Legal and Ethical Considerations Related to the Asylum Process

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Abstract This chapter sets out to cover some of the pitfalls in applying "common sense" to legal decision making relating to the asylum process and the need to engage with the wider body of general psychological knowledge. We set out a brief summary of the law, and comment on the central issue of credibility. Because the asylum seeker rarely has objective documentation of their persecution, the decision-maker usually has to consider two primary issues – first if the claim meets the threshold for acceptance and second if the claim is to be believed (credibility). Memory is taken as an example of a process that may influence the asylum claim and/or decision; for example, discrepant reporting is often taken as proof of deceit. The scientific evidence in fact suggests that this is an erroneous assumption, that memory is not fixed. It is common for memory, even memory for traumatic events, to change. It is argued that there is a need to apply expert psychological knowledge, not just in the preparation of medico-legal reports on individuals but also in making the whole system of legal decision-making more psychologically informed and more consistent with the scientific literature. After a brief consideration of interviewing issues, there is also reference to both the potential impact of vicarious traumatisation on decision-makers and the difficulties in law of tolerating uncertainty.

Keywords Asylum law · Credibility · Discrepancy · Memory · Interview Technique

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Introduction

Previous chapters have considered clinical issues. In offering treatment, as clinicians, it is always important that we respect our ethical duties and responsibilities. Although the ethics of treatment is not the focus of this chapter, it is worth reflecting on the special considerations arising from the unusual degree of dependency of asylum seekers. Often separated from family, in temporary living arrangements, having limited (or no) access to benefits, and with an uncertain future, it is hard to imagine a more precariously-placed group of people. Anyone providing clinical treatment should be aware of the possibility of intense feelings they may develop in themselves when working with a refugee or asylum-seeking client (sometimes called counter-transference). Indeed, the identification of this sort of reaction is one of the purposes of professional training. It is relatively easy for the therapist to feel that they should also be rescuer, and this may lead to distortions in the clinical relationship. Sometimes the therapist may have quite different reactions in an individual case (e.g., horror, disgust, fear, anger). It is equally obvious that these feelings must also occur within those tasked with deciding asylum claims, surely one of the most difficult of legal roles to pursue even-handedly, and that these emotions may sometimes lead to mistaken assumptions and decisions.

In this chapter, the focus will be on the legal and ethical issues involved in the process of seeking protection. It will be argued that there are important reasons for mental health practitioners to engage with this process, not only in relation to preparing medico-legal reports in individual cases but, more importantly, in helping the whole system of asylum determination to become more psychologically informed. By definition, people seeking asylum are asking to be recognised as in need of international protection. It is often impossible for health professionals to separate the demands of this legal and administrative process from therapeutic work. At the very least, key interviews with immigration officials or decision-makers or stages in the (legal) application process will easily come to dominate the (clinical) work at times. There are also stages in this process in which clinicians and mental health specialists are likely to be asked to become directly involved. In comparison with other legal activities, asylum seekers are likely to have a far smaller network of engaged professionals. This often leads to greater than usual pressures to blur boundaries, e.g. for legal advisers to engage with their clients differently based on the feelings they engender, and for health professionals providing treatment to take on the role of expert witness. Again, it is important to identify such reactions and not be led by them. The interface between asylum seeker and state often extends beyond the asylum process itself and might involve dealing with benefit applications, housing needs, family separation and so on.

The Law

When making claims for state protection, or asylum, individuals usually have to convince a state and/or judicial decision maker that they are a person with "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (United Nations, 1951). This is a most unusual legal definition, carrying at its heart an emotional concept, in this case one of fear. Whilst this definition is the basis of international treaty, states are allowed to construct their own procedures for recognising refugees. To guide them, the United Nations High Commissioner for Refugees (UNHCR, 2011) produces a (non-binding) handbook. This states that, "The relevant facts of the individual case will have to be furnished in the first place by the applicant himself." It will then be up to the person charged with determining the applicant's status to assess the validity of any evidence and the credibility of his or her statements. In some parts of the world, states also consider other legal protection instruments, such as the European Convention on Human Rights (European Court of Human Rights, 1950) or the Convention Against Torture (United Nations, 1987), both of which can protect individuals from return (refouler) to countries where they would face serious harm.

In some parts of the world UNHCR conducts this decision-making process and these countries undertake to accept a number of these pre-decided cases. In many refugee-receiving countries where the state decides asylum claims, for example the UK, there is a two-stage process whereby the state makes an initial decision, which, if negative, can be appealed by the claimant in court. This is often the point at which clinicians and medico-legal experts get involved at the legal interface.

