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TELLING THE STORY: THEME AND RHETORIC IN ASYLUM CASES¹

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I. Asylum Definition and Process

Asylum is a protection granted to foreign nationals already in the United States or at the border who meet the international law definition of a “refugee.”⁴ A refugee is a person who is unable or unwilling to return to his or her home country and who cannot obtain protection in that country due to past persecution or a well-founded fear of being persecuted in the future “on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁵ Congress incorporated this international definition into U.S. immigration law.⁶ There are two primary ways in which a person may apply for asylum in the United States: the affirmative process and the defensive

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⁴ U.N. High Comm’r for Refugees, *Convention and Protocol Relating to the Status of Refugees*, at 14 (Dec. 2010), <https://www.unhcr.org/3b66c2aa10>.

⁵ *Id.*; 8 U.S.C. § 1101 (2018).

⁶ 8 U.S.C. § 1101 (2018).

process.⁷ In both of these processes, the asylum seeker has to communicate the terrible persecution from which he or she is fleeing by telling a story that may re-traumatize the speaker while having to convince an adjudicator whose culture, experience, and perspective are often quite different from those of the person seeking asylum.

II. Need to Articulate the Particular Social Group

A claimant seeking asylum based on membership in a particular social group must clearly indicate on the record the exact delineation of any proposed particular social group.⁸ A claimant seeking to establish persecution on account of membership in a “particular social group” must demonstrate: (1) “membership in a group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question”; and (2) that “membership in the group is a central reason for [his or] her persecution.”⁹ When the persecutor identified is not affiliated with the government, the claimant must additionally demonstrate that his or her home government is “unwilling or unable to protect him or her.”¹⁰

III. Affirmative Process

A person who is not in removal proceedings may affirmatively apply for asylum through U.S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS).¹¹ If the USCIS asylum officer does not grant the asylum application and the claimant does not have a lawful immigration status, the claimant is referred to the immigration court for removal

⁷ *Asylum in the United States*, AM. IMMIGR. COUNCIL (May 14 2018), <https://www.americanimmigrationcouncil.org/research/asylum-united-states>. A person who is not in removal proceedings may affirmatively apply for asylum through U.S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS). A person who is in removal proceedings may apply for asylum defensively by filing the application with an immigration judge at the Executive Office for Immigration Review (EOIR) in the Department of Justice. Both processes require the asylum seeker to be physically present in the United States. *See also About Us*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/aboutus> (last visited June 3, 2019).

⁸ *Matter of A-B-*, Respondent, 27 I&N Dec. 316 (Att’y Gen. June 11, 2018).

⁹ *Id.* at 316.

¹⁰ *Id.*

¹¹ *Obtaining Asylum in the United States*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states> (last visited June 3, 2019).

proceedings, where he or she may renew the request for asylum through the defensive process and appear before an immigration judge in immigration court.¹²

IV. Defensive Process

Asylum seekers who arrive at a United States port of entry, or who enter the United States without inspection, generally must apply through the defensive asylum process since they are placed in removal proceedings.¹³ Any person who is in removal proceedings may apply for asylum defensively¹⁴ by filing the application with an immigration judge (IJ) at a Master Calendar in the Executive Office for Immigration Review (EOIR), the Department of Justice immigration court system and proceeding to a bench trial at a later date.¹⁵ In other words, an individual requests asylum as a defense against removal from the United States.

V. Evidence in Asylum Applications

An asylum seeker has the burden of proving that he or she meets the definition of a refugee.¹⁶ Asylum seekers provide evidence throughout the affirmative and defensive processes by demonstrating either past persecution or the existence of his or her “well-founded fear” of future persecution in his or her home country.¹⁷ Both of these processes involve the filing of an asylum application and then testimony from the asylum seeker.¹⁸ The asylum seeker or claimant bears the evidentiary burden of proof and persuasion in connection with any applications under INA § 208.¹⁹

¹² *Id.*

¹³ *Id.*

¹⁴ In defensive application submissions, all evidence submissions must comply with the requirements of the Immigration Court Practice Manual. Memorandum from the U.S. Department of Justice on the Application of the Immigration Court Practice Manual to Pending Cases to All Immigration Judges, All Court Administrators, All Attorney Advisor and Judicial Law Clerks, All Immigration Court Staff (June 20, 2008).

¹⁵ *Obtaining Asylum in the United States*, *supra* note 11.

