NOTES: Bridging the Scientific-Legal Divide in the Treatment of Trauma in Immigration

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Location: Cornell Law School
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Panel I: Documenting the practice and impact of forensic Immigration Assessments

Unfortunately, there were no notetakers during the first panel, which featured:

1. **Kathryn Hampton**, Head of Impact, Rainbow Railroad (formerly Asylum Program Deputy Director, Physicians for Human Rights and **Ranit Mishor**i, MD MHS, Senior Medical Advisor at Physicians for Human Rights and Professor, Georgetown School of Medicine
2. **Benjamin Lawrance**, Professor, University of Arizona
3. **Raquel Aldana**, Martin Luther King Professor of Law, UC Davis and **Alea Skwar**a, Postdoctoral Scholar, University of California, Davis
4. **Nermeen Arastu**, Associate Professor, Co-Director, Immigrant and Non-Citizen Rights Clinic, CUNY School of Law
    a. Shared findings from CUNY-PHR Study which studied the impact of forensic medical examinations on grant rates for applicants seeking immigration relief before USCIS and EOIR.
    b. CUNY-PHR researchers conducted a retrospective analysis of 2584 cases initiated by Physicians for Human Rights between 2008 and 2018 that included forensic medical evaluations, and found that 81.6% of applicants for various forms of immigration relief were granted relief, as compared to the national asylum grant rate of 42.4%. Among the study's cohort, the majority (73.7%) of positive outcomes were grants of asylum.
    c. These findings strengthen and expand prior evidence that forensic medical evaluations can have a substantial positive impact on an applicant's immigration relief claim.
    d. While U.S. law states that an immigrant's credible, persuasive, and specific testimony alone is sufficient to justify an asylum grant, the CUNY-PHR study illustrates that adjudicators have come to expect asylum-seekers to furnish forensic medical evaluations. Yet most applicants ensnared in the U.S. immigration system do not have access to an attorney, much less a forensic medical evaluator. Such a reliance on forensic medical evaluations may create greater disparities in grant rates along race and economic lines, setting up the

most marginalized applicants, those without counsel to lawyers and forensic evaluators, to fail.

e. Please find publications related to this study here:
   i. Atkinson, et al, Impact of forensic medical evaluations on immigration relief grant rates and correlates of outcomes in the United States, Journal of Forensic and Legal Medicine (November 2021).
   ii. Nermeen Arastu, Access to a Doctor, Access to Justice?, Harvard Human Rights Journal (May 2022).

Panel II: Children & Sexual Minorities & Forensic Immigration Assessments

Rebecca Ford-Paz, Clinical Child Psychologist, Ann & Robert H. Lurie Children's Hospital of Chicago Associate Professor of Psychiatry & Behavioral Sciences, Northwestern Feinberg School of Medicine

"Intersection of Psychology & Law for Child Asylum Seekers"

- Forensic Assessment for Immigration Relief (FAIR) Clinic
  - Trauma informed forensic medical and psychological evaluations to children and adolescents
- Incredible amount of variability in pediatric guidelines for these evaluations
  - Lack of standardization
  - Lack of information
- Objectives of the study
  - Investigate areas of consensus and variability of stakeholder groups understanding the key components of child and adolescent forensic psychological asylum evaluations and affidavit preparation
  - Explore how Trump administration's immigration policies may have impacted children
  - Strengths of child asylum seekers
- Interviews and surveys were conducted with
  - 6 forensic psychological valuators: all had experience conducting these evaluations
    - 2 child psychiatrists
    - 2 clinic child psychologists
    - 1 licensed clinical social worker
    - 1 licensed professional counselor
  - 2 immigration attorneys: experience representing minors in immigration court
  - 9 asylum seekers
  - Chart review of medical records
  - Descriptive statistics and directed content analysis

- Important to collect collateral information
    - Children are y to provide reliableunable to give information about early background, childhood, development
    - Important to assess developmental history
        - Serves to humanize the child in court and contextualize the impact of trauma that prompted migration
    - Process of evaluation looks different with kids
        - Must be more simplistic in language
        - Must be more vigilant in not using leading questions
        - Essential to devote time to meet with the child and caregivers to establish trust and build relationship .
    - Include education in affidavits about children's differences in processing trauma
- Areas of discord: variability in opinions about value of evidence-based assessment tools
    - Psychologists were most comfortable using these types of tools
    - May depend on time and resources, as well as context of evaluation
- Differences by discipline
    - Psychologists spent more hours with minors, more sessions
    - Concern about retraumatization
    - Others thought meeting with child multiple times is essential to trust and developing the information
    - Attorneys said that only 1 hour might be seen as less credible by the court, meeting multiple times is preferable
- Affidavit preparation
    - Should be kept as simple and concise as possible
    - Citations are used sparingly and not central to the success of asylum grant rates
    - 8.7 pages is average length of affidavits
        - Varied greatly in range from 5-16
    - Attorneys preferred brevity
- Types of trauma:
    - Most common:
        - Separation from primary caregiver during journey or detention
        - Witness to a crime
        - Gang violence
        - Child abuse and neglect
- Impact of immigration policies
    - Most minors seeking asylum do so because they are fleeing domestic or gang/cartel violence
        - Policies that would have removed gang/cartel violence as grounds for relief would have worked to deny these children relief
    - Many children did not know they could apply for asylum in a 3rd country

        - Had family here in the US and not in 3rd countries
    - Although the Flores Settlement, currently in effect, recommends that children cannot exceed 72 hours in detention centers, 45% of children seen in FAIR had spent more than the recommended time in detention.
    - 1 returned under MPP
    - 1 separated from family under Zero Tolerance
    - Other harmful policies: Increased vetting of sponsors, public charge fears, and title 42 increasing time before reunification – which increased trauma
- Mental health impacts
    - Intense fears and anxiety about their ability to remain in the U.S.
    - Attachment and relationship problems
    - Helplessness
    - Difficulties with family reunification
    - Low levels of motivation
    - Social alienation
    - Concentration difficulties
- Policies that increase trauma
    - Increased trauma during delay of family reunification
    - Policies like MPP, Title 42 make children more vulnerable to trafficking
- Also demonstrated strengths
    - Reunification with supportive attachment figures
    - Ability to trust and reveal personal information
    - Hopefulness, future/goal orientation
    - Strong sense of family responsibility and protectiveness/care/concern for family
    - Strong social skills and connections – charming personality, good sense of humor
    - Faith
    - Help-seeking behavior – asks for help in school, willingness to participate in therapy
    - Positive school environment and reunification with a support system were very helpful
- One evaluator
    - Saw several kids being kidnapped in Mexico, exploited by abuser, did not have a person to tell the child everything is going to be okay
    - Sense of safety feels impossible in a detention center, in a dangerous environment
- Findings
    - Even among veteran evaluators, there is a significant amount of variability in the conduct of forensic asylum evaluations with minors

