

# THE ROAD LESS TRAVELED: BECOMING AN IMMIGRATION ATTORNEY

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## I. INTRODUCTION

Celebration 50 was all about women at Harvard Law School: how we have learned together, networked, and inspired each other to be lawyers. For me, it was a particularly meaningful celebration because my career took an unexpected path due to the inspiration of Professor Deborah Anker. At Harvard Law School, I came to a fork in the road of my career, and, to borrow from Robert Frost, I took the road “less traveled by, [a]nd that has made all the difference.”<sup>1</sup>

## II. DISILLUSION AND TRANSFORMATION: MY TIME AT HARVARD LAW SCHOOL

I did not meet Deborah Anker until I took her immigration law class at Harvard Law School because my early career path did not point in her direction. As a freshman in college, I joined the Reserve Officer Training Corps (ROTC), and, at the end of my sophomore year, I was commissioned in the Military Police Corps. While I completed my undergraduate education at Harvard-Radcliffe, I served in an infantry brigade in the Army Reserve. After graduation, I volunteered for a three-year active duty tour in Alaska.

My service as a military police officer confirmed my interest in the law. I was assigned to the Sixth Infantry Division (Light) in Fort Richardson, Alaska. My duties ranged from law enforcement activities to combat training. I conducted arrests and searches, intervened in domestic violence incidents, collected evidence at crime scenes, and negotiated the release of hostages. For a brief period, I was even the commander of the Fort Richardson Special Reaction Team, which civilians call a SWAT team. Al-

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<sup>1</sup> ROBERT FROST, *The Road Not Taken*, in COMPLETE POEMS OF ROBERT FROST 131, 131 (1949).

though I experienced some unequal treatment because I was a woman, the Army was clearly moving toward providing a larger role for women, and I felt lucky to be on the forefront of the changes. As a military police officer, I also learned much about the military legal system—perfect preparation for a future lawyer. When my three-year tour ended I headed back to Cambridge, confident that if I could ski more than twenty miles in a day through Alaska's mountains, I could handle anything that Harvard Law School could throw at me.

I returned to Cambridge, Massachusetts, as a member of the HLS class of 1992. At the time, I did not know that the struggles our class would experience were not to be the predictable ones of Socratic questioning and tough examinations. Our class faced ideological turbulence, rather than a paper chase: during our three years at Harvard Law, there were seemingly daily demonstrations.<sup>2</sup> The faculty was split by intellectual clashes between the “crits”<sup>3</sup> and the more traditional faculty. These clashes played out in the classroom, as students took sides with one group or the other. There was an ongoing struggle over the Law School's failure to hire female and minority faculty members, which was seen as part of the larger battle.<sup>4</sup> In class, students would hiss at peers who said things that were not politically correct. Our class T-shirt even celebrated a quote from Dean Robert Clark about student demonstrations.<sup>5</sup> During my 3L year, I was the editor-in-chief of the *Harvard Journal of Law and Public Policy*, and some of my classmates refused to speak to me because of my affiliation with a conservative/libertarian law journal.

As I experienced these clashes among my fellow students, I never would have predicted my future professional path. Having gone through real life-and-death situations, I could not relate to the demonstrations. I wanted to focus on my studies and learn to be a lawyer, and much of the factionalism detracted from the educational experience. Some professors did not impress me because, although they taught criminal law, they seemed to know little of the daily concerns of police officers and criminals; other professors seemed more concerned with winning arguments in the pages of a law review than winning in a courtroom. I found myself disappointed with the vaunted Harvard Law School education, doubly so because I had loved Harvard College. I resented the demonstrators, who often made candid discussions in the classroom impossible.

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<sup>2</sup> See, e.g., Eric Felten, *Freedom to Think at Harvard Law*, WASH. TIMES, July 17, 1991, at E1 (describing student protesters staging sit-ins and blocking the Dean's office during the fall of 1990).

<sup>3</sup> Proponents of critical legal studies, a school of legal thought generally characterized by a focus on law as a function of power relationships.

<sup>4</sup> See Felten, *supra* note 2, at E1.

<sup>5</sup> The HLS class of 1992 T-shirt listed several quotations, including “I knew something was up when I was in the shower and I heard other voices singing,” referring to HLS demonstrators chanting outside Dean Clark's house.

