

Article

The Gory Details: Asylum, Sexual Assault, and Traumatic Memory

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Abstract: For asylum seekers to be granted asylum, they must convince immigration officials that they have been persecuted or that they fear they will be persecuted if returned to their home country. This article discusses the reluctance of asylum seekers to be forthcoming about sexual assault as a form of persecution and the ways in which traumatic memory can affect narratives of persecution for rape survivors. Many asylum seekers, particularly those who have been sexually assaulted, show symptoms consistent with trauma survivors. Consequently, their narratives of persecution are often shaped by partial and incomplete memory recall. The result is that how asylum seekers who have been sexually assaulted tell their stories of persecution is the antithesis of the expectations of credibility. This article is based on qualitative research in Los Angeles, California, and New York City, New York, in the United States. It includes interviews with asylum seekers, immigration attorneys, immigrant service providers, asylum officers, and immigration judges; observations of immigration court hearings; and content analysis of asylum applications. I use these sources to argue that the harm of rape and its long-lasting effects evidenced by symptoms of traumatic memory impacts how asylum seekers articulate stories of persecution. How these stories are told can have devastating effects for asylum seekers that may jeopardize their ability to gain asylum if immigration officials do not view them as credible applicants.

Keywords: gender; asylum; immigration; sexual assault; traumatic memory



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1. Introduction

Paulina: It's him.

Geraldo: Who?

Paulina: It's the doctor.

Geraldo: What doctor?

Paulina: The doctor who played Schubert.

Geraldo: The doctor who played Schubert.

Paulina: That doctor.

Geraldo: How do you know?

Paulina: The voice [1].

Ariel Dorfman's three-person cast play, *Death and the Maiden*, features Paulina Salas, a former political prisoner who was held captive and sexually assaulted for her involvement in a resistance movement against an authoritarian regime. By chance, Paulina meets Dr. Roberto Miranda, the man she believes raped and tortured her, and orchestrates an extrajudicial trial when Dr. Miranda follows her husband, Geraldo Escobar, home after helping him with a flat tire. Geraldo extends his gratitude to Dr. Miranda with drinks and the offer to stay the night. Geraldo awakens in the middle of the night to find Dr. Miranda tied to a chair and gagged at the hands of Paulina, who wants nothing more than for her attacker to confess his crimes. Geraldo is appalled by his wife's behavior and instructs her that "a vague memory of someone's voice is not proof of anything..." [1]. The play ends unresolved, leaving one to wonder whether Paulina had indeed correctly identified her rapist.

The experiences of asylum seekers who have been raped often mirror those of Paulina Salas. They are held hostage in dark spaces and unable to see, suffer from loss of consciousness during or after the attack, and are incapable of distinguishing one assault from another. Upon arriving in the U.S., rape survivors must navigate an asylum process that is structured by rules that dictate which narratives are believable, making their own stories seem preposterous at times. During their asylum interviews and immigration court hearings, they struggle to provide answers about the who, what, when, where, and why of their assault. Yet, like Paulina's insistence that she knew her attacker's voice, his smell, his Nietzsche aphorisms, the asylum seekers in this study know what happened to them. So much so that they live with the incessant memories of their trauma. The problem is rarely that they have no memory of the event (although this is the case for some). The conundrum they face is that the memories they do have, the ones that have taken hold of them and will not let go, are not the ones that immigration officials seem the least bit interested in hearing about. Conversely, the detailed linear story where time and place are always accounted for and their persecutor's motivation for harm is neatly linked in a causal narrative package is what structures the expectations of asylum hearings.

The data for this study were collected in 2001–2003 in Los Angeles, California, and from 2008–2010 in New York City, New York. While much has changed in the legal realm, world of migration movements, national and international responses to sexual assault, and scholarship on gender-based asylum since these data were collected, I contend that the data offer insight into the asylum process for gender-based claims. These data show that during a period of legal and institutional recognition of gender-based claims, assumptions about how stories of sexual assault are told routinely harkened to the days prior to those that accepted rape as a form of persecution. This forms my fundamental argument, which is that the law itself is less important than its implementation. This does not mean that the law does not matter. To the contrary, in the face of anti-immigrant laws and practices, asylum seekers need all the protection the law provides. However, the assumptions about rape as a form of persecution that immigration officials have impacts the process itself, regardless of the law. It is this process that I seek to shed light on in hopes of improving a system that can be unjust toward asylum seekers. Moreover, in our current #MeToo climate, these data show how immigration officials responded to narratives of sexual assault in much the same way as they do today when survivors are not believed.

As I discuss later in the article, not all asylum seekers are clinically classified as having a trauma-related diagnosis. Some of the asylum seekers presented here were diagnosed with conditions such as Post Traumatic Stress Disorder (PTSD), Rape Trauma Syndrome (RTS), depression, and anxiety, among others, by healthcare professionals. It is not my intention to argue that they do or do not have these conditions. However, nearly all have behaviors consistent with trauma survivors. As such, I use the term "traumatic memory", as it captures the general behaviors of the asylum seekers presented here and is consistent with the current scholarship on the topic.

The following is a brief overview of gender-based asylum in the United States, how rape came to be legally recognized as a form of persecution, and how traumatic memory affects credibility. I then illustrate the process of how rape survivors narrate stories of persecution in a qualitative data study that draws from interviews, asylum applications, and immigration court hearings.

1.1. Gender-Based Asylum in the United States

There are two fundamental criteria that are necessary for a successful asylum claim. First, asylum seekers must show that the harm they have experienced or fear that they will experience is in fact persecution. Second, the persecution must be linked to one of the five enumerated grounds: race, religion, nationality, membership in a particular social group, and political opinion [2]. The United Nations High Commissioner for Refugees (UNHCR) acknowledges that while there is no universally accepted definition of persecution, certain attributes, such as a "threat to life or freedom" based on one of the five grounds and "other

serious violations of human rights”, constitute persecution [3]. In theory, all states that are signatories to the 1951 United Nations Refugee Convention Relating to the Status of Refugees and the 1967 United Nations Protocol Relating to the Status of Refugees abide by these standards [4]. However, in practice, there is great variation among nation-states and immigration officials when deciding cases regarding what exactly establishes an act as persecution [5].

These two criteria, demonstrating that one has been persecuted or fears persecution and that the persecution is based on one of the five grounds, have adversely affected asylum seekers fleeing gender-based persecution that overwhelmingly impacts women’s claims. The first way that women have been excluded from seeking asylum in the past is that the types of persecution that they faced, such as female circumcision, honor killings, rape, domestic violence, coercive family planning, forced marriage, or repressive social norms, were not considered persecution [6]. Like other forms of gendered violence, U.S. law historically considered rape to be personal and private and, therefore, beyond the realm of public acts that fall under the purview of legal crimes [7]. This public/private dichotomy influenced both immigration law and the immigration officials who applied it.

The second way that women have been excluded from seeking asylum is based on how the persecution must be connected to one or more enumerated grounds of persecution. As a signatory to the 1951 United Nations Refugee Convention Relating to the Status of Refugees and the 1967 United Nations Protocol Relating to the Status of Refugees, the United States is legally obligated to the principle of non-refoulement, an international standard of not returning immigrants to countries where they face threats to their life or freedom. Of the 192 member states, 149 are signatories, leaving just over twenty percent of UN member states, including several southeastern Asian and Middle east nations, as non-signatories. This shows that the UN Refugee Convention is not universally accepted. Reasons that nation-states are non-signatories include the historical legacy of colonialism (some nation-states were still under colonial rule in 1951), global criticism that the Convention itself is Eurocentric, and the reluctance to accept large-scale migration movements due to the geographical impact and deleterious effects for particular regions [8].

In 1980, the United States passed the Refugee Act, introducing national legal standards for adjudicating refugee and asylum claims based on the definition of a refugee found in the Immigration and Nationality Act (INA Section 101a [42]). This Act defines a refugee as a person who has left their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, or membership in a particular social group, or political opinion [9]. The “on account of” language is commonly referred to as the five grounds that include race, religion, nationality, membership in a particular social group, and political opinion. Gender is absent as a ground of persecution. This omission is one component of how asylum seekers, especially women, have been excluded from consideration if the harm they have experienced or fear they will be subjected to is because of their gender [10].

Feminist legal scholars were among the first to publicize how both gendered violence and the absence of gender as a ground of persecution hurt women who were seeking asylum [11,12]. Early studies included documented cases of how immigration officials and other lawmakers, such as judges who presided over the Board of Immigration Appeals (BIA) and Circuit Court of Appeals, routinely denied or upheld the denial of women’s claims when the case involved sexual assault. This is most succinctly noted in Nancy Kelly’s seminal article that detailed how “asylum law has developed through the adjudication of the cases of male applicants and has therefore involved an examination of traditionally male-dominated activities” [11]. In short, feminist scholars argue that asylum law is androcentric, and gender-based cases provided the initial fissures that expanded the legal definitions of persecution [11].

The evolution of gender-based asylum was a multifarious effort on the part of international organizations, national policy makers, and grassroots activists working with asylum seekers. In 1985, the Executive Committee of the United Nations High Commissioner for

Refugees (UNHCR) adopted Conclusion No. 39, the first initiative to address gender-based persecution regarding asylum [13]. In 1991, UNHCR issued its *Guidelines on the Protection of Refugee Women* (updated in 2002), aimed at addressing issues of sexual violence during displacement, most notably in refugee camps [14–16]. The first country to introduce gender-based persecution guidelines was Canada, in 1993, and the U.S. followed two years later in 1995 with guidelines for asylum officers [17]. These guidelines, along with federal case law and congressional law, laid the foundation for asylum seekers to claim that they had been persecuted because of their gender.

Gender-based asylum law and policy in the U.S. evolves from various influences that include international law, national immigration law, and domestic and international women's movements [18]. Asylum law is not static, and political changes routinely affect immigration jurisprudence that facilitates or inhibits asylum seekers' ability to gain protection. For example, in 2005, the REAL ID Act, targeted mainly at undocumented immigrants' ability to secure state-issued documentation, such as a Driver's License, contained language about assessing asylum seekers' demeanor in credibility determinations [19]. Anti-immigrant laws also hurt women in domestic violence relationships, as they are reluctant to contact the police for help, as they fear retribution for themselves and their family members [20]. Anti-immigrant laws and sentiment are not specific to the U.S. One recent example is when male migrants are characterized as dangerous. For example, in Sweden, the link between migration and sexual violence is that migrants are the cause of sexual violence toward citizens, rather than migrants being the recipients of such violence [21].

The following are significant cases that laid the foundation for gender-based asylum law and policy in the U.S. I discuss two cases from 1987 (*Lazo-Majano v INS* and *Campos-Guardado v INS*) at greater length in the next section, as they deal directly with sexual assault and asylum. In 1993, *Matter of D-V* involved a Haitian woman who had been gang raped and beaten by security forces. The sexual assault was found to be a "grievous harm", and this was the first U.S. administrative precedent decision addressing gender-based asylum [22]. Later that same year, the third circuit published *Fatin v INS*, which established feminism as a political opinion. The case involved an Iranian woman's right to refuse to wear a chador [23]. In 1996, Fauziya Kassindja, an asylum seeker from Togo, was granted asylum based on a fear of female genital mutilation (FGM). The case, *Matter of Kassinga*, defined FGM as persecution [24]. Rodi Alvarado, an asylum seeker from Guatemala, fled from her abusive husband and sought asylum in the U.S. Her case, *Matter of R-A*, was denied in 1999 because the Board of Immigration Appeals (BIA) ruled that there was no ground (particular social group) that her persecution was based upon. It was not until 2009 that she was granted asylum after a decade of appeals [18,25]. In *Matter of S-A*, a Moroccan woman was granted asylum because her father had abused her for not following Muslim beliefs in 2000 [26]. Domestic violence was recognized as a form of persecution for married women in Guatemala in *Matter of A-R-C-G* in 2014 [27]. All of these cases moved asylum law forward in ways that expanded both definitions of persecution to include harm that more likely or exclusively happens to women, and the legal connection to the ground of the harm [28].

