

Ethnographies of Legal Inclusion:  
Protection, Punishment, and Legal Fictions of Asian Immigrant Woman

by

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## **CHAPTER ONE: Introduction**

### **Introduction**

#### Statement of Problem

This dissertation is about legal fictions of fraud, cooperation, innocence, and culpability that have become paradigmatic of Asian American political efforts to protect immigrant women who are survivors of gender and sexual violence. I argue the law invents legal fictions as a form of racial truth that become impossible to prove as false. Thus, legal fictions are a specific genre of law that I argue has drastically shaped the political possibilities of contemporary immigrant rights and anti-violence practices. In the latter decades of the 20<sup>th</sup> Century, humanitarian protections over immigrant women have increased but little attention is paid to how this growth took place alongside the expansion of counter-terrorism and border security laws that punish immigrant communities. Existing laws that address violence against immigrant women do not position women as subjects of laws that protect, but instead, as subjects of laws that both protect and punish immigrant communities. I argue, the legal subject of immigrant woman is the basis upon which immigration laws that include “good” immigrants are racially distanced from laws that punish and exclude “bad” immigrants. My dissertation

demonstrates how this logic of racial distance, and not racial difference, has shaped the successes and challenges Asian American political practices contend with.

In the San Francisco Bay Area, non-profit organizations make up one of the largest and strongest networks of legal services providers working specifically with Asian immigrant communities. Their work is the product of multiple political legacies borne of the feminist anti-violence movement, immigrant rights organizing, and prison abolitionist groups that have established and shaped local institutions and public policy.

Furthermore, in the last twenty years a growth in federal grants addressing legal services for immigration, citizenship, and violence against women have funded a large number of non-profit organizations in the Bay Area. As humanitarian protections for immigrant women have increased, stringent laws that monitor and criminalize immigrant communities have not decreased. This dissertation explores how legal fictions about cooperation, fraud, and trust maintain a racial distance between political practices that seek humanitarian protections for women and counter-terrorism laws that criminalize immigrant communities. Rather than argue that difference is the marker through which we identify what Asian American political issues stand within a multiracial hierarchy, I ask instead what is made to not be an Asian American issue and why is this so? I argue, the law plays a significant role in establishing what I call a racial distance, a narrative logic invoked within contemporary political debates over immigrant rights and violence against women.

This dissertation is an ethnographic study of how Asian immigrant women become visible as subjects of law at the intersections of humanitarian protection, immigration, and law enforcement. More specifically, as a legal ethnography, the

research in this dissertation studies why and how people use the legal system. I demonstrate how the particular arguments I present about race and the law cannot be made without ethnographic research. I explore what a law promises to do and how the racial and gendered representations that give meaning to such promises shape how people use the law and how it pans out in lived experience.

I spent two years conducting ethnographic fieldwork in the San Francisco Bay Area. This dissertation is not an organizational study of any single non-profit organization or of any particular group. It is instead, a discussion of dominant political strategies and political ideologies used in political practices that specifically use the legal system to address violence against immigrant women. I conducted participant observation with a legal non-profit organization focused primarily on immigration, domestic violence, human trafficking, and family law and interviewed staff from seven non-profit organizations. In my research, the term legal advocate refers not only to attorneys, but any non-profit staff member who uses the legal system to provide assistance to immigrant women. During my two years of fieldwork, the stories I heard most frequently were about the production of immigrant woman as a racial and gendered figure of law. More specifically, advocates shared stories that persistently configured immigrant women as subjects of laws that protect the innocent and the victim. I argue, we understand very little about how these particular stories become disassociated and isolated from stories about immigrants as culpable and illegal.

Thus, the following question drives the dissertation: How do Asian immigrant women become visible in the law and how have the terms of this visibility – innocence, culpability, citizenship, and illegality – shaped the kinds of political critiques attached to

Asian American racial identity? I approach this question from two narratological levels in order to theorize the relationship between law as a system of representation and political practices amongst people. The first examines the content of people's experiences using the legal system and the stories they tell about those experiences. The second examines how the law itself tells stories that produce ideologies about who immigrant women are and what they ought to be as innocent or as culpable.

For example, Helen, an attorney in San Francisco, has to decide on behalf of her organization whether she can sign a petition drafted by immigrant rights organizations seeking to make a public statement against voting rules that exclude people with criminal records. Helen cannot sign. She tells me that, if she did, this would contradict her organization's focus on women as victims who are innocent of criminal activity and who are not seen by the law as perpetrators of criminal activity. Helen's story is likely read by many of us as unrelated to scholarship on law and violence against women and instead relevant only to the issue of voting rights. But how can we think about stories like Helen's as still very much a part of the way existing immigration laws provide protection to immigrant women and even further, how the parameters of such laws shape the kinds of political choices and constraints legal advocates work under?

I thought nothing of my conversation with Helen at the time. Indeed, I would not have remembered it at all had we not spoken later that week in Helen's corner office, with her overworked and underpaid stacks of files lining walls that held thank you cards from clients. I asked her about the cards and she pointed faintly to a red one from a Korean woman who was repeatedly interviewed by immigration officials before finally receiving a waiver to apply for temporary legal status as a survivor of violence. Why was

she repeatedly interviewed and why was this attempt to apply for a visa not seamless if the visibility of woman as innocent and as victims is assumingly so? As it turns out, for a number of facts and fictions, Helen shared how her client's attempt to seek legal protection involved a process where the law saw her as both innocent of the crime of sexual violence and culpable for the act of remaining in the United States without legal status.

