



Immigration Forensic Assessments: Documenting the Practice

Presenters:

Alea C. Skwara, PhD
Postdoctoral Scholar | Saron Lab
<http://saronlab.ucdavis.edu/>
Center for Mind and Brain | University of California, Davis

Raquel E. Aldana
Professor of Law
Martin Luther King Jr. School of Law | University of California, Davis

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

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Introducing the Team



Prof. Raquel Aldana,
School of Law, UC Davis



Alea Skwara, PhD,
Psychology, UC Davis



Carmen Velazquez, PhD
Forensic Neuropsychologist



Neha Malik, JD Candidate,
UC Davis



Marius Koga, MD, MPH,
UCD SOM/PHS



Thomas O'Donnell, PhD, History,
UC Davis DEI



Sharon Howard, PhD,
Forensic Psychologist



Jenny Ballesteros
Magdaleno, JD Candidate
UC Davis

Current Research Objectives

Interrogate

The definition of trauma and its evolution in immigration law as tools of exclusion and inclusion

Compare

Immigration law's understanding of trauma with the evolution of the term in other disciplines (e.g., psychology, neuroscience, anthropology)

Trace

The evolving role of medical and mental health professionals in the adjudication of trauma in immigration proceedings

Document

The current practice of how immigration forensic assessments are conducted by mental and medical professionals and their different professional expectations with lawyers

Assess

The impact of forensic immigration assessments in shifting outcomes, norms, and practices in immigration law

Identify

The immigration norms, policies and practices that require reform based on a deeper understanding of trauma across disciplines and across cultures

Develop

Culturally responsive assessment measures to conduct forensic immigration evaluations.

Our Progress to Date

<https://compassioninimmigration.faculty.ucdavis.edu/>

COMPASSION IN IMMIGRATION

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Currently, immigration cases unduly rely on the petitioning immigrant's testimony to satisfy the high burden of establishing requisite trauma or harm in humanitarian visas. Yet, due to legal standards for assessing credibility—such as requiring consistency in the narrative and recollection of details about traumatic events—that are inconsistent with the psychological effects of trauma, immigration petitioners often fare poorly and can be re-traumatized in the process.

This project brings together legal and mental health academic faculty, and clinical practitioners working with immigrants and trauma to improve how immigration forensic assessments are conducted. Forensic assessments provide a meaningful point within the legal process where legal and health professionals can collaborate to 1) significantly improve the odds that immigration petitioners succeed in their claims, and 2) seize the opportunity to educate decision-makers about science-informed best practices to document trauma and assess credibility.



October 25, 2019, Raquel E. Aldana and Patrick Marius Koga hosted their second forum on migration and trauma at UC Davis.

The proposed project is a continuation of an ongoing collaboration between the UC Davis law and medical schools in a project titled [Transforming Refugee Mental Health: Improving Legal Assessment of Credibility through Science](#). Following two interdisciplinary symposiums, which brought together over seventy professionals, including lawyers, mental health providers, researchers and academics, refugee resettlement specialists, and medical professionals, from over twenty countries, this project led to the publication of a report titled [Stakeholder Perspectives Report: Focus Group Findings on Migrant Legal-Mental Health Intersectionality](#). We now seek to implement some of the most important recommendations from the findings.

Search ...

SEARCH

RESEARCH REQUEST: YOUR EXPERIENCE WITH IMMIGRATION FORENSIC ASSESSMENTS

Forensic assessments provide a meaningful point in immigration cases where legal and mental health professionals can collaborate to overcome some of the factors that can lead to adverse credibility determinations. However, current practices for requesting, conducting, and applying immigration forensic assessments are variable and poorly documented.

As part of our ongoing interdisciplinary effort to bridge the legal/scientific gap in immigration, our research team has designed this survey to document current practices surrounding immigration forensic assessments. We hope that

- * Phase I: 2018-2019
 - * First: Interdisciplinary Convening: Focused Groups
 - * [Report: Stakeholders Perspectives Report: Focus Group Findings on Migrant Legal-Mental Health Intersectionality](#)
 - * Second: Interdisciplinary Convening: Main Findings and Next Steps
- * Phase II: 2020-2022
 - * Survey
 - * Publications:
 - * [Trauma as Inclusion by Raquel E. Aldana, Patrick Marius Koga, Thomas O'Donnell, Alea Skwara, Caroline Perris :: SSRN](#)
 - * [Taming Immigration Trauma by Raquel E. Aldana :: SSRN](#)
 - * [Expanding collaborations — Cornell Workshop Sept. 23](#)