During President Trump's term, two cases reversed some of these gains. In 2018, *Matter of A-B* vacated *Matter of A-R-C-G* and opened the door to deny claims when the perpetrator was a non-state actor, making domestic violence claims nearly impossible to grant [29]. In 2021, *Matter of A-C-A-A* introduced further scrutiny by encouraging adjudicators to be skeptical of gender claims where violence is pervasive and returned to previous language that gendered violence is "personal" [30]. Attorney General Jeffrey Sessions argued that gender cases are "expansive", meaning that granting them risks opening U.S. immigration policies, a typical floodgates argument [28]. In 2021, President Biden vacated both *Matter of A-B* and *Matter of A-R-C-G* [18]. These cases show that asylum law changes regularly in ways that can hurt or harm asylum seekers. Since the time period when the data for this study were collected, other directions for gender-based asylum include consideration of gendered harm as the fear of future persecution [31]; persecution based on sexual identity,

particularly that of LGBTQ asylum seekers [32–35]; and variable across states that receive asylum seekers [36–38].

Immigration law in the United States is federal law, and all states must comply with Congressional Acts and the decisions of the Board of Immigration (BIA), the appellate board for immigration courts in the U.S. The U.S. is divided into twelve regional Circuits, each of which has a Court of Appeals. U.S. Circuit Court decisions can overturn BIA decisions. For example, if the BIA has ruled on a case that only the Second Circuit overturns, the BIA decision stands in all districts except the Second Circuit. Consequently, while immigration law is federal law and ostensibly applies to the entire country, immigration law varies in different regions based on Circuit Court decisions.

Migrants seeking asylum in the United States apply through two bureaucratic organizations, which include the asylum office of the United States Citizenship and Immigration Services (USCIS) under the Department of Homeland Security and the immigration court of the Executive Office for Immigration Review (EOIR) under the Department of Justice. The CIS asylum office receives affirmative asylum applications, which are claims that an asylum seeker initiates before an order or deportation has been issued by the USCIS. These claims are decided by an asylum officer during the asylum interview. Asylum claims in immigration court include referred cases from the USCIS asylum office and new claims by migrants in the United States Immigration and Customs Enforcement (USICE) detention facilities. These claims are decided by an immigration judge during the asylum hearing. Both asylum officers and immigration judges must abide by Congressional law, BIA decisions, and Circuit Court decisions in their respective region [18].

In addition to the variation regarding the bureaucratic office where asylum claims are heard (USCIS or EOIR) and the regional location where appeals are heard (Circuit Courts), one crucial factor in the outcome of asylum cases is the adjudicator [5,39]. Philip Schrag et al.'s work *Refugee Roulette* and follow-up research *Lives in the Balance: Asylum Adjudication by the Department of Homeland Security* are ambitious studies that examined all four levels of immigration decisions by key law and policy makers: asylum officers, immigration court judges, BIA judges, and U.S. Circuit Court of Appeal judges. They found that the adjudicator accounts for the outcome of an asylum decision more than any other factor. Moreover, their findings held constant even after the Immigration and Naturalization Service (INS) was renamed the Citizenship and Immigration Service (CIS) and moved from the Department of Justice to the Department of Homeland Security on 1 March 2003. This work is important for the research I present in this article, as it gets to the heart of my own observations: how the law is applied, rather than the law itself, is a greater indicator of an asylum seeker's ability to gain protection. The adjudicator's interpretation of whether rape is indeed persecution, why asylum seekers are assaulted for a particular reason (the ground), and what constitutes credible testimony and behavior for those who have been sexually assaulted are crucial pieces to the larger puzzle that elucidates the expectations of how asylum seekers should narrate stories of sexual violence.

1.2. Rape as a Form of Persecution

For many years, rape was considered a “personal” act and was relegated to the private realm like other types of gender-based violence [40]. Historically, U.S.-based feminists focused on general accounts of patriarchy, widely defined as the root cause of rape [41]. Catharine MacKinnon has contributed a trove of scholarly work on the topic and more recently has defined it as a “crime of gender inequality” [7]. She argues that using consent as the benchmark for defining rape creates a gap between the legal reality and lived reality of sexual assault so wide that legal definitions are often unrecognizable to survivors [7]. Ann Cahill builds on MacKinnon's criticism of using consent as the foundation of U.S. law to determine if an act meets the legal definition of rape. She argues that consent is problematic because of the ambiguity of sex in the context of the heteronormative sexual continuum regarding sex that is rape and sex that is consensual [42]. The #MeToo movement galvanized the contemporary landscape and provides the most current framework for U.S.

(and global) discourse about sexual assault by providing a forum for survivors to speak about their experiences on their own terms [43–45].

Peggy Reeves Sanday's work was among the first to show the cross-cultural variation of sexual assault and coded societies as being rape-free, rape-present, or rape-prone [46]. Her early work is important, as it laid the foundation for arguments against the idea that the propensity to rape is something that is biologically innate in men. Studies have parceled the scope of sexual violence into topics such as date rape or acquaintance rape [47], prison rape [48], and rape on college campuses [49], to name just a few concentrated areas. As the legal terrain shifted to recognizing rape as a crime, scholars emphasized how survivors were treated in legal proceedings [50]. Activists challenged the prevailing belief that victims of sexual assault "asked for it" based on what they were wearing, who they were with, what they were doing, and their general whereabouts during the assault, and the language of "victim" was replaced with "survivor" [51]. More recent studies include men as victims of rape [52].

The 1949 Geneva Convention was the first international humanitarian law to condemn rape. Its aim was protecting civilians during wartime, and it was among the first to treat gender-based violence as a human rights abuse rather than discrimination [53]. The rise of civil wars in the second half of the twentieth century demarcated "war rape" from rape in societies that were not war-torn [54]. Scholars have taken this bifurcation to task, given how sexual violence survivors talk about their experiences is not always in the context of war [55,56]. Rape is often normalized in conflict situations as a byproduct of war and is routinely sensationalized [57,58].

One response to war rape at the international level was the introduction of the Rome Treaty. In 1998, the Rome Statute established the International Criminal Court (ICC), the first and only permanent international court that prosecutes crimes pertaining to genocide, crimes against humanity, war crimes, and crimes of aggression [59]. While the Rome Statute did not provide a definition of rape, it included rape, sexual slavery, and sexual violence among the sixteen crimes against humanity, and cases have included sexual assault as a war crime and form of genocide [60]. The U.S. does not recognize the ICC, and therefore, its global reach does not affect U.S. asylum law [53]. However, several cases have included sexual violence, which shows that the U.S. is out of step with the rest of the world regarding prosecutions for rape perpetrators [53].

Two significant outcomes of the ICC were the International Criminal Tribunal for Yugoslavia (ICTY) that oversaw cases from 1993–2017 and the International Criminal Tribunal for Rwanda (ICTR) that prosecuted cases from 1994–2016 [59]. These were the first international courts since those that followed World War II [61]. The ICTY was the first to consider rape as a form of torture, and the ICTR was the first to prosecute sexual assault as a form of genocide [62]. Key precedent cases include *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* [63], the first international indictment dealing exclusively with sexual violence; *Prosecutor v. Anto Furundzija* [64], the first case entirely focused on sexual violence; *Prosecutor v. Jean-Paul Akayesu* [65], the first case that recognized rape as an act of genocide; and *Prosecutor v. Jean-Pierre Bemba Gombo* [66], the first case to rule on sexual violence as a weapon of war [61–68].

Catharine MacKinnon and others argue that the ICTR's use of coercion, as opposed to the ICTY's use of consent, as a legal benchmark that defines rape provided a more robust mechanism for prosecuting sexual assault cases [7,53,61]. Coercion also better describes the experiences of the victims and prevents painful questioning based on consent [53]. There is general consensus among scholars that the ICC cases show a general trend toward the legalization of the prohibition of rape and that this is largely welcomed, as sexual assault went from being a crime against honor to being recognized as a violation of international law [67,68]. However, all the cases fall under the larger umbrella of international crimes. Rape is only abhorrent at best and illegal at worst because it violates international law. Marie-Alice D'Aoust captures this in her analysis of the Bemba case when she states that "making rape visible in the context of atrocity is deceptively easy; looking at rape as war

crime and crime against humanity shows an extraordinary violence divorced from the lived experience of routine sexual violence, serving to deflect attention from the systemacity of violence committed against women" [68]. Focusing on genocide as the foundational crime (rather than the rape per se) serves to reinscribe women's relationship to the nation as reproductive and may be a modern-day form of men's ownership of women's bodies [69].

Asylum seekers are at risk of sexual violence during war; in the course of their flight to safety in the refugee camp; throughout their stay in the camp; and while detained, if held in a detention facility upon arriving in the U.S. or other nations that accept them [70,71]. One study found that there are daily complaints about sexual assault in U.S. immigration detention centers [72]. In 2020, Immigration and Customs Enforcement (ICE) received over 30,000 complaints of sexual abuse, and less than 3% were investigated [72]. Asylum seekers are more likely to experience gang rapes and repeated rapes, as well as witness the rape of others [73,74]. As an underreported crime, it is difficult to know the number of those who are sexually assaulted. The World Health Organization (WHO) estimates that one-third of the world's population of women "have been subjected to either physical and/or sexual violence" in their lifetime [75].

As awareness of sexual assaults against men have increased, so have the number of asylum cases that men bring forth that include sexual violence as a form of persecution [76,77]. While this broadens the scope of thinking about the ways in which sexual assault is a form of gender-based violence, the majority of claims are from homosexual men. This may further erase the notion that heterosexual men are sexually assaulted and that those claims could be considered persecution. Moreover, among those who claim persecution based on their sexual identity, the lion's share are homosexual men, in part due to the history of jurisprudence in the area of sexual identity asylum law in the U.S., potentially marginalizing violence against lesbians that is both gendered and sexualized, such as instances of corrective rape [78,79].

I now turn to two cases dealing with rape that shaped asylum law: *Campos-Guardado v INS* and *Lazo-Majano v INS* [80,81]. Sofia Campos-Guardado's family participated in a local agrarian cooperative in El Salvador and espoused land reform practices the government deemed subversive. In 1984, after her uncle refused to pay the bribes the government had demanded of them, he and her male cousins were murdered in front of Sofia, and Sofia and her female cousins were raped. Sofia was later threatened by her assailants, one of whom was her own cousin, and fled to the U.S., where she applied for asylum. Campos-Guardado's case was denied by an immigration judge, and that decision was upheld by the BIA. On appeal, the denial was upheld by the Fifth Circuit, as the court sided with the BIA's argument that the evidence was "insufficient to establish that the harm Ms. Campos fears is based on political opinion..." Moreover, the Board concluded that the threats that she considered to be a fear of future persecution were "personally motivated" rather than due to political opinion regarding the agrarian collective [80]. The BIA and the Fifth Circuit acknowledged the rape (though neither named it as persecution), but justified the denial based on the legal reasoning that there was not clear evidence that she had been raped because of her political opinion.