This series of conversations with Helen thus revealed to me how the law's convictions of innocence and culpability do much more than simply define what a legal subject is before the law, they constrain the very ability to tell stories about them. Where does this client's story fit? Can Helen tell this client's story only through the narration of innocence thereby sidestepping the present force of illegality? Is this story to be ignored or disregarded when Helen has to have conversations with other legal advocates about why the organization has to think twice about advocacy work around criminalization? Both conversations between Helen and myself, while separated by long periods of time, gesture towards a larger need to better understand how the legal subject of immigrant women is produced through racial and gendered representations that do not fit squarely with the empirical, with women's lived experiences of navigating the legal system. What are we conditioned to not say within the parameters of an immigrant rights framework when we advocate for women the law marks as both innocent and culpable?

In the summer of 2005 after my first year of graduate studies I took my jaded self back to California and spent three months in San Francisco working for a non-profit organization focused on gender and sexual violence in Asian immigrant communities. I spent the summer organizing published stories told by survivors of violence, editing

reports, and researching legislation. The Violence Against Women Act was reauthorized that year. A new visa, the “U” visa, was widely discussed across email listserves and amongst staff in the office as a new form of protection for immigrant women who had either fallen out of status or had entered without status and remained in the U.S. The excitement I saw was based on the visa’s popularity as the “only tool out there” for noncitizen immigrant women. However, as new law, advocates were still waiting to see how the application process and the adjudication of U Visas would pan out for their clients.

A year earlier, Zacaria Moussaoui, stood trial as the only defendant in an American court for the 2001 attacks on the World Trade Center. The United State’s Attorney’s Office sought witness testimonies and a portion of the New York Times coverage of the trial focused on lawyers with the Urban Justice Center in Manhattan who were working with noncitizen immigrants willing to testify and cooperate with the prosecution in order to qualify as applicants for a U Visa.<sup>1</sup> Nina Bernstein for the New York Times wrote, “The lawyers knew the prosecutor was looking for compelling testimony from survivors to persuade a jury to choose the death penalty for Zacaria Moussaoui . . . .” (Bernstein 2004b). U.S. attorney David Novak made “no promises” or guarantees before interviewing fourteen New York immigrants at a Manhattan hotel.

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<sup>1</sup> The U Visa is open to “non-citizen crime victims” in the final regulations, 8 C.F.R. § 214.14, “alien victim of qualifying crime” refers to someone who is a not a citizen, there are many different categories for “alien” nonimmigrant/immigrant, resident/non-resident etc. The U Visa is considered a “nonimmigrant” category in the Immigration and Nationality Act as the visa is temporary (4 year period) with no long-term intended renewals although the Attorney General can consider converting nonimmigrant status to law permanent resident if doing so furthers humanitarian interests, VAWA 2000 § 1513, 8 U.S.C. § 1184.

Three of the fourteen were asked to testify and were given forms certifying their willingness to “cooperate” thereby allowing them to complete applications for U Visas.

Originally designed by feminist anti-violence organizations, the U Visa is typically identified as a form of legal protection for battered noncitizen women who seek assistance from the law. However, within the context of Moussaoui’s trial, the U appears as a counter-terrorism tool, a product of the post-911 “War on Terror,” and a law that assists with the end goal of legal punishment. The three selected to testify were Kumar and Amish Sattaluri, “the ailing husband and traumatized 10-year-old son of a computer systems analyst from India who died on the 99<sup>th</sup> floor of the north tower” and Kadidjatou Karamoko Traore, “the widow of a chef from Ivory Coast, who breaks down when she repeats her 5-year-old son’s question, ‘Why did the bad guys kill my daddy?’” (Bernstein 2004a). Veronica Gomez from the non-profit Restaurant Opportunities Center, argued “It isn’t fair for him [Novak] to use his own definition of victims . . . . or to feel that someone who has a traumatized disorder isn’t as much of a victim as someone who lost his arm, say” (Bernstein 2004a). Leslye Orloff of the national anti-violence organization, Legal Momentum in Washington D.C., argued, “What troubles me about this is having the prosecutor say he’s supposed to decide the whole question . . . . If all the prosecutors take this position, lots of victims won’t get helped and lots of perpetrators won’t get prosecuted” (Bernstein 2004a). As the District Attorney uses the U Visa to search for witness testimonies, Gomez and Orloff express frustration with the way humanitarianism becomes redefined. They are troubled by the District Attorney’s ability to define who should and who should not be eligible for humanitarian protection. Both Gomez and Orloff’s arguments seem to imply that if the public views “victim” as a person who lost a

family member on September 11<sup>th</sup>, then this perception will hinder the chances of battered immigrant women who will also apply for such visas.

