



## Preparing Your Case:

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*Integrated case planning*

*Working with family and community*

*Working with interpreters*

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# Integrated case planning

Be realistic about case with yourself and the client:

- Be clear about why you are accepting the case
  - Organizations should have clear and consistent case priorities. Your decision to accept the case should be supported at all levels of the agency. Case policy should focus “resources on the identified priorities of the provider... and allocates available resources so that representation is of high quality.” ABA Standards for Providers of Civil Legal Services to the Poor (2002)
- If the case has weaknesses
  - Determine early what measures your organization will be able to seek (expert? Appointment of child advocate?), or not, and make that part of case acceptance decision
  - At time of offering representation, discuss weaknesses of case fully with potential client

# Integrated case planning

Know plan in case of adverse outcomes:

- What recourse is available from adverse decision in form of relief you are seeking
  - Motion to reopen or reconsider; appeal?
  - Will your organization offer representation? What will be the deadlines to file?
  - If appeal needed, will your agency potentially accept, or will refer?
- What safeguards available to minimize harm following possible adverse decision – for example, safe housing during long appeal to BIA or AAO; referral to social services agency in home country?

# Integrated case planning

- Why have clear case acceptance policy, and plan ahead for adverse outcomes?
  - Protect yourself.
- Andrew P. Levin and Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 *Pace L. Rev.* 245 (2003):
  - In addition to symptoms of secondary trauma, helping professionals have long been known to experience "burnout." Burnout develops gradually due to the accumulation of stress and the erosion of idealism resulting from intensive contact with clients.
  - The syndrome is characterized by physical symptoms such as fatigue, poor sleep and headaches, emotional changes including anxiety, irritability, depression and hopelessness, and behavioral manifestations including aggression, cynicism, and substance abuse, leading to poor job performance, deterioration in interpersonal relationships, and significant attrition among professionals working with traumatized populations.
  - ...Number of clients was moderately positively correlated with symptoms.

# Integrated case planning

## Questions in determining case strategy:

- What range of protections does the client want (need)?
- If SIJS eligible, what actions are available to seek those under state law?
- Child is seeking SIJS as part of holistic need for protection
  - USCIS adjudication at I-360 stage involves determination that “the SIJ benefit was not ‘sought primarily for purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment,’ See H.R. Re. No. 105-405, at 130 (1997). USCIS Neufeld memorandum, March 24, 2009.
  - State court process may offer multiple forms of child welfare relief

# Integrated case planning

## Questions in determining case strategy:

- What standing, jurisdictional, notice or other requirements are involved, and can they be met here
  - Consult with family law practitioners or specialists in SIJS in your state)?
  - If family members are needed as participants in case, plan with them
- What state law and other deadlines apply (see emergency provisions in state codes)?

# What to file:

## Sample SIJS checklist (Texas specific)

Name: \_\_\_\_\_

A#: \_\_\_\_\_

- Add IOLTA Control Sheet to file
- Minor's declaration
- Corroborative call
- Translate BC
- SAPCR
  - Notice/Waiver/Publication
  - Paternity Inquiry Request
  
- I-360 – SIJS (submit E-28 to court)
- I-485 – AOS
- I-765 – EAD

# Investigating your case: working with family and community

Barriers to family participation:

- Unfamiliarity with legal process
- Mistrust of legal professionals
  - “They say that the men in suits are the ones who are here to ruin people’s lives.”
- Immigration status and fear
- Less formal education
- Third-language speaking
- External pressures
  - Work
  - Economic insecurity
  - Family needs in home country
- Ongoing need to reestablish or form relationship with child

# Investigating your case: working with family and community

- Best practices in working with family members
  - Educate family on legal process
  - Enlist family help as witnesses, gatherers of evidence
  - Long-term: if possible, connect with community through outreach and education
- Assess and inform client of potential effects of family participation in child's case
  - Ethical duty to fully inform client requires this
  - Effect on family member(s) may be among client's foremost concerns