In 1982, Olimpia Lazo-Majano was raped and beaten for months by a high ranking official in the Salvadoran military. Her husband left El Salvador because he had been involved in a right-wing paramilitary organization, and after he left the group, he feared for his life from both the government and the left-wing guerrillas. After her husband left the country, Lazo-Majano was approached by Sergeant Rene Zuniga to do domestic work for him. She agreed, and soon after, he began assaulting her, threatened to kill her, and called her a government subversive. Later that year, she escaped and came to the U.S. seeking asylum. Her case was based on rape as persecution that was linked to imputed political opinion. An immigration judge denied her claim, and the BIA upheld the decision. The BIA found that "the evidence attests to mistreatment of an individual, not persecution", and while the Board acknowledged the harm as "deplorable", the decision was justified, as "strictly personal actions do not constitute persecution" [81]. The case was overturned by the Ninth Circuit, and in its decision, the court stated that "persecution is stamped on every

page of this record. Olimpia has been singled out to be bullied, beaten, injured, raped, and enslaved" [81]. In his opinion, Circuit Judge Noonan not only recognized that rape was persecution, but this case was the first to advance the idea of imputed political opinion, meaning that if the persecutor believes one has an opinion and harms someone because of it, the veracity of that opinion does not matter [82]. In other words, whether Olimpia was a subversive was not the issue; Sergeant Zuniga's insistence that she was a subversive and that is why he harmed her infers the ground and, hence, makes the persecution based on imputed political opinion.

The first case, *Campos-Guardado v INS*, shows the struggle that asylum seekers faced when rape was not recognized as persecution and the reason for the rape was ignored as politically motivated. The second case, *Lazo-Majano v INS*, shows how the persecution itself and the reason for that persecution were seen as "personal" when it involved sexual violence that happened to women. If not for the foresight of Circuit Judge Noonan, Olimpia Lazo-Majano, too, would have been denied asylum. It took years for immigration law to recognize non-governmental actors, particularly family members, as the persecutor. The 1995 INS Guidelines took notice that women might bring forth claims of rape, and as a form of "serious physical harm", rape constitutes persecution, but must also be linked to one of the five grounds. The Guidelines reminded asylum officers that "as in all cases, the determination that sexual abuse may be serious enough to amount to persecution does not by itself make out a claim to asylum. The applicant must still demonstrate that the fear of persecution is well-founded and that the persecution was threatened or inflicted on account of a protected ground" [17]. It emphasized how asylum officers should be attentive to the particularities of interviews with those who have been sexually assaulted, such as being aware of asylum seekers' reluctance to speak about their attack(s), especially in front of family members. It also addressed how female claimants might be more forthcoming about stories of sexual violence in interviews conducted by female asylum officers. The Guidelines cited trauma as a factor that can affect demeanor and, consequently, result in a negative credibility finding. In its most recent iteration in 2019, the updated Guidelines begins the section on "rape and other sexual abuse" with "Rape and other severe forms of sexual harm constitute harm amounting to persecution, as they are forms of serious physical harm", making rape as a form of persecution central to the training of asylum officers [83].

1.3. Credibility and Traumatic Memory

Storytelling is central to the process of seeking asylum [84]. A key difference between asylum interviews and hearings for asylum seekers and other legal or court hearings, including other immigration hearings, is that there is usually little, if any, proof of asylum seekers' identity and persecution. Fleeing for one's life leaves little time to pack and organize documents. For women, this is even more likely, as the persecutor is often a family member, making their escape more extemporaneous than it is for male asylum seekers. Consequently, immigration attorneys and immigrant service providers, such as health care professionals, rely on the stories that asylum seekers tell of what happened to them when compiling an asylum application [85]. The story or narrative is all that asylum seekers have to offer, as corroborating evidence is rarely available [86].

The expectations of credibility that asylum officers and immigration judges use to determine if an applicant is eligible for asylum often conflicts with how asylum seekers, particularly survivors of sexual assault, describe their experiences of persecution [87]. Credibility includes demeanor, detailed accounts, and consistency. The training materials for asylum officers instructs them that "the applicant's ability or inability to provide detailed descriptions of the main points of the claim is critical to the credibility evaluation" [88]. In the past, immigration officials acted on the belief that asylum seekers were more, not less, likely to remember traumatic events, as it seemed reasonable that one could hardly forget the details of something that produced life-changing circumstances [89]. Trauma and its effects are more widely understood in the current training materials, which state that

“while demeanor, candor, responsiveness, and detail provided are to be taken into account in the reasonable fear context when making a credibility determination, an adjudicator must take into account cross-cultural factors [and] effects of trauma . . . ” [88].

The current training materials are a response to critiques from immigrant advocates that emphasize cross-cultural variation in how stories of persecution are told and how trauma shapes those stories [90,91]. However, the implementation of asylum policy shows that immigration officials continue to expect a story that is consistent, detailed, and chronological [86,92]. Asylum seekers who do not tell their story in ways that make them believable are suspected of fabricating their account of the events, as immigration officials deem stories that have fewer details, inconsistencies, and omissions fictitious [93]. These criticisms extend to asylum adjudication in other countries, such as the United Kingdom, where one study found that a member of the Home Office, the agency that oversees asylum applications, believed that if an asylum seeker had experienced an event, it is reasonable they would be able to recount it [94].

There is consensus among experts in the field of psychology and asylum studies that traumatic memory is different from other memories [94–98]. Traumatic memory is fragmented, as it is stored as implicit memory, which is emotional and sensory-based [99]. Trauma adversely affects memory in several ways. Discrepancies and inconsistent recall are common for traumatic memory [100]. Asylum seekers routinely meld instances of harm if they happened frequently or long-term [100]. Their ability to recall autobiographical memories that are specific memories, rather than overgeneral memory, is lower if they have experienced trauma, making it harder to give a detailed narrative [97].

Trauma is both a cause and an effect of asylum denials. Asylum seekers can be denied if they are not deemed credible, and the process of seeking asylum can be traumatizing, resulting in exacerbating their trauma-related symptoms. The process of telling the story is itself traumatic, as asylum seekers must tell their attorney and mental health practitioners (if they have one) their stories repeatedly to assemble their asylum application materials [101]. This is all in preparation for the asylum interview or hearing that determines their fate.

One mechanism for facilitating storytelling is the growth of the forensic psychology industry and its contribution to asylum materials [102]. Healthcare practitioners evaluate asylum seekers and provide documentation of physical and psychological medical conditions, providing expert testimony of how the symptoms are consistent with trauma [103]. While these reports were in several of the asylum applications of the asylum seekers in my study, the standardization of medical assessments of torture survivors is one change since my research was completed. In 1999, the United Nations adopted the Istanbul Protocol, which set forth international guidelines for documenting torture [104]. These guidelines provide a systematic framework for documenting torture and its effects. While neither of the healthcare providers I interviewed referred to their clinical work as providing “forensic evidence”, this term has entered the lexicon of the legal and medical field. Clinicians assess asylum seekers, document signs of torture, and submit reports to immigration attorneys, who use them as evidence in asylum applications [105]. The change is twofold. The Protocol provides a scaffolding for clinicians to methodically document torture. It also ushered in new terminology, in particular the addition of the term “forensic”, as opposed to the language of evaluations or reports that immigration service providers and immigration attorneys used for this study [106].

Although the Istanbul Protocol is a non-binding document, it is recognized by many nation-states that process asylum claims as the standard of best practices [107]. There is also support for the Protocol among many U.S.-based organizations, such as The Lawyers Committee for Human Rights, Physicians for Human Rights USA, The Center for Victims of Torture (CVT), and Human Rights Watch, among others. However, its use in asylum applications in the U.S. in the last two decades is unclear, as there is a dearth of published studies that reference it. This is most likely a product of its non-binding relationship to U.S. asylum policy. One study analyzed 200 legal-medical affidavits from 1987–2018 from the Physicians for Human Right and found that 21% of asylum seekers experienced memory

loss. Memory loss included no recollection of the event, memory gaps, and incomplete memories of traumatic events. Clinicians reported difficulty in establishing a timeline of trauma, making a linear account of what happened hard to substantiate. The authors report that theirs is the first study “to look at the associations between neuropsychiatric diagnoses and signs and symptoms of memory loss in a sample of U.S. asylum seekers using medico-legal affidavits” [93]. Another study of medico-legal reports in Italy found that the higher the consistency with the Istanbul Protocol guidelines, the more likely asylum seekers will receive protection [108].

In 1974, the term Rape Trauma Syndrome (RTS) was introduced to explain survivors’ responses [109]. While feminists have long eschewed the application of RTS, as it shifts the responsibility of the harm from the perpetrator to the victim by naming it as a syndrome or pathology, it is used in psychological reports included in asylum application materials, as it explains behavioral responses to claims of sexual assault [110].

Like traumatic memory in general, rape memories are vague, fragmented, disorganized, and hierarchical rather than linear [95]. It is common to lose consciousness during the assault, and asylum seekers may experience flashbacks while retelling it during their asylum hearing [74]. Of all the types of persecution one may face, sexual assault is likely the one that is least often acknowledged by asylum seekers, as they feel shame [74], and it is stigmatized in many, if not most, cultures [101]. Avoidance is so great among those who have been sexually assaulted that they refrain from saying the word “rape”, as it “evokes charged and negative emotions” [111]. This presents a conundrum for attorneys, who “must press the client for graphic details of a painful and traumatic experience that the client would rather leave buried” in order to gain asylum [112]. Talking about rape is difficult and complicated because asylum seekers do not want to relive it through its retelling, and traumatic memory recall can make the narrative incomprehensible at times. Moreover, rape myths, such as victim blaming, false allegations, and the idea that it is a rare act of aggression, impact the criminal justice system, including asylum adjudicators’ ability to apply the law, even when the law recognizes rape as a form of persecution [113].

2. Materials and Methods

This research is based on qualitative data that the author collected in 2001–2003 in Los Angeles, California, and from 2008–2010 in New York City, New York. It includes interviews with asylees, immigration attorneys, immigrant service providers, healthcare workers, and immigration officials; documentation materials, such as asylum applications; and observations of immigration court hearings. All participants in immigration court (asylum seekers, immigration attorneys, immigration judges, assistant district counsels, and court interpreters) provided informed consent for this research project. Asylees gave informed consent in instances where their attorney provided me with their asylum applications.

Participants who were interviewed were recruited through contact with immigrant service organizations and immigration attorneys. I did extensive volunteering with these organizations to establish rapport with asylum seekers before our interview. The sample is convenience sampling, not a representative sample of clients from the organizations and law practices from which they were recruited. Observations of immigration court hearings were organized through immigration attorneys who represented the asylum seeker. Immigration court hearings are public hearings. My presence as a researcher was known, and oral informed consent was given by all participants for all hearings. Asylum application materials were procured with the consent of the asylum seeker through the asylum seekers’ immigration attorneys.

The data include a total of seventeen interviews. Interviews were done with four asylees (Amina, Zaina, Mariam, and Elizabeth), five immigration attorneys (Paul, Richard, Sarah, Marcos, and Mai), six immigration officials (Marilyn, Cindy, Jeffrey, Alice, Deborah, and Daniel), and two immigrant service providers (Margaret and Nicole). All interviews were semi-structured, tape-recorded, and transcribed. All names are pseudonyms. I include verbal testimony from immigration court for four hearings with Mariatu (whom I knew

before the hearing through my volunteer work with an immigrant service organization) and three others. These asylum seekers were from Sri Lanka, Russia, and Sierra Leone.

Some asylum seekers only agreed to have their attorney give me a copy of their asylum application and did not want to meet for an interview, as telling their story is retraumatizing. These included Nandar, Sebie, Mehret, and Ovsana. I was also able to procure asylum application materials from Amina and Zaina. From a total of nineteen asylum applications from the complete study, I identified six from female asylum seekers that described sexual assault. Men also experience rape, and sexual assault was common in the asylum applications of homosexual men that were part of the larger study. However, I do not include them in this article and have documented elsewhere how gay men talk about sexual assault in their persecution narratives [114]. While asylum seekers were overwhelmingly reluctant to use language such as “rape” or “sexual assault” during our interview, these terms were in their asylum application materials. I performed a conceptual content analysis of the materials, looking for terms such as rape, sexual assault, sexually violated, forced (in reference to sex), molested, and sexual abuse to identify the six applications of asylum seekers that included sexual assault as part of their claim. Asylum seekers use a range of language to talk about (or avoid talking about, as discussed later) sexual assault. However, their attorneys who prepare the application materials use explicit language, as these documents will be reviewed by immigration officials. It is more common to find references to sexual assault in the asylum application materials than in oral interviews with asylum seekers.

