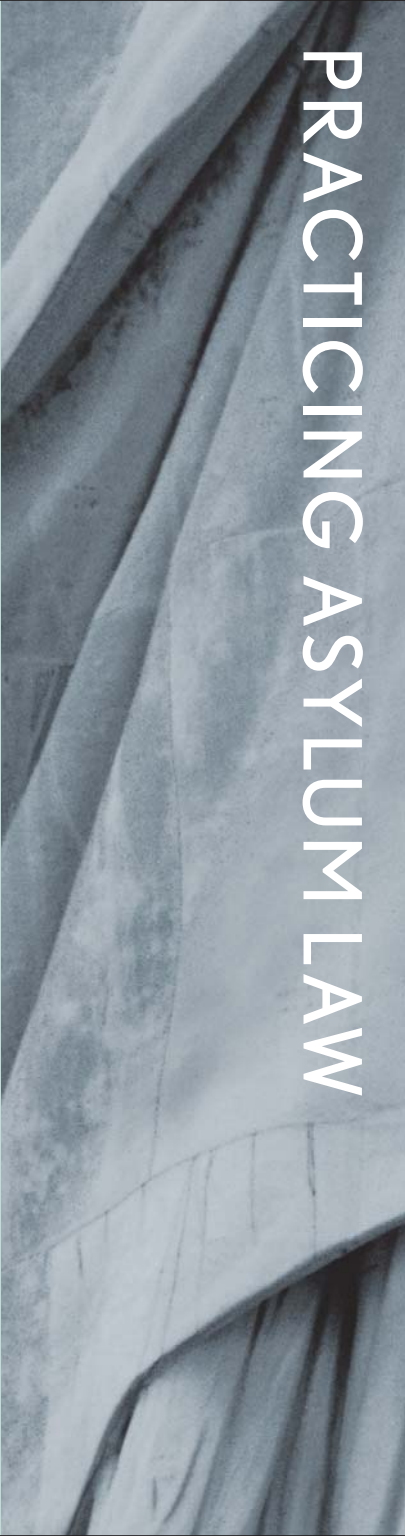


**WELL-FOUNDED FEAR**

Thoughts From An Asylum Officer

Well-Founded Fear Discussion Modules:

# PRACTICING ASYLUM LAW



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## Thoughts From A Former Asylum Officer

From the filmmakers: We asked a good friend, a former Asylum Officer, to screen these modules. What follows are some general musings on asylum law, and some pithy (and sometimes strong!) reactions to the material itself.

You can go to law school and take a course in immigration law, which may include some of the legal bases for asylum. In some cities, you can even sign up for training programs at the community outreach department of a local bar association, where training is organized for attorneys volunteering to take an asylum case *pro bono*. All of this assists you in learning about the theory of U.S. asylum law.

But there is no course that teaches the practice of asylum law – the appropriate way for an attorney to behave in certain situations or how to resolve problems that arise with clients, asylum officers (AOs), the U.S. government and translators. This film shows you some of the challenging situations that arise – and must be dealt with – in each asylum case you represent.

## Translation Issues

### 1 The Basics

This particular scenario (meeting the translator for the first time in the waiting room of the Asylum Office), although sometimes unavoidable, is an accident waiting to happen. There are many unknowns here and each can result in serious problems in the interview.

Remember that sometimes applicants are so happy to find a friend or a neighbor who speaks English and is willing to be a translator, that they have no concept of how much or how well the translator can handle the English language.

A classic example of a mismatched applicant and translator: a professor who applied for asylum was grateful that his truck driver neighbor agreed to translate for his interview. The applicant gave a long and detailed answer to the AO's question, and the translator's version was, "He said no, in answer to your question."

Last-minute translators can result in these kinds of problems, and it is the applicant who pays. It doesn't matter how good your client's case is. If the AO can't get a clear answer to the questions the law requires, your client suffers.

Here are some of the issues and the problems that will arise if meeting the translator takes place for the first time in the waiting room of the Asylum Office:

- If the applicant and translator have never met before, there will be an awkwardness and unfamiliarity that will probably rear its ugly head right in the interview, when both start working together for the first time.
- If the applicant and the attorney have never met before, there is certainly not enough time for the attorney to explain what he or she believes to be important in an asylum interview, how it may be conducted, or the more complex issues relevant in the case.
- If the translator has never been to an asylum interview, he or she may have no idea what to expect and will be extremely nervous about the unknown expectations of

'ability'. He or she will have no time – and will be too nervous – to grasp the complexity of any explanation of the definition of asylum, and will have no chance to digest complicated instructions about what he or she is supposed to do in the interview.

