

# **CREDIBILITY**

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# PERIODIC REVIEW

- Affirmative periodic review focusing Credibility
  - Selected Credibility because offices frequently request more training
- Conducted from July 23 through August 3;
- 22 cases from ZNK
  - Probed credibility and spotted potential credibility concerns
  - Some trends:
    - Analysis: Burden of Proof and COI
    - Interview: Lack of detail and clear confrontations

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# ROADMAP

- Burden of Proof vs. Credibility
- Documents (or lack thereof)
- Lack of detail
- Use of COI

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# BURDEN OF PROOF ANALYSIS TRENDS

- Mixing burden of proof with the credibility analysis
  - “Applicant’s testimony was found to be not credible as he/she has not met her burden of proof”
- Remember: make a credibility determination **before** analyzing whether the applicant met their burden of proof
  - An applicant can be credible but not meet their burden of proof
  - An applicant can be not credible but still be able to meet their burden of proof

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# BURDEN OF PROOF ANALYSIS TRENDS

- Not making a full credibility determination before proceeding to discuss burden of proof
  - **If the Totality of Circumstances analysis is missing, this is a good indicator that the credibility determination is incomplete**
- Indicating “no evidence” was presented about a particular aspect of the claim even though testimony was proffered

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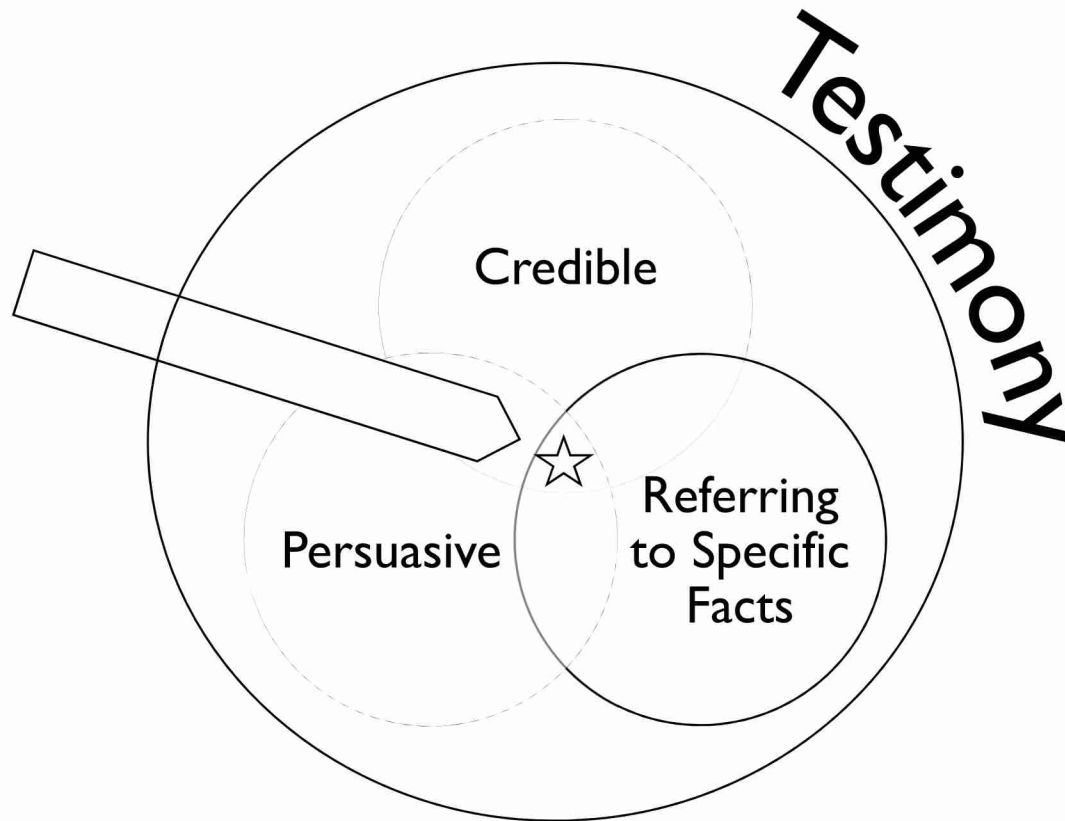
# TOTALITY OF CIRCUMSTANCES

- From the new referral template:
  - **Once all credibility factors that are relied upon for the adverse credibility determination have been analyzed, make a determination as to how much weight they should be given in assessing the overall credibility of the testimony and how the applicant's testimony is not credible in the totality of the circumstances.**
- Example:
  - **...Given the totality of the circumstances, including the applicant's sophistication, the extent and nature of the inconsistencies, and lack of detail in comparison with the record as a whole, the applicant's testimony about his claim is not credible because he did not provide reasonable explanations to address the inconsistencies and lack of detail.**

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# BURDEN OF PROOF AND CREDIBILITY

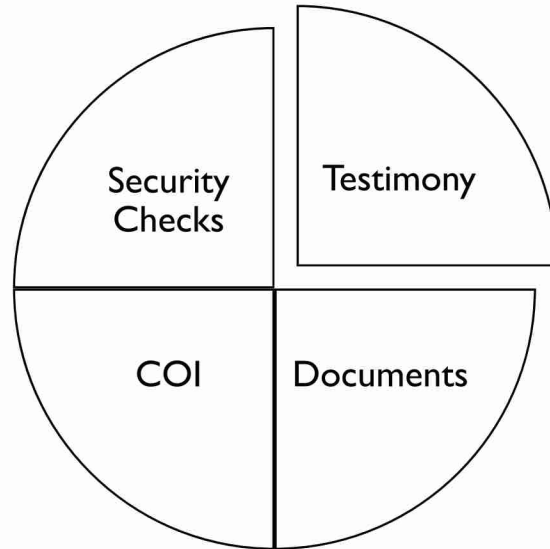
Testimony alone  
may meet  
applicant's  
burden of proof



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# BURDEN OF PROOF AND CREDIBILITY

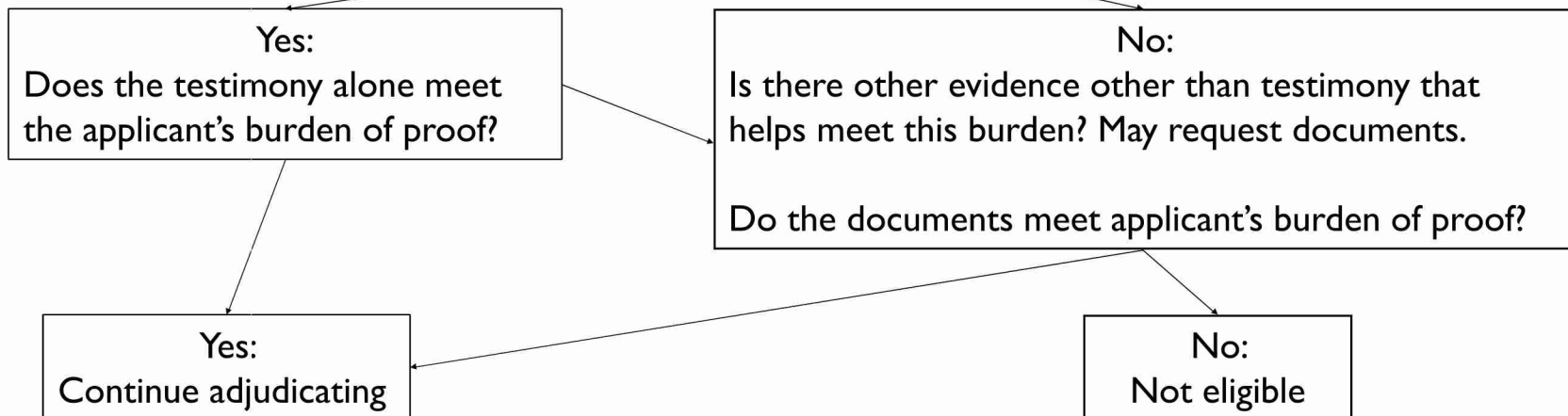
## Burden of Proof



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# STEP BY STEP ANALYSIS

- Is the applicant's testimony credible?
  - Consistent? Detailed? Plausible? **Totality of circumstances analysis?**



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# WHAT TO WRITE IN THE ANALYSIS OF CREDIBILITY/EVIDENCE ASSESSMENT PORTION OF THE TEMPLATE

- In the **Analysis of Credibility/Evidence Assessment** make a finding as to whether the applicant's testimony is credible
- Credible - "The applicant's testimony was detailed, consistent, and plausible. Considering the totality of circumstances and all relevant factors, the applicant's testimony is found credible."
- Split Credibility
- Not Credible – go through multistep analysis (pg 11-12 of Decision Writing Part II)
  - Rare cases where applicant is not credible but significant corroborating documentation establishes elements for eligibility

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# DOCUMENTS

- Consider reasonable explanations and then use that as your line of inquiry:
  - Mistranslation / Scrivener error?
  - Someone else prepared application and applicant was not aware of the document submitted?
  - Originating writer/producer of the document wrote incorrect information?
- “Did someone read back to you this document before today?”
- “Are there any errors on it?”
- How/Where did you obtain this document from?

