Adjudicating Refugee and Asylum Status

THE ROLE OF WITNESS, EXPERTISE, AND TESTIMONY

Edited by

BENJAMIN N. LAWRANCE
Rochester Institute of Technology

GALYA RUFFER
Northwestern University

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As soon as Muhammed, a young man from Cameroon, hit puberty, he realized that he was attracted to other men. He knew he had to hide these feelings or he would be ostracized, attacked, or even killed if his family learned that he was gay. At first he tried to date girls to stop the kids in his class from insulting him for being feminine. But he did not have feelings for girls and could not force himself to stay in relationships with them.

When he was in university, Muhammed started secretly dating his classmate Christopher. Although Muhammed was scared of being discovered with Christopher, spending time with him was the only thing that made Muhammed happy, and he took the risk.

When a friend stumbled on the boys kissing one day, Muhammed pleaded with that friend not to tell anyone, but the friend refused. He dragged Muhammed to his parents’ house and told Muhammed’s father what he had seen. From the rumors he had heard in the community, Muhammed’s father had suspected that his son was gay. He started yelling homophobic slurs at Muhammed and punching and kicking him.

When Muhammed’s father left the house to consult with his tribal and religious chiefs about what punishment to impose, Muhammed escaped his house. Soon thereafter, Muhammed fled to the United States.

I met Muhammed at the Harvard Immigration and Refugee Clinical Program (HIRC), where I supervise law students and represent clients in their applications for asylum and other forms of humanitarian relief. A team
of law students and I worked closely with Muhammed, meeting for several hours each week over the course a year to elicit his story and prepare his case for adjudication. In addition to drafting Muhammed’s affidavit, the students also conducted extensive research on conditions for LGBT individuals in Cameroon and began looking for evidence to corroborate his testimony.

Under the Refugee Convention, Muhammed’s credible and persuasive testimony alone should have been sufficient to establish eligibility for asylum. But, as the editors’ introduction to this volume makes clear, adjudicators increasingly expect corroboration of an applicant’s story from outside sources, leaving lawyers to seek outside experts and other evidence to bolster their clients’ claims and credibility. Given the distorted evidentiary requirements in asylum cases, including adjudicators’ demands for extensive corroboration, it is critical that our interactions with other experts are effective — our clients’ lives often depend on it. Yet, there is a natural tension between lawyers, whose role is to advocate zealously for clients, and other experts who may see their roles in the asylum process differently. It is inevitable that we sometimes disagree.

In Muhammed’s case, our legal team identified a need for three types of outside experts: a country expert to document both the pervasive violence against LGBT individuals in Cameroon and the failure of the state to protect those individuals; a medical expert to document the scars Muhammed sustained from his father’s beatings; and a psychological expert to connect Muhammed’s nightmares, headaches, and isolation in the United States to the trauma he suffered in Cameroon.²

Our communications with the country expert and medical evaluator were productive, and they drafted affidavits that effectively supported Muhammed’s asylum case. But our collaboration with a forensic psychological evaluator proved more complicated. The psychologist, who met with Muhammed and drafted a forensic evaluation, described him in terms that, in many respects,

² It is important to note that asylum applicants who have access both to lawyers and to other experts are a rarity — not the rule. Advocates and adjudicators alike must consider the potential impact on unrepresented asylum applicants of the increased demands for corroboration, including expert evidence. The regular submission of expert testimony and evaluations in immigration proceedings may unfairly raise the bar for the majority of asylum applicants who are unrepresented or underrepresented and do not have the resources to submit expert evidence. As a result, asylum advocates must think creatively about how to expand representation and how to improve the asylum adjudication process. A recent New York immigration court study presents a model for holistic representation that includes funding for both legal and nonlegal services, such as expert testimony and mental health services (NYIRS 2012).
contradicted our experiences with Muhammed over many months. He described Muhammed as an upbeat, forthcoming, and optimistic man who told a clear and consistent story about the past harm he had suffered. The psychologist stated that Muhammed had largely recovered from the Post-Traumatic Stress Disorder (PTSD) and depression he suffered upon his arrival in the United States.

Yet, in dozens of meetings at HIRC, Muhammed was reticent, reserved, and withdrawn. He would often cry when discussing his isolation here in the United States, his separation from his long-time boyfriend, and his fears of being forced to return to his home country. It was hard for him to remember dates and sequences of the attacks he suffered, and he would completely shut down when he started to recall the threats and beatings from his father. While at times he was hopeful about his future, the meetings with HIRC often left him despondent, with terrible headaches and nausea; he tried to block them out of his mind after he left the office each week.

