

## **Preparing an Asylum Affidavit: Tips for Interviewing Torture Survivors**

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A key component of a successful asylum application is an affidavit chronicling the client's story. The process of interviewing the client to elicit the story serves the dual function of gathering relevant information for the asylum application as well as preparing the client for testifying. A good affidavit provides a cohesive narrative of the client's experiences in a manner that illuminates eligibility for asylum.

### **Where to start? Educating the client**

Most clients are not familiar with the asylum process, or any legal process. Explain the purpose of the affidavit, why the information is important, and how it will be used in the asylum case. Explain the adjudicator's perspective to ensure the client understands why credibility is important and the role the affidavit has in enhancing credibility. Often clients may think "I've already told her this, why is she asking me again?" It is valuable for the client to understand why repeated recounting of the story is necessary and how it aids in preparation for testimony.

### **How do I structure meetings with my client?**

Experienced asylum practitioners and mental health practitioners agree that meetings should not last more than two hours. This is the outer limit of mindful attention by both parties, as well as the maximum amount of time to keep a client focused on difficult issues. The best practice is to have frequent meetings, especially in the beginning, to build trust with the client.

It is important to review the entire story, even if the client has provided a written statement or the referring agency has provided a summary of the claim. Different facts emerge in each retelling of the story. The further retelling of the story can highlight potential credibility issues to address and ameliorate through a mental health evaluation, careful interview preparation, and phrasing of the affidavit.

It is important to have a plan for each meeting, of gaps that need to be filled in the story contained in the affidavit, but to also be prepared to go off topic or to a different topic if that is where the client heads. Know that the story can be constructed chronologically in the affidavit later, even if the retelling during the meeting is anything but chronological.

## **How do I interview a torture survivor?**

“Be curious.” Ask lots of questions, including about collateral information, as this may lead to useful contextual information or additional case information. Balance your interviewing sessions: if the client is detailing a particularly traumatic event such as a prison rape, start and end the meeting by discussing less stressful topics, such as travel to the United States, political party membership or goals. Try to become familiar with the client’s cultural context by asking questions. This also empowers the client by allowing him or her to be an “expert” on an issue. Be flexible in meetings, adapting to the client’s needs or emotional availability on a given day.

## **Creating a credible affidavit**

As credibility is paramount in the asylum adjudication, consistency in the affidavit is paramount. The affidavit must be consistent with the client’s recounting of the story, with the I-589 application for asylum, and with the supplementary documents. The affidavit should be the best version of the client’s own words. Do not inject legal words, citations, or anything overly formal sounding. The affidavit should match the client’s telling of the story in level of detail. If a client says “I was arrested in the third month after my child was born” resist the urge to insert “in May 2010” based on your own calculation.

Torture or trauma survivors in particular may have faulty memories. Because clients are frequently eager to please, they may agree to details when pressed: “So, it was in May of 2010 when you were arrested?” “Yes.” Try to use the client’s own words when constructing the affidavit, particularly if they are descriptive. One attorney recalled a client who described the departure from her country with “the man who took me out said he could sneak an elephant through the airport.”

If the client is working with a mental health professional, consult with that individual. This may help provide insight or context for issues in memory gaps. For example, a mental health professional may have observed or diagnosed a traumatic brain injury which may help to understand inconsistent statements by the client.

## **How much time should I spend on the affidavit?**

The amount of time it takes to craft an affidavit varies; experienced asylum practitioners estimate between twenty to forty hours of work and meeting time. Factors to consider in estimating prep time include:

1. Whether the client has already written a statement which can be edited or used as a starting point;
2. The client’s education and literacy level. As a general rule, uneducated or illiterate clients will require more time to elicit a cohesive story;
3. The sensitivity of the claim and the client’s emotional fragility;
4. The depth of the claim. For example, LGBT claims may involve a lengthy personal history going back to childhood, while other claims may involve a single incident of persecution.

## Completing the affidavit

Review the completed, finalized affidavit with the client prior to signature. Adjudicators will ask “Do you know everything contained in this document? Did you have a chance to read it with someone who speaks your language?” during the interview or hearing. It is also good practice to have a statement at the end of the affidavit attesting to the fact that it was read or translated to the client in his or her own language. An alternative strategy is to write the affidavit in the client’s language, and then translate it into English.

This information is based on the 2011 National Capacity Building Institute: *Torture Survivors Seeking Asylum: The Intersection of Forensic Mental Health Evaluation and Legal Representation*. Thanks to presenters David Gangsei, Regina Germain, Emily Good, Julie Kuck, Hawthorne Smith, and Lisa Weinberg for their insights and expertise which are distilled here.