¹⁶ *Asylum in the United States*, AM. IMMIGR. COUNCIL (May 14, 2018), <https://www.americanimmigrationcouncil.org/research/asylum-united-states>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Matter of Acosta*, 19 I. & N. Dec. 211 (Dep’t of Just., Bd. of Immigr. Appeals March 1, 1985), *modified on other grounds by Matter of Mogharrabi*, 19 I. & N. Dec. 439, 446 (Dep’t of Just., Bd. of Immigr. Appeals June 12, 1987); *See also* 8 U.S.C. § 1158 (2018).

Such evidence must be provided as long as the claimant has the evidence or can reasonably obtain it.²⁰ If such evidence is unavailable, the claimant must explain its unavailability.²¹

Evidence in asylum cases is presented in two distinct forms—written or documentary evidence and oral testimony²², and these two sets of information comprise the asylum seeker’s story. The lawyer cannot create this story for the asylum seeker, but can provide guidance in shaping and structuring the account. The role of the lawyer is to facilitate the storytelling by helping the asylum seeker to select, organize, and present information to create a narrative that is clear and convincing to the judge.²³ The narrative is not only a statement about why flight from his or her own country was necessary, but also the rationale for demonstrating support for a grant of protection in the United States.²⁴ Stacy Caplow discusses how to apply classical rhetoric and narrative theory to the process of drafting the asylum affidavit, and describes why such formal and rhetorical strategies are necessary: “Sometimes language impedes comprehension; sometimes clients take detours through personal, social, or political history that may be very important to them but tangential to the claim; sometimes the emotion and trauma of their experiences inhibit their ability to talk about certain events.”²⁵ Understanding rhetorical and narrative theories and strategies can enable the attorney to help asylum seekers construct the story in a way that empowers “the asylum seeker to communicate confidently and believably at the interview or hearing.”²⁶

VI. Theme and Case Theory

²⁰ *Asylum in the United States*, *supra* note 7.

²¹ Matter of S-M-J-, 21 I. & N. 722 (Dep’t of Just., Bd. of Immigr. Appeals Jan. 31, 1997).

²² Ilona Bray, *Proving Persecution for an Asylum Application*, ALLLAW, <https://www.alllaw.com/articles/nolo/us-immigration/proving-persecution-asylum-application.html> (last visited Apr. 16, 2019).

²³ *See generally Asylum Seekers & Refugees*, NAT’L IMMIGRANT JUST. CTR., <https://www.immigrantjustice.org/issues/asylum-seekers-refugees>. (last visited April 16, 2019).

²⁴ *Refugees and asylum seekers*, SOC. PROTECTION HUM. RTS, <https://socialprotection-humanrights.org/key-issues/disadvantaged-and-vulnerable-groups/refugees-and-asylum-seekers/> (last visited March 12, 2019).

²⁵ Stacy Caplow, *Putting the “T” in Wrting: Drafting an A/Effective Personal Statement to Tell a Winning Refugee Story*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 249, 272 (2008).

²⁶ *Id.* at 257.

To be accepted as believable, a witness in any litigation must project trustworthiness through their testimony, which must be clear, simple and compelling to the trier of fact.²⁷ An asylum statement is the claimant's own personal declaration of independence from the persecution he or she seeks to escape.²⁸ Thomas Jefferson explained that his intent for writing the Declaration of Independence was "to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent."²⁹ Translated into modern terms, this means that a case theory supported by clear evidence is compelling to a trier of fact.

The commonsense of a subject in litigation is a combination of the case theme and the case theory. A case theme is a short phrase that encompasses an asylum seeker's strongest claim. Theme explains why. An example of a case theme could be "past persecution based on political opinion." Theory explains how. This is the entire point of asylum seeker's application. It is the entire point of the government's cross-examination, as well. Case theory synthesizes a complex and highly emotionally charged story into a simple concept.³⁰ The case theory in an asylum application is essentially the claimant's version of what happened and why he or she is entitled to be granted asylum protection.³¹ A possible example of a case theory is having been "arrested at a political meeting and beaten during interrogation in prison." The government's theory in a contested case is that there are reasons why the claimant is not eligible for asylum.

²⁷ E.A. Gjelten, *What Makes Witnesses Credible? How Can Their Testimony Be Discredited?*, LAWYERS.COM, <https://www.lawyers.com/legal-info/criminal/criminal-law-basics/a-credible-witness-is-trustworthy-and-believable.html> (last visited Mar. 12, 2019).