From my perspective as Muhammed's attorney, these divergent accounts had the potential to undermine Muhammed's asylum case. If Muhammed was able to recover from the trauma so quickly, an adjudicator might question the severity of the harm suffered. The evaluation's description of Muhammed as "forthcoming" and "consistent" in his narrative could also be problematic; what if Muhammed shut down emotionally or had difficulty remembering dates and sequences of events in court, as he had at HIRC meetings and as often occurs? Although the psychologist understood my concerns, he was taken aback at having to reconsider the way he had framed his evaluation. He had not wanted to victimize Muhammed and had tried to depict him as the strong, resilient survivor that, in many ways, he was.

When I asked Muhammed about his meetings with the psychologist and about the optimism the psychologist described, Muhammed explained that he had felt very comfortable talking to the psychologist. He noted that it was unusual for him to connect with someone so quickly, but the psychologist made him feel very safe and protected. Muhammed felt supported and understood. While it was reassuring for me that the psychologist believed Muhammed was doing well in terms of recovering from his PTSD and depression, the evaluation's emphasis on hope, happiness, and optimism was incongruous with the portrait Muhammed presented at HIRC meetings – and possibly damaging to his case.

We asked the expert to meet with Muhammed again, but he refused. He told us that he thought we would coach Muhammed in how to answer his
questions, thereby undermining Muhammed's sincerity and the expert's objectivity. In the end, the expert did agree to correct factual errors in his account of Muhammed's experiences in Cameroon; he also included an explanation of the connection between Muhammed's ongoing PTSD symptoms and his continued isolation here in the United States. However, the expert refused to revise his original conclusions. Because the psychologist had based those conclusions on his medical expertise, he did not believe it appropriate to revisit them in response to concerns raised by Muhammed's attorneys.

Interactions between attorneys and experts in asylum cases are often fruitful, but Muhammed's case highlights an important reality: lawyers and other experts see their work and view "evidence" through different optics. In some cases, experts see themselves as partners in the asylum process, working toward a common goal of helping an applicant obtain asylum. In other cases, experts are sympathetic to clients, but see their role primarily as "truth tellers," providing an objective perspective on the conditions in a given country, or the effects of PTSD on an applicant. In those instances, experts' sense of integrity may be violated when lawyers ask for revisions to their reports to reflect differing perspectives.

In this chapter, I argue that attorneys and experts should work together throughout the asylum process to understand each other's respective roles and to ensure, whenever possible, that their goals are aligned. Expert testimony can be critical to the success of an applicant's claim, but prepared without close collaboration with attorneys, such testimony has the potential to undermine an asylum seeker's case. In some instances, where differences of opinion cannot be reconciled, the attorney-expert relationship may not be salvageable.

I open this chapter by explaining the importance of expert testimony in recent years given adjudicators' increasing demands for corroboration of asylum claims. I then describe specific examples from HIRC's direct client representation that highlight the ways in which close collaboration between lawyers and other experts can help asylum applicants in presenting their claims. Next, I address the sometimes-conflicting perspectives of experts and attorneys in HIRC cases, and the need for increased transparency and communication among experts and lawyers about their roles and responsibilities in asylum representation. I conclude by arguing that explicit protocols need to be adopted in order to improve collaboration between experts and attorneys in the asylum process and to mediate the divide between objectivity and advocacy that is often at issue in these cases.
THE PARADIGM SHIFT TO AN EXPERT REQUIREMENT

Over the past fifteen years, adjudicators have increasingly demanded extensive corroboration of an asylum applicant's claim. In many jurisdictions, the submission of extensive evidence, and in particular of psychological, medical, and country condition expert testimony, has become a functional requirement for a successful asylum application. As discussed further below, such expert evidence serves three key purposes in asylum adjudication.

First, courts often rely on expert testimony to overturn decisions by adjudicators who improperly denied applicants' asylum claims in the first instance. In *Mukamusoni v. Ashcroft*, for example, the court of appeals cited the testimony of a psychological expert in finding that the asylum applicant, a Rwandan woman who was repeatedly detained, interrogated, and beaten by soldiers, had provided sufficient corroboration to establish eligibility for asylum. The court vacated the original decision and ordered the adjudicator to reconsider the applicant's claim in light of the forensic psychological evaluation, which was "literally replete with information which supports the substance of Mukamusoni's testimony," including evidence of "ulcers developed in prison, her independently sought HIV testing in light of her fear of having contracted AIDS from her rapes, [and] trauma-induced PTSD symptoms such as nightmares, hopelessness, sleeplessness, distrust of others, etc." In other similar cases, appellate courts have ordered adjudicators to revisit denials of asylum protection where adjudicators have failed to admit expert evidence or refused to give it adequate weight in making asylum determinations.