The Importance of the Notion of Credibility

The task of deciding if a claimant meets the criteria for international protection is often extremely difficult. Various factors stand to make the decision-making process less reliable than in other legal settings. Asylum seekers typically present without objective factual evidence (e.g., medical or detention records) from their country of origin. Judges do not usually get feedback on the outcome of their decisions to help improve their learning. It is an emotionally onerous job, due to the need to balance the responsibilities for effective state border control with the possibility that an unwise decision to return someone may result in their detention, torture and possible death.

In most branches of law one would expect the account of a claimant, defendant, or appellant to be supported (or not) by witnesses, documentation and other corroborating evidence. This is rarely the case in asylum applications or appeals. The decision maker can draw on known reports concerning the alleged country of origin, for example those produced by human rights organisations, government agencies or the United Nations. Some of these will include reference to the scale of organised

violence, torture or other persecution of certain groups in the country in question. Other than this, the decision maker usually has to reach a decision based on their assessment of what is effectively the asylum seeker's apparent recollection of events (often traumatic events), with all of the potentials for distortion implicit in this statement. The decision-maker has to determine if the account that they are being given is credible.

All of this has to be performed within a highly politicised and media-dominated context of debate concerning immigration, human rights and – rightly or wrongly – terrorism and crime. This inevitable reliance on the credibility of the applicant means that there should be an important role for psychological study to help illuminate the process and to facilitate just decision-making. A report in the UK noted that Immigration Judges were required to use their "common sense and experience" to assess whether or not they believed elements of a claim (Independent Asylum Commission, 2008). We argue that this is not adequate and that there should be active engagement of research psychologists and others to ensure that higher standards of validity than this are achieved.

We are not alone in criticising the inherent subjectivity implicit in relying on judicial "common sense and experience". Indeed, the United Nations High Commissioner for Refugees (2013) report, Beyond Proof, suggests a 'structured approach' to credibility assessment in order to address the subjectivity inherent in the application of 'common sense and experience'. The report further suggests a methodology that requires decision makers to consider systematically which elements of the account are material to the claim, and to consider the claim as a whole, rather than picking out particular errant details. In addition, the authors clarify the importance of a "multidisciplinary approach". By this, they mean that decision makers should be required to draw on knowledge from disciplines such as psychology, anthropology, gender and sexuality studies, amongst others, where necessary to make a properly informed decision. Directive 2013/32/EU of the European Parliament and of the Council (2013) states that, "It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has *the appropriate knowledge or has received the necessary training* in the field of International protection" (our emphasis). We believe that to make decisions about people's lives that are at odds with established science is no longer acceptable.

The Importance of Psychological Input

Mental health practitioners can make helpful inroads into the process of determining asylum applications in various ways. Here liaison with immigration lawyers, medico-legal reporting and research will be considered, but this is not meant to be an exhaustive list and different approaches may be appropriate in different settings across the world.

(a) **Liaison**

Immigration lawyers often have no specialist training in mental health and yet they must interview people with high levels of distress and psychological difficulties. In many judicial systems, they have a crucial role to play in helping asylum appellants prepare a statement regarding past experiences that are claimed to give rise to a fear of future persecution or serious harm. If there is marked avoidance or dissociative behaviour (not always evident to the untrained eye), they may struggle to provide this help. Liaison between the lawyer and an experienced mental health practitioner can help to overcome some of these barriers. Simply explaining the effects of dissociation, for example, and suggesting the use of basic grounding techniques, may enable lawyer and claimant to have more productive meetings. In turn the lawyer may (with consent) be able to share information with a mental health practitioner about a judgment likely to have an important impact on health.

(b) **Reports**

Mental health practitioners are also often asked to prepare reports to assist in the decision-making process. Directive 2013/32/EU (2013) also notes that, "Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence". Health professionals may be engaged to address these issues.

We believe that it is very important to be clear about the exact role that is being requested of the health professional, and the basis on which the practitioner might agree to prepare a report. The simplest in some ways is the role of professional witness. Here the practitioner is expected to report the factual evidence that they collected in the clinical setting and to describe their conclusions concerning issues such as diagnosis, treatment plan and risk. This is essentially a summary of the treatment record. It must not be undertaken in a way that will mislead the decision maker or court but equally it should not stray into areas that are not part of the normal clinical assessment. The more difficult role is that of independent expert witness. The way in which these independent medico-legal reports are commissioned differs from country to country, but even when they are requested by the claimant/appellant, the writer must state and remain aware of their primary duty to the court. A very informative guide can be found in the Istanbul Protocol (United Nations, 2004).