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# **LACK OF DETAIL**

**METHOD FOR  
EFFICIENTLY  
PROBING FOR  
DETAIL**

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# STRATEGIC FRAMEWORK

Determine efficient areas of inquiry

Identify reasonable level of detail

Ask specific questions

Clearly confront

Assess reasonableness of explanation

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# DETERMINE EFFICIENT AREAS OF INQUIRY

- Case specific
- Review record, thinking of eligibility
- Probe issues need to probe for eligibility
- Look at other evidence –identify gaps

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# DETERMINE EFFICIENT AREAS OF INQUIRY

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  - 
  - 
  -
- (b)(6)

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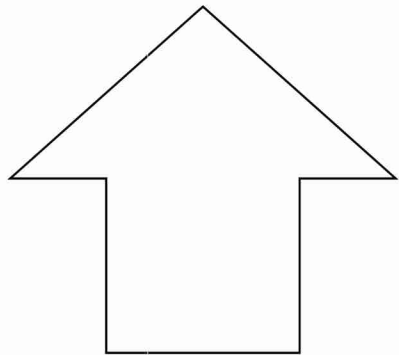
# DETERMINE EFFICIENT AREAS OF INQUIRY

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  - 
  - 
  -
- (b)(6)

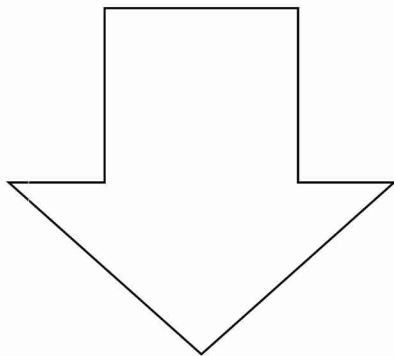
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# IDENTIFY REASONABLE LEVEL OF DETAIL

- Circumstance and Person-Specific



Recent Harm  
Motivations  
Pastor  
Activist



Harm 10 years ago  
Specific event  
Recent convert  
Participant in rallies

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# IDENTIFY REASONABLE LEVEL OF DETAIL

- The applicant testified he is a bisexual Ugandan man who has never been in a same sex relationship and has no past harm.
- What should the applicant be able to provide detail about?

?

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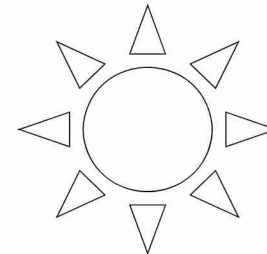
# SPECIFIC QUESTIONS

- AO must ask for what detail they want to know
- Compare:

- “How was your vacation in Portugal?”

With

- “What was the weather like in Portugal?”
- “What was the food like in Portugal?”
- “What cities did you visit?”



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# CLEAR CONFRONTATIONS

- Asking the applicant to EXPLAIN why cannot provide detail
- If provides more detail, rephrase/ask again
- If does not understand, rephrase/ask again

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# REASONABLE EXPLANATIONS

Q: You testified you attended 4-5 fundraisers for your party. When did you attend these fundraisers?

A: The first ones were end of February 2013, maybe beginning of March. The others were in April before the election.

Q: You coordinated and attended these fundraisers, can you explain why you cannot provide more precise dates?

A: It was 5 years ago. I can't remember.

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# STRATEGIC FRAMEWORK

Determine efficient areas of inquiry

Identify reasonable level of detail

Ask specific questions

Clearly confront

Assess reasonableness of explanation

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# **USING COI IN CREDIBILITY**

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# USING COI IN CREDIBILITY

- ✓ Checking for consistency between the applicant's timeline and widely-known events
- ✓ Using COI to probe statements of belief and move the applicant "off script"
- △ Using general COI to confront "farfetched" testimony

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# **CONSISTENCY BETWEEN THE APPLICANT'S TIMELINE AND WIDELY-KNOWN EVENTS**

- Parts of an applicant's claim may be related to widely-known events.
- Certain events may not be reflected in COI. This does not necessarily mean the events didn't happen.
- When an applicant's claim is related to reported events, reviewing COI pre-interview and drawing timelines will help formulate lines of questioning.

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# EXAMPLE 1: VENEZUELA

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# EXAMPLE 1: VENEZUELA

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# EXAMPLE 1: VENEZUELA

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# EXAMPLE 2: SYRIA

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# EXAMPLE 2: SYRIA

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# EXAMPLE 2: SYRIA

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# USING COI TO INFORM QUESTIONING

- AOs should use their knowledge of COI to examine testimony at odds with recent reports, probe statements of belief, and to move the applicant “off script.”
- References to COI need not be limited to formal credibility confrontations.
- An applicant’s responses to questions informed by COI may produce testimony that supports a legally sufficient credibility referral.

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# EXAMPLE 3: INDIA

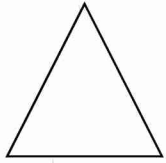
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# EXAMPLE 3: INDIA

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# USING COI TO CONFRONT “FARFETCHED” TESTIMONY

- There’s a temptation to confront apparently “farfetched” testimony with COI that speaks about **general** practices or trends and use it as a credibility ‘point’.
  - “the government took steps to prosecute officials who committed abuses”
  - “practitioners were generally able to worship freely”
  - “abuse of prisoners was rampant”
- Such ‘points’ rarely support a legally sufficient credibility referral, as COI rarely supports the proposition that events resembling those that the applicant described **never** happen.

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# EXAMPLE 4: CHINA

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# EXAMPLE 5: RUSSIA

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# EXAMPLE 5: RUSSIA

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# USING COI IN CREDIBILITY

- ✓ Checking for consistency between the applicant's timeline and widely-known events
- ✓ Using COI to probe statements of belief and move the applicant "off script"
- △ Using general COI to confront "farfetched" testimony

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# U.S. Citizenship and Immigration Services

## Fraud Detection and National Security 2016 Asylum Division Fraud Prevention and Detection Training

Date

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USCIS05721

USCIS Fifth Production Part 2  
40 of 183



# Performance Objectives

## ENABLING PERFORMANCE OBJECTIVES

- Provide adjudicators a general understanding of fraud and USCIS' approach to fraud deterrence
- Familiarize adjudicators and FDNS officers with their roles and responsibilities in the adjudication process
- Familiarize adjudicators with national and local fraud trends in asylum
- Provide adjudicators with a foundation to properly elicit testimony and develop the interview record
- Familiarize adjudicators with the fraud life cycle, Terminations/PAER process, and Post Conviction Clean Up Response Framework
- Enable adjudicators to identify fraud indicators related to asylum, refugee, identity, and relationships
- Enable adjudicators to recognize and understand primary fraud detection resources



## **GAO REPORT 16-50**

- In December of 2015, the GAO issued a report on *Asylum: Additional Actions Needed to Assess and Address Fraud Risks*
- The GAO made 10 recommendations on which Asylum agreed to take action
  - conduct regular fraud risk assessments across the affirmative asylum application process;
  - develop and implement a mechanism to collect reliable data, such as the number of referrals to FDNS from asylum officers, about FDNS's efforts to combat asylum fraud;
  - identify and implement tools that asylum officers and FDNS immigration officers can use to detect potential fraud patterns across affirmative asylum applications;
  - require FDNS immigration officers to prescreen all asylum applications for indicators of fraud to the extent that it is cost-effective and feasible;





# GAO Report cont.

- 10 recommendations cont'd.
  - develop asylum-specific guidance on the fraud detection roles and responsibilities of FDNS immigration officers working in asylum offices;
  - develop and deliver additional training for asylum officers on asylum fraud;
  - develop and implement a mechanism to regularly collect and incorporate feedback on training needs from asylum officers and supervisory asylum officers;
  - develop and implement a method to collect reliable data on asylum officer attrition;
  - include a review of potential fraud indicators in future random quality assurance reviews of asylum applications; and
  - develop and implement timeliness goals for all pending termination reviews of affirmative asylum cases.