Yet, there are no concerns voiced about whether the law will always and equally identify U Visa holders as only innocent victims contrasted against those law enforcement prosecutes as “bad guys.” The challenges Gomez and Orloff present are limited to the argument that all victims, regardless of how are why they are victims, should be eligible for humanitarian protection. The focus on equal and fair victimhood however, assumes “victims” and “perpetrators” never cross paths in the law. Like the nuanced relationships between the innocent and the criminalized Helen’s stories demonstrated, the visibility of how one even becomes a legal subject worthy of protection cannot be resolved by creating more fair or just humanitarian perceptions of victims. Further, while Congress passed the U under the banner of saving women and ending domestic violence, the U appears here as a mechanism to assist the U.S.’s “War on Terror.” Whether the U is out of context as a counter-terrorism tool and should be viewed instead as a humanitarian form of protection for immigrant women, the very existence of this double visibility leads one to question the state is invested in protecting immigrant women. Indeed, we must ask, why must immigration law only promise to protect women in a manner that also allows other facets of government, such as law enforcement, to enhance its capabilities? In other words, how has the use of punishment to protect women become logical, acceptable, and not contradictory?

The incertitude I see threaded throughout these stories demonstrates the focus of this dissertation, how perceived differences between laws that protect and laws that punish mask their interdependence in ways that constrict radical political possibilities

amongst immigrant rights politics and anti-violence work. I argue that racial distance is the logic upon which some political issues are taken up to be Asian American issues and others are not. As I discuss in the latter chapters of this dissertation, existing scholarship on Asian immigrant women is largely read as unrelated or irrelevant to discussions on prisons and the prison industrial complex. Even within discussions of how immigration law matters to immigrant women, questions of deportation and illegality are often identified as political issues not pertaining to Asian communities. Thus, rather than ask whether Asian American occupy a critical mass worthy of analysis in scholarship on prisons or seeking to find exceptions and pockets of Asian American communities that are part of the prison system, we might ask, how and why is the question of prisons made to not be an Asian American issue?

I argue, that this racial distancing is subtle but growing effect of the larger legal structures which disavow the interdependence between humanitarian protection and punishment in U.S. immigration law. Thus, we ought to carefully explore how and why the concept of difference has played such a large role in the shaping of Asian American political identity. I begin this discussion by analyzing how current humanitarian opportunities for protection have led to conditions where Asian American legal advocates must cooperate with law enforcement in order to obtain protection for battered immigrant women. This connection opens up rich possibilities in Asian American studies to interrogate the conditions under which immigrant women are able to speak and are ushered into participating in governing mechanisms that promise protection from coercion, promises which make invisible “freedom with violence” (Reddy 2011; Hammonds 1994).

Dian Million has argued that the law is a “trace and living performance of a destructive history.” She argues law sits as an archive of U.S. colonialism and law is active as the maintainer of its present day form (Million 2000). In this dissertation, the law’s promise to create a non-destructive future untraced from its past establishes the foundation through which humanitarian visas are given meaning and the point of departure through which I analyze humanitarian protections and practices of law enforcement are part of the living performance of U.S. colonialism. For immigration law, I argue the living performance of benevolence and humanitarianism is the trace through which we can open up discussions about how U.S. immigrations should be theorized with U.S. colonialism. Thus, in what appears to be a seamless and logical use of law enforcement practices to protect noncitizen immigrant women, I look for the seams that bind how Asian immigrant women become visible as legal subjects at the intersections of immigration law, humanitarianism, and law enforcement.

In Asian American Studies there are few publications that discuss violence against women and there are many publications about immigration. Research on violence against women is found mostly within sociological texts that measure resources, institutions, and behavior. And the study of immigration is largely analyzed within the context of legislation and public policy severed from other texts that discuss cultural forms that are produced by the immigrant subject’s “contradiction” to the citizen subject. This dissertation hopes to speak to all three scholarly groupings – Asian American Studies, scholarship on violence against women, and legal scholarship on immigration - through an interdisciplinary approach to law and people’s experiences. More specifically I focus on legal fictions of fraud, cooperation, and innocence that circulate through both

legal texts and people's lived experiences of navigating the legal system. If the law, as Sora Han as argued, is itself a system of racial representation then our studies of violence against immigrant women must consider the violence of racial representation alongside women's experiences. Indeed, this dissertation argues that the absence of such a consideration is one Asian American Studies cannot afford. With this dissertation I remedy this absence by theorizing the relationship between the racial figure of Asian immigrant woman and the actual forms of violence women protection from.

In this Introduction I discuss my chapter descriptions, theoretical concepts, methodology, and research. The three theoretical concepts I engage with are, 1) the framework of inclusion and the study of immigration, 2) legal exchange and the study of state protections for women, 3) racial distance and the study of Asian American racial formation. My methodology discussion describes and theorizes my approach to the method of legal ethnography. My use and definition of ethnography both as the practice of fieldwork and as writing achieve much more than the application of existing legal concepts to an already existing Asian American experience. Instead of presuming that experience is evidentiary and that it is important only because it transforms legal concepts into legal fact, I argue that ethnography provides a racial critique of the law. My research section will discuss two years of ethnographic fieldwork I conducted in the San Francisco Bay Area. I describe and interpret the research I carried out with Asian American legal advocates who are attorneys, social workers, and women's shelter advocates from different non-profit organizations and all who work directly with immigrant women as their clients.

