

BEST PRACTICES FOR WORKING WITH TRAUMATIZED CLIENTS WHEN PREPARING FOR ASYLUM INTERVIEW

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This guide is intended to prompt you to think about how to style your client interactions for the best possible outcomes, particularly when you are forced to work with clients in less than ideal conditions: in crowded detention center meeting spaces, at the border, in refugee camps.

All of the people you are working with have likely undergone some traumatic experiences - certainly in the emotional sense, if not also in the legal sense. Making the decision to leave home, travel across other countries, undertake a frightening journey and perhaps being harmed physically or psychologically along the way – these are all traumatizing experiences, regardless of what traumatic experiences may have prompted the person to flee their country of origin (CoO). This means that even if their traumatic experiences might not ultimately help them with their asylum claim (e.g. because they rise to the level of persecution in the CoO), and might not therefore be the focus of the bulk of your questions, these experiences will nevertheless impact their interactions with you. Traumatic experiences may cause: faulty memory, flooding, inability to focus, hypervigilance, suspicion, depression, anxiety, and so forth. Each of which may well impact your client’s ability to communicate with you. In addition, you will often be communicating in a second language to one of you, or through an interpreter, both of which further exacerbate the potential for challenges to communication. Furthermore, governments with restrictive immigration policies are increasingly imposing policies designed to minimize the time you have to prepare your client, your access to your client, and the level of confidentiality you are able to maintain. Lawyer/client interactions will be more successful if you are mindful of this and moderate your actions accordingly. This short guide is designed to provide some tips and things for you to consider before you begin.

If you are meeting with your client in person, one easy first step you can take is to select a quiet interview space, neither too hot nor too cold, and allow your client to select where to sit. A person who is hypervigilant may be too nervous to speak with their back to the door or conversely, without easy access to flee. If you are communicating with your client via phone or video, you can ask them if they are comfortable and in a private or semi-private space. Given them time to make adjustments as needed. Explain who all of the parties in the room are, what their roles are, especially yours, and discuss confidentiality. By the time they reach you, asylum seekers will have heard from at least one person (probably several) about what a “successful asylum claim” looks like. At the point at which they meet you, your client trusts this person more than you. Part of your job is to invite them to trust you more, through a combination of receptivity, compassion and competence. The first steps you take can do a lot to create or break trust, to erect walls or to allow them to come down.

One of the first things to consider is that a client does not owe you anything. This means that they will only tell you their story if you adapt your manner and questions to evoke a sense of trust. Think about the most traumatic experience you have ever had. What would prompt you to tell it to a complete stranger, particularly if you thought your life or your children's wellbeing was hanging in the balance. It is tempting to think that because you are volunteering your time to assist people in need -- people who would have no legal assistance otherwise -- that they owe you forthrightness, efficiency in their answers, gratitude. Thinking those things, even subconsciously (which is especially likely to happen when you are also tired or perhaps even suffering secondary trauma or feeling burned out), is likely to impede the process in multiple ways.

Clients who have experienced sexual violence may be even less forthcoming and take longer to trust you. Every individual is different, and how long ago the sexual violence took place and what has happened since then is also likely to impact their ability to discuss the event(s). For example, if the sexual violence took place in the CoO, and the person made the difficult decision to leave and then travelled for several months to seek asylum, they may now view themselves as survivors and persons with agency, taking affirmative steps to seek asylum. They may possibly be better equipped to discuss the details of the event(s). Even so, discussing traumatic events is often extremely triggering. At a minimum, consider offering your clients compassion, nonjudgment, and breaks as needed. The breaks should not only be for your clients. If you find yourself becoming impatient, ask yourself whether you might benefit from a break.

When our clients are telling us horrific stories, and when we are trying to think of legal bases for asylum claims based on those stories, we may find ourselves rightly concerned that we are revictimizing our clients by asking them to tell us these stories. One of the best ways to avoid revictimizing your clients is to be exceedingly clear, at every step of your interview(s), exactly *why* you are asking the questions you are asking. Another very important tool is to begin each interview by explaining in plain non-legal language, what the law says and how that relates to the client's story. Most interviews will take place in at least one parties' second language or through an interpreter, but this term of art means that it is the lawyer's obligation to meet the client "where they are," intellectually and emotionally, and to ensure that the interpreter does, as well. The client "owns" the case, meaning that they suffer or benefit from the consequences of the outcome of their claim. Therefore, our job is to explain the law to them, elicit facts, and then explain how their facts fit into the law. "Explain" means that we say it in such a way that it is understood. Our job is not to impress clients with our legal knowledge. Our job is pull out the facts that are most likely to satisfy the elements of asylum law (or vulnerability standards, or eligibility) and then guide them in how best to communicate those facts to the adjudicator. For example, you might say:

