



National Immigrant Justice Center

## *NIJC Pro Bono Seminar*

Preparing Your Client for an Asylum Office Interview  
or Asylum Merits Hearing

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[www.immigrantjustice.org](http://www.immigrantjustice.org)



# Welcome

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# About the National Immigrant Justice Center

- The National Immigrant Justice Center (NIJC), a program of Heartland Alliance for Human Needs & Human Rights, promotes human rights and access to justice for immigrants, refugees, and asylum seekers through legal services, policy reform, impact litigation, and public education. Throughout its over 30-year history as an organization and its more than 25 years of *pro bono* service, NIJC has been unique in blending individual client advocacy with broad-based systemic change.
- NIJC serves more than 8,000 immigrants annually with the support of a professional legal staff and a network of over 1,500 *pro bono* attorneys.
- NIJC has *pro bono* opportunities available for a variety of immigration case types, including asylum, detention, special immigrant juvenile status, VAWA & U visas, citizenship clinics, and asylee/refugee family petition and adjustment clinics
- NIJC's *pro bono* programs
  - Conduct in-depth case screening, assessment and acceptance
  - Placement with *pro bono* attorneys
  - Case management, attorney support and technical assistance

# About NIJC's Asylum Project

- NIJC's Asylum Project represents asylum seekers through *pro bono* attorneys at law firms in Chicago, Milwaukee, and Indiana.
- NIJC has over 200 open asylum cases today.
- The majority of NIJC's asylum clients currently come from Eritrea, the Republic of the Congo, the Democratic Republic of the Congo, and Central America.
- NIJC maintains a 90 percent success rate in representing asylum seekers. Nationwide, USCIS and EOIR have only approved about 30 percent of all asylum cases in recent years.
- In FY2011, NIJC and its network of *pro bono* attorneys obtained asylum and other protection-based relief for over 100 individuals.



# Client Preparation Basics

# Why Client Preparation is Important

## ➤ Client Comfort:

- The more you practice with your client, the more comfortable your client will be with the process.
- The more comfortable your client is with the process, the better her testimony will be.

## ➤ Attorney Comfort:

- The more you practice with your client, the more comfortable you will be with all aspects of your client's story.
- The more comfortable you are with your client's story, the better your advocacy will be

## ➤ Difference in Testimony:

- Your client will explain her story differently to asylum office questions and to direct/cross-examination that she did when explaining her story to you in a narrative format

# How Much Preparation?

- The more preparation, the better.
- Plan to meet with your client to prepare for the asylum office interview or hearing at least two times, but preferably more.
  - During the second to last meeting, conduct a tough/mock prep.
    - If before the court, conduct an rigorous cross-examination
    - If before the asylum office, question your client critically
  - The last meeting should build up your client's confidence and leave her feeling positive before the hearing/interview.

# Background Information to Review

## ➤ Explain the who/what/where

- Who are the parties and who will be there?
- What will happen and what are the goals of the parties?
- Where will it take place?

## ➤ Explain the possible end results

- Win?
- Lose?
- Other?



# Preparation By Your Client

- Explain how your client should prepare before the hearing:
  - Get a good night sleep
  - Eat a good breakfast/lunch
  - Don't take any new medication/caffeine
  - Stick to a normal routine
  - Leave early/plan for traffic (take public transportation if possible)
  - Dress like she's going to a job interview/church

# Client's Role

Whether your client is before the Asylum Office or Immigration Court, your client only has three jobs:

- 1) Listen carefully to all questions,
- 2) Think before answering all questions, and
- 3) Tell the truth
  - It is not your client's job to determine whether an answer is "good" or "bad."
  - It is your job to know the client's story inside out and ensure that the adjudicator knows what is important.

**REPEAT THIS AS OFTEN AS NECESSARY**

# Finally...

Let your client know that you understand how difficult it is for her to have to tell her story again and again, but that hopefully, this is the last time she will ever have to do so.

# Tips For Your Client on Testifying

- Make eye contact with the Officer/Judge
- Do not guess at answers: if your client thinks she knows the answer but is not certain, she should say "I think/believe"
- It is okay to ask for a question to be repeated or to say I don't understand.
- It is okay to show emotion
- Tell all the details to the Officer/Judge
  - Often, clients have told their story so many times and know that the adjudicator has a copy of their statement, so they assume the adjudicator doesn't want to know all the details of their story.
  - It's crucial that your client understands she must tell EVERYTHING about her story.



