

National Capacity Building Project: Technical Assistance of the
Survivor of Torture Programs

The Asylum Process: Interdisciplinary Responses to Multifaceted Challenges

April 16, 2023



The
CENTER for
VICTIMS of
TORTURE



Harvard
Program
in Refugee
Trauma



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OF TORTURE
TREATMENT
PROGRAMS

Asylum Assessment and Evaluations



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Asylum Seekers in a Time of Record Forced Global Displacement: The Role of the Clinician

Katherine C. McKenzie, MD
Director, Yale Center for Asylum Medicine



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Conflicts of Interest

- No disclosures





Outline

- Historical and legal background of asylum
 - Criteria for gaining asylum
 - Performing medical evaluations of asylum seekers
 - Forms of torture and persecution and common related scars
 - Teaching asylum medicine
-



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- **Historical and legal background of asylum**
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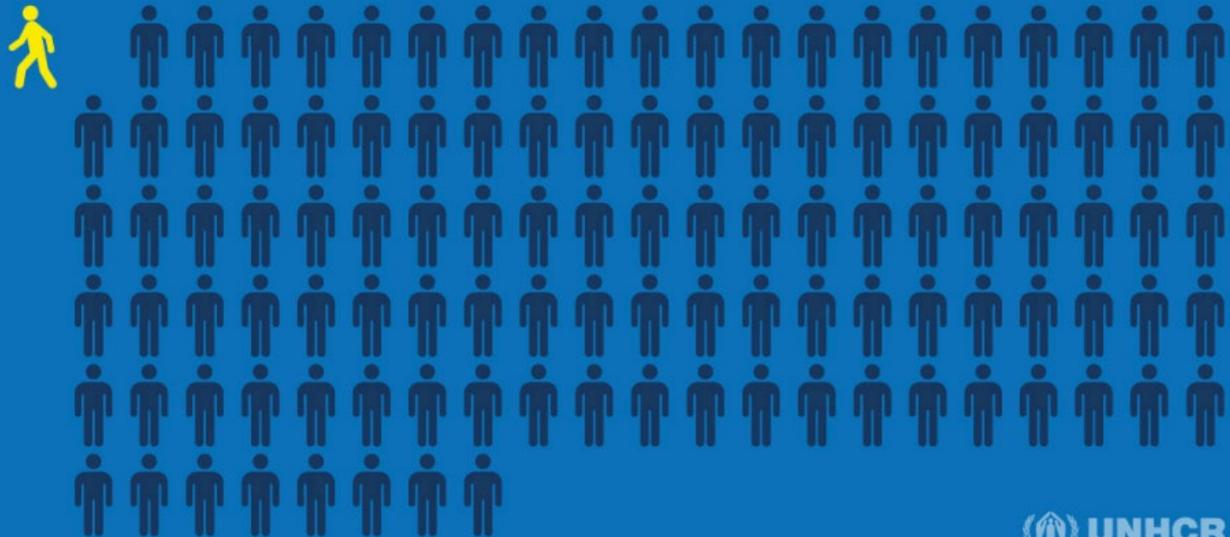
Ancient History of Asylum



Sanctuary ring on the door of Notre-Dame in Paris
During the Middle Ages, grasping this ring gave the right of asylum

Gil-Bazo M-T. Asylum as a General Principle of International Law. *International Journal of Refugee Law*. 2015

1 in every 113 people on earth is an asylum-seeker, internally displaced or a refugee