Rather than getting involved in the ideological battles, I focused on my teaching fellowship with Harvard College, where I taught a course in international relations, and on proctoring Harvard undergraduates. After graduation, I planned to leave the unsettled atmosphere of Cambridge to return to Alaska to pursue a career as a tax lawyer. I had a job lined up with a reputable law firm, and I was getting married to a partner at the firm. My future husband did insurance defense work, and he promised me that law firm life was relatively sedate and predictable.

Faced with such a typical career path, how did I become a defender of the “huddled masses”? During my 3L year, I was scheduled to take constitutional law with Derrick Bell. He taught constitutional law in a unique way and was reputedly an excellent professor. Professor Bell was also the first African American to be tenured at Harvard Law School, and he believed that the ethnic and gender mix of the faculty should reflect the student body. However, he took a leave of absence in 1990 and was due to return to teach when he was dismissed from the faculty.<sup>6</sup> I was left with a gap in my schedule, and I filled it with a course in immigration law.

I spent my 3L winter break doing Army Reserve duty in Japan, so when I came back for the first day of Immigration Law, I experienced a bit of culture shock. Professor Anker greeted us warmly and began speaking rapidly about immigration law. As she talked, she grew more animated and more passionate. She began describing the barriers to justice that immigrants face when confronted with the Immigration and Naturalization Service (INS). She became agitated as she told horror story after horror story. Finally, she said, “They’re so screwed up! They’re like, they’re like the ‘Bolivian Secret Police’!” I remember thinking, “I work for the government. They can’t be that bad!”

After enduring two and a half years of Harvard Law School’s divisive atmosphere, I was at first wary of a professor who seemed so emotionally involved in her work. None of my other professors showed the obvious passion that Professor Anker displayed. As the semester went on, however, I grew to admire her commitment to immigrants and her determination to overcome the bureaucratic barriers that stood in their way. Professor Anker was not the dispassionate lawyer, divorced from any feelings of personal concern for her clients and the law. She was clearly an advocate who valued passion as a necessary component of the law.

Professor Anker’s visible fervor for immigration law made her especially inspiring to students. Unlike some other Harvard Law School pro-

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<sup>6</sup> Throughout the 1980s and early 1990s, Professor Bell’s protests over faculty hiring practices were public and vocal, and ultimately resulted in a parting of ways between him and Harvard Law School. His dispute with Harvard was the subject of numerous news articles while I was a student at the Law School. *See, e.g.,* Fox Butterfield, *Harvard Law Professor Ups Hiring Protest Ante*, CHI. DAILY L. BULL., Feb. 28, 1992, at 3 (describing Professor Derrick Bell’s refusal to return to Harvard Law School until an African American tenured female faculty member was hired).

fessors, she did not care whether a student shared her particular ideology, as long as the student was interested in the complex problems faced by immigrants. She made the classroom welcoming rather than intimidating and was always available outside of class. As part of our coursework, we worked in a clinic at Cambridge & Somerville Legal Services, and Professor Anker always stopped by to discuss cases with us and check our progress. I still remember a difficult case that I handled involving a family of Ethiopian refugees, over which Professor Anker and I agonized for hours. Her caring for the family, as for her work, was genuine and unaffected.

On the other hand, immigration law seemed difficult, and it had been a twist of fate that landed me in the class in the first place. Although I enjoyed the course, I had no plans to be an immigration lawyer. One thing seemed clear: immigration law was complex and did not attract many Harvard attorneys, and I was not going to buck the trend.

### III. FINDING MYSELF AS A LAWYER

I graduated, got married, went back to Alaska, and passed the bar exam. I settled into law firm tedium and learned to be a litigator, drafting endless Rule 12(b)(6) and summary judgment motions in the law library and concentrating on billing enough hours to keep the firm's partners pacified.

A few weeks after I was sworn in as a new attorney, the pro bono coordinator from Alaska Legal Services called me. "We have this little case, perfect for a newly admitted attorney. It's immigration. I see you took a class in immigration law in law school, so this will be easy for you. The guy's guilty; ten to twenty hours max. You just need to go to a hearing and negotiate voluntary departure." I knew it was my duty to take a pro bono case occasionally, and, after I picked up the file, the first thing I did was to call Professor Anker and ask for advice.

