



CLBB News

A newsletter from the Center for Law, Brain & Behavior

June 21, 2021

Special Edition: Trauma and Memory in Asylum Law

This special edition focuses on the Center's work on applying neuroscience in asylum and immigration law, spotlighting CLBB's recent publication in the *Annals of Internal Medicine*: "A Historic Opportunity to Update Asylum Law's Outdated Assumptions About Trauma and Memory." *Annals of Internal Medicine* is the highest-ranked and most frequently cited internal medicine journal in Medicine, both General and Internal. CLBB's commentary in this journal comes at a critical time as federal policymakers review asylum law practices in addressing immigration reform. See below for a summary of the article, as well as previous CLBB work in this space.

Annals of Internal Medicine

IDEAS AND OPINIONS

A Historic Opportunity to Update Asylum Law's Outdated Assumptions About Trauma and Memory

Erin Shortell, JD, MPH¹; Aldis H. Petriceks, BA¹; Francis X. Shen, JD, PhD²; and Judith G. Edersheim, JD, MD³

A Congress debates a significant overhaul of the country's immigration laws, the urgency of asylum reform is increasing as migrants flock to the U.S. southern border and the Biden administration faces a backlog of 1.3 million immigration cases. (1) When asylum seekers finally have their asylum interview or court hearing, the Immigration and Nationality Act requires that they convince the adjudicator that they cannot return to their home country because of past persecution or a well-founded fear of persecution.

An asylum seeker's memories about persecution are central to the legal process. Under the REAL ID Act of 2005, adjudicators are required to consider any possible discrepancies in an asylum applicant's verbal and written testimonies, "without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim" (2). As a result, applicants with rare trauma-related distress—even those that may be considered peripheral or understandable given a history of trauma-related distress—often are found not credible and are denied asylum (3). In this way, the system adjudicates asylum claims under the unspoken assumption that memory is like a videotape and that any inconsistency in recall of episodic memory is evidence of a deliberate lie. This hidden assumption in asylum law regularly contributes to the rejection of asylum claims that deserve greater consideration. It is also fundamentally inconsistent with current scientific understandings of trauma-related distress and human memory.

HOW TRAUMA AFFECTS AUTOBIOGRAPHICAL SPYRELLING AND CREDIBILITY

A wide body of research in psychology, neuroscience, and related fields has found that autobiographical memory is particularly vulnerable to interference at the encoding, storage, and retrieval stages. When a specific event is encoded and stored as memory under stressful conditions, subsequent recollection of certain aspects of the event may be less accurate than those encoded under less stressful conditions. For example, subjects in a psychology study watched a videotaped depiction of either a traumatic or a nontraumatic version of the same event, and although those who watched the traumatic version recalled in central details with greater accuracy, they were less capable of recognizing specific slides (4). Furthermore, the effect of trauma on memory may be noted during the retrieval stage given that people with objective signs of trauma-related distress (though not necessarily a history of trauma alone) often demonstrate reduced specificity when recalling episodic

memories (5). All of this suggests that persons from non-U.S. cultures with histories of trauma, trauma-related distress, or both may provide honest recollections of their asylum-seeking narratives that inadvertently include inconsistencies and thus seem misleading to asylum officers or immigration judges.

To complicate matters, there is evidence that cultural background may affect the content of autobiographical descriptions of traumatic as well as nontraumatic memories (6). For example, people from collectivistic cultures may describe "shorter, less egocentric" memories of trauma than those from more individualistic cultures, which tend to prioritize the goals of individuals (6). These culturally mediated styles of recalling events may be misinterpreted by officials in the U.S. asylum system.

The effects of trauma and stress on episodic memory may be amplified among children and adolescents—a critical observation, given the surge of unaccompanied minors at the southern border. Depression and trauma-related distress are prevalent among child and adolescent asylum seekers with histories of trauma (7). Consequently, young asylum seekers often "provide less lucid interviews and tell stories with "less emotional and sensory content" and "from an observer perspective," seemingly detached from their memories (7). Thus, they may be viewed skeptically by an asylum system that equates a failure to provide specific details with an intention to deceive.

The law's adherence to outdated assumptions about memory has significant consequences for asylum seekers. For example, a woman from Guinea fled her country after government soldiers invaded her home, arrested her and her husband, and sexually assaulted her each night for several months (8). In the United States, she was diagnosed with posttraumatic stress disorder. However, the immigration judge who heard her case denied her asylum because of testimonial inconsistencies. For example, she had described the case in her back as resulting from being beaten with belts but had not reported that her captors had also burned her with cigarettes—a detail she had discussed in sessions with her counselor.

CALL TO ACTION
As the Biden administration and Congress embark on widespread immigration reform, there is a historic opportunity to update asylum law's deeply flawed assumptions about episodic memory. At the systemic level,

A Historic Opportunity to Update Asylum Law's Outdated Assumptions About Trauma and Memory

Annals of Internal Medicine | June 8, 2021

CLBB Executive Director Francis Shen and CLBB Co-Director and Co-Founder Judith Edersheim teamed with CLBB student research assistants Erin Shortell (Harvard Law) and Aldis Petriceks (Harvard Med) to critique asylum law's assumptions about credibility and inconsistencies in episodic memory.

Highlight: "the system adjudicates asylum claims based on the unspoken assumption that memory is like a videotape, and that any inconsistency in recall of episodic memory is evidence of a deliberate lie. This hidden assumption in asylum law about human memory regularly contributes to the rejection of asylum claims that deserve greater consideration. It is also fundamentally inconsistent with current scientific understandings of trauma-related distress and human memory."

