

Fordham Urban Law Journal

Volume 29, Issue 1

2001

Article 3

Lesbian, Gay, Bisexual, and Transgender Communities and Intimate Partner Violence

Lesbian, Gay, Bisexual, and Transgender Communities and Intimate Partner Violence

Abstract

Panelist Valerie B, a survivor of domestic abuse, discussed her experience in an abusive relationship with another woman. She discussed the trauma and how she slowly got out of the relationship. Panelist Lisi Lord, associate director of programs at My Sisters' Place, then gave an overview of the things she has learned working with victims of violence on the LGBT community. She discussed some of the barriers they face as a marginalized group and how their expression of sexuality and societal response to it makes their problems unique. Panelist Lt. Grace A. Telesco, chair of the Behavioral Science Department of the New York Police Academy, then discussed her research on violence in lesbian relationships and what she teaches Police Academy recruits in terms of same sex domestic violence. Panelist Theresa Jefferson, community and police relations program coordinator from New York City Gay and Lesbian Anti-Violence Project, then explained that the Anti-Violence Project is a crime service agency formed in 1980 to address lesbian, gay, bisexual, transgender and HIV-affected victims of violence and discrimination. She talked about the legal obstacles faced by LGBT persons in terms of intimate partner violence. She also talked about police responses and the criminal justice system. Panelist David Pumo, director of Lesbian & Gay Youth Project at the Urban Justice Center, spoke about the legal issues related to working with LGBT teens or young adults, and the ways you need to avoid liabilities when working with people under the age of eighteen. Panelist Victoria Cruz, a domestic violence advocate and counselor then discussed her experience as a male-female transgender. She discussed that they are a group that feels invisible and that they do not really have anywhere to go outside of the Anti-Violence project, where she works. Cynthia Knox, director of Legal Advocacy Program at Bronx Aid Services, then discussed the HIV case reporting and partner notification law and its links to domestic violence.

KEYWORDS: LGBT, lesbian, transgender, domestic abuse, violence, AIDS, HIV

ISSUES IN REPRESENTING IMMIGRANT VICTIMS

Panelists

EMIRA-HABIBY BROWNE

*Executive Director,
Arab American Family Support Center*

JULIE DINNERSTEIN

*Staff Immigration Attorney,
Sanctuary for Families*

STEPHEN JENKINS

*Attorney, the Workplace Justice Project
Make the Road by Walking*

LYNN NEUGEBAUER

*Supervising Attorney,
Safe Horizon Immigration Law Project*

MARGARET RETTER

*Executive Director,
Din Legal Center, Inc.*

Emira-Habiby Browne¹

*Executive Director
Arab American Family Support Center*

MS. BROWNE: It is always a pleasure to speak about our community because it is a very misunderstood community, and people generally have difficulty dealing with Arab women. It is important we help everyone understand the cultural barriers our women experience when they come to this country and particularly when they become victims of domestic violence.

First, a little background on the community. According to the 1990 Census, New York State has the second-largest number of Arab Americans in the United States, with a growth of thirty-four percent from 1980 to 1990.² New York City has an estimated 163,000 Arab Americans, with Brooklyn being the third largest Arab community in the United States.³

Arab immigration in New York has been ongoing for more than 100 years.⁴ The first wave of immigrants were mostly Christian Arabs from Syria and Lebanon.⁵ The middle waves, arriving after World War II through 1975, were a more professional and educated group of immigrants. They mostly integrated successfully into American society and are doing very well.⁶ The Arab immigrants, however, who arrived in the past twenty-five years, are extremely disadvantaged and have not adequately integrated into

1. Emira-Habiby Browne is a founder and executive director of the Arab American Family Support Center. Established in 1993, the Arab American Family Support Center is the first and only Arabic-speaking social services agency in the New York City metropolitan area. Browne worked in this area for over fifteen years. Her topic is "Cultural Challenges Faced by Arab Immigrant Battered Women and Strategies to Overcome these Challenges."

2. The New York State Arab American population was estimated at 73,065 in 1980 and 97,738 in 1990. Arab American Institute, About Arab Americans, at <http://www.aaiusa.org/arabamericans/Ny.pdf> (Sept. 6, 2001). According to Census 2000, an estimated 123,914 Arabs live in New York State. U.S. Census Bureau, Census 2000 Supplementary Survey, QT-02 Profile of Selected Social Characteristics: 2000, at <http://factfinder.census.gov>.

3. Arab American Institute, About Arab Americans, at <http://www.aaiusa.org/arabamericans/whereweare.htm> (Sept. 16, 2001).

4. Arab American Institute, About Arab Americans, at <http://www.aaiusa.org/arabamericans/whoweare.htm> (Sept. 16, 2001) ("Arab immigrants first came to the United States more than 100 years ago . . .").

5. Arab American Institute, Arab America Today-Introduction, at <http://www.aaiusa.org/arabamericans/introduction.htm> (Sept. 16, 2001).

6. See Arab American Institute, About Arab Americans, at <http://www.aaiusa.org/arabamericans/arabamericatoday.htm> (Sept. 16, 2001).

American society.⁷ This wave is generally less educated, less proficient in English, more rural, poorer, and frequently Muslim.⁸

The Arab American community is very diverse, with different socio-economic levels and many different countries represented. There are twenty-two Arab countries⁹ with the three main religions of Islam, Christianity, and Judaism.¹⁰ Not all Arabs are Muslims and not all Muslims are Arabs. Arabs speak different dialects and have different skin colors.

We mostly work with new immigrants. They are poor and tend to speak English.

The Arab community, as a whole, is unified by language, culture, and similar problems. It is a very stigmatized and demonized community, a community increasingly marginalized and isolated, resulting in severe family instability and dysfunction.¹¹

The Arab American Family Support Center¹² ("AAFSC") came into existence in 1993 to help acculturate newcomer families into American society. Its activities are directed towards newly arrived Arab immigrants. The Center seeks to address the destabilizing effects of the immigration experience—marginalization, family instability, and family violence—much of which is due to the lack of services to guide newcomers through the laws, culture, and norms of this country. AAFSC offers help through counseling, crisis intervention, advocacy, information and referral services, educational programs, and immigration assistance.¹³

To our shock and dismay, soon after we opened our doors, we found ourselves addressing serious domestic violence in the com-

7. See Arab American Institute, About Arab Americans, at <http://www.aaiusa.org/arabamericans/income.htm> (Sept. 16, 2001).

8. See generally Arab American Institute, About Arab Americans, at <http://www.aaiusa.org/arabamericans/arabamericatoday.htm> (Sept. 16, 2001).

9. Twenty-two Arab countries make up the League of Arab States, more generally known as the Arab League. The countries are Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. *THE MIDDLE EAST AND NORTH AFRICA* 1999, at 275 (47th ed. Europa Publications 1999).

10. *Id.* at 12.

11. Arab American Institute, About Arab Americans, at <http://www.aaiusa.org/arabamericans/arabamericatoday.htm> (Sept. 16, 2001).

12. The Arab American Family Support Center can be reached by contacting Emira Habiby-Browne at 88A Fourth Avenue, Brooklyn, New York 11217. She can also be reached by telephone at (718) 643-8000 or by fax at (718) 643-8167. National Arab American Organization Information Guide, at <http://www.hanania.com/arabus.htm> (updated July 10, 2000).

13. National Arab American Organization Information Guide, at <http://www.hanania.com/arabus.htm> (Sept. 16, 2001).

munity—emotional, psychological, and financial—in the form of abuse by husbands, in-laws (particularly the mother-in-law), siblings, and parents. We were not prepared to address these problems, which had been successfully covered up by the community. We found several cultural factors, combined with the destabilizing effect of immigration were causing increasing incidents of domestic violence.¹⁴

Since the Arab American community does not internally sanction domestic violence, immigrant Arab women and children were left to cope alone without adequate support. They lacked proficiency in English, did not understand the American legal system, and could not communicate with police or child welfare workers. They were left to struggle without guidance or support.

Arab American women were petrified of losing their immigration status or being deported, which their husbands often used as a threat. They did not want to return to their home countries to admit failure, lose face with families and neighbors, and face possible ostracization. Over and over women have told us they do not want to go home, no matter how bad the situation is here.

Yet this country did not have family support systems to help these women cope with their marital situations. Moreover, these women were extremely afraid of losing custody of their children, because traditionally in Arab culture, the father or his family has legal rights to the children.

They did not know where to find help. They were unaware of options or rights they might have in this country. They were forced to accept abuse because they had nowhere else to go and no financial means.

While our center was not initially established to address domestic violence, it has become a safe haven for many women. It is a place they find help and understanding without being judged, a place where they can explore options other than tolerating abuse and accepting it as the norm.

What are the cultural factors that encourage domestic violence in our community? Let me give you a little background.

14. See generally Linda Kelly, *Stories From the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 Nw. U. L. Rev. 665 (1998) (discussing unique problems facing immigrants stuck at the intersection of immigration and domestic violence).

Arab immigrants bring to this country their values of large, multi-generational patriarchal families.¹⁵ Having lived under patriarchal norms¹⁶ and values for generations, men are viewed as “kings of their castles.” They are shamed and often ostracized by family and community members if perceived to have “lost control” over their families.

Typically, men are viewed as the sole providers of economic security for the entire family, which may include in-laws and cousins. These men, however, face tremendous difficulties finding employment and maintaining their position as the breadwinner and head of household. There is pressure to support large families—often six children or more—on one income, in a new country, with poor English skills and inadequate job skills. There is discrimination, inability to find work, and hostile attitudes from the larger American community. There is a lack of education and coping skills to adjust to new norms and attitudes. All these factors contribute to a high level of stress and family instability and, thus, to the ensuing incidence of domestic violence.

Traditional Arabian women, meanwhile, live very insular lives. They are relegated to the home and are extremely dependent on their husbands for economic security. They are not encouraged to think for themselves or take control of their lives. A woman’s life must center on her children, husband, and larger family. She must be self-sacrificing and give up her own needs. Success of the marital relationship is her responsibility. Failure is viewed by the community as her fault, with serious social sanctions if she leaves the marital relationship.

This belief system is internalized early in her life. She must do everything to cater to her family and keep them happy. Divorce is taboo and living outside the marital home is unacceptable. Leaving the marital relationship with the children is seen as breaking up the family and depriving the children of a father. A woman is not allowed to live alone and can only reside with family members.

In addition, family members and the society as a whole expect women to accept and cope with abuse silently. Women are ex-

15. Melanie Frager Griffith, *Battered Woman Syndrome: A Tool For Batterers?* 64 *FORDHAM L. REV.* 141, 170 n.172 (1995) (discussing patriarchal norms and their role in domestic violence).

16. *Id.*; see also M.M. Slaughter, *Fantasies: Single Mothers and Welfare Reform: The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies*, 95 *COLUM. L. REV.* 2156, 2183 (1995) (book review) (discussing patriarchal norms and patriarchal ideology).

pected to accept physical, emotional, and verbal abuse rather than break up the family.

Traditional Arab women, therefore, are trapped within their cultural conditioning about a woman's place in marriage. They are immobilized by cultural norms that do not accept women's rights. These women are mostly unaware of their legal rights in the United States.

The traditional shelter system is not an option for Arab women. Since they are not accustomed to living outside the family, we have never been successful in sending them to shelters. They experience extreme isolation, fear, and trauma when they leave home and the familiarity of their surroundings and language. They are unable to cope on their own and are forced to return to the abusive relationship, where they may experience more abuse because they dared leave the marital home.

Arab children, particularly girls, are also subject to family violence. They are torn between two different worlds: home and parents on one hand and school and peer group on the other. Unlike their American peers, they are raised to sacrifice their own needs for the family's honor. They have much less freedom than non-Arabic children to express opinions and question authority figures like parents or teachers.

Parents feel threatened by their children's increasing independence, and seek to assert their authority through traditional disciplinary methods unacceptable in this country.

Fathers, brothers, and other male members of the family are socialized to have rights over female members of the family, including the right to discipline them, make decisions for them, and even pressure them into early marriage. Too often, girls are married off early and not allowed to continue their education. They are often sent back to their home countries to protect them from American ways that may lead to dishonoring the family.

The resulting adolescent female acting out—lying, playing hooky, running away, joining gangs, getting involved in drugs and sexual relationships—is most often a rebellion against the oppression at home and double standard extended to females in the family.

The control by males over females leaves many girls feeling powerless and dependent, a feeling enhanced by the powerlessness felt by their mothers, who are unable to help their daughters.

Arab society also places tremendous value on close family ties and on the place of the mother as a caretaker and nurturer of the family.

There is tremendous fear of social criticism and what people will say. Public image is incredibly important to Arabs, and family problems are not to be discussed or publicly displayed. Problems must be dealt with only by other family members, for fear of social embarrassment or ostracism.

Arab immigrants fear public exposure will reinforce the stereotypical image of Arabs as being violent and extreme. Exposing internal family or social problems to outsiders risks tarnishing the image of an already demonized community. Family violence, therefore, cannot be openly acknowledged and must be outwardly denied, eliminating the possibility of addressing it openly and honestly.