The USCIS office was formerly the Immigration and Naturalization (INS) office and moved from the Department of Justice to the Department of Homeland Security on 1 March 2003. References to events before this date refer to asylum hearings as part of the INS.

3. Results

The results from this study are organized into three subsections that discuss the themes from the data analysis. The first, *Rape: A Questionable Form of Persecution*, shows how immigration officials continue to refuse to accept that rape is a form of persecution, even after the law has recognized it as such. The second, *Talking about Rape*, demonstrates the myriad ways that rape survivors refer to their own assault and how service providers, immigration attorneys, and immigration officials respond. The third, *Gory Details: Credibility and Traumatic Memory*, explains what counts as credible evidence or proof, how details matter when articulating stories of persecution, the emotive dimension to how asylum seekers express themselves when telling traumatic stories of sexual violence, and the expectations that immigration officials have about how rape is narrated.

3.1. *Rape: A Questionable Form of Persecution*

The examples in this section show how immigration officials continue to question whether rape is persecution. They do so not by naming rape as personal, but by rendering it invisible by focusing on other forms of persecution presented in asylum application materials and immigration court hearings. The following are three examples of asylum seekers: Nandar from Myanmar, an Armenian woman from Russia in immigration court, and Mariatu from Sierra Leone. I also give an example from Marilyn, an asylum officer supervisor. These cases show how immigration officials accept men’s persecution as the primary form of harm when considering a claim, assume asylum seekers’ motivation for migrating is other than persecution, give blanket denials for those who have suffered general atrocities during wartime, and do not see how rape can be persecution.

Nandar is an asylee from Myanmar (although her asylum materials use Burma, including Nandar’s declaration). Nandar’s father and brother were involved in the National League for Democracy (NDL). According to Nandar, “Burmese soldiers tortured and killed my father and our family suspected they killed my brother”. Nandar left Myanmar for a refugee camp in Thailand, where she received a permit to work at a construction site. In her declaration, she stated that “after I had been working at the construction site for three months, the Thai

manager tried to rape me". She fended him off with a piece of concrete, and in retaliation, he beat her in front of the other workers. When she returned to the refugee camp, she tried to report what happened and described the following in her declaration:

Around 4:00 p.m., an officer, a tall heavy-set man, came into the room where I was waiting. He pushed me onto a table, tore off my pants, and raped me. After the officer raped me, three or four other soldiers came in and held me down. I was screaming, so one of the men held his hand over my mouth. Some Burmese men heard me screaming and came to intervene. The officer who had raped me ordered me to get dressed and let me go. I believe that if the Burmese men had not intervened to help me, I would have been killed after I was raped. [115]

Nandar was granted asylum based on political opinion because of her family's participation in the NDL movement. Her attorney told me that "she got it [asylum] based on imputed political opinion because of her family. The judge didn't even mention the rape" [116]. Even though she was persecuted herself, her family's political actions eclipsed her assault. Not only was the rape itself persecution, but since the perpetrator was a military officer and of a different nationality than Nandar, the assault could easily have been linked to political opinion and/or nationality. Instead, the justification for gaining asylum was as though the rape never happened. Moreover, Nandar's description of her rape constitutes coercion, as she reports having feared for her life if it were not for the men who intervened.

An Armenian woman testified that she had been persecuted for being an ethnic minority in Russia. She was active in an Armenian political organization and was threatened that if she continued to participate in the group, there would be violence. The following is the exchange between the Assistant District Counsel (ADC) and the Armenian asylum seeker. The ADC is the attorney that represents the government in immigration court hearings and is responsible for questioning the applicant.

ADC: Why did they rape you?

Asylum Seeker: Because of my involvement in the organization.

ADC: Did you scream? Did you shout out?

Asylum Seeker: No.

ADC: Why not?

Asylum Seeker: They were closing my mouth.

ADC: Did anyone hear what was happening?

Asylum Seeker: I don't know.

ADC: After they left, what happened?

Asylum Seeker: I left.

ADC: Did you go to a Doctor?

Asylum Seeker: No, I was ashamed.

ADC: Were any other women in the organization raped?

Asylum Seeker: I don't know.

ADC: Did you go to any more meetings?

Asylum Seeker: No.

ADC: When did you go back to work?

Asylum Seeker: Soon. But I could only work a few hours a day and was told not to come back to work because I had trouble concentrating.

During this exchange, she is crying, and the interpreter (male) hands her a tissue. The judge granted the case, and when the hearing ended, the judge and ADC talked about Armenians living in Russia and how the real problem was finding work. The judge stated "Half the time I am left guessing in the dark" [117].

Like other hearings I observed in immigration court, asylum seekers are suspected of having ulterior motives for why they migrated to the U.S. when the issue of work is introduced [118]. The post-hearing discussion between the judge and ADC indicated that the judge may have believed that the asylum seeker did not come to the U.S. because of

persecution (although the judge did not state this explicitly), but instead to find work. There was no acknowledgment of how the asylum seeker was dismissed by her employer because of her inability to concentrate, a common symptom that rape survivors report. Moreover, she testified that she did not visit a physician because she was ashamed of the assault. As the asylum seeker made a clear link in her testimony that her rape was because of her involvement in a political organization, the case could easily have been interpreted as persecution based on political opinion. Instead, the judge granted the case based on the general treatment of Armenians in Russia, with no mention of the rape in his opinion. The judge was uneasy with his own decision since he stated he was “guessing in the dark” for a case of rape that was tied to political opinion. The ADC’s questioning about her response to the rape, asking her if she “screamed” or “shouted out”, is common in U.S. domestic legal proceedings, where the legal burden involves showing that the rape was not consensual sex. This is one example of how the concept of consent, rather than coercion, guides the implementation of asylum law.

Mariatu is the only asylum seeker in this section whom I knew before her hearing. I met Mariatu through a local group that worked with asylum seekers. Mariatu was from Sierra Leone and was seeking asylum based on female genital cutting and rape. Her brother had been killed in front of her and other family members as retribution for their father’s political activities during the civil war. She fled Sierra Leone because of the rebels and feared for her life. Upon arriving in the U.S., her attorney introduced her to an organization that provided mental health counseling, and her therapist learned that she had been circumcised. As a legal basis for asylum, her circumcision was included in her claim as a form of past persecution, even though it was not the reason she left her country. A medical doctor who had examined Mariatu, an OB/GYN, provided telephonic testimony and was on speaker phone as Mariatu sat on the stand.

ADC: How would you know if you were examining someone with FGM?

Physician: There are three stages of FGM [Female Genital Mutilation] and Mariatu has stage two which includes the removal of the labia minora. I have done thousands of pelvic exams in my career and have seen enough women without it to know the difference.

ADC: What did you find when you examined her?

Physician: She told me she had been raped.

ADC: What evidence was there of sexual assault?

Physician: The barrier between her vagina and rectum was crudely violated. Her vagina and urethra were exposed because the tissue was torn and stretched. This is consistent with trauma.

During the doctor’s testimony, Mariatu is visibly shaking and crying. Later in the hearing, Mariatu is questioned about her rape.

ADC: Why did you leave Sierra Leone?

Mariatu: The rebels came to my house looking for my father. He was not there. They beat my mother. They cut off my brother’s leg. They raped my sister.

ADC: Did anything happen to you?

Mariatu: They raped me. If they had killed me it would have been better than what’s happened to me.

ADC: Why didn’t your family take you to the hospital?

Mariatu: Because of my brother’s leg.

After the questioning ended, the ADC informed the judge that the government did not oppose a grant. The judge asked on what basis since civil war is not a reason for asylum. The ADC responded that the rape and FGM constituted past persecution, and her fear of the rebels established fear of future persecution. The judge granted the case since it was not contested by the ADC [119].

The ADC’s questioning of the physician shows that it was not enough for Mariatu to divulge her rape to her medical provider, but that “evidence” was needed to show that

she had been assaulted. The physician's testimony, while not required, conforms to the practices outlined in the Istanbul Protocol that documents torture. To the ADC's credit, she acknowledged two forms of gendered harm that Mariatu had experienced, the rape and female genital cutting during her childhood. As I have argued, after the 1996 *Matter of Kassinga* case allowed women to claim asylum based on female genital mutilation, instances where asylum seekers can show past persecution, or fear of future persecution based on it, justification for granting asylum often focuses on the female genital cutting parts of their testimony and application materials and supersedes those of sexual violence [120]. This is in part due to the exoticization of these types of claims. In Mariatu's case, the ADC recognized both types of gendered harm. The judge, however, saw neither as persecution, even though there was settled (for the time) case law for both female genital cutting and rape as persecution. The judge justified his initial inclination to deny the claim because of general war atrocities not being reason enough to grant asylum. The judge's decision normalizes rape in conflict situations as a byproduct of war.

The rapes that Nandar, the Armenian woman from Russia, and Mariatu experienced all should have been considered persecution, and yet none were acknowledged by immigration officials as being such (with the exception of the ADC in Mariatu's case, who does not make a final decision). None of the immigration officials called the rapes "personal". In fact, they did not call them anything at all, as they were ignored, as though sexual assault was not at all part of their claim. Yet, they all gained asylum. In the past, legal scholars emphasized the importance of rape being persecution since cases such as *Campos-Guardado v INS* and *Lazo-Majano v INS* revealed the devastating outcome of being denied asylum when immigration officials do not consider rape persecution. The examples I offer show that even in cases that are granted, that rape can be ignored and still not be considered a worthy cause for granting asylum.

In my interview with Marilyn, an asylum officer who later worked as a supervisor, she recalled a case where a female officer she supervised did not consider rape persecution.

I remember trying to educate one of my very good officers—very good—why rape was persecution. This was a very good officer and a female officer mind you. And she gave me a case very well written, that had a finding on it where the woman had been raped and she found no past persecution. Here's a woman, you know, who could not perceive this as persecution. But that shows you the challenge of it. And also, just seeing rape as a crime. The problem was the rape wasn't considered persecution, and that's scary. [121]

One key assumption among immigrant advocates is that women prefer to discuss sexual assault with other women rather than men. The asylum officer training materials indicate as much and attempt to pair asylum seekers with female officers when requested, based on availability [83]. Yet, some immigration attorneys, as I discuss in the next section, find that male immigration officers are more sympathetic toward rape cases.

These examples show how some immigration officials still do not recognize rape as a form of persecution. Men's activities and the persecution they face are seen as more important, as in Nandar's case. Asylum seekers are accused of having an ulterior motive for coming to the U.S., as in the case of the Armenian woman whom the judge suspected needed work. Rape, killing, and other violence were seen as the normal course of what happens during civil war in Mariatu's hearing. Marilyn's example of a female asylum officer who did not think that rape was persecution contradicts the assumption that women are more likely to be receptive to hearing about sexual assault and considering rape persecution compared to men.

3.2. Talking about Rape

During my interviews with asylum seekers, it was more common for them to use alternative words and terms for describing their assault than to use the word rape. This section shows how asylum seekers use language other than terms such as "rape" or "sexual assault" to talk about their experiences. I offer examples from three asylees, Amina from

Ethiopia, Zaina from Lebanon, and Mariam from Iran, and how they discussed their own sexual assault with me. I also discuss five examples from three immigration attorneys, Richard, Paul, and Marcos, who talk about the challenges of representing clients who are not forthcoming about sexual assault.

