

ATTORNEY-CLINICIAN COLLABORATION IN IMMIGRATION PSYCHOLOGICAL EVALUATIONS

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M: ...Whether we're attorneys, clinicians, paralegals, support staff, the client.... **everyone in the team has this central goal of fully presenting the client's case, making sure that the client's truth is fully heard in the context of an immigration system that has a tendency to silence immigrants' voices...**

There's a ... recent dissertation from 2020 by Hanna Schwartzbaum called *How Psychologists Make Meaning of their Work with Asylum Seekers in a Turbulent Sociopolitical Climate*, and that dissertation does a great job of talking about the **central goal of humanizing the client**, which I think is another way of encapsulating that shared goal, that ultimate purpose that we try to humanize the client in front of immigration adjudicators who are conditioned in some ways to attach numbers to our clients, to identify them by their alien numbers, by their file numbers, and with such backlogs in the immigration system it's important to come back to humanizing the clients. ... You are documenting the life and the reality of a person who otherwise is simply called undocumented. **But in cases where there isn't as much evidence as we'd like about trauma and about scars in the person's past, the psychological evaluation helps us to show the scars that might otherwise go unseen...**

D: ...I've been doing this for over ten years and **all I have learned about immigration evaluations has been through the attorneys who have carved out time out of their busy schedule to share how I can use my clinical skills as a mental health provider so that they can best represent their client. There are no certification programs or degrees specific to immigration evaluations.** In fact, I only learned that there was a need for mental health providers for this work when an attorney contacted me about a mutual client. That is how it all got started. Up to that point I knew that individuals and families sometimes required a letter confirming services they receive. I never imagined that there was a comprehensive evaluation that directly supported or strengthened their legal case. My conversations with attorneys or the feedback I've received is the only way I have been able to improve on my service delivery. I like to say teamwork makes the dreamwork and really with an immigration system that is constantly changing, yet remains broken, if we don't work collaboratively and creatively we miss the ball and have much less of an impact with this humanitarian crisis.

But it also makes me think about the reality that clinicians are not necessarily trained, or ... as we go through our own training as licensed providers there may be a small exposure or awareness of, this is a special population, the injustices that undocumented immigrants face, but when it comes to using mental health assessments to support or strengthen their legal case, every provider I've talked to, they kind of say, "Oh it kind of fell into my lap," or someone made us aware but it really wasn't something that we knew or that we thought we were preparing for as we were preparing as professionals. And so, I know for me it started because an attorney requested just a letter confirming a service for a client, and then ... my perspective is that he noticed that I could write well in English and that I was a bilingual provider and so it was through him, where he said, "Hey, listen, this is something that is crucial for many immigrants in their legal case and there are few providers that can serve these individuals and do this work and that also know how to write the report."

... **For that one attorney to carve out the time to say, "This is something that's needed, and I can give you some guidance but I still want you to use your clinical judgment and keep this within your scope of practice, but I can give you an idea of the information that should be covered in this type of report"—so for me, that's the start of it.** But ... best practice is rooted in that collaboration, and that there is a cost savings aspect to it, or a time saving as well, I think is important. And working with varying attorneys, it's not everyone that carves out the time to do that. Or submitting a report and making sure that they have their eyes on it, because there may be something that I didn't realize legally, that the way I said it may actually hurt the case ... A lot of us don't even know that is an actual need and a way that we can support families. And the reality that if we say we want to, then there's this big question of, "How do we make sure we're doing it the right way?"

And there are huge differences between this assessment and a traditional assessment, and also this assessment and the report we write in comparison to what ongoing treatment may look like. And so I do think there's this awareness of the clinical skills that we need to incorporate, and how that looks a little different, and what rapport building looks like, and many immigrants, maybe all, are approaching this with quite a bit of fear and uncertainty ... like they're kind of following the steps but they don't know what will result of it, or if this will just be another thing where they invest their money and nothing's going to happen to support their legal case, or the fear of repercussions or actually being deported if they open up about their situation at all or try to pursue legal representation. And so keeping that in mind is highlighting the complexity of it all, and if we do that, it means it's more complex on our end and that's why I think **we have to stop, pause and think about how important it is to be able to collaborate, so that we increase the likelihood of the results that we would like to see. I always say, coming alongside of them and with compassion, understanding their journey, explaining what we are there to do,** and then hopefully opening the pathway where, like you said, they are really sharing their truth so that we have the best opportunity to build their case. And I always get confused with all the legal terms but I think you know on your end what that really looks like.