# Identified Fraud and Security Risks

Type

Serials

Priority (F + PI)

Offices

(b)(7)(e)





# Identified National Security Risks

Office

Identified National Security/Public Safety/Fraud Risk

(b)(7)(e)



# Identified Document Fraud Risks

**Office**

**Identified National Security/Public Safety/Fraud Risk**

(b)(7)(e)



# Identified Identity Fraud Risks

**Office**

**Identified National Security/Public Safety/Fraud Risk**

(b)(7)(e)



# Identified Immigration Service Provider Fraud Risks

**Office**

**Identified National Security/Public Safety/Fraud Risk**

(b)(7)(e)



# Identified “Boilerplate” Fraud Risks

Office	Identified National Security/Public Safety/Fraud Risk
	(b)(7)(e)



# Identified Jurisdiction Fraud Risks

**Office**

**Identified National Security/Public Safety/Fraud Risk**

(b)(7)(e)



# Identified Public Safety Risks

**Office**

**Identified National Security/Public Safety/Fraud Risk**

(b)(7)(e)



# Identified Gang Affiliation Risks

Office	Identified National Security/Public Safety/Fraud Risk
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# Identified Relationship Fraud Risks

**Office**

**Identified National Security/Public Safety/Fraud Risk**

(b)(7)(e)



# Identified Visa Fraud Risks

Office	Identified National Security/Public Safety/Fraud Risk
	(b)(7)(e)



# Fraud Prevention at USCIS

The screenshot shows the USCIS website interface. At the top left is the USCIS logo and the text 'U.S. Citizenship and Immigration Services'. To the right are links for 'Home | Español' and a search box. Below this is a navigation bar with tabs for 'FORMS', 'NEWS', 'RESOURCES', 'LAWS', and 'OUTREACH'. The main content area is titled 'Home > ABOUT US' and includes a 'Printer Friendly' icon. The left sidebar contains a list of links such as 'Contact Us', 'Find a USCIS Office', 'Directorates and Program Offices', 'Leadership', 'What We Do', 'Budget, Planning & Performance', 'Citizenship and Integration Grant Program', 'Our History', 'Freedom of Information and Privacy Act (FOIA)', 'Electronic Reading Room', 'Report USCIS Misconduct', 'Entrepreneurs in Residence Initiative', 'Career Opportunities', and 'New Employee Information and Forms'. The main content area has the following text:

**About Us**

U.S. Citizenship and Immigration Services (USCIS) is the government agency that oversees lawful immigration to the United States.

**Mission Statement**

USCIS will secure America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.

We are the 18,000 government employees and contractors of USCIS working at 250 offices across the world. Achieving our goals becomes possible when the different elements of our organization are engaged and acting as partners working toward a common outcome. USCIS' strategic goals include:

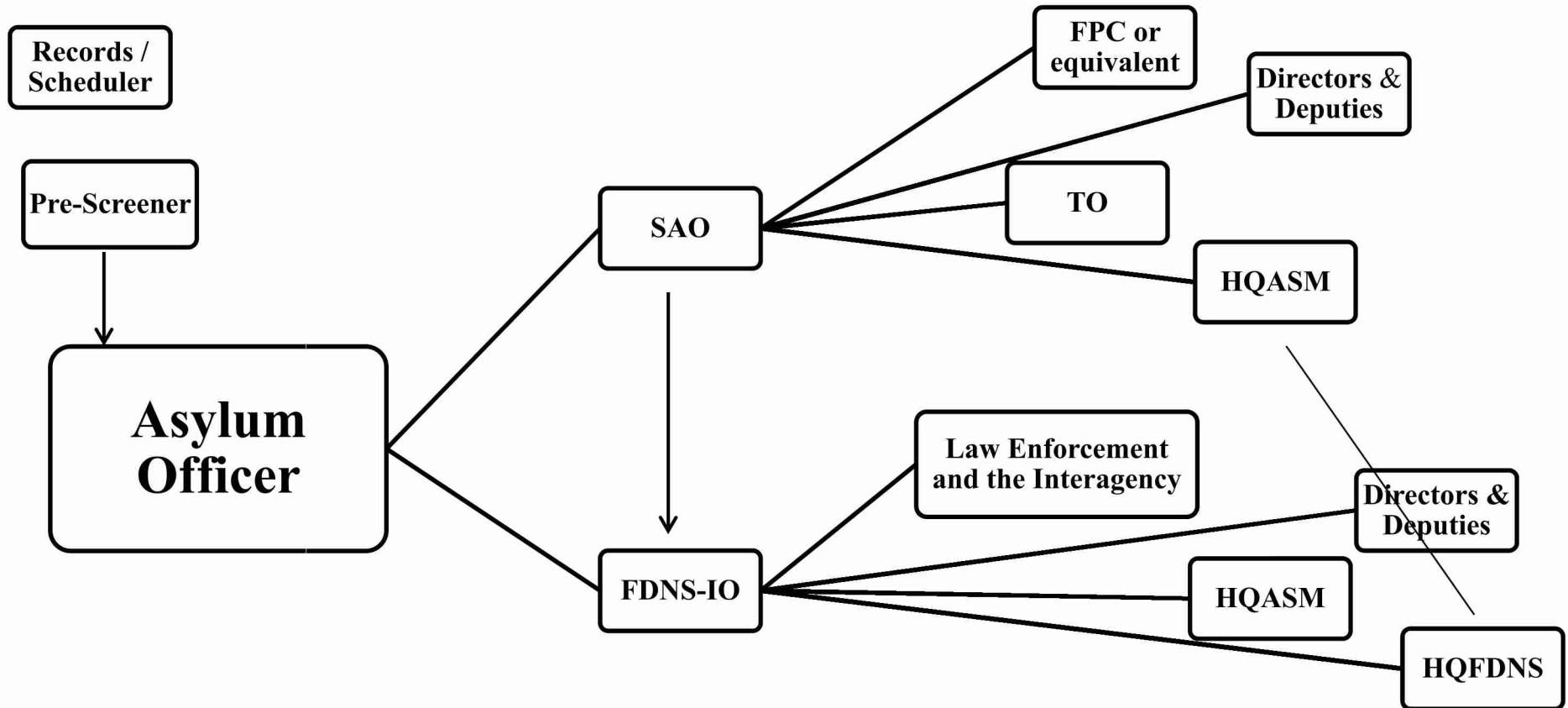
- Strengthening the security and integrity of the immigration system.
- Providing effective customer-oriented immigration benefit and information services.
- Supporting immigrants' integration and participation in American civic culture.
- Promoting flexible and sound immigration policies and programs.
- Strengthening the infrastructure supporting the USCIS mission.
- Operating as a high-performance organization that promotes a highly talented workforce and a dynamic work culture.

## USCIS Mission Statement:

“USCIS will secure America’s promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.”



# Fraud is Everyone's Responsibility





# FDNS Roles & Responsibilities

**Purpose** – The purpose of this memorandum is to clarify existing guidance and provide additional information regarding the roles and responsibilities of FDNS Immigration Officers (FDNS IO) within the Asylum Division.

**Scope** – In addition to the traditional FDNS roles and responsibilities as articulated in national HQFDNS policy memoranda, training, guidance material, and standard operating procedures, this memorandum and any additional Asylum-specific guidance within it applies only to the Asylum Division staff and FDNS IOs working within the Asylum Division.

**Shared** – Preventing fraud, ensuring our national security, and addressing public safety concerns is a shared responsibility of all Asylum Office personnel.



# FDNS Roles & Responsibilities

- **FDNS Officer**
  - It is the principal role of FDNS officers to provide direct support to the Asylum Office in furtherance of adjudications by:
    - responding to issues referred for assistance
    - conducting administrative investigations of suspected fraud
    - resolving national security concerns
    - coordinating with law enforcement partners
- **FDNS Supervisory Immigration Officer**
  - It is the primary role of supervisory immigration officers to provide direct supervision of day-to-day FDNS operations to their team of immigration officers.



