

# A Call for Asylum Evaluation and Advocacy in Forensic Psychiatry

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A recent editorial by Chaimowitz and Simpson in *The Journal* raised crucial and overdue questions regarding the role of advocacy in the profession of forensic psychiatry.<sup>1</sup> They advocate for a “need to question what we are doing to make changes to the system for the betterment of our patients and our society” (Ref. 1, p 158) and suggest that space exists “to regularly step outside of the objective position” to call out social injustice (Ref. 1, p 160). Incorporating these principles into forensic practice can take many forms and how to operationalize their proposal is likely to engender debate, even among those psychiatrists who strongly embrace these goals. One approach to advocacy entails calling out the structural biases in our legal system and pushing for policies that favor rehabilitation, combat racism, and confront the inequities of the carceral state. A second approach (not at all incompatible with the first, but likely to be overlooked) involves reconsidering the cases which forensic psychiatrists prioritize when choosing whom to evaluate. How forensic psychiatrists allocate their services, which are a scarce and valuable resource for society, can play a significant role in achieving social justice and bettering the world. Providing *pro bono* psychiatric evaluation for asylum seekers offers one such opportunity for the profession to redeploy its resources. By incorporating training in such evaluations into fellowship programs, facilitating opportunities for forensic psychiatrists to donate time for these assessments, and valuing such work toward career advancement, the profession of forensic psychiatry could fill an unmet need for which

members of this field are distinctively suited by training and experience.

As of 2015, “one of every 122 persons worldwide is a refugee, internally displaced person, or asylum seeker” (Ref. 2, p 6). The United States is a signatory to the United Nations Protocol Relating to the Status of Refugees,<sup>3</sup> which defines refugees as “individuals who are unable or unwilling to return to their country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion” (Ref. 4, p 479). The Refugee Act of 1980<sup>5</sup> reflects an effort by the United States Congress to operationalize its commitments under the Protocol. According to the U.S. Department of State Bureau of Population, Refugees, and Migration Office of Admissions, as of October 31, 2021, 11,411 refugees were admitted to the United States in 2021.<sup>6</sup>

Credibility assessment plays a key role in asylum evaluation. Federal law allows immigration judges to base their conclusions upon “the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements . . . , the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . and any inaccuracies or falsehoods in such statements . . . ” (Ref. 7, §1158(b)(1)(B)(iii)). Mental health professionals serve a crucial function in the asylum evaluation process in that they offer a formal psychological basis upon which adjudicators can “base decisions regarding a well-founded fear of persecution” (Ref. 8, p 9).

The job of the evaluator is to “elicit a thorough trauma history, document physical and psychological evidence of abuse, and comment [upon] the degree

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of consistency between examination findings and specific allegations of abuse by the applicant” (Ref. 8, p 9). According to a study done by Lustig *et al.* between 2000 and 2004, applicants with a medical affidavit had an 89 percent chance of being granted asylum, compared with the national average of 37.5 percent for all applicants.<sup>8</sup> Psychiatrists, in particular, have an important role to play in facilitating asylum claims because psychological symptoms manifest with considerable frequency in refugee populations.<sup>8</sup> A systematic review of psychological symptoms shown by refugees demonstrated prevalence rates of 32 percent for posttraumatic stress disorder (PTSD) and 35 percent for depression.<sup>9</sup> These conditions have been associated with well-documented changes in cognition and behavior.<sup>10</sup> As a result, asylum applicants may have difficulty advocating for themselves in the legal context. Unfortunately, the “positive impact” that “affidavits may have in the asylum process” (Ref. 11, p 2) means that “requests for forensic evaluations often exceed the capacity of experienced health professionals available to provide these services,” (Ref. 11, p 2) a shortage that is most acute for psychological evaluations.<sup>12</sup>

Although any licensed mental health professional can conduct an evaluation and submit an affidavit in asylum cases, forensic psychiatrists are particularly equipped to do so. Effective asylum evaluation requires an understanding of a case’s legal context and an ability to work closely with attorneys, skills expected of forensic psychiatrists.<sup>13</sup> The training of forensic psychiatrists specifically includes generating reports for the legal system. These reports are the “central focus of forensic practice” and their execution a “core competency” of the field (Ref. 14, p 67). Offering expert testimony in court is also a focus of forensic training.<sup>15</sup> In contrast, neither expert witness testimony nor medico-legal reports are part of training in other psychiatric specialties, nor do most other psychiatrists possess these skills. Moreover, forensics psychiatry claims among its “fundamental skill[s]” the “clinical detection of malingered mental illness” (Ref. 16, p s42) and the broader gathering of evidence related to credibility. While general psychiatrists can certainly acquire these skills with appropriate training, the principal features of asylum evaluation (i.e., credibility-related fact gathering, report writing, and expert testimony) are familiar tools of the forensic psychiatrist. Finally, the expertise and authority of forensic psychiatrists may carry more weight with the court than those of general psychiatric practitioners, as forensic psychiatrists can note in

affidavits and testimony their specialized knowledge regarding the questions under review.

