

Beyond Expert Witnessing: Interdisciplinary Practice in Representing Rape Survivors in Asylum Cases

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“Sometimes stories can only be told when there is safety, the possibility of a future, when one is drawn back from the ‘abyss’; when the shame, guilt, and anger can be faced in circumstances of trust; when ‘perennial’ losses can be accommodated; when needs for human rights and justice can be expressed; when therapists and others can bear to hear; and when compassion abides.”

(Raphael, in Wilson and Drozdek 2004)

INTRODUCTION

Before going to law school, I spent fourteen years as a social worker working with survivors of gender-based violence. As a lawyer representing clients seeking asylum based on rape, I often draw on my social work skills. But as a lawyer, the client has engaged me to obtain legal relief, for example, asylum, and not as a social worker. To maximize the chances of obtaining asylum, the lawyer must press the client for graphic details of a painful and traumatic experience that the client would rather leave buried. To do anything less, the lawyer would be failing miserably at her obligation as lawyer. Strict adherence to legal obligations, however, does not detract from the inevitably brutal legal process in which both the client and the lawyer must operate in order for the client to obtain asylum.

The question of what the lawyer’s role is in cases involving human trauma is a common problem for lawyers in refugee law. Regardless of prior mental health training, many lawyers and law student representatives struggle with the tension between what is necessary to prepare a successful legal case and the additional trauma that they are inflicting on the client by forcing the client to revisit the incidents of the underlying persecution.¹ Lawyers may also be woefully

¹ In many law schools, students may enroll in clinics in which the students represent real clients with real legal problems. There are numerous asylum and immigration law school clinics in the United States. At the University of Connecticut School of Law, our students work in teams

unprepared to recognize or address this tension, tension that is exacerbated because there is rarely a structured interdisciplinary team in place in which the legal representatives and the clients have guidance and support with respect to the client's (and their own) mental health. In rape cases in particular, there are powerful nonlegal issues at play that can negatively impact the success of the advocacy. I was, for example, part of a legal team representing Naomi, a survivor of brutal gang rape seeking asylum. There was one part of the story so heinous Naomi could not recount it. It is often uncomfortably true in the law that the greater the client's suffering, the greater the chance of obtaining relief. Thus, Naomi's legal team made a decision that the missing part of her story was essential and decided to try one more time to elicit the information from her. Because of my background, it was decided that I would interview Naomi for purposes of this particular information. Viewed through a legal lens, the interview was a success. Naomi provided details about the missing piece and the immigration judge granted Naomi a specific form of asylum under U.S. law based exactly on the severity of the persecution that she had suffered.²

For Naomi and for me, however, disclosure of the hardest piece of her narrative was not one of unqualified success. Bound by an obligation to zealously advocate on Naomi's behalf, my decision to question her was governed by an understanding of the evidentiary requirements in the U.S. immigration system to obtain asylum.³ These requirements necessitated that Naomi disclosed each piece of the brutality she had endured. But disclosing for survivors like Naomi is akin to emotional torture. The decision to push her to disclose stood in sharp contrast to my mental health training in which the goal was the client's mental health; what governed was the client's choice as to if, what and when she disclosed.⁴ Naomi's case exemplified the conflict

of two representing a client seeking asylum in the United States. Students take the lead on these representations, supervised by a licensed faculty member.

² In contrast to the Refugee Convention, U.S. law allows for an asylum grant based solely on past persecution. Commonly known as "humanitarian asylum," an applicant is eligible for this form of relief if the applicant meets one of two conditions, p. either "the applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution; or the applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country." 8 C.F.R. § 1208.13 (b)(1)(iii).

³ Lawyers are bound by Rules of Professional Conduct. While each licensing body can differ, some principles, like zealous advocacy, are a constant. *See, e.g.* American Bar Association Center for Professional Responsibility. "Model Rules of Professional Conduct, p. Preamble & Scope." American Bar Association. Retrieved November 27, 2013, from http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html.

⁴ In a recent interview with Naomi, she told me that, while she understood the importance of the brutality, she would still choose not to disclose the particularly heinous part of the persecution to me (Naomi 2012. Interview by author).

between what the legal system demands and what the asylum seeker can give without extraordinarily emotional damage.

In addition to issues of trauma, the legal representatives may run into silencing mechanisms that inflict dire consequences for disclosing rape that I call “disclosure taboos.” Disclosure taboos are taboos that are put in place by victim-blaming familial, cultural or religious structures. Disclosure taboos are universal and arise from patriarchal beliefs that women are responsible for being raped, that the rape irreparably defiles a woman and that the structures themselves are dishonored through rape. The most palpable consequences for breaching the disclosure taboos are dire consequences like forced marriage or divorce, loss of custody of children, social ostracism, and severe economic deprivation or even death. Consequences for breaching the disclosure taboos can also be much more subtle, like the shame imposed on the victim for being raped. Here, the shame itself silences the survivor and can be severely debilitating.