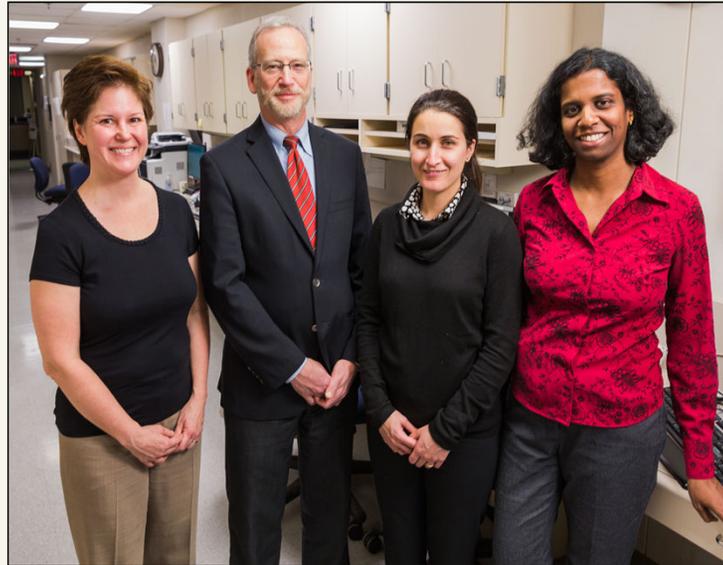
Source: UNHCR / 20 JUNE 2016







Yale Center for Asylum Medicine





Modern History of Refugees and Asylum



THE UNIVERSAL DECLARATION OF Human Rights

Preamble Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Preamble disregard and contempt for human rights have resulted in atrocious acts which have outraged the conscience of mankind, and the freedom of the world, to which human beings have

aspirations to promote social progress and better standards of life in larger freedom.

Preamble Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.



Universal Declaration of Human Rights. United Nations; 1948



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Legal Criteria for Refugee and Asylum Status

- Persecution [is perpetrated] by the government, or the government [must be] unable or unwilling to provide protection from [that] persecution



UNHCR



World Relief

Legal Criteria for Refugee and Asylum Status

- Race
- Religion
- Nationality
- Political opinion
- Membership in a particular social group
 - Domestic violence
 - Gang related violence
 - LGBTQ violence
 - Gender related violence
 - Female genital mutilation/cutting
 - Forced marriage



UNHCR



Fisher Jones
Greenwood

Refugee vs. Asylum Seeker

	Refugee	Asylum
Meets legal criteria?	✓	✓
Timing of legal status?	Granted <u>before</u> entering US	Apply within 12 months <u>after</u> entering US



Convention and protocol relating to the status of refugees. Geneva: Office of the High Commissioner on Refugees



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Istanbul Protocol

OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS
Geneva



PROFESSIONAL TRAINING SERIES No. 8/Rev.1

Istanbul Protocol

*Manual on the Effective Investigation and
Documentation of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment*



UNITED NATIONS
New York and Geneva, 2004



YCAM: Medical Evaluations of Asylum Seekers

- Academic legal clinics (Yale and UConn)
- Immigration attorneys
- Human rights groups (Physicians for Human Rights, HealthRight International, American Friends Service Committee, IICONN)