²⁸ See generally Ashley Huebner, *Representing Asylum Seekers*, NAT'L IMMIGR. JUST. CTR. (Nov. 16, 2017), <http://immigrantjustice.org/sites/default/files/content-type/page/documents/2016-11/Jones%20Day%20asylum%20training%20powerpoint-final-11.17.pdf>.

²⁹ Letter from Thomas Jefferson to Henry Lee (May 8, 1825) (on file with the National Archives).

³⁰ See generally THOMAS A. MAUET, TRIAL TECHNIQUES AND TRIALS (Vicki Been et al. eds., 9th ed. 2013).

³¹ Caplow, *supra* note 25, at 259.

The asylum application is evidence. It is a sworn statement and must be in the claimant's own words.³² In both a hearing before an asylum officer, and in a removal hearing before an immigration judge, an asylum seeker will be asked questions about his or her reasons for fleeing and for seeking protection.³³ Since the claimant's credibility is crucial, the oral testimony must be consistent with the written application.³⁴

The theme sets the stage for the theory, the claimant's version of the undisputed facts and proof of legal elements of the claim.³⁵ Throughout the narrative, the use of labels and descriptive words that are psychological anchors propel the theory and unify content and style.³⁶ One example of a label is the phrase "beaten on the bottom of the feet with stiff bamboo sticks," which indicates that the speaker was tortured. Instead of a generalized concept such as "torture," the specific terms and phrasing create an image in the listener's mind and thus becomes more believable. Likewise, the government's opposition must be logically laid out and supported by evidence gleaned through cross-examination of the claimant and a thorough review of the evidence.³⁷

VII. Using Rhetoric to Frame the Trauma Narrative

Crafting a coherent and convincing narrative is especially challenging for trauma survivors.³⁸ In the asylum context, the speed and intensity of courtroom testimony exist in tension with the continuous triggering of the witness by having to retell – and through the retelling relive – past traumatic experiences.³⁹ Furthermore, trauma resists symbolization, and consequently narrative

³² Alena Shautsova, *How to File for Asylum Part II*, ALENA SHAUTSOVA LAW OFFICES (Oct. 24, 2012), <https://www.shautsova.com/law-publications/how-file-asylum-declaration-affidavit.html#.XLZhxKeZPOQ>; Ilona Bray, *How to Complete a Form 1-589 for U.S. Asylum*, ALLLAW, <https://www.alllaw.com/articles/nolo/us-immigration/how-complete-form-i-589-asylum.html> (last visited June 3, 2019).

³³ Bray, *supra* note 32; Alena Shautsova, *What Happens if Asylum Case is Denied After the Interview?*, ALENA SHAUTSOVA LAW OFFICES (Mar. 21, 2016), <https://www.shautsova.com/law-publications/asylum-denied-after-interview-what-happens.html>.

³⁴ See Shautsova *supra* note 32.

³⁵ Caplow, *supra* note 25.

³⁶ *Id.*

³⁷ See generally Shautsova, *supra* note 32.

³⁸ See Caplow, *supra* note 32, at 265-66.

³⁹ See *id.* at 272.

structure, because it does not fit within our individual or societal symbolic order.⁴⁰ Trauma threatens the integrity of the self and thus embodies the disruption of order and the dissolution of coherence, two elements that are essential in asylum seekers' testimony.⁴¹ In *The Body in Pain: The Making and Unmaking of the World*, Essayist and Harvard University Professor Elaine Scarry describes the limits of language for trauma survivors:

Whatever pain achieves, it achieves in part through its unsharability, and it ensures this unsharability through its resistance to language ... Physical pain does not simply resist language but actively destroys it, bringing about an immediate reversion to a state anterior to language, to the sounds and cries a human being makes before language is learned.⁴²

Scarry also notes that the language used to describe the physical pain experienced by the individuals she has interviewed often comes from others speaking on their behalf.⁴³ To the person in pain, there is no reality besides that pain. Yet, it is exactly a coherent narrative that serves as the precondition for being believed. Thus, it is the lawyer's role to help asylum seekers relay unbearable and unspeakable experiences into a logical, coherent narrative that is generally understandable and legally viable, but also evokes empathy from individuals who have not been through such trauma. The importance of narrative in bearing witness to trauma cannot be overestimated. Narrative has a unique ability to forge an emotional connection between the speaker and the listener, and to enable the listener to understand events not experienced first-hand from another's perspective.