# Investigating your case: working with family and community

- Refer to Legal Orientation Program for Custodians (LOPC) program for orientation if available
  - EOIR has contracted with non-profit partners to carry out the LOPC at 14 sites nationwide.
  - The LOPC providers offer general group orientations, individual orientations, self-help workshops, and assistance with pro bono referrals. Also assist with school enrollment and make referrals to social services to help ensure the well-being of the child.
  - In addition, LOPC National Call Center provides telephonic assistance to custodians who live outside the geographic areas in which LOPC is currently available. Includes legal orientations on the immigration court process, as well as guidance in filing basic court forms, such as the change of address and motion to change venue.
- LOPC call center: 888-996-3848

# Investigating your case: working with family and community

- When family members are involved in the case, be clear with all about:
  - Who is the client
  - Individuals involved in juvenile court proceeding may include the child; parent or other caregiver seeking appointment from court; absent parent; or other party
- Be clear with all parties that your client is the child
  - Even if interests appear aligned, be prepared for potential conflicts, for example between child and potential guardian or conservator
  - Assess state ethics rules before beginning representation
  - Plan for potential conflicts in representation agreement(s)

# **Investigating your case: working with family and community**

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**Working with interpreters: before the meeting**

# Preparing your case: working with interpreters

- If possible, plan ahead for working with interpreters and translators
  - Develop guide to interpreting and translating documents
  - Provide to volunteer interpreters or translators at time of orientation
- Roles of interpreters and translators
  - Volunteer interpreters may interpret during a Know Your Rights presentation, an intake interview, legal counseling between an attorney and a client, or during a client's hearing or interview with a government agency or a consular office.
  - In an asylum interview, the client must bring her own interpreter
  - In an state court hearing regarding an SIJS predicate order, the court may furnish interpreters, or the client may be required to bring one.

# Preparing your case: working with interpreters

- Roles of interpreters and translators
  - Volunteer translators may be asked to translate affidavits, official documents, newspaper articles substantiating a client's case, or outreach materials informing a particular community about agency's services.
  - Interpreters are usually given much shorter notice than translators. Because we also work with many individuals, especially victims of trafficking, who are in life-threatening situations, we may ask an interpreter to assist in a crisis situation.
  - Many translations, however, do not need to be completed immediately. When we ask someone to translate our outreach materials, we ask that they finish the translation within a week or two, depending on the length and difficulty of the document. as possible.

# Preparing your case: working with interpreters

- General Responsibilities as an interpreter or translator
  - NEVER disclose information learned while interpreting or translating for a case to anyone. This includes friends, classmates, professors, and media.
  - Disclose any conflict of interest in interpreting or translating for the client. If you realize that you know the client or are familiar with his/her case, you must inform the a staff member or *pro bono* attorney with whom you are working as soon as possible.
  - NEVER give legal advice of any kind to the client, whether solicited or not.
  - Communicate your language limitations fully to the staff member or *pro bono* attorney with whom you are working, preferably before you start interpreting or translating.

# Preparing your case: working with interpreters

- General Responsibilities as an interpreter or translator
  - Do not initiate outside contact with the client. If you do encounter the client at a later date, allow the client to make the choice about whether to start a conversation.
  - Strive to remain objective in your work. We understand that many interpreters become emotionally invested in a case with which they are assisting, but you can best serve a client by interpreting or translating honestly and accurately. We also know that you may feel uncomfortable interpreting or translating in a particular case because of your own beliefs. In these situations, please inform the staff person or *pro bono* attorney with whom you are working about your concerns.
  - Take care of yourself and allow yourself some time to process after interpreting or translating.

