

Telling the Story: Preparing a Torture Survivor to Testify

Educating the client

In order for a client to effectively testify, he needs to understand the purpose of the asylum process. At the beginning, provide the client with an overview of the process and each step. Make sure he understands what must be proven to the asylum officer or judge in order to prevail. It is also important to explain what credibility is, why it is important, and what the adjudicator will be evaluating. Explain the legal strategy of the case to the client, so he knows what you are trying to prove.

In addition to explaining the legal standard, inform the client about the physical environment of the interview or hearing. Describe what will happen when arriving and where to go. A detailed description such as: “first you will go through a metal detector; after you exit the security area, you’ll enter a lobby. Take the elevator up one floor, when you get off the elevator go to the right, past the drinking fountain” will provide the client with a comforting visual. Make sure to note who will be at the interview or hearing, what each person’s role is, and where each will be seated.

What does every client need to know?

There are a few general rules about testifying which apply to all asylum seekers:

1. If you don’t understand the question, ask to have it repeated or indicate “I did not understand the question.” This prevents misunderstood or incorrect testimony and avoids annoying the adjudicator with off topic responses.
2. If you don’t know the answer, say “I don’t know.” Prepare clients for the possibility of feeling pressured to know something they may not, and encourage them to stand firm in their answer.
3. It’s okay to pause, to cry, to gather your thoughts.
4. Listen to the question. Encourage the client to focus on the words in the question and include them in her answer. This fosters active listening, gives the client a task to focus on and engages the adjudicator as it uses her own words. For example:

Adjudicator: “Explain to me how you were able to get released from jail.”

Client: “I was able to get released from jail because my sister bribed the chief of the gendarmes to release me.”

Preparing for testimony

Practice, practice, practice. In many cases the time spent preparing the asylum application and affidavit will provide much of the groundwork in preparing the client for responding to the adjudicator’s questions. Depending on how much time passes between the submission of the application and the interview or hearing, more preparation sessions may be needed to help the client feel prepared for answering questions.

It is a good idea to do one “dress rehearsal” in which you go straight through the questions for a duration of time approximating the interview or hearing. Additionally, a meeting where you stop and start to provide immediate feedback on your client’s responses to questions is a useful preparation tool. Encourage clients to take notes during the preparation sessions, of things they are struggling with, or suggestions you make about testimony.

Collaborate with your client on a list of “key points” about the asylum case. This can help keep the client on task while testifying, as well as helping both of you know if something important has been missed and needs to be raised before the conclusion of the proceeding. For clients who are literate, it can be helpful to provide a list of questions that may be asked for them to review and practice.

Prepare your client to respond to the question “why are you seeking asylum” in a short paragraph response. This helps to guide the interview and also focuses the interview on the claim in the client’s own words.

Adjudicator: “Why did you leave Togo?”

Client: “I was jailed and beaten because of my participation in the UFC, an opposition political party. I don’t feel the government of Togo listens to or respects the people. I was afraid that I would be killed if I was caught at another rally.”

Coping mechanisms

Prepare the client for difficult moments. Breathing is an excellent tool to refocus and move past traumatic memories. Remind the client to take deep breaths and breathe together during preparation meetings. During the interview, you may audibly take a few deep breaths to remind the client to do the same. One attorney provided her client with a mantra to repeat in her head: “I am a strong woman.” This may help the client refocus and overcome traumatic memories.

How do I prepare the client to testify through an interpreter?

If the client will be using an interpreter during the interview or hearing, make sure to practice with an interpreter. In an affirmative hearing, the client may be allowed or expected to bring an interpreter to the hearing. In such cases, it is strongly preferable to practice with the same interpreter who will be interpreting during the interview at least once or twice, if not more. Prepare the client to pause for interpretation while testifying. Set up a signal between the interpreter and the client when the interpreter needs the client to pause, typically a raised hand in a “stop” signal.