    - Recent immigration policies have put asylum seeking minors in harm's way and have had a detrimental impact on their mental health
    - There are a number of strengths and protective factors for child asylum seekers
    - Need for legal and psychological professionals to develop shared understanding of best practice guidelines for the conduct of these evaluations with minors
- Next Steps
    - Need for legal and psychological professionals to develop shared understanding of
        - Expereinces of asylum seeking minors
        - Best practices guidelines for the completion of psychological asylum with pediatiic populations.
- Connect: https://luriechildrens.org/fair
- Resources:
    - Istanbul Protocol
    - PHR- "Examining Asylum Seekers"

    - Neglect
- Immigration Policies
    - Most minors seek asylum are fleeing domestic or gang violence
    - More than half of children pass through a third country and not knowing they could apply to asylum in third country
    - Flores Settlement: child should not be held more than 72 hours in detention→ found children have spent more time
    - Longer wait times due to vetting of sponsors in previous administration and Title 42

Katie Annand, Immigrant Legal Defense; **Christine Lin**, Director of Training & Technical Assistance, Center for Gender & Refugee Studies, UC Hastings; and **William Martinez**, Assistant Professor, Psychiatry and Behavioral Sciences, University of California, San Francisco

"Medical-Legal Partnerships and the Utility of Universal Declarations"

- Immigrant Health Equity and Legal Partnership
    - UCSF, Stanford Medicine, KIND, Immigrant Legal Defense, CGRS, JDC, Legal Services for Children, CARECEN
    - Founding organizations located in Bay area, but reach of activities is state and nationwide
    - Been around since 2018
- Universal vs. Individual Expert Declarations

- Universal
    - Developed to be used in many cases
    - Specific to topic, issue, country
    - No individual interviews
    - Efficiency - resources/time
    - **How do they differ from individualized? They aren't tailored to a specific claim.**
- Individualized
    - Specific to an individual
    - Review client declaration and other relevant background documents
        - Interview individual to make assessment and provide evaluation
        - Resource intensive
            - Not accessible for everyone due to time/monetary constraints
- Purpose of Health Expert's Universal Expert Dec
    - Common for child asylum-seekers not to report trauma/past abuse to border officials
    - Sometimes unable to provide linear account, accurate timeline, can be inconsistencies and omissions → result of trauma
    - Some children have self-medicated/abused drugs bc of trauma
    - Educates adjudicator as to how age, developmental stage, trauma history, medical/mental health history impact:
        - Memory
        - Credibility
        - Testimony
        - Ability to recount experiences and its details
        - Decision making
        - Substance abuse
        - Other issues
- Hoping that UD would be submitted as expert evidence
    - Submitted as evidence to bolster legal theory of the case
- Utilizing Universal Declarations
    - Key piece of the work is empowering children to share their stories
    - Advocating for protection around the storytelling process itself
    - Credibility
        - Difficulty in providing consistent testimony about trauma
        - Issues with memory/recall
            - Dates might shift between meetings with the child
        - Changes in expressions or tone when talking about traumatic events

            - Child can shut down when talking about violence – dissociations may decrease credibility if adjudicator is not informed on these effects of trauma
    - Decision-making
        - Missing a court date/*in absentia* removal orders
            - Limited understanding of importance of attending court while coping with trauma, fear of attending court
        - Decisions made in a state of panic (at the border for example)
            - Providing different information at the border – can follow child throughout the case
        - Juvenile delinquency, conflicts with the law
    - Foundational
        - Instead of or to supplement individualized evaluation
- Collaborative Declaration Development
    - Need to consider trauma when assessing legal strategy
    - Interdisciplinary approaches to case hypotheticals demonstrate need for universal declarations
    - Contemporaneous policy and legal changes have affected collab
        - Family Separation affects Credible Fear Interviews
    - Case examples raised in group calls
    - Space for questions from medical professionals
    - Opportunity to explain legal relief elements, requirements, trends
    - Health impact of past, cumulative, ongoing trauma
    - Having one long declaration that encompasses multiple issues isn't always as effective – may distract adjudicator, less likely to read it, contain irrelevant information that may raise red flags not at issue in a case
    - Need more than just one declaration to address the concerns raised in different types of children's claims - universal and consensus report on decision making
- Admissibility of Consensus Report vs UD
    - How to offer a co-authored report to an adjudicator and get it accepted as expert evidence
    - That is why we titled it Consensus Report vs Universal Declaration
        - Consensus report: issues with admissibility
            - Why Consensus Report
                - How to present a co-authored report to an adjudicator
                - Expert declaration: one individual swearing under penalty of perjury
                - With Multiple authors, cannot declare the content under penalty of perjury
- Declaration #1

- Psych impact of trauma on kids
    - Psychological impact of trauma on kids and issues with credibility
    - Topics:
        - Complex trauma
        - neurodevelopmental response
            - Young children vs. adolescents
            - Pubertal timing: another critical window of time around puberty; trauma impacts are big during this time
        - Mental health risk
        - Impact on memory and decision making
    - One author
    - Outcomes: disseminated 12,000+ times
- Declaration #2 (Consensus)
    - Decision making in children and adolescents
        - Need to consider trauma when adjudicators are thinking about kids decisions / past behaviors
        - How does trauma increase risk taking behavior
            - Conflicts with law and permanency of behavior
    - Organizational and/or multiple authors
    - Need more data on how people are using this and what types of cases
- Outcomes - Declaration #1 (Impact of Trauma)
    - Need more data for outcomes
    - Sept 2020 (disseminated 12,000+)
        - Completed in June 2018
    - What they didn't have the data to do?
        - How are people using this? Only so far n=64
        - Vast majority using in asylum, adolescent, gang violence cases
- CGRS Universal Expert Declaration Survey: Demographics
    - Mostly nonprofit attorneys
    - Most used declaration topics:
        - Non-disclosure of trauma at the border
        - Trauma and memory
        - Childhood trauma and child neurodevelopment
    - Most people submitting it as general evidence, rather than expert
    - Some also submitted individualized declarations as well, but most did not
- Suggest doing more targeted survey for each UD?
- UD Survey takeaways
    - It's more cost-effective for clients who cannot afford individualized declaration
    - Some attorneys met with challenges from DHS for submitting universal declarations as expert evidence

- Impact of Universal Declaration -
    - Some judges have been resistant to universal declarations
    - Sometimes individualized declarations are required by judges as universal ones aren't tailored to that specific trauma or person.
    - There has been success. Huge impact in the number of cases where these resources can be submitted.
    - Some IJs and courts of appeals have cited to universal decs in their decisions
- Helps build record and preserve arguments for appeal
- Demand for additional topics
- DHS Objections to Admission
    - Exper
- IJ Bases for Exclusion. Limited Weight
    - Without cross-exam, not fair

Mark Silver, Forensics and Mitigation

"Sexual Orientation Asylum Petitions: Challenges in Forensic Psychosocial Immigration Evaluations"