In the UK, the claimant's lawyer usually commissions independent medico-legal reports at the stage when a refusal of protection is being appealed in court. The commissioning of such a report is often dependent on obtaining state funding – and this is not always forthcoming. Thus, for example, claims concerning prohibition of torture (article 3 of the European Convention on Human Rights) usually attract funding whereas claims concerning a right to respect for private and family life (article 8) are often not supported. In other areas of legal practice involving adversarial processes in Court, it would be common that if one "side" commissions a report, the other "side" will do so as well and then the experts then have the opportunity

to argue their respective cases in court. It is extremely rare for the UK Government authorities to request a report of their own; therefore the absence of a balancing report means that the onus is on the judge alone to assess the weight to be given to technical detail in the health professional's evidence, even though this may be beyond their training and knowledge.

Those commissioning expert testimony with regard to the mental health of the claimant are rarely clinically trained themselves. In the case of lawyers and NGO advocacy groups we might expect some level of training, or at least experience of working with settled refugees. Wilson-Shaw, Pistrang, and Herlihy (2012) studied immigration lawyers' decisions to commission a report and showed that, probably due to training, there was a good awareness of common presentations of fear-based PTSD. However, even these motivated, trained lawyers relied on their own feelings of comfort and on categories of refugee experience (e.g., lawyers more frequently commissioned a report if the claimant reported rape or if there were overt PTSD symptoms of nightmares or flashbacks). They did not seem to be as good at identifying less overt presentations – such as people with more avoidant forms of PTSD, despite these being highly relevant, if the avoidance, sometimes coupled with shame, had a bearing on the ease of presenting an account of their experiences. They also tended to focus on PTSD rather than depression, although in fact, as will be described later, depressed mood can also have a strong negative impact on the capacity to present a credible account.

Practitioners setting themselves forward as expert witnesses must be clinically experienced (specifically in current work with refugees and asylum seekers) and up to date with research findings. Perhaps of equal importance, they need to be able to recognise when a question is outside their competence. They need to be able to communicate their findings clearly and, for this, additional training will be helpful.

On the other hand, even expert evidence has its limitations. In the individual, symptoms characteristic of PTSD may be observed but even if this is the case, they can never be said to prove that a specific traumatic event occurred. A conflict therefore sometimes emerges with a mental health professional finding clinical evidence of anxiety, in the form of classic PTSD symptomatology, but a decision-maker rejecting the factual basis for the initiating trauma. This is often frustrating for all concerned but it has to be acknowledged that a mental health professional cannot determine the factual basis of the claim of persecution. Finding symptoms of PTSD may sometimes be very helpful in bolstering a claim (i.e., PTSD symptoms are consistent with prior trauma) but are insufficient to bear more directly on the factual judgment. There are also many cases in which there is no evidence of PTSD and yet there is a good factual claim of persecution. It is worth recalling that most people do not develop persistent symptoms of PTSD even after the most severe trauma and therefore an excessive reliance on this single condition can lead to otherwise genuine claims being downgraded. If the diagnosis is depression, the problems of identifying cause and effect can be even more difficult.

(c) **Breadth of Evidence**

The final aspect worthy of psychological input is probably the most important. This concerns the generation and application of general research findings to the

benefit of the decision-making system as a whole and as a guide to the issues likely to be relevant in any individual case.

This means moving away from the traditional medico-legal report – dealing with individual experiences, emotional responses and diagnostic conclusion. Indeed, it is often assumed that this (the medico-legal report) is the only role for the application of psychological understanding in the legal process. It has been contrasted with the evidence put forward by country experts – where there is routine presentation of general contextual and political information. This assumption was clearly articulated by a UK Senior Immigration Judge (Barnes, 2004) who considered that country evidence could be assessed in the context of other material whereas medical evidence could not.

> In the case of country evidence, the expert is not the sole source of that evidence before the court. There will almost always be other evidence going to similar issues even if not as focused on the claimant's account as the expert report is likely to be. The expert evidence can therefore be evaluated against other material much of which although of more general application will have been produced by other experts in the field. ... In contrast, there will be no similar breadth of evidence to assist in the evaluation of expert medical evidence

We argue that this is a serious misunderstanding and that, just as there is a breadth of evidence about current practice and conditions in different countries, so too there is a broad scientific literature addressing key psychological processes, for example relating to memory, general effects of anxiety and depression, disclosure and the scientific underpinning of decision-making. Current understanding and research findings in each of these areas of knowledge will be outlined below.

Memory in Everyday Situations

The asylum procedure naturally relies very heavily on memory. In order to claim asylum individuals have to relate an account which includes and explains sufficient details about their alleged persecution, flight from their country and often the journey to the host country. Interviewers and decision-makers base their decisions largely on this account and their appraisal of its credibility. It seems appropriate, then, for decision-makers to be sufficiently informed regarding how memory works, in order to understand what can and cannot be expected of people's memories.

(a) Why and how memories normally change

There are different categories of memory but here the main concerns are usually with the accuracy of autobiographical memory – the explicit 'memory of an event that occurred in a specific time and place in one's personal past' (Nelson & Fivush, 2004, p. 486) and, to a lesser extent, semantic memory (memory for facts and meanings).