Amina's father was an officer in the Ethiopian military. During a regime change, opposition members came to her home, killed her father, and raped her. She was interrogated on several occasions by the secret police and gang raped twice. When Amina and I met, she knew that I had read her asylum materials and, therefore, knew about her assaults. She had agreed to the interview, but was clear that she did not want to talk about "you know", meaning her sexual assaults. There were several times during the interview when she said "you know" about the sexual violence she experienced, but did not use any other language to articulate or name what had happened to her. For example, when she talked about her immigration court hearing, she said, "I'm so glad the interpreter was a woman because I don't want a man because my case is, 'you know'. I don't want to talk with a man". Amina conveyed how in court, she had to give details of the attack and did not want to do this if a man had been translating. She recalled how in court, "I was crying when I remembered everything that happened to my father and I didn't want to talk about, 'you know'. I told them, "I don't want to stay in my country, and I hate it especially after they killed my father, and, you know". She ended our interview by telling me that "I had a lot of things happen to me" [122].

That Amina used vague language about her rapes with me had no effect on her asylum hearing. She knew that I knew, hence the repeated language of "you know", which allowed us to talk about other aspects of her experiences without having to relive the horror of the multiple rapes she experienced. To Amina's relief, the interpreter during her immigration court hearing was a woman. She found this reassuring since she did not want to talk about being raped in front of a man, particularly one who was translating her testimony. Unlike the asylum office that extends an effort to make female asylum officers available for cases involving sexual violence, immigration court makes no such accommodations. Amina did not discuss the gender of others in the courtroom—the judge, the ADC, and her own attorney (who was a man). While Amina was more comfortable testifying through a female interpreter, this does not mean that the interpreter was necessarily sympathetic to hearing Amina's experiences regarding the assaults. As shown in the previous example about the asylum officer Marilyn supervised, simply being female does not necessitate an understanding of rape as persecution.

Unlike the other asylees I discuss in this article, who were raped by men unknown to them, Zaina's perpetrator was her husband. Zaina was from Lebanon and was forced to marry her husband at a young age. Zaina detailed beatings and how her husband threatened her life throughout their marriage. She seized an opportunity to leave when her mother fell ill and used it as an excuse to leave the country. Once she arrived in the U.S., she sought asylum based on domestic violence. When she talked about the assaults she endured throughout her marriage, she said, "The first day... I don't really like to talk... but the first day he treated me bad, in bed. He forced me to make love to him. Emotionally I was like a dead person because of him". Zaina does not use the word rape, although it is used throughout her asylum application materials. In her asylum application, she declared that she was "sexually abused", but when discussing a domestic worker who lived with her family, Zaina expressed that her husband was arrested and questioned by the police for "the rape of a girl who was working at our house as a maid" and that their children were "made to witness the rape". He was released because of his political connections. She uses the word rape to talk about fear of future persecution when she affirmed that "if I return to Lebanon, I will be beaten and raped" [123].

Like the example offered about Mariatu and how some forms of gendered violence, such as female genital cutting, can elide other forms of violence, such as sexual assault, Zaina's asylum materials were primarily about her being a victim of domestic violence, with the rapes treated as just one of many ways that her husband abused her. Her use of

language such as being “treated badly in bed” and “forced to make love” reveal the tenuous line between consent and coercion for marital rape. The sexual violence in her marriage was only viewed as “abuse”, ostensibly under the incorrect assumption that all marital sex is consensual, even when the marriage itself was not. Conversely, the assault of the domestic worker was “rape”, not because the act itself was any different, but because the social relations between a husband and wife are different than those between an employer and employee. Here, Zaina reproduces the slippery slope of the notion that marital sex is consensual, rather than calling it coercive. It is only in the hypothetical fear of future persecution that she calls what will continue to happen to her rape.

Mariam was imprisoned for nearly four years for protesting oppressive policies in Iran in the aftermath of the 1979 Iranian revolution. Her husband had escaped to the U.S. with their children, and her father bribed government officials to secure her release and helped her join her family in America. Like others I interviewed, Mariam talked first about other women who were assaulted in prison. She recalled how:

In my country, they believe that if you are a virgin and are being executed that you will go straight to heaven. They [the guards] don’t want this to happen, so they rape those girls the night before the execution. I don’t know how anybody can be silent.

Throughout our interview, Mariam contextualized her imprisonment as a political act and identified strongly as an activist for women’s rights. She was appalled at those who did nothing in response to atrocities against Iranian women. She said “I talked with a lot of people. You’re not the first person. I went to the U.N [United Nations] and Amnesty International. I talked to lawyers. Yet still, remembering those things, the worst scenario for me...” Her voice trailed off before she continued the story of the girls who were raped. “The same person that raped the girl the night before the execution would visit the family afterwards and inform them that the girl had lost her virginity and that they were the one who did it and then shot her to death”. Mariam is crying as she tells me how traumatic it is for the families to hear this, not because their family member was raped, but because she was not a virgin, depriving her of eternal bliss. It is after she has provided the context for the rapes of others that she mentions her own assaults in prison by saying “the worse thing is that it happened to me”. Her voice trails again, and then she tells me that she did not tell her attorney about being raped. “I didn’t say everything. Maybe because he was Persian [her attorney], maybe because he was a man. Culturally, it was difficult, But the officer [immigration official] asked so I told her” [124].

Like other asylum seekers, especially those who were political prisoners, Mariam is aware of and talked more about the rape of other women than her own assault. She did so with seemingly ease, as she understood what was happening to others in the greater context of Iranian politics. Sexual assault was not personal, it was political. It was happening because they were politically active and because they were women. Yet, when she talked about her own assault, she did not use the word rape, only saying that “it” happened to her, as well. Like the asylum seekers in the following examples, Mariam did not tell her attorney, and it was not part of her application materials. She pondered whether her reluctance to talk about it with her attorney was based on gender (being a man) or ethnicity (being Persian). She also recognized that it was difficult culturally, possibly referring to the cross-cultural variation in how different communities talk about or do not talk about sexual assault. It was only when the immigration official inquired about it that she came forth with the information about her rape.

The following are five examples from three immigration attorneys about how their clients were not forthcoming about their rapes and with what consequences. For attorneys whose clients do not confide in them or reveal that they were raped once the documents have been submitted, it can provide a conundrum for their attorney and potentially harm their case. Paul, an immigration attorney described how a client did not tell him she had been raped.

There was a Salvadoran woman who told me she had been raped a day or two before we went into court. And that's damning because we've already filed our asylum application and there's no mention of it, and now she's saying she was raped. What do you do? Do you say, let's not talk about it, do you say lie about it if they ask you what happened, do you admit it? It's a horrible position to be in [125].

Paul presents the choices he faces when learning that clients have been raped after their application was filed. That he uses the language of "damning" reflects the strict expectation that immigration officials have about asylum applications; they need to be consistent with the testimony in the oral interview or hearing and not contain new information.

During my interview with Richard, an immigration attorney, he described how his client was reluctant to talk about her rape, so much so that she did not include it in her asylum application materials that were prepared by a different attorney. During the asylum hearing, she spoke about it for the first time.

The attorney that I got the case from had already filed the asylum application. She told me she was raped, even though it was not in there [the application]. The woman did not tell the INS that she was raped. I said if there's anything else you're not talking about, you know, this is your last chance. So it came out in bits and pieces. And when I prepped her, to talk about the rape, she would break down. She wouldn't be able to talk about it. And in court, we had to stop the hearing for forty-five minutes. Unfortunately, we had a trial attorney [ADC] who thought my client was lying. I actually prefer the rape cases with the men. She [the ADC] was like really cold. Luckily, we had a good judge, but the trial attorney was not believing her. [126]

Another immigration attorney, Sarah, echoed Richard's sentiment of a preference for rape cases with male judges and trial attorneys. Sarah stated that "My feeling is if I'm going into court with any sort of rape issue, you're generally much better off with a male judge than a female. The men are afraid to look insensitive and, in fact, go out of their way to be sensitive" [127].

These examples show how male immigration officials, rather than female ones, may be more likely to recognize rape as a form of persecution. Richard's client demonstrates the reluctance that many asylum seekers have when discussing rape. Since he took over the case from another attorney, the client had not been prepped to testify about being raped, making her ability to talk about it more difficult. Both Richard and Sarah articulated how they prefer male officers. Richard also acknowledges those in the courtroom who are in powerful positions in addition to the judge. Even though he had a "good" judge, presumably meaning one that believed his client, the ADC thought his client was lying. This may have been because the rape was not mentioned in the original application materials. However, that Richard emphasizes that he prefers men for rape cases shows that his interpretation was less about the inconsistencies between the written application and oral testimony and more about the ways in which men can be better allies for female asylum seekers who have been assaulted.

One reason that asylum seekers are reluctant to be forthcoming with details about sexual assault is if a family member is involved in the asylum process. For example, Richard described how when his client's brother served as the interpreter, his client did not discuss being raped.

I had one client who I found out she was raped a couple of days before our hearing, and I said, we have to tell the judge and she didn't want to. And I said, you know, it could help your case. I asked her why didn't you tell me before? When she was applying for asylum, her brother was the translator and she didn't want him to know. [126]

In this example, unlike Paul, who referred to the new information as "damning", Richard tried to persuade his client to be forthcoming about her rape, as it might facilitate

a grant. This shows that Richard views rape as persecution and how its inclusion can potentially help asylum seekers' cases. His client's reasoning for not talking about the rape was to prevent her brother from knowing about it. Margaret, a physician who treats torture survivors, reiterated the dilemma Richard described about rape survivors talking about their assault in the presence of a family member.

It's always better—in any torture case—to have a person not be a relative because people don't want to disclose rape or any kind of violence. They want to protect their family from the knowledge of how horrible it was or the humiliation of revealing what's been done to them because there's always so much shame involved. And that's the other thing that I tell the women over and over again that this is not their shame: it's the shame of the person who did this to them. [128]

Margaret picks up on a central theme among rape survivors. The shame of the experience is so great that many do not speak about it and certainly do not disclose it to family members. This example shows how shame and the desire to prevent family members from knowing about their assault impedes asylum seekers' ability to talk about sexual violence. Yet, if they do not talk about it, or attempt to talk about it later, they may be viewed as noncredible by immigration officials.

While immigration officials are far more educated about sexual assault and how to interact with those who have been persecuted in this way, others seem to behave no differently than those who adjudicated cases long before asylum law recognized rape as a legally accepted form of persecution. Paul recounted the following experience he had with his client in immigration court.

She's describing the rape and saying that while all of this was happening, that he [the assailant] said terrible things to her, and the judge said: 'what did he say?' She started to cry and said 'I don't want to repeat the words he said to me as he was raping me.' 'I want to know exactly what he said, tell me what the words were.' And you just have this focus from him, which I think was gross voyeurism. He also wanted to know what she was wearing. [125]

This example is particularly troubling, as it seems to reverse the gains made by asylum law and policies that seek to make rape survivors more at ease when testifying, rather than humiliate them. It shows how victim blaming, evidenced in the judge's questioning about what she was wearing, continued to pervade asylum hearings, even after asylum law recognized rape as a form of persecution. Needing to hear the words, the details of what her rapist said, with no reference as to why, demonstrates how retelling narratives of rape can be emotionally gut-wrenching for asylum seekers, and all for what may be only to satisfy the voyeuristic need of a judge to know details that may have proved unnecessary.

Conversely, other immigration attorneys, such as Marcos, conveyed positive experiences with judges. During my interview with Marcos, he described how a judge purposefully helped an asylum seeker avoid having to testify about her rape. Since the judge had the written asylum application materials, he used that instead to make his decision. Marcos told me that:

I've seen judges, particularly with rape cases, do the right thing. The judge comes out and says to the client 'I've marked a little piece of your declaration, I want you to read it right now to yourself. Councils—do you all notice the section that I've pointed to? This is very sensitive material. Now I want to ask you a question, a very important question, is that what really happened to you? [The applicant then states 'Yes, your honor, yes, that's what happened to me. I'm going to give instructions to council for no further questions on these points. I'm going to issue my finding right now, that this person has credibly suffered what is indicated in paragraph three.' Now there's a judge who gave that client some of her dignity. I wish we could see more of that [129].