# Preparing Your Client For an Asylum Office Interview

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# Who: explain who is involved in the interview

- The Asylum Officer:
  - The Asylum Officer conducts the interview and decides whether to grant asylum.
  - The Asylum Officer is NOT a judge, but has expertise and training in asylum issues.
- The Interpreter (if necessary, you must provide one)
- The language monitor (if an interpreter is used):
  - a telephonic monitor will listen to the interview to ensure the interpreter is properly interpreting the client's statements.
- The Attorney(s)
- The Client and his/her spouse and children, if in the United States
  - Any spouse and/or children listed on the application and present in the United States must attend the interview, but do not typically testify and will not sit in the office during the interview

# What: explain what will happen at the interview

- The goal of the interview is to determine whether your client is eligible for asylum, *i.e.*, whether she meets the four asylum elements.
- The interview will consist of the asylum officer asking the client questions about why she came to the United States and why she is afraid to return to her home country
  - The attorney will not ask the client any questions
  - However, the attorney is there to ensure that the officer has all the information she needs about the client's case
- The interview will likely last between one – three hours (usually two)

# What will happen at the interview cont.

- The Asylum Officer will not issue a decision after the interview
  - The Officer will instruct the client/attorney to return in about two weeks to pick up the decision (if the client lives > ~ 60 miles away, the Asylum Office will mail the decision).
- The Asylum Office does NOT issue denials (except if the client is in lawful status at the time of the decision)
  - The Office will either grant asylum (decision is final, no appeal) OR
  - The Office will refer the client to the immigration court to present the case to the Judge, who will review the case *de novo*.
- The Chicago Asylum Office grants ~ 40% of applications. Nationwide, the grant rate is ~ 30%.



# What will happen at the interview cont.

## EXPLAIN CONFIDENTIALITY

- Everything that your client says during the interview is confidential.
- Nothing that your client says can be repeated to anyone outside of the U.S. government or shared with her government.
- The interpreter and the language monitor are all bound by confidentiality

# Where?

- The Chicago Asylum Office is located at  
181 W. Madison Street, Suite 3000  
Chicago, IL 60602
- There is security on the ground floor and the 30<sup>th</sup> Floor
  - Clients will need to present an ID or the blue “interview notice” in order to gain access to the 30<sup>th</sup> floor.
  - Clients will need to go through a metal detector at the Asylum Office (leave laptops, key chains with bottle-openers/pen-knives etc. at home)
- Plan to meet your client at your office or on the ground floor of the Asylum Office to avoid mishaps.

## Where cont.

- Make sure your client understands that the asylum office interview will be conducted in an OFFICE in an informal setting.
- The client will not be going into a courtroom, before a judge.

# Preparing for the Substance of the Interview

- Make sure your client understands the legally relevant parts of her story
  - She is trying to establish that she was harmed in the past or fears harm in the future
  - On account of the relevant protected ground(s)
  - She cannot get protection from the government
  - She cannot find safety by relocating
- Prepare your client so she can provide a clear and concise answer to the questions:
  - Why are you applying for asylum?
  - What would happen if you went back?

# Preparing for the Substance of the Interview cont.

- Most of the asylum officer's questions will be open-ended, so you must work with your client so that she can tell her story and include all of the details without much prompting.
- Although there isn't a standard set of asylum interview questions, some common questions include:
  - How would [the persecutor] be able to find/identify you?
  - Do you know anyone else [the persecutor] has harmed?
  - Why would [the persecutor] want to harm you after X years?
- Make sure your client understands that "harmed" has a broad meaning and should include mental, emotional, and physical harm, along with threats, and severe harassment.

# Conducting the Mock Interview

- If time permits, conduct at least one mock interview in which you “coach” your client as necessary, but be sure to conduct at least one mock interview with absolutely no coaching at all.
- Conduct the mock interview in the same format as the Officer will conduct the real interview
  - Begin by going through the biographic section of the I-589 and ensuring that the information is still correct
  - Then ask your client why she applied for asylum
  - Go through her story chronologically from there with opened ended questions, such as “what happened next.”