### Suggestions From Experience

#### For the attorney:

- Do everything possible never to get stuck in this jam, but if it happens, here is some advice on how to use your very limited time wisely:
- Concentrate on the translator who will, understandably, be extremely nervous. The most important quality for success in an interview requiring a translator is having a calm, confident translator. The translator, in fact, becomes the AO's voice in the interview.
- Reassure the translator that you know he or she can do a good job, even though this is the first time. Everyone has a first time! If he or she just stays calm and listens carefully to what they are asked to translate and goes slowly, things will work out.
- Give the translator some simple rules of behavior in the interview – not the theory of asylum. Try to go over these rules together several times, and work on making the translator feel relaxed and confident.
- Don't assume that because your applicant and the translator share the same language, they also share the same dialect or the same level of conversation. Argentineans and Mexicans both speak Spanish, but the Spanish is quite different.
- Give the translator and the applicant some time to talk with each other together in their own language while you are in the waiting room. Tell them to relax and get to know each other. Ask them to get a sense from each other about how they speak their common language.
- Don't use what little time you have to give a crash course in the theory of U.S. asylum law. If you remember the incident

shown in the film where the attorney reels off the definition of “refuge” to a new and nervous translator, it should not be surprising that the translator gets stuck in trying to understand what “membership in a particular social group” means and is all about.

- Don't try to jam a full explanation of the asylum interview process and/or interview procedure into this short time space. Every AO conducts the interview a little differently. All you will accomplish will be to increase the translator's nervousness and to deepen his/her feelings of inadequacy.

#### **For the translator:**

In this interview, you have only two jobs: first, to make a clear and accurate translation into your language of the question the AO asks you, and ask it to the applicant; second, to make a clear and accurate translation into English of the response the applicant gives to the AO. These two are your only jobs in an asylum interview. Do them the best you can.

- Stay calm and confident – you can do it! Everyone had to begin somewhere and today is your day to begin!
- Listen carefully to the question the AO asks the applicant.
- Don't be afraid or embarrassed to ask the AO for an explanation if you don't understand something in the officer's question – a word, a phrase or the whole question. The worst thing you can do in an asylum interview is be too embarrassed to ask for an explanation and either sit there paralyzed about what to do next, or just jump ahead and get it wrong! No one expects you to be perfect. You have the right to ask for help. Neither you nor the applicant will be penalized if you ask for an explanation, or if you ask the officer for a different word that's easier for you to translate. In fact, you may even make the AO feel pleased that you are so careful and attentive about your responsibility as translator.
- Go slow and stay calm. There is no prize for a fast finish!
- If the applicant says something that you don't understand, tell the AO right away.

- If the applicant gives you an answer that doesn't make sense, just tell the officer. Don't start a conversation with the applicant to try to find out what the problem is. That is not your job. Once you tell the officer, it is his/her job to decide what to do. Maybe the officer will ask you to talk to the applicant. If so, do that. But don't do it on your own. You need the officer's permission to do anything except to translate the officer's questions and the applicant's answers.
- Remember the reason you are here at this interview: the AO needs to ask the applicant a lot of questions but doesn't speak the applicant's language. You do. You are helping the applicant have a conversation with the AO in which he or she can explain his/her case.

## **2 Too Much!**

For you, this is just another affirmative asylum case. For the applicant, it may be, in his or her mind, the Day of Judgment!! You will never get an applicant to become calm by saying, “Please be calm!” You need to understand that at worst, your client fears that his or her past may create havoc in the present interview time, which may result in the destruction of your client's future. The truth is, an applicant may not know what to do to help him/herself or to calm down at this time. It may depend on what you can do to help your client. Instead of saying, “Don't be afraid!”, you need to give advice around the applicant's fears that can address and reduce them.

#### **Before the interview**

- If at all possible, role play an asylum interview with the applicant before the interview date. In a guided role-play, you start out asking questions like an AO, but when the applicant doesn't answer the way you feel he or she should, you come back to your role as attorney and guide, explaining how best to answer the question. Then, you go through the question/answer again as the AO—being sure the applicant answers, but this time in a better way. This teaches the applicant, step by step, what is going on in the questions asked, and what should be done to get the best results – a good way to relieve nerves!