M: ...The part of the report that's the most dense when I'm reading it is the diagnostic impressions, and so there are all these terms that I know are going to be unfamiliar to most attorneys, and so we as attorneys will sometimes get lost in that jargon and that detail [...]

[E]ach of the fields, each of the collaborators, will have their own form of expertise and their own jargon and we'll be getting lost in each other's worlds in a way, but the way that we find our way is through this collaboration.

D: Right.

M: That's essential, and that's where **the attorneys can learn from the clinicians how best to present psychological realities so that immigration adjudicators can learn more about a case, and then clinicians or evaluators who are doing this work can learn gradually about the legal framework and that can help to inform the report.** So it is really a symbiotic relationship.

D: In terms of informing, for the report, for most mental health providers, we are also stepping into this with our own uncertainty or fear. We might provide a report without ever knowing if we actually helped or what the outcome was. And so it takes a level of acceptance for us to know that we did the best job we could, we're submitting this, and we may never know. For some cases we may hear back, but for others we may not.

But with that being said, I think for providers who have the best intentions and their heart is invested in really helping, at least for me that's how I got involved with this work. It's because I saw this broken system, and I wanted just this other avenue to help case by case. And so it's been very valuable and very important to me to get the feedback from attorneys when they're saying, "Hey, this is how this comment might be interpreted" or maybe questions they have in terms of clarification, or sometimes it could just be a change in wording or one statement that really bumps it or strengthens the information that's being provided. So whether it's ... the organization of the report, ... sometimes the subtitles, how it's presented, whether there's a case summary at the top, a conclusion, how we tie it in, maybe it's rephrasing sometimes, ... and how much repetition, because we're driving home a certain point ..., or referencing whatever we're talking about and tying it to whatever is most relevant. So I always say I'm sneaking in more information that I know might help, but I'm doing it in a way that it's not going to be discounted because they'll say "That's irrelevant." And so it does take a level of creativity and exploration, and that's the same thing **I tell clients as they're sharing their information, that the details they provide, they might think it's minor but it might actually be something that is of much value in their case.** I get excited when attorneys make the time to review the reports word for word, and when they're engaged before, during and after, so that you know, now it's sealed, this is the final report.

M: Yes, and your last point ties into this quote from an article called Developing Effective Supports for Immigrants and Refugees: Collaboration across Institutions and Community. "Organizations that are working together to serve immigrants, whether created by government, by non-governmental efforts, or by immigrants themselves – must establish mechanisms for interaction among the partners." This was by Paul Mattessich, Anna Bartholomay, and Nicole MartinRogers and it was prepared for the International Metropolis Conference in September 2017, in the Hague, Netherlands. They go on to talk about "... **the need for cross-sector consultation, collaboration, and high quality communication among public authorities and community-serving organizations as an absolute necessity for effective processes and services.**" It just ties into what you were just saying.

D: And I'm not going to say that all clinicians are accustomed to interdisciplinary work, but many

are. When you think about many mental health providers that are working in hospitals, in schools, in criminal justice systems, ... [T]he way we best identify patient needs and client needs, is when we're doing this warm handoff. In the clinical world a warm handoff is a transfer of care between two members of the health care team, where the handoff occurs in front of the patient and family. **Warm handoffs engage the patient and are a safety check.** Communication breakdowns within the health care team (in this case the legal and mental health team) or between the team and the patient or family can result in medical errors (missed opportunities for best legal representation). **With a warm handoff, we're able to talk back and forth about what we're observing, and bringing that together to offer the best care or come up with the best treatment plan. This is a model that we know already exists for vulnerable populations** and so applying it to what we're doing for forensic assessments, same deal. We're able to see the best outcomes if we're following those best practices models.