## Chapter Descriptions

There are four chapters that make up this dissertation. I begin with a discussion of legal ethnography and why ethnographic methods shift and push forward our current theorizations in Asian American Studies on race, gender, and law. This discussion is followed by a chapter that discusses laws from a historical time period twenty years prior to my ethnographic fieldwork from 2009-2010. I discuss this time period because of the development of legal fictions that carry a legal legacy well into the contemporary moment I study. The dissertation ends with a discussion of two pieces of legislation that took on the most prominence during my ethnographic research: the Violence Against Women Act and the Immigration Nationality Act. I focus on two forms of legal protection for noncitizen immigrant women, the U Visa and the T Visa. These visas exemplify how the protection of women in the legal arena shapes the rationale on the ground for increased “cooperation” between immigrants and law enforcement. I end with a discussion of the relationship between humanitarian projects to save women from human trafficking and counter-terrorism projects that support the U.S.’s War on Terror. Racial and gendered forms of visibility are the sites through which I analyze how changes to the Immigration Nationality Act and the Violence Against Women Act do not merely protect immigrant women, but also establish new federal and local forms of law enforcement based on relationships of “cooperation” between immigrant communities and the state (Chacon 2008, 2009).

The first chapter, *Against Experience as Evidence: Fiction’s Role in Feminist Ethnographies of Violence* argues experience in legal ethnography is a form of racial critique rather than evidence of the omniscience of law. The chapter considers how

fiction appears in ethnographic practice and ethnographic writings that search for truth told through stories, particularly in ethnographies of “violence” and “women” we often assume those who speak must only be survivors themselves. I discuss how this assumption of the origins of truth can reproduce a form of ethnographic violence. Ethnographic desire for “truth” is a production of colonial knowledge with roots in structures of subordination and institutional oppression (Smith 1999; Abu-Lughod 1993; Behar 2003).

The second chapter, “Of the Law, but Not Its Spirit”: Immigration Marriage Fraud as Legal Fiction and the Shaping of Anti-Violence Legal Advocacy Practices discusses the relationship between laws designed to detect “immigration marriage fraud” in marriages between non-citizen and citizen subjects. I argue “immigration marriage fraud” is a legal fiction.<sup>2</sup> Fraud of this particular kind cannot be explained as completely fictive (“women are not frauds”) or based on exceptions that are facts (“there are some frauds out there, just not here”) and is better explained as a completely different form of legal genre, that of legal fiction. Originally popularized and narrated as a mechanism to protect white women citizens from being “duped” into marriages with non-citizen immigrant men, the impact of the Immigration Marriage Fraud Amendment’s legal legacy has since then formed one of the primary constraints non-profit attorneys face in their work to help obtain legal protections for Asian immigrant women who are survivors of domestic violence.

The third chapter, Legal Protection as Legal Exchange: Violence Against Immigrant Women as the Establishment of “Cooperation” between Law Enforcement and

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<sup>2</sup> I thank Sora Han for this insight on my chapter.

Immigrant Communities argues that legal protections for battered immigrant women operate through legal exchange. This chapter analyzes how the Violence Against Women Act has designed legal protections for immigrant women through a framework of exception and how this shift bases a new era of “cooperation” between law enforcement and immigrant communities on the racial figure of the immigrant victim of violence. VAWA provides visas as a form of legal protection for immigrant women. In this chapter I focus on one visa in particular, the recently established “U.”

The fourth chapter, “Big Guns and Green Cards”: Asian American Political Identity and the Whiteness of Racial Distance in Anti-Human Trafficking Law and the War on Terror, discusses Asian American non-profit organizations that participate in immigration raids in order to provide services to women who trafficked. Counter-terrorism laws and anti-human trafficking laws claim to target the “bad” and the “good” immigrant. The marking of human trafficking and counter-terrorism as a necessary and acceptable pairing of law is an under-theorized area of scholarship. Indeed, their similarities are underplayed in order to maintain a distinction between the two that describes one as a necessary component to the other. I discuss how the perceived distance between these two racial figures of “good immigrant” and “bad immigrant” is a space of whiteness made visible. Lastly, I discuss how whiteness and the protection/punishment dichotomy produce narratives that mark the racial violence of policing and enforcement as not an Asian American political issue. This racial unmarking curtails the scope of Asian American political critique against policing, law enforcement, and the debate over “victim’s rights” versus “immigrant rights.”

## Violence Against Women Act

Leigh Goodmark has argued that dominant feminist approaches are reflected in the way the Violence Against Women Act defined the problem of violence and the establishment of criminalization as the solution (Goodmark 2012). As a marker of success for the feminist anti-violence movement of this time period the legislation “was intended to fundamentally alter what was seen as society’s insufficiently punitive response to domestic violence” (2012). In 1994, Congress passed the Violence Against Women Act (VAWA) as Title IV of the Violent Crime Control and Law Enforcement Act (VCCLEA), one of the largest federal crimes bills to date (P.L. 103-322). VAWA was the first piece of comprehensive federal legislation focused on gender related violence and the issue of violence against women. VAWA’s significance goes beyond the fact that this legislation was the first of its kind. The making of violence as a crime punishable by the state, the criminalization of violence against women, reshaped the landscape of law enforcement, non-profit organizations, medical institutions, and prisons. While a growing body of literature explores the legal, policy, and political changes induced by criminalization as a response to violence against women, there is very little written on how such changes have impacted immigration and U.S. immigration law.