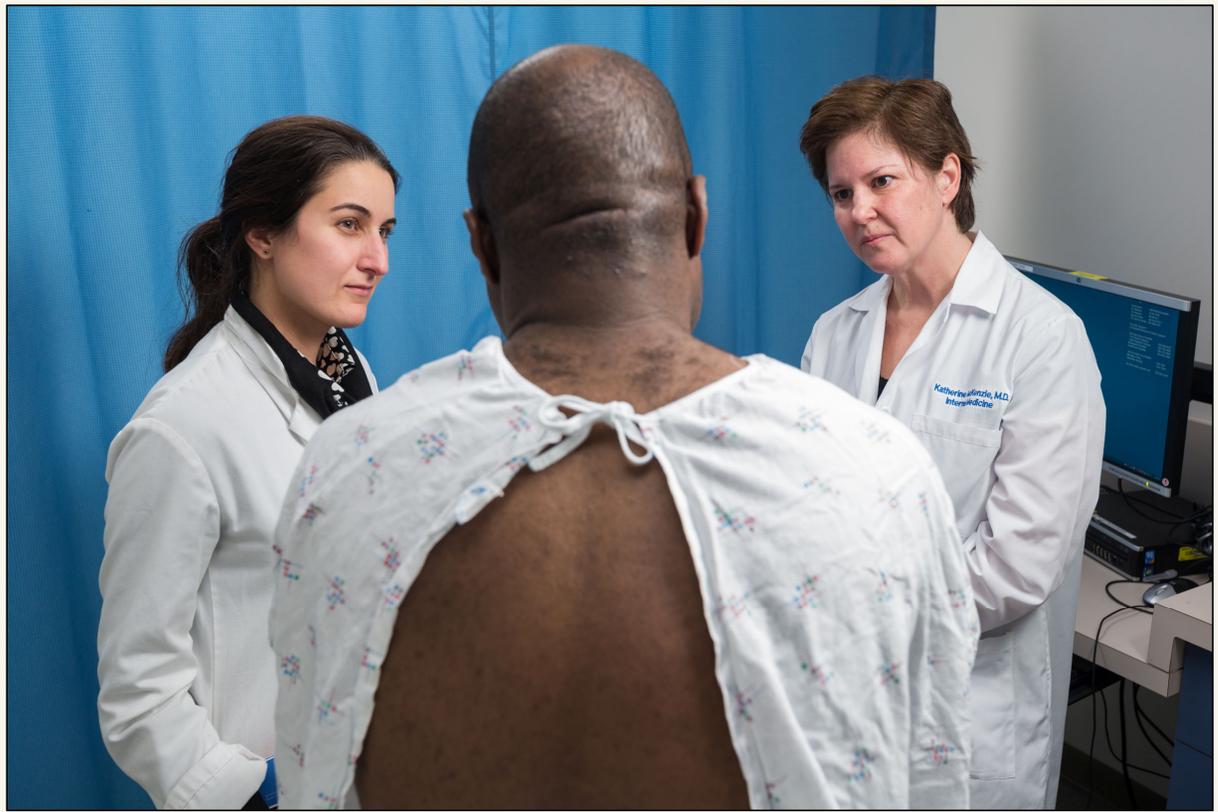
PHR

**Physicians for
Human Rights**





Interview and Review Injuries Due to Persecution



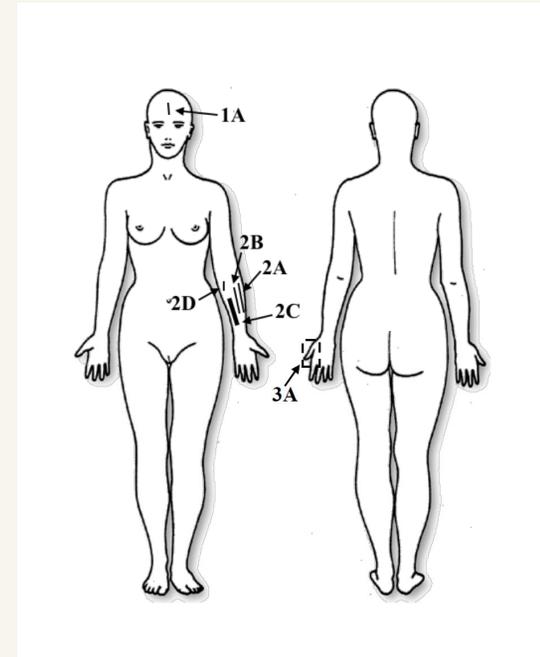
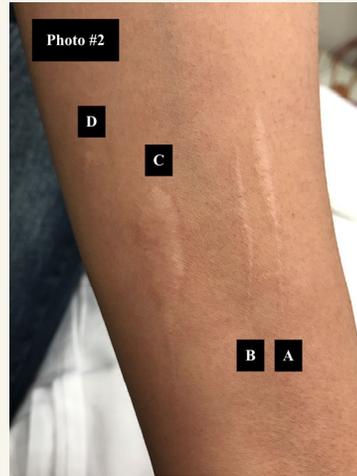
PHR;. Examining asylum seekers : a clinician's guide to physical and psychological evaluations of torture and ill treatment. Cambridge, MA: Physicians for Human Rights; 2012.

Examine Scars Related to Persecution



McKenzie KC, Thomas A. Assisting asylum seekers in a time of global forced displacement: Five clinical cases. *Journal of Forensic and Legal Medicine*. 2017

Documenting Signs of Torture



Documenting and Describing Signs of Torture



Scar # 1). A 6.5 cm long, 4 cm wide flat and oval shaped scar with irregular pigmentation and sharp borders. It is on the medial side of the right leg and is consistent with a scar from blunt trauma

Scar # 2) A 4 cm long, 1 cm wide flat linear scar on the medial side of the right leg consistent with blunt trauma.

Scar # 3) A 3/4 cm circular hyperpigmented scar on the medial side of right leg consistent with blunt trauma.

Scar # 4) A 3 cm faint pigmented linear scar on the anterior side of right leg consistent with blunt trauma.



Istanbul Protocol: Degrees of Consistency

<i>Not consistent with</i>	The lesion could not have been caused by the trauma described
<i>Consistent with</i>	The lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes
<i>Highly consistent with</i>	The lesion could have been caused by the trauma described, and there are few other possible causes
<i>Typical of</i>	This is an appearance that is usually found with this type of trauma, but there are other possible causes
<i>Diagnostic of</i>	This appearance could not have been caused in any way other than that described

United Nations, Office of the High Commissioner for Human Rights. Istanbul Protocol manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. United Nations, New York. 2004.