# Adjudicator Roles & Responsibilities

- **Asylum Officer**

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- **Supervisory Asylum Officer**

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# Fraud Lesson Plan Highlights

## **FRAUD LESSON PLAN**

### **FRAUD OVERVIEW**

- Definition of Fraud
- Perpetrators of Fraud
- Fraud Indicators
- Where are Fraud Indicators Found?
- Types of Fraud in Asylum Adjudications
- Partnering with FDNS

### **FDNS OVERVIEW**

- FDNS Structure
- RAIO's FDNS Program
- FDNS Officer Roles & Responsibilities
- Fraud Referral Process



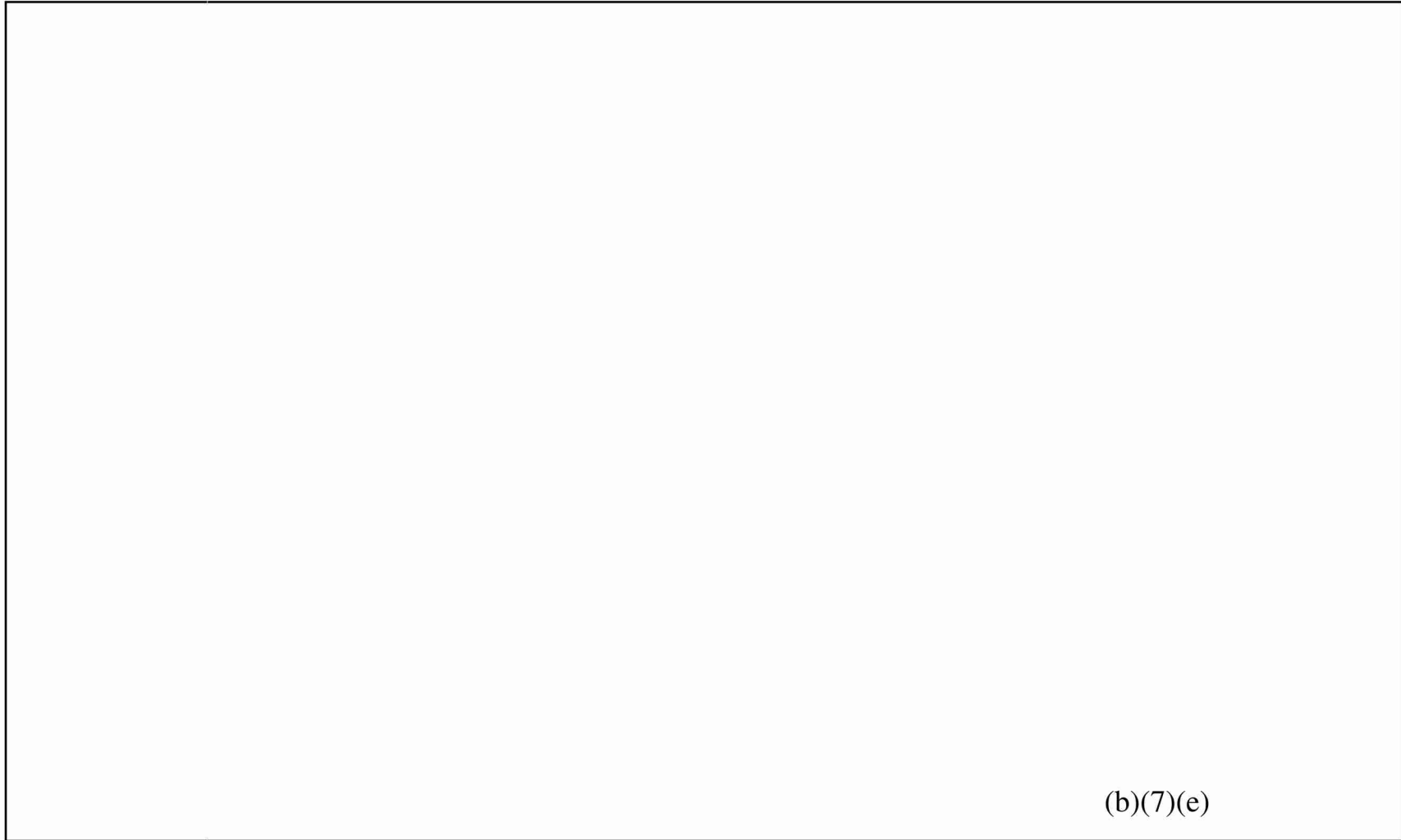


# Fraud Life Cycle

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# Post Conviction Clean Up Response Framework



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# Recent/Emerging Clean up Efforts

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# Terminations – FDNS IO’s Role

## ROLE OF THE FDNS IO

- FDNS IO conducts a “work-up” on each asylum case to gather all possible evidence
- Completes updated checks for the *Termination* and *PAER Checklist*
- Completes an FDNS *Statement of Findings* (SOF)
- Creates or updates record in the FDNS-DS database



# Terminations Process

## TERMINATIONS PROCESS

- Asylum Office reviews evidence and determines if sufficient to proceed
- Prima Facie evidence supporting termination ground is needed for issuance of Notice of Intent to Terminate Asylum Status (NOIT)
- Preponderance of the evidence is needed to terminate asylum status – for termination, the burden of proof is on the government, not the asylee
- Asylum Office issues NOIT, stating ground(s) for termination with a brief summary of the evidence



## Terminations Process cont'd

- Termination interview\* scheduled at least 30 days after mailing of NOIT (If they FOIA, we reschedule)
  - \*Exception: *Nijar v. Holder*, 689 F.3d 1077 (9th Cir. 2012), which provides that DHS (USCIS) does not have the authority to terminate asylum status
- AO conducts termination interview and considers any rebuttal evidence
- AO assesses evidence and determines if preponderance of evidence supports termination
- If yes, AO issues Notice of Termination (NOT)
- If no, AO issues Notice of Continuation of Asylum Status
- AO updates RAPS throughout the terminations process



# Eliciting Testimony

## ELICITING TESTIMONY

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# Eliciting Testimony cont.

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# Documenting the Record

## DOCUMENTING THE RECORD

- The interview notes serve as a record that allows a reviewer to reconstruct what transpired during the interview
- Notes must be clear and legible
- Notes must include all information elicited during the interview regarding the interviewee's eligibility for a benefit, petition, or request
- Notes must accurately reflect the questions asked and the applicant's response
- Notes must support the decision made by the AO
- Notes must not include the officer's opinions, suppositions, or personal inferences
- Notes must indicate instances when the officer confronts an applicant with adverse information and the applicant's response



# Fraudulent Documents

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# Fraud Scheme Briefing Slides

## *Fraud Scheme Briefing Slides*

- *briefly discuss the identified scheme overview. This should be a high level overview that minimizes PII. If warranted, create a hard copy handout with all the relevant PII information.*
- *briefly list what an AO needs to know to identify related files during the course of an adjudication.*
- *briefly list what an AO needs to know to identify related files during the course of an adjudication.*

*For examples of how to use this slide, please see the accompanying  
EXAMPLE.ppt*



# Scheme Indicators

*Use this slide to briefly list what an AO needs to know to identify related files during the course of an adjudication.*

*For examples of how to use this slide, please see the accompanying EXAMPLE.ppt*



# Actions and Follow Up

*Use this slide to briefly list what an AO needs to know to identify related files during the course of an adjudication.*

*For examples of how to use this slide, please see the accompanying EXAMPLE.ppt*



# Practical Exercise

## *PRACTICAL EXERCISE*

- *Text*



# Questions/Comments?

# Matter of S-M-J- & Contemporaneous Records



# BACKGROUND

- If you are documenting incidents of harm due to political violence – what would be a good start?
- Were any contemporaneous records created of the incidents?

# FACT PATTERN

- 
- 
- 
- 
- 
- 

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# SPECIFIC ADJUDICATIVE PROBLEM

- DOES THE LETTER SUBMITTED CALL INTO QUESTION THE APPLICANT'S HARM?
- RELATED TO OTHER BROADER PROBLEMS:
  - IS THE APPLICANT A MEMBER OF PARTY "X"
  - WAS THE APPLICANT HARMED B/C OF TIES TO PARTY "X"

# POSSIBLE SOLUTION

- MATTER OF S-M-J-
  - LEGAL FOUNDATION
- CONTEMPORANEOUS RECORDS APPROACH
  - INTERVIEW STRATEGY

# MATTER OF S-M-J-

- WHEN IS IT REASONABLE TO EXPECT DOCUMENTARY VERIFICATION IN ADDITION TO TESTIMONY?
- CODIFIED BY THE REAL ID ACT
  - Sections 208(b)(1)(B)(ii), 241(b)(3)(C)
- SEE E.G. MATTER OF L-A-C 24 I&N DEC. 516 (BIA 2015)

# HOW TO USE MATTER OF S-M-J-

- 1) IS THE EVENT “E” (E.G. THREAT) SUBJECT TO VERIFICATION?
- 2) IS IT REASONABLE TO EXPECT CORROBORATION OF EVENT “E”?
- 3) WHAT’S PA’S EXPLANATION FOR NOT PROVIDING CORROBORATION?
- 4) IS PA’S EXPLANATION REASONABLE?

# **SUBJECT TO** **VERIFICATION?**

- DOES THE PA CLAIM TO BE AN ACTIVIST WITH PARTY “X”?
- IS PARTY “X” AN ESTABLISHED ORGANIZATION?
- DOES PARTY “X” HAVE A PUBLIC RELATIONS DEPARTMENT?
- ARE THERE INTERNATIONAL OR NATIONAL MONITORS OF POLITICAL VIOLENCE IN THE AREA (E.G. STATE DEPARTMENT)?
- DID THE INCIDENT HAPPEN DURING AN ELECTION?