Given these underlying complications in representations of rape survivors seeking asylum, I was looking for a solution that reconciled the tension between the client’s mental health and the client’s legal goals. The obvious choice was an interdisciplinary team in which mental health professionals and lawyers worked together, educating each other as to the roles and expertise of each profession and providing unqualified support for the clients.

This chapter examines the particular problems that arise in representing rape survivors seeking asylum. The chapter argues that representing rape survivors seeking asylum requires an interdisciplinary approach in which mental health professionals assist legal representatives in understanding the particular psychosocial, political and cultural dynamics that surround and arise out of rape. The goal of such an interdisciplinary approach is to minimize the risk that the consequences of rape – the very persecution for which the applicant was seeking relief – will sabotage the asylum claim by addressing the three areas in which rape as persecution in an asylum case can present the most challenges: the legal system’s propensity to erroneously interpret the consequences of rape as evidence of fabrication; the legal representatives preconceived notions about rape and rape survivors; and the lack of a safe environment in which a rape survivor can disclose the details of her persecution necessary to satisfy evidentiary requirements of the courts and withstand questions from her own legal team about that persecution that can feel persecutory in and of themselves.

Before continuing the discussion, I want to clarify three points. First, many of the issues raised here arise in representing any asylum seeker. What distinguishes rape survivors is not a question of a hierarchy of pain but a

particular form of suffering that manifests during representations of rape survivors that stems from the need to recount the intense shame and sense of personal violation arising from rape. Compounding this suffering is that rape survivors often go through the asylum process alone. Second, the chapter is not meant to imply that the asylum system is just. This system is, however, often the clients' only option for relief. Consequently, I am advocating for a way to work within a hostile system such that the dynamics created by the very persecution that forms the basis of the claim for asylum do not sabotage that claim.

Finally, I want to address the issue of the gendered system in which asylum claims are adjudicated. Persecution deemed worthy of refuge has traditionally been the persecution tyrannical governments inflict on male political dissidents (Freedman 2007). Defining persecution in this manner genders the question of what constitutes persecution as well as potentially the framework in which asylum cases are adjudicated. There has been significant progress in the recognition of gender-based violence, including rape, as persecution.⁵ It is crucial, however, that lawyers and clients be aware that gendered notions can still be at work in adjudicating rape cases. Thus it is not unusual to feel, in framing the legal case, as if the proverbial square peg simply does not fit into the round hole. Particularly with respect to credibility, judgments may "penalize those who do not fit within normative male, heterosexual, American cultural expectations for testimonial behavior" (Conroy 2009, p. 13). This is another area in which mental health professionals can assist the lawyer by explaining the gendered misconceptions that can accompany an analysis of rape.

ISSUES INHERENT IN REPRESENTING RAPE SURVIVORS SEEKING ASYLUM

The Legal System

Asylum applicants have survived inconceivable brutality that forces them to flee their homes, leaving behind families they may never see again or, in cases of rape, families that have disowned the asylum seeker, or who even seek to punish the survivor for the rape. In making their way to what they assume will be a country of refuge because of the persecution they have survived, they have, as Naomi observed, "a simple view of the asylum process: 'I will just tell them the

⁵ *Lopez-Galarza v. I.N.S.*, 99 F.3d 954, 959 (9th Cir 1996.); *Matter of D-V-*, 21 I&N Dec. 77, 79–80 (B.I.A. 1993). For analysis of the gendering of the asylum process, see Kelly (1993); Musalo (2003, 2010); Podkul (2005); Freedman (2007); Frydman and Seelinger (2008).

truth and that should be enough.”⁶ Refuge from persecution, however, requires the asylum seeker to subject herself to a process during which all that she knows to be true is questioned by those with the authority to determine whether she has suffered to a satisfactory extent such that she “deserves” to stay in the receiving country. Many asylum applicants have never told anyone that they were raped, let alone the details of that rape, and are unprepared for the harsh reality of the legal system in which reciting the narrative once is never sufficient.

The narrative, for example, must be microscopically examined for the credibility problems discussed by Bruce Einhorn and Megan Berthold in this volume. This scrutiny requires the asylum seeker to recount the narrative numerous times in gruesome detail first to her legal representatives and later to the adjudicator in response to the cross-examination by a government attorney. Observers may rightly assert that litigants in any legal proceeding must provide credible evidence to succeed. The difficulties for rape survivors seeking asylum is that the legal system has preconceived notions of how credible victims “should” present. Thus, “credibility assessments . . . ‘ultimately privilege [immigration judges’] individual ideas of how refugees should psychologically respond to persecution’,” (Conroy 2009, p. 45). One study, for example, revealed that asylum adjudicators assumed that all people respond in specific ways to trauma and “that traumatic material is always clearly remembered” (Herlihy 2010, p. 361). A judge interviewed in that study opined that rape “is not the type of event which I would expect a person to forget about or confuse.” There is, however, no “normal” demeanor for rape survivors. What one survivor presents emotionlessly another will be unable to recite. One survivor may look defiantly at those questioning her account while another will stare paralyzed at her lap. Furthermore, survivors often do not recall key details of a rape and may powerfully suppress memories when they threaten to surface to consciousness.