Kristin Bumiller has argued that the feminist anti-violence movement of the 1990s celebrated its success with the passage of the Violence Against Women Act but has not come to terms with how the feminist agenda of this era was coopted by the state’s neoliberal agenda. That is, in light of how crime control laws targeted communities of color throughout the 1970’s and 1990’s, the anti-violence agenda’s promotion of increased criminalization as the means by which women are protected puts the terms of

this protection in question. Activists and organizers working both within the anti-violence movement and movements that challenge the prison industrial complex have not only drawn attention to how the racialization of communities of color is told as part of the “war on crime” and “public health” but also, how these dominant narratives create challenges to address violence and create strategies that take into the account the almost near impossibility of disregarding the prevalence of law enforcement and the prison system in our lives (Kim 2010; Silliman et al. 2002; Buzawa and Buzawa 1992; Sokoloff 2005). Thus, both Bumiller and Goodmark outline ways for us to analyze how VAWA both opened and foreclosed political possibilities in anti-violence work.<sup>3</sup> Such possibilities have, I argue, also played a large role in reshaping how local and federal law enforcement monitor U.S. immigration.

VAWA provided funding for increased law enforcement and for local governments to create educational and social programs to prevent crime. The funds for discretionary programs for state, local, and Indian tribal governments from VAWA were established within the Department of Justice and Health and Human Services. VAWA also increased penalties for domestic violence in federal courts, created new penalties for interstate stalking or violent crime related to foreign commerce, and expanded the list of admissible evidence in federal sex crime cases.<sup>4</sup>

VAWA 1994 also created language that would allow individuals to file private damage suits in federal court against “gender motivated violence.” This language was included in Title IV, subtitle C – “Civil Rights for Women.” However, on May 15, 2000,

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<sup>3</sup> For a discussion of foreclosures and possibilities in state responses to violence against women, see Munshi, Soniya. Forthcoming.

<sup>4</sup> VAWA I § 40401

the Supreme Court struck down this provision in *United States v. Morrison*. In a 5-4 decision the Court argued that VAWA's civil rights provisions were unconstitutional under the Commerce Clause and the Fourteenth Amendment because violence did not substantially affect interstate commerce. The Court also stated that the Fourteenth Amendment was created for state actions, not private actions of individuals. *Morrison* did not affect any of VAWA's grant programs.

The law is the first comprehensive bill to address violence against women, but more significantly, the law chooses to introduce violence against women as a crime. All portions of the law – legal provisions, changes in client access to courts, educational and social programming, research, etc – aim to end or prevent the crime of violence not violence itself. From FY1996 to FY 2001, the majority of funds appropriated for Violence Against Women Grant Programs were earmarked for STOP Grants – Special Training Officers and Prosecutors. STOP grants focus on the apprehension, prosecution, and adjudication of persons committing violent crimes.<sup>5</sup> These funds can be used for a range of activities that train police officers, improve data collection systems, assist with victim services, and better training for the collection of medical evidence.

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<sup>5</sup> For Example in FY 1995, 26 million was allocated for STOP Grants whereas \$0 was allocated for battered women's shelters and transitional housing for domestic violence victims. In FY 2001 209.72 million was allocated for STOP Grants, whereas, 116.92 was allocated for battered women's shelters and \$0 was allocated for transitional housing for victims of domestic violence. These numbers improve in FY 2005 where 185 million was allocated for STOP grants and 175 million went to battered women's shelters. For an annual report of appropriations and authorized funding, see (Laney Last updated August 7 2008)

The STOP (Services . Training . Officers . Prosecutors) Violence Against Women Formula Grant Program (STOP Program) was initially authorized under the Violence Against Women Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005).

## VAWA and the Immigration Nationality Act

Because immigrant women who are survivors of violence all have immigration related concerns, within VAWA any provision designed specifically for battered immigrant women promises to provide a less stringent and more accessible means by which women can obtain temporary or permanent legal status to remain in the U.S. Legal protections are made possible through amendments to the Immigration Nationality Act (INA), the backbone of U.S. immigration law. My research is interested in how VAWA's amendments to the INA also fold new law enforcement mechanisms into the design of humanitarian protection. American humanitarianism is undertheorized in existing literature on immigration. Current scholarship focuses largely on the role of war, asylum, and refugee status but there is little discussion of how humanitarian discourses existing as a part of U.S. immigration law and women who are already residing within the borders of the nation-state.

Noncitizen immigrant women require a particular definition of protection from the law, one that often includes some form of immigration relief as an attempt to provide women with legal status and remove the pressures of being a noncitizen who does not have legal status. To be clear though, the pressure that I speak of exists for anyone who is a noncitizen be their status temporary or if they have fallen out of status. Regardless of the presence of violence in women's lives, the control immigration law has over women is already present.