Second, adjudicators may turn to expert testimony to allay their concerns about applicants' credibility, particularly following widely publicized stories

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4 *Mukamusoni v. Ashcroft*, 390 F.3d 110 (2004): 122. Similarly, in *Cee v. Holder*, a different court of appeals relied on the testimony of a country expert, a professor in Balkan history, to overturn the initial adjudicator's denial of asylum, finding that a young, single Albanian woman targeted by members of a criminal gang would not be able safely relocate within Albania if forced to return. The expert, a professor in Balkan history, "described a very serious problem of human trafficking for prostitution in Albania in which gangs, often with the protection, and at times the participation of the police, kidnap women ..." *Cee v. Holder*, 733 F.3d 662 (2013): 667.

5 *Tun v. Gonzales*, 485 F.3d 1014 (2007): 1025-29; *Niam v. Ashcroft*, 354 F.3d 652 (2004): 660. In *Tadesse v. Gonzales*, for example, the Seventh Circuit returned the asylum case to the original immigration judge to allow the torture counselor who had evaluated the applicant and identified the applicant's symptoms as "characteristic of survivors of rape and torture" an opportunity to testify *Tadesse v. Gonzales*, 492 F.3d 905 (2007): 911.
about some instances of fraud in asylum cases. Because an applicant’s testimony is often the central—if not the only—source of evidence in asylum cases, adjudicators often focus on inconsistencies in an applicant’s story in order to determine whether the applicant’s claim is genuine or fraudulent. Legislation and case law require that such inconsistencies be viewed holistically—in light of the “totality of the circumstances,” and considering “all relevant factors.” Adjudicators, however, often fail to follow these strictures, improperly finding that any inconsistency—even if tangential to the claim or immaterial—undermines an applicant’s credibility (Anker 2013, p. 183; Einhorn and Berthold, this volume).

As Hawthorne Smith, Stuart Lustig, and David Gangsei explain in their chapter in this volume, experts may provide critical context for those inconsistencies. A psychological expert, for example, can play an important role in explaining why an applicant’s trauma history—not a lack of credibility—resulted in testimonial inconsistencies. The more distressing an event, the more likely an asylum seeker is to remember “central details . . . at the expense of peripheral details” (Herlihy and Turner 2009, p. 178–79). Inconsistencies frequently arise when people describe traumatic events, particularly when a significant period of time elapses between each re-telling (Jacobs and Lustig 2010; Herlihy, Scragg, and Turner 2002, p. 326). Due to the enormity of the backlog in the U.S. immigration system, asylum seekers are often forced to wait years for their cases to be heard, thereby increasing the likelihood of gaps.

In July 2011, the New York Times ran a front-page article describing the “shadowy industry dedicated to asylum fraud” that “thrives in New York” (Dolnick 2011). The next month, the New Yorker profiled Caroline, a young African woman, who successfully applied for asylum in the United States based on a story she had invented. Although Caroline likely had a valid asylum claim based on the attacks her family suffered due to their support for a prominent opposition leader, she embellished those facts and claimed to be a rape survivor in order to improve her chances of being granted asylum (Mehta 2011).

Under the REAL ID Act of 2005, adjudicators can consider any inconsistency in making an adverse credibility determination. The Act states that, “considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the . . . consistency between the applicant’s or witness’s written and oral statements . . . , the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . , and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor.”

HIRC recently took on the case of a Burundian woman who was denied asylum in the first instance due to an apparent inconsistency between her testimony that her sisters were killed in the genocide and her testimony that a sister had accompanied her to her visa interview. For the Burundian woman, the female cousin who accompanied her to the visa interview was, in fact, her sister, although biologically she was not. The inconsistency was significant enough from the adjudicator’s perspective to undermine the Burundian applicant’s credibility and her claim.
in memories. Expert testimony is thus often essential to proving that, despite these gaps and inconsistencies, an applicant is not malingering.

Country experts can also help adjudicators understand inconsistencies in applicants' testimony. When an applicant is unfamiliar with Western notions of time, a country expert can provide an adjudicator with the cultural context necessary to explain why an applicant may experience difficulties recounting events in a linear manner (Kalin 1986, p. 236). As Anthony Good notes in his chapter in this volume, a country expert can attest to whether an applicant's narrative is consistent with the expert's information about conditions in the applicant's country of origin. In addition, a country expert's specialized knowledge is often invaluable to filling in gaps in human rights reports and explaining why changes to laws often cited in reports have not yet improved conditions on the ground.