In judging an applicant’s credibility, moreover, adjudicators are not required to consider that the very persecution for which refuge is being sought may severely impact the factors used to make the credibility determinations. Instead, an adjudicator can rely on factors such as the applicant’s demeanor or inconsistencies in the applicant’s testimony.⁷ But demeanor is extraordinarily relative and varies widely depending on a whole host of factors such as reaction to trauma or the shame that is at the heart of rape. A person’s demeanor can also be greatly altered by the rape itself or appear very differently while

⁶ Interview with the author, August 5, 2012.

⁷ 8 U.S.C. § 1158(b)(1)(B)(iii).

discussing the rape. Naomi, for example, would come alive when speaking about her country's history and politics, using her hands to speak, speaking directly to her legal team, making consistent eye contact and infusing her speech with passion and sometimes sadness at the loss of her home. When speaking about the rape, however, she would lower her head almost to her knees and talk very softly, if at all. Naomi's two distinct demeanors were unrelated to her credibility but were instead indicative of the severe trauma and shame that accompanied the rape.

Likewise, what may appear to the adjudicator as "inconsistencies" in a rape narrative may only appear to be inconsistencies within a legal framework that continues to expect linearity and fails to account for survival mechanisms. For example, a skilled mental health clinician would expect a certain amount of fragmented memory – memory that comes in bits and pieces – with respect to a rape narrative. Like Naomi's different demeanors, this fragmentation is likely to be indicative of the level of trauma inflicted on the asylum applicant. Thus, it is likely not related to credibility at all.

Certainly there are adjudicators sophisticated enough such that there is an understanding of the consequences and impact of trauma on narrative. Too often, however, the biased expectation of linearity interferes with an adjudicator's ability to take mental health issues into account, putting the asylum seeker at risk for being sent back to her country of origin based on erroneous interpretation of the emotional consequences of the very persecution from which she is seeking relief. As Berthold and Einhorn argue, in such cases, there is a need for mental health professionals as expert witnesses who can educate adjudicators as to the dynamics and impact of trauma. Mental health professionals as expert witnesses, however, can only address the adjudicator's lack of understanding of mental health issues, leaving unaddressed the questions of what the lawyer brings to the table and what the client may need during the process of preparing for the case.

THE LAWYER

Isabelle's Story

Isabelle's experience trying to obtain refuge offers a case study in the problems in asylum representations that trace back to the lawyer. The case also offers a particularly insightful window into both the danger and the power of disclosure taboos. Isabelle's original lawyer was woefully oblivious to the possibility of rape as a basis for asylum and consequently failed to establish a safe environment in which Isabelle could help him make her case. As is the case

with many female rape survivors, before Isabelle filed for asylum, she was listed as a derivative⁸ on the application of her husband, Alex. Alex and his father, Samuel, both filed for asylum based on political persecution they had suffered for their political activism in their home country. The U.S. adjudicators regularly deny asylum cases based on political persecution from this particular country because the prior tyrannical regime is no longer in control of the national government. Unsurprisingly, then, the regional Asylum Office referred both men's cases to the immigration court.⁹ Both men then retained lawyer, Larry. Given the slim chances of success of an asylum claim based on political persecution from this country, Larry should have been looking for possible alternative bases for an asylum claim, including, with respect to Alex, any persecution that Isabelle may have experienced in which Alex could become the derivative claim.

Larry was an experienced immigration lawyer in private practice. Yet Larry, like the system in which he practiced law, did not take his legal analysis beyond the gendered notions of what constitutes persecution. Consequently, Larry's focus was on the male heads of the household, their political activities and the resulting persecution that the men suffered. Larry thus failed to view Isabelle as anything more than his client's wife. He created neither the time nor the space for Isabelle to disclose the rape. For example, Larry met with the entire extended family together. In Isabelle's and Alex's patriarchal culture, a victim who disclosed rape may be subjected to forced divorce, social ostracism, severe economic deprivation and even murder. She will also likely lose her children to her husband's family. All of these punishments were consequences that Samuel, as the family patriarch, would indubitably enforce should he discover that his son's wife had been raped. Larry never asked Isabelle why she had fled her home country, apparently assuming, consistent with the gendered framework in which asylum cases are adjudicated, that Isabelle left because Alex was fleeing. By failing to establish a safe environment in which Isabelle, a rape survivor, could disclose, Larry all but ensured

⁸ Asylum applicants may include spouses and minor, unmarried children on their asylum applications. This means that only the applicant must have a basis for asylum and, if granted, the spouse and children, the "derivatives," are also granted without having to put forth a case of persecution.