By bringing the issue to the forefront and addressing it publicly, AAFSC is violating sacred norms. We have struggled for the past six years to address domestic violence in a community that refuses to accept it as a social problem. We have experienced tremendous difficulties because the community refuses to acknowledge abuse is prevalent in many homes. Such behavior is not viewed as abuse but as a way of disciplining children and females who do not comply with family and societal norms.

It is the duty of those in authority—the male members of the family who are regarded as providers, protectors, and educators of the female members—to ensure the family and its honor are kept intact.

What are some strategies we use to address domestic violence in our community?

We have tried to mobilize the community against domestic violence by raising the awareness of family violence through meetings with the Arab Muslim and Christian clergy. This has been difficult because of the sensitivity of the issue. But the religious community is usually the first contact, other than the family, made by a victim, and its influence is very strong.

We have worked hard to establish a collaborative working relationship with clergy members to help us deal with the religious issues of divorce, child custody, and support.

We have repeatedly stressed to clergy and male community leaders the importance of speaking out against domestic violence publicly, particularly in their weekly sermons to their congregations.

However, this is a continuous struggle because of tremendous communal resistance to addressing or supporting women's rights issues.

We try to raise the consciousness of women and encourage them to fight abuse and insist on their rights. Because they are strongly socialized to be dependent and to comply with male authority, they are unaware of their rights, and often feel unworthy of any rights.

We provide domestic violence victims with information, resources, and emotional support to give them strength to fight for themselves and their children. We enable them to make choices for themselves rather than acquiescing to social and family pressures. That is an extremely difficult task in a patriarchal society that insists on maintaining male domination and female submission.

We have linked women with community services—housing, legal, and immigration services, employment, English language classes, job skills training, and child care—to enable them to take charge of their lives and take advantage of options available in this country. This has been extremely hard because of their socialization against working outside the home or living outside the family circle.

We are continually developing collaborative efforts with other providers so our women can access services our agency cannot provide. We are participating in a collaborative effort with the Brooklyn District Attorney's Office to coordinate activities with the police precincts and encourage victims not to drop charges and to cooperate with law enforcement and prosecution.¹⁷

We provide language and support services to help victims understand how the legal process can help them. Since many Arab men come from oppressive political regimes and fear any proceedings that could result in arrest or deportation, this can be very effective. Legal action can also lead to tremendous pressure from the family and society to drop charges to avoid dishonoring the family in public.

We stress the psychological and emotional toll domestic violence has on the healthy development of these women's children and their ability to establish healthy relationships in their family and in

17. The sexual and domestic violence task force is open to the public and meets monthly at Borough Hall in Brooklyn, New York. For information about the task force, call (718) 286-2900. *Suburban Neighborhood News*, N.Y. DAILY NEWS, Apr. 26, 2001, available at 2001 WL 17949121. For a description of the Brooklyn District Attorney's Domestic Violence Task Force, see Kings County District Attorney's Office, D.V. Task Force, at <http://www.brooklynda.org> (last modified Aug. 28, 2001).

the outside world. We underscore the negative psychological effects resulting from living in an abusive home environment and the trauma experienced by children who see their mothers continually abused or battered.

We have also addressed domestic violence from the perspective of child welfare. We are educating parents on how to discipline their children, emphasizing that the cultural norms regarding discipline in this country could result in the removal of children from the home and their placement in foster care.

We have stressed the mother's responsibility to ensure the safety and well-being of her children, even when it means depriving them of their father in the home. This has been an area of particular difficulty because of the strong cultural belief that children must not be deprived of their father, no matter what the circumstance, and women must accept and remain in the marital relationship under all conditions.

Because Arab women are socialized to sacrifice their own needs to those of their families, tolerating an abusive marriage for the sake of the children is common and accepted. We often see the children, and other family members, blaming their mothers for the behavior, hating her for leaving, siding with the father, and pressuring her to return.

We have translated materials on domestic violence into Arabic and conducted several workshops, particularly on U.S. laws. In order to encourage attendance we do not label the workshops as "domestic violence workshops". Instead, we advertise them as educational workshops on women's health issues, child development, and so on.

We are initiating a batterers and anger management group in Arabic. We want to work closely with the men to help them understand their behavior, its consequences, its effects on their children, and the deep scars it leaves on family life. Helping and supporting women without addressing men's attitudes towards women, and without a concerted effort to change men in our society as a whole, will be useless and ineffectual.

We are attempting to provide the men with a safe environment where they can honestly address their own issues. It is extremely difficult to engage Arab men in counseling or group therapy. Because of their resistance to discussing family issues with strangers, interventions including the male batterer are almost impossible, even when court mandated. But we continue to try to engage the male family members, including, as I mentioned before, by involv-

ing the religious clerics in the discussion, by providing educational workshops and discussion groups under the rubric of life skills, and by translating pertinent material into Arabic and starting special groups for the men.

To stop the cycle of violence, our agency must bear the consequences of breaking entrenched cultural taboos pertaining to wives leaving their husbands, initiating divorce proceedings, gaining custody of their children, living on their own, working outside the home, asserting their independence, demanding their rights, and rejecting their religious and cultural beliefs regarding the role of women in the family.

It has meant risking the credibility and reputation of the agency and being perceived as “interfering feminists intent on breaking up and destroying families.” We have encountered serious problems, both internally and externally, regarding our work with victims of domestic violence.

The empowerment and self-sufficiency of women strikes at the core of male power and authority. The need to ensure that sacred cultural norms and taboos are not challenged is forcing women to remain in their traditional roles. Often, we find that women themselves are reluctant to accept empowerment and combat strong cultural conditioning. Change is difficult for those from strong patriarchal societies where authoritarian traditions are strongly ingrained in their being and in the male sense of manhood.

What do we still need to do for our immigrant women? There are several things we can work on.

Arab women need more easily accessible support services, particularly legal, immigration, housing, and employment services in their native language.

We need some kind of housing—not the traditional shelter system, but something less threatening for immigrant women—where immigrant women from similar backgrounds can come together.

We need Arabic-speaking, professionally trained staff and volunteers to provide services and advocate on behalf of women and children.

We need more educational programs targeted to immigrant men and women, particularly with respect to women’s rights in the religious context.

We need the active participation of community members. We need the active involvement and participation of religious leaders, community leaders, and males in the community.

We need males to develop programs for males that address male power and control issues in the context of cultural conditioning.

We need more family-based interventions to help promote better understanding of the rights of women and children to live in a safe environment.

We must develop more coordinated efforts to provide services and more effective strategies. If we cannot ensure that women and children have the right to live in an environment with love, respect, and healthy communication as the norm, we will continue to be caught in the ongoing cycle of violence and abuse that continues to abound in our communities.

Margaret Retter¹⁸

*Executive Director
Din Legal Center Inc.*

MS. RETTER: Jewish women face cultural obstacles that stand in their way of being able to determine if they are being abused (many women do not realize it until too late), and to get out of the situation.

Jewish women, particularly more-to-the-right Hasidic¹⁹ women—when I say Hasidic, I do not just mean people in a certain garb, but those who are more to the right in their viewpoints—are brought up in a family background where they are expected to be perfect wives and mothers. They are trained from the time they are four or five-years-old to be perfect, to preserve family tranquility, and after marriage, to create a sanctuary in the home.

They are held responsible for anything that goes wrong in the home. Any problem in the home is the woman's fault. She is taught from an early age her job in life is to get a good match and, when married, to ensure her children make good matches.

18. Margaret Retter is the founder and president of the Din Legal Center. Founded in 1999, the Center serves Orthodox Jewish victims of domestic violence. "Din" means law in Hebrew. Din Legal Center is the first legal center in New York City to represent exclusively Orthodox Jewish victims of domestic violence in family law, domestic violence-related immigration cases, and proceedings in the Beis Din. Ms. Retter has been an advocate for Orthodox Jewish victims of domestic violence since 1995. She is a private practitioner in immigration and criminal law. Her talk addresses cultural and religious legal obstacles that Orthodox Jewish women face in extricating themselves from abusive relationships.

19. Hasidism is "the practices and beliefs of the Hasidim." A hasid is "a member of a Jewish sect devoted to mysticism and opposed to secular studies and Jewish rationalism that was founded in Poland about 1750 by Rabbi Israel ben Eliezer to revive the strict practices of the earlier Hasidim." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1037 (Merriam Webster Inc. 1986).

Generally, Jewish women stay in an abusive relationship ten to seventeen years, rather than the norm of five to eight years for non-Jewish women.²⁰

There are very few services, but they are becoming more available. There are more social service agencies. There is very little, however, in the legal forum.

If a woman did not see abuse at home, she is caught unaware. She marries very early, usually through a matchmaker. She usually meets her proposed husband two or three times if lucky. If she has grown up in a good household, she does not realize what abuse is. We are not necessarily talking of physical abuse. We are also talking of emotional abuse, control, and power.

If she did see abuse in her home, then she feels she is expected to stay. If she questions her family, they will tell her, "This is something you just take."

If she does have the courage to seek outside help, generally the first person she will seek help from is the rabbi in the community.

I really must emphasize the problem Jewish women face in having to deal with two court systems. If a woman finally has the courage to go to court or leave her relationship, she will speak to a rabbi, usually the one from her synagogue. If the rabbi feels there is a terrible, abusive relationship, he may suggest, or she may suggest, she go to a *beth din*.²¹

Her options are limited because of the general rule in Jewish law is that two Jewish people are not permitted to go to secular court; they must only go to a Jewish court, which is called a *beth din*.²²

If she goes to the *beth din*,²³ she may be confused and afraid. She believes there are no rules and no precedent. She has no idea what she is doing, and walks into a lion's den, so to speak. This is something we are trying to change.

She is not aware that a *beth din* proceeding is an arbitration proceeding, according to section 7501 of the New York Civil Practice

20. Merry Madway Eisenstadt, *Domestic Violence Strikes Jewish Women*, WASH. JEWISH WK., Oct. 21, 1999, at <http://hometown.aol.com/merryeee/abuse.htm> (Sept. 16, 2001).

21. "The Beth Din, or Beit Din, is the Rabbinical Court that has been the basis of Jewish law and living throughout history and around the globe. Procedures and decisions based on the Torah, Talmud, and the great body of Halachic law are the guarantee of continued Jewish communal life." Beth Din, at <http://www.beth-din.org/more/> (Sept. 16, 2001).

22. *Id.*

23. *Id.*

Law and Rules.²⁴ All the rules are listed there. She is entitled to adequate legal representation that cannot be waived.²⁵ Most of the time, however, she has no idea what is happening. Also, in Jewish law, only a man can give the woman a Jewish divorce. It is called a *get*.²⁶

Faced with the problem of having to deal with Jewish court and that only her husband can give her a Jewish divorce, she is stuck.

In a situation where there is tremendous physical abuse, she is going to want to go to court, and everyone will probably advise her, if she speaks to anyone, to get an order of protection. But she has tremendous fears of going to court. First, how does she do it? Who tells her what to do? If she goes to secular court, what are the prejudices? If she goes to Jewish court, what are the penalties? What will the community say? Will she be ostracized in her synagogue and by her friends? Definitely. Will she be summoned to *beth din* by her husband as a result of her seeking an order of protection? Does she need permission to go to secular court? In the case of physical abuse, how will her husband react to the order of protection?

One of the many problems a woman faces is that there are very few community-based *beth din*.²⁷ In the old times in Europe, every community had its own court system and people knew the rules and procedures.²⁸ Today, any three rabbis can put together a *beth*

24. N.Y. C.P.L.R. § 7501 (McKinney 2001); *see also* Meisels v. Uhr, 593 N.E.2d 1359, 1360 (N.Y. 1992) (stating broad arbitration agreements are permissible, including those agreements widely used in Beth Din (Jewish religious tribunal) arbitrations).

25. *Id.*

26. *Divorce*, in 6 *ENCYCLOPEDIA JUDAICA* 131 (Keter Publishing House, Ltd. 1973).

27. Irving Breitowitz, *The Plight of the Agunah: A Study in Halacha, Contract, and the First Amendment*, 51 *MD. L. REV.* 312, 327 (1992).

[M]ost communities today do not have a standing *bais din*. There is, for example, no officially designated *bais din* in Baltimore whose rulings are accepted by all segments of Baltimore Jewry. Indeed, there is not even an officially designated Orthodox or Conservative *bais din* on either the local or national level whose rulings would be even morally binding on adherents of their respective movements.

Id.

28. Breitowitz, *supra* note 27, at 326.

Under classical Biblical or Talmudic Law, each community had its own *bais din* that would be empowered to rule on matters of Jewish law and to compel obedience to its rulings. Indeed, even after the destruction of the Judean State, for hundreds of years Jews were able to maintain the rule of Jewish law and to preserve the functioning of their courts.

Id.

din.²⁹ However, there are certain community-based *beth din* who publish their rules, procedures, fees, notices, and times, and are very compassionate towards women.³⁰ They understand the problems and are accessible and will listen to a woman's questions beforehand.