To be credible and convincing, asylum seekers must connect with the judge through the diverse means of sincerity and strategy. Their messages should dramatize, humanize, and organize the pertinent details of their life and history in a logical and understandable manner. There is an art to the

⁴⁰ Army Schweiger, *From Representing Trauma to Traumatized Representation: Experiential and Reflective Modes of Narrating the Past*, 9 FRONTIERS LITERATURE STUD. CHINA 345, 357 (2015), <http://www.diva-portal.org/smash/get/diva2:853020/FULLTEXT02>.

⁴¹ See Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility and the Adversarial Adjudication of Claims for Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457, 483-490 (2016).

⁴² ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD*, 4 (Oxford University Press ed., 1985).

⁴³ *Id.* at 324.

study of effective speaking and writing, known as rhetoric.⁴⁴ Rhetorical strategies can help to both forge a rapport with the audience and make an argument believable. As defined by the Greek philosopher, Aristotle, in his fourth century BCE treatise, *On Rhetoric*, rhetoric is both the study of effective speaking and writing, and the art of persuasion.⁴⁵ Classical rhetorical strategies and devices can be used to connect a speaker with his or her audience.⁴⁶ People are more fully persuaded when they consider a thing demonstrated.⁴⁷ In asylum cases, the lawyer can identify rhetorical techniques for effective speaking; learn to make narrative and rhetorical choices according to the audience and situation; and help his or her client develop a believable, authentic, and practiced voice.

In his treatise, Aristotle identifies three types of persuasive appeal: ethos, logos, and pathos.⁴⁸ Ethos refers to the speaker's character, and particularly the speaker's credibility, which depends on the judge or jury perceiving the speaker as (1) trustworthy and impartial, (2) knowledgeable and expert, and (3) dynamic and confident.⁴⁹ Ethos in the context of an asylum case does not refer to the credibility of the particular witness, but rather to the trustworthiness of the lawyer. When the lawyer is organized and confident, the audience will be more likely to presume that she or he is trustworthy and knowledgeable.⁵⁰ To establish credibility, the speaker must gain the audience's favor. Some techniques for doing this include to expressing modesty by downplaying his or her accomplishments and use of plain and clear language instead of artificial or affected speech or images.⁵¹ An example of ethos is the expert witness. For instance, a psychiatrist's opinion about a person's state of mind carries

⁴⁴ *Rhetoric*, OXFORD DICTIONARIES, <https://en.oxforddictionaries.com/definition/rhetoric> (last visited Apr.17, 2019).

⁴⁵ See ARISTOTLE, RHETORIC (W. Rhys Roberts trans., Biblioteca On-line de Ciências da Comunicação).

⁴⁶ *Id.* at 8 (wherein Aristotle speaks of the three kinds of persuasion through spoken word, including "putting the audience into a certain frame of mind.").

⁴⁷ *Id.* at 5 ("Persuasion is clearly a sort of demonstration, since we are most fully persuaded when we consider a thing to have been demonstrated").

⁴⁸ ARISTOTLE, ON RHETORIC: A THEORY OF CIVIL DISCOURSE bk. I, pt. II para. 2 (George A. Kennedy trans., Oxford University Press 2d ed. 2006) (c. 367 B.C.E.); See also, generally Krista C. McCormack, *Ethos, Pathos, and Logos: The Benefits of Aristotelian Rhetoric in the Courtroom*, 7 WASH. U. JURIS. REV. 131 (2014).

⁴⁹ See generally McCormack, *supra* note 48.

⁵⁰ See generally *id.*

⁵¹ Kennedy, *supra* note 48.

more weight with a jury.⁵² Likewise, a forensic scientist is assumed to be able to interpret evidence better than the jury.⁵³

The second rhetorical appeal, *logos*, refers to the content of the narrative and testimony.⁵⁴ Within the context of an asylum case, *logos* is represented by the case theory and consists of facts, argument, knowledge, and logical organization of ideas. An iconic example of *logos* is Sojourner Truth's "Ain't I a Woman" speech, delivered at the 1851 Women's Convention in Akron, Ohio:

That man over there says that women need to be helped into carriages, and lifted over ditches, and to have the best place everywhere. Nobody ever helps me into carriages, or over mud-puddles, or gives me any best place! And ain't I a woman? Look at me! Look at my arm! I have ploughed and planted, and gathered into barns, and no man could head me! And ain't I a woman? I could work as much and eat as much as a man - when I could get it - and bear the lash as well! And ain't I a woman? I have borne thirteen children, and seen most all sold off to slavery, and when I cried out with my mother's grief, none but Jesus heard me! And ain't I a woman?⁵⁵

