

Credibility & Corroboration

Resources

AALS Clinical Conference, April 28, 2021

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Readings

General

This American Life, “[Anatomy of a Doubt](#).”

ProPublica/Marshall Project, [An Unbelievable Story of Rape](#) (preceded and led to the TAL podcast)

Nikki Gloudeman, [The Problematic Rape Reporting On ‘This American Life’](#)

Chimamanda Ngozi Adichie, [The Danger Of A Single Story](#) (TED talk)

David F. Chavkin, [Clinical Legal Education](#) p. 99-102 (discussing factors affecting plausibility of a witness and factors affecting the persuasiveness of a story)

Veterans Benefits Readings

M21-1, Part III, Subpart iv, Chapter 5, Section A - Principles of Reviewing Evidence and Decision Making, particularly Topics 2 (Evidentiary Concepts) and 9 (Weighing the Evidence)

38 USC 5107

Caluza v. Brown, 7 Vet. App. 498, 511–12 (1995), *aff’d per curiam*, 78 F.3d. 604 (Fed. Cir. 1996).

Sample Assignments

Villanova CARES Clinic Credibility Assignment

Purpose

The Real ID Act of 2005 and a series of Board of Immigration Appeals (“BIA”) decisions that preceded the Real ID Act have significantly increased the burden on asylum applicants of corroborating the facts underlying their claims. According to the BIA decisions and the Real ID Act, lack of corroboration will reflect adversely on the applicant’s credibility. Because credibility is one of the single largest reasons for denials of asylum claims, it is critical that advocates representing asylum applicants familiarize themselves with the requirements of the Real ID Act and the BIA cases.

In this class we will analyze the INA’s credibility and corroboration provisions to determine what kind of corroborating evidence is necessary to support a favorable credibility determination and what to do when corroborating evidence is not available. We will also explore the significance of these statutory and case law requirements for our CARES cases and how it will impact fact investigation.

“Credibility” refers to whether your adjudicator believes your client. According to INA 208(b)(1)(B)(iii), “a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), 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.”

“Corroboration” refers to the requirement that an asylum applicant’s claims should be confirmed by external supporting evidence, independently attesting to the accuracy of your client’s affidavit and testimony. Congress, the Board of Immigration Appeals, and the federal courts have significantly increased the burden on asylum applicants to submit supporting evidence, and many

IJs have come to expect ever-increasing mountains of documents, to confirm even small and elusive factual assertions.

“Authentication” refers to the requirement that advocates demonstrate that the documents we submit to the court – especially official documents from a foreign government – are in fact what they purport to be. In an era of easy access to desktop publishing, IJs and appellate courts have become increasingly concerned that applicants (or their relatives and supporters) may be able to prepare papers that look identical to valid documents but are fake.

In all likelihood, the core of your case will arise from the applicant’s own testimony, and the federal regulations provide that such testimony, if credible, may be sufficient on its own to carry the applicant’s burden of proof and win asylum. Nonetheless, Congress, the federal courts, and the BIA have recently moved to demand more from applicants. Supporting documentation to substantiate, verify and confirm key elements of the story will be very valuable, and you will probably spend a great deal of your time this semester trying to locate and generate such corroborating materials.

Assignment

Review INA section 208(b)(1)(B) (provided in the Resource Manual). Then, look over the attached summary of the law on corroboration and the chart depicting the “corroboration pyramid.”

As you consider the various statutes, regulations, BIA cases, and circuit court opinions discussed, think about how the requirements for corroboration and authentication will affect your case, and how you can deal with the evolving challenges.

Listen to This American Life, Anatomy of Doubt (Feb. 26, 2016), *available at* <https://www.thisamericanlife.org/581/anatomy-of-doubt> .

Before class, you and your partner should brainstorm one or two credibility, corroboration or authentication issues that may come up in your case. Please e-mail them to rebecca.feldmann@law.villanova.edu; frances.kreimer@law.villanova.edu; and christine.speidel@law.villanova.edu by 10:00 a.m. on Monday, 9/16, in advance of our joint class with the Tax Clinic.

Procedure

For the first 35 minutes of class, we will meet in our normal classroom to discuss credibility, corroboration, and authentication in the context of asylum law. Then, we will join the Tax Clinic in room 301B to debrief the *Anatomy of Doubt* podcast and conduct a joint rounds-style session related to credibility and corroboration.

“Verbatim” Interviewing & Credibility Exercise

Purpose

This class provides the opportunity to reflect on lessons learned during your first client interview and to obtain feedback from your colleagues about ways to address issues that arose during your interview. This session also allows you to observe your colleagues’ different interviewing styles and assess your own strengths and areas for improvement in interviewing witnesses, and reflect on your own internal reactions to your clients’ credibility.

Assignment

Each case team should come to class prepared to discuss one issue that arose in your first interview.

Before reviewing the recording of your first interview with your client, within 48 hours of the interview, work with your partner to choose a piece of the interview in which you had an impression of the client’s credibility (or lack thereof), and attempt to reconstruct from memory a verbatim account of what each interview participant said during that portion of the exchange. Put in parentheses your visual observations of each party, and in brackets your thought process during the exchange. For example:

Student 1: Why did you come to the United States?

Client: (fidgeting nervously, not making eye contact) to provide for my children.

Student 2: [feeling concerned that this may not be the whole story, and may not be a legitimate basis for asylum] Why couldn’t you do that in your country?

Client: (beginning to cry) Because of the gangs

Sample Class Agenda

Villanova CARES Clinic and Tax Clinic

Credibility and Corroboration Fall 2019

Professors Frances Kreimer, Rebecca Feldmann, and Christine Speidel

10:05 Clinics meet separately to review credibility and corroboration issues in their legal fields

10:40 Break

10:45 Joint debrief of This American Life podcast

Introduce session goals. (think about how the issues in the podcast translate into the broader legal world and into our case work; increased awareness of our own reactions and biases)

Word Cloud: using Poll Everywhere, enter your one-word reaction to the podcast. (ask if anyone would like to elaborate)

Discussion

Framework: (1) How to convince a skeptical adjudicator of our client's story; (2) How do we deal with our own skepticism toward our client's story?

What can we learn about how we deal with our own skepticism from how the people involved with Marie reacted/acted?

Do any of the characters in that story provide a helpful model, or alternately did you identify any behaviors we should try to avoid?

It can be helpful to think about "holding facts loosely" - our understanding of the facts in our cases will almost always change over time. (Give case examples)

11:00 First Rounds Case

11:30 Second Rounds Case

12:00 End of Class