Four hundred hours later,<sup>7</sup> I was fascinated with immigration law. I won the case, having sued the government, and forced the INS to drop the charges against my client. Throughout the case, Professor Anker was a ready source of advice and assistance, giving me ideas about arguments to pursue and people to help me make those arguments. At the end of it all, I was convinced that she was right: the INS really *was* like the Bolivian secret police. The INS was governed by complicated statutes, regulations, and internal directives that made no sense and were interpreted arbitrarily, capriciously, and irrationally. The agency had a culture of secrecy, and some of its employees were mean and corrupt. Some even seemed to take delight in abusing poverty-stricken immigrants, most of whom had

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<sup>7</sup> This is a rough estimate. I quit keeping track of my hours when I figured out that the firm's partners would probably be upset at how much time I was really spending on the case.

no attorneys to fight on their behalf. The INS claimed to represent the United States, but it seemed intent on kicking all of the immigrants out of our “nation of immigrants.” People’s lives were at stake, and their hopes and dreams depended on INS decisions. The INS was clearly in need of regime change. Fighting the anti-American INS appealed to my sense of patriotism. I had found the ultimate challenge for myself as a lawyer.

I started to take more immigration cases, this time for pay. At Professor Anker’s suggestion, I joined the American Immigration Lawyers Association, a group that was an invaluable source of mentorship and information. Having been trained by my firm as a litigator, I concentrated my litigation skills on the INS and found plenty of battles. I also applied the principles of strategy and tactics that I had learned in the military: concentrate your forces; attack using “combined arms”—the courts, the administrative process, the media; and, above all, never give up. Within a few short years, and with due credit to Professor Anker, I became known in Alaska as the “nemesis” of the INS.<sup>8</sup>

In these battles, I often found myself on the front lines, particularly when representing female immigrants. Female immigrants face special challenges that male immigrants do not. In dealing with the culture of America, their voices are often silent or unheard.<sup>9</sup> For example, a woman who has been brutally raped can be told that rape counts as street crime but not as a basis for political asylum.<sup>10</sup> Yet a male dissident who is punched in the teeth can claim asylum with little difficulty.

One of the first cases I handled involved a Nigerian woman who had been subjected to female genital mutilation (“FGM”). Although women have been subjected to FGM for centuries, Americans had only just begun to recognize the issue. To be granted asylum in the United States, one must prove that one has experienced past persecution or has a “well-founded fear” of future persecution, on any of five statutory grounds.<sup>11</sup> Although the Board of Immigration Appeals had granted a case involving a woman who feared *future* FGM,<sup>12</sup> I was one of the first attorneys in the

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<sup>8</sup> See Lisa Demer, *Tending the Melting Pot*, ANCHORAGE DAILY NEWS, Oct. 24, 2000, at A1 (stating, “[i]f [INS District Director Robert Eddy] has a nemesis, it’s [Margaret] Stock, who frequently sues Eddy and the INS”).

<sup>9</sup> See generally FAUZIYA KASSINDJA, *DO THEY HEAR YOU WHEN YOU CRY?* (1998) (describing the ordeal of a female asylum applicant).

<sup>10</sup> See, e.g., Karen Musalo, *Matter of R-A-: An Analysis of the Decision and its Implications*, 76 INTERPRETER RELEASES 1177 (1999); Deborah E. Anker et al., *Defining “Particular Social Group” in Terms of Gender: The Shah Decision and U.S. Law*, 76 INTERPRETER RELEASES 1005 (1999).

<sup>11</sup> 8 U.S.C. §§ 1101(a)(42)(A), 1158 (2002).

<sup>12</sup> *In re Fauziya Kasinga*, 21 I. & N. Dec. 357, 368 (B.I.A. 1996) (recognizing that “[t]he applicant has a well-founded fear of persecution in the form of FGM if returned to Togo. The persecution she fears is on account of her membership in a particular social group consisting of young women of the Tchamba-Kunsuntu Tribe who have not had FGM, as practiced by that tribe, and who oppose the practice. Her fear of persecution is country-wide. We exercise our discretion in her favor, and we grant her asylum”).