Preliminary Survey Findings

Survey Respondents - Attorneys

Employment Setting	Frequency	Percent
Private legal practice	44	45.83
Nonprofit immigration clinic	31	32.29
Other nonprofit organization	19	19.79
Law school immigration clinic	15	15.62
Other (please list):	4	4.17
Government (for example Department of Homeland Security or Office of Refugee Resettlement)	1	1.04
Refugee resettlement agency	1	1.04

- * 96 respondents provided usable data
 - * 76 made it all the way through the survey
- * ~80% women or non-binary, gender fluid, trans, or genderqueer
- * Mostly White and/or Hispanic/Latinx (nearly 90%)
- * 68 indicated they spoke another language in addition to English
 - * 88% of these spoke Spanish

Survey Respondents - Evaluators

Employment Setting	Frequency	Percent
Private practice	36	69.23
Nonprofit organization	21	40.38
Other (please list):	4	7.69
Hospital	3	5.77

Professional Degree	Frequency	Percent of Cases
Clinical psychologist (PhD/PsyD)	13	35.14
LCSW	13	35.14
Other:	5	13.51
LPC	4	10.81
LMFT	2	5.41
Psychiatrist (MD)	1	2.70

- * 52 provided usable data
 - * 37 made it all the way through
- * Over 80% women or non-binary, gender fluid, trans, or genderqueer
- * Largely White and/or Hispanic/Latinx (over 90%)
- * 26 indicated they spoke another language in addition to English
 - * ~70% of these spoke Spanish

Takeaways

- * Attorneys and evaluators are disproportionately white and/or latinx women
- * Many are bilingual, most of those who are speak Spanish
 - * Surprisingly few speak Chinese, Arabic, or other Asian or Middle Eastern languages

When, Why, and in What Types of
Cases are Assessments Being Sought?

Impact of Mental Health Evaluations on Case Outcomes

HOW OFTEN DO FORENSIC ASSESSMENTS AFFECT YOUR CASE OUTCOMES?

Response	Frequency	Percent
Most of the time	33	44.00
About half the time	19	25.33
Sometimes	19	25.33
Always	4	5.33
Never	0	0

DO YOU FEEL THAT A FORENSIC EVALUATOR'S COURT TESTIMONY GENERALLY HELPS OR HURTS YOUR CASE OUTCOME?

Response	Frequency	Percent
Helps the case a lot	39	72.22
Helps the case some	9	16.67
I'm not sure/don't know	5	9.26
Doesn't affect the outcome	1	1.85
Hurts the case a little	0	0
Hurts the case a lot	0	0

How Often do Immigration Attorneys Include Mental Health Forensic Assessments?

IN WHAT PERCENTAGE OF YOUR IMMIGRATION CASES DO YOU SEEK A MENTAL HEALTH FORENSIC ASSESSMENT?

Response	Frequency	Percent
Fewer than 10% of my cases	21	21.88
50% to 75% of my cases	17	17.71
25% to 50% of my cases	15	15.62
10% to 25% of my cases	12	12.50
Depends on the type of case or client:	12	12.50
75% to 90% of my cases	9	9.38
In about 50% of my cases	6	6.25
Greater than 90% of my cases	4	4.17

IDEALLY, WOULD YOU INCLUDE IMMIGRATION FORENSIC ASSESSMENTS IN A DIFFERENT PROPORTION OF CASES THAN YOU CURRENTLY DO?

Response	Frequency	Percent
Yes, I would include them in a greater proportion of cases	60	62.50
No, I am satisfied with the current proportion of cases	29	30.21
Unsure	4	4.17
Yes, I would include them in a smaller proportion of cases	3	3.12

Factors Limiting Proportion of Forensic Assessments

- * “Money and time. There aren’t a lot of evaluators that are free or low-cost and those that are require a lot of lead time or are unavailable. I have also seen some poor evaluations and it’s quite an investment for the client (and potentially retraumatizing) to sit through one that ends up not helping them.”
- * “It is extremely difficult to find practitioners who will conduct a proper evaluation & then provide a diagnosis with a report outlining the testing methods, tools, used & length of time/visits they saw my client. Many practitioners, wishing to help, write things like “in my opinion he/she will suffer extreme hardship” – when they cannot make a legal assessment on extreme hardship– killing the report...”
- * “Cost of evaluations, language barriers, availability of clients, and additional time constraints for me because I have to do so much work to coordinate all of it because the practitioners don’t schedule the appointments themselves, can’t get documents directly from clients, etc.”