# Investigating your case: working with family and community

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**Working with interpreters: at the interview**

# Preparing your case: working with interpreters

Adapted from Vera Institute of Justice, *Tip Sheet for Working with Interpreters* (2013):

## **Instructions for interpreter:**

- Interpret everything that is said
  - Use the first and second person as stated
  - Use same grammatical construction as the speaker
  - Do not summarize, omit, edit, or polish what was said
  - Interpret the meaning as accurately as possible
- Do not have side conversations with the client
- Never answer for the client
- You may ask speakers to pause, repeat, or slow down
- If needed, ask for clarification or a time out

# Working with Interpreters

Adapted from Vera Institute of Justice, *Tip Sheet for Working with Interpreters* (2013):

## **Suggestions for client:**

- Address all questions and concerns to me
- Explain the role of the interpreter: to be a conduit only
- Speak slowly and speak only one or two sentences at a time
- Be patient - the interpreter may ask you to slow down or repeat what you just said
- Explain words or concepts upon interpreter's request
- Allow the interpreter to finish interpreting before speaking
- Do not ask the interpreters any questions or have any side conversations with the interpreter

# Working with Interpreters

Adapted from Vera Institute of Justice, *Tip Sheet for Working with Interpreters* (2013):

## **Suggestions for advocate:**

- Walk through the instructions above with the interpreter
- During the interpretation:
  - Maintain eye contact with the client
  - Use first person, plain English, speak slowly and pause
- Speak one sentence at a time, ask one question at a time
- Allow the interpreter to finish interpreting before speaking
- Explain words or concepts upon interpreter's request
- Be aware of cultural differences and regional vocabulary differences
  - Best protection: know your case facts

# Working with Interpreters

Adapted from Vera Institute of Justice, *Tip Sheet for Working with Interpreters* (2013):

## **Suggestions for advocate:**

- Always maintain control
  - Ask for full interpretation of side conversations
  - Do not allow the interpreter to answer for the client
  - Inquire about interpretation that is longer or shorter than expected
- Debrief with the interpreter at the end to address issues or concerns
  - Discuss any questions or concerns that emerged during the session
  - Invite suggestions from the interpreter on how you can work better with interpreters

# Preparing your case: prior to hearing or interview

- Direct examination
  - Let client know purpose of direct examination is to help her tell her story
  - If client has trouble answering questions, rephrase – find questions that work
  - Offer to let client identify questions that will most help her tell story
- Interviewer questions, or cross-examination
  - Practice potential interviewer questions
  - Remind client it is ok to say she does not know or does not understand
  - Practice with an interpreter if possible
- Cross examination is its own full topic, but:
  - Identify case weaknesses and consider addressing in direct (difficult areas of testimony; negative facts)
  - Know the facts – prepare to clarify difficult areas on redirect

# Preparing your case: prior to hearing or interview

- Work to minimize retraumatization
  - Balance duty to thoroughly prepare with need to avoid further trauma
  - Okay to skip over traumatic sections of direct, in follow-up meetings
- Leave sufficient time between practice and hearing
- Choose time when client has access to therapeutic conversation or setting following your meeting

# Preparing your case: hearing or interview

- Plan how you will take notes – on copy of declaration or separate paper
  - You will need to know question and answer
  - Plan to flag issues to clarify at end of hearing or interview
- Preserve notes in case of appeal, follow-up hearing or interview, or request for evidence (RFE)
- In asylum interview, plan to take down officer's contact information
- Plan for time to do follow-up activities, such as submitting additional evidence to asylum officer
- Debrief with client
  - Recognize client's achievement in testifying
  - Be prepared to review next steps.
- At client's wish, offer to debrief with family members



# Conducting Effective Client Interviews & Drafting Affidavits

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# Step One: Understanding the Client, We're working with kids!

Intersection of children, immigrants, and trauma survivors.

- **Individual**: age, intelligence, education, lack of understanding of consequences, susceptible to suggestion, fear of reporting abuse/harm, limited vocab and recall of info, mistrust of adults or over reliance, **trauma survivors**.
- **Familial**: Mixed status families, fear of deportation; distrust of legal system/authority; cultural and linguistic barriers; economic and educational differences.
- **Social**: socioeconomic, country of origin, distrust of legal system/authority, cultural/linguistic barriers.
- **Trauma Survivors**: memory and concentration impairment; difficulty making decisions; intrusive re-experiencing, dissociation, hyper-arousal; physical effects (insomnia, fatigue, loss of appetite, inability to speak).