In this example, Marcos articulated how the judge considered the written testimony in the asylum application sufficient and did not require further oral testimony about a sensitive topic, such as sexual assault. The judge asked only one question about the rape and that was whether it “really happened”, to which the judge was satisfied with the asylum seeker’s answer that it did. Marcos lauded the judge for not forcing his client to testify about her rape. However, what Marcos does not point out is that this was only possible because the description of the rape was in the written materials. If Marcos’s client had not confided in him about the rape until later, as in the examples that Paul and Richard provide, the judge may have responded differently.

The examples from this section show that asylum seekers are generally reluctant to talk about rape. They do so by using vague references to their assaults or withholding information from their attorneys and immigration officials. In some instances, the hesitation to discuss their assaults can prove detrimental if their case is denied. In general, they are viewed as noncredible by immigration officials who interpret the omission as problematic. Asylum seekers then become suspected of being liars who are fabricating stories to remain in the U.S. In other interviews I did for this study, there were instances of immigration attorneys and immigrant service providers discussing their clients’ sexual assaults with me, even when I knew their client, and the asylum seeker had not disclosed this information to me [130]. That asylum seekers did not always confide in me, or if they did, but did not disclose their assault to their attorneys, was of no consequence regarding the final outcome of their case if they gained asylum.

The asylum system itself is not conducive to stories of sexual assault. The asylum adjudication system locks one into their own narrative early in the process. Once the asylum application materials have been submitted, that becomes the story that must be repeated in interviews and hearings before immigration officials. Straying from that narrative can prove detrimental. In this sense, as I have argued elsewhere, asylum seekers have limited space as subjective agents telling their stories on their own terms [131].

While there is more awareness about why rape survivors do not disclose their assaults since these data were collected, the asylum system has become more stringent, not less, with laws such as The Real ID Act and *Matter of A-C-A-A*, which have more narrowly defined credible testimony. In the last two decades, there seems to be two contradictory movements regarding gender-based asylum cases and domestic movements in the U.S. regarding rape. For gender-based asylum, and even asylum in general, anti-immigrant sentiment, materialized through restrictive laws and policies, has made it harder, not easier, to gain asylum. Conversely, awareness about sexual assault, particularly with the domestic #MeToo movement, as well as international movements and legal changes outlined earlier in international courts that deal with the subject of rape, has increased and made a space for survivors to come forward. Yet, even in our current climate of awareness and emphasis on survivors telling their stories, such as the asylum seekers in this study, there is still shame and stigma associated with sexual violence that make speaking out about rape a deterrent for many.

3.3. *The Gory Details: Credibility and Traumatic Memory*

A crucial part to asylum seekers telling their story is offering enough details to make it believable to immigration officials. Immigration attorneys and immigrant advocates walk a fine line between needing enough information to make their clients’ stories believable, but not wanting to retraumatize them during the process. One immigration attorney, Mai, captured this dilemma when she told me that “asylum cases are grueling because you have to talk about the gory details” [116]. This section focuses on how credibility, especially the expectation of detailed statements and testimony, and demeanor, how asylum seekers tell their stories and the emotions they convey, most notably crying, structures narratives of persecution. I offer examples of how the symptoms of traumatic memory recall, which include the inability to remember details, loss of consciousness, and flashbacks, affect asylum seekers’ ability to narrate stories of sexual violence. This section includes six

examples of asylum seekers (Sebie and Mehret, both from Ethiopia; Ovsana, an Armenian from Russia; Elizabeth from Cameroon; and two immigration court hearings of an asylum seeker from Sri Lanka and one from Sierra Leone), five excerpts from asylum officers and one immigration judge (Cindy, Jeffrey, Alice, Deborah, and Daniel), three immigration attorneys (Richard, Mai, and Sarah), and two service providers (Nicole and Margaret).

Since immigration officials typically have little information to use when deciding cases, the story that asylum seekers tell them is paramount. The story must make sense to them, the harm must be indisputable as persecution, and the cause of the harm must be due to the five legal grounds. There is wide variation in how immigration officials adjudicate cases, so much so that the study referenced earlier shows that the adjudicator is the single most important factor that determines grants and denials [5]. The following two examples of Cindy and Jeffrey, both asylum officers, give a glimpse into this variation.

Cindy, an asylum officer, was the most direct about needing to hear asylum seekers' stories. She recalled one asylum seeker who had been raped and said, "I remember one instance of a woman being reluctant to speak about it. I said that she really had to do this. She was mortified about doing it. She was really, really reluctant to describe what had happened or to speak about it" [132]. Conversely, Jeffrey, another asylum officer, was open to various ways that asylum seekers might talk about being raped. He stated that:

In some cultures, there were idiomatic expressions like 'my dignity was taken' for horrible unspeakable sexual violence. It was so uncomfortable for the applicant, as well as for me. I would just try to get more information about other parts of the claim and put in that the applicant felt that her dignity was not respected and get the details about other things that happened in detention or whatever was happening. [133]

Cindy describes how, even when an asylum seeker is "reluctant" and "mortified" speaking about her rape, that she insisted she do so and instructed her that she had no choice. Jeffrey, however, offered alternative ways of understanding other aspects of a claim so that rape survivors did not have to disclose details that they (and he) were uncomfortable with discussing. These examples also support the gender differences that immigration attorneys Richard and Sarah reported earlier when they indicated that they both prefer cases before male, rather than female, officials.

Daniel, an immigration judge, offered this account of how a minor detail in wording changed his decision on a case.

We had a case involving a woman from the former Soviet Union who said that her political opponents cornered her in a valley or a building somewhere and she says they threatened her and began to fondle her. At her asylum hearing before the INS, according to what was noted on the asylum application, she claimed she was raped by them. Now molestation is nothing to smile at, but molest and rape are different—both disgusting but different. I found the Russian language interpreter who had translated for this woman at her INS interview. She testified that in the Russian language the verb for rape and the verb for molest is the same verb and it depends on inflection and tone. And she says, 'I could well have been wrong; it could have been molest. I was just so horrified I said rape.' Well, that ended the problem of credibility and I granted the woman asylum. [134]

Here, the significance of details has two implications. One is the discrepancy between the asylum application and hearing and how the applicant testified in immigration court. It was the difference between being molested and raped that Daniel needed clarification for. That the applicant described two different types of sexual assault meant that her testimony was inconsistent, making her testimony noncredible. In fact, Daniel ends by stating that the "problem of credibility" was then resolved. Yet, there is another distinction that Daniel is making. He is using a narrow definition of sexual assault that most likely names rape as cis-heterosexual penetrative sex. This standard makes being molested bad, and in Daniel's words "disgusting", but also very different. While Daniel granted her

asylum, some immigration officials most likely would not agree that being molested rises to the level of persecution that rape does and may have denied the case.

Asylum seekers who have been sexually assaulted routinely report that they have trouble remembering details. The following are examples of how asylum seekers had trouble recalling details from their sexual assault. Richard described how not remembering a detail hurt his client's case. "I had one client who was raped. The INS should never have denied this case. They denied it on a discrepancy, she couldn't remember the exact color of the uniform of the soldiers who were raping her" [126].

Sebie, an asylum seeker from Ethiopia, also had trouble remembering details. In her asylum application, she conveyed how she did not remember the number of men who assaulted her. Sebie was active in the All Amhara People's Organization (AAPO), a political group whose members were targeted and jailed by the Ethiopian government in the early 1990s. Sebie joined as a youth and attended several demonstrations, one of which resulted in her arrest, and she was raped in jail. The following is from her declaration.

The soldiers grabbed me, and I began to scream. One of them put his hand on my mouth. I tried to stand but he pulled me down. He raped me. I heard other soldiers come into the room. At some point, these other soldiers raped me. I don't remember how many soldiers raped me. It was a long time. I felt dead. I am afraid to return to Ethiopia. I fear I will be returned to prison for my involvement in the AAPO. The memories of my horrendous imprisonment and rape still remain with me. I can never forget what I have suffered. [135]

In these examples, Richard's client could not remember what many might consider an insignificant detail—the color of the uniform of the soldiers who raped his client. Sebie was raped by multiple men while in detention, but could not remember how many had raped her. Some immigration officials consider the inability to remember these details incomprehensible, as though in the moment of being sexually assaulted, one would somehow remember all of the details of what was happening. Yet, it is precisely these details that are inaccessible to asylum seekers as they narrate stories of sexual violence. A common theme in the literature on traumatic memory is that recall is more likely to be compromised for traumatic memories than non-traumatic memories.

Another example of not remembering details is from an asylum seeker from Sierra Leone who had experienced multiple rapes. A woman from Sierra Leone described how she was taken captive by rebel groups and raped repeatedly. The following are the questions her attorney and the ADC asked her in immigration court.

Attorney: Why did you leave Sierra Leone?

Asylum Seeker: The rebels were killing everyone. They caught me and took me.

Attorney: What did they do?

Asylum Seeker: They tied me up and beat up.

Attorney: Anything else?

Asylum Seeker: They raped me.

The asylum seeker starts crying. The attorney continues to question her.

Attorney: How many times?

Asylum Seeker: Every day.

The interpreter is yawning as she testifies about the daily rapes.

Attorney: How were you able to leave?

Asylum Seeker: Some of the girls agreed to run out.

Attorney: Where did you go?

Asylum Seeker: To Freetown to find my family.

The ADC then questions her about dates, as there were discrepancies between her written declaration and oral testimony. The asylum seeker responds: "The problems I experienced, those are my memories now, every time I remember pain, I lose my mind".

ADC: Is the problem with dates due to your lack of education?

Asylum Seeker: I don't know [136].

Rather than finding the discrepancy in dates linked to traumatic events, the ADC assumes that being uneducated is why the asylum seeker could not remember certain dates. Like other survivors of sexual trauma, the asylum seeker describes how intrusive memories of painful experiences have affected her. That the asylum seeker stated that her problems are "my memories now" and when painful memories emerge "I lose my mind" reflects how traumatic memories are intrusive, another theme in the scholarship on traumatic memory.

How asylum seekers tell their stories matters just as much as the story itself. In addition to telling a story that includes details, the demeanor of the asylum seeker is another component of what constitutes credible testimony. While much of the literature on traumatic memory emphasizes a flat affect as a common way of talking about trauma, many asylum seekers cry when recounting sexual assault. The following examples reveal the expectations that immigration officials have about crying. Some interpret crying as credible; some view it as inauthentic, making the testimony be suspected as being fabricated; and others view crying as rehearsed or not appropriate for a particular place in the testimony.

Mai, an immigration attorney, told me that "with one client, every time she talked about the abuse or the rape, she would break down crying, so we would stop and just wait until she could talk again" [116]. Some immigration officials understand and perhaps even expect asylum seekers to cry when talking about rape. Daniel, an immigration judge said that "so a person who's been perfectly calm, very lucid in conversation, suddenly chokes up about her rape, that is common" [134]. During my interview with Alice, an asylum officer, she stated that:

When a person is telling you something that is credible, they'll start off very normal like you and me talking here today. All of a sudden when they talk about the harm, they start crying, sobbing—it's like a waterfall. They were just perfectly normal—and that's very credible testimony. To cry with real tears is very credible. [137]

In these examples, Alice and Daniel link crying to being credible. Both describe how asylum seekers exhibit a demeanor that is "calm" and "normal" prior to discussing trauma. Once they begin talking about a traumatic event, such as rape, their demeanor changes, mostly by crying. While neither say that they expect sexual assault survivors to cry, they view crying as credible.

Conversely, other immigration officials, like Deborah, an asylum officer, do not believe that rape survivors cry when recounting what happened to them.