The biggest problem women have is that, even if they are able to find attorneys, the attorneys are confused when dealing with orthodox women. They know there is this other system, this other track, that is happening at the same time as the secular court system, and they do not know what to do.

Anyone who represents an orthodox Jewish woman should be aware of certain things.

The first thing is that, at some point, whether the woman finds herself in secular court, family court or supreme court—she will have to face a *beth din*. The attorney should go with her. The attorney should request the proceeding be tape-recorded. The attorney should immediately notify the *beth din* he is representing the woman. He should send certified copies, keep all receipts and documents, and make memoranda stating this woman will comply with the *beth din*. At the same time he should preserve her permission to go to secular court. Most rabbis will give the woman permission to go to court.

If she does not comply with these initial requirements, she may jeopardize her ability to get a Jewish divorce later on.³¹ The attorney should be aware the woman has to notify a *beth din*, or the

29. Breitowitz, *supra* note 27, at 320; Randy Linda Sturman, *House of Judgment: Alternative Dispute Resolution in the Orthodox Jewish Community*, 36 CAL. W.L. REV. 417, 418 (2000) (citing Bernard J. Meislin, JEWISH LAW IN AMERICAN TRIBUNALS 123 (1976)).

30. See, e.g., Beth Din of America, What You Can Expect From the Beth Din of America, Sensitivity, at <http://www.bethdin.org/services.htm> (Sept. 6, 2001). "Beth-din personnel, well aware of the personal angst that emerges from conflict, treat all parties to disputes with respect and sensitivity. They are available to answer your questions about the process of adjudication and to carefully guide you through the practical steps leading you to the case's conclusion." *Id.*

31. Divorce, at <http://www.beth-din.org/more/divorce.html> (Sept. 16, 2001).

The official documentation of divorce according to Jewish law is required for either party to remarry. It is therefore extremely important that couples who divorce follow the proper procedure with a respected Bet Din, or Religious Court. Much grief can be avoided by performing and documenting the *Get* properly, thereby avoiding the tragic situation where one party is left unable to remarry without an acceptable *Get*, and must remain an Agun or Agunah until a *Get* is executed.

Id.

attorney must notify the *beth din* that she is willing to come and comply with all Jewish law.

However, if her husband summons her to a *beth din*, she does not have to appear before the particular *beth din* her husband selected. She can choose her own *beth din* as long as the attorney notifies the *beth din* she will do so. It is very important to keep all the documentation.

Many times, the *beth din* will demand the woman drop her order of protection in order to obtain a *get*.³² Many times, the *beth din* will demand she give up certain visitation rights, custody rights, and money owed her from marital assets, in order to obtain a *get*. Women are frightened. They know if they do not obtain a *get*, they are stuck the rest of their lives.

The person who does go to *beth din* or speaks to a rabbi must be aware of confidentiality. There was a recent reported case, called *Lightman v. Flaum*,³³ where a woman went to her rabbis, poured out her heart, and told them certain things. The rabbis then went to the husband's attorney and to court and wrote a letter that affected her future custody of her children.³⁴ The court reversed and sent it back to the trial court on the issue of third-party presence.³⁵

Every attorney should advise their clients that under current New York law, when they go to a rabbi to speak to that rabbi as a spiritual adviser in his spiritual capacity, they should not take anybody with them.³⁶ Do not let the woman take anybody with her unless the attorney can go, because any time there is a third party, anything she says to the rabbi can be used against her.³⁷ That is the law in New York today.

In addition, it is very important for her to go to a community-based *beth din*. If anyone has any questions as to what they are and which are reputable, our organization is putting out a resource

32. Kent Greenwalt, *Religious and Civil Law: Using Secular Law to Assure Observance of Practices with Religious Significance*, 71 S. CAL. L. REV. 781, 812 (1998) (citing Irving Breitowitz, *BETWEEN CIVIL LAW AND RELIGIOUS LAW* 35-37 (1993)).

33. *Lightman v. Flaum*, 717 N.Y.S.2d 617 (App. Div. 2000).

34. *Id.* at 619. The Rabbis claimed that their disclosures via the affirmations they submitted on the divorce action were necessary to protect the upbringing of the children. *Id.*

35. *Id.* (granting summary judgment and dismissing the complaint; no issue of a third party presence was sent back to the trial court). A third-party presence is the presence of a person other than the rabbi or his congregant during a conversation between the two primary parties.

36. *Id.* at 618.

37. *Id.*

manual on the status and rules of the different *beth din* in the five boroughs today.

One of the big problems women face is that a man can go to a *beth din*, and if the *beth din* is less than honest, can convince the *beth din* he is entitled to a second wife without divorcing his first. This process is called *The Dispensation of 100 Rabbis*.³⁸ A man can go to whichever *beth din* he chooses—it can be three rabbis that put themselves together—and say, “My wife is crazy, my wife is not orthodox, my wife does not comply with the rules of Jewish law.” They will issue a document, called *The Dispensation of 100 Rabbis* that allows him to take a second wife without granting his first wife a divorce.³⁹ It is called a *heter*.⁴⁰ *Heter* means permission. Initially, this was done, approximately 1,000 years ago, for the protection of women because thousands of years ago, men could take as many wives as they wanted and they could divorce the wife against her will.⁴¹

Rabbi Gershom⁴² said, “This is unacceptable. A man cannot take on as many wives as he wants. He can take one wife and he cannot divorce his wife against her will.”⁴³ The discussion then became, “What happens if she is in a coma or unconscious?” So the rabbis said, “Well, if 100 rabbis from three different countries investigate the situation scrupulously and decide she cannot accept the *get*”—he can take a second wife without granting her a *get*.⁴⁴

Therefore, the attorney should document all correspondence with the *beth din*, and even send a copy of all their correspondence to the Chief Rabbi of the Rabbinate in Tel Aviv.⁴⁵ This way the Rabbinate is on notice that the woman complied. There is no issue of her incompetence or “badness,” and no document can be pub-

38. Lisa Zomberg, *Beyond the Constitution: Is the New York Get Legislation Good Law?* 15 PACE L. REV. 703, 784 n.10 (1995).

39. *Id.*

40. *Id.*

41. Irving Breitowitz, *The Plight of the Agunah: A Study in Halacha, Contract, and the First Amendment*, 51 MD. L. REV. 312, 323-24 (1992).

42. Ben Judah Me’or Ha-Golah Gershom was “one of the first great German talmudic scholars and a spiritual molders of German Jewry.” 7 ENCYCLOPEDIA JUDAICA 511 (Keter Publishing House, Ltd. 1973).

43. *Id.* at 323 (citing J. DAVID BELICH, CONTEMPORARY HALAKHIC PROBLEMS 152-53 (1977)).

44. *Id.* at 325 (citing KOL BO, Ch 116; Otzar Haposkim, Even Haezer 1:10).

45. The Chief Rabbi has sole jurisdiction over Israelis over matters of marriage, divorce, alimony, and confirmation of wills. The Chief Rabbi also has jurisdiction over matters in which both parties consent to their jurisdiction. 9 ENCYCLOPEDIA JUDAICA 895 (Keter Publishing House, Ltd. 1973).

lished, and therefore the husband will not be able to get away with a *heter*.⁴⁶

Now, dealing with the Violence Against Women Act⁴⁷ is a little difficult. When women come into the office, they are not going to tell you right away they are being abused emotionally or physically. You have to sort of drag it out of them and you have to get a feeling. But generally you can tell. When you hand the women the I-130 petition⁴⁸ and say, "Your husband has to sign this in order for you to be able to address status," if you get the feeling he does not want to sign, he will not sign, he is not going to do anything for you, start asking questions about abuse, start asking questions about his control, his domination, because there are a lot of important different factors in the Jewish situation.

One of them is, in order to get a VAWA application approved, you need to show a bona fide marriage.⁴⁹ In order to do that, you have to have a certificate of marriage issued by whatever state you are in. We are in New York State. You have to have a license and a certificate of marriage.⁵⁰ Many orthodox Jews do not marry with a certificate of marriage. They are under the impression that the Jewish marriage is sufficient.

There is a new case that says that this may be changed now and that immigration may look upon this differently, but as far as I know, you still need to have the certificate of marriage.⁵¹ The same holds for a divorce. If the woman says, "I received a *get* in Indiana," but she does not have a certificate of divorce, this divorce may not be approved by immigration.⁵²

Another large problem is documentation. Many abused women who finally seek medical help or go to police precincts, will go out

46. See Breitowitz, *supra* note 41, at 323-24.

47. 42 U.S.C. § 13981 (2001) (stating that the purpose of the Act is to protect the civil rights of domestic violence victims based on gender).

48. 8 U.S.C. § 1154(a) (2001) (outlining procedure for the granting of immigrant status that includes the filing of an I-130 petition, which allows a U.S. citizen or lawful permanent resident to establish a relationship between the filer and certain alien relatives who wish to immigrate to the United States); see also *Fiallo v. Bell*, 430 U.S. 787, 806 n.7 (describing the I-130 procedure).

49. 8 U.S.C. § 1154 (2001) (defining immigration laws in terms of valid marriages); 8 C.F.R. § 204.2(c)(1)(A) (2001).

50. N.Y. C.P.L.R. 4526 (McKinney 2001).

51. *Persad v. Balram*, 724 N.Y.S.2d 560, 563 (2001) (holding "[t]he parties' failure to obtain a marriage license does not render their marriage void," as long as the parties are of full age).

52. 8 C.F.R. § 204.2(c)(1)(H)(ii) (2001) (noting that even a *legal* divorce would result in a denial of an abused woman's self-petition for citizen or resident alien status).

of their borough and use anonymous names. They will go to social workers or hospitals; they will pay cash; they will not use their insurance cards. It is very difficult to get the documentation necessary to show the emotional abuse they have gone through.

The community is not going to be tremendously supportive, to the point where some of my clients have been disinvited to weddings, asked not to come to the synagogue, disinvited to all social gatherings. The essence of the orthodox Jewish woman's life is her community and her friends. Generally there is no television, no Internet, no magazines. She does not have access to the media as most other people do. She is stuck. She has no way to get information.

The documentation has to be secured very creatively. We do this by trying to get a friend, an affidavit, anything we can attach to this application, and also to explain to the immigration department the cultural background inducing this problem.

All attorneys representing orthodox women should tell them, "Do not sign any papers unless I am present," because any papers they may sign can subject them to arbitration, and it is something you want to read. A lot of women go to court, especially in Kings County court, where they are told the agreement done by the *beth din*,⁵³ which is all in Hebrew, is being translated, and there is no attorney to make sure it is an accurate and certified translation. They just assume that it is what they agreed to.

There is tremendous pressure on women to sign away their life to obtain a *get*, and many women have been forced to give up their children and assets, to become destitute, in order to get their divorce, which sometimes they do not get anyway.

If anyone has any questions about Jewish law issues, call the resources listed in the handbook of the Beth Din of America.⁵⁴ They will give you answers. Do not do anything unless you are sure. One wrong step can cause the woman tremendous harm.

53. See *supra* note 21 and accompanying text.

54. Beth Din publications can be obtained by contacting the organization directly at Beth Din of America, 305 Seventh Ave., 12th Floor, New York, NY 10001-6008; (212) 807-9042[P]; (212) 807-9183[F].

Julie Dinnerstein⁵⁵

*Staff Immigration Attorney
Sanctuary for Families*

MS. DINNERSTEIN: I will give a nuts-and-bolts discussion on remedies available to immigrant battered women. It is very important to tell immigrant victims of domestic violence, "Call the police; they are not the same thing as the Immigration and Naturalization Service" ("INS"). From a number of countries throughout the world, people are very concerned any government entity is identical to any other one and one part of the whole. The police in New York City, as you know, do not report people to the INS when they are crime victims.⁵⁶ There are places in the United States where the police work very closely with the INS.⁵⁷ We are very blessed that the New York City area is not one of those regions. So encourage people to call the police.

Two, women can go to family court. Women are very, very frightened when they go to family court. They are asked for their Social Security number. They do not have one because they are undocumented. They think that, because of that, the family court is going to turn them in to the INS or just not help them out. Everywhere you go, please emphasize immigrant women are entitled to go to family court.⁵⁸

One of the things I love about immigration law is that there are no rules of evidence.⁵⁹ I submit documents and unsworn third-party hearsay that prove my point. I get letters from people in the neighborhood: "Everybody thinks he's a bad guy; I do too."

A lot of times you see a battered immigrant woman and think, well, we can't help you because you don't have documents. You

55. Julie Dinnerstein is the director of the Immigration Intervention Project at Sanctuary for Families' Center for Battered Women's Legal Services. Prior to coming to Sanctuary for Families, Julie was an associate at Cleary, Gottlieb, Steen & Hamilton and handled a number of challenging immigration law cases pro bono for domestic violence victims. Julie addresses the Violence Against Women Act and battered spouse waiver remedies for immigrant victims of domestic violence.