⁹ Because neither Alex nor Samuel were detained or placed into removal proceedings, they could file an asylum application with the asylum office. The asylum officer may either grant the application or, if the asylum officer does not believe the applicant's story or concludes that it fails to satisfy the legal standards for asylum, may refer the application to the immigration court. Once a case is referred, the applicant is then in removal proceedings. The applicant has another opportunity to present her claim for asylum to the immigration judge as a defense to removability.

that the rape would remain sequestered behind the cement disclosure taboos that governed Isabelle and her family.

What Larry focused on was the details of an incident in which Alex and Isabelle were together when four men, armed with semi-automatic weapons, beat Alex, referencing both his family name and his political party. Had Larry been trained to go beyond a gendered framework, his client interviews would have included exploring any and all persecution to which the family had been subjected and that could form the basis of an asylum claim that went beyond the political persecution claims. Indeed, beyond the rigid gender constructions was Isabelle's own basis for asylum independent of that of Alex's doomed political persecution argument. The rampant political violence that was gripping Isabelle's and Alex's home country at this time included numerous incidents of rape of female members of politically active families.¹⁰ Because Isabelle was with Alex when the armed men beat up Alex, a legal analysis outside of the gendered framework would have included questioning whether Alex's attackers had done anything to Isabelle that rose to the level of persecution. In addition, Isabelle herself was quite rebellious based on the standards in her country, stirring great controversy in her hometown because the country was governed by rigid gender mores. Rape was one method that the society used to punish women who dared to step outside these rigid gender mores.

Trained to employ a careful perspective on gender and violence, Larry might have wondered how to start a dialogue with Isabelle to explore whether Isabelle had her own history of persecution. Instead, Larry went to trial on the political persecution theory. The immigration judge predictably denied asylum to both Samuel and Alex. The story would have been over and the family deported except for Isabelle's acts of courage.

It turned out that one of the armed men had indeed raped Isabelle while his companions beat up Alex. During the rape, the rapist referenced Isabelle's rebellion, Alex's family name and their political party affiliation. At the time of the rape, Isabelle was a young bride. To avert the harsh disclosure taboos, Isabelle and Alex made a pact: they would never again speak about what happened, to each other or to anyone else. After the immigration judge denied Alex's asylum claim, however, Isabelle did her own research and discovered for herself that she may have her own basis for asylum because of the rape. Isabelle, despite the great risk disclosure posed, informed Alex that the pact

¹⁰ Isabelle's case is also the quintessential example of why refugee lawyers must also take the time to research country conditions in their client's home country. Without a doubt, an asylum case takes an enormous amount of research and time for the legal representatives. Lawyers who do not take the time to properly educate themselves run a high risk of missing crucial facts or, as in Isabelle's case, an entire basis for relief.

was off and retained an attorney of her own. Isabelle spent hundreds of hours with her new legal team, explaining why she did not come forward initially, and recounting the rape in great detail. Isabelle relived her memories of the rape, the rigid gender mores and the terror over and over again in order to comply with the evidentiary requirements of the asylum system. She did this notwithstanding the constant presence of the disclosure taboos, including the shame that gripped both her and Alex. After years of this process, an immigration judge granted Isabelle humanitarian asylum based on the severity of the rape and the long-lasting effects it inflicted on Isabelle. By this time, she had been separated from her oldest son for over six years and it would be another year before the U.S. government would allow him to immigrate to this country.

Identifying the Lawyer's Issues

In asylum cases in which rape is the persecution for which relief is sought, the dynamics of rape inevitably color the representation, beginning, as with Isabelle, with the client's terror of disclosing the event. An argument for addressing the issues with an interdisciplinary approach in asylum cases can begin with reviewing the lack of skills that lawyers like Larry bring to the representation, and that diminish the lawyer's competency as legal representative. Larry, for example, did not comprehend the extent to which the physical environment in his office was counterproductive to disclosure. Larry also failed to understand that interviewing a rape survivor requires a specific skill set. In addition to Larry's shortcomings, lawyers sometimes may themselves measure their clients' narratives against expectations of linearity that arise out of a legal framework but that are not always present in recounting narratives of trauma. Larry, for example, may have had flawed expectations of Isabelle and may not have understood the "irrationality" of a refusal to disclose events necessary to obtain asylum. Lawyers themselves may be operating in a framework in which the client's narrative is constantly measured against unreasonable expectations of linearity. Ultimately, a lawyer like Larry, himself wed to the gendered legal framework, cannot imagine the possibility that his client's spouse may be a rape survivor with a good basis for an asylum claim.¹¹

Importantly, the lawyer may have little or no training in recognizing or responding to indicators that the process of preparing for the asylum proceeding

¹¹ As some commentators point out, "[w]omen are often granted asylum or refugee status based on their husband's claim and may not realize they can claim asylum in their own right" (Mezey and Thachil 2010, p. 247). With the law students I supervise, one of the issues we regularly address is whether any other family members have basis for relief and how to go about exploring that basis.

is re-traumatizing the client. Even if Larry had understood the potential for Isabelle's own basis for asylum, it is unlikely that he had training on how to move his and Isabelle's relationship passed the powerful disclosure taboos to which Isabelle could be subjected. Moreover, how far the lawyer may push the client to recall details of the rape raises ethical issues in terms of the lawyer's lack of clinical training. The lawyer may have the most admirable of goals – obtaining refuge. The client's psyche, however, may be hard at work at its own admirable goal of protecting the self from the overwhelming memory of the trauma. Removing this deep-seated protective layer during the legal process by interrogating the client about her memory raises grave concerns of retraumatizing the client without plans or resources to help the client deal with the resurfacing of post-traumatic stress symptoms.