Early exposure to particular clinical experiences has been shown to affect future professional choices, including the decision to pursue careers in psychiatry.<sup>17,18</sup> It seems likely that introducing forensic psychiatrists to the asylum process and providing the opportunities to conduct such evaluations early in their training would increase the likelihood that they will render such services. They are likely to find the work personally rewarding.<sup>19</sup> As important, they are likely to increase their level of comfort with handling these evaluations and the associated challenges.<sup>20</sup> Free training in conducting such evaluations is increasingly available. For example, medical organizations, including Physicians for Human Rights,<sup>21</sup> HealthRight International,<sup>22</sup> and the Society of Asylum Medicine,<sup>23</sup> among others, offer no-cost training sessions online throughout the year. Approximately twenty individual medical schools, such as the Icahn School of Medicine at Mount Sinai and the Columbia University’s Vagelos College of Physicians and Surgeons, both located in New York City, offer training through student-run clinics.<sup>24</sup> But asylum assessment is not a core component of forensic psychiatry fellowships, and most programs do not require or even offer such training.

More than a decade ago, Zonana raised the possibility that “training programs near regional asylum offices or immigration courts . . . should consider forming affiliations” to perform asylum evaluations (Ref. 25, p 501). Although this has happened at a small number of programs, it has not become widespread practice. Individual trainees can and do pursue such service on their own time, but asylum evaluation has largely not been incorporated into forensic fellowship programs, although the demand for such services continues to accelerate. Fortunately, the increased acceptance of telehealth assessments and evidence in support of their feasibility make it possible for any forensic fellowship program, no matter where it is geographically situated, to create such opportunities for trainees.<sup>26,27</sup> The time has arrived for fellowship programs to do so. In light of the reconsideration of priorities advanced by Chaimowitz and Simpson, we propose three specific measures that the American Academy of Psychiatry and the Law (AAPL) should endorse to effectuate this goal.

#### *Training Access and Expectation*

All forensic fellowships should be required to offer training in the evaluation of asylum seekers either

directly or in partnership with medical school or non-profit clinics. This requirement should be incorporated into the core training requirements enumerated by the Accreditation Council on Graduate Medical Education (ACGME).<sup>28</sup> Every fellow graduating from an ACGME-accredited forensic psychiatry fellowship program should have sufficient medical knowledge and experience to conduct such evaluations independently. The Association of Directors of Forensic Psychiatry Fellowships can play a leadership role in promoting such opportunities, and directors should consider modeling such evaluations for fellows in an effort to lead by example.

### Service Expectation

AAPL is a voluntary organization with limited enforcement authority regarding the practice choices of its members. It is neither practicable nor realistic for the organization to impose a requirement that its members conduct *pro bono* asylum evaluations. It is possible, however, for the organization to create a moral expectation that forensic psychiatrists make every effort to conduct such evaluations when possible. This approach occurs in other fields, such as law, where the American Bar Association expects, but does not enforce, certain *pro bono* service goals.<sup>29,30</sup> For example, asking forensic psychiatrists to conduct one such evaluation in each of their first three years of practice does not seem unreasonable.

### Professional Credit

Asylum evaluation may be noble work, but it is generally not accompanied by the tangible rewards of the profession, such as funding, promotion, or professional recognition. AAPL could play a crucial role in remedying this injustice. First, AAPL should encourage its members to consider asylum evaluations as valuable service when making recommendations regarding appointments and promotions. Second, AAPL should sponsor events and panels to draw attention to the work of its members, and particularly its trainees, in this important field. Finally, AAPL should consider creating one or more awards to honor members who have contributed significantly to this largely overlooked area of forensics.

We take very seriously the imperatives outlined by Chaimowitz and Simpson.<sup>1</sup> Many opportunities will arise to operationalize reforms in the areas of social injustice to which they rightly draw attention. But merely shifting the focus of forensic psychiatrists toward aspects of service that have too long been neglected, such as *pro*

*bono* asylum evaluations, may prove a valuable first step toward a better forensic world.

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