Congressional leaders amended the Immigration Nationality Act in 1986 in an attempt to prevent what they slowly began to call "immigration marriage fraud." The Immigration Marriage Fraud Amendments of 1986 required any spouse married to a U.S.

citizen or legal permanent resident to remain married for two years during a “conditional residency” period in the United States. Women who divorced before this period would not be able to stay permanently. After the two-year waiting period is completed, women can only apply for residency if their spouses apply for the removal of their “conditional” status. In 1990, anti-violence advocates sought to address spousal control and remove the two-year conditional residency period in order to assist women who were dependent upon their spouses for legal status but were caught in abusive marriages (Calvo 2004; Abrams 2007; Volpp 2005).<sup>6</sup> The Immigration Nationality Act was amended to include a new “battered spouse waiver” which allowed immigrant women to obtain their own permanent resident status without the cooperation of their spouse.<sup>7</sup> However, the waiver was only available to women whose spouses had already filed conditional residency at the start of the two-year waiting period.<sup>8</sup>

In 1994, new immigration provisions addressed spousal dependency in VAWA. A “self-petition” provision was created allowing women and children to apply for permanent resident status without relying upon the cooperation of a spouse. Self-petitions were designed so that women could leave marriages due to abuse without any recourse to their legal status. To be eligible, women had to demonstrate “good moral character” and “good faith” marriages and prove “extreme hardship” would ensue if they

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<sup>6</sup>See INA § 216, 8 U.S.C. § 1186. Doctrine of Coverture - Pub. L. No. 5, § 2(a), 42 Stat. 5 (1921)

<sup>7</sup> Immigration Act of 1990, Pub. L. No 101-649, 104 stat. 4978 (1990).

<sup>8</sup> For further information on waivers, cancellation of removal, the ability for immigrant women to self-petition, and VAWA confidentiality see: Violence, National Coalition Against Domestic. "Comparison of VAWA1994, VAWA 2000 and VAWA 2005 Reauthorization Bill " 1-19. Washington D.C., 1/16/2006. “Immigration and Domestic Violence: a background on current law and advocacy” published by Legal Momentum, [www.legalmomentum.org](http://www.legalmomentum.org), publishing date unknown.

or their children were removed from the U.S. The legal subject of protection throughout the 1980's and 1990's is always and only a wife particularly for provisions that address immigration related concerns (Kwong 2002). Thus, the 1990 INA amendments coupled along with VAWA's immigrant provisions focused on a particular form of violence as the "problem" – that of spousal control. And the solution, or the law's attempt to provide protection to immigrant women who were married, was to remove mechanisms built into already existing immigration laws that furthered spousal control over women.

In 2000 VAWA was reauthorized and for the first time new immigration provisions were created for women who were not married to U.S. citizens or legal permanent residents. More specifically, protections were created for noncitizen immigrant women, those who either lacking any legal status or who had recently fallen out of status. The Battered Immigrant Women Protection Act (BIWPA) created the U Visa and the Victims of Trafficking and Violence Protection Act (VTVPA) created the T Visa. Both BIWPA and VTVPA are passed under the 2000 reauthorization of the Violence Against Women Act.

The U Visa is designed for noncitizen immigrant women who are victims of 26 different forms of qualifying criminal activity. The T visa is designed more specifically for survivors of severe forms of human trafficking. However, in order for women to complete applications for the U, they must first obtain a form from law enforcement or other USCIS approved entities certifying their willingness to cooperate in the prosecution of criminal activity. In Chapter Four, I discuss how one of the primary means by which legal advocates are able to come in contact with women who are trafficked is through partnerships with federal law enforcement. While the U and T visas are the first to

provide protections around gender and sexual violence for noncitizen immigrants they are also significant for the relationships of cooperation they seek to establish between women, legal advocates, and law enforcement. VAWA's underlying logic of criminalization has shaped the kinds of questions we ask about violence against and law enforcement. How should the state punish? Why do some women hesitate to pursue punishment for batterers? Why are we not able to think about alternatives to criminalization, and in those moments when we do, what are the struggles we encounter as we develop alternatives to the system in a manner that is accountable to the fact that we still live within a legal system based on criminalization?<sup>9</sup> With the passage of the U and T Visas, such questions bring immigration and law enforcement together at the center of a rapidly changing political and legal landscape.

Throughout the 1990s, the number of "community policing officers" increased from 4 to 21 percent nationwide and the Bureau of Justice Statistics office estimated 86 percent of the U.S. population was impacted by community policing (Hickman 2001). Local police departments held regular meetings with school officials and students, neighborhood associations, business groups, senior citizen groups, and domestic violence groups. These partnerships are designed to strengthen the prosecution efforts of federal and state law enforcement agencies, the very same agencies that enforce heavy monitoring and regulation over immigrant communities.

October 6<sup>th</sup> 2010 a Department of Homeland Security (DHS) press release reported a "70 percent increase in removal of criminal aliens from the previous

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<sup>9</sup> I thank Mimi Kim for this insight.

administration” between 2008 and 2010.<sup>10</sup> Department of Justice reports in 2000 showed a record high in the number of reported immigration offences to the U.S. Attorney’s office, incarceration rates related to immigration offenders increased from 57% to 91% between 1985 and 2000, and immigration law enforcement grew from 42% between 1996 and 2000 (Scalia 2002). In 2005, immigration was the most prevalent arrest offence during a year when the likelihood of being prosecuted, convicted, and sentenced to prison increased from 1995 to 2005. For example, the number of persons sentenced to federal prison nearly doubled from 1995 to 2005 (Motivans 2008). We are pushed to ask, given the six-fold expansion of the detention system in the last 15 years, do we continue to distance this expansion from the “new and improved” humanitarian protections for women or do we seek to understand what purpose this distance serves (Kerwin 2009; Peter 2010)?