At the other end of the spectrum and equally destructive, lawyers may be “hyper” sensitive to issues of sexual assault or cultural difference and resist having to ask the client questions the lawyer considers too personal, too embarrassing, or too indicative of judgment or cultural insensitivity. Shying away from those difficult conversations carries significant risks. First, a lawyer's own hypersensitivity comes dangerously close to the “narcissism of pity” (Hesford 2011) as opposed to a constructive partnership. Relating to the client from a place of pity dehumanizes the client and may jeopardize the lawyer's ability to gain the client's trust or establish a safe place in which the client can confront disclosure taboos.

Second, to skip over the hard questions runs the risk that the first time the client is asked such questions will be by the adjudicator or the government. When a lawyer does not know the answer to these questions, neither the lawyer nor the client can be adequately prepared to respond. Finally, skipping over the hard questions means that the lawyer misses out on a chance to understand the complexities of her client's persecution, risking that she will not be able to explain such complexities to the adjudicator. In more cases than not, when I have asked the hard questions – the very questions that make me cringe at their insensitivity – it is my client who rises to the occasion, who shows much more courage than me, and who gives me compelling answers key to her successful asylum claim. This can happen for a multitude of reasons. There is so much that a lawyer may not know, about her client, the client's culture, history, or life, that what appear to be holes in the client's story may actually be holes in the lawyer's knowledge and understanding. Additionally, there may be an explanation for conduct that we cannot imagine from our place of relative privilege.¹² This is a common problem that presents with asylum seekers who have left children in

¹² In their article on the Five Habits for Cross-Cultural Lawyering, Bryant and Koh Peters describe a multitude of reasons why our assumptions about a client's behavior or narrative may be incorrect. Bryant and Koh Peters encourage lawyers to engage in “parallel universe”

their country of origin. It is common for American lawyers to be particularly shocked, for example, that a mother could flee from danger and leave her children in the place of danger. This judgment, however, fails to take into consideration the expense and danger of the flight itself and the impossible choice in which the woman finds herself. Female rape survivors may come from patriarchal cultures in which it is normally the men who have access to or control of resources. Thus it is common for women to arrive here only from the charity of a sympathetic relative, who may not have much more than the cost of getting one person out of the country. Moreover, asylum seekers are also fearful of requesting visas for an entire family as doing so may alert authorities in either their home country or the receiving country of the intent to permanently flee. Whatever the explanation, the lawyer's avoidance of sensitive issues can significantly impair her ability to successfully advocate for her client.

Complicating any issues that the system raises or that either the lawyer or the client brings to the table are the issues of language and culture. Much has been written about cross-cultural lawyering. Lawyers must often be mindful of judgments and assumptions that are based on the lawyer's own cultural framework and that fail to account for cross-cultural differences (Bryant and Koh Peters 2005, p. 57). What often surprises new lawyers, or lawyers new to refugee law, is that language itself can greatly interfere with the lawyer's ability to understand the nuances, pain and terror of the brutality inflicted on the client. Translations from one language to another are fragile and influenced by factors such as dialect and the capability of an interpreter (specifically, interpreters find it difficult to translate legal concepts). In order for the lawyer to understand the enormity of what her client has experienced, and, in turn, in order for the lawyer to put that experience into an advocacy narrative, the client's full experience must be translated. Some languages, however, do not contain words for certain actions or even body parts. This of course increases the risk that the lawyer will not understand the persecution her client experienced.

There is another mental health implication in this situation, however. One asylum seeker's language, for example, contained no words for what her rapists had done to her. In order to explain the rape to her lawyers, this woman was reduced to pointing and gesturing to parts of her body, like a tragic game of charades, and to using phrases like "down there." This survivor was a competent adult explaining an extremely humiliating and painful rape to a room

thinking, in which the lawyer imagines all of the reasons beyond her own assumptions for a client's conduct (Bryant and Koh Peters 2005, p. 56–57). The purpose is not to reach yet another unsupported conclusion, but to "remind ourselves that we lack the facts to make the interpretation, and we identify the assumptions we are making" (Bryant and Koh Peters 2005, p. 56).

full of strangers. The lack of words and the necessity of pointing inflicted the added humiliation of appearing inarticulate and childlike. Within the current legal framework, a lawyer cannot avoid exploring every piece of the persecution with her client. Language problems may necessitate nonverbal explanations. If the lawyer is properly trained in an interdisciplinary approach, however, the lawyer can anticipate these issues and work in partnership with the client and mental health professionals to minimize the damage and humiliation on the client.