Third, expert testimony is particularly useful in establishing why an applicant was unable to file for asylum within his or her first year in the United States, as required under U.S. law. An adjudicator may excuse an applicant's failure to file for asylum within his or her first year in the United States, if the applicant can demonstrate, inter alia, that he or she suffered a "serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the [one]-year period after arrival," that prevented the applicant from timely filing for asylum.10 A mental health expert can document "the presence of psychiatric disorders or symptoms related to trauma exposure" and demonstrate how those conditions "may adversely impact an asylum seeker's capacity to file an application and to cogently present [his or her] story" (Piwowarczyk 2001, p. 156–7).

THE NEED FOR COLLABORATION

Throughout this volume, doctors, psychologists, country experts, adjudicators, and immigration practitioners alike have heralded the importance of expert evidence in establishing asylum eligibility (Chelidze et al. 2014: Ch. 7, infra, Smith et al. 2014: Ch. 8, infra, Good 2014: Ch. 5, supra, Einhorn and Berthold 2014: Ch. 1, supra). Drawn from experiences at HIRC, the three case examples described below highlight the ways in which HIRC attorneys have successfully worked with medical, psychological, and country experts to document physical and mental scars; explain inconsistencies and gaps in memory; prove exceptions to the one-year filing deadline; and assess the dangers an applicant would face if forced to return home.

10 INA § 208(a)(2)(D); 8 C.F.R. § 208.4(a).
In the case of a young man from Uganda named Robert, medical and psychological evaluations were indispensable to documenting the physical and psychological effects of the human rights violations he had suffered. Robert fled to the United States after being repeatedly abducted, detained, and tortured by Ugandan government security forces. Robert had extensive scars from his time in detention, but the details he provided about his abduction and torture varied significantly with each retelling. When he came to HIRC, he had no evidence to document his claim – he had nothing other than his passport and a college transcript. Given the lack of other corroboration, along with Robert’s difficulties recounting his experiences, I knew expert testimony would be particularly critical to proving that Robert had suffered past persecution and had a well-founded fear of future persecution.

The medical expert who examined Robert found a scar on the back of Robert’s head, consistent with a blow that Robert had described from the butt of a gun. The doctor also identified scars on Robert’s knees, calves, lower back, and hip area, consistent with the whippings and electric shocks Robert suffered while in detention. These findings by the doctor helped demonstrate to the adjudicator that Robert had suffered severe physical harm rising to the level of persecution. The doctor’s forensic physical evaluation and photographs he took of the scars were the only non testimonial evidence of the past physical harm inflicted on Robert.

The psychologist who evaluated Robert wrote an affidavit documenting his trauma history and explaining the reasons why Robert was unable to recount his past experiences in a coherent, linear manner. In her expert report, the psychologist emphasized the significant effects of trauma on Robert’s memory. She noted that Robert became very emotional when describing his past, and his memories often flooded together. She observed that while Robert’s fragmented memories might appear as confusion or even dissembling about specific events, his difficulties with recall were, in actuality, a symptom of severe PTSD.

The psychologist recommended that we ask the adjudicator for a continuance to postpone Robert’s testimony to a later date so that Robert could see a

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11 Under U.S. asylum law, a finding of past persecution gives rise to a presumption of future persecution, which the government can rebut by showing either that country conditions have changed or that the applicant could relocate safely within the country. 8 U.S.C. § 1101(a)(42); 8 C.F.R. § 208.13(b)(1)(i)(A); 8 C.F.R. § 1208.13(b)(1)(i)(A).

12 Fears of applicants lying and concerns about bias in witnesses may lead immigration judges to privilege “objective” documentary evidence of harm suffered or feared, including, for example, authenticable photos and police reports, over testimonial evidence of experts or other witnesses (see Smith et al., this volume). As such, adjudicators may give greater weight to forensic medical evaluations, which document actual physical scars, than to psychological evaluations, which are based on the most critical, and at the same time potentially most difficult evidence to assess – the testimony of the applicant.
psychologist and start therapy to ensure that he did not break down completely while preparing to testify. As Miriam Marton explains in her chapter in this volume, such interdisciplinary collaboration is often essential in asylum cases to help clients disclose painful memories in a safe setting. The psychologist in Robert’s case worked closely, with me and the student team, to sensitively elicit the details of his past torture, without re-traumatizing him.

