed Forces of Colombia, or FARC — has seen a sharp

31. "I need to show that I have not been involved in the government's persecution of the FARC." See 8 C.F.R. § 208.13 (2003) (barring asylum where applicant has "[o]rdered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion").

32. Chris Kraul, *Colombia's Military Toughens Up*, L.A. TIMES, Jan. 18, 2008, at 1.

33. "Even if I've shown that I've been a victim in the past, if things have improved in Colombia, I may not get asylum." See, e.g., 2 Immigration Law Service 2d § 10:101

*drop in its strength and status. Once 18,000 strong, the group has lost half its forces along with whatever credibility and following it had elsewhere in Latin America.*³⁴

When read differentially—that is, recognizing that meaning is always deferred, and content is only understandable in relation to what it is not—Santamaria's construction of Bogota as an antagonist disrupts the coherence of her asylum claim. Telegraphing a number of internal contradictions, the text problematizes several of its own explicit terms ("FARC," "home," "governmental," "military," etc.), whose ostensible idea, self-sufficiency, and even unity are called into question. Moreover, such a reading excavates, isolates, and then destabilizes several latent legal terms ("political opinion," "reasonable relocation," "persecution," "changed conditions"). In the end, the text itself de-antagonizes Bogota.

Specifically, this differentiated reading recognizes a number of hierarchies. In each, the (ostensible) first term is that which, in Santamaria's case, is privileged by asylum law; the second is marginalized. In the foregoing excerpt, they might include, but are not limited to:

specific / general
urban / rural
mobility / immobility
purity / taint
stability / change

Thus, on Santamaria's theory of the case, because her persecution must be "on account of" one of five specific protected grounds, of which "political opinion" is one, her victimizers must target her for her alleged anti-leftist, pro-government opinions.³⁵ Yet, as a

(2008) ("An alien who has established past persecution in his or her homeland may nonetheless be denied asylum if the immigration judge determines that there is little likelihood of future persecution if the alien is deported Thus, the government may successfully rebut the presumption by establishing through a preponderance of the evidence that, since the persecution occurred, conditions in the home country have changed enough that there is no longer a reasonable chance of the petitioner suffering future persecution if he or she were to return there.").

34. Robert M. Gates & Juan Manuel Santos, *Colombia's Gains Are America's, Too*, N.Y. TIMES, July 23, 2008, at A21. Gates is the U.S. Secretary of Defense and Santos is Colombia's Minister of Defense.

35. See Convention and Protocol Relating to the Status of Refugees, *supra* note 11.

Bogotana, she is much more likely to suffer from generic, widespread organized or petty (non-political) crime.³⁶ Similarly, because asylum law generally presumes that an applicant can move within her country to escape persecution, it requires her to do so, assuming such relocation is reasonable.³⁷ In Colombia, however, for various reasons, victim immobility is effectively assumed, and thus privileged.³⁸ And (not unlike other areas of U.S. immigration law), asylum law exalts and centers "pure" or iconic³⁹ victims, repressing those with compromised credentials.⁴⁰ But such notions are suspect in Colombia, where the government and those associated with it—even asylum seekers—defend against charges of human rights abuses against political opponents.⁴¹ Finally, when appraising political conditions in an asylum seeker's country of origin, the law presumes stability of circumstance.⁴² Yet change is the central theme sounded by many of those who claim the authority to speak for and about Bogota and Colombia, trumpeting far-reaching improvements in security, economy, and quality of life.⁴³

What then of Santamaria's asylum claim, if she is left without her antagonist? If Bogota is absent, must her claim fail? As any postmodern-theorizing asylum practitioner will retort, of course not. In reading differentially, one does not simply invert the oppositional pairs above, so that weak becomes strong, and vice versa. Bogota is never fully absent. Rather, the value of such a reading lies in a greater awareness of the fact that certain social structures (e.g., asylum law) exalt current configurations as uniquely fixed or present. Those configurations are inherently unstable.

36. See INTERNAL DISPLACEMENT MONITORING CTR., *supra* note 28.

37. See UNHCR, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, *supra* note 30.

38. See *id.* at 10.

39. See, e.g., Jayashri Srianktiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157 (2007).

40. See, e.g., 8 U.S.C.A. § 1158 (West 2008) (barring from asylum aliens who have engaged in the persecution of others, committed certain nonpolitical crimes, or pose security risks).

41. See *generally*, Galvis, *supra* note 21; Kraul, *supra* note 32.

42. See, e.g., *In re H-*, 21 I. & N. Dec. 337, 1996 WL 291910 (B.I.A. 1996) (asylum seeker who has demonstrated past persecution need not also demonstrate a compelling reason why he or she is unwilling to return to his or her country of origin unless the government has first established by a preponderance of the evidence that the persecution occurred under conditions which have since changed to the extent that the applicant no longer has a well-founded fear of future persecution).

43. See, e.g., *supra* notes 18-20 and authorities cited; Gates & Santos, *supra* note 34.

As a practical matter, a similar type of juxtaposition occurs sooner or later in the prosecution of Santamaria's and most other asylum claims. Asylum officers, immigration judges, and cross-examining government attorneys, all repeat players in the machinery of adjudications of asylum applications from countries like Colombia, know asylum law well and routinely receive updated information on conditions within the country. In evaluating or seeking to defeat Santamaria's asylum bid, these agents will likely wield counter-narratives like those in the right-hand column. In turn, good asylum defense attorneys will anticipate the "adverse facts" that such alternative narratives provide, and will plan to counter them in their litigation strategy, or, if shrewd, will anticipate them in the crafting of Santamaria's initial narrative. A volley, toggle, or "play," will ensue. Bogota, in other words, is not fully absent, but not fully present. Bogota is not decidable.

Like the putative protagonist, Santamaria, for that matter. Or rather, Santamaria. But hers is another story.

