

## **Guatemalan Asylum Case Helps Push Envelope in Abuse Matters**

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"Honestly," admits Sheila M. Zachman, who together with Nathan J. Greene has just made a significant mark in asylum law, "I thought we were going to lose."

But at perhaps the sharpest point of cutting-edge law -- political asylum for foreign victims of domestic abuse -- Zachman, 29, and Greene, 33, corporate associates at Shearman & Sterling, ultimately won the day in U.S. Immigration Court.

Their client was a Guatemalan woman whose husband beat her into unconsciousness in the presence of their two young boys, and whose government did nothing to prevent his returning home to ram a pistol into her mouth, shoot the family cat to death and threaten the same fate for his wife and children.

Greene said their 18-month effort involved some 400 pro bono hours, the help of two other associates in Shearman's Washington, D.C., office, counsel from New York-based Sanctuary for Families and the Center for Gender and Refugee Studies in San Francisco, and personal inspiration gained from a courageous client -- a woman who must be known here as "Octavia," as she still lives under threat of death.

A rigorous bench interrogation by Judge John Opaciuch during the client's hearing in Manhattan's Immigration Court early this year seemed "hostile" at first, said Greene. But the resulting 22-page decision constitutes what Greene calls "a road map for other attorneys dealing with this type of case."

Indeed, maps are needed in an area of law very much in flux -- the result of fundamental political and bureaucratic change in Washington. New immigration policies promulgated by former U.S. Attorney General Janet Reno would have provided swift asylum status for women such as Octavia. But these policies are believed by many to be under challenge by her successor, John Ashcroft. And the Immigration and Naturalization Service that existed during Reno's tenure has now been absorbed by the Department of Homeland Security, with a whole new set of operational regulations in development.

Julie E. Dinnerstein, director of the Immigration Intervention Project at Sanctuary for Families, agreed with Greene's assessment of the importance of Opaciuch's order granting asylum to Octavia, even though opinions written by immigration judges carry no legal precedence.

"Nonetheless, he [Judge Opaciuch] knew he was writing an opinion in a volatile atmosphere with the law changing," said Dinnerstein, 34, a former associate at Cleary, Gottlieb, Steen & Hamilton. "He really listened to the facts of the case, he really focused on the law. It was incredibly solid legal work."

### **WELL-FOUNDED FEAR**

Zachman, a graduate of the University of Michigan Law School, said the applicable law under the federal Immigration and Nationality Act precluded her and Greene

from making a direct claim of domestic abuse on behalf of Octavia. Under § 101(a)(42)(A) of the act, asylum applicants must prove "well-founded fear" of returning to their countries based on five grounds: race, religion, nationality, membership in a particular social group, or political opinion.

Opaciuch's March 10 opinion concluded that Octavia was part of a "clearly definable social group," which he identified as "women in Guatemalan society who resist male domination by living independently and self-sufficiently."

The judge went on to cite a number of failures by Guatemalan authorities to assist Octavia's several attempts to protect herself and her children. His decision said INS attorneys argued that recently adopted laws in Guatemala had provided more protection for women. But based on U.S. government reports, the judge wrote, "Violence against women remains a problem in Guatemala."

Instead of the hour or two that an immigration judge ordinarily takes to issue an oral decision, Opaciuch delayed his opinion for months. This worried Greene and Zachman and the other members of the Shearman team in Washington: associates Gabriela Vallejo, currently on maternity leave, and Mark Tanney, who recently left Shearman to join the Washington, D.C., firm Gilbert, Heintz & Randolph.

Given the political backdrop in domestic abuse claims for asylum, Greene said cases such as Octavia's are increasingly difficult to try. Ashcroft has assumed direct involvement in the matter of yet another abused woman from Guatemala, which Dinnerstein and others fear may establish extremely difficult legal barriers.

Justice Department spokesman Jorge Martinez denied widespread claims that Ashcroft aims to thwart asylum claims based on gender. He blamed such perceptions on inaccurate media reports, despite a number of petitions reported to be lodged with the attorney general's office supporting Dinnerstein and other activists, signed by hundreds of congressional members and religious leaders.

Martinez said new rules that Ashcroft is considering would merely improve the efficiency of immigration courts.

"The issues in asylum law are difficult to interpret," said Martinez, "and will be dealt with when these [new regulations] come out [to] help the judges make easier decisions."

Meanwhile, said Greene, a graduate of Georgetown University Law Center: "I'm a believer in immigrant rights. I believe immigrants are not the burden on society that certain parts of the political spectrum believe them to be."

He said further, "Immigrants are brave and hard-working people. As we went on [in the Octavia case], the details of her life kept us going."

With reference to the decision in the case, Greene added, "I thought [Judge Opaciuch] gave us a hard time on the stand. But in retrospect, given his really detailed, really thoughtful and supportive opinion, I think he was trying to lay a strong groundwork and satisfy himself that this was worth going out on a limb for."

Like Greene, Zachman said she became "very emotionally entrenched" in the case of Octavia.

"She is an inspiration," said Zachman of her client. An adverse ruling from the judge "really could have ravaged her life, and that of her two boys," she added.

"This was my first pro bono case. I had studied asylum law in school, and I'm very interested in gender issues and how that affects international law," said Zachman. "But until we got into this, I didn't think we'd have all these tough issues to deal with. I'm so glad we did it, though. It took a year and a half, but it's definitely rewarding."

Greene agreed. "I find corporate work rewarding and intellectually interesting," he said. "But taking on this project, even though it was a bit more than we signed on for, gave us social welfare satisfaction."

Dinnerstein would encourage other young lawyers to volunteer for such satisfaction.

"Asylum law has always provided creative opportunities for lawyers," she said. "Now in gender-related cases, you're seeing a lot of movement in the law. It's really cutting-edge."

"This [Octavia] was a good case -- a righteous case. I think the story here is that if you sit down and look at your case, you begin to realize that you can actually make it work."

With translation from Spanish by Fany Vargas, a Shearman secretary, Octavia offered her own assessment.

"I feel really grateful and happy about what [the lawyers] have done for me," said Octavia. "It's something I cannot explain. It's like a dream."