As Robert’s case underscores, a psychological expert can help explain to attorneys and adjudicators alike the effects of trauma on an asylum seeker’s memory and demeanor and the reasons why an applicant’s testimony may be inconsistent or incoherent (see the chapters by Chelidze et al., and Smith et al., in this volume; also, Gangsei and Deutsch 2007, p. 81). Such experts are particularly important in asylum cases since adjudicators may consider applicants’ demeanor and any inconsistencies in written or oral testimony in determining whether applicants are credible.

A forensic psychologist can also, as noted, explain the relationship between the effects of the trauma suffered or feared and an applicant’s inability to come forward and timely apply for asylum. Mary, for example, a domestic violence survivor from Kenya, was eight years past her one-year filing deadline, when she came to HIRC. She had only opened up about the violent beatings and rapes her husband had inflicted after reconnecting with a childhood friend, a social worker who could tell that Mary was suffering. The friend did not want to pry, but over time, she managed to convince Mary to talk to her about some of her past experiences and her fears of return to Kenya.

When HIRC students and I began meeting with Mary, we realized we would need a psychological evaluation to explain why Mary was unable to apply for asylum during her first year in the United States. In meeting with Mary, we quickly observed how painful it was for her to recount what had happened and referred her to a psychologist for counseling and a forensic evaluation. The psychologist provided HIRC with an evaluation that documented Mary’s severe PTSD and ongoing avoidance of the painful memories of her past. The evaluation explicitly connected the horrific abuse Mary had suffered in Kenya to her tremendous fear of speaking of the past, even here in the United States. The evaluation underscored that given Mary’s severe trauma, she could not have come forward and applied for asylum earlier. The adjudicator relied on this psychological evaluation in finding that Mary qualified for an exception to the one-year filing deadline. The psychological expert was thus critical to Mary’s ability to proceed with her asylum claim.13

13 If an asylum applicant fails to meet an exception to the one-year filing deadline, he or she cannot proceed with an asylum claim. Rather, the applicant is limited to applying for
In Mary’s case, we also had to find a country expert to explain why the Kenyan authorities would not and could not protect Mary if she were forced to return. While Kenya had passed national laws against domestic violence, we knew from our conversations with Mary and country condition evidence, that in practice, the laws were not consistently enforced at the local level. HIRC students contacted a political science professor whose research focused on gender violence in Kenya, and he agreed to testify in Mary’s case. He explained to the adjudicator why, based on his knowledge of Kenya, Mary’s fear of being subjected to further violence or even death in Kenya was well founded. The country expert was able to corroborate Mary’s account of Kenyan authorities’ unwillingness to intervene in situations involving domestic violence. Mary’s husband had ties to the police, and the country expert was able to attest to the increased danger she would face if she contacted the authorities.

As Good notes in his chapter, country expert reports are often critical to clarifying or rebutting information presented in country condition reports—in particular, information in country reports prepared by government officials, which may be biased or incomplete. For example, in a HIRC case involving a gay man from central Africa, there was a dearth of information on violence against LGBT individuals. The 2009 U.S. State Department reports on human rights practices noted that “there were no reports” of violence or discrimination against LGBT individuals in the applicant’s home country, and the government attorney used this statement to argue that violence was not occurring. The country expert HIRC asked to testify was, however, able to explain the actual meaning of this statement.

She noted that LGBT individuals in the applicant’s home country were too scared to come forward and report the attacks they suffered. She explained that human rights groups were not investigating and documenting such abuses, given competing priorities regarding human rights violations and homophobia within the local human rights community. The adjudicator found that the applicant’s fears of harm if forced to return to his home country withholding of removal and protection under the Convention Against Torture, neither of which provides for family reunification or a pathway to citizenship (Anker 2013, pp. 8–9).

There is no requirement that an applicant seek state protection if it would be futile to do so or if reporting to the authorities would cause further harm. Asylum Officer Basic Training Course, 2009, “Female Asylum Applicants and Gender-Based Claims” 24–25, retrieved June 30, 2014 from http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Female-Asylum-Applicants-Gender-Related-Claims-3aug10.pdf.

Galya Ruffer’s description of her field research on rape and sexual violence in the Democratic Republic of Congo similarly underscores the differences between official narratives of human rights abuses in a particular country and actual conditions on the ground (Ruffer, this volume).
were well-founded and pointed to the expert's testimony that a dearth of information in official reports "does not mean that such acts do not occur since there are no avenues through which a person could report" an attack (Ardalan 2013, p. 10).