- To get a sample report- marksilver1@cs.com
- How to clinically elicit information from clients - taught with report
    - Something we sorely lack in law school training
- Clinical and criminal issue
- Victims deal with individual pathology based on their background/context/experiences
- People with Sexual Orientation asylum cases, they don't have support from community.
- May have suffered persecution by their own family members
- Systemic persecution happens before they experience trauma in the community.
- Many times adjudicators cannot understand fluidity/curiosity. Research shows that this is not unusual
- Need to think of harm as systemically - any kind of harm; physical/psychological/PTSD
- **More like "complex trauma"** than "PTSD"
    - Children who have suffered repeated incidents of harm - physical/sexual abuse
    - Kids can face CT in families but also communities! → PTSD
- Suicidality
    - Hopeless feelings of despair and pain
    - People do not consider suicidelity
        - Deep psychological pain
        - Clients have varied odd perceptions of identity and actual physical body and safety in everyday lives

        - Borderline personality disorder indiviuddals have deep emptiness inside and see world in extreme ways to do self harm or injury and suffer psychosis.
        - Walk down street to hear your name called is an audiroty hallucination
        - Clients can develop neurological issues.
- Pre-abuse
    - Erosion of Trust
    - Breakdown of Communication
    - Hints of Real Issues
    - Sub-clinical issues
    - First Problems
- Resilience (ability to move on) does not mean someone has suffered significantly

- How we understand ourselves is based on healthy development
    - Extremely challenging when development of an unaccepted sexual identity becomes muted
        - Normal health sexual development is prohibited – individual realizes it is dangerous to express their identity
            - Experimentation and curiosity will be quelled
                - This is crucial to general health development
        - Pathology follows with low self esteem, confusion about identity and how they should act, how they understand themselves as individuals
        - Sense of self: may perceive themselves as deviant
        - Become paranoid, guarded, suspicious, distrustful
            - Important to ask and understand outlets for this anxiety
                - Social isolation
                - Destructive
                - Denial
                - Depression and suicidality
                - Goal oriented
    - Also true in non persecutory communities
    - Issues with how an individual defends themselves
        - Impacts of the lack of social support or community services – don't have support in defending themselves

        - Same sex encounters are difficult and healthy devleopment cannot ensure as sexual development starts at a young age
        - Individual may judge himself quite harshly and assume their feelings are deviant and may berate himself with shame for sexual thoughts and fantasies.

- Individual cannot develop, they might judge themselves harshly
- Early Same Sex Encounters
    - Guarded, suspciious, intamancy with same sex partner can lead to negative consequences
    - Issue such as trauma
    - Person becomes even more aware of atypical interests particularly if they become sexually aroused in the context of same-sex activities
- Secretive Connection → Paranoia
    - Sexual activity for gays in persecutory soiceties cannot be secretive and undertaken with considerable caution
    - Event when individuals are careful may brush one another and hold hands
- Bisexuality
    - Some indivudlas are in denial can be self-isolated and destructive
    - Can go into drug and alcohol abuse
    - People thrown themselves into school as academics are a priority to get ahead and hope to have a strong professional career to reach personal accomplishment
    - Sexual issues cannot be developed
    - Non-persectuory communities can develop these issues as well.
    - People may avoid school dances
- Community support
    - A sense of home and community is vital for normal healthy growth devleopment and psycholoigcal well being
    - Need to think that harm clients face systemically
- Types of Harm
    - Physical harm
    - psychological/emotional
    - Coercion, control, manipulation
    - Coercive medical or psychological
    - Unfair prosecution or disproportionate punishment for a criminal offiense
    - Look at clients daily life, how they function, see where they have been limited or PRIVATION
    - See where client is limited in daily function
- Privation
    - Basic human right deprivation
    - Can be seen as unusual from someone living in a first world country like the US
    - Ex:
        - Soical or family deprivation
        - Hygiene deprivation

- Deprevation of basic health care needs

LUNCH: Keynote Speaker

Prof. Juan E. Méndez, Professor of Human Rights Law in Residence and Faculty Director, Anti-Torture Initiative, Washington College of Law, American University

Discussing the (re)development and use of the Istanbul Protocol and the way in which there is tension between it being rhetorically largely accepted and using it correctly in practice.

- The scientific and legal divide exists in all aspects of state actions, especially in the area of implementation of the prohibition of torture and cruel, inhuman or degrading treatment or punishment..
    - The divide is particularly acute when it comes to enforcing state duties with regards to the Convention against Torture (CAT), especially as it relates to the obligation to investigate, prosecute and punish each incident of torture or ill-treatment. Also affected by this divide are the obligation to exclude evidence obtained under torture, the obligation to offer reparations to victims, and the prohibition to extradite or deport anyone to a place where they may be at risk of torture (the *non refoulement* rule).

- The Torture and Forensics report (a thematic report to the Human Rights Council published during my tenure as US Special Rapporteur on Torture) was intended to generate discussion regarding the admissibility of forensics evidence, with particular reference to the already existing Istanbul Protocol (1999) as the relevant international standard.

- Implementation Problems with the original Istanbul Protocol (1999)
    - Had multiple problems with implementation
    - Forensic doctors generally work for the judiciary or in the health department of many countries, which automatically calls into question a prime rule of the Istanbul Protocol: the independence and impartiality of the examiner. In addition, professionals doing forensic work either were unfamiliar with the Istambul Protocol or, if they know of it, reported that they did not apply it in practice, Professionals knowledgeable about the Protocol and were not involved in capacity building to implement it
    - In many countries courts refuse to accept testimony if the testimony is not from an official forensic doctor
        - This is a due process problem, has it hampers the right to an effective defense,
        - Gives an undue monopoly to official forensic institutions, when in fact and in law the expert witness reports should be judged on the persuasiveness of their findings and their support in science.

    - Even in countries like Mexico where the Istanbul Protocol was mentioned extensively – it was implemented with the wrong standards and very frequently led to findings that no torture had happened. In fact, the purpose of an examination under the Protocol is to determine the consistency of the science-based analysis with the claims made by either side in the judicial debate; it is NOT to decide the factual matter of whether torture has taken place.
- The original Istanbul Protocol of 1999 (and also its updated version), sets forth the duty of the examiner to determine consistency between the narrative of the person alleging torture and external science, in various degrees of consistency. However, in many reports that requirement is not observed.

- In 2015, a large number of experts and practitioners launched a process of consultations to update the Istanbul Protocol, with a focus on attempting to address the aforementioned difficulties of implementation.
- Drafting Process:
    - Focused on the incorporation of
        - The experience of using the protocol
        - The scientific advances made since 1999
        - The extensive legal and normative developments that had taken place since 1999
    - Agreement and goal to maintain the original structure of the Istanbul Protocol so that it could be updated without undermining the already existing protocol
    - Challenge: the pandemic delayed the process of finalizing the draft and submitting it. The updated document, labeled "Istanbul Protocol 2022" was officially launched by the UN High Commissioner of Human Rights in June 2022.
    - Among its innovations, the new protocol paid particular attention to vulnerable people such as interviewing children, incorporating a gender perspective, and including more specific standards on psychological evidence. It also incorporates jurisprudential and treaty norms developed since 1999, like the Convention on the Rights of the Child, the Convention on Enforced and Involuntary Disappearances, and the Convention on the Rights of Persons with Disabilities.