Provide Objective, Expert Evidence in Immigration Court

Yale SCHOOL OF MEDICINE *Department of Internal Medicine*

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DECLARATION OF KATHERINE C. MCKENZIE, MD CONCERNING XXX

November ZZZ

MEDICAL EVALUATION

I, Katherine C. McKenzie, am a licensed physician in the State of Connecticut, currently working as a general internist on the faculty at Yale School of Medicine and as an attending physician at Yale New Haven Hospital. I am trained and board certified in Internal Medicine.

I am a graduate of Boston University School of Medicine, and I received my clinical training as an intern and resident at Boston University Hospital in Boston, Massachusetts.

Since 2006, I have provided medical forensic examinations for asylum seekers referred to me by Yale Law School, The University of Connecticut School of Law, Physicians for Human Rights, HealthRight International, the International Institute of Connecticut, the American Friends Service Committee and private immigration attorneys. I have received specialized training from HealthRight International in the evaluation and medical documentation of victims of torture and other human rights abuses.

This medical report reflects an interview and examination conducted on XXX at Yale School of Medicine, New Haven, Connecticut. At the time of this examination, I reviewed in detail the declaration provided in support of an application for asylum submitted by XXX.

The findings of XXX's physical examination, as detailed below, support and are consistent with the events recounted in her declaration and that she described to me when I interviewed her as part of the examination.

Events Described by XXX

1. XXX is seeking political asylum in the United States. She is from YYY.



Scruggs et al. A qualitative study of legal perspectives on medical affidavits in the asylum process. *JFLM*.44:72-8.



Benefits of a Medical Forensic Evaluation



A PHR study showed that 89% of asylum seekers who received forensic evaluations through PHR were granted asylum compared to the national average of 37.5% among US asylum seekers who did not receive PHR evaluations

Lustig SL, Kureshi S, Delucchi KL, Iacopino V, Morse SC. Asylum grant rates following medical evaluations of maltreatment among political asylum applicants in the United States. *J Immigr Minor Health*. 2008



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Forms Of Torture: Blunt Trauma



Forrest D. Examination for the late physical after effects of torture.
Journal of Clinical Forensic Medicine. 1999



Forms of Torture: Burns





Forms of Torture: Sharp Trauma



Danielsen L, Rasmussen OV. Dermatological findings after alleged torture. *Torture : Quarterly Journal on Rehabilitation of Torture Victims and Prevention of Torture*. 2006;16(2):108-27

Forms of Torture: Forced Positioning



PHR



cnn.com

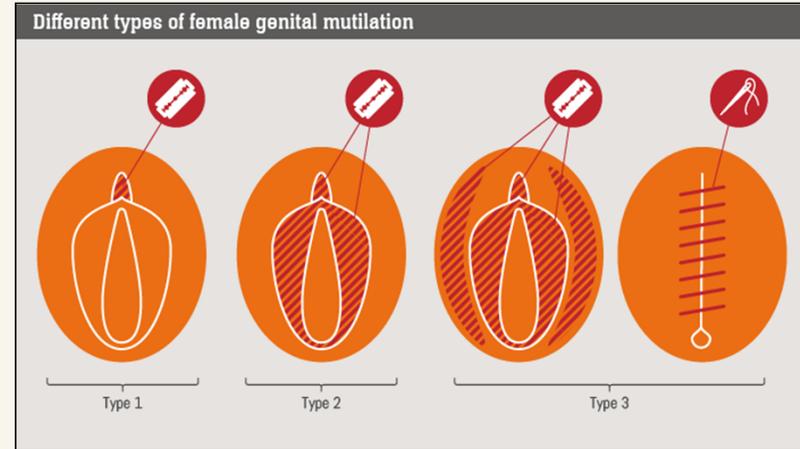


Peel, Editor. The Medical Documentation of Torture. New York: Cambridge University Press; 2002

Forms of Torture: Suffocation



Forms Of Persecution: Gender Based Violence: Female Genital Mutilation/Cutting



Female genital mutilation/cutting: All procedures that involve partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons

Fact Sheet No. 241: Female Genital Mutilation.
World Health Organization. 2000.