The Client

Like the legal system and the lawyer, the client will also bring her own issues to the representation. Chief among these issues are the disclosure taboos that forbid disclosing the rape at all. Unquestionably, survivors of other forms of torture, political torture, for example, may struggle to recount the atrocities they endured. Yet it is also common for political dissidents to feel proud that they are part of a struggle against tyranny in their country – pride that may be shared by family and community. This pride and support stand in sharp contrast to what I am referring to as disclosure taboos, silencing mechanisms that inflict dire consequences for disclosing rape. In preparing an asylum case, lawyers may thus see clients unable to provide the lawyer with the facts necessary to make the asylum claim. These circumstances are foreign to the lawyer, who believes she is operating within a rational system in which those who want relief naturally and willingly share the facts that entitle them to that relief.

The asylum seeker, by contrast, may feel as if she is “in a state of ‘speechless terror’ in which . . . she lacks words to describe what has happened.” (van der Kolk and Fissler 1995, p. 6) Naomi talked about trying to describe the brutal rape inflicted on her:

For gender-based violence victims, there is no excitement, you want to keep it to yourself. Talking about sexual abuse is very hard. When someone is beaten, they can give so many details, like, “they punched me in the eye” or “then a car came by.” But how do you explain sexual abuse? And there is a pride in traditional political protesting but people don’t talk about rape and pride. (Naomi. 2012. Interview by author).

Unfortunately, explaining the sexual abuse is exactly what is required in an asylum case.

A story about a women’s therapy group that I ran when I was a clinical social worker illustrates the enormity of the task for the survivor. The group consisted

of Western women, each a survivor of some form of sexual assault, who I also saw individually. Few of the women had shared their history of sexual assault with family, friends or community. One woman tried, but her family disowned her, choosing instead to believe the denials of the rapist, the survivor's uncle. Another woman's rapist was a "pillar of the community," and she was terrified of the social consequences she would pay for disclosure.

One therapeutic model intended to combat the internalization of disclosure taboos and empower the survivor is to give voice to a silenced part of the survivor (Courtois and Ford 2013, p. 121, 160). This model is particularly effective with memories of shameful trauma as it gives the survivor an opportunity to be supported, rather than blamed or shamed for the abuse she experienced (Courtois and Ford 2013, p. 121). When I proposed engaging in a form of group narrative therapy, the women vehemently resisted, making it clear to me the enormity of what I was asking them to do. In contrast to the asylum process, the purpose of this exercise was therapeutic. It was neither to scrutinize the women's narratives of rape nor to subject any part of those narratives to interrogative cross-examination. Thus, no one was to be exhaustively questioned about the details of their sexual assault. No one would be asked, for example, what time of day the rape occurred; or what color shirt the rapists were wearing; or what the rapists exactly did or said before, during, and after the rape.

This lack of examination stands in sharp contrast to the legal process to obtain asylum, in which the survivor will be expected to recount all such exhaustive details. And while the women in the group all eventually agreed to share their narratives in the group setting, that agreement was reached only after months of intensive individual and group work in a safe therapeutic atmosphere. Disclosure taboos, hard at work within the safe context of a therapeutic container, are likely to be working overtime in a legal environment that is notably less safe and can even appear hostile or authoritarian. Isabelle's story is a story of the impact such a hostile environment can have. Among other parts of her experience with Larry, Isabelle described him as loud, abrasive, and male. As detailed earlier, there was little in the environment of Larry's office that would have created a safe place in which Isabelle could disclose the rape.

Another issue that a rape survivor seeking asylum may encounter is that the adjudicator may base a credibility finding on the adjudicator's expectation that the asylum seeker's narrative will be a sequential recitation of the persecution. The human psyche, however, will not necessarily allow memory of trauma to be recorded in this manner because the pain of the trauma may be intolerable. The psyche may edit or even delete memories of the rape to protect itself from

irreparable damage, creating a narrative that is equally edited or missing (Halligan 2003). Although this self-editing can play a positive role in the survivor's psychological healing, clients and lawyers are likely to find it confounding and frustrating because it may stand in sharp contrast to an adjudicator's requirements of linearity. Clients may feel pressure to fill in the memory gaps. They may also be receiving unsolicited advice from their community on "what to say," advice that may or may not be useful or accurate. Clients may also predetermine what pieces of their narrative are important and what pieces are not. Given that the client is unlikely to have legal experience, such judgment calls are not necessarily accurate. Clients may also withhold information because of a fear of judgment from their legal representative.