- Overall, the Istanbul Protocol has been largely accepted. There is a problem in how to use it in practice and whether courts are willing to have examinations done properly and to give evidentiary value to findings reached with the highest professional standards.. The Istanbul Protocol 2022 should prove a useful tool in overcoming those challenges.

Panel III: Innovations in Immigration Medical-Legal Collaborations

Farah Shaheen, Assistant Clinical Professor and Primary Care Internist; University of California, Davis

UC Davis Human Rights Initiative

- Clinic that evaluates physical and psychological manifestations of torture

- Main reason for this clinic and the partnership with local immigration lawyers is that there are a large number of asylum seekers and there is a need to support them in the best way to maximize the success of their asylum application
- The overall reason for the need of this clinic is the basic need for human rights for all individuals.
- Medical and mental health practitioners can play an important role
- Student-run human rights clinics in the US
- Many of the clinics are located in the east coast
- California is the state leading with the number of asylees UCSF is the only student-run clinic in northern California with UC Davis now the second.
- Asylum cases in the United States
    - Can take about 4 years to process, with many cases remaining unresolved
    - Variability over the number of years since 1990s
    - More recently, 2019 & 2020, about 30,000 cases or so have been granted
- Affirmative vs defensive asylum cases
    - Removal proceedings are harder to overturn with respect to the success of asylum cases
    - Client already has so many barriers as it is, such as language barriers
- US Immigration system structure
- Not only fleeing from danger but for also better opportunities
- Asylum evaluations
    - Could be another layer of trauma for the client themselves
    - Process of asylum evaluations
    - Plan ahead and think about the barriers and how that can affect us and try to create the best settings we can.
    - Explain the interview process to the client and make distinction that our role is as a forensic evaluator
    - The goal is to find the conclusion to be at least consistent or highly consistent
    - Ultimately submit the affidavit to the immigration attorney to review
- Asylees can live without fear and have economical support, hopeful possibility of family reunion

Christine Lin, Director of Training & Technical Assistance, Center for Gender & Refugee Studies, UC Hastings; **Ryan Matlow**-- Clinical Associate Professor, Stanford School of Medicine Department of Psychiatry and Behavioral Sciences

<u>"Developing Best Practices for Medical/Legal Collaboration to Support Immigrant Communities"</u>

- ImmHELP
- Began in 2018
- ImmHELP Objectives

    - Interdisciplinary approach to trauma-informed and healing-centered services to individuals seeking immigration protection
    - Achieve positive medical/legal outcomes for immigrant communities
    - Advocate for systemic change
- Disciplines previously siloed - passing on resources is often best case scenario, resulting in piecemeal services, and families have to seek these things out, people slip through the cracks - Ryan Matlow
- Workshop - replicable model
    - Attorneys with prior experience working with a forensic health evaluator
    - Health professionals who have conducted forensic evaluation
        - People with more experience - so we didn't have to explain the basics
    - Facilitators - 1 Medical & 1 Legal
    - Case Study - Attorney and Forensic Health Evaluator Team
    - Discussion
    - Themes:
        - Setting and managing expectations - between attorney and expert
        - Legal assessment/theory
        - Seeing the client as a whole human being
        - Mutual respect of expertise/lenses
        - Affidavit writing
            - Seeing if affidavit answered questions related to legal theory
            - Did the affidavit connect the dots for the adjudicator?
            - Discussion on citations whether they're useful on affidavits
        - Handling new information & edits
            - Doc/Attorney learning new info during medical and legal evaluations and how to reconcile these
        - Gratitude for interdisciplinary support/collaboration
            - Mitigating burnout
            - Feeling like this is a community
    - Workshop Outcomes
        - Sample Lesson Plan
        - Workshop Outline
        - Best Practices Document
        - Tool to Streamline Communication
    - Outputs: Cross-sector Policy Advocacy
        - Participated in human rights monitoring (HRW), academia, and congressional hearings (2019)
        - Concern regarding Dedicated Dockets and expedited asylum proceedings
            - Miscarriages of justice
    - CGRS - connect experts to attorneys

- Free, searchable repository of health, country conditions, and issue-specific professionals who serve as expert witnesses to support asylum

Beth Lyon, Clinical Professor of Law, Associate Dean for Experiential Learning, Clinical Program Director, Director, Farmworker Legal Assistance Clinic, Cornell Law School, **MacKenzi Preston**, MD, MHPE, Assistant Professor of Pediatrics, Department of Pediatrics, Weill Cornell Medicine *(invited),* **Faten Taki**, PhD, MS, Instructor of Pharmacology in Anesthesiology, Anesthesiology Global Health Initiative, Department of Anesthesiology, Weill Cornell Medicine *(invited)*

<u>"Improving Accurate Health Data Collection Among Child and Youth Farmworkers: A Pilot Qualitative Study"</u>

- Goal is to figure out how to work together.
- Farm workers, group living, very little contact with medical contacts.
    - But they do meet with lawyers.
    - So how can we increase medical contact ?
- Migrant children require special health considerations
    - Why is child health so important? Child health is predictive of adult health
- Social conditions can contribute to increased increased health risks after immigration
- children who enter the workforce face additional occupational hazards, with farmworking being the most dangerous
    - Without treatment can lead to long term sequelae
    - Living nearby sources of pesticides cause problems
    - The available data that they have can picture that immigrant health is not that bad.
    - To summarize, we know that infant mortality is lower in immigrant children.
    - Migrant children have few mental and physical diagnoses reported in medical records.
    - The longer that migrant children are in the US, the closer the medical records get to being like US childrens
    - Incidence increases over time when migrant children are here longer than 5 years.
    - We don't see data that supports elevated risks of diagnosis or problems
    - Assumptions suggest that there is less disease, however this may reflect aof positive selectivity bias.
    - However, this data may also reflect underdiagnosis, as immigrant children face many barriers to accessing care.
    - Lower insurance coverage could be one big barrier
- Applying omics tools to advance the health of refugees
    - Can give probiotics.
    - It is reversible. Can do lifestyle changes.