TRUTH-TELLING VERSUS ADVOCACY

As attorneys, we request affidavits from country experts, doctors, and psychologists with one goal in mind: to help our clients win asylum. In pursuing this goal, we often assume that other experts are on our "team." Although that is sometimes the case, some experts may have different assumptions about their roles. Doctors and psychologists, for example, are trained to objectively describe injuries and to explain what might have caused them. For country experts, preserving their impartiality before the tribunal may be a central concern. Attorneys may view clients through different lenses than other experts and may suggest changes to expert affidavits to ensure consistency between an expert's affidavit and the applicant's case. Experts may, however, balk at taking direction from members of another profession, even with the best of intentions. The four cases described herein draw from the experiences of HIRC attorneys and highlight these challenges in cross-disciplinary representation.

As was the case with Muhammed, conflicts may arise between lawyers and experts regarding how to present and describe an applicant's history, demeanor, trauma, and testimony. At her initial meeting with attorneys at HIRC, Maryum, a Pakistani client, described ongoing loss of appetite, sleeplessness, and recurring nightmares from the time she started receiving threatening calls and messages in Pakistan to the present. Clinic attorneys requested a forensic psychological evaluation to assess whether these symptoms were related to the threats that Maryum had suffered as a result of

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16 In some other fields, such as in cases involving the Social Security Administration, which employs its own set of internal experts, the division between advocacy and objective evaluation may be more clearly delineated (Hubley 2008, p. 368). In contrast, in the immigration context, lawyers commission expert affidavits and therefore often assume the affidavits will align with the legal objectives and framing of the case.

17 As the American College of Physicians has observed, "the expertise, the objectivity, and the credibility of the medical profession are essential to persons who seek political refuge. ... Physicians' testimony will be assessed by the immigration judge using criteria such as the qualifications of the physician ... and the relevance and the reliability of the evidence brought forth in the testimony" (American College of Physicians 1995, p. 609).

18 Some government attorneys may challenge experts as "hired guns" whose opinions support an applicant's claim because they receive payment or because their mission and objectives align with the applicant's.
her activism and to the harms she feared if forced to return to Pakistan. The psychologist had one interview with Maryum and drafted a lengthy affidavit, diagnosing Maryum with PTSD and emphasizing the deleterious effects that returning to Pakistan would have on Maryum's mental health.

Although the evaluation was very helpful in terms of offering a diagnosis for Maryum's symptoms, the evaluation was, in critical respects, inconsistent with the facts presented by Maryum and with the legal theory of her case. The psychologist focused extensively on the childhood abuse that Maryum had suffered, portraying her as a submissive victim. This description was, however, at odds with Maryum's outspokenness and her strength as a female activist, upon which the legal theory of her case was built.

From a young age, Maryum had rebelled against her conservative father. Maryum's mother stood up for her and encouraged her to pursue a British education. Because of this, Maryum's mother came under attack from her husband. As the eldest child, Maryum tried to protect her mother, which further angered her father; and Maryum was also subjected to insults and beatings. The psychologist who evaluated Maryum specialized in childhood abuse. As a result, the psychological evaluation focused heavily on the beatings that Maryum suffered at the hands of her father. In contrast, Maryum's asylum claim was based primarily on the threats she received after she studied in the United Kingdom and returned to Pakistan to work with an international organization to promote women's rights.

I contacted the psychologist and noted that some of the facts and events described in the evaluation were inconsistent with the information students and I had elicited from Maryum in dozens of client meetings. The psychologist quoted Maryum as saying she "accepted" the violence within her family, because she could not stop it. But when I reviewed the evaluation with her, Maryum vehemently denied accepting the violence, and in fact, said that she had spent her life standing up for herself, her mother, and other Pakistani women. The evaluation also stated that Maryum had received seven to ten threatening phone calls and texts, but Maryum did not remember how many she had received. In speaking with the psychologist, I suggested taking out the quote and some details, including the number of threats, since they did not comport with Maryum's recollection.

The psychologist was taken aback at my comments and requests for deletions and clarifications. As the chapters in this volume by Chelidze et al., and by Smith et al. describe at greater length, forensic medical and psychological evaluations typically include a detailed section that sets forth the applicant's
entire life story. Mental health experts and forensic doctors are instructed that history taking and relaying should be rigorous and extensive (Jacobs and Lustig 2010; Jones and Smith 2004, p. 385). The quotes the psychologist had attributed to Maryum were based on her transcription of Maryum’s words at the time of the evaluation. She believed that she had accurately captured what Maryum had told her, and she was not inclined to revisit her description. She felt that I had usurped her role as the expert. She had volunteered to conduct the psychological evaluation pro bono and had already spent more time than she had anticipated on the case. The psychologist had expected I would review her affidavit and submit it as she had written it with only minor revisions.

