



# **Working with Experts**

Shanti Martin Brown (Ayuda)

Elizabeth Keyes (University of Baltimore)

# Why Experts Matter

- An adjudicator may grant asylum on testimony of the applicant alone but only where the testimony “is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.”
- **An adjudicator may require other evidence to corroborate otherwise credible testimony “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”**

# How Can An Expert Help?

- Prove (an element of) your case through testimony
- Help discover more facts (particularly with psychological evaluations)
- Identify and pursue investigative strategies likely to procure additional facts or evidence
- Help develop your theory of the case (and identify weaknesses)
- Enhance credibility of the client (explaining, for example, memory issues)

# Exercise

- Mom came here when Jorge was 2 and left him and his sister with Jorge's uncle, and the uncle has been beating them. A teacher noticed bruises and brought Jorge to the police, but nothing happened. Uncle is in a gang and the rival gang is threatening him and his family with death because of the uncle killed one of their members.
- **In groups of 2-3, brainstorm a list of the experts you would hire to support your case if money and time were no object. What expertise do you need?**
- **[Time permitting]—Go back to your groups and prioritize *two* from your list.**

# Who is an “Expert” at Trial?

- Federal Rule of Evidence 702
  - someone with “scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue...” AND
  - who is “qualified as an expert by knowledge, skill, experience, training, or education”
- Anyone who the judge decides, in the exercise of discretion, is an expert

# Who is an “Expert” at Trial?

- According to the BIA: “one who is qualified as an expert by **knowledge, skill, experience, training, or education and** who has **specialized knowledge** that will assist the Immigration Judge to understand the evidence or to determine a fact in issue.”
  - [Matter of D-R-, 25 I. & N. Dec. 445, 2011 WL 1341569 \(B.I.A. 2011\).](#)

# Relevant Considerations

- RESUME QUALIFICATIONS
  - Standing in the community
  - Training and experience
  - Breadth of expertise
- OTHER QUALIFICATIONS
  - Neutrality/objectivity
  - Communication ability
  - Demeanor
    - With client
    - With court
- COST \$\$
- FORM OF WORK PRODUCT (Written? In-court?)

# Exercise 2

- **Expert 1: Maria**

- B.A. in Criminal Justice, Univ of Baltimore ('98). Thesis: *Police Presence and Organized Crime in South Africa*
- Detective with P.G. County Police (99-2009), served on gang task force 2007-2009
- Now runs consulting business. Has done 4 consultancies in El Salvador for USG studying gang violence, and consults for Baltimore police dep't on gang initiatives.
- Testified before House Int'l Affairs Committee in 2011 on MS-13 on transnational gangs.
- No experience testifying in immigration court.

- **Expert 2: Tony**

- M.P.A. from Princeton ('04), specialty in int'l development, PhD from Yale in Gender studies
- Did Peace Corps in El Salvador 2004-07, then worked as consultant for World Bank on gender issues in Central America, contributing to multiple reports on gender discrimination, youth and law enforcement.
- Currently a professor of public policy at George Washington University.
- Volunteers weekly at a shelter for homeless youth (Sasha Bruce Youthworks), in their program for homeless Latino youth
- Has previously testified as expert in immigration court.

# Finding a Country Conditions Expert

- <http://www.refugeelegalaidinformation.org/country-origin-information-experts>
- Refworld
- Background reading on the country (books, non-legal scholarship)
- Universities
- Professional associations
- Bar associations
- List serves / word of mouth / referrals
- Other networks
  - Peace Corps, employment, etc.

# Finding Other Experts

- Psychological Experts
  - Physicians for Human Rights
  - Pro Bono services from private sources
  - Social workers at non-profit partners
- Physical Evaluations
  - Physicians for Human Rights



# Experts in the Trial Setting

# To Testify or Not to Testify

- Witness List
- Telephonic testimony
- Written affidavit
- Stipulations and proffers

# Preparing Your Expert

- Simplify, simplify, simplify!
- Explain the nature of the proceeding
  - Role of IJ
  - No stenographer
- Practice/moot the testimony
- Be sure the expert is ready to explain any last-minute changes in country conditions,

# Content of Direct Exam

- Introduction
- Education, Training & Experience
- Opinions or Conclusions
- Basis for the Opinions/Conclusions

# Direct Examination Techniques

- **Pay Attention to Form!**
  - Avoid leading questions
  - Use open(who/what/how/when/why) questions, and not closed (“did you...”) questions
- **Consider using narrative questions**
  - But be willing to interrupt if the witness goes on too long
- **Use Headlines & Transitions**
- **Tone, Pitch & Pace**
- **Emphasis Techniques**
  - Series of questions that elicit the same answer for emphasis