I am applying what I have learned in practice working with interdisciplinary teams and integrated health care, a best practice model used to improve health care quality and outcomes.

We know that integration of care is a solution for fragmented systems. Collaboration means working jointly to make sense of patients' needs and, together, identifying a treatment plan to best address those needs; in the context of immigration cases it means working together to determine the best legal representation for clients As a clinician, it is helpful to understand what is the focus of the case or most relevant information. I'll also note that there are integrated health care competencies by SAMHSA-HRSA Center for Integrated Health Solutions that include interpersonal communication; collaboration & teamwork; screening and assessment; care planning and care coordination; intervention; cultural competence and adaptation; systems-oriented practice; practice-based learning and quality improvement strategies and informatics. I believe these are the same competencies or principles we should be considering for immigration cases.

M: And now I think we can turn to how the need for attorney-clinician collaboration came about in the first place, in the context of immigration psychological evaluations. So **the very first forensic psychological evaluation in an asylum case in the U.S.** was in 1985, according to the literature that we have available. This evaluation was for a client called Mr. B ... So his case ended up being successful, and the literature describes the case as being inspired by a previous case for someone called Ms. M. This was an eighteen year old woman from El Salvador who had applied for asylum, and her application was actually denied by the immigration judge. And it seems that one reason for the denial was that the judge took issue with her emotional presentation, her psychological presentation during the individual hearing. She was described as "quiet and emotionless" even though she was describing the murder of her brother and cousins, and the torture of her partner by local gangs and Salvadoran security forces. And the judge thought that it was impossible for someone who had actually gone through these things to be so muted in their presentation at a hearing.

[...] it was after that case that the case of Mr. B came along. The immigration attorney there sought out a psychological evaluator and asked for a forensic evaluation in this case, **to explain why applicants might present in a counterintuitive way, and so that case set a precedent for the use of psychological evaluations in asylum cases.** And as we mentioned, Mr. B's case was actually successful. ... This history is described in Hanna Schwartzbaum's dissertation and also in Adrienne Aron's 1992 article called Applications of Psychology to the Assessment of Refugees

Seeking Political Asylum.

D: Yeah, we know that many models are moving toward trauma informed and trauma responsive. And so again, that's another reason why collaboration is important ... And it makes me think of a case where the attorney had, from various appointments with an individual, they had come to the conclusion that this individual maybe had a low IQ, and when I met the client it became very clear that it was just hallmark social anxiety. But just because of how he presented and how he would get stuck, and like he wouldn't be able to articulate or express himself, they actually thought it was a cognitive ... impairment. That's a perfect example of making sure they have an accurate assessment. ... We know they present with a wide range of potential adverse childhood experiences or trauma ... We can say the immigration system in itself is very traumatic and adds to minority stress. Individuals respond and cope differently and we have to be aware of that.

M: ... Another quote from the 2017 paper that I mentioned earlier says that we “must establish mechanisms for interaction among the partners.” I want to pause on the concept of mechanisms. So when you think about the lifespan of the psychological evaluation ... there's **the discussion with the client informing them, “one of the pieces of evidence we need is a psychological evaluation,”** and then you talk to the client about what that means. Then you send an email over to the evaluator. The process of finding an evaluator is another topic, that can involve reaching out to different people, talking about cost and best languages and time frames and so forth, so that is a whole other topic where you could mention a whole other set of mechanisms.

But fast forward to the point where you know which evaluator is going to do the case, the evaluation, then someone from the law office communicates ... my impression of a mechanism for this is that **someone from the law office communicates directly with the evaluator to give some background on the case**, even if it's an initial email that's about a paragraph or two sentences long, saying, here's the nature of the case, this is the type of application, brief summary of the facts at issue and **if there are specific points that need be elaborated, here are things we need to learn more about.** And from there, the interactions between the evaluator and the client proceed, and then you have the evaluator communicating with the attorney when a draft is ready.