- Have the translator come for the role-play exercise (and you should make these arrangements with your client well before the interview). Ask the question, have the translator translate it, and then listen to the way the applicant responds.
- Stop the process wherever you have to. Make sure the applicant answers in bite-size pieces, and that the translator translates each piece for the AO.
- Remind the applicant that what he or she is saying won't make a difference to the outcome of the case unless the translator is given the chance to tell the AO what the applicant has said, with all the detail and information which the applicant has provided.
- Practice enough so that the applicant and the translator establish a rhythm of working together.
- Remind the applicant that the AO is the person asking the question. The applicant needs to look at the officer when receiving questions and giving answers.

In the case of the actual interview featured in "Too much!", notice the applicant's body language. As the interview progresses, the applicant starts to talk to the translator – not the AO. This despite the fact that it is actually the AO who is asking the questions.

Watch how the applicant's body language starts to change in the film as, during the interview, he starts talking with the translator as if he is having a conversation with him. He becomes a bit calmer and also starts to talk faster, and more conversationally. He begins to face his translator and he directs his responses to his translator.

This is a common way for an applicant to relieve interview tension. It is a way of going from the "unknown" of the asylum interview to the "known" of having a conversation with someone who speaks his language. Obviously, if you are having a conversation with someone with whom you can share a language, you are somewhat less nervous than you would be having to talk to a U.S. government official who says things you do not understand. But when this applicant starts to feel

more comfortable – facing the translator, looking at the translator—he begins to sound more like he is talking to a friend, explaining things, than that he is part of an asylum interview.

If this situation progresses, the focus of the interaction moves to the translator with reminders and corrections – and finally, it seems as if the asylum officer is totally eliminated from the interview! By changing his body language, the applicant has changed the relationship in the asylum interview from a relationship of three people – a triad of applicant, translator and – into a dyad, a relationship of two people—applicant and translator.

Everyone knows from basic geometry that organizing something with three sides is more complex and difficult than organizing something with two. A dyad is always a more comfortable and more bonding; a triad is complex and awkward to manage. The applicant has used this subtle transformation as a way to relieve his tension and nervousness.

Check the speed and complexity with which the applicant answers the questions. In the dyadic relationship the applicant created in this interview, he relaxes a bit, talking more quickly, giving detailed and more involved replies. Although this may be calmer and better for the applicant, at the other end of this dyad is the translator who, now realizing his responsibilities in the interview, starts feeling overwhelmed. The applicant has given the translator an awful lot to translate, without giving him either the time, or the chance, or a format in which to present everything he has said to the AO in English, as required.

As you have seen in this interview, on a number of occasions this has rendered the translator speechless. For significant parts of this interview, the AO gets no translation – just silence – from the translator about what the applicant has said. This has left the AO "out in the cold", without the detail provided by the applicant which would be so helpful in this case.

Overwhelmed and in affirmation that this has happened, the translator finally turns to the applicant first and asks him to slow down, so that he can translate. And then the translator tells the AO what he just told the applicant.

Watching this behavior we must ask, "Who's in charge here?" Clearly, the AO has been left out. But who is supposed to

control the asylum interview??? Certainly not the translator, and, it couldn't be the applicant (who has applied for a benefit from the U.S. government). It should be the AO.

The value of having at least one practice session before the interview is so that when this happens in the role-play, you, as the attorney/AO, can remind the applicant that even though the AO doesn't speak his language, it is the AO who is asking the questions. Notice for yourself how, when the applicant becomes aware that he is talking to the AO, he slows down his responses. It will take practice to get the interview rhythm down. Be aware that in some cultures, it is considered impolite to look at a government officer who is speaking to you. Let your client know that in the U.S., not looking at the person who is speaking to you is often considered a sign that something is being hidden.

### 3 What Did He Say?

The AO asked whether the applicant had ever "hurt" anybody in India. What the translator understood, and asked the applicant, however, was whether he had ever "heard" anybody. Fortunately, in this case, the misunderstanding got worked out.

This may be a case of a translator suffering from nerves and the limits of his own culture. The translator did hesitate before he asked the applicant a question. It could be that he had a question (which, of course, he did not ask). Maybe he didn't hear the AO completely or correctly, but because of his nervousness and his own culture (which does not condone as appropriate behavior asking government officials to repeat something), despite a brief moment where the translator pauses, he doesn't stop; he continues with what he thinks he heard and this problem continues for awhile.

Alternatively, this may simply be a case of an AO believing that what he said was perfectly clear to the translator. AOs should check whether translators understand what they have said. Usually this is done, but sometimes they forget to check or simply think they have been clear.

If, while you are present in an asylum interview, you identify a problem like this, you may first want to ask the AO if you may please interrupt for a moment to ask the officer something. It is the officer's prerogative to say either yes or no. During an

interview, an attorney may not interfere with the officer's line of inquiry.