Neuroscience in Action: "A wide body of research in psychology, neuroscience, and related fields has found that autobiographical memory is particularly vulnerable to interference at the encoding, storage, and retrieval stages. When a specific event is encoded and stored as memory under stressful conditions, subsequent recollection of certain aspects of the event may be less accurate than those encoded under less stressful conditions."

Citation: Shortell, Erin, Aldis H. Petriceks, Francis X. Shen, and Judith G. Edersheim. "A Historic Opportunity to Update Asylum Law's Outdated Assumptions About Trauma and Memory." *Annals of Internal Medicine* (2021).

<https://doi.org/10.7326/M21-0489>

¹This article was published in *Annals of Internal Medicine* on June 8, 2021.
²Erin Shortell and Aldis H. Petriceks are former students.
³Dr. Shen and Judith Edersheim share senior authorship.

CLBB Faculty Research and Previous CLBB Programs on Trauma and Asylum Law



[Associations Between Memory Loss and Trauma in US Asylum Seekers: A Retrospective Review of Medico-Legal Affidavits](#)

PLOS One Journal | March 23, 2021 | Dr. Altaf Saadi

CLBB Faculty Member Dr. Altaf Saadi, MD, MSc and colleagues empirically explored “the interplay of trauma and memory loss and how they might impact immigration proceedings for this vulnerable population” of U.S. asylum seekers. The study examined “200 medico-legal affidavits from ... the Physicians for Human Rights Asylum Network.” The study found that a “majority of the sample received a neuropsychiatric diagnosis.”

Highlights: “Given how common memory loss is in this trauma-exposed population, professionals in the legal and immigration enforcement sectors need to have increased recognition, understanding of, and training around this phenomenon in order to accurately assess asylum seekers’ asylum applications. This recognition must include awareness that both PTSD and depression are associated with memory complaints. ... Our findings lend merit to recommendations for better training of judges, lawyers, immigration authorities, and other stakeholders in the symptoms and challenges of the intersection of trauma, memory loss and mental health, and how they affect personal narratives and testimonies.”

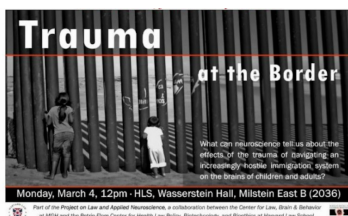


[Trauma, Truth, and the Scientific Shortcomings of U.S. Asylum Law \(Past Event\)](#)

McLean Hospital, Perspectives on Trauma Lecture Series | February 17, 2021

CLBB Co-Director and Co-Founder Judith Edersheim, JD, MD and **CLBB Executive Director Francis Shen, JD, Ph.D.** presented "Trauma, Truth, and the Scientific Shortcomings of U.S. Asylum Law."

The success of an asylum claim relies on the perceived credibility of an asylum seeker's memory. In this presentation, Dr. Edersheim and Dr. Shen discussed a foundational, yet failed assumption, animating U.S. asylum law's approach to credibility—that honest human memory is free of inconsistencies, and that those with histories of trauma are capable of error-free autobiographical recall. Dr. Edersheim and Dr. Shen discussed how changes in asylum seekers' narratives over time may not be due to deliberate deception but rather to the nature of human memory itself. The presentation included a discussion of current efforts at the Center for Law, Brain & Behavior to leverage memory science for a more nuanced legal approach to credibility assessment in asylum law. To learn more about CLBB's work on immigration and trauma [see here](#).



[Trauma at the Border \(Past Event\)](#)

CLBB | March 4, 2019

Record numbers of children and families seeking to enter the United States face an increasingly hostile immigration system. Can neuroscience help us understand how the trauma of violence and separation affects the brain? Might neuroscientific evidence be effectively introduced into legal cases? Does neuroscience have a larger role to play in shaping our nation's immigration policies? Panelists Charles Nelson, III, Ph.D., Cindy Zapata, JD, and Francis Shen, Ph.D., JD, engaged in a dialogue between scientists and lawyers on neuroscience, trauma, and justice.

This event was a part of the [Project on Law and Applied Neuroscience](#), a collaboration between the Center for Law, Brain & Behavior at Massachusetts General Hospital and the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School.

THE ASYLUMIST
Asylum and Its Discontents in the United States

[Neuroscience, Memory, and Credibility in Immigration Court](#)

Aldis Petriceks, Erin Shortell, & Francis Shen
The Asylumist | May 6, 2020

In this article, **CLBB Student Research Assistants, Aldis Petriceks of Harvard Medical School and Erin Shortell of Harvard law school**, join **CLBB Executive Director, Dr. Francis Shen**, to discuss how the neuroscience of memory can inform issues regarding credibility in immigration court.

Highlight: "The bottom line for credibility is that inconsistencies in

autobiographical recall may not reflect a willful attempt to bend the truth, but rather the biological reality that recalling memories usually involves modification of those memories in ways of which most people are not fully aware."



[Memory, Trauma, and Asylum Law: A Role for Neuroscience?](#)

Petrie-Flom Center | December 10th, 2019

CLBB Executive Director Francis Shen CLBB and Research Assistant Aldis Petriceks provided an update on the Center's [emerging work around immigration, neuroscience, and trauma](#) at the Harvard Law School Petrie-Flom Center's Year in P/Review symposium. The Center is actively exploring the potential of applied neuroscience to advance immigration justice, identifying trauma and memory as two areas into which neuroscience might provide value to courts, attorneys, and litigants. The update follows the Center's earlier 2019 program on [Trauma at the Border](#).

The work is part of the [Project on Law and Applied Neuroscience](#), a collaboration between CLBB and the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School.

CENTER FOR LAW, BRAIN & BEHAVIOR



| clbb.org