56. See Allison B. Feld, *Section 4343 of the Welfare Act: Does the Federal Immigration Power Collide with the Tenth Amendment?* 63 BROOK. L. REV. 551, 552 (1997) (describing explicit city order prohibiting certain city employees, including police, from reporting crime victim's alien status).

57. Linda Regna Yanez and Alfonso Soto, *Local Police Involvement in the Enforcement of Immigration Law*, 1 TEX. HISP. J. L. & POL'Y 9, 11-12 (1994) (citing El Paso, Texas as a place where the police and the INS successfully worked together).

58. 29 U.S.C. § 794 (1994).

59. See Felicia E. Franco, *Unconditional Safety for Conditional Immigrant Women*, 11 BERKELEY WOMEN'S L.J. 99, 120 (1997); see also 8 C.F.R. § 103.2(2).

never went to court, you never went to the police, you never went to a battered women's shelter. We can't help you.

I want to emphasize that if you believe the story is true, there is a way to explain it. Those of you who spend a lot of time in court may think the Rules of Evidence govern the entire universe. They do not.

All women are also admissible to battered women's shelters, and many women believe if they are undocumented, they do not have a right to shelter.⁶⁰ I urge all of you, as you go out into your communities, to repeat this message again and again.

Finally, many immigrants are afraid to get welfare because they think when they go to their green card interview, their receipt of welfare benefits will be held against them. It is generally true that it will.⁶¹ There is an exception. When you are using public assistance to escape domestic violence, it cannot be counted against you, as is made explicit in the VAWA II legislation.⁶²

In our work, as soon as women get prima facie notices and become eligible for public assistance, we send them to the welfare office. So please tell women that if they are battered they can go and get assistance. It will not hurt their green card applications.⁶³

There is some basic immigration law I would like to explain.

First, the terms "green card" and "lawful permanent residence" ("LPR") represent the same idea—the right of indefinite legal residence.⁶⁴ "Green card" is the popular phrase, because for many years the card showing you were a lawful permanent resident was green. It is no longer green. I have had people call me and say they wanted a green card. They really thought they were not residents of the United States because their card was not green.

There are more people who want to move to the United States permanently than the United States has chosen to allow in legally.⁶⁵ Many people live here or wish to live here although the United States has not granted them official permission to do so.

60. There are also shelter programs specifically available for immigrant women. Maurice Goldman, *The Violence Against Women Act: Meeting Its Goal In Protecting Battered Immigrant Women?* 37 FAM. & CONCILIATION CTS. REV. 375, 377 (1999).

61. *Id.* at 383.

62. *Id.* at 384 n.109; Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 (2001).

63. *Id.* at 380 n.55-56 (stating that VAWA II "gives [battered women] the right to self-petition to adjust their residency status").

64. *Id.* at 379 n.35.

65. See Immigration and Naturalization Service, U.S. Dep't of Justice, ANNUAL REPORT: LEGAL IMMIGRATION, FISCAL YEAR 1998 (1999), available at <http://www.ins.usdoj.gov/graphics/aboutins/statistics/index.htm> (last visited Sept. 6, 2001).

To apply for lawful residence, you first must establish that you fit into a category of people allowed to file for a green card.⁶⁶ This is an important distinction; I usually think of it as the “reason petition,” that is, the reason you should be allowed to apply for a green card as opposed to the green card application itself.⁶⁷ It is important when you help women walk through their options to understand there are two different issues. One is the reason petition and one is the green card application.

The two remedies I am going to focus on today, VAWA self-petitions⁶⁸ and battered spouse waivers,⁶⁹ address these two different areas.

I would also like to talk about the meaning of the word “marriage” according to the INS,⁷⁰ particularly in reference to the recent comment about a case, that said that New York State is going to recognize religious marriages that do not comply with the laws of New York State.⁷¹ My own guess is that it will be quickly overturned, but it seems to be the law in the First Department right now.

A marriage for INS purposes is a marriage where “the marriage or the intent to marry the United States citizen was entered into in good faith by the alien.”⁷² So, for example, if you have a same-sex couple married in Holland, where they have a legally valid marriage according to the laws of Holland, that will not do for immigration purposes here.⁷³ If you have a marriage, for example, in Hungary, where if you are a man you can marry up to four times, a

66. See 8 U.S.C. § 1445 (2001); 8 C.F.R. § 101.4 (2001);.

67. See 8 U.S.C. § 1446 (2001) (green card application itself); 8 C.F.R. § 245(a)(3) (2001) (stating reasons why you may or may not be eligible for a green card).

68. 8 U.S.C. § 1154 (1994) (describes how citizen or relative can file petition with the Attorney General).

69. 8 U.S.C. § 1186a(c)(4)(C) (1994) [updated].

70. 8 U.S.C. § 1186a(d)(1)(A) (1994); see also 1 U.S.C. § 7 (1994) (defining marriage).

71. *Persad v. Balram*, 724 N.Y.S.2d 560, 563 (2001) (holding that “[t]he parties’ failure to obtain a marriage license does not render their marriage void”). Section 25 of the Domestic Relations Law provides that “[n]othing in [Article 3 of the Domestic Relations Law] shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age.” *Id.*

72. 8 U.S.C. § 1154 (a)(1)(A)(iii)(aa) (2001).

73. *Adams v. Howerton*, 673 F.2d 1036, 1041 (9th Cir. 1982) (holding that Congress did not intend to confer spousal status to gay partners in INS legislation).

marriage for the second, third, and fourth wives is not recognized for immigration purposes here in the United States.⁷⁴

So you must have a legal and valid marriage.

The marriage must be in good faith.⁷⁵ A good-faith marriage is one not made for the purposes of evading immigration laws.⁷⁶ Technically speaking, if you marry for the purpose of evading U.S. tax laws, that is a good-faith marriage under INS rules.⁷⁷ Any reason that you marry someone other than avoiding the immigration laws of the United States is a good-faith marriage.⁷⁸

A. VAWA Self-Petitions

When you talk about a VAWA self-petition,⁷⁹ you are talking about a woman who does not have lawful permanent residence and would like to file a reason petition showing she should be allowed to apply for lawful permanent residence.⁸⁰ She is establishing her right to apply for a green card.

This is for anyone not granted lawful permanent residence. A VAWA self-petition is their first step. Maybe they talked to someone at the INS who said: "You know, you are almost going to get a green card," or "maybe next year," or "we just need a few more documents." So they may think they have a green card, but not necessarily have one.

If they have not yet received lawful permanent residence, they are going to file a VAWA self-petition,⁸¹ establishing their right to apply for a green card.⁸²

For the VAWA self-petition, the cite is 8 U.S.C. § 1154.⁸³ I want to point out to everyone the law changed on October 28, 2000, with

74. *In re Matter of Hosseinian*, 1987 BIA LEXIS 7, 19 I. & N. Dec. 453, 456 (BIA Aug. 25, 1987) (holding that because the first marriage was never terminated, that second marriage cannot be addressed by the INS).

75. 8 U.S.C. § 1154(a)(1)(A)(iii)(aa) (1994).

76. *Id.*; Lauren Gilbert, *Family Violence and the Immigration and Nationality Act*, 98-03 Immigr. Briefings 1, at 5 (Mar. 1998).

77. 8 U.S.C. § 1186a(b)(1)(A)(i) (1994) (discounting marriages if they are formed to avoid INS laws).

78. Gilbert, *supra* note 76 (noting marriage is in good faith if there is no "substantial and probative evidence that self-petitioner attempted or conspired to enter into a marriage for purposes of evading the immigration laws").

79. 8 U.S.C. § 1154 (1994).

80. Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. INT'L. L.J. 1, 17 (1999).

81. 8 U.S.C. § 1154 (1994).

82. *Id.*

83. *Id.*

the passage of the Victims of Trafficking and Violence Protection Act of 2000.⁸⁴ The Public Law is Public Law Number 106-386.⁸⁵ The regulations have not been changed, so you will want to look at the regulations along with the new law, to make sure you are following the new law.⁸⁶

With certain exceptions, you must have joint residence here in the United States for a VAWA self-petition.⁸⁷ For a VAWA self-petition, you have to have good moral character, generally established by a clean police record for the last three years, although there are ways to get around that for those with criminal records.⁸⁸

In a VAWA self-petition you must either currently be married to your abuser,⁸⁹ or with the change that has come in the law—what I call VAWA II—from October 28th, you may have been divorced in the last two years because of domestic violence, or your husband may have lost his immigration status within the last two years because of domestic violence.⁹⁰ Either way, you still qualify.

The abuse must have taken place during the course of the marriage.⁹¹ You see people who are with their abusive partners for years and who marry only at the very end, as a last-ditch effort to save their relationship. If all of the abuse takes place prior to the marriage, you are in trouble, though usually you can find some incidents that have taken place after the marriage has actually occurred.⁹²

With a VAWA self-petition, children, whether they are here in the United States or abroad, can be included. The INS defines children as being under twenty-one and unmarried.⁹³

B. Battered Spouse Waiver

The next group of people we deal with—a much smaller number—are people for whom you are going to do a battered spouse

84. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

85. *Id.*

86. 8 C.F.R. §§ 204.1(3), 204.2 (2000).

87. 8 U.S.C. § 1154 (1994) (stating that joint residence means the alien resides with the alien's spouse or intended spouse).

88. 8 U.S.C. § 1154(a)(1)(A)(iii) (1994).

89. 8 C.F.R. § 204.2(c)(1)(ii) (2000).

90. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1503(b)(1)(A)(iii)(II)(aa)(CC)(bbb)-(ccc), 114 Stat. 1464.

91. 8 U.S.C. § 1154(a)(1)(A)(iii)(I) (1994).

92. See Kathryn E. Suarez, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 424 (1994).

93. 8 U.S.C. § 1101(b)(1) (1994 Supp. V).

waiver. A battered spouse waiver is for people who already have lawful permanent residence. It is sometimes referred to as “temporary permanent residence,” or “conditional permanent residence.”⁹⁴ I do not like either of those phrases because I find them misleading. It really is lawful permanent residence with a condition.⁹⁵

The people who are granted lawful permanent residence with a condition are those who have a green card interview within the first two years of their marriage. They receive lawful permanent residence, but there is a condition stuck on that residence. The condition is very similar to a hold on your registration, which is different from applying for the right to register in the first place.

Let’s say you would like to attend Fordham University. You may fill out an application saying why they should let you come and register at Fordham University. You will have to prove a certain set of things in order to be admitted to Fordham University. Before you have been admitted, you cannot even begin to think of yourself as a Fordham University student. Then, you may think of yourself as a Fordham University student—you’ve already been admitted, here you are at Fordham—and in the springtime it comes to the attention of the registrar that you have a number of outstanding library fines you have not paid from the fall. So you go to register and your registration is blocked, your registration is really on hold. You are going to have to pay the library fines, get rid of the hold on your registration, so you can continue being what you already essentially are, which is a Fordham student.

Joint residence is not required for a battered spouse waiver. Good moral character is not required for a battered spouse waiver. With the battered spouse waiver, a divorce is a ground for applying.⁹⁶ Divorce is always a good thing with a battered spouse waiver. Children cannot be included in battered spouse waivers unless the lawful permanent residence was granted at the same time.⁹⁷

I make this distinction because procedurally a VAWA self-petition and a battered spouse waiver⁹⁸ are two different legal remedies. Substantively, there are many underlying similarities, but

94. 8 U.S.C. § 1227 (a)(1)(D) (1999).

95. 8 C.F.R. § 216.1.

96. 8 C.F.R. § 216.5(e)(3)(ii) (1998).

97. 8 C.F.R. § 216.5 (e)(3) (1998).

98. For the VAWA self-petition provision, see 8 U.S.C.A. § 1154(a)(I)(A) (West 1999). For the battered spouse waiver, see 8 C.F.R. § 216.5(a)(3) (1998).

from a procedural perspective, the person is really in a different place.

The people who can benefit from this remedy are women who are either married to U.S. citizens⁹⁹ or lawful permanent residents.¹⁰⁰ That is a relatively small group of the population of battered women.¹⁰¹

If you are filing a battered spouse waiver or a VAWA self-petition, check on the INS Web site the day you file. The INS is famous for changing its fees with about one-to-two-weeks' notice and then not accepting applications with the wrong fees.¹⁰² You often find, even if you have printed the form off the computer that day, the fee listed on the form itself is the wrong fee. So, beware and make sure you include the correct fee.

I would like to make a couple of other points.

One is that abuse need not be physical. There have been some references this morning to emotional and psychological abuse. This type of abuse is enough. The woman does not have to prove physical acts of violence to apply for these forms of relief.

The final thing I would like to mention is the resource available to women in relationships that are not accepted as marriages under the INS definition or whose partners are not U.S. citizens or lawful permanent residents. These are called U-Visas.¹⁰³ This is a new form of relief that came into law in October of 2000.¹⁰⁴ There is not yet a procedure for applying for the new U-Visa, but there will be 10,000 of these visas every year for crime victims who cooperate with the police.¹⁰⁵

We do not know what they are going to require as proof yet, but in order for your clients to be eligible for these new U-Visas, they should be reporting abuse to the police, cooperating with the police, and cooperating with the Assistant District Attorney.¹⁰⁶ They

99. 8 C.F.R. § 216.5.