In speaking with the psychologist, I explained that, as it currently stood, I would not be able to submit her evaluation. I noted that, unfortunately, under U.S. law, any inconsistency between the evaluation and Maryum’s affidavit, including the divergent descriptions of Maryum’s reactions and the minor factual differences regarding the number of threats, could be used by an adjudicator as a basis for making an adverse credibility determination and denying Maryum’s asylum claim. Eventually the psychologist reluctantly agreed to cut the parts of her evaluation that were inconsistent with Maryum’s recollection, but she was not pleased with this outcome.

In agreeing to do a psychological evaluation for Maryum’s asylum case, she had seen her role as...
that of an independent, objective expert whose evaluation would complement the legal case; she had not anticipated being asked to revisit her evaluation to address legal concerns that were outside of her purview.

At HIRC, we spend hundreds of hours with clients and observe in depth how they tell and retell stories and how recounting past experiences and fears affects them physically and psychologically. Our observations sometimes conflict, however, with those of the forensic evaluators who may only meet with a client once or a handful of times.

In another case, HIRC attorneys represented an extraordinarily strong and resilient Guatemalan woman activist who often presented as if she was unaffected by the threats she received prior to fleeing her country. When describing the events of the past, she rarely broke down into tears except when discussing her fears for her family. She developed strong coping mechanisms, including regularly jogging and leading church groups, which helped her manage her fears. But for years, living in the United States, did not disclose to anyone, not even to her own family, the complete picture of why they could not return to Guatemala.

The forensic psychological evaluation HIRC initially obtained described why the client was forced to leave Guatemala, including the past threats she received, but stated that she was asymptomatic and did not exhibit any signs of PTSD. This description was, however, at odds with what HIRC attorneys had learned in extensive meetings with the client about her nightmares and intrusive memories, as well as avoidance tactics that she employed in her daily life. The evaluation’s failure to identify and describe any effects of trauma on the applicant presented a significant obstacle to proving that she met an exception to the one-year filing deadline. It was only after extensive conversations with the forensic psychologist explaining what we had observed and knew about her and her symptoms that the psychologist agreed to interview her again to better understand how the trauma she had suffered prevented her from coming forward to apply for asylum earlier.

Close collaboration and mutual respect between lawyers and experts is particularly vital in the context of the one-year filing deadline. In order to find that an applicant meets an exception to the one-year filing deadline, adjudicators often expect experts to include a clear statement linking applicants’ PTSD to their inability to come forward and apply for asylum within their first year in the United States. Yet, this type of conclusion may be difficult for mental health professionals to attest to, regardless of their training.

21 Eliciting client testimony is a work in progress until the hearing date; essential details and memories often come back to clients as the date of the hearing approaches and as clients prepare to testify.
and expertise. In asking experts to assess whether an applicant's mental or physical disability prevented the applicant from filing an asylum application within his or her first year here, mental health professionals have to draw what is essentially a legal conclusion. Although psychologists are experts on the symptoms manifested and the impairments suffered, they may not understand the type of assessment an adjudicator is looking for. Lawyers may have a better understanding of the information an adjudicator needs to reach a decision regarding whether an applicant meets an exception to the one-year deadline.

As a result, attorneys may be placed in the difficult position of having to explain adjudicators' demands for additional corroboration to experts who may not fully understand the legal basis for the demand. In one instance, for example, an adjudicator requested a supplemental affidavit from a forensic psychologist to address in greater depth the one-year filing deadline issue. The asylum case involved a gay man who had suppressed his past history of persecution for many years until he was detained by immigration following a traffic stop. The psychologist did not understand the reason for the adjudicator's request and insisted that his initial affidavit was clear enough for the adjudicator to understand why the applicant had been unable to apply for asylum earlier. The psychologist had described at length the applicant's severe PTSD symptoms and isolation in his initial evaluation and believed that this description should have sufficed to show that the applicant met the criteria for an exception to the one-year deadline. He had presented his diagnosis and did not know what else he could add. Through discussions with HIRC attorneys, the psychologist eventually understood that the adjudicator needed an additional statement explicitly linking the applicant's PTSD to his inability to come forward earlier in order to grant the applicant asylum.