Autobiographical memory has three main functions. It is the key to the development and maintenance of social bonds – by recalling shared experiences with others we maintain our relationships with them. It has a directive role – we can draw on past experiences to decide how to act in a current situation: in order for this to work well, we need to be able to update and reinterpret our actions in past situations, taking into

account new appraisals of cause and effect. Finally, it forms a key part of our identity, giving us a sense of continuity and an awareness of how we change, and even protecting us from threats to identity. For example, in the context of persecution some torture survivors describe how they 'held onto' their sense of self, supported by autobiographical memories, perhaps of political work or of their family. It follows from these functions that crucial facets of normal autobiographical memory include the ability to adapt to different social demands, to be updated and to integrate new information.

Problems arise therefore if, within a legal framework, there is a naïve assumption that memory is fixed and unchanging; that is, that if events or facts are remembered, the content of memory will always be the same – rather like accessing a recorded video of an event. In fact, one of the features of narrative memory is that every time a specific memory is retrieved, it becomes unstable and may change. It is this new "memory" that is then "reconsolidated" into storage. In other words, every time we retrieve a memory, there is the potential for it to change (Schwabe, Nader, & Pruessner, 2014). One of the common indicators of credibility in asylum decision-making remains consistency of recall (e.g., UNHCR, 2013). For example, it may (wrongly) be argued, "This was such a bad experience that if it happened, you must remember it clearly and consistently; the fact that you have given different accounts proves that you have lied". Inconsistency may be found both within the narrative itself (internal inconsistency) and between the narrative and external facts (a large literature of studies examining memory for dates, objects, distances and other semantic memories has been ably reviewed and applied to the asylum system by Cameron, 2010). The bottom line is that inconsistency is part of normal remembering and should be applied as a criterion of credibility with great caution.

Furthermore, experimental work over many years has shown the important effect of questioning on the answers given. A prime example of the questioner effect is someone being asked what they had for dinner by their doctor ("low-fat chicken steak"), their mother ("fried chicken – just like you make it") and the chef they are trying to impress ("chicken supreme sauté") (Gyulai et al., 2013 p82). A robust literature has also shown that it is possible to suggest answers – and even memories – by changing the question. An early example can be seen in the study by Loftus and Palmer (1974) where 150 students were asked to watch a video-recording of a car accident. Afterwards one third were asked to estimate the speed of the cars "when they hit each other" (the *hit* group) and another third were asked to estimate the speed "when they smashed into each other" (the *smash* group); the remaining third were not asked this question. There was a significant effect of the question used (the *hit* group suggested an average estimate of 8.00 miles per hour; the *smash* group 10.46 miles per hour; $t(98) = 2.00$, $p < .05$). The researchers followed-up with the participants 1 week later to ask a list of 10 questions about the accident, including one enquiring if they had seen any broken glass; this question was significantly more likely to be answered positively by those in the *smash* group. This study was crucial in developing evidence that memories are reconstructed after the event – and

indeed that the reconstruction can be influenced by outside factors. In the asylum system claimants may be interviewed more than once and, if the precise wording of the question differs, the answer may differ as a mere artefact of the process. It is also worth noting that very often questions are passed to the asylum-seeker through an interpreter, who may attach their own feelings to the way that questions are phrased and so there may be additional and unmeasured variance introduced into this process.

There are also interviewee effects to consider. Studies here mostly rely on the Gudjonsson Suggestibility Scale (Gudjonsson, 1997), in which a short account is read to the research participant, and then questions are asked about the text. It is possible to measure the individual participant's susceptibility to 'yielding' to suggestive questions and, after being told that they have made some errors, each person's tendency to 'shifting' or changing their answers as a result of 'interrogative pressure'. There is a large body of research into this measure and its relevance in the forensic setting but there has been very little attention to the asylum process. Negative emotional states (e. g., McGroarty & Thomson, 2013) and the perceived difference between subject and interrogator (Gudjonsson & Lister, 1984) have been found to correlate positively with suggestibility, implying that there are good grounds for further research to better understand the impact of these factors in the asylum-seeking process. The power difference between interviewer and interviewee in the asylum context probably cannot be overestimated.