What Types of Cases are Assessments Sought For?

- * Humanitarian cases were most frequently cited
 - * Asylum: 88% of attorneys, 92% of evaluators
 - * VAWA: 65% of attorneys, 71% of evaluators
 - * U Visas: 63% of attorneys, 69% of evaluators
 - * Evaluators also frequently mentioned Cancellation of Removal (71%)

Why are Assessments Sought? What is Evaluated?

REASONS FOR SEEKING EVALUATIONS

- * Need to validate past harm/cruelty/hardship claims
 - * 94% of attorneys; 94% of evaluators
- * Diagnosis required
 - * 69% of attorneys; 67% of evaluators
- * Credibility concerns
 - * 66% of attorneys; 56% of evaluators

SPECIFIC TOPICS EVALUATORS ARE ASKED TO ADDRESS

- * Impact of trauma
 - * 98% of attorneys; 100% of evaluators
- * General psychological evaluation
 - * 89% of attorneys; 90% of evaluators
- * Specific mental health diagnosis
 - * 83% of attorneys; 83% of evaluators

Role of Mental Health Diagnoses

ATTORNEYS

Reason	Frequency	Percent
Validation of past harm/cruelty/hardship claims	70	89.74
Prediction of future behavior/needs/hardship	57	73.08
To explain behavior	57	73.08
Assessment of credibility	52	66.67
To explain missed filing dates, failure to appear, or other	44	56.41
Potential of rehabilitation	28	35.90
Other (please explain):	7	8.97

EVALUATORS

Reason	Frequency	Percent
Validation of past harm/cruelty/hardship claims	32	86.49
To explain behavior	29	78.38
Prediction of future behavior/needs/hardship	27	72.97
Assessment of credibility	23	62.16
To explain missed filing dates, failure to appear, or other	18	48.65
Potential of rehabilitation	16	43.24
Other (please explain):	4	10.81

Why is this Problematic?

- * Conflates clinical criteria for a specific diagnosis (e.g., PTSD) with past experience of trauma
- * Cross-cultural differences in how trauma is expressed
- * Not necessary to answer referral question/validate past harm
 - * Confuses assessment model with treatment model

Knowledge about Current Psychological Research on Trauma

ATTORNEYS

Response	Frequency	Percent
Moderately knowledgeable	40	51.28
Slightly knowledgeable	21	26.92
Very knowledgeable	9	11.54
Not knowledgeable at all	7	8.97
Extremely knowledgeable	1	1.28

MENTAL HEALTH PRACTITIONERS

Response	Frequency	Percent
Very knowledgeable	18	48.65
Extremely knowledgeable	9	24.32
Moderately knowledgeable	8	21.62
Slightly knowledgeable	2	5.41
Not knowledgeable at all	0	0

MENTAL HEALTH PRACTITIONERS' PERCEPTION OF IMMIGRATION ATTORNEYS

Response	Frequency	Percent
Slightly knowledgeable	14	37.84
Moderately knowledgeable	11	29.73
Not knowledgeable at all	5	13.51
NA/I am not able to assess this	4	10.81
Very knowledgeable	3	8.11
Extremely knowledgeable	0	0

Perceptions of Adjudicator Knowledge about Current Psychological Research on Trauma

ATTORNEYS' PERCEPTIONS OF ADJUDICATORS

Response	Frequency	Percent
Not knowledgeable at all	32	41.03
Slightly knowledgeable	31	39.74
Moderately knowledgeable	10	12.82
NA/I am not able to asses this	5	6.41
Very knowledgeable	0	0
Extremely knowledgeable	0	0

MENTAL HEALTH PRACTITIONERS PERCEPTIONS OF ADJUDICATORS

Response	Frequency	Percent
Not knowledgeable at all	12	32.43
Slightly knowledgeable	12	32.43
NA/I am not able to asses this	9	24.32
Moderately knowledgeable	3	8.11
Very knowledgeable	1	2.70
Extremely knowledgeable	0	0