# Identify Strengths & Risks

Strengths	Risks
<ul style="list-style-type: none"><li>• Connections in ethnic community</li><li>• Using coping mechanisms</li><li>• Transportation</li><li>• Language acquisition</li><li>• Resourceful</li><li>• Entrepreneurial</li><li>• Religious/faith community</li><li>• Social ties (family, friends, coworkers, neighbors)</li><li>• Economic stability</li><li>• Hobbies</li></ul>	<ul style="list-style-type: none"><li>• Separation/isolation from family, friends, community, &amp; home</li><li>• Economic stress</li><li>• Language barriers</li><li>• Lack of social supports</li><li>• Different cultural and belief systems</li><li>• Loss of familiar ways of living</li><li>• Barriers to obtaining social and legal services</li><li>• Power structures change (gender, economic roles, etc.)</li><li>• Discrimination/ minority status</li><li>• Trauma</li></ul>

# Recognizing Signs of Trauma

## Physical symptoms:

- Being startled easily
- Racing heartbeat
- Fatigue
- Difficulty concentrating
- Edginess and agitation
- Muscle tension
- Aches and pains
- Difficulty eating
- Sleep disturbances
- Low energy
- Nightmares

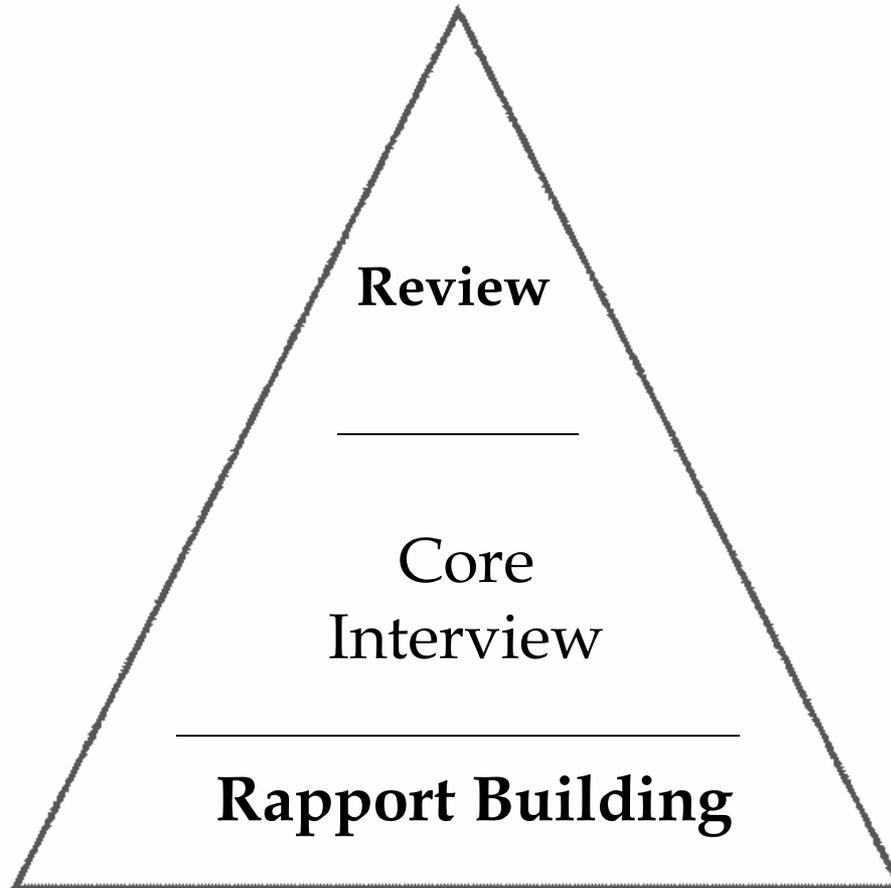
## Emotional symptoms:

- Fear and helplessness
- Sad and hopeless
- Unsafe
- Insecure
- Shock, denial, or disbelief
- Anger, irritability, resentment, mood swings
- Guilt, shame, self-blame
- Anxiety and fear
- Withdrawing from others/disassociation
- Feeling disconnected or numb
- Depression
- Numbness

# Children and Trauma

- **Impacts of trauma on children**
  - Flashbacks
  - Repetitive behaviors (reenactment, drawing story)
  - Changed attitude and approach to life
  - Trauma-specific fears (nightmares, “irrational” fears)
- **Trauma may lead to:**
  - Self-blame
  - Powerlessness
  - Stigmatization
  - Destructiveness
  - Feelings of loss and betrayal
  - Difficulty forming attachments
- **Risk of secondary trauma (PTSD)**

# Step Two: Understanding “The Anatomy” of an Interview



# Rapport Building

- **Build trust**
- Meet in a child-appropriate setting (private, non-distracting, developmentally and culturally appropriate)
- Explain process to child and family
- Explain the scope and purpose of your role
- Meet several times for short periods before working on substantive issues
- Show interest in the child's life
- Modify & experiment with approaches

# Tips for a Child Friendly Approach

- **Use Clear Language**
- **Watch body language** (*yours and the child's*)
- **Explain legal jargon** ("*charges*", "*parties*")
- **Use the child's words and ask for clarification** (*do not substitute your own words for the child's*)
- **Allow time for a child to answer** (*uncomfortable silences are okay*)
- **Ask one question at a time**
- **Ask open ended questions**
- **Ask about the child's meaning**  
*Ambiguous words "tickling"  
"hugging" "punished" may  
communicate more to you than what  
is being said literally*
- **Schedule frequent shorter meetings or take breaks**
- **Active/Reflective listening** "*It sounds like*"
- **Repeat, rephrase, etc.**
- **Show empathy but understand/know boundaries**

# Pitfalls

- **Never ask the child to guess:** (“about how many times do you think it happened?”)
- **Avoid asking “how many times did x happen”:** *Children can count objects much better than they can count incidents.*
- **Avoid complicated relationship words:** *step-father, ex-wife, mom’s boyfriend, maternal grandfather, etc... Use, “Joe,” “Maria” etc.*
- **Avoid abstract concepts:** *“abuse”, “control”, “discipline”, “custody”*
- **Avoid complex questions**
- **Avoid time estimates:** *Ask “what grade were you in when that happened” or was that near your birthday? Christmas? Not: how long ago did that happen?*
- **Avoid asking “do you remember”**
- **Avoid shifting topics**
- **Avoid shifting time frames:** *avoid moving back and forth in time and signal the child when you are about to do so*

# Ending an Interview

- Restate what was discussed, how it is helpful, how it will be used.
- Revisit confidentiality.
- Review next steps, timelines, and future meetings.
- Answer any questions.

# Step 3: Preparing Affidavits

- **Expect to draft, draft & redraft**
- Give homework!
  - Creates autonomy
  - Allows the child to reflect
- Remember the child's voice BUT also remember the purpose of the affidavit as well as the audience
- Keep in mind many of the tips from above (facts may change, new facts may appear, etc.)

# Understanding Inconsistencies in Interviews & Affidavits

## **Children's stories will change. Why?**

- New relationships/distrust
- Natural inconsistencies
- Child tendencies to fantasize, invent, regress

## **Why would my client make-up a story?**

- Avoidance of painful memories and topics
- Fear of consequences/reprisals
- Seeking affirmation
- Wishful thinking
- Occasionally, instructed by smuggler, trafficker, abuser, or others while detained

## **Response?**

- Consider the reasons
- Refrain from judgment (react carefully!)
- Reinforce the importance of telling the truth
- Review, review, review

NATIONAL  
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A HEARTLAND ALLIANCE PROGRAM