Memory for repeated events may introduce further difficulties. Memories which are "vague or lack detail" can be seen as untruthful by asylum decision-makers. A UNHCR survey of practice in Europe cites the example of a female applicant who claimed to have been sexually abused repeatedly from a young age. The decision maker wrote:

> You were also vague about the details. At your substantive interview, you admitted that you do not know the dates or days of the week when he abused you. You said that he tried to abuse you in Syria but were unable to say when or provide any details. It is therefore not accepted that you were sexually abused. (UNHCR, 2013, p.141)

However, when people experience a similar event repeatedly, they normally form a 'schema' or generalized memory that covers the gist or common features of all these events. This means that they have poorer recall for specific details of each individual event. One example of this in the trauma field relates to children's reports of abuse (Bidrose & Goodman, 2000). Where there is a series of events, most of which are similar, but some are different, people can develop a generalised schema, coupled with memories for specific instances that were schema-incongruent or otherwise memorable (Brewer & Treyens, 1981; Brown & Kulik, 1977; Reed & McDaniel, 1993; Rubin & Kozin, 1984; Schrauf & Rubin, 1998). An everyday example is of eating in a restaurant – we are likely to have a 'script' for what generally happens (get seated, choose from a menu, eat, pay the bill, leave) but a better memory for the one occasion when a person at the next table collapsed, having had a cardiac arrest.

This effect can cause problems in the asylum process. Interviewers may ask about, for example, the events surrounding an individual's detention, without following up to make sure that there was only one instance of detention or of violence within detention. If there were many, and these have become conflated in the asylum seeker's memory, then a specific, detailed description of each one is unlikely to be straightforward (Herlihy, Jobson, & Turner, 2012).

(b) **Individualist/collectivist culture and memory**

People seeking asylum will often come from cultural backgrounds that differ from the predominant culture of the host country. This cultural diversity may act as a barrier to good communication. For example, there has been substantial research looking at differences between "individualist/collectivist" cultures – as an indicator of the "degree to which individuals are integrated into groups" (Hofstede, 2011). In summary, in individualistic cultures (generally Western) the self is perceived to be an independent, autonomous and self-determining unit, while in collectivistic cultures (generally non-Western and where most refugees come from) the self is perceived as interdependent and related (Herlihy et al., 2012; Markus & Kitayama, 1991).

Cultural emphasis on independence or interdependence influences parental reminiscing (Jungsook, Leichtman, & Wang, 1998) and in turn affects a child's learning. Several studies have demonstrated that mothers from individualistic cultures encourage their children to contribute their ideas to the discussion, engage more often in memory talk, use more elaborative conversations, focus on the child's role and predilections, and take a partnership role rather than a leadership role in the conversation. In contrast, mothers from collectivistic cultures tend to prompt their children to confirm the information they have already presented to them, discourage children from introducing their own ideas into the discussion, take a more directive role, and focus on social interactions, moral rules and behavioural standards (Fivush & Wang, 2005; Mullen & Yi, 1995; Wang, 2001; Wang, Hutt, Kulkofsky, McDermott, & Wei, 2006; Wang, Leichtman, & Davies, 2000). These findings suggest that, in individualistic cultures, autobiographical memory is viewed as a critical source for validating the self and a unique individual identity (Wang et al., 2006). In contrast, in collectivistic cultures identity is more strongly related to relationships and social hierarchy and thus, identity is less dependent on a unique autobiographical history (Fivush & Wang, 2005) – a requirement for the substantiation of a claim for asylum.

(c) **Memory and Emotion**

Deffenbacher, Bornstein, Penrod, and Kiernan (2004) conducted a meta-analysis of the effects of heightened stress on memory, distinguishing between the 'orienting' response of increased interest or attention to material and the 'defensive' reactions of anxiety, which lead to a 'catastrophic' impairment of memory. In one study, Valentine and Mesout (2009) recruited visitors to the London Dungeon 'Horror Labyrinth', where participants are willingly startled and frightened by a series of gruesome figures jumping out at them in the dark. One of these was an actor, co-

opted to the study, who was asked to ensure that they interacted with each participant for a total of 7 min during the visit. After the visit, participants (who had not been warned that their memory would be tested) tried to identify the actor from a series of photographs. Those whose anxiety had clearly been aroused by the experience were significantly less able to identify the actor (only 17% correct) compared to those who had experienced low anxiety levels in the dungeon (75% correct identifications). Similarly, those with high state anxiety found it more difficult to recall details such as the actor's age, height, hair colour or design of his makeup. In the asylum context, this suggests that those who are most frightened by their traumatic experiences might be least able to describe them in detail. Brewin (2011) reviews this literature in detail, and suggests that PTSD appears to bring with it both enhanced and impaired memory for aspects of the traumatic experience, although he comments that additional difficulties might arise in situations where there has been prolonged or repeated exposure to trauma.

Memory and Trauma

Although the diagnosis of Posttraumatic Stress Disorder has probably attracted too much attention in asylum decision-making as specific evidence of corroboration for an account of serious harm or torture, it can still be very helpful to consider how posttraumatic symptoms (whether or not they amount to the full syndrome of PTSD) can affect the asylum-seeker's ability to present their claim.