# SHOULD WE EXPECT CORROBORATION?

- POLITICAL PARTIES HAVE A PROCESS FOR DOCUMENTING HARM TO THEIR MEMBERS
- PA CLAIMS TO IDENTIFY STRONGLY WITH THE GOALS OF PARTY “X”
- PA SUBMITTED LETTER FROM PARTY “X” AS EVIDENCE
- PA IS REPRESENTED, SOCIOECONOMIC FACTORS



# CONTEMPORANEOUS RECORDS APPROACH

- GOAL: IDENTIFY RECORDS  
CONTEMPORANEOUSLY CREATED
- METHOD:
  - FOUNDATIONS
  - SUGGESTED LINES OF INQUIRY

# FOUNDATION OF DOCUMENT

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# **FOUNDATION OF REPORTED EVENT**

- HOW WAS THE HARM REPORTED?
  - ASK OPEN ENDED Q AT FIRST
  - IF VAGUE ANSWER, ASK SPECIFIC Qs TO IDENTIFY THE PROCESS (E.G. WHO TOOK YOUR INFORMATION? HOW WAS INFORMATION PROVIDED? ETC.)
- WHAT WAS THE INFORMATION USED FOR?
  - DOES PARTY “X” KEEP STATISTICS? IS THERE AN ANNUAL REPORT?

# LINE OF QUESTIONING FOR REPORTED EVENT

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# **FOUNDATION OF UNREPORTED EVENT**

(b)(7)(e)

# LINE OF QUESTIONING FOR UNREPORTED EVENT

(b)(7)(e)

# HOW TO USE RECORD CREATED?

- YOU NOW HAVE A RICH RECORD ABOUT AN IMPORTANT ASPECT OF PARTY “X” AND ITS RELATIONSHIP TO THE PA’S EXPERIENCE
- GOES TO BURDEN OF PROOF
  - NOT ALL EVIDENCE IS GIVEN EQUAL WEIGHT
- MIGHT LEAD TO CREDIBILITY CONCERNS
  - LACK OF IMPORTANT INFORMATION?

# QUESTIONS?



Problems in  
Adjudication  
Series:  
Cognitive Bias &  
Decision Making:

# Our mission & goals

- Mission: to find refugees
- Goals:
  - Improve decision making
  - Develop an accurate and fair record

# Learning objectives

- Understand how cognitive bias affects interviews and adjudications
- Learn strategies to mitigate impact
- half-identify the blind impress of our experience [borrowed from Larkin]

# Questions for the AOs

- What did you imagine the role of the adjudicator was when you began the job?
- Has this image changed with experience?
- How are our adjudications different than a questionnaire?
- What factors would lead you to say that a decision was a biased decision?

# Definitions

- Decision making: the cognitive process resulting in the selection of a course of action among several alternative scenarios
- Procedural justice: consistency, accuracy, bias suppression, and representation
- Cognitive bias: heuristics/mental shortcuts that can bias decision making (i.e. creates blind spots)

**What do these three triangles  
have in common?**



# Types of heuristics

- What is actually perceived, as well as how it is interpreted, depends in part, at least, on the analyst's patterns of expectation.

# Types of heuristics

- Which one of these products would you pick: '80% lean' ground beef or '20%' fat ground beef?



# Types of heuristics

- Most people would be more likely to choose the first option in both cases, even though the two choices are identical.
- The choices we make are also influenced by the way they are framed. Different wordings, settings, and situations will have a powerful effect on decision-makers.

# Types of heuristics

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# Types of heuristics

(b)(7)(e)

# The problem for our adjudications

- “[It] was a very bizarre, erratic fact” –  
W.G. Sebald

# The problem for our adjudications

- The structure of our adjudications:
  - We deal in gray zones
  - We are making inferences from incomplete information
  - Use of an interview to obtain information
  - Discretion
  - Time limitations

# The problem for our adjudications

- The record is created through a negotiation with the applicant and we do this against a background of our skills, knowledge, environment, prejudices, values, and the structure we have to work in



# The problem for our adjudications

(b)(7)(e)

# A potential strategy

(b)(7)(e)

# Fact pattern

(b)(7)(e)

# Specific adjudicative problem

- What's the nexus? Any harm to others?  
Any contacts with bad actors?

# Specific adjudicative problem

- What interviewing issues do you see?
- (that is not legal issues, but issues regarding the interview dynamic)

# Scharff technique and expectations

- Articulate what are the expectations from the applicant's point of view.
- For example: what expectations do they have about the interview, you (the AO), and themselves.
- Articulate what expectations you have of the applicant.
- For example: they are going to think we are going to interrogate them

# Specific adjudicative problem

- What interviewing issues do you see?
- Use expectations to inform your strategy.

# Specific adjudicative problem

(b)(7)(e)



# Scharff technique and expectations

(b)(7)(e)

# Fact pattern

(b)(7)(e)

# Specific adjudicative problem

- What's the nexus? Any harm to others?  
Any contacts with bad actors?

# Fact pattern

(b)(6) (b)(7)(e)

# Specific adjudicative problem

- Is the applicant's religious community evidence of a religious identity?

# Possible solution

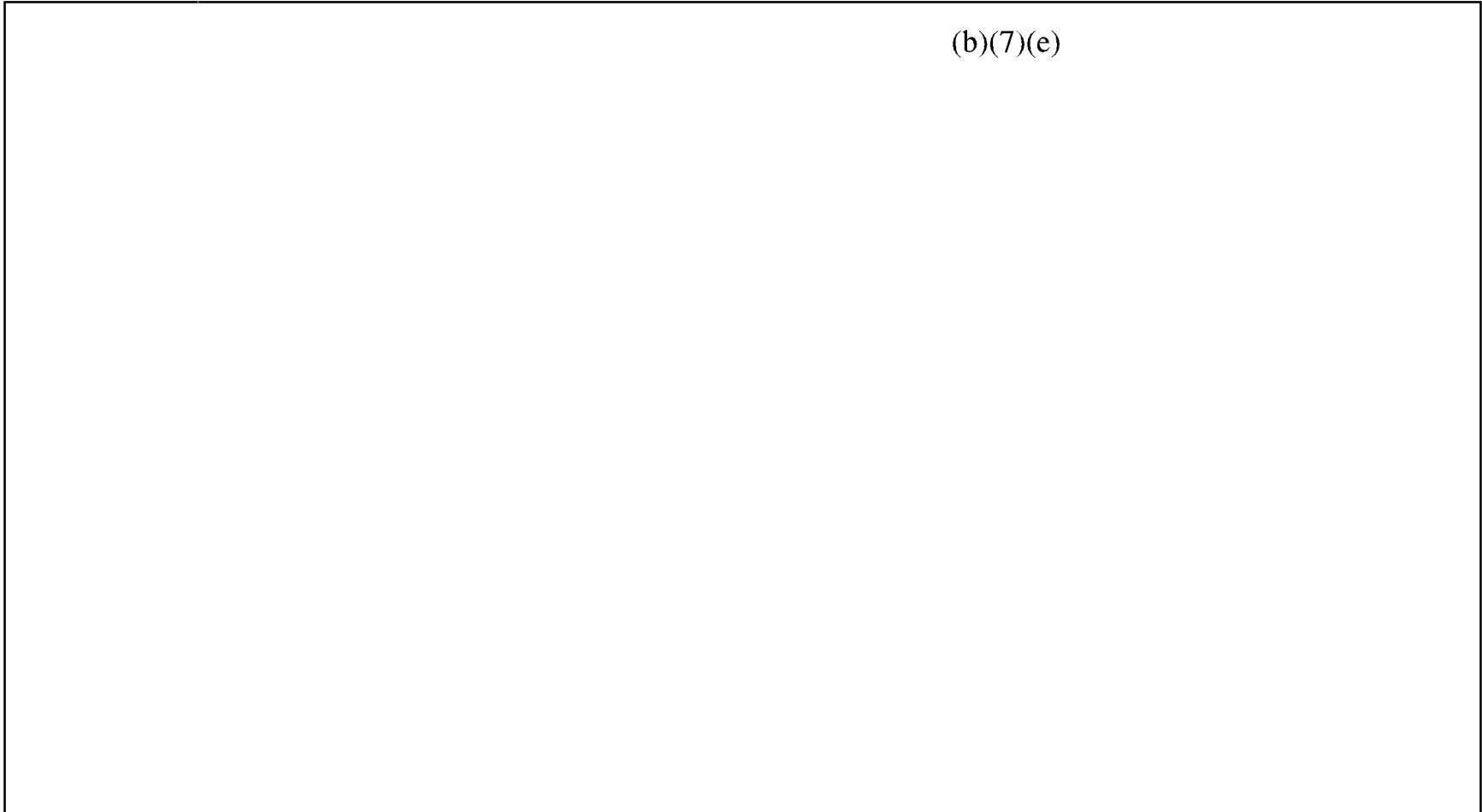
(b)(7)(e)

# Foundation of a religious community

- 

(b)(7)(e)