100. 8 C.F.R. § 216.1.

101. See generally *Understanding the Problem* (From the United Nations resource manual *Strategies for Confronting Domestic Violence*), reprinted in *WOMEN AND VIOLENCE: REALITIES AND RESPONSES WORLDWIDE* (Miranda Davies ed., 1994).

102. Immigration and Naturalization Service, Forms, Fees and Fingerprints, at <http://www.ins.usdoj.gov/graphics/formsfee/forms/I-360.htm>.

103. VAWA II Immigration Fixes, available at <http://www.shusterman.com/vawa00.html>.

104. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1466 (codified at 22 U.S.C. § 7101 (2001)); Deb Riechman, "Law Expands Support for Abuse Victims," *STAR-LEDGER* (Newark N.J.), Oct. 29, 2000, at 8.

105. VAWA II Immigration Fixes, *supra* note 107.

106. *Id.*

should call Safe Horizon,¹⁰⁷ call the Assistant District Attorney, stay in touch with the Assistant District Attorney, and make sure the abuse is prosecuted. This will provide an additional method for gaining residency in the United States.

Questions & Answers

QUESTION: What do you do if your client does not know her husband's immigration status?

MS. DINNERSTEIN: There are really two issues. One, she may not know her husband's immigration status. Two, she may know her husband's immigration status, but cannot prove it because she does not have documents.

Some people are married to U.S. citizens who were born in the United States, and that is a hard one. If a U.S. citizen born in the United States has never filed anything with the immigration authorities, it is difficult to locate his documents. You must go through a slow process of trying to chase down the state, perhaps taking the state where they were born to court, to force them to produce a birth certificate. However, you must know the state where that person was born.

If that person is either a lawful permanent resident, a naturalized U.S. citizen, or has at any time filed any document referencing his U.S. citizenship status with the INS, the INS can and should chase the status down. You can force the INS to find the document.

If that person has filed on behalf of the battered woman, your other option is to do a Freedom of Information Act¹⁰⁸ request for her file. When you get the Freedom of Information Act request documents back, it will usually contain evidence of his status.

QUESTION: My question concerns the requirement in VAWA¹⁰⁹ self-petition cases that the applicant establish she would be subject to hardship if forced to return to her country of origin. What has happened to the hardship requirement?

107. "Safe Horizon operates on an annual budget of \$32 million, helps 250,000 clients a year, has a staff of 830 and is the largest crime victim agency in the US." Greer Fay Cashmen, *US Agency Here to Study Wife-Beaters Program*, JERUSALEM POST at 5, May 15, 2001, available at 2001 WL 6607546. For more information on the organization, see <http://www.safehorizon.org>.

108. 5 U.S.C. § 552 (2001) (ensuring there is an "informed citizenry" essential to a democratic society by allowing access to information).

109. 8 U.S.C.A. § 1154(a)(1)(A)-(B) (West Supp. 2001). For an explanation of the self-petition procedure, see Lori Romeyn Sitowski, *Congress Giveth, Congress Taketh Away, Congress Fixeth Its Mistake? Assessing the Potential Impact of the Battered Immigrant Women Protection Act of 2000*, 19 LAW & INEQ. 259, 274-76 (2001) (explaining the self-petition procedure).

MS. DINNERSTEIN: The hardship requirement, we are excited to say, is now gone when it comes to VAWA self-petitioning.¹¹⁰ Therefore, with all of your Canadian or English or Australian clients, you no longer have to establish the hardship in returning to the cold weather in Canada or the warm weather in Australia. That is the good news.

The bad news, however, is that for your clients who are already in “removal proceedings,” popularly known as “deportation proceedings,” there is a VAWA option for those people, it is called “VAWA cancellation,” which allows them to get green cards.¹¹¹ Those people must still prove hardship upon return to their home country.¹¹²

QUESTION: Can you talk a little more about the U-Visas?

MS. DINNERSTEIN: U-Visas became available under VAWA II, which became law on October 28, 2000.¹¹³ Unfortunately, there is no form to fill out; there is no office to send any application to; there are no regulations on point. Our office, and offices around the country, are collecting the names of would-be U-Visa applicants in preparation for the time when there is some procedure somewhere and somebody we could convince to take these applications.

I will tell you what they are, who might be eligible, and what you should be doing now with your domestic violence clients.

There are going to be 10,000 of these visas available every year. That does not include derivatives, so just 10,000 primary applicants per year. That is not a lot.

These are going to be available to crime victims who are—in the words of the statute—“helpful,” “[are] being helpful,” or “[are] likely to be helpful” in the prosecution of a crime.¹¹⁴

I know people tried to draft the language to include people who go to family court alone and not those who go to the police. It is unclear yet whether that is going to work or not as “being helpful to the prosecution of a crime,” because you are not technically prosecuted in family court; you bring a civil action. We are going to try it.

110. Sitowski, *supra* note 109, at 301-02.

111. *Id.* at 298.

112. *Id.*

113. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386,

114 Stat. 1466 (codified at 22 U.S.C. § 7101 (2001)).

114. *Id.*

At this point, you should try to encourage everyone you know who is a crime victim to be helpful to the police and district attorneys who are prosecuting those crimes.

What the U-Visa will lead to is a phrase called "temporary residence."¹¹⁵ Temporary residence is not a frequently used term in immigration. It is used, I think, in the Haitian Refugee Immigration Fairness Act ("HRIFA").¹¹⁶ HRIFA legislation from the early 1990s uses that phrase, but it is not very common.

The idea behind the U-Visa is you get temporary residence, a sort of unclear state. Then, at the end of three years of having temporary residence, you would be allowed to apply for a green card.

At the moment, my advice would be to contact domestic violence service providers that provide legal services for immigrants to at least get your clients on a waiting list and encourage them to cooperate with the police and the ADA.

The people who wrote the statute wrote it in such a way as to mirror, I think, the one or two other times the phrase "temporary residence" was used. Previously, when that phrase has been used in conjunction with language saying afterwards you can apply for a green card, it has led to the opportunity to apply for a green card.¹¹⁷

However, the language is not air-tight. We have a new Attorney General,¹¹⁸ we have a new Administration,¹¹⁹ and we do not know what is going to happen.

QUESTION: What if the criminal case is over by the time the crime victim applies for the U-Visa?

MS. DINNERSTEIN: Even if you have a criminal case from 1974 and you were helpful, there is nothing in the statute to say

115. Susan Martin, Andy Shoenholtz & Deborah Waller Meyers, *Temporary Protection: Towards a New Regional and Domestic Framework*, 12 GEO. IMMIGR. L.J. 543, 578-79 (1998).

116. Haitian Refugee Immigration Fairness Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681-538.

117. Martin et. al., *supra* note 115, at 578-79.

118. The new United States Attorney General is John Ashcroft. He was confirmed on February 1, 2001. Alison Mitchell, *Senate Confirms Ashcroft as Attorney General*, 58-42, *Closing a Five-Week Battle*, N.Y. TIMES, at Abstracts 1, Feb. 2, 2001, available at 2001 WL 11226374.

119. President George W. Bush and Vice President Richard Cheney were sworn in on January 20, 2001. Amy Herstek and Mike Ferullo, *Despite January Weather, Inaugural Parade Aims to Celebrate America's Spirit*, CNN.COM, Jan. 20, 2001, at <http://www.cnn.com/2001/ALLPOLITICS/stories/01/20/inaugural.parade/index.html>.

you could not apply for this benefit now. That is the statute. I do not know what the regulations are going to look like.

QUESTION: What is the statute that governs the U-Visa?

MS. DINNERSTEIN: The legislation can be found in Title V of the Victims of Trafficking and Violence Protection Act of 2000.¹²⁰

QUESTION: How would applicants for U-Visas, or potential applicants for U-Visas, establish they could, would, might, or are likely to be helpful in a criminal prosecution?

MS. DINNERSTEIN: In the statute itself, there is language that talks about a certificate from a public official, and the list of public officials is a laundry list so long it seems to include the dog catcher.¹²¹ But it is unclear.

What we are trying to do is to establish a certificate form, and then we are going to try nationally to write our own form. And then, we are going to go to our local communities, our local police departments, DA's offices, and so on, and try to get people on board with a form being drafted right now. We are presenting the INS uniformly throughout the country with a single form that has the certification that tracks the language in the statute.

Stephen Jenkins¹²²

Attorney

The Workplace Justice Project

Make the Road by Walking

MR. JENKINS: I am going to be speaking about eligibility for welfare benefits for immigrants. Some of these benefits are particularly for victims of domestic violence or petitioners under VAWA. Some of them are available to legal permanent residents who are victims of domestic violence who want to apply for benefits but do not have a special immigration status based on domestic violence.

In terms of the New York welfare system, the first thing to know is the sort of laws about who can apply for welfare,¹²³ what the

120. 22 U.S.C. § 7101 (2001).

121. 8 U.S.C. § 1184 (p)(1) (2001), *amended by* 114 Stat. 1464 § 1513.

122. Stephen Jenkins is an attorney and organizer with the Workplace Justice Project at Make the Road by Walking, a community-based organization in Bushwick, Brooklyn, focusing on workplace and economic justice, welfare rights, environmental justice, and issues pertaining to youth. Mr. Jenkins's talk addresses benefits available to battered immigrants.

123. N.Y. Soc. Serv. Law § 131 (McKinney 2001).

different benefits are,¹²⁴ and the reality of what happens. In a lot of ways, it is more important to know how the reality works than to know specific laws. It is always good to know the laws, but often they do not drive the system.

In many ways, what is most important is making sure people submit an application and are ready to fight about it after the fact. There is a tremendous drive within the welfare system to turn people away, and that is the way case workers are motivated by their supervisors. Any kind of category where you have people who can be turned away, like immigrants, the system will do its best to push them away. In that sense, learning the details of the law is less important than just making sure people get in.

A big issue for immigrants is language. One of the issues the Economic Justice Project has focused on is providing better translation services in welfare centers, because there are clear regulations in the food stamps law saying that centers have to provide translation and interpretation services.¹²⁵ We have found, by surveying people at centers, that fifty percent of people applying for benefits are not told this.¹²⁶

The people we work with are mostly Spanish-speaking. They have a right to be paired with Spanish-speaking case workers. They are not. They are forced to take their children out of school to help them translate.

At Make the Road by Walking,¹²⁷ we do community organizing. A lot of our work has been telling people about the law. However, when dealing with the welfare system, it is also important to know about the specific centers where you send people. It is important to know if the counselors are good or bad at a given center. You may be able to get that information by talking to people who have experience with that center.

We are now working with the city council to try to get a local law so that New York will require better, more comprehensive transla-

124. N.Y. Soc. Serv. Law § 131(7)(a) (McKinney 2001) (describing the benefits as medical care, instruction and work training to restore health, and teaching individuals skills to prepare them to procure employment).

125. 18 N.Y.C.R.R. 387.2(t) (West 2001) (requiring languages other than English when informing recipients of rights and responsibilities).

126. MAKE THE ROAD BY WALKING, THE NEW YORK LEGAL ASSISTANCE GROUP, & THE NEW YORK IMMIGRATION COALITION, POLICY OR PRETENSE? (1999) (stating that fifty-five percent of people at centers were unaware of translation services).

127. Make the Road by Walking is located at 301 Grove Street, Brooklyn, NY 11237 and can be reached by phone at (718) 418-7690 or by fax at (718) 418-9635.

tion and interpretation services, not only in HRA,¹²⁸ but also in ACS,¹²⁹ and other city-contracted agencies.

Along those lines, we also have a complaint campaign. You have a right to make complaints under the welfare system. We have complaint forms. You can get them from our Web site.¹³⁰ We have created a form that covers a lot of different things you can complain about. We send them to everyone. We send them to the supervisor, the center director, the field manager, the whole range of people, and then follow up with them.

We have had a lot of success. Bureaucrats are used to looking at forms. When they see forms that say "complaints" on them, they think they have to do something about them. There is a certain mechanical process. These bureaucrats have been very responsive to our complaints. We have seen internal HRA documents, and they actually keep track of how many complaints Make the Road by Walking has filed and if they have responded to them.

I would encourage other agencies to use these complaint forms, because they have been very successful. Not only is it an effective advocacy tool, but we also use the forms to collect information about the type of things HRA is not doing successfully, and particularly, which HRA centers. We use that information as an organizing tool.

I would say this about community organizing: a lot of immigrants come to this country with experience in their countries of organizing and collective action—a lot of times more frequently than in the United States. We do not need to empower them or teach them about collective action. We have people in our group who were secretaries in their unions, and have participated in strikes and political action in their countries. A lot of people have this experience already, many more than even native U.S. citizens, because we do not have the same political climate in a lot of ways.