United States to represent someone who was granted asylum before an immigration judge on the basis of past persecution because of FGM. My client was from the Ibo tribe in Nigeria, and FGM had been performed upon her when she was a young teenager. Years later, she was still suffering from the physical and emotional consequences. With Professor Anker's help, I was able to work with my client to win the case. In a thoughtful and well-reasoned opinion, immigration Judge Kenneth Josephson of the Seattle Immigration Court granted asylum.<sup>13</sup> The INS did not appeal.

After that case, I took more immigration cases until my law practice became almost totally devoted to immigration and citizenship matters. I left my first firm and started a new practice devoted almost exclusively to immigration and citizenship cases. I handled family cases, business cases, asylum cases, deportation cases, and cases involving violence against women. Throughout the progress of my career, Professor Anker was always there for advice and inspiration. She told me of expert witnesses, gave me the names of attorneys who were handling similar cases in other parts of the country, and introduced me to scholars working in the field.

Many of my most memorable cases involved female clients. For example, I represented Meng Li, a Chinese businesswoman who was strip-searched and held in jail in Alaska for twenty-six days.<sup>14</sup> INS agents at the Anchorage airport refused to admit that they had made a mistake in interpreting their regulations and that poor translation had caused them think that Ms. Li was applying for asylum.<sup>15</sup> They charged her with trying to enter the United States with fraudulent documents, despite the fact that the U.S. State Department had issued her visa.<sup>16</sup> The agents were happy to apply their newly acquired "expedited removal" authority, which allowed them to remove aliens from the United States virtually at whim.<sup>17</sup> I took the case after a frantic lawyer in Texas begged me to visit Meng Li in the Anchorage jail. On the day the lawyer called, I was at home recovering from an emergency caesarian section after having given birth to my daughter Catherine. The lawyer said he could understand if I was not in any condition to help Ms. Li, but there were not any other lawyers in Alaska who were willing to visit her, and Ms. Li was unable to communicate with anyone due to limited English. I found a female translator

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<sup>13</sup> Matter of U- S-, file number redacted (Dec. 19, 1996) (order of immigration judge granting asylum), available at <http://www.uchastings.edu/cgrs/law/ij/54.html> (last visited Feb. 8, 2004).

<sup>14</sup> *Li v. Eddy*, 259 F.3d 1132 (9th Cir. 2001), vacated and appeal dismissed as moot, *Li v. Eddy*, 324 F.3d 1109 (9th Cir. 2003).

<sup>15</sup> Anthony Lewis, *It Can Happen Here*, N.Y. TIMES, Sept. 8, 1997, at A1 ("She was strip-searched, handcuffed, put in an Anchorage jail and told she was barred from the U.S. for five years.").

<sup>16</sup> *Id.*

<sup>17</sup> See Margaret D. Stock, *United States Immigration Law in a World of Terror*, in THE FEDERALIST SOCIETY FOR L. & PUB. POL'Y, NAT'L SEC. WHITE PAPERS (2001) (citing 8 U.S.C. § 1225(c)), available at <http://www.fed-soc.org/Publications/Terrorism/immigration.htm> (last visited Feb. 8, 2004).

who spoke Mandarin and headed for the jail with my newborn baby. After hearing Meng Li's story, I took the case.

Another cutting-edge case I took involved Hawa Said, a woman who was born in Yemen but had immigrated to the United States as a small child. Her father was from Ethiopia and her mother was from Vietnam, both naturalized American citizens. Ms. Said spoke no Arabic and had no memories of Yemen. Her known family members had all immigrated to the United States. When I first became her lawyer, Ms. Said was pregnant and a United States citizen, but the INS did not recognize her citizenship.<sup>18</sup> Terrified that she would be sent back to a Middle Eastern country she could not remember, Ms. Said begged me to help her. Having been brought up in American culture her entire life, Ms. Said was completely unprepared to assume the role that Yemeni society demanded of its women. I filed a habeas corpus case and pursued administrative remedies. One of those remedies, withholding of removal, required us to show that Ms. Said would be persecuted on account of her gender if she were returned to Yemen. We were able to make this showing, grounding our case on the cultural differences between the treatment of women in the United States and Yemen. The INS held Ms. Said in jail for more than six months, finally releasing her only a week before her child was born.<sup>19</sup> After she was released from jail, the U.S. Department of State issued Hawa Said a passport, formally recognizing her American citizenship and preventing the INS from deporting her.<sup>20</sup>