(a) **Voluntary and Involuntary memories**

There is an increasing body of evidence suggesting that after a traumatic event, in addition to normal autobiographical memory (the sort of memories of events already considered – voluntary, verbal, structured), there are also involuntary (triggered rather than being consciously accessible) emotional memories. The latter are sensory (an emphasis on sight, sound, smell etc.), 'snapshots' rather than a structured story, and without a sense of being in the past, they are felt as a 're-experiencing' of the original event, as if in the present (for more information, see Brewin's dual representation theory (Brewin, Dalgleish, & Joseph, 1996; Brewin, Gregory, Lipton, & Burgess, 2010)). In an asylum interview, both types of memory will probably occur but they will have different characteristics and effects.

(b) **Central and peripheral memories**

There is a difference in recall between the central gist (of the chronological or emotional narrative) of an event and the peripheral details about the same event (Kensinger, 2007). For example, watching distressing videos, in analogue studies, is associated with a narrowing of attention resulting in preferential recall of the central gist at the expense of peripheral details (Loftus & Burns, 1982). In a study of memory consistency in refugees, peripheral details of traumatic events were shown to be the least stable in repeated interviews (Herlihy, Scragg, & Turner, 2002). For

example, what clothes they were wearing at the time of arrest might be a central memory for someone who was then raped, and a peripheral memory for someone who was badly beaten in falaka. This lack of stability of peripheral memory is important precisely because the ability to recall consistent peripheral details may be seen as carrying weight in a legal assessment of credibility. Thus, it might appear reasonable to a lay judge to comment, "I assume that even if you are lying, you will remember that you spoke about the big event that you claim happened – the torture/beating/rape (as appropriate) – in a previous interview, and will be able to repeat this now, but if this never actually happened, you will not be able to remember the detail; that is how I will know that you are not telling the truth". Such a statement is manifestly incorrect on the basis of current scientific knowledge.

(c) **Overgeneral memory**

This body of work has been largely overlooked in relation to asylum claims because the phenomenon described is associated most robustly with depression. This is curious given the prevalence of depression in this group and highlights the importance of clinicians bringing to lawyers' and decision-makers' attention the different aspects of memory to be taken into account in valid decision-making. When people are asked to look at a cue word (e.g., 'park') and to recall a specific memory from the past that the word makes them think about, they may recall a specific event (e.g., last Tuesday I went to the park to walk my dog in the morning) or they may report an overgeneral memory referring to a category of events (e.g., I go to parks to walk my dog) or a prolonged event (e.g., last year I used to walk my dog in the park). An excessive tendency for overgeneral memory production has been robustly associated with diagnoses of major depressive disorder (see Vreeswijk & Wilde, 2004; Williams et al., 2007 for reviews) and PTSD (see Brewin, 2011, for review), and has been observed in asylum seekers and refugees with PTSD (Graham, Herlihy, & Brewin, 2014). These overgeneral memories are reasonably described by decision-makers as vague or lacking in detail, but this should be interpreted in the context of the asylum-seeker's mental state rather than as evidence suggesting lack of credibility.

Interviewing

(a) **The effects of PTSD on presentation at interview**

Little systematic work has been done on the way in which asylum claimants with psychological difficulties are perceived by decision makers, but Rogers, Fox and Herlihy (2015) report an analogue study in which trained undergraduates each watched 1 of 4 recorded versions of an actor giving an account of persecution, as if in an asylum claim. In condition 1 the actor was instructed to present rehearsed behavioural cues of PTSD (e.g., startle response, increased motor behaviour, dissociative behaviour and avoidance). In condition 2, the actor presented rehearsed

behavioural cues to deception taken from the literature. Condition 3 was a combination of both these conditions and condition 4 was a neutral account with none of these behavioural cues. Instructed in making 'credibility assessment' judgments, as if an asylum decision maker, participants rated the 'trauma' presentation (condition 1) as most credible, and the mixed trauma and deception presentation as least credible (condition 3). They also answered questions designed to explore the reasons behind their decisions, which suggested that the high credibility ratings were due to what has been termed 'emotional congruence' (Kaufmann Drevland, Wessel, Overskeid, & Magnussen, 2003), which can be summed up in the comment 'he seemed understandably traumatised by events'. Emotional congruence is a worrying construct as it does not take into account other presentations of PTSD (e.g., with numbing or flattened affect). Interestingly, in the 'neutral' condition of this study (condition 4), many comments suggested that the "asylum seeker" was not believed because they were not "distressed enough."