The speech is structured around the definition of "woman" that Truth first attributes to "that man over there," and then systematically and logically destroys by providing counter-examples from her own experience.⁵⁶ Truth emphasizes her points by posing a repeated rhetorical question at the end of each of her statements: "And ain't I a woman?"⁵⁷

The third rhetorical appeal is *pathos*, which refers to the speaker's emotional impact. *Pathos* involves appealing to the audience's assumptions, emotions, and values.⁵⁸ To be effective, the speaker must connect to the audience by using visual and visceral cues and psychological anchors such as themes, words that summarize your theory and give moral weight to the theory; and labels, descriptive

⁵² See Sanja Kutnjak Ivković & Valerie P. Hans, *Jurors' Evaluation of Expert Testimony: Judging the Messenger and the Message*, 28 LAW & SOC. INQUIRY 443 (2003).

⁵³ See generally *id.*

⁵⁴ ARISTOTLE, ON RHETORIC: A THEORY OF CIVIL DISCOURSE bk. I, pt. II para. 2 (George A. Kennedy trans., Oxford University Press, 2d ed. 2006) (c. 367 B.C.E.).

⁵⁵ Sojourner Truth, *Ain't I A Woman?*, Address at the Women's Rights Convention in Akron Ohio (May 29, 1851).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Rhetorical Appeals*, PATRICIA COLLEEN MURPHY, <http://www.public.asu.edu/~trishm/classes/activities/rhetoricalappeals.html> (last visited June 4, 2019).

words to tag key ideas.⁵⁹ Pathos is exemplified in the defense mounted by Leo Branton, Jr., the African American attorney responsible for civil rights activist Angela Davis' 1972 acquittal of the murder of Judge Harold Haley.⁶⁰ To appeal to the jurors' emotions, Branton submitted a drawing of Davis in chains, and began his closing statement by asking the all-white jury to imagine themselves as black:

I am going to ask you, if you will, for the next few minutes to think Black with me—to BE black. [...] Don't worry. When the case is over, I am going to let you revert back to the safety of being what you are. You only have to be Black and think Black for the minutes that it will take for me to express to you what it means to be Black in this country.⁶¹

Branton then related the history of racism in America, from the Middle Passage and slavery to the Fugitive Slave Law, the Dred Scott decision, and the Jim Crow laws.⁶² He ended by releasing the jurors back to their white selves and reading “a poem [that celebrated] Black love as a redemptive act.”⁶³

Using the rhetorical appeals of ethos, pathos, and logos in oral testimony enables the asylum seeker to “re-writ[e] the moment of trauma in order to make sense of it” to the court.⁶⁴ Likewise, the three encompassing terms of Kairos, audience, and decorum lead the speaker to tailor his or her language, style, and tone to the specific context and audience in a convincing manner.⁶⁵ Kairos refers to time and place, or literally, “the opportune occasion for speech.”⁶⁶ Each context both calls for and constrains one's speech: the speaker must take into account the contingencies of a given place and time, and weigh which words and ideas are effective and appropriate to a specific context.⁶⁷ Similarly,

⁵⁹ *Visual Aids in Public Speaking: Importance, Purpose, and Audience Considerations*, STUDY.COM, <https://study.com/academy/lesson/visual-aids-in-public-speaking-importance-purpose-and-audience-considerations.html> (last visited June 6, 2019).

⁶⁰ Dan Berger, “Thinking Black’ Against the Carceral State: Angela Davis and Prisoner Defense Campaigns”, BLACK PERSPECTIVES (June 3, 2017), <https://www.aaihs.org/thinking-black-against-the-carceral-state-angela-davis-and-prisoner-defense-campaigns/>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Tara Roeder, *My Words Would Have Murdered: Sandor Ferenczi, Women's Memoir, and Reparative Reading*, 22 PSYART 32, 34 (2018).

⁶⁵ *The Forest of Rhetoric*, SILVIA RHETORICAE, <http://rhetoric.byu.edu>.