128. The Human Resources Administration of New York City is located at 180 Water St., New York, NY 10038; Infoline: (877) 422-8411; World Wide Web: <http://www.nyc.gov/html/hra>. HRA's office of Domestic Violence provides social services and emergency shelters for victims and sponsors domestic violence programs to help victims who do not seek emergency shelter.

129. The Administration for Children's Services of New York City is located at 150 William St., 18th Floor, New York, NY 10038; (877) 543-7692; World Wide Web: <http://www.nyc.gov/html/acs/home.html>. ACS wants to ensure the well-being of children. Domestic abuse in a child's home can affect his or her well-being. Therefore, ACS is interested in dealing with domestic violence as it affects the parents and consequently the child.

130. Complaint and Conference Request Form, <http://www.maketheroad.org> (last visited Sept. 17, 2001).

In terms of actual welfare benefits, it is a pretty complicated scheme of who is eligible and who is not. You have citizens, LPRs,¹³¹ and undocumented people as broad categories, and there are a lot of categories in between.

Citizens are basically eligible for everything; undocumented people are basically eligible for nothing, except emergency Medicaid. The real questions come for legal permanent residents and in-between categories, like VAWA petitioners.

There are charts that explain all this. There is no reason to memorize it. You are always going to rely on a chart or, hopefully, someone who does this all the time.

One question many people have regarding welfare benefits is the issue of reporting—the issue of being afraid to apply for public benefits due to fear of being deported by INS. At this point, as far as I know, it is not a valid fear.

A federal law provides that state social service systems must report undocumented aliens to immigration.¹³² The Giuliani Administration challenged that law.¹³³ The Administration lost.¹³⁴

The law has been interpreted so that if a social service system has information that a benefit applicant is undocumented, there is a reporting requirement.¹³⁵ I am not even sure if this provision has been put into effect. It is always just best to say the person is a “non-qualified alien,” because if he or she is a “non-qualified alien,” that does not mean he or she is undocumented; it just means he or she is not eligible for benefits. In terms of being safe about it, advocates go by the rule to always refer to clients who are not eligible as “non-qualified aliens.”

131. See 8 U.S.C. § 1101(a)(20) (2001) (defining a person “lawfully admitted for permanent residence” as one “accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed”).

132. 42 U.S.C. § 608 (g) (2001) (requiring state social services agencies that receive federal funding, pursuant to 42 U.S.C. § 603 (2001), to furnish the INS with the identification and contact information of illegal aliens at least four times a year).

133. *City of New York v. United States*, 971 F. Supp. 789, 791 (S.D.N.Y. 1997).

134. *Id.* at 795-99; Allison B. Feld, *Section 434 of the Welfare Act: Does the Federal Immigration Power Collide with the Tenth Amendment?* 63 BROOK. L. REV. 551, 553 (1997).

135. See 42 U.S.C. § 608(g) (2001) amended by Act of Aug. 5, 1997, 42 U.S.C. § 5581(a) (2001) (providing that a state “shall” furnish information to the INS “regarding any individual who the state knows is not lawfully present in the United States”); see also Act of Aug. 5, 1997, Pub.L. No. 105-33, Title V, Subtitle F, Ch. 4, Subch C, § 5581(a), 111 Stat. 642 (providing that the amendment to 42 U.S.C. § 608 made by such § 5581(a), adding subsection (g), was effective July 1, 1997).

In terms of the breakdown, the most complicated category is legal permanent residents. The two big category breaks revolve around when the law was passed or put into effect on August 22, 1996.¹³⁶ A lot of the differences hinge on whether people were here when the law passed or if they arrived afterwards.

Just starting with the basic programs we are going to talk about.

Family Assistance, which is basically assistance for parents with dependent children.¹³⁷

New York has a program, called Safety Net Assistance, which has the same level of benefits and covers the same people as Family Assistance when Family Assistance does not apply.¹³⁸ It also covers single adults under Safety Net Assistance, and some other categories of people that do not fit under Family Assistance.¹³⁹ So New York State has a kind of catch-all program that covers a lot of people that Family Assistance does not, but the main welfare program is Family Assistance for parents with children.¹⁴⁰

Family Assistance and Medicaid have similar criteria. Basically, if people can prove they entered before 1996 and have had continuous residence, they can receive Family Assistance or Medicaid if they are legal permanent residents.¹⁴¹

If they came after 1996, there is a five-year waiting period to receive Family Assistance.¹⁴² But, my understanding is they may be eligible for Safety Net Assistance, which has the same level of benefits as Family Assistance.¹⁴³

That is the way it works for Family Assistance or Medicaid. The bottom line is, a legal permanent resident that entered after 1996

136. Act of Aug. 22, 1996, Pub. L. No. 104-193, 110 Stat. 2113, and amended Aug. 5, 1997, Pub. L. No. 105-33, 111 Stat. 620 (codified at 42 U.S.C. § 601 (2001) (explanatory notes)).

137. N.Y. Soc. Serv. Law §§ 157-350(2) (Consol. 2001); *see also* New York State Office of Temporary and Disability Assistance, at <http://www.otda.state.ny.us> (Sept. 17, 2001) (describing programs and types of temporary aid available in New York state).

138. N.Y. Soc. Serv. Law §§ 157-159(2) (Consol. 2001); Department of Social Services, Introduction to Welfare Reform, New York's Safety Net Assistance Program, at <http://www.co.cattaraugus.ny.us/dss/welref.htm>.

139. *Id.*

140. N.Y. Soc. Serv. Law §§ 157-165, 343-360 (Consol. 2001).

141. 8 U.S.C. § 1612 (2001).

142. 8 U.S.C. § 1613(a)(2)(D) (2001) (describing transition for aliens already receiving benefits as of August 27, 1996).

143. Department of Social Services, Introduction to Welfare Reform, New York's Safety Net Assistance Program, at <http://www.co.cattaraugus.ny.us/dss/welref.htm>.

will have to wait for five years before applying for welfare benefits.¹⁴⁴ And they will only be eligible for emergency Medicaid.¹⁴⁵

So that wipes out a lot of people, but New York State has a program called Safety Net Assistance, and people can receive that. Now, there are all sorts of complications with Safety Net Assistance. It is supposed to have a two-year time limit, then people are supposed to go to vouchers and not be provided with cash assistance.¹⁴⁶ My understanding is that this is not being implemented. Safety Net Assistance, for the most part, does not look that different from Family Assistance, and people may not know which they are eligible for.

The welfare centers, frankly, do not even use those terms. They are still talking ADC,¹⁴⁷ which was the old program. So, in a lot of ways, the difference between Family Assistance or Safety Net Assistance is somewhat invisible.

Food stamps are yet another program and are even harder to obtain. Legal permanent residents will not be eligible for food stamps unless they can demonstrate forty quarters of work, or ten years of work history demonstrated by a Social Security statement.¹⁴⁸ That is the basic law.

There are some exceptions. If you can show you were lawfully residing, which is different than just entering the country, before the law passed in August of 1996, and you are elderly, disabled, or under eighteen, you can be eligible for food stamps.¹⁴⁹ There are some complexities with the age requirements, and New York State picks up some elderly people that the federal law does not pick up, but those are the basics.¹⁵⁰

People who entered the country after 1996 are not going to be eligible for food stamps until they have ten years of work history.

144. 8 U.S.C. § 1613(a)(2)(D) (2001).

145. 8 U.S.C. § 1612 (2001).

146. Department of Social Services, Introduction to Welfare Reform, New York's Safety Net Assistance Program, *available at* <http://www.co.cattaraugus.ny.us/dss/welref.htm>.

147. Aid to Dependent Children was encompassed within the Social Security Act, which the Roosevelt administration enacted in 1935. Robert D. Bomersbach, *New Jersey's Bryant Amendment: Is This Welfare Reform?*, 15 WOMEN'S RTS. L. REP. 169, 172 (1993-94).

148. 8 U.S.C.S. § 1612 (a)(2)(B)(ii) (West Supp. 2001); Stephen Yale-Loehr & Jessica Bellinder, *Basic Immigration Law, 2001 U.S. Immigration Law Overview*, 98 PLI/ NY 7, 23 (2001).

149. 8 U.S.C. § 1612 (a)(1)(D)(ii) (I-J) (2001).

150. New York State Office of Temporary and Disability Assistance, "Food Stamps," *at* <http://www.otda.state.ny.us/otda/fs/default.htm> (Sept. 17, 2001).

If they entered before 1996, however, they will not be eligible unless they are elderly, disabled, or under eighteen.¹⁵¹

One way someone can be eligible in less than ten years is to become a U.S. citizen, because you can become a U.S. citizen after five years of legal permanent residence.¹⁵²

Those are the basics of the main program.

Now I will talk about VAWA. When submitting a VAWA petition, even before you get approval, you can get something called a "prima facie notice,"¹⁵³ saying that INS thinks it is a good application.¹⁵⁴ With a "prima facie notice," a person also becomes eligible for certain programs.

In terms of Family Assistance and Medicaid, it is the same basic criteria as for LPRs.¹⁵⁵ It is like you have become a legal permanent resident.¹⁵⁶ If you entered before 1996, you are eligible. If you entered after 1996, there is a five-year waiting period, however you are eligible for Safety Net Assistance.

Food stamps present the same problems and are also difficult. You have to be elderly, disabled, or under eighteen if you entered before 1996.¹⁵⁷ If you entered after 1996, then you are not eligible unless you have had ten years of work history.¹⁵⁸ I do not even know if the work requirement applies, because you are usually not going to have ten years of work history at that point.

PARTICIPANT: You could if you were a student for ten years.

MR. JENKINS: Right. So basically, food stamps are harder than Family Assistance or Medicaid, and that is the VAWA petition. Once you become a legal resident, then you fit into the legal residents categories as above.

Each time just look at the chart and call someone up and have him explain it for the given case. Just know when people go to apply—be ready to fight it out after the fact. Know that everybody has the right to have an application taken and to receive a denial in writing.

151. *Id.*; see also Legal Immigrants and Food Stamps, at <http://www.nylc.com/frames/menus/welfare-law/fact-fact-sheets/immigrants-food-stamps.htm> (Sept. 22, 1997).

152. 8 C.F.R. § 216.1 (2000).

153. Shawn Fremstead, The INS Public Charge Guidance: What Does it Mean for Immigrants Who Need Public Assistance?, Center of Budget and Policy Priorities, Jan. 7, 2000, at <http://www.cbpp.org/1-7-00imm.htm>.

154. *Id.*

155. See *supra* note 131 and accompanying text.

156. See *supra* note 141.

157. N.Y. Soc. Serv. § 95 (10)(b)(iii) (McKinney 2001).

158. 8 U.S.C. § 1612 (2001).

That is the most important thing to always tell people, to make sure to get the application submitted and to demand some sort of denial in writing. Do not let people be turned away and told "you have to have your green card" or "you have to have this or that." They can always get those documents later. They have a right to start the process, they have a right to denials in writing, and with those you can do fair hearings.

It is always better to have the denial in writing. If, for some reason, they do not get the denial in writing, we do a lot of fair hearings¹⁵⁹ where we just say, "They went there, they didn't get it, they are willing to testify they tried to apply," and you can actually do the fair hearing even if the person does not have a written denial. It is just easier if they have the written denial.

Now, once you are receiving assistance, there are certain exceptions for victims of domestic violence that apply against the normal welfare requirements. One is that there can be exemptions from workfare requirements,¹⁶⁰ paternity or child support requirements,¹⁶¹ substance abuse requirements,¹⁶² and "deeming." Deeming is when your sponsor's income is applied to you.¹⁶³ That generally will not apply in VAWA cases anyway, if they do not have a sponsor who has signed what is called the Affidavit of Support.¹⁶⁴ The biggest issues are generally workfare, child support, and substance abuse.

They may also receive domestic violence counseling, but I think I would leave that to people who know whether that is a good thing or a bad thing. It may vary very much from center to center or counselor to counselor.

I am going to quickly go through the public charge.

159. The fair hearing process was established in *Goldberg v. Kelly*, 397 U.S. 254, 259-260 (1970). A fair hearing "is a proceeding before an independent state hearing officer at which the recipient may appear personally, offer oral evidence, confront and cross-examine the witnesses against him, and have a record made of the hearing." *Id.*

160. Illegal Immigration Reform and Immigrant Responsibility Act § 501, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

161. *Id.*

162. *Id.*

163. Bill Ong Hing, *The Emma Lazarus Effect: A Case Study In Philanthropic Revitalization of the Immigrant Rights Community*, 15 GEO. IMMIGR. L.J. 47, 78 n.90 (2000).

164. See Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589, 618 (1997).

When you apply for a green card, they are going to look for certain things. If you are a drug trafficker, a communist, or other things, you may not be able to get a green card.

One of those things is being a public charge.¹⁶⁵ If they think you are going to get welfare, they can deny you a green card even if you are otherwise eligible.

This usually occurs with a sponsor. They are not looking at the beneficiary. They are looking mostly at the sponsor. The biggest challenge most of my clients had was that their mother or their sister, the person who was sponsoring them, did not have sufficient income.