From there I think an applicable mechanism would be to **have a call between the attorney and the evaluator to talk about the draft.** I'm imagining a highlighted draft report in front of everybody, or the attorney has reviewed the report, takes notes and goes through all the notes, that's my way of doing it ... I take my notes, I go through and say, “Hey I wanted to talk to you about the second paragraph of page three, this point, I have a question about it.” And then there's **email communication after that, about any subsequent drafts, and then you have the final version of the report.**

And sometimes it helps to have more than one conversation after the initial draft and before the report is finalized. So to me, that's what we can discuss in terms of mechanisms. I know there are going to be people who listen to this and say “Where on earth is the time to employ all of these different mechanisms?” It's like there are too many steps, it ends up being really time consuming, and then what about all the other elements, all the other types of evidence that have to come together in the case? ... [O]ne point of this whole discussion is to advocate for mechanisms like that to be followed while also of course recognizing constraints on time and other pressures.

But ultimately we have as I mentioned before this overarching goal of humanizing the client.

And in the longer run, **if you have a really strong psychological evaluation report, that just brings you closer to that overarching goal of fully presenting the client's case and humanizing the client, making sure that their voice is fully heard, in this immigration system that really needs help listening to the voices of clients.**

D: It certainly makes me think about the fact that ... what we do now [in my own practice], to encourage more communication, is that **we're asking [the attorneys] to at least send a quick email where they are telling us if there is anything relevant that they know that we should be aware of** ... Because we are familiar with the different types of cases attorneys don't have to ... explain to us what a VAWA case is, so there is an element of, the more we're working with different clinicians--I know many attorneys have a list--but **the more cases that are handled, you are saving a little bit of time.** There are cases now where we send our report, and [the attorneys] say, "Looks great, thank you so much," right? So sometimes, **more of it is in the beginning just to make sure everyone's on the same page** ... and that means that the attorney ... it's not that they have to be repetitive in what they're sharing with us. So I'm finding that sometimes even more work at the beginning is helpful, and then we're sending it, and they're kind of just catching if there's anything off. And now, for the most part usually, there isn't. Other times it might be, "You said this thing about this family member, but that could be taken as something else, and shouldn't even be in the report and it doesn't need to be." Easy. Let's not talk about that. So it's fascinating to me, how the work is evolving and more and more providers are getting way more experience.

M: I think **there's something to be said for more free-flowing collaboration.** I think some of the most interesting moments in this whole process come when we have scheduled calls between attorneys and evaluators and then we go a few minutes off-script, away from the notes, away from saying, "Ok now let's talk about page three paragraph two," and you can talk freely about the case. Thoughts flow in a way that can educate everybody involved and I think it's related to what you were talking about before, that you can put a little bit of extra time in toward the beginning, and then there's information solidified that's then useful for the future.

...Because there are things that a clinician might say in an offhand way, like they might not be trying to teach, but it's something that will stay. ... A clinician will say something and it just stays with me, and it'll be a helpful learning for a future case. And then sometimes an attorney might say something that is helpful in giving a broader legal context for the evaluator for next time, for a future case. So I think **in the long run these formal mechanisms and informal communications can help to drive efficiency and greater informational stability for the longer term.**

...I think that sometimes it can feel a little bit isolating...it can feel like there's a lot of pressure...to be lead counsel on a case...one point about collaboration is that when you have an expert witness helping you in the case, it makes the process feel less lonely honestly, on a human level. I think there's something to be said for that. There's a kind of professional solidarity that comes in and makes the difficult days a bit more bearable. I have good memories of conversations with evaluators in that context too, where it's made it easier to move through cases feeling that we're not really alone.