#### Feminist Anti-Violence Movement and Criminalization

Prominent feminist positions on violence against women in the 1970’s pushed to frame the issue of gender and sexual violence as a problem that stemmed from the failure of law enforcement and widely supported proposals ensure “public safety” through law enforcement intervention in the private realm. A growing body of literature has documented how political ideologies from this era drew largely upon an understanding of transformation as a process that moved the issue of violence against women away from the “private” realm and into the “public” (Bergen, Edleson, and Renzetti 2005; Dobash, Dobash, and Gutteridge 1986; Dobash, Dobash, and Noaks 1995). By doing so, feminist

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<sup>10</sup> Anon. n.d. DHS: Secretary Napolitano Announces Record-breaking Immigration Enforcement Statistics Achieved under the Obama Administration. [http://www.dhs.gov/ynews/releases/pr\\_1286389936778.shtm](http://www.dhs.gov/ynews/releases/pr_1286389936778.shtm).

approaches sought to bring the powers of the state to bear upon problems thought to be “private.” The private/public binary however does not address structures of power that produce public economic and social conditions that can lead to violence. Further, neoliberal ideologies resulted in publicized beliefs that domestic violence was a product of ethnic and cultural practices found in the realm of the home and the private sphere. As Anannya Bhattacharjee has argued, the private is already conditioned by the public (Bhattacharjee 2002). In short, this particular feminist approach closes out room to account for forms of state violence while at the same time seeking to place the state in a position as the arbiter of solutions to violence, not as a possible source of violence itself (Ritchie 2006). Women of color organizations and feminists activists have posed questions around the foreclosure of state violence to critique dominant understandings of violence as private, and how such critiques allow us to envision new ways of approaching anti-violence strategies (Incite! Women of Color Against Violence. 2006; Ross 2006).

The binary of public and private has not only reproduced itself in various political forms but has formed a particular place within contemporary federal and state laws. The most comprehensive laws that speak specifically to the issue of domestic violence, sexual violence, or assault, argue that in order to better protect women we must strengthen criminalization practices and expand institutions that promote stringent punishment for criminal activity. The legacy of the 1970s feminist movement’s push to establish the private/public binary has unfolded in a mix of laws, public policies, institutions, and political beliefs. Criminalization, or the making of violence into a crime punishable by the state, contributes to the idea that the problem of violence can and ought to be solved by punishing those who do harm. When political practices seek opportunities to place the

state in a position to manage how crime is solved and not how conditions that structure violence can be eliminated, the state becomes the arbiter of who should be protected, who should be punished, and why. For women of color, the opening of criminalization as the framework through which violence is understood forecloses analyses of state violence thereby placing women “at the margins” of analysis by feminist anti-violence movements and anti-racist politics (Crenshaw 1995). Crenshaw argues that an intersectional approach looks not only for how we can analyze those who are at the margins of existing laws but a framework that allows us to analyze how the law tells the story of racial oppression and then uses such stories to legitimize solutions. Thus, it is a theoretical push against those who seek to analyze gender, race, and violence only through the identity of women of color as a descriptive marker. Such a move is only able to argue that women of color are excluded from dominant narratives within feminist or anti-racist politics, or, excluded from white feminist politics that rely on the private/public binary and excluded from anti-racist politics that do not address gender. While an intersectional approach does not disregard the material consequences of exclusion, the theoretical approach Crenshaw articulates provides a way to analyze how structures of power reproduce the subordination of women of color.<sup>11</sup> She writes, “Thus, when the practices

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<sup>11</sup> In *Mapping the Margins*, Crenshaw focuses on structural intersectionality, political intersectionality, and the larger intersectional framework within identity politics. Structural intersectionality allows us to map the structures of domination that create violence against women of color as experienced in much different discursive formations compared to white women (358). Structural intersectionality is a framework used to unravel the location of women of color whose experiences of violence are different from white women due to the intersections of race and gender and overlapping systems of subordination. Crenshaw’s discussion on political intersectionality locates women of color at the margins of feminist and antiracist politics. She maps the intersections of race and gender to show how racism and patriarchy have formed our understandings of rape. In contemporary politics, intersectionality is useful for understanding that when identity

expound identity as ‘woman’ or ‘person of color’ as an either/or proposition, they relegate the identity of women of color to a location that resists telling” (357).

Crenshaw’s writing on telling speaks not only to the limitations of our political claims, but also to the stories laws and legal institutions narrate about punishment, protection, and violence. In particular, the legal legacy of the War on Crime of the 1970s and the neoliberal policies of the Reagan era resulted in law enforcement campaigns that targeted black communities who were criminalized and configured as a threat to the sanctity of white domestic familial spaces. Furthermore, the racialization of black women’s bodies was the legal figure targeted by public policies promoting the sterilization of women as prerequisites for social services within the U.S. and in exchange for foreign aid benefits abroad (Roberts 1997; Bumiller 2008; Richie 1996; Davis 1997).