So in terms of issues of getting welfare, the bigger issue usually is whether the sponsor has sufficient income. If the sponsor has sufficient income, then that is who Immigration is looking at.

Whether the applicant has received certain benefits can factor Immigration's decision. However, the challenge in terms of public charge is generally the sponsor. If the primary sponsor does not have sufficient income, the applicant must find a joint sponsor who will sign an affidavit in court, showing his income is 125% over the poverty level.¹⁶⁶ It is a very onerous requirement. It keeps a lot of people from getting green cards.

Under the law, it says if an alien is the beneficiary, he will not be considered a public charge for receiving health-care benefits, food programs, or other non-cash things like housing.¹⁶⁷ INS, however, can consider if they received cash benefits, such as SSI, cash welfare, or things like institutionalization.¹⁶⁸ They will not consider cash benefits for the children, unless it was the family's only means of support. Such an example would be a mother whose two children were citizens and she received cash benefits for them that constituted her sole support.

With respect to the person receiving support, Immigration is going to ask, "Why is the primary sponsor not helping them out?" If it is a joint sponsor who is helping with the application, Immigration is going to say, "Why was this person receiving welfare if you have this joint sponsor who is so willing to help out?" It is always a discretionary decision.

It is always safer if the applicant does not receive benefits, so that the immigration officer, who may be creepy, does not have

165. 8 U.S.C. § 1182(a)(4) (2001).

166. 8 U.S.C. § 1183(a) (2001).

167. *Id.*

168. *Id.*

anything to think about other than approving the application. Most of the time people receiving benefits do not have a choice, so they must work with that. If people can get by without the assistance, I think they go for it.

In a lot of cases I have faced, it has not been a choice, people have to get benefits, and you just have to scramble to find a joint sponsor or some way of beating the public charge requirement after the fact.

Lynn Neugebauer¹⁶⁹

*Supervising Attorney,
Safe Horizon Immigration Law Project*

MS. NEUGEBAUER: If you are going to do a political asylum case for someone, please talk to someone experienced in immigration law as a mentor, because these are sort of deep waters, and sometimes you can put a person in more trouble if you file something unknowingly. So just check with somebody before you do it.

There is good news and bad news with gender asylum. The remedy does exist for some women, but by no means is it a remedy for everyone, as you will see when I talk about some of the criteria.

When you are talking about political asylum for women based on domestic abuse or gender issues, you have to realize this is a last resort remedy. A better remedy is a self-petition, which can be used if the woman is married or has been married to her persecutor and that person has legal status in the United States. The Immigration Service handles those cases administratively.¹⁷⁰ There are usually no hearings, and your client does not get thrown into deportation if you lose, so it is not so scary. Self-petitions are the first choice; asylum is definitely the second choice.

If a woman was never married to her persecutor, if she does not have children with the persecutor, or the persecutor does not have immigration status, asylum may be the only choice.

I will give you the basic definition of a political asylee or refugee. Then I will give you two fact patterns and see if you can tell why someone is eligible for asylum in one fact pattern but not the other.

169. Lynn Neugebauer is a supervising attorney at the Safe Horizon Immigration Law Project. Ms. Neugebauer has been an immigration law practitioner since 1988. The Immigration Law Project, based in Jackson Heights, serves indigent immigrants city-wide, and places a special emphasis on representing domestic violence victims and torture survivors.

170. 8 C.F.R. § 204.2(c) (2001).

A refugee or a political asylee is a person who has a “well-founded fear” of returning to her country because she fears persecution in the future based on one of five protected grounds—race, religion, national origin, membership in a political group, or membership in a social group.¹⁷¹

Let’s just take this scenario: You have a young Jordanian woman who was raised by her mother. Her mother is a widow and worked to support her family. From that background, the young woman got the idea in her head that it might be a good idea for women to work to have a small measure of economic independence and a little self-respect. It is not such a bad thing to work outside the house.

What happens to this young woman next is when her mother passes away, and her male cousin starts pressuring her to marry him, she gets a lot of family pressure to marry him: “Marry him. You’re a young unmarried woman. This is a weird situation. You’ve got to be married. You’re a woman. You have to be married. This is what you do in this society.”

She marries him. It is not a love marriage. She marries him and he starts abusing her, mostly emotional abuse, pressuring her to stop working because the man is the breadwinner in the family, and “by working, you are undermining my ability as a man in society to hold my head up, and how dare you do this.” This woman continuously resists and is beaten for it. She does not have a child with her husband—and, my goodness, what a disgrace she is to her family, to him and to everyone. The mother-in-law and everyone in the family is constantly on her case.

The young woman has family in the United States and she is able to arrange a visit here, in which she applies and is granted political asylum. The immigration judge says: “Well, yes, she fears persecution if she returns home. What is her husband going to do? Is he going to congratulate her for leaving and going to the United States and seeking freedom, or is he going to continue the abuse and escalate it to even a higher level?”

Is she a member of a political group? Is she a member of a particular social group? The immigration judge said: “Yes, she is. She is a member of an educated class of women in the Middle East and Jordan who wants to work, who wants to maintain a little measure of self-reliance and ability to support herself, and she does not

171. 8 C.F.R. § 208.13(b) (2001).

want to change her opinion. For those reasons, I find her to be qualified for political asylum."

Now, let me give you another scenario of a young woman from El Salvador, not married to the father of her child, but with him for many years, from a very young age, not really beaten by him at first, but controlled—"you can't go out, you can't see your mother, you can't see your girlfriends, you can't see your sister, you have to get permission from me when you are going to go to the store. If you are going to have somebody come over and watch the baby, you better let me know in advance." And then, when he starts coming home in the middle of the day to check up on her and she is not there, the beatings begin.

She flees to his mother for some help, and the two of them start to live together. He moves back in with the two women, and starts beating both of them because they start standing up to him and saying, "What are you doing? What are you doing to the mother of your child? Why are you treating her this way?" Finally, with the help of her father, she escapes to the United States, where she applies for political asylum. The immigration judge tells her: "Well, maybe this is a personal matter. Maybe this is a domestic situation. Why didn't you go to the police in your country? Yes, I see those reports from human rights workers, but maybe you should have tried to get help from the police. Maybe you should go back. Maybe you can live somewhere else in your country. Maybe you could go to a different city. Never mind the child has been abducted by the father, but, you know, it's not so bad, it's not such a severe case."

So those are two different scenarios. This is the situation you face when you bring a political asylum case, you are dealing with a fact finder who may or may not be sympathetic to the situation your client finds herself in.

It is a little bit hair-raising for your client too, because it is not a question of sitting in your office with the woman and going over the facts, which in itself is heartbreaking for her, but she has to repeat this to an adjudicator at the asylum office. Furthermore, if she loses there, she has to go to an immigration judge and repeat it again, and those two people are not necessarily at all sympathetic to her plight.

I am going to talk to you about some of the requirements of the law so you get an idea how to build a case for someone seeking your help.

There is a one-year filing deadline for a political asylum application from the time a person enters this country.¹⁷² There are a few exceptions, such as maintaining a good immigration status as a student or a temporary visitor.¹⁷³ If you file a day later, you are automatically going to be referred to an immigration judge for removal. You can process your case there, but it is extremely difficult to do so.

Sometimes you have people arriving at the borders of the United States seeking political asylum. There was a famous case of a young woman who came to the United States from Africa seeking political asylum.¹⁷⁴ She arrived at JFK and was immediately put into detention.¹⁷⁵ If you come to the border with phony documents or no documents and you are seeking asylum, you are put in detention until such time as you win your asylum claim. Of course, if you lose, you are sent back.

The African woman's situation was that in her country, she was under a great deal of pressure to marry someone she did not want to marry, and it would be discovered that she was not a virgin (a big taboo in her country and in her clan).¹⁷⁶ If she was found not to be a virgin, she could be put to death. Asylum was granted in that case, not by the Immigration Judge,¹⁷⁷ not by the Board of Immigration Appeals,¹⁷⁸ but finally by the Second Circuit.¹⁷⁹

The rule is that if you come seeking asylum in the first instance at the border, you are put into detention.

In addition to seeking political asylum, an applicant may ask for withholding of removal.¹⁸⁰ In certain circumstances, a person who has a very serious criminal conviction on her record cannot even seek political asylum.¹⁸¹ That is a bar. So what the judge can do, and only an Immigration judge can do it, is to withhold the person's removal from this country and say, "All right, the Immigra-

172. 8 C.F.R. § 208.4(a)(2) (2001).

173. 8 C.F.R. § 208.4(a)(4) (2001).

174. *Abankwah v. INS*, 185 F.3d 18 (2d Cir. 1999).

175. *Id.* at 21.

176. *Id.* at 20.

177. *Id.* at 21.

178. *Id.* at 21.

179. *Id.* at 26.

180. 8 U.S.C. § 1231(b)(3) (Supp. III 1997); *see also* *INS v. Stevic*, 467 U.S. 407, 429-30 (1984) (defining the standard: that it is more likely than not that the alien would be subject to persecution on one of the specified grounds); *Safaie v. INS*, 25 F.3d 636, 641 (8th Cir. 1994) (stating that the standard for withholding of deportation is more stringent than the "well-founded fear" standard for political asylum).

181. 8 U.S.C. § 1182(a)(2) (1997 & Supp. 2001).

tion Service cannot return you to the Gambia, or Morocco, or wherever the case may be.”¹⁸² If they find there is some other country they can send you to, they can do it, but you cannot be sent back to that country.¹⁸³

To get withholding a person has to prove by a very strong burden of proof that, more likely than not, she would be persecuted in the country from which she was seeking withholding.¹⁸⁴

There is a new remedy, called Convention Against Torture (“CAT”), where if you can show that government agents are more likely than not to torture the person upon her return home to the country, a person can be granted withholding as to that country, in other words, cannot be returned to that country.¹⁸⁵ However, the CAT claims are dealing with governmental actors, not family members or personal relationships.¹⁸⁶

You have to be able to prove all the elements of political asylum in order to make out a case.¹⁸⁷ You have to show well-founded fear,¹⁸⁸ which has two parts, subjective and objective.¹⁸⁹ A person has to feel a subjective fear of returning home, and that fear has to be objectively based on country conditions.¹⁹⁰ So part of a person’s

182. 8 C.F.R. § 208.21(a) (2001).

183. 8 C.F.R. § 208.16(f) (2001).

184. 8 U.S.C. § 1253(h) (2001); *see also* *Kapcia v. INS*, 944 F.2d 702, 709 (10th Cir. 1991) (stating that “the alien must demonstrate a clear probability of persecution” with “objective evidence that is more likely than not that he or she will be subjected to persecution upon deportation”).

185. 8 C.F.R. § 208.16(c)(2) (2001); *see also* *Kamalthas v. INS*, 251 F.3d 1279, 1284 (9th Cir. 2001) (stating that in order to present a prima facie case for relief under the Convention Against Torture, the burden of proof is on the petitioner “to establish that is more likely than not that he or she would be tortured if removed to the proposed country of removal”).

186. Convention Against Torture Part I Article I, at <http://www.hrweb.org/eqal/cat.html>.

187. 8 U.S.C. § 1158 (2001); *see also* *Debab v. INS*, 163 F.3d 21, 24 (1st Cir. 1998) (upholding the determination that the alien had not established proof of past persecution nor a “well-founded fear of persecution on account of one of the five categories protected by the statute”).

188. *Cardoza-Fonseca v. INS*, 767 F.2d 1448, 1455 (9th Cir. 1985) (holding that the Board of Immigration Appeals should have applied the well-founded standard for the asylum applicant).

189. *Civil v. INS*, 140 F.3d 52, 55 (1st Cir. 1998) (stating that to establish a well-founded fear of persecution, a petitioner must show both a genuine subjective fear and an objectively reasonable fear of persecution on protected ground).

190. *Melendez v. United States Dept. of Justice*, 926 F.2d 211, 214 (2d Cir. 1991); *see also* *Carcamo-Flores v. INS*, 805 F.2d 60, 64 (2d Cir. 1986); Carol Wilson, *Well-Founded Fear of Persecution—The Standard of Proof in Political Asylum Resolved, or is it?*; *INS v. Cardoza-Fonseca*, 22 U.S.F. L. REV. 385, 387 (1988). *But see* *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987) (declining to define the exact parameters of the well-founded fear standard).

claim is not just their own affidavit of statement, but also corroboration—Human Rights Watch reports, Amnesty reports, or actual testimony from expert witnesses—to verify what they say.¹⁹¹

You have to show you are going to be persecuted based on one of five permitted conditions.¹⁹² You cannot just say, “I am going to go back there and I am going to be treated badly in general.” You have to show that as an individual, you would be singled out for treatment because of whatever makes you special. This can be hard or easy to show, depending on the circumstances of the case.