(b) **Late disclosure**

One problem that often arises in asylum applications is the late disclosure of relevant history. Decision-makers often expect that full disclosure will take place at the earliest opportunity and when this does not happen, they may interpret the late disclosure as evidence that the asylum seeker has been rehearsed in their narrative and advised to include more traumatic events. Although this probably does happen in some cases, there are also other valid psychological explanations for this phenomenon. Bögner, Herlihy, & Brewin, (2007) conducted a study of disclosure of sexual and non-sexual violence in immigration interviews in the U.K. Ramsay, Gorst-Unsworth, & Turner, (1993) & van Velsen, Gorst-Unsworth, and Turner (1996) had previously identified avoidance as a particular feature of PTSD in survivors of sexual violence (compared to higher re-experiencing symptoms in survivors of other forms of torture); Bögner's study built on this earlier work to examine the role of shame. The sexual violence group scored higher than the non-sexual violence group on measures of PTSD, PTSD-avoidance, shame, depression, dissociation, and a study-specific 5-point measure of 'difficulty disclosing' (although difficulty disclosing was not restricted to the sexual violence group). This study (including qualitative findings, Bögner, Brewin, & Herlihy, 2010) is a good example of the application of research and scientific literature in the asylum field to investigate the sort of real-life problems identified by decision-makers, NGOs and others. Baillot, Cowan, and Munro (2009) commented on parallels and dissonances in the treatment of rape narratives between the asylum and criminal justice contexts. Anecdotal evidence suggests that even where there is growing awareness of the inappropriateness of expectation of early disclosure of sexual violence by women, this understanding is not yet being applied to men's claims. Of course, this phenomenon is not restricted to sexual assault. In the asylum context, it is likely that betrayal experiences, for example, lead to similar behaviours. Indeed any experience that preferentially increases feelings of shame is likely to be associated with late disclosure.

(c) **Interviewer effects**

'Culture of disbelief' is a phrase commonly used (Souter, 2011 extends this to culture of denial) to describe the impression that an asylum system is led primarily by the need to control borders, and thus leans towards finding ways of refusing entry, as opposed to providing state protection. Such political pressures per se are beyond the scope of this chapter, but if they are present they are likely to have an effect on the quality of information collected. For example, in a film made by a leading asylum NGO[1] in the U.K., it is argued that the more disbelieved the already traumatised asylum seeker feels, the more distressed and panicky she becomes, and therefore the more confused her account. By contrast, if she feels that her story is believed, the situation changes, "then empathy automatically comes out... she gives her all". In a meta-analysis conducted by Deffenbacher et al. (2004), the authors concluded that "it is clear that high stress levels impact interrogative recall (i.e., directed questioning) much more negatively than they do narrative or free recall," suggesting that interviewing that allows the claimant to explain the story themselves might help to mitigate the effects of the anxiety inherent in asylum interviews. It is likely that a non-judgmental stance is a better way to get fuller disclosure in asylum and related interviews.

In carefully designed analogue research, subjects were divided into two groups: "truth tellers" and "liars". The liars planned a mock crime and additionally prepared a cover story. Truth tellers planned a neutral task. Both groups were interviewed. Truth tellers provided longer and more detailed answers. When interviewed several times, no differences were found between groups in consistency over time (Giolla & Granhag, 2015). It follows that an interviewer interested in the facts of a claim should provide the opportunity for longer explanations. Furthermore, a pilot project of asylum procedures in the U.K. (Lane, Murray, D., GVA, Devine, & Zurawan, 2013) found that, even if refused legal status that would afford them protection, claimants were more likely to be satisfied and accept the decision if they felt that they had been heard and considered fully and fairly. The process of interviewing people claiming a need for international protection from persecution could – and should – also benefit from findings from well-designed, peer-reviewed research of the type increasingly undertaken in criminal law. This leaves mental health professionals with a double responsibility – firstly to continue to explain that what appear to be signs of deception may in fact be artefacts of flawed interviewing techniques, and secondly to continue to contribute to the development and dissemination of the science on which more effective interviewing could be based.

[1] http://www.asylumaid.org.uk/new-video-on-credibility-assessments-in-womens-asylum-claims/

Impact on Decision Makers

Asylum claims often entail accounts of some of the most atrocious acts that humans perpetrate upon each other, usually in the name of state or political ideology. The effects of working regularly with such material are not well known in the field of refugee law. However, by the very nature of the issues – both the emotional reaction to experiences like torture and the importance of the decision (potentially a matter of life and death) – it is likely that there is some impact. In theory, this might lead some decision makers to be more sympathetic and others to become hardened and cynical. This might go some way to explaining the wide diversity of decisions reported in a classic study of the system in the U.S.A. (Ramji-Nogales, Schoenholtz, & Schrag, 2007). Although not necessarily typical, a study of claims heard by the Refugee Review Board of Canada (Rousseau, Crépeau, Foxen, & Houle, 2002) described highly emotionally charged hearings, with board members being sarcastic with claimants, expressing anger, dismissing or trivialising horrific events and laughing amongst themselves. In psychological practice, good supervision is emphasised, not least as a way of identifying situations in which the therapist's own emotions might cloud the picture and interfere with a therapeutic effect. It is likely that similar emotions affect decision-makers but without the benefit of this sort of psychologically informed supervision.