For clients who understand and speak some English, remind them that they will need to wait for the interpretation before answering a question. This can work to the client’s benefit, as it allows him/her to hear the question two times before answering. Some clients may wish to testify in English, believing that it shows their intention and ability to integrate. Advise against this unless the client is fluent or nearly so. The stress of testifying and the importance of accurately responding to questions makes this an unwise situation to “test” developing language skills.

How do I make suggestions without coaching my client?

Given the paramount importance of credibility, it is vital that the testimony be the client's own words. The lawyer's job is to help direct those words in a way that highlights important facts and keeps the client on task. Demonstrate the "good" answer to the client with an explanation of why that answer is more helpful.

Sample Question: "What did the gendarmes do to you when they arrested you?"

Client: "The Cameroonian government agitates and oppresses the Anglophones through military force and uses techniques like the helicopter, or beating on the soles to keep prisoners in line."

Attorney: "It sounds like you are talking generally about what happens to some people, whereas the question is asking about what happened specifically to you. Since these things happened to you, try saying 'The gendarmes tied my arms up together, and my legs together, in a formation called a helicopter. They said this would teach me a lesson about speaking up.'"

Considerations for the affirmative interview

The affirmative asylum interview is structurally non-adversarial. Conducted by trained asylum officers, the purpose of the interview is to learn about the individual's claim for asylum through questioning and to assess credibility. Interviews are usually conducted in an office, with the asylum applicant, an interpreter, the attorney, and the officer being the only individuals present. The officer will direct the interview, but the client will have an opportunity to bring up missed points at the conclusion.

Practice responding to difficult or brusque questions so the client is prepared. Bring in a colleague to play the role of the asylum officer so the client can practice telling the story to an unfamiliar face. In some jurisdictions, you may be able to find out who the interviewing officer will be and prepare specifically for that individual.

Preparing for immigration court testimony

Unlike the affirmative asylum process, the immigration court is adversarial. The client will be questioned by the attorney, cross examined by an attorney representing the government, and questioned by the Judge. Learn about the Judge handling the case and prepare for his or her particular preferences. Additionally, if possible find out who the government attorney will be and prepare accordingly.

Cross examination is the greatest difference between immigration court and the affirmative asylum interview. Whereas asylum officers are generally inquisitive and neutral, without being aggressive, most trial attorneys are aggressive. The client should be prepared for difficult cross examination, skeptical questions, and an attorney who will try to "gotcha" him or her. A mock hearing is vital to prepare the client for this experience. Bring in another attorney who can play an aggressive cross examiner, challenging the client's answers to questions.

Explain the function of cross examination so the client understands why the questions are being asked aggressively. In some cases, it may be helpful to advise the client to keep answers short and direct to cross examination questions to avoid creating credibility issues. Counsel the client to pause before answering a question if an objection is raised. Remind the client to listen carefully to questions and to practice grounding techniques such as breathing.

Special considerations for clients in detention

Representing and preparing detained clients presents a unique set of challenges. The space and timing can be substantial hurdles, as visiting hours are usually restricted. Additionally, bathroom breaks or water breaks may be possible in court but not during jail practices. It can be difficult to prepare for the representative length of time (three - four hours) a hearing will take in a detained setting, where visits may be limited by lock down times. Furthermore, there is often less time to work with a detained client due to the expedited schedule for the hearing.

Clients may end up testifying via video screen, which complicates testimony. Be prepared with signals between the attorney and client - such as changing up the pace of questioning - to maintain communication and control. For detained clients, grounding practices such as breathing become even more important given the difficult physical situation.

What about bad facts?

There may be information in the case which is not helpful to the asylum claim. Perhaps the client has coped with the effects of trauma through alcohol or drug abuse which has led to criminal convictions. These are always best addressed head on. Provide copies of court records for any convictions and counsel the client to speak candidly about these events, while explaining what he did and why. A mental health evaluation may help demonstrate the client's progress in treatment and corroborate claims that he is reformed.

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 Ally Beckman, Megan Bremer, Ana Deutsch, David Gangsei, Regina Germain, Elizabeth Lopez, and Lisa Matos for their insights and expertise which are distilled here.