D: I think it's also worth saying that I've found myself, with the years and as I was doing more, where I was trying different things, but then I'm like, "Who's giving me feedback?" I don't want to change ... the attorneys are saying that my reports are great, right? But what if I take away the one thing that they really thought was helpful, just ... trying to make my process a little easier. When we talk about humanizing, I really try to think about the case and then figure out how I want to present it instead of always following the same template, but then I might miss something that the attorneys really thought was helpful. The other thing I think is worth mentioning was that once we have a little more idea of the legal context, the bit that you guys are able to share of why this is so important, sometimes that means that when we meet with [the client], any information that's revealed or that may go against even what the attorney was thinking was the primary focus, then we are also aware enough to say, "Hey, something came up, we should check this with the attorney," because maybe it holds a lot more weight and we can spend more time on that as well. So that's where you get the win-win where we're learning from one another and then it gives us the insight or the awareness as we have these different cases to be able to go back when necessary so that we're not missing anything that may come up that is very specific to that one case.

M: Yeah, exactly. That reminds me of how there are some clinicians who say, "You have to send me at least a draft of the affidavit before I can start the evaluation because I want to have a baseline set of facts." And there are other clinicians who don't require that. But it tends to be helpful to just send at least a paragraph summary as a starter and then you have more conversations about the operative facts in the case as necessary. But it is important to give some introductory information about the facts in the case, ... and then from there, it's absolutely true that **the facts can get really elaborated through the clinician's assistance too. Things can come out that nobody anticipated coming out during the evaluation. ... that end up strengthening the case.** Adding facts to the affidavit that otherwise wouldn't have made their way, and again just presenting the case more fully. I mentioned to you one case that I had recently [in my own private practice] ... in which the facts were fairly well developed before I handed over the case to the psychologist to do the evaluation, but then these facts came out about a sexual assault the client had suffered, and she actually said she had never told anyone about it before that evaluation, which is a classic example that happens.

D: Yeah, I can't tell you how many times the client will say, "I've never told anyone this." Or they haven't even told their spouse. No one knows. And then sometimes we've also had cases where they say, "I've never told anyone, and I don't want you to include this in the report." And sometimes that's then an opportunity to discuss and explain to them it may be of value, but they still have control of how that information might be shared if it's included, but it won't be discussed with the spouse. A lot of times it has to do with that type of abuse. Or an asylum seeker revealing to the provider LGBTQI status for the first time. Or the provider confirming that a client who suffers from PTSD flashbacks could be triggered by testifying.

I tell clients as well, and I think attorneys do this, where they need to present as honest as possible instead of feeling like ... "I have to exaggerate how I feel." So **I always start with, "I respect you and your story, I need to understand not just what's happened, but what you think, what you feel, what that experience has been, uniquely to you, in your own words."** And I tell them, "No worries, **you be as honest as possible,** I will then come in with my professional expertise, and I'll share with

you how it is that we may speak about this. ... Because that gives them the freedom to disclose some things that they may think may hurt the case but may actually help it or...we don't want to deal with a client where then we feel it's not credible and then it minimizes everything else. So that has been wildly helpful, where it's even transgressions or things that they think are not okay to talk about and ... in order for it to be a comprehensive evaluation, we really need to know that whole person and how they present. So I tell them, we need to know the good and the bad and the vulnerabilities so that we have a full understanding and then we know what is most relevant for the legal case. So yeah, I think that's hugely important and that creates some synchrony, right? You guys are also seeing that.

I know that some attorneys are certainly ... This is on our side, where we're like, "They must be coaching their client" Sometimes to remind the client, we do work separately, right? I can only speak to the work, the assessment that I'm providing, and the report. I cannot speak to what the attorney does or anything like that. But that we are trying to work collaboratively. And that collaboration, I like to say, is attorney, clinician, and the client. So that's why I'm asking for their full disclosure, their honesty, **I thank them for their bravery, because they're meeting us and trusting us and I think that really facilitates a level of honesty that's helpful.**

M: Yes, absolutely. ... And I appreciate that you mentioned the point about the evaluation team really including the client. ... And now I think we can move to some of the more subtle benefits of cross-sector collaboration. ... We talked a little bit about the **fuller cross-sector trust that can be built with each case in which we communicate. It's like our own personal edification can make us more effective in our respective fields for each case going forward**, and also can make for smoother and more efficient collaboration on future cases. So the more I know about how psychological evaluations go, the more smoothly and more efficiently I can proceed in the next case in which I need an evaluation. ... I have a better sense of what I want to say to the evaluator, what I want to ask from them.