# Foundation of a religious community

-  (b)(7)(e)



# Foundation of a religious community

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# Foundation of a religious community

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# Foundation of a religious community

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(b)(7)(e)

# Foundation of a religious community

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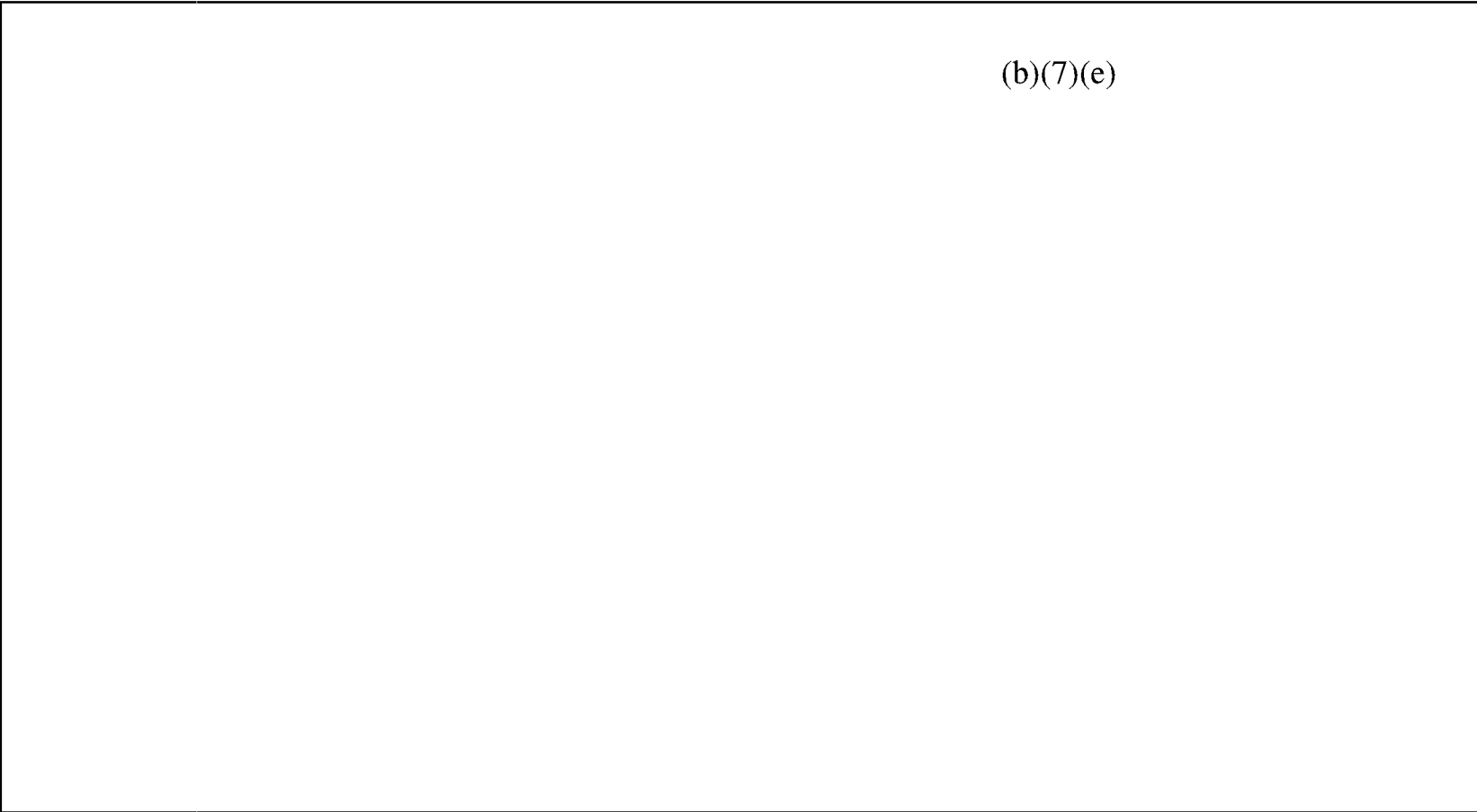
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# Foundation of a religious community

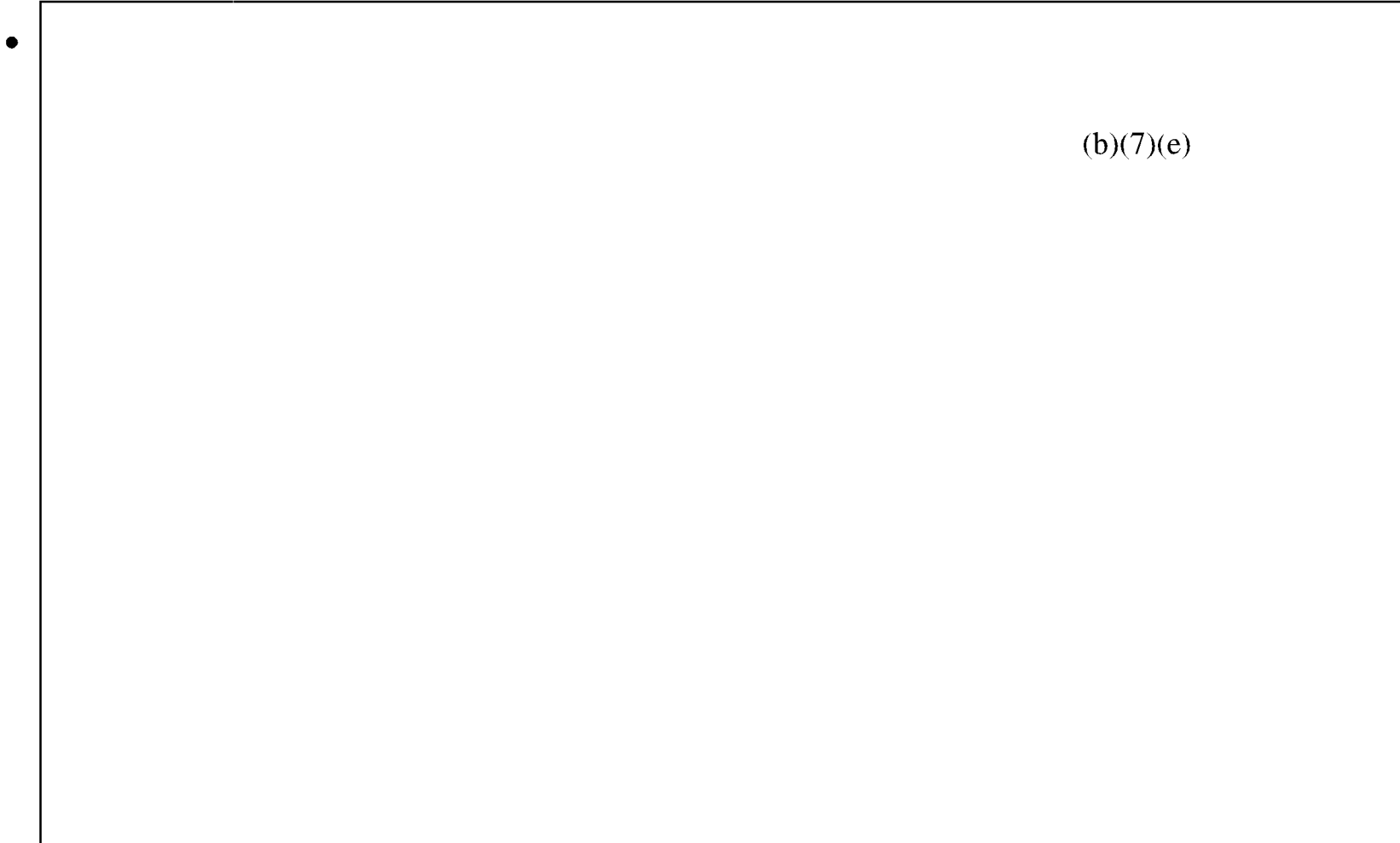
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# Foundation of a religious community

-  (b)(7)(e)

# Foundation of a religious community



# Foundation of a religious community

- 

(b)(7)(e)



# Line of questioning for religious identity

- If this community is important for you and you were involved with it for sometime – reason that you have limited information about these aspects of your community?
- Is there a reason that this community has not made efforts to find out about legal support and made itself available of the resources for dealing with problems from the government?
- If this community has larger goals – reason it has not reached out to the broader religious community movement?

# The Sorites paradox and harm

- “Start with a heap of sand. If you remove a single grain, it remains a heap. Repeat this process enough times, however, and you have a heap of sand that contains, say, one grain. This is absurd: One grain is not a heap. Something has gone wrong, but it is not obvious what. Either there is a precise number of grains at which point a heap becomes a nonheap, or there is no such thing as a heap [...]. Which bullet to bite?”