In X number of days, you will be meeting with X official who will make a determination about X. I do not work with any government. I am here for you, and my job is to help you to tell your story in such a way that when you meet with the officer, you know how to talk about what happened to you, emphasizing the parts that are required to be shown in order to be granted asylum (or eligibility, etc.). [optional, but very effective:] At the end of our time together, I will try to

tell your story back to you, so that you can hear what it sounds like to focus on the parts that satisfy the asylum requirements, and maybe leave out events which, while they might be very important to you, are not relevant or not helpful to your claim. At some points, I might ask you questions that the Officer might ask you. But I will let you know first that I am going to do that, so you will not think that I am questioning the truthfulness of your story. [optional] If we have time, and we think it would be beneficial, I might ‘play the role’ of the Officer once I’ve told your story back to you. The point would be for you to become more familiar with the style and type of questions you might be asked. Throughout all of this, I am here for you. I work for you.

One of the quickest ways to shut down a client who has started to trust you is to start “cross-examining.” There is a difference between asking questions to elicit more useful details, and making a person feel like you are judging them or don’t believe them. Look at the difference, for example, between the following two interactions:

1. “You just said that you were raped by men who entered your home. I am so sorry that this happened to you. I would like to ask you some questions that will bring out some details that are very important. I am not trying to make you suffer by remembering the story. I am trying to help you pull out details that would be very persuasive to the Officer and important for him to hear. Is it alright if I ask you these questions? [if yes, then:] Can you tell me what clothes they were wearing, what car they were driving, how many of them hurt you? Did they ever say anything to you or to each other while these events were happening? What happened when they left?”
2. “You just said you were raped by men who entered your home. How many of them were there? Why did they let you escape?”

The first may help the client understand why you are asking the questions and, *crucially*, that you are not judging them or questioning the truthfulness of their claim. The second scenario, by its abruptness alone, shuts down any trust that you are “on their side,” and is likely instead to make them wonder whether you believe them. If you have elected to represent a client, and you do not know for certain that the client is lying [in which case you would withdraw your representation], your job is to believe them, and help them tell their story in a way that applies their facts to the law. Remember that responses to trauma can often look like lack of candor, especially when compounded by cultural and language differences. Your job is to *believe in* your client. Really show that you are empathetically listening. If this makes you emotional, that is not the end of the world. Lawyers don’t have to be stoic to be effective. They can be human, too. The caveat to this is that most clients do not want to hurt you; if you feel that your emotional response is impeding your client’s willingness to continue, take a break. You might also tell a client who becomes emotional that genuine emotion is not only fine to show to the Officer, but often helpful. Don’t be afraid to share space with a client telling a difficult story.

Finally, framing is very important. In this context, framing means beginning each area of law you are exploring by briefly explaining *why* you are asking the questions you are asking, or why you are asking them the *way* you are asking. For example, if you decide that mooting your client might be helpful, then remind them say, “I’m going to ask you questions now that the officer might ask. I will also ask them the way the officer might ask them. I am doing this only because it might be useful for you to know what to expect. Although I might behave the way an officer might behave, so you can see what that might be like, I am doing this to help you, *not* because I do not believe you. Is it OK to proceed?” These framing moments might feel like wasted time when you are feeling short on time, overworked, stressed or frustrated with your client or your day. But they actually do not add much time, and what you gain is the ability to get much more trust, and therein more ease, cooperation and information, from your client, which will allow you to better help them. Conclude each meeting with an acknowledgement of how difficult speaking about these matters can be, an expression of support and a reminder that you believe you client, and are working for them.

** With respect to sexual violence, if the client explains that they suffered sexual violence after they fled their CoO, en route, and you are concerned (rightly) that this alone will not help their asylum claim, you may need to explain this legal issue to the client in greater detail. This violence might be helpful to the vulnerability determination (Europe) or the safe third country determination (US), but irrelevant or even potentially harmful to the asylum claim (because the officer might view the outward manifestations of their trauma as being valid, but not “because/on account of” persecution in the country from which they are seeking asylum). Explaining this to a client who has suffered could be problematic and the framing (and legal explanation) will be particularly important. Having access to a mental health professional in these cases can be very helpful to the client.

** A caveat to all of this advice is that it is never good practice to truncate meeting with your client or to have them in spaces where others are present. However, the advice offered here assumes that the lawyer is attempting to offer advice in less than ideal circumstances, typically created by the host governments [public or non-private spaces, with a short period of time in which to provide counsel]. Essentially the lawyer is forced to work in an environment in which she would not work, were the legal impediments not in place that require it.