

Mental Health Professional Testimony in Asylum Cases

In court, the role of the mental health evaluator is to aid the judge in answering the question “has the client gone through the experiences he or she claims to have experienced?” Testimony elicits this information from the expert and explains the process and credentials to the adjudicator.

Establishing the “expert”

Although the strict evidentiary rules found in state or federal court are not applicable in immigration court, it is still necessary to prove that the mental health professional is an expert on the topic. Preliminarily, the expert must be listed on a witness list submitted to the court in advance, along with either an affidavit of the testimony or a short summary of the expected testimony. A curriculum vitae or resume for the expert should also be submitted, to attest to his or her skills and qualifications.

Direct examination should begin by asking the expert about her qualifications, work history, training, and familiarity in working with torture survivors before continuing to the specifics of the case. Explain the type of assessment conducted and why it was chosen.¹

How to prepare the expert

Rehearse direct examination and cross examination with the expert on at least one occasion. Provide the expert with a list of questions or outline of topics to be covered on direct exam in advance of the preparation meeting and hearing. A list of possible questions to anticipate on cross-examination should also be provided and discussed in advance of the hearing. A good expert should testify confidently and clearly. Avoid overly scientific terms that would not be familiar to lay people while refraining from testifying in a condescending manner.

What to cover in testimony

Focus testimony on the client’s symptoms the expert has observed which would be helpful for an adjudicator to know about and understand. The expert testimony should focus on probable conclusions that can be drawn from observations of the client’s behavior and statements. These conclusions become corroborating evidence when framed in terms of whether the behavior and diagnosis are “consistent” with the persecution experiences of the client.

Attorney: “Can you say with a reasonable certainty that Ms. A’s withdrawal from friends and family is attributable to post-traumatic stress disorder?”

Expert: “Yes, withdrawal from social settings is one of the symptoms of PTSD and I have observed Ms. A’s withdrawn behavior during our group therapy meetings. I have diagnosed Ms. A with PTSD based on this behavior and her expression of other symptoms, all of which are consistent with someone who has experienced past torture.”

¹For more information about types of assessments, see *Collaborating with Mental Health Professionals: Assessments for Torture Survivors Seeking Asylum* on www.healtorture.org.

Additional topics for direct examination include:

- Describing the clinical tests and methods used in diagnosis;
- Detailed description of symptoms;
- Discussion of client's "score" on tests and expressed symptoms;
- Cultural or linguistic factors affecting the diagnosis or treatment;
- Ongoing course of treatment (if applicable) and current medications;
- Explanation of client's behaviors in relation to testifying in court.

Anticipating cross examination questions

A common perception by the government attorney may be skepticism: assuming the mental health provider has been "duped" by a client who is "faking" symptoms for the asylum claim. Prepare the expert for common questions and skepticism from adjudicators; for an excellent overview of these refer to *Psychological and Psychiatric Opinions in Asylum Applications: Ten Frequently Asked Questions by Fact Finders* by Uwe Jacobs and Stuart Lustig.²

Cross examination questions may be phrased "isn't it possible that" Experienced professionals recommend responding "it is possible, and it is not probable."

Other possible topics for cross examination:

- Does the professional ever refuse to provide an evaluation for a client?
- Scientific acceptance of diagnosis (e.g. is PTSD widely recognized?)
- Seeking causation: "can you speculate as to the *cause* of Ms. A's PTSD?" Response should focus on *consistency* between reported events and observed client response.
- Professional's experience working with individuals from this country/culture.

The role of the mental health expert

When testifying in court, the mental health professional is an objective expert providing context and explanation for the client's behavior. Although the professional may be an advocate for the client in other settings, in this context that is not appropriate. Strong professional testimony can advocate for the client more effectively than a direct statement of support such as "I believe this client is credible." The attorney has the task of being the advocate in court, and these roles should remain separate to enhance each party's skill.

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 Emilia Bardini, Janet Beck, Bruce Einhorn, David Gangsei, Julie Kuck, Danielle Lehman, Stuart Lustig, and Hawthorne Smith for their insights and expertise which are distilled here.

²*Psychological and Psychiatric Opinions in Asylum Applications: Ten Frequently Asked Questions by Fact Finders* by Uwe Jacobs and Stuart Lustig. 15 *Bender's Immigration Bulletin* 1066 (August 1, 2010).