    - Can be proved on an epigenetic level.
- Discussion points
- Ethics
    - Many were undocumented
    - How could we share information out of our files, when we as legal workers have a duty to our clients?
    - We could share with medical teams to look at and draw out our conclusions. Not enough research in our files and so we need more. If we are going with free lawyers, which is often what we can only get. We do not want to distract ourselves from the case.
    - Adult consent is needed. Acts as a challenge.
    - Trying to find ways to ethically contact between layer and client.
- Solution: develop and evaluate a tool to collect multi-level data from disciplinary

- Convention on the Rights of the Child
- The journey of an unaccompanied minor to the US
- Post release deportation process
- Prospects for immigration relief
    - Most of these form are not available or take a long time to research citizenship
- Lawyer access to health data
- Migrant children require speical health consideration
- Immigrant children arrive int he US with unique health needs
- Social condition can contribute to increased health risks after immigation
    - Social determinants of health
- Children who enter the workforce face occupational hazards
    - Risk of fatalities for child farmworks is 8x greater than any other
    - Musculoskeletal injuries
- Toxic substances
    - Children farm workers are exposed to toxic substances
    - Also, living close to toxic substances such as pesticides could affect them
- Immigrant have better markers of health compared to us born individuals
    - Migrant children actually have fewer mental/phys diagnoses in medical records
    - Decrease increases over time. The longer migrant children are in the US, the more chronic diagnoses increases.
        - Assimilation process may be detrimental to children's health
- Positive selectivity bias in health, ambition, resilience
    - *Problems in making this assumption: does not account for differences in healthcare utilization and other barriers*
    - Large inequities in healthcare utilization

        - Migrant children are less likely to utilize primary care services and preventative health services
            - Partially due to health insurance barrier - not TOTALLY
            - When chidlren interact w health system less, obviously less likely to get diagnoses
        - Transportation, work conflicts, concerns about undocumented statuses of fmaily members
    - Undocumented children that are never seen by a physician are overlooked in data reporting → First presentation may be for legal rather than medical assistance
- American Academy of Pediatriccs recommends trauma-informed comprehensive health screening for all immigrant childrens

- Dr. Taki: Applying omics tools to advance the health of refugees
    - Study molecular markers of stress
    - How can epigenome and microbiome profiling advance human rights?
        - Mental health evaluation are not helping as much as forensic evaluation
        - This is a little bit futuristic
    - Epigenome
        - Epi- above genome- genome
        - Everything above the genome
        - You are what you consume
        - They are very sensitive to the environment
    - Examples
        - Refugee microbiome research
            - In Minnesota
                - Their microbiome shifted to the us microbiome which affected their exposure
- Beth & Mackenzie: Ethical considerations
    - Legal side
        - If we are going to farmworkers and hoping to enroll them in a study, that feels unethical and could affect client-lawyer relationship/power dynamic
    - Medical
        - We need medical consent from the parents in order to see
        - not knowing truly how old a child is
        - not knowing how many immunizations they have
        - not able to provide immunizations without parent present, same consent/assent for research
            - If they are unaccompanied can we provider them with vaccines
    - Persistent Q: How to ethically supplement the moment of lawyer-child contact

Panel IV: Effective Advocacy and Ethics of Collaboration

Mark Silver – Forensics and Mitigation

"Competency Evaluations in Immigration Court Proceedings: Matter of M-A-M Cases" AND

"Spousal Abuse Petitions in Immigration Cases: Criteria in Psychological Evaluations for I-360 and I-751 cases"

- Not an event but a series of events
- Psychological trauma that is ongoing and sometimes reinforced on a daily basis
- The abuse is purposeful and malignant
- In most cases, there are cycles of abuse
    - Abuser is fine most of the week.
    - Emotional and physical abuse stop as well.
    - Abuse occurs because of alcohol abuse during the weekend.
    - Abuser could be legitimately remorseful.
- In sharp contrast, there are instances of abuse without cycles. (Very similar to asylum cases because no clear pattern exists.)
    - Where patterns are absent, there is more significant psychological harm because there is no certainty.
    - Important for documentation and clinically for the expert evaluation.
- Immigrant women have a high chance of being targets (although abuse also happens to men and in same-sex relationships)
    - Language barrier
    - Lack of financial resources
    - Lack of family or friends
- Look for pre-abuse
    - Erosion of trust
    - Breakdown of communication
    - Hints or real issues
    - Sub-clinical issues
    - First issues
    - Important forensically (USCIS wants to know that the marriage was entered in good faith)
- Physical abuse
    - Most serious are indirect, threatened with a weapon
- Verbal abuse
    - Threats regarding the victim's safety
        - Making sure the victim will be deported
        - Victim will be detained permanently
        - Victim will be permanently separated from U.S. citizen-born children
- Sexual abuse
    - Evaluation is very intimate
        - The attorney needs to feel comfortable asking the victim questions about sexual experiences with the abuser

    - A lot of abuse happens outside of the home
        - Having relationships outside of the home (which can lead to obtaining sexual diseases)
- Financial Abuse
    - Extortion
        - It occurs when the abuser says:
            - "Give me money, or I will call ICE to have you deported."
            - "Give me money, or I won't go with you to your USCIS appointment next month."
- Religious abuse
    - Religious faith is denigrated
    - Abuser prohibits the victim from attending their religious ceremonies
- Child abuse
- Technology abuse
    - Abuser obtains passwords from social media
    - Takes away mobile devices, which can separate the victim from their connection with family
- One single instance of abuse can be systematically damaging and cause trauma
- Some people are resilient and strong, but that does not mean they have not experienced trauma
- Abuse is culturally appropriate
    - Abuse suffered is not considered abuse
    - Need to understand that there are cultural issues that need to be asked about in a very careful way
- Abusers usually abuse alcohol or drugs or both
- Trauma affects the victim's ability to process information and function
    - It can take years for them to function how they used to before they experienced the trauma
- Lawyer needs to understand how to elicit information from the client
- Need to understand that clients come from a background where they are ashamed about these issues and have never talked about them
    - Lawyers need to have patience and understanding

Jon Bauer, Clinical Professor of Law and Richard D. Tulisano '69 Scholar in Human Rights, Director, Asylum and Human Rights Clinic, University of Connecticut School of Law –

<u>"Why Immigration Judges Give Little Weight to Mental Health Evaluations and How to Address that Skepticism"</u>

Since 2002 I have been teaching in a clinical program in which law students represent asylum-seekers. The students work intensively with their client for a semester or more to delve into the client's story, assemble as much corroborating evidence as possible, prepare documents to support the asylum claim, and ultimately represent the person at a hearing before the immigration court or asylum office.

We regularly collaborate with faculty and trainees in psychiatry, psychology, and social work and medicine from UConn's medical and social work schools, and from Yale's Center for Asylum Medicine. Faculty from those institutions guest-teach a class in our law clinic each semester to introduce the law students to how traumatic experiences affect psychological functioning; trauma-informed approaches to interviewing; secondary trauma and self-care; and forensic evaluations. And law faculty from our Clinic periodically do trainings for health professionals to introduce them to the law and process of asylum, the evidentiary role of evaluations, and considerations in writing reports and testifying. And in a large majority of our asylum cases – to date, my Clinic has handled about 180 asylum hearings – we present, as part of our supporting evidence, a mental health evaluation of the asylum-seeker.