If the officer does not allow you to interrupt at this time, make a note and save it for the end when the officer will give you a chance to speak. Or, if the case is referred to Immigration Court, be sure to bring this up before the Immigration Judge. If the officer does allow you to interrupt, ask the officer if he would be kind enough to repeat the question to the applicant, using a different verb to get the same meaning.

Sometimes there is nothing that can be done about such an error unless it is eventually revealed, as happened in this case when, by finally asking the question using the misheard word in a different way, the officer learned that the applicant had never harmed any person or destroyed any government property in order to further his political aims.

### 4 Culture Is Real

In this interview, the AO is asking the applicant – via the translator – to explain what he meant by the term "abuse" when referring to treatment of family members. Although you can see from the subtitles provided by the filmmakers what the applicant actually said, that word-for-word translation was not part of the interview. The translator tried to make it clear to the AO that saying these things out loud was something he could not do. As best he could, the translator indicated that his culture would not allow him to say or explain what the applicant had said.



## 5 Oh, You Speak English?

The hallmark of this interview is that nobody sought to relieve the applicant of his struggle to answer poorly in English, when he could have answered completely and in detail using his own language and translator. It is painful to watch an applicant struggle like this, without the interference of the AO before a lot of time has been spent. It is also sad if an applicant feels somehow encouraged to put his speaking in English ahead of the quality of his responses.

This is a very clear example of how difficult it can be for an applicant to ask for what he needs in an interview. Finally, the AO decided that the translator must be used in the interview. But in this case the attorney was present, and should have asked permission to interrupt and then suggested to the officer that she remind the applicant to use his translator.

## 6 Multiple Fractures

What we see in this episode is frustration all around. There is the nervousness of the translator and her frustration because, although she speaks Arabic, she is from another Arabic-speaking country and cannot understand – or translate – the French and Berber words that the Algerian applicant uses in her answers.

Applicants – and this one is a good example—often start right in with their history, whereas AOs usually begin the interview by reviewing biographic information, such as current address and marital status.

The applicant begins her story with, “I am from a political family. My grandfather was political.” But the translator does not translate it. The officer asks what the applicant is saying only by way of having the translator ask her to hold on to it, because he wants to get to the biographical information first. As we know, the information about the applicant’s political family and background never surfaces again in the interview.

In doing a guided role-play with your clients before the interview, it is important for them to understand that an AO may ask them a first question about the content of their case, and then may ask them to leave that, in order to address and verify the biographic information in the application.

Please note that although the applicant’s attorney does interrupt to explain the applicant’s natural use of French, which the translator didn’t understand, the AO asks the attorney not to interrupt unless something really important happens, that he is willing to give the case all the time necessary to do it right.

But in fact, something really important has happened. Because the translator is not properly able to do this point of translation, all the goodwill efforts of the AO notwithstanding, the case could not be properly heard. This is why careful selection of and practice with the translator before the asylum interview is imperative. Otherwise, the result can be disappointing, no matter how good the case.

### **In conclusion, when working with a translator:**

- Try to be sure that the translator is selected with enough time before the interview for you, the applicant and the translator to practice a mock-interview together.
- Be sure, whenever possible, that the applicant and the translator really do speak the same language and can communicate with ease.
- Remind the applicant that he or she will be talking to the AO – not to the translator.
- Remind the applicant to speak slowly and in bite-sized pieces while looking at the AO. Remind the applicant to be thorough. The more detail that gets translated to the AO, the better it will be for the case.
- Encourage the translator to be confident and translate slowly.



## About “Glimpses Inside The Asylum Office”

This section looks at what attorneys can do in asylum interviews according to regulation and procedure, what they often do and what they shouldn't do.

There are certain clear principles in an affirmative asylum interview, specified by regulations and instructions in the law and procedure:

- An attorney representing an applicant has certain, but limited, rights and opportunities to speak during an asylum interview.
- An attorney may not interrupt an AO's line of inquiry at any time during the interview.
- As the hearing officer responsible for the proper conduct of a non-adversarial asylum interview, it is the AO's duty and responsibility to control this interview, albeit with due respect to all parties involved.

When an attorney is present, an AO is trained to take a few minutes at the beginning of the interview to explain to the attorney how they will be conducting the interview. This involves indicating to the attorney that when the officer has completed all questioning they believe is required of the applicant, the officer will allow the attorney time to either make a brief statement about the case or to ask additional questions of the applicant. At no other time in the interview should the attorney be engaging the AO.