The final thing is that granting asylum is an exercise of discretion.¹⁹³ Where a person has violated the immigration law, has lied even a little bit on their application, has certain criminal arrests, or things like that, an adjudicator, the officer or the judge, can deny the application as an exercise of discretion.¹⁹⁴

An individual can apply for political asylum based on past persecution.¹⁹⁵ The past persecution has to have been pretty severe because you are saying, “everything that happened to me was so egregious, made such a psychological impact on me, that I just cannot return to that country.” In doing so, you do not have to show that in the future there is going to be similar persecution visited upon you.¹⁹⁶ That is one possible method of getting political asylum.

For example, if the woman’s batterer has left the country of her origin so she is not going to face the same persecution, but the persecution was extremely egregious, you can make a case based on past persecution alone.¹⁹⁷

The asylum process is done with paperwork submitted to the Immigration Service. You have an application, called an I-589, which is an eight-page application.¹⁹⁸ You submit that with an affidavit detailing in incredible detail everything that has happened to the

191. *Cardoza-Fonseca*, 767 F.2d at 1453; *but see Carvajal-Munoz v. INS*, 743 F.2d 562, 574 (7th Cir. 1984) (noting that refugees are often not in a position to gather testimony or documentary evidence and that the applicant’s testimony, if credible, will be sufficient); *DelValle v. INS*, 776 F.2d 1407 (9th Cir. 1985).

192. 8 C.F.R. § 208.13(b)(1) (1999). The five conditions are race, religion, national origin, membership in a political group or membership in a social group; *see also supra* note 171 and accompanying text.

193. 8 C.F.R. § 208.13(b)(1)(i) (1999).

194. 8 C.F.R. § 208.13(c)(2)(i)(A-F) (1999).

195. 8 C.F.R. § 208.13(b)(1) (1999).

196. *Id.*; *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 429 (1987).

197. 8 C.F.R. § 208.13(b)(1) (1999).

198. I-589 immigration form available at <http://www.ins.usdoj.gov/graphics/form-sfee/forms/files/i-589.pdf>.

person in her country and why she feels she would be persecuted there in the future, or why the past persecution was so serious she cannot return.¹⁹⁹ You submit the application with photographs. The person gets fingerprinted. This goes to the question of any criminal record of the applicant. You submit documentation as to country conditions and corroborative evidence.

There is some case law that says a person may be granted political asylum just on her say-so.²⁰⁰ However, in general, when you are trying a case or presenting a case to an adjudicator, if you do not have corroborating evidence, or at least an explanation why not, your case will most likely be denied.²⁰¹ So if you say, "such and such happened and the person died or the person was killed," they will say, "Where is the death certificate?" If you do not have it or you cannot get it, you must explain why.

If you have any relatives or friends in this country who witnessed anything and you happen to mention they were a witness to the abuse and you do not present a statement from them or bring them in person to testify for you, the adjudicator at immigration will draw an adverse inference as to their non-presence and possibly deny the case.²⁰²

Another issue is gender asylum. The big case in this area is *Matter of Kasinga*,²⁰³ a female genital mutilation case.²⁰⁴ This case opened the door for women in certain circumstances filing for political asylum.

The Board of Immigration Appeals ("BIA") has extreme right wing views, although most of the people working at the Immigration Service do not share these views.

In *Matter of Kasinga*,²⁰⁵ Kasinga was facing forced genital mutilation in her country and marriage to somebody substantially older

199. US Immigration Forms & Application Center, Form I-589, available at <http://www.immigrationapplication.com/i-589.htm>.

200. See *Chand v. INS*, 222 F.3d 1066, 1075 (9th Cir. 2000) (The "specificity of [petitioner's] testimony was more than adequate to support his claim. . ."); see also *Singh v. INS*, No. 98-70376, 1999 U.S. App. Lexis 16028, at *2 (9th Cir. Jul. 12, 1999) (ruling that an application for asylum could be based solely on an alien's testimony).

201. See *Klawiter v. INS*, 970 F.2d 149, 151-52 (6th Cir. 1992) (deciding that petitioner failed to sustain burden of proving that she had a well-founded fear of persecution because she did not provide specific facts to back up allegations).

202. *Id.* at 154.

203. *In re Kasinga*, 1996 BIA LEXIS 15, 21 I. & N. Dec. 357 (BIA 1996).

204. *Id.*

205. *Id.*

than her if she had to return to her country.²⁰⁶ The BIA, in its landmark decision, said, "We find her to be a member of a social group. She is a woman who does not want to go along with this."²⁰⁷

The BIA's opinion contrasted with the U.S. Government's argument, which was, "Well, maybe we don't want her here in the United States to be genitally mutilated, but they weren't really doing it to hurt her; they just wanted her to fit in with the mainstream of society."²⁰⁸ They were helping her to acclimate herself as a young woman and take on her new role in society.²⁰⁹

The BIA said, "No, she is perceiving this as extreme danger and harm, and that's good enough for us."²¹⁰ That kind of thinking has been borne out in a number of different cases.

There is also a well-known case about a Russian lesbian who had been subjected to ultra shock and all kinds of horrible psychological treatment.²¹¹ People at immigration were again taking the tack, "Well, they were just trying to help her."²¹² The BIA supported their reasoning by saying that the Russian militia was not punishing her but was just trying to change her so she would fit in with mainstream society, and thus her situation was not one of persecution.²¹³ Cooler heads prevailed, stating that punishment is not a mandatory aspect of persecution and that the actions taken against the woman could objectively be viewed as inflicting torture.²¹⁴ If that is the case, human rights laws cannot be sidestepped.²¹⁵

*Matter of R-A*²¹⁶ is an infamous BIA case.²¹⁷ *Matter of R-A* has been vacated and is on remand. The BIA is going to reconsider

206. *Id.* at 4 ("The husband selected [for Kasinga when she was seventeen years old] . . . was 45 years old and had three other wives . . . her aunt and her husband planned to force her to submit to FGM before the marriage was consummated.").

207. *Id.* at 20-21 ("[W]e find the particular social group to be the following: young women of the Tchamba-Kunsuntu Tribe who have not had FGM, as practiced by that tribe, and who oppose the practice.").

208. *Id.* at 15.

209. *Id.*

210. *Id.* at 12.

211. *Pitcherskaia v. INS*, 118 F.3d 641, 644 (9th Cir. 1997).

212. *Id.* at 645.

213. *Id.* at 646.

214. *Id.* at 648.

215. *Id.*

216. *In re R-A*, Int. Dec. 3403 (B.I.A. 1999).

217. See Caroline O'Neil, *Health is a Human Right*, 17 J. CONTEMP. HEALTH L. & POL'Y 241, 245 (2000).

Matter of R-A as soon as there are new asylum regulations.²¹⁸ Right now, the state of the law is unsettled.

In *Matter of R-A*, a victim of extreme domestic violence in Guatemala went to the Guatemalan authorities who said, "Go back home; we're not dealing with this stuff; this is between you and your husband."²¹⁹ She came to the United States, filed for asylum, and the BIA said, "She is not a member of a social group."²²⁰ Society in Guatemala is not really advanced enough to perceive this as a big problem.²²¹ Maybe it is a personal matter." They dropped a few lines like that, and they basically said, "No, we're not doing it."²²²

The case went on appeal, and right now it is in limbo. We are waiting for new regulations on that.

Currently, the Immigration Service has issued proposed regulations.²²³ The preamble to the proposed regulations says that domestic violence is terrible, that it is a big societal issue, and our country should encourage women who are victims of domestic violence to apply for political asylum.²²⁴ However, the proposed regulations give very little guidance as to what a person has to show to make a case.²²⁵

I would say, at a minimum, a person has to make a documented case of abuse. By "documented," I mean either psychologically with psychological reports from a doctor here or abroad or with police reports from here or abroad; a great deal of background evidence from the country in general to show that systems are not in place to help women in her situation; and whatever proof may exist to show that society in general perceives this as a problem and that the country of origin is not particularly addressing it.²²⁶ That is the minimum a refugee must prove to be successful in a domestic violence gender case.

218. See Domestic Violence: R-A-, Center for Gender & Refugee Studies, at <http://www.uchastings.edu> (Sept. 14, 2001).

219. *In re R-A*, Int. Dec. 3403, at 5 (B.I.A. 1999).

220. *Id.* at 9 ("We do not agree with the Immigration Judge that the respondent was harmed on account of either actual or implied political opinion or membership in a particular social group.").

221. *Id.* at 15.

222. *Id.*

223. Asylum and Withholding Definitions, 65 Fed. Reg. 76588 (proposed Dec. 7, 2000) (to be codified at 8 C.F.R. pt. 208).

224. See *id.*

225. *Id.* at 76596 (stating that a political asylum applicant claiming persecution from domestic violence may prove persecution through circumstantial evidence).

226. *Id.* at 76594-96.

However, there are regulations floating around somewhere at the Department of Justice, which may or may not come out in the next six months or so, which may change that.

*Aguirre-Cervantes v. INS*²²⁷ is also pertinent to our discussion. This Ninth Circuit decision involves a young woman, one of many siblings, all of whom were abused by the father.²²⁸ Her mother had been abused by the father as well.²²⁹ Her sisters went to the police, but the police did nothing to stop the abuse.²³⁰ The young woman tried to run away, lived with her grandfather, but she keeps getting sent back to her father.²³¹ Finally, she came to the United States and applied for political asylum.²³² She said something to the effect of, "I am a member of a social group, I am a member of a family of people who have been abused, and in my country you cannot get help for it. I want political asylum."²³³ Not surprisingly, the Immigration Service and the BIA turned her down.²³⁴

But the Ninth Circuit said: "Wait a minute. This is a really clear example."²³⁵ Of course she is a member of a particular social group.²³⁶ She cannot change her family.²³⁷ You are born into a certain family. You cannot say, 'Gee, I want to belong to the Rockefellers now.' She is who she is, and because of that, her father feels he has the right to beat her up."²³⁸

Then they looked at all of the reports, many showing that there was one domestic violence shelter in Mexico City with only eight beds for a female population of twenty-three million women,²³⁹ and that many cities in Mexico have absolutely no facilities.²⁴⁰ The Ninth Circuit emphasized that and granted her political asylum.²⁴¹

227. *Aguirre-Cervantes v. INS*, 242 F.3d 1169 (9th Cir. 2001).

228. *Id.* at 1172.

229. *Id.* at 1173.

230. *Id.*

231. *Id.*

232. *Id.*

233. *Aguirre-Cervantes*, 242 F.3d at 1174.

234. *Id.* at 1173 (stating that the INS BIA case number is A76-627-200).

235. *Id.* at 1178.

236. *Id.* at 1177.

237. *Id.*

238. *Id.* at 1178.

239. *Id.*

240. *Id.*

241. *Id.* at 1181.

Questions & Answers

QUESTION: I know that the one-year bar is really tough to overcome, but I wondered what arguments could be made if the client did not pursue this relief within that one-year period, especially if she is a victim of domestic violence?

MS. NEUGEBAUER: The rules do provide for an exceptional circumstances exception.²⁴² They give an example in the preamble to the regulations as the severe illness of the applicant or someone in the family that prevents a person from filing.²⁴³

I haven't filed any late claims on this, but I would imagine I would try to get psychological evidence to show the woman was really not capable, or that she was in the abusive situation, if she was not able to do so during her first year in the United States.

QUESTION: Are convicted batterers without legal standing who are convicted of battery reported to the INS?

MS. NEUGEBAUER: A conviction for domestic violence is grounds for removability.²⁴⁴ Therefore, if that person comes to the attention of the Immigration Service, that person can be removed from the United States.²⁴⁵ However, the persecutor could also be removed from this country just by being here without permission anyway.²⁴⁶ It is not my job to report people to the Immigration Service, but I sometimes give advice on how to do that. Sometimes a woman might want to, if not go herself because she has no status, send a documented relative with full particulars about somebody who is here illegally and doing things that are not quite correct. On occasion, the Immigration Service may seek out the suspect and put them into removal proceedings.

QUESTION: There are a lot of rumors right now about supposed amnesty. Are these rumors accurate?

MS. NEUGEBAUER: There is no amnesty. We get about eighty calls a day from people asking about it. The New York Immigration Hotline²⁴⁷ receives over 200 calls every day asking about it. There is something called Section 245(i), which has been ex-

242. 8 C.F.R. § 208.4(a)(2)(B) (2001).

243. 8 C.F.R. § 208.4(a)(5)(i) (2001).

244. 8 U.S.C.S. § 1227(a)(2)(E)(i) (Law. Co-op. 1997).

245. 8 U.S.C.S. § 1227(a) (Law. Co-op. 1997 & Supp. 2001).

246. 8 U.S.C.S. § 1227(a)(1)(B) (Law. Co-op 1997).

247. State-wide service that provides over-the-phone information at (800) 232-0212 and referrals on a wide range of immigration-related issues, such as legalization, access to city services, fraud and discrimination. <http://www.dvguide.com/newyork/vshot.html>.

tended.²⁴⁸ It does not create any new eligibility categories under the law.²⁴⁹ There is no amnesty.

248. Immigration and Nationality Act § 245(i), 8 U.S.C.A. § 1255(i) (West 1999).

249. *Id.*