In a session at the International Congress on Law and Mental Health held in Prague 5 years ago, I and a former colleague, Anna Cabot, reflected on some of the tensions that arise when mental health professionals, lawyers, and adjudicators interact in asylum cases. We suggested that it can be useful to think about these interactions as a process of cross-cultural communication, pointing to differences in professional culture among the various players in asylum cases that frequently give rise to misunderstandings. In that presentation, we focused primarily on differences in professional culture between lawyers and mental health professionals. Today, I want to reflect differences in culture and perspective between asylum adjudicators, on the one hand, and asylum advocates and mental health experts, on the other, that may undercut the effectiveness of psychological evidence.

My starting point is an admittedly anecdotal impression that asylum adjudicators often give little weight to mental health evaluations. In decisions granting or denying asylum in our cases, immigration judges very rarely point to a psychological evaluation as evidence that helped persuade them that the applicant's account of persecution is credible.

One judge my clinic regularly appears before openly states at hearings that he doesn't find mental health testimony helpful. At a program a few years ago where asylum officers from the USCIS asylum offices spoke with our law students, an asylum officer said that he and many of his colleagues give little weight to mental health assessments unless the asylum applicant is actually receiving ongoing mental health treatment. My impression of inefficacy does seem to be in tension with the findings of the large-scale PHR and PHR-CUNY studies discussed by Professor Nermeen Arastu. But I'm not sure how much we can make of these studies' findings that applicants who get a forensic examination are granted relief at a much higher rate than those who don't, even when you factor in whether the applicant is represented by counsel. It tends to be the more zealous and effective lawyers who arrange to have their clients undergo forensic evaluations, and those same lawyers are likely to be more effective in other ways, too, in terms of their thoroughness of preparation and the quality of the other evidence they present. And the

PHR-CUNY study in fact lends some support to the conclusion that mental health evidence often falls flat with judges – it indicates that physical evaluations correlated with a 10% higher rate of favorable outcomes than psychological affidavits.

I'd like to suggest that if we consider and take seriously aspects of adjudicators' professional culture that affect their attitudes toward mental health evaluations, we, as advocates and evaluators, can recognize some flaws in how we often package and present psychological evidence, and do a better job of making this evidence persuasive to judges. Here are a few factors that shape the outlook of immigration judges: Most previously served in law enforcement roles, often as ICE trial attorneys; They face overwhelming caseload pressures that require them to make hugely consequential decisions with little time for reflection They experience very high levels of stress and burnout – which was amply documented in a 2009 study by Lustig, Karnik, and others analyzing judges' narrative survey responses.

The judges feel disrespected by their employer, the Justice Department, which classifies them as staff attorneys, not judges, and subjects them to constantly changing case processing directives; They constantly hear accounts of persecution and torture, which can give rise to desensitization or vicarious trauma, yet they receive little by way of training on mental health issues or supportive services;

They see lots of psychological evaluations in asylum cases, nearly all of which diagnose the person as having symptoms of PTSD. They hear many cases that strike them as weak, and they believe that asylum applicants without valid claims have a strong incentive to lie or exaggerate in order to be able to remain in the United States. They firmly believe that it's solely their role, as the judge, to determine whether an asylum applicant is credible, and they see it as improper for an expert witness to offer an opinion on the applicant's credibility.

Let me now turn to some features of psychological evidence offered in support of asylum claims that can make it look particularly problematic to adjudicators operating in this professional culture and environment. The first is what I will call the "circularity problem" in drawing inferences about whether the traumatic experiences reported by an asylum applicant actually occurred, based on the presence of PTSD symptoms. As I've seen some ICE attorneys effectively point out when cross-examining mental health clinicians, there's a logical difficulty in reasoning backwards from the existence of PTSD symptoms to the truth of the asylum applicant's account of their traumatic experiences. Under both the DSM-V and the ICD-11, one required criterion for a PTSD diagnosis is that the individual WAS exposed to actual or threatened death, serious injury, or sexual violence. Thus, in order to make the diagnosis, the evaluator either needs to either accept the truth of the asylum seeker's account as a given – which is problematic if the presence of PTSD symptoms is being offered as evidence that the alleged

traumatic events probably did occur – or the clinician must make a determination about the credibility of the client's account of torture or mistreatment – which will be seen by the judge as falling outside the clinician's area of expertise and infringing on the judge's role.

What can be done to address the circularity problem? Too often, evaluations abstractly document the existence of a sufficient number of types of symptoms to warrant a diagnosis, and then assert that the presence of these PTSD symptoms lend credence to the asylum applicant's account of persecution. The Istanbul Protocol, as revised in 2022, offers much useful guidance here. (See especially ¶¶ 349-52 and 530). The Protocol urges evaluators to offer a detailed and textured description of the person's symptoms: the content of their intrusive recollections, flashbacks, or nightmares; the specific triggers that bring on episodes of distress; the types of experiences the person seeks to avoid. The evaluator can then point up the ways in which the asylum applicant's symptoms resonate, descriptively or symbolically, with the alleged acts of persecution. The Protocol also urges evaluators to make "observations of congruency between an alleged victim's observed affect" during the interview and the content of the evaluation – for example, if they shook or grew agitated when recounting acts of torture – while bearing in mind that affect may vary widely.

In making arguments at the hearing, lawyers can similarly emphasize the congruence between the specific content of the person's symptoms and their reported experiences of persecution, rather than arguing that the diagnosis of PTSD is directly probative of persecution. This approach provides a basis for inferring causation that judges are likely to find more intuitively probative and acceptable than reasoning backwards from the existence of a PTSD diagnosis.

Presenting evaluations in this way also helps to address adjudicators' concerns about psychological experts infringing on their turf by opining about whether the asylum applicant's underlying story is credible. Instead, evaluators can focus on assessing whether the person's symptoms are genuine. One question likely to occur to the judge is, "How do we know that this person isn't faking distress in order to get an evaluation that will help their claim?" That's something that health professionals do have expertise on. An evaluator should be able to articulate their reasons for rejecting the possibility that the person is exaggerating or fabricating their symptoms. The answer might take the form of describing the person's forthrightness in denying the presence of some symptoms, or pointing to aspects of their presentation that would be difficult to fake, or administering a standardized malingering scale, when that's culturally appropriate. Too often, however, psychological reports give the impression that the evaluator failed to even consider the possibility that the asylum applicant is faking or exaggerating their symptoms.

Another purpose frequently served by psychological evaluations is to explain why the person has difficulty remembering or recounting key events, makes inconsistent statements, confuses

chronology, or has a manner of presentation – such as a flat affect – that might seem at odds with the content of their testimony. This sometimes does help to convince a judge or asylum officer to make allowances for aspects of an asylum applicant's testimony that could otherwise have led to an adverse credibility finding. But judges can also be very resistant to the idea that the tools they habitually rely on to determine credibility – like looking for detail and consistency in testimony – should be taken off the table.