I think more of what we see are people embellishing and thinking they have to say that they have been raped, but have never been raped. Maybe they have been close to, maybe they have been fondled. But that has not been enough. With a male officer, there are always tears involved. To me, that isn't genuine. I have dealt with too many rape victims and the thing that they don't do is burst into tears. At this point, six months after, there is usually never a breakdown. [138]

Deborah articulates the opposite of what her colleague, Alice, conveyed. For Deborah, tears are "not genuine" when recounting rape. She situates her authority as one who is familiar with how rape victims talk about their experiences, and for her, that means no tears are involved. Deborah is convinced that rape survivors do not "break down" after several months after the assault. She explains the gendered dynamic of how rape survivors talk about rape with men in such a way that insinuates that women are disingenuous when they are assigned to a male officer. Moreover, unlike Daniel, who granted the case of the Russian woman who was "molested", Deborah sees cases that do not meet a strict definition of rape as "not enough" to constitute persecution. Deborah relays that asylum seekers exaggerate their testimony, cry unnecessarily, especially in front of men, and are able to talk about sexual assault without a breakdown. She posits herself as an expert who knows how "real" rape survivors act, as she has "dealt with too many" to not know how real rape survivors behave.

Other immigration officials view crying at a particular time in the testimony as credible if it occurs when they think tears are warranted. A Sri Lankan couple (husband Eurasian, wife Tamil) testified that they had been threatened and physically assaulted because they are an interracial couple and she is Tamil. He was beaten, and she was raped multiple times. The Sinhalese police caused her to miscarry when they detained them. She started crying when she described how she had been called a prostitute, but had stopped crying when she told about the multiple rapes she endured. The judge interjected, asking her if being called a prostitute was worse (presumably compared to the rapes).

ADC: How did your family suffer?

Asylum Seeker: They beat my husband.

ADC: Can you describe specific incidences?

Asylum Seeker: I was pulled out of our van and pushed down by the police. I was pregnant. I went to the doctor, and they said the baby was dead.

ADC: Anything else?

Asylum seeker: They called me a prostitute (starts crying).

ADC: Were there any other incidences?

Asylum seeker: They took advantage of me for being married to him (no longer crying).

ADC: Took advantage how?

Asylum Seeker: They were raping me (no longer crying). Judge interjects: And being called a prostitute was worse [139]?

The case was denied and the judge stated that they did not have a sufficient fear of future persecution, even though they both testified that the police and others had threatened to kill them. Moreover, the asylum seeker testified that her husband was beaten, yet she gave an example of her own physical assault, one that was severe enough to cause her to miscarry her pregnancy. In this example, the judge could have accepted the rape as past persecution. Not only was the rape not considered persecution, but how the asylum seeker narrated the rape by no longer crying, compared to her emotional response of crying while recounting being called a prostitute, influenced the judge's decision.

The following is a second example of how crying at a particular time was viewed as noncredible. Sarah, an immigration attorney, recounted how one immigration judge viewed crying as incredible during a rape testimony.

I had a case of a Salvadoran mother and daughter. The asylum was based on past persecution. When this death squad were looking for her husband they couldn't find him, they raped the mother while the daughter was in the next room. The mother testifies very credibly. When she starts getting to the rape she starts crying. Her case ends. Daughter comes in. When she starts getting to the point where the mother is raped, she starts crying. The judge goes off on this really rambling opinion about how outrageous it is they both cried at exactly the same place in the testimony when they were talking about a rape. It was just absolutely outrageous—and essentially just told them they were complete liars and abusing the system. [127]

These two examples, the judge who criticized the Sri Lankan woman for crying when she testified about being called a prostitute, but stopped crying when she talked about her rape, and the Salvadoran mother and daughter who cried when they talked about the mother's rape, show how crying is seen as noncredible if it is done or not done at a particular place in the asylum seekers' testimony. Yet, when compared to the previous examples offered by Daniel and Alice, crying is viewed as credible. The variation is not only between those who cry and those who do not, but how a particular adjudicator interprets crying. For some it is credible, for others it is not.

Recalling details and demeanor are fundamental components of appearing credible. While not all asylum seekers exhibit trauma behavior, many do, and those who have been sexually assaulted have trouble remembering what happened to them. Nicole, a

psychologist who does evaluations and testifies in court on behalf of asylum seekers, described her experiences with trauma survivors.

Traumatic memory is processed differently. It is common for there to be difficulty remembering details, to have inconsistencies in recall for details of traumatic events. They may not be able to give a full narrative account of what happened to them. [140]

Nicole and others I interviewed acknowledged how the process of seeking asylum is re-traumatizing. Yet, it is the trauma that makes it credible. Mai, an immigration attorney, described how “trauma makes the case compelling”. Mai elaborated with the following:

Bringing in a therapist helps in the sense that there’s documentation of it, and that there’s somebody else that can verify that the story this person is telling is true and accurate. And in one sense it hurts, because then they might not be the best witness, they don’t want to talk about what’s happened to them, because they’re forced to relive the memories. And it’s hard to force them to be retraumatized in a room full of strangers. [116]

Mai astutely takes note that making trauma central to the story being told about asylum seekers is what is more likely to help them gain asylum. They have to show that they have experienced persecution, and one way to do that is to convince immigration officials that they have been traumatized by the events that led them to leave their country. She understands that asylum seekers are not always able to tell their own stories, as the process itself is “retraumatizing”. One alternative that Mai relates is to bring in a therapist who can help document and verify the story being told.

Since most asylum seekers only have their stories of how they were harmed, evidence takes a different form than in other legal settings. Some asylum applications include letters from medical personnel documenting physical and mental health conditions that corroborate their story. For example, Margaret, a physician who works with asylum seekers, submitted a report for Amina’s asylum application that stated the following.

At 19 years of age, she witnessed her father’s murder. Her mother was beaten, and her brother disappeared at the hands of the secret police. She was gang raped on two occasions by police which she believes was because her father held a high military position. Suffers from PTSD and post rape syndrome. This woman’s demeanor and reluctance to have the pelvic exam performed were consistent with that of women who have been raped. My findings are consistent with her history. It is my impression that she has been sexually victimized. [128]

When I interviewed Margaret about working with rape survivors, she told me that:

In the beginning they can be so guarded and so unemotive because they’re so suspicious that it’s harder to believe at first because they’re not convincing when they first tell you the story. I do about five to ten pelvics in a day so I pretty much know how people respond to a pelvic exam. I tell them [asylum seekers] that the psychologist doesn’t perform the pelvic. They start bawling and shaking all over. I can even talk to women from other cultures who are virgins into having a pelvic—unless they’ve been rape victims. [128]

It is these types of documents that can strengthen a case because they provide “proof” of how asylum seekers who have been raped are expected to act during a physical exam.

Margaret’s assessment of Amina is an example of what is currently referred to as forensic psychological reports. These reports, as outlined in the Istanbul Protocol, serve multiple purposes. They document physical and psychological effects of torture that verify the stories that asylum seekers tell. Not included here is also an explanation that Margaret gives of Amina’s female genital cutting, another form of persecution she experienced. Reports also explain behavior that includes why asylum seekers might be reluctant to discuss aspects of their file, such as sexual assault. Margaret, a trained clinician, diagnosed Amina

with PTSD and Post Rape Syndrome. These findings can be useful, as they can corroborate asylum seekers' stories. However, the reports also rely in part on the cooperation of asylum seekers, who need to visit the healthcare provider and describe what happened to them. This can ultimately be helpful in that it may assist with gaining asylum and, depending on the immigration official, as I discussed earlier, may provide a narrative buffer so that they do not need to tell their story yet again. However, at some point, asylum seekers must tell stories for trained professionals to document, which, as Mai described, reproduces the trauma it is intended to alleviate.

One effect of trauma that rape survivors describe is how they lost consciousness during the attack. As a result, they cannot answer specific questions about their assault during asylum interviews and hearings. For example, Mihret, an asylum seeker from Ethiopia, lost consciousness during her rape. She left Ethiopia after being persecuted based on her Oromo ethnicity and her political involvement in the Oromo Liberation Front (OLF). Her brother was tortured to death for his participation in the organization. She described in her declaration how she was arrested, beaten, and raped.

I was taken into custody and questioned about my activities with the OLF. There were two men, and they tied my hands and feet, they turned me upside down, and beat my feet with electric cables. At some point I lost consciousness. When I woke up, they were pointing a gun at me and said since I wasn't cooperating, they were going to give me a hard lesson. He took off his lower body clothing. I was resisting and crying, and he raped me. I have been emotionally devastated since then. [141]

In her asylum application, her psychologist, Nicole, wrote that Mihret "presents severe and chronic symptomology of Post Traumatic Stress Disorder (PTSD) and Rape Trauma Syndrome". It states that Mihret "displays significant emotional effects of trauma when recounting the experience of being tortured and raped" [141].

Mihret's description of losing consciousness during detention is common among torture survivors. Many cannot recall what happened because they were tortured to the point of losing consciousness or they blocked the memories. Her account of the rape is one of coercion, "resisting", and she is traumatized as a result. Her therapist, Nicole, like Margaret, assigned the common diagnosis of PTSD and RTS. When asked about why these particular diagnoses, Nicole relayed that they are the ones that immigration officials are familiar with and have come to expect [131]. Immigrant advocates reported the struggles they faced in the 1980s and 1990s with educating immigration officials about asylum seekers' demeanor when testifying. The inclusion of reports that document diagnoses such as PTSD were intended to explain the emotive response. However, when Nicole states that during the time these data were collected that immigration officials have come to expect a particular diagnosis, it is possible that these were the early years of PTSD emerging as what now may be a hegemonic discourse in forensic reports. In the study of medico-legal documents that I cite earlier, 69% were diagnosed with PTSD [93].

Another example of a rape survivor who lost consciousness or blacked out during her assault is Ovsana, an ethnic Armenian living in Georgia. In her declaration, Ovsana described how Georgian nationalist soldiers had broken into her home, threatened her, and told her she needed to leave and did not belong there [in Georgia]. She stated that:

One occasion I will never forget; it remains with me until this day. In mid-1992, one early morning, two soldiers entered. I could hear other men talking just outside the house. They reminded me about having to leave. One of the men forcibly put his hand over my mouth. After that, things went blank. When I came to, I was on the floor. [142]

She left her home and stayed with friends and soon after found out that she was pregnant from the rape. She stated that:

This added to my deep shame of being raped. My pregnancy was a reminder of my rape. With the help of my friend, I obtained an abortion. I cannot return

to Georgia. I have strong memories of my rape, and cannot return to the place where I had been raped, and where Georgians want to get rid of me because I am Armenian. [142]

Ovsana's testimony captures the seeming contradiction of how traumatic memory works. She begins by stating that the day of the rape is one that she "will never forget", but the last memory she has is of the soldier putting his hand over her mouth before "things went blank". This is one example of how rape is a form of traumatic memory that asylum seekers both cannot fully remember, but can never completely forget either. The trauma of the rape continued, as she found out she was pregnant from it and did not want to live in the place where the trauma occurred.

The last examples are when traumatic memory may cause flashbacks. Unlike losing consciousness, which makes it impossible for asylum seekers to know the details of what happened to them during their assault, flashbacks are a type of reenactment of the trauma. According to Nicole, "flashbacks are a way of reexperiencing the traumatic event as if it was happening right now. This is not recounting an event. It is experiencing it" [140]. During a flashback, some immigration officials may believe that asylum seekers are engaging in hyperbole, as if exaggerating their claims makes them more believable. Conversely, others, such as Jeffrey, were familiar with emotional outbursts. He recounted the following:

There were some very, very emotional interviews. You are trying to get information and you are trying to learn as much as you can about the situation, but you are walking a tight rope. If you ask too many questions or if you try to elicit too much, you put them at the risk of reliving that experience. Then you open a floodgate that is hard to close back up because it gets very emotional. One officer was interviewing a woman who had been detained and mistreated, somehow it crossed the line, and the applicant went into a real post-traumatic state. She went into a fetal position on the floor and started taking her clothes off, sort of went back into that horrible incident during the interview. [133]

In this example, Jeffrey describes how an asylum seeker responded to trauma by possibly reenacting it.