# Preparing Your Case:

*gathering evidence*

December 2014

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

# United States Asylum Process

## Asylum Office/Affirmative Process

Client in US; not in system

↓  
File Affirmative Application

↓  
Asylum Office Interview

↙  
Grant

↘  
Referral

## Immigration Ct/Defensive Process

Client in DHS system

**Unaccompanied  
Children  
File with the AO  
while in  
proceedings**

↓  
"Notice to Appear" Issues

↙  
Master Calendar Hearing

↓  
Merits Hearing

# What to File

## Asylum Office (Service Center)

- Appearance form: G-28
- TVPRA Instruction Sheet (for unaccompanied children only)
- Asylum App (I-589) and 1 passport photo
- Two copies, plus an one copy for each deriv.
- No filing fee!

**One week before the interview, file** (with the Asylum Office)

- Legal memo
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identity documents, expert affidavits, and other corroboration

## Immigration Court

- Appearance form: E-28
- Asylum App (I-589) and 1 passport photo
- Serve one copy of the I589 on DHS

No filing fee!

**Prior to the merits hearing, file:**

- Brief
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identity documents, expert affidavits, and other corroboration

*Anytime you file anything with the Court, you must serve a copy on the government*

# Credibility

- Most important part of any case
- Can be based on demeanor, candor, inherent plausibility, consistency of statements (made any time/any circumstance)
- The adjudicator's credibility determination will be based primarily on the client's affidavit and testimony, so...

Your client's affidavit is THE MOST IMPORTANT EVIDENCE in your client's case.

# Corroborating Evidence

- can be required “unless the applicant does not have the evidence and cannot reasonably obtain the evidence”
  - finding of fact (non-reviewable)
- Also remember...
  - 8 C.F.R. § 1208.13(a): “The testimony of the application, if credible, may be sufficient to sustain the burden of proof without corroboration.”
- Corroborate each element of the asylum claim or provide evidence as to why your client cannot reasonably obtain corroboration.

# Obtaining Corroboration

## Everything Matters!

<b>Country Conditions</b>	<b>Client-Specific</b>	<b>Past Persecution</b>	<b>Future Persecution</b>
State Dept Human Rights Reports	Facts: dates, times, flights, DATE OF ENTRY, IDENTITY	Forensic Medical Evaluation	Evidence of past incidents that may not rise to persecution
Amnesty Intl & Human Rights Watch	Physical Evidence: pictures, police reports, receipts	Mental Health Evaluation	Affidavits from similarly situated individuals who have suffered harm
UNHCR Refworld <a href="http://www.unhcr.org/refworld">www.unhcr.org/refworld</a>	Witness Affidavits	Medical Reports	Expert Affidavits (especially for court cases)
Domestic and Foreign News Sources	Google Earth, Hand Drawn Maps, Internet Footprint	Pictures	Country Conditions

# Corroboration: witnesses abroad

- Ensuring safety
- Ensuring credibility
- Availability for cross examination?

# Corroboration: Examples

- Veronica is afraid her husband will beat and abuse her if she returns to El Salvador.
- Eli is afraid that if he returns to Honduras he will be forcefully recruited by gang members.
- Karla is afraid if she returns to Guatemala, the gang member who targeted her to be his girlfriend will harm her.

# Obtaining Documents

- Always verify document authenticity with your client.
- Establish chain of custody.
  - Ask your client how he/she obtained the document
  - Provide evidence of the document's origin (e.g. copy of the envelope containing the postmark from the country of origin)
- If you doubt the authenticity of a document, leave it out.
- All foreign documents must be translated into English.

# Obtaining Your Client's Immigration History

- There is no discovery in immigration proceedings.
- If your client is in court proceedings, know the history of your case:
  - Review court file/hearing tapes
  - File FOIA request right away
    - Request Track 3 if case is in proceedings
    - Include NTA and Hearing Notice
- Contact information
  - Address: FOIA Office, Department of Homeland Security  
National Records Center  
150 Space Center Loop, Suite 300  
Lee's Summit, MO 64064-2140
  - Fax: 816.350.5785
  - Email: [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov) (for subsequent inquiries)