# “Is there anything else you want to tell me?”

- Nearly all Asylum Officers will end the interview by asking your client whether there is anything else she wants to say.
- It is important to prepare an answer to this question, so that the client does not say something completely unexpected and potentially harmful to the claim
- Work with your client to prepare a concise and strong answer to this question in your client's own words



# Preparing Your Client for an Asylum Merits Hearing



# Who: explain who is involved in the hearing

- The Immigration Judge (IJ)
  - The IJ will decide the case, but also may be very actively involved in questioning the client during the hearing
  - Make sure your client understands that the IJ is part of separate agency (the DOJ) than the prosecuting attorney (DHS)
- The Trial Attorney (the prosecutor):
  - Responsible for enforcing immigration laws
- The Interpreter (if necessary): the court will provide the interpreter
- The Attorney(s)
- The Client and his/her spouse and children, if in the United States
  - Any spouse and/or children listed on the application and in removal proceedings must attend the hearing

# What: explain what will happen at the hearing

- The goal of the hearing is to determine whether your client is eligible for asylum, *i.e.*, whether she meets the four asylum elements.
- Explain that the attorney will ask the client questions first and then the trial attorney will cross-examine the client. The IJ may ask questions throughout the hearing.
- The hearing will likely last three – four hours.

# What will happen at the hearing cont.

- Many IJs will take a short break after testimony is complete and then issue an oral decision
  - If the case involves complicated issues, the judge may issue a written decision instead, within about three – nine months.
- If the IJ denies relief, the case is NOT over.
  - Reserve appeal
  - The IJ's decision is not final until affirmed by the Board of Immigration Appeals (BIA), so your client cannot be removed until the BIA decides the appeal.
  - It typically takes about one year from briefing to receive a BIA decision
- If the IJ grants relief and DHS waives appeal, the case is over!

# What will happen at the hearing cont.

## EXPLAIN CONFIDENTIALITY

- Everything that your client says during the hearing is confidential.
- Nothing that your client says can be repeated to anyone outside of the U.S. government or shared with her government.
- The interpreter, trial attorney, and court staff are all bound by confidentiality.
- No one can observe the hearing without your client's permission.

# Where?

- The Chicago Immigration Court is located at  
525 W. Van Buren Street, Suite 500  
Chicago, IL 60607
- There is security at the Court
  - Clients will need to go through a metal detector
- Plan to meet your client at your office or on the ground floor of the Court to avoid mishaps.

# Preparing for the Direct Examination

- Make sure your client understands what you are trying to establish through your direct examination questions (asylum elements)
  - BUT, don't have your client memorize the direct exam or script the answers in any way.
- Remind your client about the importance of credibility
- Prepare your client so she can provide a clear and concise answer to the questions:
  - Why are you applying for asylum?
  - What would happen if you went back?

# Preparing for the Cross Examination

- Prepare your client to answer leading questions
- Empower your client to ask for clarification or for the question to be repeated
- Remind your client to listening carefully to all questions and take her time answering
- Be sure your client understands the importance of maintaining the same demeanor on cross-examination as on direct examination.

# Preparing for the Cross Examination cont.

- Remember, your client to only has three jobs during the hearing:
  - 1) Listen carefully to all questions,
  - 2) Think before answering all questions, and
  - 3) Tell the truth
  
- Explain about re-direct: your client should not worry on cross-examination that an answer may “sound bad” or be incomplete
  - It is the attorney’s job to clarify the client’s responses through re-direct



# Conducting the Mock Hearing

## PRACTICE, PRACTICE, PRACTICE

- Even more than with asylum interviews, multiple preparation sessions are extremely important for asylum merits hearings
- Consider bringing in an outside attorney to serve as the judge and trial attorney.
- If using an interpreter, conduct the mock hearing entirely through the interpreter

# Conducting the Mock Hearing

- If time permits, conduct at least one mock hearing in which you “coach” your client as necessary, but be sure to conduct at least one mock interview with absolutely no coaching at all.
- Be sure to conduct a rigorous mock cross-exam with your client (but NOT during the last prep session)
  - The mock cross-examine is just as important as the mock direct exam – if not more important

# Expect the Unexpected

- No matter how much you prepare, something unexpected will happen during the hearing
- Know your client's testimony inside out so that you can bounce-back from anything that comes up.

# THANK YOU!

*National Immigrant Justice Center*

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