Takeaways

- * Attorneys generally feel that including a mental health forensic evaluation helps their case and would like to include them in a great proportion of cases
 - * Factors limiting this are cost and availability of skilled evaluators
 - * Some expressed concern about the harm that an evaluators missteps can cause
- * Evaluations are most frequently sought in humanitarian cases
- * Trauma is central to the evaluations, and specific mental health diagnoses are frequently requested
 - * Evaluators and attorneys share concerns about adjudicators' level of knowledge about trauma
 - * Seeking specific mental health diagnoses is problematic, but we did not see this awareness reflected in our data

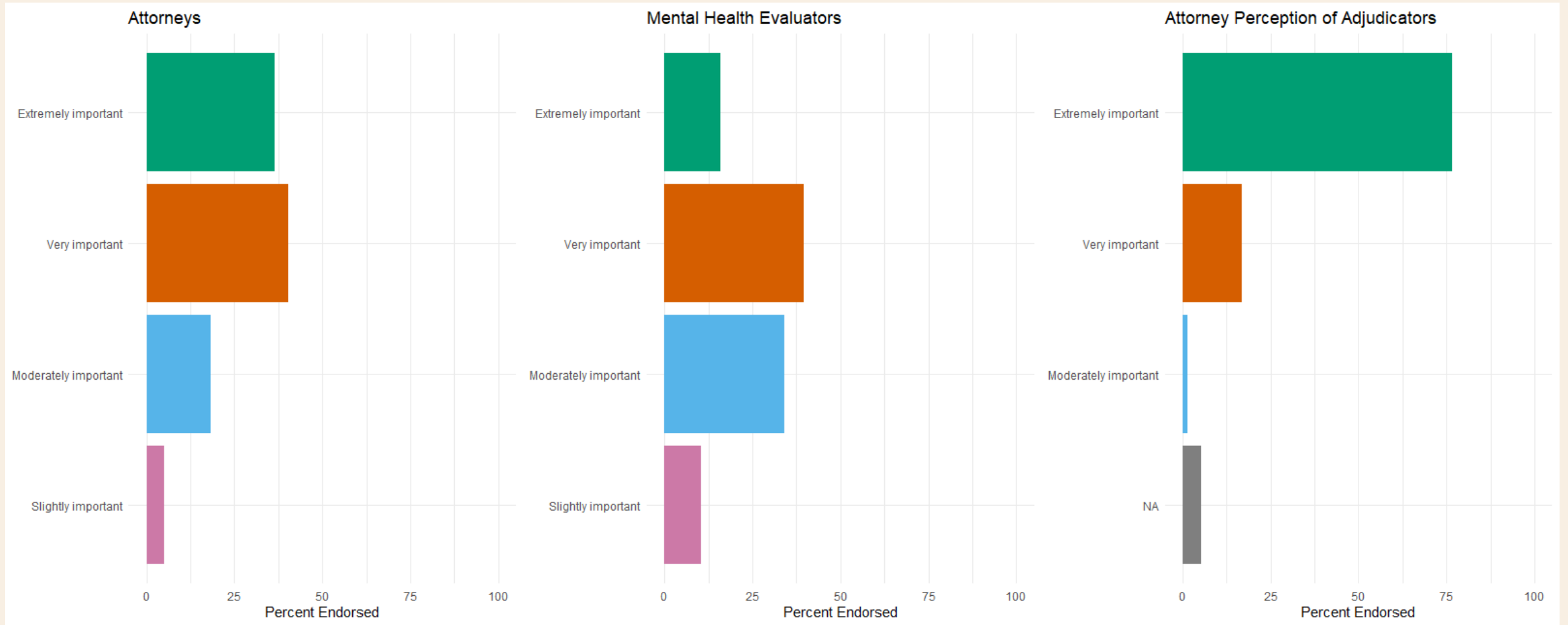
Determining Credibility

Perceived importance of various indicators

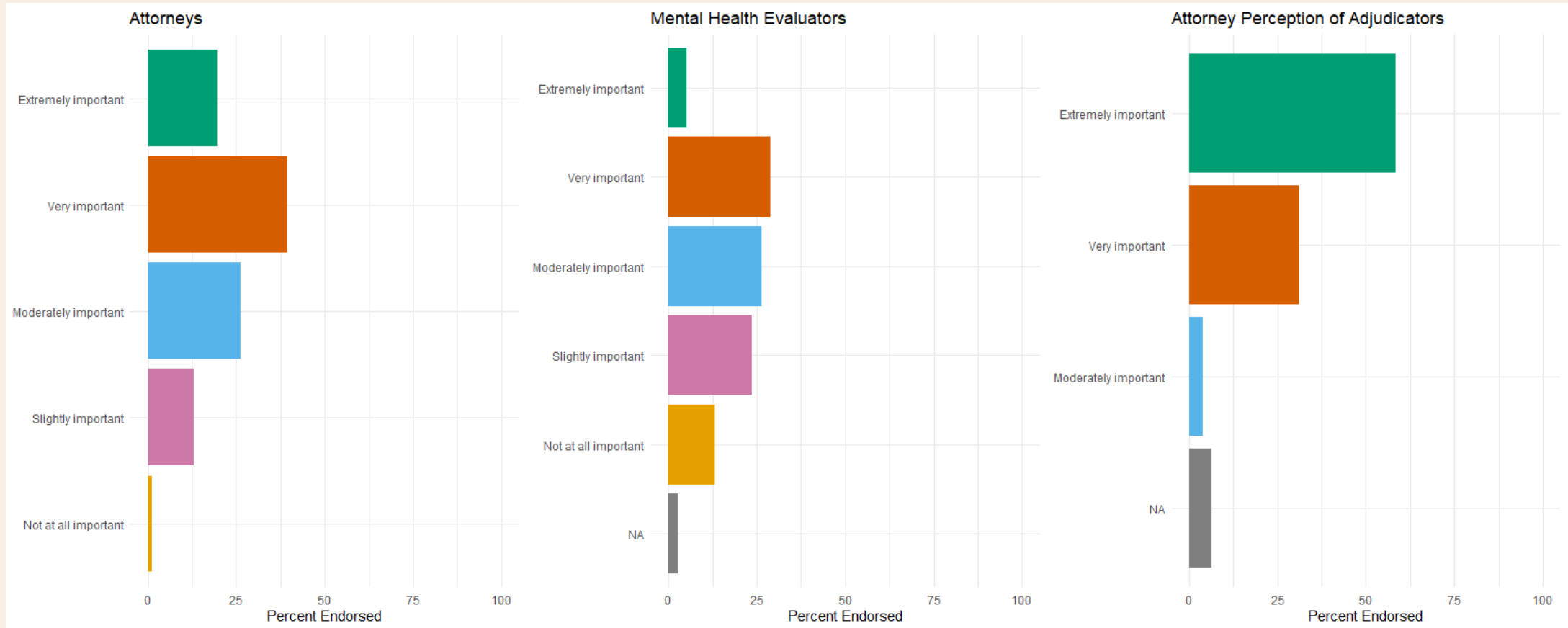
Potential Indicators of Credibility

- * Emotional/behavioral congruence with personal story
- * Demeanor
- * Consistency with psychological/neurological models of trauma
- * Consistency with testimony by family or other witnesses
- * Factual consistency in the personal story
- * Temporal consistency in the sequence of events
- * Consistency across interviews/declarations/etc.
- * Consistency with corroborating evidence
- * Availability of collateral/corroborating evidence
- * Sufficiency of detail and specificity
- * Plausibility
- * Validity scales
- * Effort testing