### Interrupting The Officer

Based on the attorney's persistently argumentative behavior, the officer could have suspended this interview. Had he not been able to stop the attorney's interruptions, he could have excused himself and then returned with a supervisor. Then, if the attorney continued interrupting the officer's line of inquiry, the interview could be suspended.

The officer's positive demeanor and control in response to the comments and accusations of the attorney should be

noted. In fact, the attorney's behavior in this interview was totally inappropriate.

The issue at hand involved the applicant stating that he remained in the U.S. instead of returning to his country, the Sudan, because of a military coup which took place at the end of June, 1989. However, the applicant's Form I-94 indicated that the applicant had permission to stay in the United States until May, 1989. The officer was trying to clarify, by asking the applicant questions, why he didn't leave within the period he was given at the airport when he entered.

The attorney attempted to explain to the officer either what the applicant said or what the applicant meant – neither of which she was supposed to be doing, or was allowed to do by regulation and /or procedure. The officer respectfully asked her to allow the applicant to tell him directly – not through the attorney - the points he was trying to clarify.

The way the attorney argued with the AO directly interfered with the officer's line of inquiry. The attorney's next comments sounded like a baiting of the AO. She indicated that she wanted a clarification because she heard the officer “ask the same question, over and over and over again.” To this, the officer responded that he would ask this same question of the applicant again – until it was answered to his satisfaction.

This illustrates the tension between their two roles. The officer had a responsibility to ask a question in as many ways as was needed to get the information that would resolve the issue, whereas the attorney was annoyed that the officer kept asking the same question of the applicant over and over.

At the end of the interview, when the officer told the attorney that she now had her five minutes, she began by critiquing the AO's method of inquiry. By respectfully reminding the attorney that the issues he had regarding this applicant were resolved and were satisfied by the applicant's answers, the officer finally convinced her that there was no need for further upset on her part. Nevertheless, it took the attorney a while to calm down, because she was prepared to launch into battle over the questions that were repeated.

The attorney's behavior was highly inappropriate in this interview, and in my opinion should be a good lesson for an attorney

of how not to behave. It would also appear that the attorney had a “chip on her shoulder” about AOs and how they conduct their interviews. There are proper places to lodge such complaints. An asylum interview is not one of them.

### Making His Client’s Case

The voice-over in the film decries the lack of attorney performance during asylum interviews. It seems that most attorneys do not make proper use of their limited time in an asylum interview. Sadly, often the attorney - the one person associated with the applicant who could provide positive substance to the case in the asylum interview before a decision is reached - tends to offer very little on his client’s behalf.

One of the things which an attorney can do, by sitting in the asylum interview and quietly listening to the proceedings and taking notes is to get an idea of where the AO may be going with this case, and what might be determining the officer’s specific line of inquiry.

Particularly after September 11th, the issues for AOs have become more involved and complex when presented with an applicant who is involved with, or even accused of being involved with, an organization on the U.S. State Department list of terrorist or terrorist-associated organizations.

In the film, which was made before September 11th, we have an interview with someone who has been accused of being part of the Tamil Tigers, a group in Sri Lanka that has been actively and openly involved in armed rebellion against the government and also has a history of committing atrocities – against government as well as civilians.

Here this attorney listened – quietly and carefully – during the asylum interview and then used his five minutes at the end not to argue or fight with the AO about his perspective, not to try to convince the AO that he may have been wrong in his line of inquiry, but rather to remind the officer what the current legal standard was for dealing with cases like the one his client presented.

The attorney, citing important decisions, reminded the officer that the issue of armed rebellion developed another aspect in the law where it has been determined that no peaceful

government change is possible in that country. Additionally, again citing legal sources, the attorney reminded the AO that his client was not a member of the Tamil Tigers, and that being a supporter of them would not in and of itself be a bar to being considered eligible for asylum.

When the officer mentioned recent reports of Tamil Tiger attacks against civilians, the attorney gently reminded the officer that he would have to prove that the applicant, in fact, was a participant in such attacks in order to be barred from being granted asylum, if found otherwise eligible. Additionally, he told the officer that on a mere suspicion of membership in the Tamil Tigers, the government had no right to inflict extra-judicial punishment – that is, punishment outside the law – on the applicant.

[Please remember that this film was made several years ago. The Tamil Tigers and the Sri Lankan government are currently attempting to make peace, and the laws of the United States have changed.]

The attorney did this in a respectful manner. By citing legal precedents and decisions, he clearly assisted the officer in trying to prove his client’s case both to the satisfaction of this interviewing officer, and the supervisory AO who must concur with this officer’s decision for it to be a final one.