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Teaching Asylum Medicine at Yale



*“To tame the savageness of man and make
gentle the life of this world”*

-Aeschylus

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Survivor of Torture Programs

Asylum Evaluations by a Treating Clinician

Hawthorne E. Smith, Ph.D.

Director, Bellevue Program for Survivors of Torture

President, National Consortium of Torture Treatment Programs



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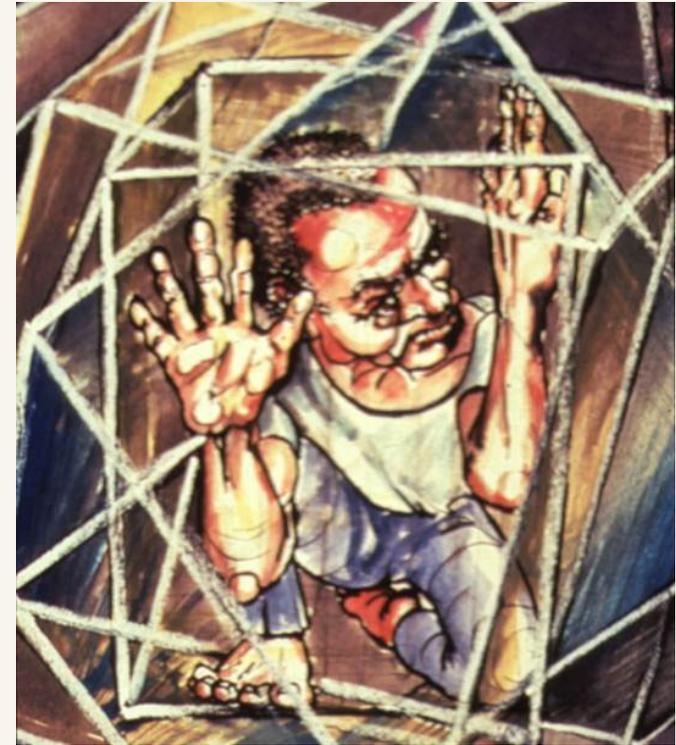
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Primary Asylum Questions

- Are you the person you say you are?
- Do you come from the country you say you come from?
- Have you gone through the experiences you claim to have survived?



IRCT



Approach to the task

Goal – To produce the most detailed, comprehensive, and insightful report possible.

Not to “win the case”

Approach - Focus on effective collaboration and communication

Not just “touchy-feely,” “PC” stuff.



Multiple Goals



Legal and therapeutic benefits

“It doesn’t have to be therapy to be therapeutic.”

Types of Psychological Documentation

- One-time psychological evaluation
- Ongoing treatment

Different forms - (Legal Affidavit or Psychological Summary)

Presenting problem; Means of referral; Brief history; Course in treatment; Describe how symptoms fit with diagnosis; Clinical summation; DSM-5;





Structural Limitations

- Consistency not Causation
 - Cannot report past facts as such (reported events)
 - No pre-morbid contact with client
 - Possible v. Probable – No 100% certainty
 - Bounds of competency
 - Not country experts
 - Not political experts
 - Not cultural moralists
-



Clinical Assessment

- Review of Systems -
 - Review of Experiences
 - Review of Context
 - Review of Feelings
 - Interdisciplinary Focus
 - Psychiatric functioning as part of overall health
 - “How are you sleeping?”
 - Normalizing the conversation
 - Patient is the best determinant of pain/distress
 - Avoid stigmatizing or minimizing
-



Evaluation Priorities and Techniques; Safety



- Of crucial importance for people who have lost their sense of safety and/or their sense of trust;
- Potential for re-traumatization
Many people have been tortured in the context of interrogation

Safety (cont'd)



Create a climate where the client can open up, share, and trust;

Work against negative institutional transference



Safety (cont'd)

- **“Anticipatory guidance”**
 - Explain process and potential benefits
 - Normalize fears and anxieties
 - Reduce ambiguity
 - Relate ambiguity to psychological torture techniques
 - “Accompanier” model - stretching of traditional roles
 - Emphasize therapeutic value of positive personal relationship
-



Evaluation Priorities and Techniques: Empowerment

- Of crucial importance for people who have been purposely and violently disempowered;
- Helps them to find their voice in an intimidating situation (it can mean life or death)
- May need reinforcement and elevation in the perceived power hierarchy