I have handled hundreds of immigration cases over the course of my career. At least half involved unique issues relating to women's status in different societies, as in the case of Hawa Said. The practice was always intellectually and emotionally challenging, drawing on all my skills as a trial lawyer and a human being. After a few years, I had enough dramatic material for ten seasons of a television series. Yet, this was not television: these were real people, experiencing real human dramas. My clients told tales of flight, persecution, torture, and refuge. They faced the barriers of laws and a legal system that even federal judges frequently did not understand. I was daily reminded of the words of an INS spokesperson, who opined that "immigration law is a mystery and a mastery of obfuscation, and the lawyers who can figure it out are worth their weight in

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<sup>18</sup> Anthony Lewis, *Abroad at Home; Is This America?*, N.Y. TIMES, Sept. 21, 1999, at A29 (observing that "[a]fter taking [Hawa Said] into custody, the I.N.S. sent her to a facility in San Diego, 2,427 miles away from her home and family; it brought her back only when ordered" by a federal judge).

<sup>19</sup> Lisa Demer, *INS Ends Woman's Jail Ordeal*, ANCHORAGE DAILY NEWS, Nov. 29, 1999, at A1.

<sup>20</sup> See Lisa Demer, *Tending the Melting Pot*, ANCHORAGE DAILY NEWS, Oct. 24, 2000, at A1 (stating that "[t]he U.S. State Department later determined Hawa Said was a U.S. citizen").

gold."<sup>21</sup> Professor Anker and the other women on my panel at Celebration 50 are such valuable lawyers.

Today, continuing to follow Professor Anker's inspiration, I have taken yet another step on that road-less-traveled that brought me to immigration law as a profession. After years of practicing immigration law, I am now teaching at the United States Military Academy at West Point, New York. Here I face a new set of challenges, yet immigration and citizenship law is still an intrinsic part of my career. I write and speak on immigration law issues,<sup>22</sup> and I teach constitutional and military law, national security law, and comparative law to the future leaders of our nation's army. Some of these future officers came to this country as immigrants themselves, and many of the soldiers they will lead are immigrants. As they fight for our country, some of these soldiers or their families will be targeted for deportation.<sup>23</sup> Immigrants are targeted today as never before in the name of national security.

The notion that immigrants threaten national security in a post-September 11 world is mistaken. Yes, the September 11 hijackers were foreigners. Yes, the terrorists used the immigration system to their advantage.<sup>24</sup> In the global war on terrorism, however, we cannot turn our backs on the foreign-born. We need them to fight this war. We need them as translators; we need them for their cultural knowledge; we need them to provide information about terrorists; we need them to keep our economy strong. America became a superpower by attracting the best and the brightest to its shores, and here these immigrants have thrived and built the greatest economy and democracy the world has yet seen. We will harm our national security if we forget this history and heritage and turn our back on it through mistaken fears.

#### IV. CONCLUSION

It is fitting that I sat on a panel at Celebration 50 with Professor Anker. Celebration 50 was all about celebrating women at the Law School. One of the important characteristics about women at Harvard Law School is the way that we have networked with, inspired, and supported each other. As my professor more than a decade ago, and as a mentor, colleague, and later a friend, Professor Anker has provided the vision and support that

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<sup>21</sup> Nurith C. Aizenman, *Md. Family Ensnared in Immigration Maze; After Changes in Law, Couple Faces Deportation*, WASH. POST, Apr. 24, 2001, at B1 (quoting INS spokeswoman Karen Kraushaar).

<sup>22</sup> See, e.g., Stock, *supra* note 17, available at <http://www.fed-soc.org/Publications/Terrorism/immigration.htm>.

<sup>23</sup> Florangela Davila, *Soldier Served in Iraq but May be Deported; Pvt. Juan Escalante, Parents Came Here Illegally 15 Years Ago*, SEATTLE TIMES, Sept. 12, 2003, at U1.

<sup>24</sup> See, e.g., Stock, *supra* note 17 (describing how terrorists were able to get into the United States so they could hijack aircraft on September 11, 2001), available at <http://www.fed-soc.org/Publications/Terrorism/immigration.htm>.

has sustained me and many other Harvard Law School women in battles with the INS over the years. Thank you, Professor Anker, for carrying on the long tradition of women at Harvard Law School that we celebrate today.