## Evaluating A Prep Session

This part of the film needs to be watched carefully in order to learn some of the issues that arise when preparing your client for an asylum interview.

It cannot be overemphasized that there's a difference between knowing your case, and being able to present your case at an asylum interview. A client needs to be prepared for the interview -- for the way he or she will be asked questions in an asylum interview, for the kinds of questions he or she will be asked in an asylum interview and for what are the best, most complete ways to answer the questions asked in asylum interview.

The attorney remembers that fear and nervousness can prevent a good case from being perceived as such during the an asylum interview. There is reason to believe that fear and nervousness can play a large part in affecting credibility determinations and may make a significant contribution to asylum cases referred to Immigration Court.

After all, if an applicant is nervous and scared when testifying at an interview, serious discrepancies may develop between what and how the applicant testifies compared to what is written in the applicant's application.

### 1 Interview Logistics

Be sure you and the client – and the translator, if there is one – know where you will meet before the interview and what time you will meet there, so there will be no confusion.

The Asylum Office cannot accept your client's Interview Notice until everyone in the party is present in the Waiting Room.

Please be sure your client knows that he or she must bring along to the interview the following items:

#### For the applicant

- The Interview Notice – this must be brought by the client to prove that he or she actually has a scheduled interview.
- Passport and Form I-94

- Any other relevant identity (ID) documents. If you submitted copies of documents with the application, all originals of these documents must be brought to the interview.

#### For the translator

If you will be using a translator, the translator must also bring a photo-ID document along and proof of his/her immigration status in the United States.

### 2 How The Interview Starts

The attorney explains in the practice session how the interview begins. At the start of the interview, the asylum officer will ask the applicant to stand up and swear to tell the truth during the interview.

If there is a translator, the officer will also ask the translator to swear that the translation into both languages will be true and complete, without additions or deletions.

The attorney makes a very helpful suggestion to the applicant here: if at any time, she is asked a question that she doesn't understand, or hears something in an answer that doesn't make sense, she should say she doesn't understand and ask for the question to be repeated or to be clarified.

Having at least one session of practice before the interview is vital, so that the applicant and translator can get a sense of their rhythm working together for the interview.

### 3 The Attorney Points Out Possible Problems

The attorney expresses concern about the applicant's correct memory of dates, particularly as some of the important events took place awhile back.

The attorney explains that he knows why it might be difficult for his client to remember dates 5 years back, but points out that if the AO is a stickler for correct dates, incorrect dates, if she offers them, could be used against her in the decision for her case.

The attorney goes on to explain that if the applicant says one date – and then changes it for another – the asylum officer will make a record of both dates she offered.

The attorney also warns the applicant that he’s going to give her a hard time if she makes mistakes in the practice. He reminds the applicant she has to get used to being asked difficult questions in a difficult way, and that the interview will be like an exam. The attorney reminds the applicant that she is responsible for everything that’s written in her application.

The attorney, playing the AO, starts by asking the applicant why she left Haiti. She answers that her husband belonged to a political organization and that because of this, she had problems. The attorney asks the applicant how she can claim a “husband” in her answer to him when her application says that she has never married. [This is a clear demonstration of the kinds of inconsistencies the applicant will have to account for in an interview.]

Also notice that when the applicant starts to explain this “inconsistency”, she speaks fast and talks a lot – the attorney slows her down, because what she says has to be translated.

The attorney, now playing the attorney, continues to point out to the applicant the differences between the things she said and details she gave in the application, and what she appears to remember now when asked.

The attorney points out that inconsistencies like this can result in a decision from the officer that, “the applicant was vague and inconsistent with her comments, when compared to the application.”

The film reminds that in this case, the attorney you see filed the applicant’s application. However in many cases – perhaps even yours, if you pick up another attorney’s case or if an applicant comes to you to represent him or her in Immigration Court, after they have been referred by the Asylum Office, based on an application prepared by someone else – an applicant may not actually know the contents of his/her application. The attorney also suggests this: do not be surprised to learn quite late that the information in the application may not be accurate.

In reviewing the application with the applicant, the attorney discovers an error. Her application states that she voted in an election. However, when the attorney asks if she had voted, the applicant states that she did not—her husband voted. The attorney then asks the applicant why did she sign the application if it contained something that was incorrect?

In fact, it is a common practice of asylum officers to ask an applicant at the beginning of the interview if what appears on the signature line of the application is, in fact, the applicant’s signature. The follow-up question then becomes whether the applicant knows the contents of the application that he or she signed and whether what is written there is true.