Jeffrey mentioned in our interview that this was someone who "may have been raped", but it was not in the asylum application. When discussing the case with his colleague, Jeffrey reported that the asylum officer told him, "how was I supposed to know", meaning that if the rape was not in the file, how could he have known she had been assaulted. The asylum officer voices the frustration that many immigration officials experience. How can they possibly know what someone has lived through if it is not in the application materials? And yet the process itself, of questioning asylum seekers about what they have lived through, is what can cause more trauma. This supports a central theme in the literature on asylum seekers and traumatic memory, namely, that retelling the story is not a neutral act, but is one more layer of emotional distress that is itself traumatizing.

The last example is from an interview I conducted with Elizabeth, a journalist from Cameroon who covered the political activities of the Southern Cameroons National Council (SCNC), an organization that worked toward the independence of the Anglophone population from the Francophone government. She covered SCNC's protests, mostly via radio broadcasting, supporting their cause and exposing how the English-speaking population is oppressed. She was jailed three times, and while awaiting trial for speaking out against the government, members of SCNC helped her escape to the U.S. Elizabeth is the only asylum seeker I interviewed who used the word rape to talk about her own sexual assault. She discussed the beatings and other forms of torture she experienced during her first arrest and said that others had "suffered rape" from members of the military. She returned to her work at the radio, and it was during her second time in jail that she, too, was assaulted. She described how: "and this time [after the second arrest] I suffered rape from the military men, torture, and beatings with an electric cable" [143].

During my interview with Elizabeth, she exhibited the symptoms of a flashback, as articulated by Nicole, when she described the beatings that happened just before her sexual assault. As mentioned earlier, Elizabeth was the only asylee who used the word rape during our interview. While talking about her assault that occurred while she was detained, she stated that:

They will lash you every morning and say ‘café.’ Café is coffee and they call it in French café. They say, ‘you are having café’ and they are giving you that every morning and evening. They will lash you under your feet. They will ask you to sit and stretch your legs like that and they’ll lash you under the tops of the leg. [143]

As she narrated the lashings, she closed her eyes, raised her voice, and began to reenact the event, as though she was the torturer rather than the recipient of the beatings.

I have seen asylum seekers do this many times, typically in immigration court, but sometimes during interviews, where they act out the most traumatic part of their persecution. What is interesting is that as they narrate the harm they experienced, their physical movements mimic those who dealt the blows. It is hard to know if it was the use of the word rape that occurred just before this vignette, the description of the lashings, or both, that prompted how she talked about her time in detention. At the close of the interview, she told me “sometimes I have no sleep at night”, a symptom of trauma that many rape survivors experience. It is impossible to know if Elizabeth was in fact having a flashback. The point of this example is not to offer a diagnosis, but instead to show the effects of traumatic memory when recounting sexual violence.

This section offered examples of how asylum seekers need to tell stories of harm that are sufficiently detailed to make them believable. Moreover, documentation, such as pelvic exams, can provide evidence that an asylum seeker is telling the truth if the physical evidence matches the legal and cultural expectations of how rape survivors act. Margaret believed that Amina was raped because of how she responded to the exam. Immigration attorneys cannot gather this type of evidence if their clients do not confide in them, as was the case with Paul, or if they are not believed, as was the example that Richard offered. Some immigration officials, like Ann and Daniel, work to facilitate asylum approvals; yet, they still rely on details to do their job. Sebie and the asylum seeker from Sierra Leone provide examples of how remembering the details, especially when they pertain to an assault, can be daunting.

These examples also show the variation in how asylum seekers narrate stories of sexual violence. Some remember the details and cannot shake those memories. Others cannot remember specific details, particularly the ones that immigration officials find useful, like the color of the uniform of the soldiers who are raping them. Some asylum seekers cry when they talk about being assaulted; others do not. The asylum seeker is but one factor in the variation among cases; the adjudicator matters, as well. For some immigration officials, crying is credible behavior; for others, it is not. These data give some insight into the conundrum of what constitutes credible testimony and how traumatic memory can affect narratives of persecution for asylum seekers who have been sexually assaulted.

4. Discussion

This research analyzed three findings from qualitative data on asylum seekers about how they narrate stories of rape as persecution. The first theme, *Rape: A Questionable Form of Persecution*, shows how immigration officials do not always understand that rape is indeed persecution. The second theme, *Talking about Rape*, elucidated the various ways that rape survivors talk about their own assault, and the consequences they and their attorneys face when they are reluctant to discuss it. The third theme, *the Gory Details: Credibility and Traumatic Memory*, addresses the role of details and demeanor in credibility, and how traumatic memory can make asylum seekers appear as noncredible. Several themes from the literature on gender, asylum, sexual assault, credibility, and traumatic memory cut across these three findings.

Some examples show how androcentrism, one of the earliest criticisms that feminist legal scholars had about asylum law, continued to guide immigration officials' decisions, even when the asylum seeker was granted asylum. The examples show how other forms of persecution that are not gender-based served as the basis for asylum rather than the sexual assaults. None of the immigration officials explicitly articulated that rape was "personal". Instead, rape was ignored in the sense that other forms of persecution became the reason they gained asylum. Nearly all gained asylum, which may lead some (even the asylees themselves!) to question why the reasoning matters. It matters because these data show that it is not enough for the law to change. Those who apply the law must also understand that rape is persecution in order for gender-based asylum to move forward in a way that accepts rape as persecution.

Scholars of international law have shown that the U.S. is behind much of the world in its use of consent rather than coercion as a legal standard for rape. Asylum law has the potential to provide a way for U.S. domestic law to change from a consent model to a coercion one. For asylum seekers who have been sexually assaulted, the assailant is overwhelmingly someone they do not know. They tend to tell stories of their attack using the language of coercion, which draws a clear line between sex and rape, rather than the ambiguous line that consent offers as a distinguishing marker. These data show that asylum seekers use coercion to talk about sexual assault. This provides an opening for other cases of sexual assault, such as those exposed by the #MeToo movement, to also use a coercion model.

The literature on sexual assault has long shown that survivors are reluctant to talk about their experiences. The examples I provide show how they resist by using language other than rape, by omitting rape from their application materials, and by evading questions about it during their asylum interviews and hearings. Global awareness of the pervasiveness of rape has not erased its shame and stigma. Some examples provided here expose asylum procedures as voyeuristic and immigration officials as uncaring. Other examples offer a glimpse into what a less traumatic experience might look like if retelling their story can be minimized. It is from this place, one of inducing less trauma, not more, that change should stem from to make what is ostensibly a human rights legal arena more humane.

A common criticism in the early literature on gender-based asylum is that the asylum bureaucracy was staffed with male officers and judges who were not sympathetic to women's claims. The data in this article show the assumptions that immigration attorneys and asylum officers have about how the gender of the adjudicator and those in other key positions, such as the ADC, affects rape claims. Some attorneys preferred male immigration officials rather than female ones for sexual assault cases. This stands in stark contrast to the early accounts that immigrant advocates gave about male immigration officials not being as accepting of understanding rape as a form of persecution as their female colleagues. Much of the training manuals focused on how women with rape claims may not be forthcoming to male officials and that women should be able to request a female officer. Yet, this study shows that doing so could potentially hurt, rather than help, their case.

Credibility has remained a fundamental criterion for asylum seekers to gain asylum. They are expected to know details, be consistent, and narrate stories of trauma in ways that make them believable. Without proof of their persecution, all they have is their story. It is the immigration official's role to determine if their story is believable. Seemingly, the only way this can happen in the current system is for asylum seekers to be forthcoming about what happened to them. The difficulty is that talking about what happened is exactly what many rape survivors do not want to do. The gory details become a necessary evil since little to no evidence or proof of persecution is part of the asylum process. The details matter because they are the building blocks of a credible claim. Credibility is paramount, as asylum seekers' narratives must be believable for them to be granted asylum. The complexity of rape claims is that survivors do not want to talk about what happened, or they often cannot remember all or parts of their assault, all of which is compounded by the effects of trauma-related symptoms caused by sexual assault.

One focus of the literature on credibility and trauma is that asylum seekers often have a flat affect when talking about persecution. While this is certainly true, a flat affect is not the only effect of trauma. There is a range of responses to sexual assault. There is also a range of what those responses mean. Immigration officials vary in their interpretation of not only the story itself, but how asylum seekers tell stories of harm. Some believe that rape survivors cry when they talk about their attacks; others believe they do not. What makes their beliefs potentially detrimental is if the expectation of demeanor is what guides decision making. The data I offer show the variation in how stories of persecution are told, the expectations immigration officials have about how they should be told, and the range of responses to the ways in which rape is considered persecution.

The last contribution this study seeks to make is to the literature on traumatic memory. Studies show that there is a strong correlation between the asylum-seeking population and trauma. Many who experience persecution are traumatized by it. Like the struggle that feminist legal scholars outline about having gender-based asylum claims count as persecution, the medical and legal community too fought to have trauma-related symptoms diagnosed and taken seriously in asylum adjudication proceedings. From these efforts came international standards, such as the Istanbul Protocol. During the time of the data collection for this study, what are now known as forensic reports were less routine than they are now. Standardizing criteria for trauma may prove to increase asylum seekers' ability to gain asylum, if their demeanor can be explained and they are deemed credible. However, diagnoses, such as PTSD and RTS, can be problematic if they become blanket responses to trauma, with no regard to their roots in western ideations of behavioral responses to sexual violence.

5. Conclusions

While doing this research, I routinely thought that there must be a better way of adjudicating asylum claims, particularly for those who have experienced gender-based violence, such as sexual assault. The data from this study confirm the claim of studies that were done before and after the reorganization of the asylum bureaucracy that the adjudicator is the primary determinant in the outcome of a case. This work focuses on outcomes, denials, and approvals, which are of the utmost importance, as these decisions determine whether one can remain in the U.S. lawfully or must face deportation and possibly further persecution or even death. The life of asylum seekers is quite literally in the hands of their adjudicator. As a qualitative study, my research highlights process—how asylum seekers talk about persecution when their narratives are not molded by their attorneys and service providers, how immigration attorneys and service providers shape those narratives, and expectations that immigration officials have about the stories themselves and how they are told. It endeavors to show that there is a multitude of ways to talk about sexual assault, a task that seems insurmountable, especially for those who simultaneously cannot remember and cannot forget the trauma of rape.

These data are from a particular time period and were collected on the heels of positive changes in asylum law and policy for gender-based cases. During the years of my data collection, rape, and most other forms of gendered harm, were legally recognized as persecution. Of the twelve asylum seekers I discuss, only one—the asylum seeker from Sri Lanka in immigration court—was denied asylum. Legal gains are paramount, as they provide a path for relief for asylum seekers. Yet, even with the legal recognition of rape as a form of persecution, asylum seekers were still interrogated about the ways in which rape is persecution, were made to remember painful details, and were required to recall their experiences at the cost of further traumatizing themselves, all for the prize of gaining asylum.

My hope is that this research will be used not only to advance the literature on asylum and sexual assault, but to change a system that is retraumatizing to those who have already been persecuted. Rape survivors routinely report that not being believed feels like another attack. Understanding the range of responses that rape survivors have and how they narrate their experiences is crucial for changing how asylum claims are adjudicated. Perhaps, once the myriad ways that asylum seekers talk about rape are accepted as credible, it will be

enough for rape survivors like Paulina Salas from *Death and the Maiden* to recognize the voice of their attacker and be believed.

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