Ideological differences may also arise in working with country experts with divergent perspectives on human rights conditions in applicants' home countries. A country expert who has, for example, been involved in efforts to reform state institutions may be reluctant to criticize those institutions for failing to protect individuals from persecution. In a case involving a woman who fled to the United States to escape her abusive husband, HIRC consulted with a human rights advocate about whether she might be able to provide an expert affidavit. The human rights advocate declined to provide an affidavit because she had worked with government officials to establish protections for women against domestic violence, including shelters for women who fled abuse. Her optimism about the safeguards for women in the applicant's home country stood in stark contrast, however, to the experiences of the HIRC client. The HIRC client had sought protection from the authorities, but they had refused to intervene. As a result, HIRC students sought out another expert
who had studied violence against women in the region, and she was able to
confirm that the client’s experiences were consistent with her understanding of
the lack of political will to enforce protections for women. She corroborated the
client’s account that authorities view domestic violence as a private family affair,
not to be intervened in by the state.

PROTOCOLS FOR COLLABORATION BETWEEN
LAWYERS AND EXPERTS

Given the importance of expert testimony in today’s asylum process and the
potential for misunderstanding between lawyers and other experts, guidelines
need to be developed to mitigate tensions and improve collaboration in
asylum cases. Experts and lawyers must respect each other’s respective pro-
fessional roles and boundaries and work closely together, whenever possible.
Without explicit protocols, however, such collaboration between attorneys
and other experts can be fraught with tension. As the case examples given in
this chapter illustrate, clear and extensive information sharing is necessary
to ensure that attorneys and other experts alike understand each other’s
respective ethical and professional obligations.

As legal experts, it is our responsibility to effectively communicate to other
experts our expectations for their testimony in immigration proceedings,
as well as potential challenges to their expertise and conclusions that the
adjudicator and government attorney may raise. Attorneys need to set forth at
the outset their main objectives for the expert testimony, including the
specific questions they hope to have answered, so that experts can try to
address them. Similarly, doctors, psychologists, and country experts need to
make clear what they perceive their role to be, what their objectives are in
providing expert testimony, what they plan to address in their testimony, and
how they would like to communicate with and receive feedback from
attorneys. Ideally, these conversations between lawyers and other experts
should occur prior to the drafting of an expert affidavit or forensic evaluation,
so that all parties can better understand the perspectives each professional
brings to the process.

Extensive communication between experts and attorneys is often necessary
from the time a lawyer first contacts an expert through finalization of the
affidavit for filing and testimony in court. Unfortunately, such communication

Chelidze et al. suggest in their chapter that once a medical affidavit is drafted, it can be
submitted to the court. Yet from my perspective as an attorney, the process from the drafting of
the affidavit to its filing in court can be complicated and at times, contentious, and often
requires extensive communication between experts and attorneys.
generally occurs in an ad hoc manner. For example, our experience working with the Maryum's psychological evaluator would have benefited from a lengthier discussion at the outset with the expert regarding the focus of her legal claim. In Muhammed's case and in the case of the Guatemalan woman activist, the process might also have been smoother if we had shared our observations of the clients' demeanor and history with the mental health experts prior to the evaluation process.

In communicating with other experts, attorneys need to respect experts' objectivity and opinions and avoid suggestions or changes that impinge on experts' impartiality. In order to ensure consistency with the other factual descriptions presented in a client's asylum application, including the applicant's own personal statement, attorneys may need to closely review the client history presented in an expert affidavit and make suggestions to eliminate any inconsistencies. Experts may, however, balk at the methods attorneys use, that is, track changes and comments, to give feedback. As a result, attorneys should determine from the beginning what type of feedback other experts will be open to and the best way to provide it.

Attorneys and experts each speak the language of their own trade, and, in some instances, mediators may be necessary to navigate the divide. Staff at nonprofits, including HealthRight International, Survivors International, and Physicians for Human Rights, which train medical doctors and mental health clinicians to perform forensic evaluations, can facilitate communication among lawyers, doctors, and psychologists in the asylum process. Attorneys may also benefit from training on the process of preparing medical and psychological evaluations so that we are better equipped to interact with doctors and mental health professionals. Specific parameters should be established so that, on the one hand, attorneys understand the bounds within which they may make suggestions and ask for revisions and, on the other hand, experts understand the reasons for attorneys' requests, including the flawed credibility and corroboration requirements of the asylum system. Clear communication and close collaboration is essential to ensure that experts and attorneys work together effectively.

REFERENCES