(a) Vicarious Traumatisation

Vicarious traumatisation (VT) and compassion fatigue are umbrella terms often used to describe the psychological effects – well documented in therapists working with psychological trauma (Figley, 2002; Pearlman & Mac Ian, 1995) – of exposure to other people's traumatic experiences. They can involve symptoms which mirror the symptoms of PTSD, such as having nightmares about a client's trauma, or forgetting particularly stressful parts of the account, or it can mean a more pervasive change of beliefs and attitudes, e.g., seeing the world as more dangerous or untrustworthy. Unfortunately, where crucial decisions have to be made, these emotional reactions can have a major effect, for example, the unconscious attempts to reduce decision-makers' own difficulties by trivialisation of horror, cynicism and lack of empathy (Rousseau et al., 2002). In a different setting, Dembour and Haslam (2004) highlighted that, although one of the common perceptions of War Crimes Trials is that they should allow the victims space to tell their stories, close reading of the transcript at one trial before the International Criminal Tribunal for the former Yugoslavia suggested that these trials can effectively silence, rather than hear victims. Victim-witnesses are unable to dictate what they talk about or the pace of their answers; these are matters dictated by those with the power to ask questions. Moreover, "incongruously optimistic judicial remarks unnecessarily denied their suffering." A recent legal study of the U.K. Asylum and Immigration Tribunal reported 'strategies of detachment' and 'denial of responsibility' as ways of coping with the 'emotional impact of

asylum work' (Baillot, Cowan, & Munroe, 2013). Although a number of qualitative studies have shown VT in family court judges (Jaffe, Crooks, Dunford-Jackson, & Town, 2003), criminal lawyers (Vrklevski & Franklin, 2008) and immigration lawyers (Westaby, 2010), no quantitative assessment of VT in immigration lawyers has been attempted, nor have potential links between VT and quality of decision-making been examined under controlled conditions in this crucial area.

(b) **Tolerating Uncertainty**

Legal and judicial professionals are forced to make binary decisions (e.g. guilt or innocence) albeit with uncertain and incomplete evidence. In the asylum context, in the absence of any independent evidence or feedback on the outcome for those denied and returned, these decisions are especially difficult. They are certainly not clear-cut decisions and yet there can be no middle ground. The outcome of any decision must be a decision to deny asylum (with the possibility of wrongful return to torture or death) or a decision to allow entry to the host country (often against a tide of social, governmental and media pressure (e.g., Free Movement, 2012)).

In a thorough audit of practice in the U.S.A., Ramji-Nogales et al. (2007) concluded that these decisions amount to a sort of "refugee roulette". Because there is no feedback from those returned to their country of origin, judges cannot learn truth from prior experience. They can only learn how they managed the decision-making process before. Inevitably, we believe, this includes learning how they had previously managed the emotional aspect of such uncertainty - and this repetition, in itself, may simply lead to a false sense of certainty.

The other frequent factor in asylum decision-making is the knowledge that some of the people before the decision maker are likely to be using systems of humanitarian protection deceitfully. Without going into the structural and political reasons why this might be so, the fact remains that some people do exaggerate accounts that would not qualify for state protection, in order to gain entry to countries. Continually having to consider whether or not one is being told lies is likely to test the most liberal of assessors and can also lead some judges to become 'hardened' by their experience.

Maroney (2011) sets out an alternative approach, a model of 'emotional regulation', drawing on psychological research and parallels from the training of doctors (who also have to make important decisions in the face of gruesome realities). It is argued that rather than asking judges to "put emotion aside" and adopt a state of judicial dispassion, they should be prepared to acknowledge and manage the emotions that they cannot help but feel. Such a model could be integrated into training programmes, without making any judgment about those participating. Mental health professionals need to be prepared to encourage and support any initiatives in this direction.

Conclusions

In this chapter, we have set out to present some of the existing evidence concerning the handling of claims for protection made by asylum seekers. As demonstrated in the U.S. by Ramji-Nogales et al. (2007), this process can amount to no more than

"refugee roulette". These uncertainties can place tremendous pressure on asylum seekers, their representatives, health professionals and on those responsible for making what might be life or death decisions. We argue that as health professionals, we have an essential duty to inform decision-makers about more than the health or otherwise of an individual in a typical medico-legal report. We must also be able and prepared to describe the breadth of relevant psychological literature that pertains to the generality of reasons for acceptance or refusal of asylum-seekers. If possible, we should seek to add to this body of scientific evidence. Only in this way will there be growth of better-informed standards for justice for all those seeking asylum and safety in a new country.

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