Empowerment (cont'd)

- Context of mutual respect – it's a cycle. Pt. is helping you to do the most thorough job possible on their behalf

- Collaborative v. expert stance

Relationship between two human beings not
“expert” and “victim”

Give sense of control and ownership

Do not add another cultural boundary
(legal processes) in which they
do not know the norms/behaviors





Empowerment (cont'd)

Allow client to teach/share

Model that their thoughts/ideas have value

Some country knowledge is valuable, but you don't have to be an "expert"

Language issues

Acknowledge multiple language skills; particularly for those who are struggling with English (most Americans struggle to speak just one language)

Process Issues

Humanistic Approach

Free floating v Specific Sequence

Collaborative context – not punitive like they are doing something wrong; do not want to discourage sharing





Process Issues

(cont'd)

Understanding the Trauma history:

Consider process as well as content (Where does client begin narrative? What is the focus? How is the story told?)

Use for evidence regarding thought processes:

Gaps in history? Inconsistencies? Affect? Fixations?
Avoidance of certain areas?

Look for consistencies/examples (i.e. finding the office; navigating the transit system; time management)

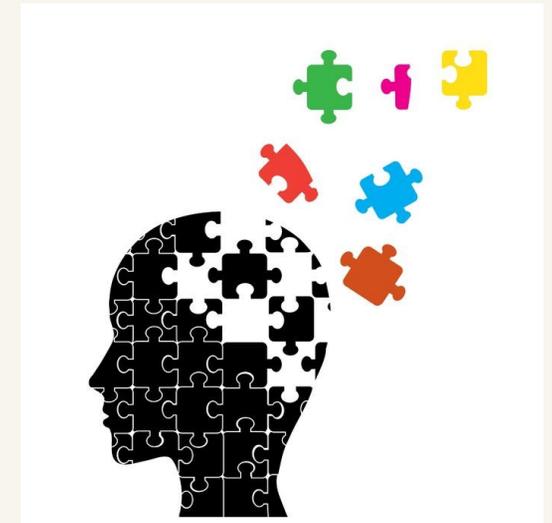


Trauma and Memory Function

Trauma impacts how memories are encoded and how they are accessed;

Complex neurological interconnections;

“Library metaphor”



Helping a “withdrawn” client

- Normalize and give a sense of control
- Restate the potential benefits of sharing
- Reiterate the reason for the question and how it can be helpful



Helping a “flooding” client

- “Flooding”
 - Information or affect overload
 - Tangential, circumstantial, ruminative, or fixated
- Containing
 - Short breaks
 - Developing mutual goals
 - Restating the purpose/need for focus





Helping a “hopeless” client

- Safety Assessment
- Reflect back and inquire about resources strategies they already possess, or interventions you may provide
- Normalize and share experiences of witnessing change and improvement (victories?)





Credibility is Paramount

- Respect bounds of competence
 - Context is key
 - Consider process as well as content
 - Feedback from fellow expatriates (group encounters, etc.)
 - Historical/Cultural knowledge
-



Comments about testifying

Focus on consistency, not causation

Acknowledge limits of knowledge (no pre-morbid contact)

Cannot expect to always eradicate ambiguity

Limits of competence (possible v probable)

Be careful of being drawn into adversarial relationship

More effective when seen as professional/expert, not
advocate

Be prepared to defend credentials



Insights from former applicants



Wide range of presenting styles/reaction

“Getting to express
myself”

“My heart holds more
than I can say”



Insights from former applicants

Setting a humane context is the key

“Humanity is the only thing we
have in common”

“Treat me like I’m a human being
who has no country, no home,
and I’m asking if I can stay with
you.”





Questions?

Have a question or something you want to discuss more in-depth? Here are some options for you:

- Type your questions in the Q&A, or
- Type your questions in the chat, or
- Raise your hand using the reaction button.

Have a questions after the presentation? Here is the contact information for our presenters:

- Name: Hawthorne Smith | Katherine McKenzie
 - Email: Hawthorne.Smith@nychhc.org | katherine.mckenzie@yale.edu
-



Thank you
for attending
this NCB
virtual
training!

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The National Capacity Building Project is a project of the Center for Victims of Torture in partnership with Harvard Program in Refugee Trauma and the National Consortium of Torture Treatment Programs.



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More resources are available at www.healtorture.org.

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