Finally, the testifying is likely to be terrifying to the client. Human beings are notoriously bad witnesses.¹³ Under the best of circumstances, we do not necessarily remember events clearly or linearly. Having to do so under oath can fill us with anxiety. Indeed, I have seen professionals shaking at the thought of testifying at a deposition and subsequently fail miserably at giving linear, cohesive testimony – and this when the matter about which they are testifying is impersonal and the stakes are financial. In an asylum case, at stake is the life of the asylum seeker and perhaps that of her family as well. Moreover, disclosure taboos will be working overtime to silence a survivor testifying to a black-robed authority figure, subjected to cross-examination, all in a public forum.¹⁴ Likewise, language issues can greatly impede testimony. The asylum seeker may not be able to communicate directly with the adjudicator, putting her at the mercy of an interpreter who she can only hope is accurate, understands the nuances of her history and does not have her own preconceived notions about the asylum seeker's history. In defensive asylum proceedings in the United States, it is the immigration court, and not the asylum seeker, that provides the interpreter. An asylum seeker will not know who that interpreter will be until she gets to court the day of her merits hearing. Consequently, in addition to being yet another stranger to whom the asylum seeker must recite her rape narrative, the interpreter might be of a different gender, increasing the shame and difficulty of the testimony.

Although all of these issues can be overwhelming to both the client and the lawyer, they can be tempered. At the very least, the lawyer can educate herself regarding the potentiality of these problems and insert into the process plenty

¹³ As one expert in litigation psychology vividly framed the issue, the "average" witness may be "a dangerous grenade with the pin pulled out, ready to explode" (Singer 2012).

¹⁴ Notwithstanding assurances of the confidentiality of asylum procedures, most survivors view a courtroom as a public forum.

of opportunities to dialogue with the client regarding the issues. The solution the dynamics necessitate, however, is an interdisciplinary legal team.

THE NECESSITY OF INTERDISCIPLINARY COLLABORATION

I was privileged to be a part of Isabelle's new legal team. Isabelle later told me that it was because of my approach that she could talk about the rape (Naomi 2012; interview by author). For example, I knew from my years as a social worker that interviewing success comes not solely from either hand-holding or confrontation. Regardless of how tragic a client's story, or regardless of how necessary a piece of information is to the legal case, an interviewer must know how to balance the two and have the skill to know when and how to use each technique and when and how to move from one response to the other. For example, I knew that the government attorney and the adjudicator in Isabelle's case would want to know why she did not come forward about the rape in Alex's asylum case.

The assumption underlying this question was that Isabelle simply fabricated the rape in order to get asylum for herself and her family. A rigid gendered legal framework cannot allow for the possibility that an asylum seeker cannot disclose sexual torture without certain safeties and trust established with her legal representatives who conduct the client interviews. Working within the current legal framework, then, necessitates exploring the disclosure taboos in order to explain the underlying mental health and cultural issues in a way that satisfies the adjudicator's fabrication concerns. Questioning the asylum seeker on her lack of disclosure, however, presents a risk that the question will lead the client to think that her legal representatives do not believe her.

Regardless of the sensitivity of the lawyer, it is almost inevitable that the client, while intellectually understanding why the lawyer is asking the question, may understandably have an emotional response to the questioning. The client may feel the lawyer is not really on her side, or that the interrogatory nature of the question makes it too difficult to continue the process. Lawyers may err on either a "Larry" approach, in which there is no thought to how the question can be asked in order to minimize its interrogatory nature; or the hypersensitivity issue discussed above in which the lawyer is hesitant to ask at all, which of course risks that the first time the question is asked is in the hearing with the adjudicator. Interdisciplinary training and continued work with mental health professionals can give the lawyer the skills in how, when and where to ask these difficult questions. Interdisciplinary training can encourage the lawyer to have a mental health professional available to the client to process a difficult interview. By enlisting a mental health professional

as a continued source of support for the client, the client has someone on her team whose sole purpose is to offer support and develop coping mechanisms to get through the process itself, someone who does not need to ask the interrogatory questions.

Notably, however, my social work skills alone did not lead to the success of Isabelle's case. First and foremost, it was Isabelle's own persistence and courage. After Isabelle, it was the interdisciplinary approach with which my colleagues and I approached the case; in other words, it was the skill and knowledge of both professions in partnership with the client that created the space in which Isabelle could disclose her narrative and her story could subsequently be framed consistent with the requirements of the U.S. asylum law. This is not to say that the process was in any way easy on Isabelle. To the contrary, the legal system did what it always seems to do and revictimized Isabelle, Alex and their children by, first and foremost, forcing Isabelle to disclose a rape she had decided long ago never to disclose. Furthermore, Isabelle's narrative of that rape was subjected to microscopic examination and cross-examination. Present was that never-ending question always asked of rape survivors: did it really happen? Isabelle's case thus concretized for me that the only way through that system is via the creation of a new subsystem of interdisciplinary collaboration in which the asylum seeker's professionals are fluent in both the law and mental health.

It takes skill on the part of a lawyer and great strength on the part of a client to jointly navigate the disclosure taboos, the trauma, the shame and the lawyer's own preconceived notions about rape to frame the client's narrative in a way that is legally compelling and consistent with the system's requirements while simultaneously remaining willing to ask and answer those difficult questions, address the system's gendered framework and prepare for a proceeding that is likely to be more interrogative than investigative. The enormity of this task can be significantly eased with the use of an interdisciplinary approach. To gain an understanding of how to successfully work with a survivor, for example, the mental health professional and the lawyer together can begin to explore questions that seek to push the relationship beyond the gendered restrictions. These questions should become part of an attorney's regular practice and include such questions as:

How do I identify if my client is a rape survivor?