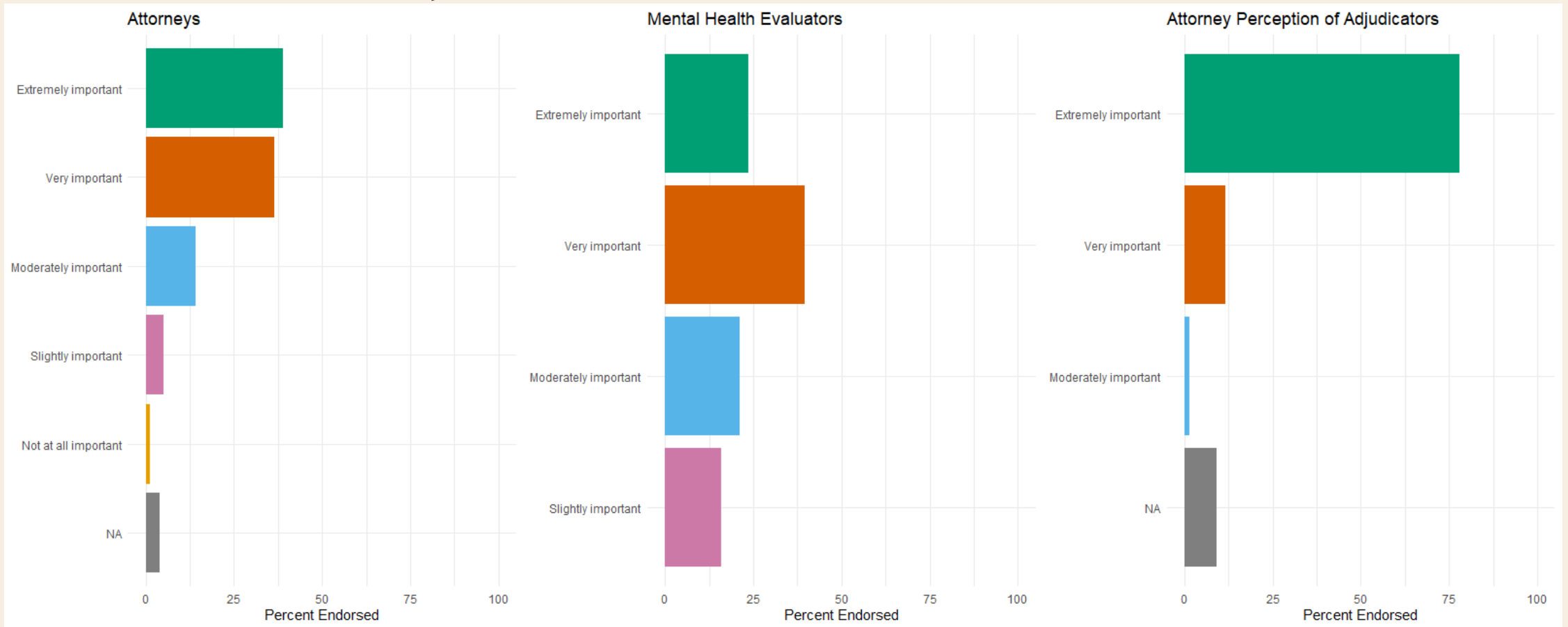
Factual Consistency in the Personal Story



Temporal Consistency in Described Sequence of Events



Consistency across Interviews, Declarations, etc.



Vignettes: Use of Different Credibility Indicators (by evaluators)

- * “The medical tests are unfamiliar to judges and officers so I feel they have less impact, whereas the evaluator place great weight on them. A plain language document with helpful examples explaining the the tests and what they man would be helpful.”
- * “I feel that credibility can only be evaluated over a long period of time, not based on a single interview or a single document. Errors are often made by the affidavit-writer, which leads to suspicion of inconsistency, when in reality it was the writer’s misunderstanding of the client. Also, context can rarely be understood without several hours of discussion and relationship building.”

Vignettes: Reservations about Credibility Criteria

75% of attorneys surveyed indicated that they had reservations or concerns about the criteria used to assess credibility

- * “I think the reality of trauma is that people have varying levels of responses to [trauma] – as such, using standard indicators does not always take into account the different ways people respond to traumatic events.”
- * “I think that most adjudicators have a very simplistic view of credibility such that any criminal history, any inconsistency, and any perceived cultural or emotional oddity can affect the adjudicator’s evaluation of credibility inappropriately.”
- * “I don’t think that demeanor should be a factor. I have plenty of traumatized clients with flat affect, or those whose outward emotions don’t seem in line with what they’ve experienced. I also don’t like that judges are so concerned with details like time or order of events, given that traumatized folks struggle with recalling that type of information.”

Takeaways

- * Attorneys generally consider consistency more important than evaluators do
- * Attorneys perceive that adjudicators are extremely focused on consistency
 - * Unclear to what degree attorneys' criteria are influenced by what they perceive/expect adjudicators to value
 - * A number of evaluators report not knowing what adjudicators care about in assessing credibility
- * This focus on consistency is, in fact, inconsistent with current psychological/neuroscientific understanding of the impact of trauma on memory and recollection



Thank you
realdana@ucdavis.edu
acskwara@ucdavis.edu