And then **another example of the cross-edification that we can gain is that attorneys might learn interviewing techniques from evaluators**, which goes back to your point about trauma-informed services. I think that the field of trauma-informed services is evolving ... and even like ten years ago, there's just such a difference in the extent to which trauma-informed services is even discussed as a topic. I think that the mental health field is ahead of the legal field in the emphasis on trauma-informed services, but that doesn't mean that it's actually less important for attorneys to have that focus. I think for immigration attorneys, it's especially important for us to be trauma-informed service providers and I have found that I improve in that way through my interactions with mental health professionals.

... **And evaluators can potentially deepen their knowledge of the legal background on cases, through these collaborations with attorneys which can lead to evaluations that are more likely to get to the main legal points in the case.** So that's a benefit for everyone involved. And then there's another point that was mentioned in Adrienne Aron's 1992 paper called Applications of Psychology to the Assessment of Refugees Seeking Political Asylum ... it's in that article that she mentions that **a client's good experience with an evaluator can help to build the client's trust in the referring attorney, which is essential. It can help to open attorney-client communication and can reveal more information that will strengthen the case.** So I think that's a really essential point. The more that the client can build a healthy trust in the people working on the case, the more

effectively we can present the client's case moving forward.

D: Sometimes individuals with trauma may feel paranoid, unable to trust their legal team. The support of a clinician can support the client through that process of trust and full commitment to the case, full disclosure. With an in-depth understanding of the situation, the clinician's expertise may reveal a psychosocial disorder directly tied to ability to testify--social anxiety, dissociation, cognitive and/or processing concern, memory concerns. Therapeutic support can allow the client to show up for themselves or prepare them for testifying. They are letting out the full story but with the healing necessary to take control of the next steps. If the provider's messaging is the same as the attorney's in terms of the process of the legal case, it becomes a relationship of trust and strong rapport.

... To be honest, I even ask them directly, where they stand, how they're feeling, more as a check-in and to immediately show them that I care about how they're engaging with these systems and this experience. So it's kind of a rapport-building but it also gives me a little bit of insight as well. And so they may bring up their concern, "They're taking too long," or "They're asking me for all this stuff and I don't understand." And so I'm able to kind of align and say, "I get it," and even for my service, it's like, "I get it, you're investing so much time, you've waited ... but this is time consuming," and so that is the trauma responsiveness in essence. ... **[I]t's a way of empowering them or making them feel that they are in fact, although they have no control of the outcome, they do have some control in the steps they're taking to provide the information that is needed to see this legal process out.** And so I try to ... help them and hoping that I'm instilling a little more hope than what they came in with. And some are very hopeful and others are like, "I'm so done," right? ... I encourage them that they have a voice and that they can check in or ask questions or make sure that they're following up.

Because yes, everyone, we all have many cases but it doesn't mean that one case is more important than the other. It's just that there are so many families pushing for the same thing. So it is important for me to know what attorneys I'm working with, and the integrity... so saying, **when I know the law office, when I know the attorney, I'll say "Don't worry, so and so is going to do this, they're definitely going to call you, but first they're going to wait to review our report, and then they're going to give you an appointment." Or "I'm going to tell you as soon as I submit it, and then you can call them and ask for an appointment."** ... I think that's important as another benefit of the collaboration, that we can speak to different styles for the attorneys and say, "You're still in good hands, don't worry, this is the process, and I'll follow up. And I know that they'll get back to me." To be able to say that is huge. So that they can even trust me. **I know the attorney is going to provide the guidance we need to make sure this is a strong report.** ... The warm handoff--so essentially that's what it's about. I remember being at a pediatric office, and because they trust that doctor, they trust Dalissy because that doctor referred them directly. And it increases the likelihood that they will actually engage versus going to a stranger and really still having a defense mechanism or a wall up about, 'I have to be careful what I say.'