What the attorney does about this is to make a formal correction to the applicant’s application. He advises her that he will give this to the AO before the interview starts, to prevent this mistake from becoming an issue in the interview. Reviewing the application with your client before the interview and making a list of any errors to give to the asylum officer at the time of interview as an Appendix to the application is the best way to handle this kind of problem.

Further discussion between the attorney and the applicant makes it clear that her “husband’s” political enemies were known to be looking for him and, having been warned by friends not to go home, they stayed at a neighbor’s and heard relatives at home being beaten. The attorney also discusses what those waiting for her “husband” said. When the applicant said that these men stated they wanted to find her “husband” and break him, the attorney asked the applicant why she herself would have a problem. The applicant replied that these thugs also said they were looking for “that skinny woman”, which the applicant explained was a reference to her.

The attorney is doing his best, because this case involves imputed political opinion and membership in a social group, to get the applicant to express her connection to the harm intended for her “husband”. The attorney makes it clear that the applicant must articulate that in the interview.

#### 4 Issues Of Returning To Haiti Or Being Able To Relocate There

The attorney makes it clear that, as her husband was an Aristide supporter, and Aristide is returned to Haiti and back in power, the applicant will now have to explain to the satisfaction of the AO why she would still continue to have problems if she returned to Haiti now. The attorney explains why, in this situation, she will have to explain and make it clear how and why it is still not safe for her to return to Haiti.

The attorney also confronts the applicant to make her explain what the reasons are that she would not be safe in some other part of her country.

The attorney then tells the applicant that she didn't do too well, that she basically "flunked" the test or the role-play he gave her. He reminds her a little harshly, "It's not going to be me on the plane going back!".

#### 5 The Interview

(Please remember: In order for the Asylum Office to give an applicant's case to an officer to prepare for interview, all members of the applicant's party must be present. If the translator is late, everyone has to wait.)

When the case is called, the asylum officer proceeds largely in the manner the attorney described to the applicant in the practice session – the applicant and the translator were both sworn in and the officer proceeds to review the biographic data.

As predicted in the practice session with the attorney, the applicant states in her interview that, although she never belonged to a political group, her "husband" did. This sets off a set of questions about whether the applicant is single or married. Because of the preparation, the applicant is able to explain in the interview that even though she was never formally married, she and the man she lived with were considered "husband and wife" in the community. The officer asks after how long a time living together a couple is viewed as "married" in Haiti, and the applicant clearly answers, "A month or two."

The applicant explains why she fled her country. However, as predicted and role-played by the attorney, the asylum officer

asks that now, having separated from her politically active "husband" and with the return of Aristide to power, how could she have problems in Haiti if she returned there?

When the applicant replies that even now she would have problems if she returned, the officer asks whether the source of her problems would be because of her "husband's" activities, or because she was his "wife". The applicant carefully explains that in Haiti, once someone is looked for, the gangs may not find that person; however, if a family member is found, that relative would be harmed in place of the one looked for originally.

#### 6 Asylum Officers And *Pro Se* Cases

It has been said that about 90% of asylum applicants are *pro se*, that is, they appear on their own, without an attorney's help for their case.

*Pro se* applicants require special attention from AOs because these foreigners are making a first pass at the U.S. system of legal immigration with no knowledgeable guide. The advice they receive may be from friends within their community or operators within their community who, for a variety of reasons may try to tell them what to say and what will work in an asylum interview. In such cases, it then becomes the AO's responsibility to determine whether there may be a "refugee" hiding in these circumstances.

*Pro se* applicants require AOs to reach down deep in their interviewing skills and to realize that a person, scared and alone, may apply for asylum.

Expressed emotions about traumatic events are always a topic for conversation among officers and supervisors at the Asylum Office. As the supervisor explains, different human beings have different coping reactions and express the tragedies that happen to them differently. Some people have great strength. As the officer herself said, the applicant has had several years to deal with these events and probably also prepared herself to talk about them at the interview. There are no hard and fast rules to predict or judge the quality or veracity of an applicant's emotional reaction to trauma.

The officer was very gentle with this applicant and, knowing that the applicant had no legal guidance in either preparing her application or preparing herself for this interview, took extra time to ask questions and to give explanations where it might help the applicant understand the nature of an asylum interview. It gave the applicant a chance to think about her answer with some assistance. At one point, not knowing if the applicant knew the grounds for asylum, the officer explained them to her, by way of asking whether the applicant could give an “on account of” reason for the harm she feared facing, if returned to Liberia.