# The Sorites paradox and harm

- “vagueness was an expression of our ever-changing purposes: that there is a precise point at which a heap becomes a nonheap, but it “shifts around” as our objectives do.

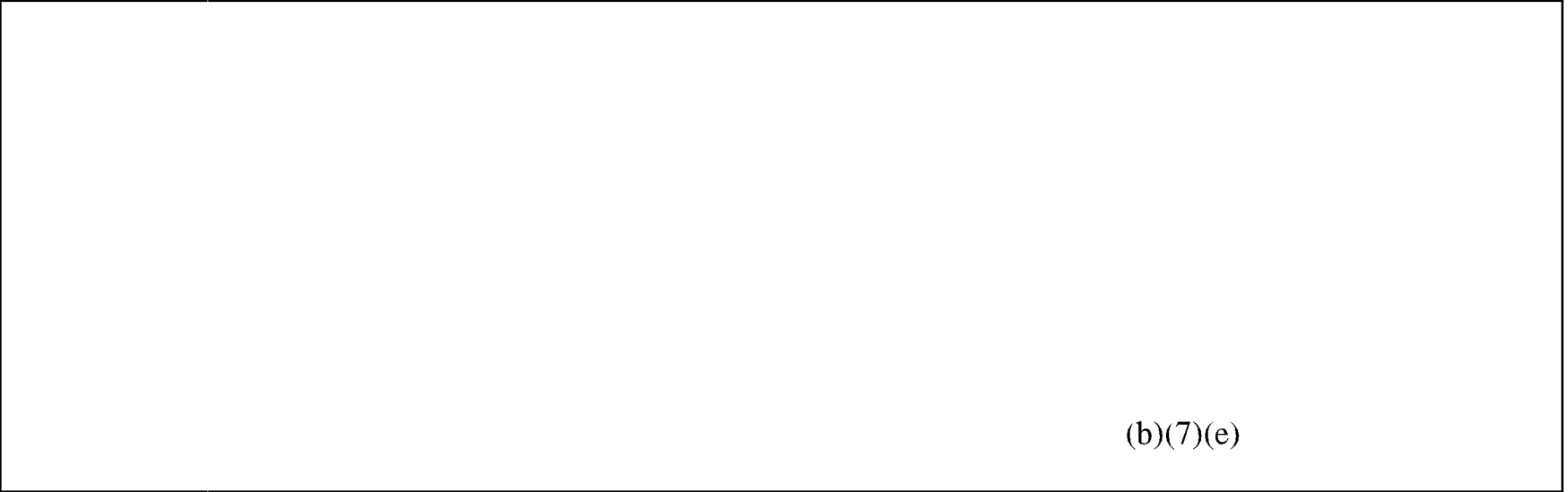
# The Sorites paradox and harm

- For example whether or not the predicate “what are enough grains of coffee for Smith’s purposes” gives rise to a sorites paradox depends at least in part on what Smith’s purposes are. If Smith’s purpose is to make some coffee to drink, so that he can wake up and start his day, then we would be inclined to accept that there is a sorites paradox. Given his purpose how could one grain make for the difference in the possibility of its being achieved?

# The Sorites paradox and harm

- If, however, Smith has a stack of twenty quarters on one pan of a finely calibrated balance and for whatever reason his purpose is to use the coffee grounds to tip the balance, then we would be in no way inclined to accept the sorites paradox.

# The Sorites paradox and harm

- 

(b)(7)(e)

# The Sorites paradox and harm

- 

(b)(7)(e)

# Revisiting the questions

- The Stanford Prison Experiment
- There is this dynamic where we become our roles – that’s why that idea that “kindness matters” is so important
- Human interactions make a difference in how the record is developed



# Learning objectives

- Half-identify the blind impress of our experience [borrowed from Larkin]

# Sources

- RAND Corporation, Understanding how organizations ensure that their decision making is fair (2017)
- Graff, Delia, Shifting Sands: An Interest-Relative Theory of Vagueness, Philosophical Topics (2000)
- Johnson, Ian, The Souls of China: The Return of Religion After Mao (2017)
- Kahneman, Daniel, Thinking, Fast and Slow (2011)
- Osnos, Evan, “Confucius Comes Home: Move over, Mao,” The New Yorker, January 5, 2014
- Osnos, Evan, Jesus in China, PBS - Frontline, June 24, 2008

# Challenges

- Apart from additional time, do you have any recommendations for improving decision making at an individual level?
- At a structural level?
- Develop a training on your take on how to mitigate bias in adjudications!

# Questions?

- Are we better than algorithms?
    - This type of decision making also faces the problem of bias
    - “artificial agents, like humans, are not above bias” – RAND Corporation study\*
- \*An Intelligence in Our Image: the Risk of Bias and Errors in AI (2017)

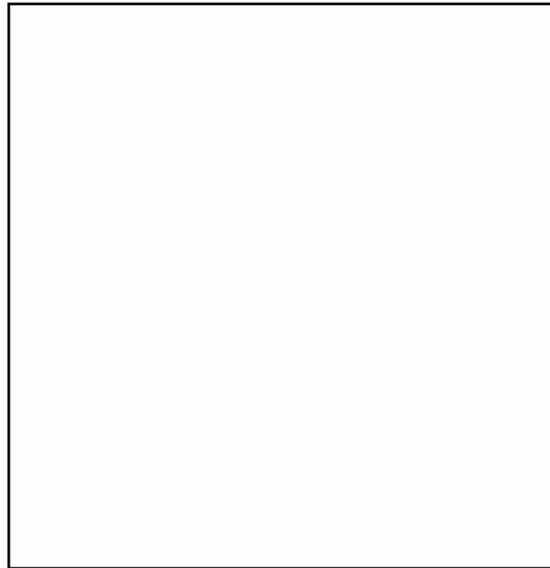
# **SPLIT /CREDIBILITY totality of the circumstances**



With Black Belt Experts  
SAO Scott Miller and QAT Lauren Vitiello  
July 30, 2012

# What it is not

- Split Credibility is not a personality disorder.



(b)(6)

# Split Credibility

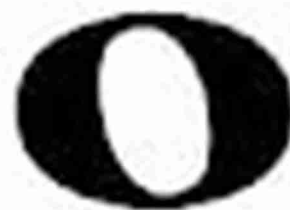
- ... is a tool that will allow an AO to more precisely address issues that may arise during an asylum interview.

# Credibility Evaluation

- Evaluation of the credibility of an applicant's testimony is fundamental to the evaluation of asylum eligibility and, in many cases, is the determining factor.
- The asylum officer must make an independent judgment as to the applicant's credibility in every asylum case. (Credibility Lesson Plan)



**whole  
note**



aka

# Totality of the Circumstances

- Asylum officers must evaluate credibility in every case
- The statute requires that the officer consider *the totality of the circumstances, and all relevant factors, when making a credibility determination.* (Credibility Lesson Plan)

# You must consider *all* the evidence

“The whole picture must be taken into account since testimony is not a discrete, self-contained unit of evidence examined and weighed without context, it is part of the body of evidence which is intertwined and consist[s] in its totality.” *Matter of S-M-J-*, 21 I&N Dec. 722, 728 (BIA 1997)

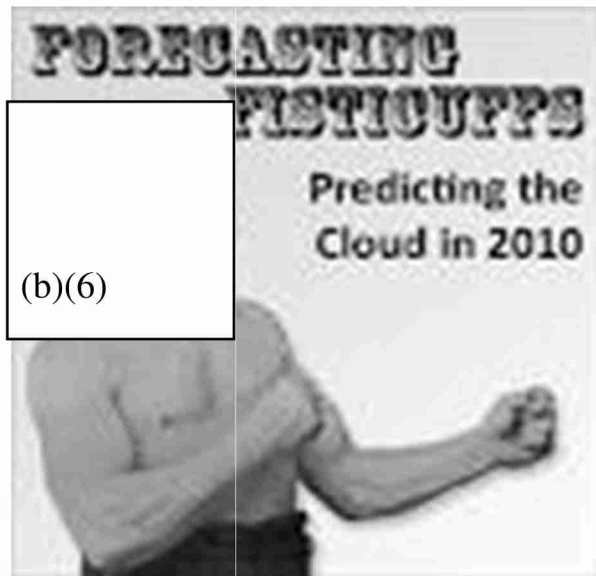
*An overall credibility determination does not necessarily rise or fall on each element of the witness's testimony, but rather is more properly decided on the cumulative effect of the entirety of all such elements.* Jishiashvili v. Attorney General, 402 F.3d 386, 396 (3rd Cir.2005)

# Asylum officers must evaluate credibility in every case

- If the factual analysis indicates that the applicant's testimony, or a portion of the applicant's testimony, is not credible, regardless of whether it “goes to the heart of the applicant’s claim,” a determination whether any credibility flaw is relevant to the claim is required.  
(Credibility Lesson Plan)

# REAL ID Act

- This is where I thought I would have to “have it out” with Scott...