⁶⁶ *Id.*

⁶⁷ *Id.*

the message must be consistent with the specific audience's expectations, and the speaker must not overload the audience with too much information.⁶⁸ Decorum, in the rhetorical sense, means fitting the chosen words and the overall subject matter to each other, to the circumstances and occasion, and to the audience.⁶⁹ Because the asylum seeker must provide both written evidence and oral testimony, it is especially important to note that written language is fundamentally different from spoken language.⁷⁰ The oral testimony must sound authentic and come across as spontaneous, so the speaker should not memorize a written script.⁷¹

VIII. Framing the Narrative

“Framing” refers to both a narrative framework and interpretive frames – the contexts and perspectives we call on in order to interpret and understand information. Frames are mental structures that shape the way we see the world.⁷² Interpretive frames, or schemas, refer to “a set of expectations which rests on previous experience.”⁷³ The narrative framework is the logical sequencing of information within culturally-specific storytelling conventions, including an introduction designed to grab the audience's attention and good will, narration of the facts of the case from the speaker's point of view, proof or evidence to support the speaker's version of the facts, and a conclusion recapitulating the argument in a way that arouses the judge's or jury's emotions.⁷⁴

Framing an argument or a set of facts can help to move the audience to your worldview. In framing the narrative, the language one chooses carries and evokes certain ideas, and must be selected

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Immigration Equality Asylum Manual: 9. Immigration Basics: Real ID Act* (2015), IMMIGR. EQUALITY, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/immigration-basics-real-id-act/#.XLiAUehKg2w> (last visited April 23, 2019).

⁷¹ Caplow, *supra* note 25, at 257.

⁷² GEORGE LAKOFF, DON'T THINK OF AN ELEPHANT!: KNOW YOUR VALUES AND FRAME THE DEBATE – THE ESSENTIAL GUIDE FOR PROGRESSIVES (Chelsea Green, 2004).

⁷³ JOHN J. GUMPERZ, DISCOURSE STRATEGIES (Cambridge Univ. Press, 1982).

⁷⁴ See Philip M. Meyer, *Going beyond the evidence to spin a story for your jury*, ABA JOURNAL (Feb. 1, 2015, 6:21 AM), http://www.abajournal.com/magazine/article/going_beyond_the_evidence_to_spin_a_story_for_your_jury.

to fit the speaker's standpoint and interpretation.⁷⁵ Specific words create images that draw the audience into the speaker's perspective.⁷⁶ Along with word choice, paralinguistic and prosodic features of speech, called "contextualization cues," signal the cultural and social interpretive frames that we all use to make sense of information.⁷⁷ Sociolinguist Deborah Tannen notes:

Ever since its introduction by Gregory Bateson in "A Theory of Play and Fantasy" ([1954] 1972), the concept of framing has influenced thinking about language in interaction. Bateson demonstrated that no communicative move, verbal or nonverbal, could be understood without reference to a metacommunicative message, or metamessage, about what is going on that is, what frame of interpretation applies to the move.⁷⁸

To be effective, the narrative framing must both articulate the argument from the speaker's point of view and be consistent with the audience's expectations.⁷⁹ In the introduction, the speaker should construct a preview of reality that creates a preference in the audience's mind. The speaker must then maintain thematic progression by tying the facts together and cueing the relationship among the various elements.⁸⁰ Tannen notes that audiences experience discomfort when they cannot tell what the speaker is getting at.⁸¹

IX. Conclusion

Rhetorical strategies, themes, and interpretive framing allow the speaker to control the narrative when presenting oral testimony in asylum cases. These formal elements help structure traumatic events and memories into a coherent story that will engage the judge and enable the court to see the situation from the asylum seeker's worldview. In the context of asylum applications, even the most deserving claimant may be unable to deliver their testimony in a coherent or compelling

⁷⁵ See *Approaching the Speaking Situation: Audience, Occasion, Purpose*, U. OF PITTSBURG DEPT OF COMM., <https://www.comm.pitt.edu/approaching-speaking-situation-audience-occasion-purpose> (last visited June 5, 2019).

⁷⁶ See *id.*

⁷⁷ See Randy J. LaPolla, *Language as Culture: The Conventionalization of Constraints on Inference*, SEMANTIC SCHOLAR, <https://pdfs.semanticscholar.org/a905/67977cb3645cd60f798693f504727100ad7d.pdf> (last visited June 6, 2019).

⁷⁸ DEBORAH TANNEN, *FRAMING IN DISCOURSE 3* (Oxford University Press, 1993).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

manner without the assistance of an effective advocate, due to the severe trauma that he or she experienced – and the trauma that he or she must once again undergo by having to retell and relive these experiences in the courtroom. It is crucial, therefore, that immigration lawyers acting in these proceedings consciously utilize these rhetorical techniques in order to facilitate the delivery by their clients of narratives that are credible, humanizing, and persuasive to the court. It is equally important that the lawyers representing the Department of Homeland Security be sensitized in this area so they are able to separate out any genuine issues of material fact and law critical to a fair analyzation of the asylum claim.