How do I establish trust or rapport with my client and overcome the consequences of trauma such that she will be able to tell me about the rape?

How do I explain the confusing law to my client?

- How can I ensure that the interviews are accurately translated?
- How can I best ensure that I understand the client's responses to disclosure and to the trauma of the legal process?
- How do I genuinely respond to what I hear?
- What response is sincere and respectful versus condescending or patronizing?
- How much personal response is appropriate and how much will only serve to further embarrass or shame the client?
- How do I overcome my own discomforts of hearing an account of rape?
- Am I limited by my own cultural preconceptions about rape?
- Am I limited by my own issues of outrage at my client's victimization and the likely impunity her persecutors enjoy?

In exploring these questions, the professionals can identify what limits the representation and can work together with the client so that she can feel as safe and supported as possible and so that the adjudicator sees an accurate and compelling account of persecution.

In Isabelle's case, for example, the system's definition of rationality called into question why she did not immediately flee her home country after the rape and why, at the very least, she did not come forward to make her own asylum claim once the family did escape. We anticipated that the immigration judge or the government attorney would ask about this as a credibility issue. We therefore spent many hours together ensuring not only that Isabelle was prepared to explain the issue but that we, as her lawyers, had sufficient expert testimony to present to the immigration judge that put the time lapses in context. Consequently, for example, we researched how the combination of a misogynistic culture with the disclosure taboos and the unsafe environment provided by Larry guaranteed that Isabelle could not have disclosed her rape during Alex's asylum case, and how the choice to leave was not Isabelle's to make but was left to Alex.

The mental health professional and the lawyer can also work together to minimize the harm of the legal environment. A lawyer cannot establish the kind of space in which a mental health professional works. Lawyers often meet with clients in conference rooms, for example, as opposed to an office of a mental health professional that is specifically designed to establish safety and comfort for the client. A mental health professional may also take some notes during a session with her client, but a lawyer cannot do her job without taking copious notes of what the client reports so that she can put the client's account of persecution into a persuasive and organized litigation package for the adjudicator. The mental health professional can, however, assist the lawyer

in considering issues that can increase the client's sense of safety, alleviate stress and convey the importance of the client's well-being. Thus, the lawyer should consider logistics such as room size, where people sit, who is in the room, does the gender of who is present matter, what about meal times, travel times, interruptions, and distractions. How a lawyer addresses these considerations can become central to whether a client feels safe enough to disclose. These are questions that mental health professionals consider every day, making cross-professional work essential in asylum representations of rape survivors.

Likewise, the mental health professional can help the lawyer frame the interview questions to be productive, understand the responses and assess whether what appear to be holes or inconsistencies are simply manifestations of trauma. Similarly, the mental health professional can assist the lawyer in identifying signs of retraumatization, how much meaning and risk should be assigned to such symptoms and work with the client to formulate response options. Finally, the most difficult of interviews can take place in a mental health professional's office, where the client has access to both her professionals.

CONCLUSION

The past few years has seen an increase in an interest in interdisciplinary practice. There have been cross-discipline trainings across the country. Asylum clinics often have a mental health professional guest lecture on the topic of mental health issues in asylum claims. The lecture typically includes the expert testimony that a mental health professional can provide. By doing so, the lecture also introduces the students to the concept of the impact of trauma on memory and the particular methods of interviewing traumatized clients that may be successful in overcoming disclosure taboos and post-trauma symptoms and in establishing a safe environment in which the client can disclose the details of a trauma such as rape to the legal representatives. I have regularly done trainings for law students on the same topic. Lawyers are also conducting one-session trainings for mental health professionals to educate the professionals on asylum law and process in the United States.

Although these trainings are helpful, they are introductions. The feedback I regularly receive from participants is that one-session trainings are insufficient, and that even the consultations with an expert mental health witness regarding the testimony leaves the legal representatives in unfamiliar and often frightening territory. Law students regularly report that they are unsure how to respond to a client speaking, in particular, of brutal accounts of rape, or

if and how to respond to indicators that the client is experiencing emotional trauma during the students' client interviews. Students have, for example, reported clients staring off into space or heavily grinding their teeth while speaking about history of atrocious sexual violence.

It seems to me that under these circumstances, the harsh asylum process can so easily go awry for either the client or the untrained lawyer or law student. When we are stuck and unsure of how to move the process forward, when the client seems so fragile it seems as if she could break with a breath, when the issues of disclosure taboos and self-edited narratives put the legal case at risk, or even when the brutality of what we are witness to is overwhelming, the natural solution is a partnership across professions. Such a partnership would include intense trainings and regularly scheduled and structured cross-disciplinary consultations that go beyond expert witnessing into the formation of interdisciplinary teams.

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