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CLBB’s recent publication in the Annals of Internal Medicine: “A Historic Opportunity to Update Asylum Law’s Outdated Assumptions About Trauma and Memory.”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.

A Historic Opportunity to Update Asylum Law’s Outdated Assumptions About Trauma and Memory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."

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

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.

**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.