There is clearly a point in this interview where the applicant becomes relaxed enough to actually begin to take the lead in her own case, beginning to give the officer a clear and sustained narrative of her story.

If you observe the applicant, there is a change in her demeanor from her initial fear and nervousness as potential victim to a participant, explaining her life to the officer. This is only possible where an officer is willing to gently protect an applicant who comes alone with no legal guidance to this process.



## Our Advisors:

### Robert F. Barsky

Dr. Barsky is Professor of French and Italian, and Comparative Literature, at Vanderbilt University. He has previously been a *Professeur sans octroi* at the Ethnic Studies Department of the Institut National de la Recherche Scientifique in Montreal, with a specialization in migration and refugee issues, and the Canadian Bi-Centennial Visiting Professor at the Yale Center for International and Area Studies. He is the author of six books, including **Arguing and Justifying: Assessing the Convention Refugee Choice of Moment, Motive and Host Country** (2001) and **Noam Chomsky: A Life of Dissent** (1998, with 5 translations), as well as **Zellig Harris's America and The Chomsky Approach** (both forthcoming with MIT Press). He is on the editorial board of several journals, including his new journal called *AmeriQuests*, for which he is founding editor.

### John "Wally" Bird

Mr. Bird joined the Asylum Division of the INS in November 1994, and is currently employed by the Refugee Operations branch of USCIS, DHS. Mr. Bird's immigration background extends back to the early 1980s, when he worked with Central American refugees in the United States through the Society of Friends while completing graduate coursework in 20th Century Latin American and Immigration History at the University of Florida. Prior to joining the INS, he worked for Congressman Peter W. Rodino II at the law firm of Rodino & Rodino, and then practiced immigration and entertainment law in his own firm.

### R. Gerald Brown

Mr. Brown has more than 20 years of experience in refugee and immigrant work, including provision of direct services, national program management, overseas refugee processing and asylum adjudication. He was an Asylum Officer with the INS, and now works as Senior Consultant for the Institute for Social and Economic Development assisting agencies with organizational development, program design, case management and performance measurement. He began his career with refugees in Egypt and Taiwan and coordinated the provision of social services to Haitian and Cuban refugees at Guantanamo Bay. Mr. Brown holds a B.A. in psychology from the University of North Carolina at Chapel Hill.

### Steve D. Heller

Mr. Heller has over 10 years of immigration law experience. He has represented asylum seekers as an attorney, and has adjudicated asylum claims as an Asylum Officer. He was also a Supervisory Asylum Officer in the Newark Asylum Office, and the Supervising Attorney with the New York Association for New Americans (NYANA), a non-profit immigration services organization. Currently, he is an Adjudications Officer in the Office of Programs and Regulation Development at USCIS, primarily responsible for matters relating to inter-country adoptions and special immigrant juveniles. Mr. Heller co-authored **U.S. Citizenship for Dummies**.

### Estelle F. Strizhak

Ms. Strizhak has over 30 years of experience in the migration and refugee field. Most recently, she was an Asylum Officer with the Newark Asylum Office of the INS, a position she held for almost 8 years. For over 15 years prior to that, she represented asylum applicants on behalf of voluntary agencies before the INS, through a credential obtained from the Board of Immigration Appeals (U.S. Department of Justice). As an advocate for refugees, Ms. Strizhak has also trained attorneys and staff of local community-based agencies in asylum law and procedure. She has designed and managed refugee resettlement and immigration programs in various parts of the United States, and written and/or edited three US Government publications on immigration law and procedure.

### Virgil Wiebe

Mr. Wiebe is currently Director of Clinical Education and Assistant Professor of Law at the University of St. Thomas School of Law. For 4 years, he served as Director of Immigration Services and Supervising Attorney for Interfaith Community Services in New York City. While at ICS, he represented hundreds of immigrants before the INS and in Immigration Court. Most recently, he taught immigration law at the University of Maryland and Georgetown University. Mr. Wiebe holds a B.A. in geography and political science from Kansas State University, a M. Phil in Latin American studies from Oxford University (where he studied as a Rhodes Scholar), a J.D. from New York University and an L.L.M. from Georgetown University.



This guide was written and edited with the assistance of Deborah Popowski and Jill Krauss.

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All footage in the videotape is original material filmed during production of the feature documentary film, *Well-Founded Fear*, produced and directed by Shari Robertson and Michael Camerini.

**Well-Founded Fear** is available for purchase at <http://www.wellfoundedfear.org>

In memory of **Arthur Helton**,  
whose work for refugees and displaced persons  
changed so many lives.