... but I was patient.  
And you know? It  
turned out all right!

*Next page please*

# REAL ID Act

- For asylum applications filed on or after May 11, 2005, the REAL ID Act supersedes prior case law that limited reliance on inconsistencies that did not go to the “heart of the claim.”
- Credibility Lesson Plan

# REAL ID Act

- Under the INA as amended by the REAL ID Act, asylum officers may base a credibility determination on inconsistencies, including omissions, “without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim,” as long as it is relevant to the evaluation in light of the totality of the circumstances.
- Credibility Lesson Plan



**If one of you kids tells me a lie, so help me – you *all* are punished!**



*Falsus in uno, falsus in omnibus*

*Falsus in uno, falsus in omnibus*  
[false in one thing, false in everything]

- “A single false document or a single instance of false testimony may (if attributable to the petitioner) infect the balance of the alien’s uncorroborated or unauthenticated evidence”
- Credibility Lesson Plan

# *Falsus in uno, falsus in omnibus*

- Some circuit courts have taken the position that the credibility provisions of the Real ID Act have opened the door for adjudicators to apply the doctrine of *Falsus in uno, falsus in omnibus* to credibility determinations.
- Credibility Lesson Plan

# *Falsus in uno, falsus in omnibus*

The Second Circuit has...identified five situations in which the *falsus in uno* doctrine may not apply:

(b)(6)



**Felix Norbert SIEWE, Petitioner,  
v.  
Alberto R. GONZALES, Attorney  
General, Respondent.  
480 F.3d 160**



1

A finding that the petitioner adduced false evidence does not excuse [in the sense of *mitigate* or *discount*] the assessment of evidence that is independently corroborated.



## 2

The presentation of fraudulent documents that were created to *escape* persecution may actually tend to support an alien's application. (This generally does not include false documents submitted as genuine in support of the asylum application.)



3

False evidence that is wholly ancillary to the alien's claim may, in some circumstances, be insufficient by itself to warrant a conclusion that the entirety of the alien's uncorroborated material evidence is also false.



4

A false statement made during an airport interview, depending on the circumstances, may not be a sufficient ground for invoking *falsus in uno*.



(b)(6)

Aliens may “not be entirely forthcoming” during the initial interview due to their perception that it is “coercive” or “threatening,” particularly aliens who may have a well-founded fear of government.



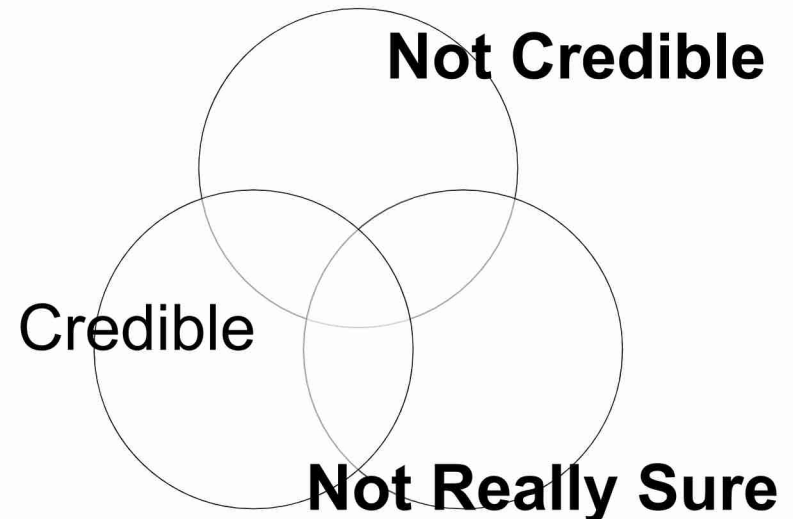
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An alien's submission of documentary evidence that the alien does not know, and has no reason to know, is inauthentic, is no basis for falsus in uno.

# SPLIT /CREDIBILITY

- In some cases, the asylum officer may determine that part of the applicant's testimony is not credible, but that another part is credible.

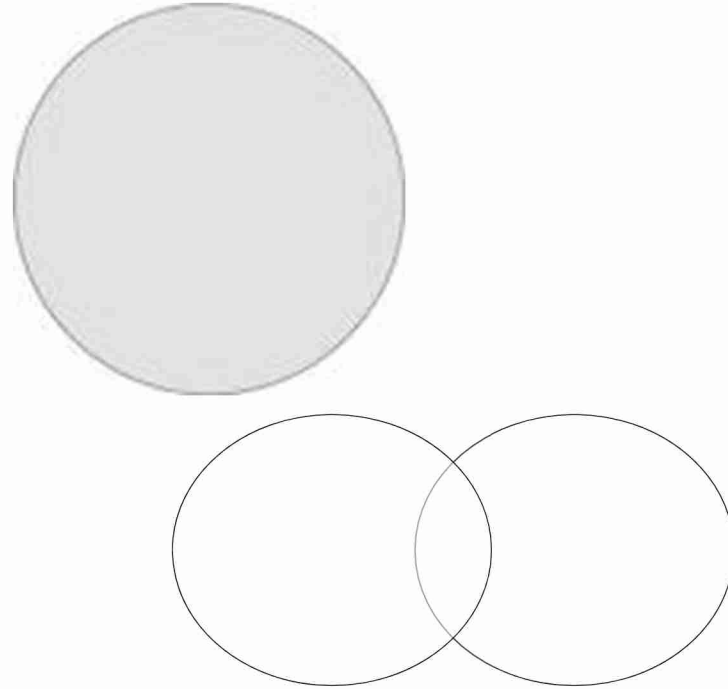


# SPLIT /CREDIBILITY

- The asylum officer should then identify those parts of the testimony that were found not credible, explain why they were found not credible, and state whether they are relevant to the applicant's claim. The assessment should also identify those parts of the claim that were deemed credible.

# WHY USE SPLIT CREDIBILITY

- Although Real ID generally allows a finding that encompasses a negative credibility finding when part of the testimony is found not credible, circumstances may justify separating aspects of a claim.

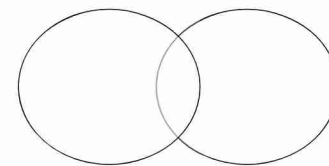


# WHY USE SPLIT CREDIBILITY

- Recent cases where this could have been used but was often lacking dealt with claims by Egyptian Copts.
- AO finds applicant not credible because testimony regarding claims of past harm were not detailed and at odds with other evidence.
- AO grants based on well founded fear.

# SPLIT /CREDIBILITY

- Where the applicant is found *wholly* not credible, analysis should stop, without further discussion of WFF. But ...when you have this situation: ~~~~>



# SPLIT /CREDIBILITY

- ... AO could have come up with a split credibility finding. Applicant could be found not credible in part (as it relates to past persecution), but credible with regard to being an Egyptian Coptic Christian living in Cairo. AO could then address WFF.





But before you jump to conclusions

Make Questions!





You take it  
from here!

# SPLIT /CREDIBILITY

- There have been few precedent decisions that deal with split credibility.
- Paul v. Gonzales, 444 F.3d 148 (2d Cir. 2006)
- Zuh v. Mukasey, 2008 WL 4983837 (4th Cir. 2008)
- Siewe v. Gonzalez, 480 F.3d 160 (2d. Cir. 2007)

# SPLIT /CREDIBILITY

- *Matter of S-M-J-*, 21 I&N Dec. 722, 728 (BIA 1997)
- *Jishiashvili v. Attorney General*, 402 F.3d 386, 396 (3rd Cir.2005)

# How To Do It

(in the assessment, continued)

Step 1: Identify the issue

Step 2: Present the evidence

Step 3: Present the explanation or lack of explanation provided

Step 4: Address if the explanation is or isn't reasonable, and why

Step 5: Explain how this issue is or is not material (relevant) to the applicant's claim

# How To Do It

(in the assessment)

## **CREDIBILITY**

In order to receive asylum... 8 U.S.C. §§ 1158, 1101(a)(42); 8 C.F.R. § 208.13(b).

Your testimony provides for a split credibility analysis. Your testimony regarding being a student and participating in demonstrations is found credible because it is sufficiently detailed, internally consistent, and generally consistent with your written application. Additionally, the evidence submitted is consistent with known country conditions.

# How To Do It

(an example)

(b)(6) (b)(7)(e)

# How To Do It

(example continued)

(b)(6) (b)(7)(e)



# How To Do It

(example continued)

(b)(6) (b)(7)(e)

Decision Writing - Credibility Analysis

(b)(7)(e)



THE [SPLIT]  
END !