What can be done to make them more receptive? First and foremost, the training that immigration judges receive on how trauma affects people's ability to recall and recount their experiences desperately needs improvement – unlike USCIS asylum officers, they barely get any. Universal declarations, like those discussed by Christine Lin and her colleagues, may also help, over time, to educate judges on these issues. One other thing that might help, at least at the margins, is ensuring that evaluations aren't phrased in a way that creates an expectation that the asylum applicant will necessarily testify in a problematic way. I have had cases where a client who showed little emotion when recounting traumatic events during a psychological evaluation became tearful and distraught when testifying about the same events at a hearing. A report asserting that the person's flat affect during the evaluation is consistent with PTSD may lead the judge to question why their affect is so different at the hearing. Similarly, an evaluation that emphasizes the applicant's difficulties providing a complete and consistent narrative may do more harm than good in cases where any inconsistencies in the person's earlier statements to immigration officials are minor and readily explainable, and they later testify in a detailed and coherent manner at their hearing. An explanation in the psychological report that such symptoms often vary over time can help to minimize the risk that explanations of anticipated testimonial deficiencies will backfire.

One final problem that sometimes leads adjudicators to discount psychological evidence is what I'll call the "treatment fallacy." Immigration judges, ICE attorneys, and asylum officers often ask asylum applicants why, if they're experiencing the serious symptoms described in their psychological evaluation, they aren't getting treatment for their problems. The underlying assumption is that if a person is experiencing a real health problem that impairs their function, they'd seek out treatment. Many mental health evaluations include a recommendation that the person get treatment to address the ongoing effects of trauma. That can be appropriate – it underscores the seriousness of the symptoms, and it may have the salutary effect of helping the person understand that they can benefit from treatment. But if the person then doesn't get treatment, their failure to follow a mental health expert's recommendation may be held against them. To anticipate and address this problem, evaluators who recommend treatment can further explain in their report that, although treatment would be beneficial, there are likely to be obstacles, both internal and external, to obtaining treatment. As the Istanbul Protocol notes, avoidance is a common psychological response to trauma, and it may "lead survivors to avoid seeking help for their symptoms and thus inhibit treatment or therapy." (¶ 501). And because

asylum seekers are generally ineligible for public benefits, including Medicaid, unless and until they are granted asylum, they may not be able to find free or low-cost treatment services.

The ideas that I've outlined about the cultural mindset of asylum adjudicators, and how advocates and experts might take that into account in framing more effective evaluations for use in asylum cases, are very tentative at this point, and I'm eager to get your thoughts, questions, and feedback.

Sabi Ardalan, Clinical Professor, Harvard Law School; Director, Harvard Immigration and Refugee Clinical Program (HIRC) & Katie Peeler, MD, MA, Joint Fellow-in-Residence, Edmond & Lily Safra Center for Ethics and Center for Bioethics, Harvard University; Assistant Professor of Pediatrics, Global Health and Social Medicine, and Bioethics at Harvard Medical School

<u>"Competing Ethical Obligations and Mandatory Reporting in Asylum Cases with Forensic Evaluations"</u>

- Medical professional duties:
    - Mandated reporters
    - For example, in Massachusetts, if a physician suspects abuse or neglect of a child, they must make a report within 48 hours
- Legal professional duties:
    - Absolute obligation to keep client confidentiality unless given informed consent by the client
    - Exception: information MAY be revealed to prevent reasonably certain death or substantial bodily injury
- Attorneys tend to think of physicians (and medical professionals more broadly) with whom they work as expert evaluators as agents of the legal teams, and therefore, believe the medical professional fall under the same professional responsibilities as attorneys; whereas physicians (and medical professionals more broadly) may not have the same understanding of the expert-attorney relationship.
- Solution to this problem is for the attorney and physician to discuss the issue in advance and determine if they will report the abuse.

ADDENDUM: Selected In-Depth Notes

Dr. Mark Silver
(2:45-4:15pm session)

- Victims experience repeated and chronic stress because of the abuse the person experiences a particular psychological trauma which is ongoing and reinforced sometimes on a daily basis.
- Layers of trauma from the perspective of the abuser the abuse is purposeful. It's malignant and hateful. This is very important to understand and very different from trauma. A car accident, you step onto the road, you're a pedestrian and a car hits you. This incident is a terrible accident but the person had no animus towards you, no hatred. This is something very different from abuse. There is purposeful malignant hate.
- The next thing I really want to stress is that in most cases there are cycles of abuse and I want to give you one example. The abuser is fine for most of the week, Friday he drinks at the bar and Friday night and Saturday night and you have abuse that occurs because of the alcoholism during the weekend and when the weekend is over it stops.
- You may even have the abuser being legitimately remorseful particularly with alcoholism. It's a whole set of specialties because having blackouts the person may have poor memory and little recollection of the abuse suffered that occurs in the context of these patterns.
    - Cannot conduct themselves in a regular manner by processing information. That ability has been fundamentally damaged, and sometimes it can take months or even years to reconstitute the matter that allows themselves to gain function in the way they did prior to experiencing drugs/alcohol
- However in sharp contrast there are cycles of abuse that are none the less important. There are instances of abuse where there are no cycles, in other words there is not always a clear pattern that exists.
- There may be greater psychological harm when there's predictability about our environment including harmful environments because we gain certainty and where we have certainty we gain greater comfort and sense of security even if there's a specific person who is harming us for one reason or another.
- When there is no cycle abuse, when there is no predictability, then a person suffers much more and that's something very important not just for documentation purposes for the lawyer, but it's important politically for the clinical expertise in the forensic evaluation.
- women are by far the most vulnerable and targeted population
- I always ask my client what was the first sign of problem what was the first red flag that indicated that there was some real difficulties with this individual
- Physical abuse is usually thought of as hitting, slapping and so on. Among the most serious physical abuse are indirect threats with a gun or knife.
- Verbal abuse- creation by words, my client tells me of terrible profanity and threats regarding the victim's safety where the abuser will say I will make sure that you're

deported or worse, or I will make sure that you're permanently separated from your American child who is in the United States.

- Financial abuse- 1 nugget that I would have everybody takeaway is that Financial extortion is Criminal as many of these issues are. Financial extortion occurs when the abuser says give me $200 because if you don't give me that $200 I'm going to call Immigration and have you deported. That's a threat and that's extortion and it's somewhat common.
- Religious and cultural abuse- religious abuse is seen a lot of time when a person comes to the United States and they marry people that are outside of their culture or outside of their ethnic or religious background. I get a lot of clients who told me that one of the worst abuses they suffer is religious, where their religious faith is denigrated and the abuser prohibits the victim from attending their place of worship.
- Child abuse- the victim should be interviewed alone, but sometimes it's important to understand the issues not just for a child victim but because the adult who's petitioning in the spousal abuse case have suffered even greater psychological abuse
- Technology abuse- when the abuser is able to obtain social media or confiscate the smartphone of the victim. It's really quite essential because it separates the victim from the larger community, from their family and so on.
- sometimes it's a single incident such as sexual abuse can be systemically damaging and cause terrible trauma, which may seem relatively unimportant or relatively small compared to more serious harm, but it can add up to very damaging.
- You have to understand the particular vantage point of the victim and their own history and how they perceive that particular abuse. Some people are particularly resilient and strong and able to move on, it doesn't mean that they haven't experienced trauma.
- A very serious issue was culturally appropriate abuse. I hear that from victims all the time, they will say I come from a society where our country or even a family where the kind of abuse that I suffered was not considered abuse and it's very important to be culturally sensitive to our clients, but on the other hand understand that there are cultural issues from where they come from which we may not feel comfortable at all.
- Victims of abuse often suffer neurological and cognitive dysfunction, their ability to think through things and make decisions and their judgment, memory, and cognitive processing ability have become impaired in one way or another.
- Many of these clients come from societies where psychiatric care is anathema to their background and mental health issues. You must have a great deal of patience and understanding about their particular issue and why they are so reluctant to open up about profound harm and suffering that occurs in the context of these kinds of abusive situations.

Professor Jon Bauer

- Should regularly do trainings for health professionals to introduce them to the law office of the side, the evidentiary role of the valuations and considerations in writing reports
- In most of the Asylum cases at my clinic we present a mental health evaluation of our clients as part of the supporting evidence and a pretty significant number of cases we've handled about 180 cases that have gone through hearing so far.
- Some of the tensions that arise when mental health professionals lawyers and the judicators interact in the Asylum cases suggest that it can be useful to think about those interactions as a process of cross-cultural communication pointing to differences in professional culture among the various players.
- I want to reflect some more on differences in culture and perspective between asylum adjudicators on the one hand and mental health experts on the other. They undercut the effectiveness of psychological evidence when presented to adjudicate because of the anecdotal impression that Asylum adjudicators have. They do not give much weight to mental health evaluations in decisions granting or denying asylum in our cases
- Lawyers who arranged to have their clients undergo a mental health evaluation or medical exam are likely to be more effective in other ways to in terms of the quality of the evidence and testimony that they provide
- both mental health professionals and lawyers that work together do a better job of making it more persuasive
- Downsides to asylum cases: overwhelming case load, pressures influencing decisions quickly, high levels of stress and burnout, judges feel disrespected by the employer (justice department), judges are constantly hearing accounts of torture causing trauma, little training on health issues, see a lot of psychological evaluations, evaluation mostly diagnose ptsd, hear a lot of cases judges believe are weak asylum cases and lie and exadurate to remain in the US, firmly believe it is their roll as the judge to decide if the asylum applicant is credible
- Features of psych evidence
- The circularity problem- actually occurs based on ptsd symptoms, logical difficulty in reasoning backwards to the truth of the asylum applicants account of abuse and torure. A diagnosis evaluator either needs to accept the truth of the Asylum Seekers account as a given, which is problematic in the presence of PTSD. This is being used to make the argument that it's more probable that their account is actually true or else the clinician needs to make a determination about the credibility of the applicant's account or mistreatment which then will be seen by the judge and has fallen outside their area of expertise and infringing on the judges.
- So what can be done about the circularity problem? The existence of a sufficient number and types of symptoms to warrant PTSD diagnosis and then assert that the presence of those PTSD symptoms lend credence to the asylum applicants accounts.

- Some protocol urges evaluators to offer a detailed description of the persons symptoms, including contents of their intrusive recollections/flashbacks or nightmares and the specific triggers
- Concerns about psych experts infringing on their turf, evaluators can assess if their symptoms are genuine and not being faked. The evaluator should be able to articulate reasons for rejecting why symptoms may not be real, or symptoms that would be difficult to fake. Too often psych evals think they failed to consider the possibility the asylum seeker is faking or exaggerating symptoms.
- I think first and foremost the training that immigration judges receive on how trauma affects people's ability to recall their experiences desperately needs improvement. Unlike USCIS Asylum officers, they hardly get any training. I think Universal declaration might also help overtime in educating judges.
- The treatment fallacy: ask asylum applicants why you aren't getting treatment if you have the symptoms you claim to have. Recommend getting treatment for the effects of trauma. If the evaluation recommends treatment and the seeker doesn't get it, failure to follow the recommendation can be held against them. Evals who rec treatment can explain there are obstacles to getting treatment such as avoidance to trauma and inhibit treatment or therapy and lack of benefits such as medicaid so they cannot find the services should be noted.

Sabi Ardan and Katie Peeler

- There are certain things that are really important to know about legal and medical professionals. Medical professionals among other people including law enforcement and teachers and many others are mandated reporters and so where we are right now in Massachusetts, if you kind of suspect abuse or immediate danger to a child to talk about children this contact I need to make an oral report the Department of Children and Families when in your professional capacity as their kind of key words here that clinicians have a reasonable cause to believe that a child under age of 18 is suffering abuse or neglect and then you have to submit a written report within 48 hours
- Clinicians and attorneys work together on the same team. Must be on the same page even with different backgrounds.
- Lawyers must maintain client confidentiality and may breach that only if we think there is reasonably certain death. Consequences of this are violating ethical obligations as lawyers. Tend to think of experts as agents of our legal team. Making them fall under the same confidentiality as lawyers to ensure anyone associated with us has to have professional conduct consistent with these obligations. A former client of mine, a teenager from a country in south america came to the U.S. as a kid and reunited her with her mom who she hadn't seen since she was one. They had no foundation for a relationship and conflict escalated when they started living together. Pulled her from the

home and she went into a teen group house. Did psych evaluation before the conflict escalated, had the evaluation been done later all of it would have shown in the evaluation.

- Case Example 2:
    - Woman with two children who was sexually assaulted applying for immigration relief
    - Eldest son (21 y/o) had hit her and threatened to kill other children
        - Evaluation done to get understanding of the immediate danger
- Need to have informed consent at clinics with minors re what it means to do an evaluation. In some jurisdictions policy makers have recognized this and some laws have been written to address this. There is not much case law on this in terms of courts weighing in.

Questions/feedback:

Mark: Focus is on the diagnosis and conclusion, I think it is misplaced. To me what is primary is the clinical narrative, if written sufficiently the reader will come to conclusions on their own given what the person experienced. Many of the clients suffered multiple issues of harm in their country of origin, these clients have also experienced other issues and explaining their history in a larger context and narrative adds credence to the specific issue. There is a fallacy that decisions are made through rationality, the problem with this is that it is wrong. We make decisions based on our emotions and rationalize our decisions based on perceived reasoning and logic. Issue for adjudicators to get a grasp of when a forensic piece comes in.

Katie: Focus on presenting ideally a neutral objective providing evidence in forensic eval. People usually do this to help immigrant populations, but in the courtroom that is not your role. It is easy for evaluators to conflate what you think the person deserves versus a lawyer looking at the objective evidence.