If it is difficult to talk about the location that resists telling, we should also consider how this difficulty is shaped by those locations that are promoted and made knowable by existing laws to protect women from violence. That is, if political and institutional structures of criminalization produce racist ideas that foreclose the location of violence against women of color, how then, do we connect these foreclosures with laws that intend to protect women and include women? For example, humanitarian projects aid women and fund efforts to “save” women, not from U.S. Wars in their

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politics fail resistance practices, it’s not because categories become naturalized rather than recognized as socially constructed. Rather, the social content of these categories marginalize women of color because they privilege some narratives over others (376). In contemporary identity politics we should distinguish between intersectional approaches and anti-essentialist approaches, the latter of which draws from the postmodern method of questioning how concepts we take as natural are socially constructed through language. This “descriptive” approach is useful for critiquing the substance of categories such as “woman” but differs from the framework of intersectionality which maps the systems of subordination that give power to such categories in the first place.

homelands, but from Western definitions of their culture as “bad behavior” (Volpp 2000; Abu-Lughod 2002). Transnational feminist scholars have documented U.S. humanitarian projects that identify cultures of the Other as oppressive in order to buttress the “correction” Western society and law claims to provide. Humanitarian assistance can both assist women and at the same time assist in the establishment of U.S power as a humanitarian state (Ticktin 2011; Chow 2002; Hua 2011).<sup>12</sup> Thus, activists and organizers within the anti-violence movement are faced not simply with the question of how to “raise awareness” about the issue of violence against women, but more importantly, how to strategize against any possibility that our politics are used to support structures of subordination (Davis 1985). Kristin Bumiller argues, “One clear piece of advice is that it no longer makes sense to single out violence against women as a specific issue for policymaking because there are advantages to seeing it as part of a larger project of enabling women to be more effectual citizens. It is critical to “protect” women by removing the economic and social obstacles they regularly encounter rather than by expanding the capacity of the state to reproduce violence” (2008, xv).

## **Theoretical Concepts**

### Framework of Inclusion and the Study of Immigration

Existing scholarship on law and immigration uses the dominant framework of exclusion to discuss the relationship between immigrant communities and the state. Within Asian

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<sup>12</sup> The recent Congressional bill, H.R. 4594, “International Violence Against Women Act” of 2010, while not the first to discuss violence against women as a foreign aid project, proposed funding to implement pilot projects in 5-20 different countries and whether such projects should include programs for contraceptives and abortion.

American Studies, existing research on race and law have theorized the position of immigrants themselves, and the legal subject of the immigrant, as a subject of subordination based on exclusion from full cultural, political, and legal belonging to the nation (Lee 2003; Gotanda 1999; Ancheta 2006; Chang 1999; Chang 1997; Ngai 2004; Saito 2009; Park 2004). The prominence of exclusion's theoretical reach goes beyond studies of legal doctrine, public policy, or political institutions to shape the field's broader scholarship on racial representation and identity (San Juan 1999). Exclusion from the state is understood to be a descriptor of Asian American subject formation. Thus, in Asian American Studies, exclusion has simultaneously served as the foundation upon which agency is theorized and explained (Shiu 2006). Studies that critique legal forms of exclusion in citizenship, migration, and political participation, have over time become the foundations upon which the field builds counter-narratives and seeks transformation. For example, studies have theorized how the absence of rights, including partial or unfulfilled rights, led Asian immigrant communities and individuals to respond with strategies that seek more full inclusion into the nation-state or state benefits (Wong 2006; Kim 2007; Fujiwara 2008; Lisa Sun-Hee 2010; Kim 2000).

Studies that seek to define what exclusion looks like have largely focused on exclusion as a legal and public policy act largely contained to actions on the part of the state. And conversations about inclusion often refer to actions on the part of communities who seek inclusion within the nation-state by means of law, culture, and representation. Moon-Ho Jung has argued that stories of assimilation and inclusion are not longer sufficient if Asian American Studies is to move away from maintaining a "liberal, nationalist project of recovering and proclaiming our 'American' roots" (2008).

I want to suggest however, that in addition to this insight, there is a very clear distinction between exclusionary frameworks used only to address the desires of the law, and inclusionary frameworks used only to describe how immigrants respond to such laws. A distinct pathway separates what kinds of studies have focused on exclusion and what other kinds of research of focused on inclusion. This distinction is the actual site for theoretical exploration. That is, exclusion is taken to be an act on behalf of the state and inclusion compartmentalized to those actions of communities who respond to exclusionary injustices. For example, Bonnie Honig's work on state exclusions of the foreign and the foreign subjects search for belonging, Mae Ngai's argument that illegal immigrants can never possibly be full legal subjects and are instead "impossible subjects," and scholars who focus their analysis on the deployment of race and gender in citizenship laws create tensions between what Kitty Calavita calls "the dichotomy between citizen-members and immigrant outsiders" (Glenn 2002; Haney-López 2006; Hing 2004).

This dissertation suggests that we can better understand this relationship of exclusion and inclusion by expanding the framework of inclusion outside the realm of how communities respond and resituate inclusion as the state's investment in including immigrants. How might we better understand existing state efforts to include immigrants and the relationship of this inclusion to historical exclusionary laws? I suggest, we take into account both an analysis of the state's investment in including specific racial and gendered legal subjects under particular terms and conditions. Further, I suggest we look at how Asian American political practices have participated in these inclusionary pathways? I argue we ought to theorize immigration law (as a set of governing

institutions and a body of law) through the framework of inclusion to ask, why has the state been invested in including immigrant women through the specific form of protection? I am not suggesting that U.S. immigration laws do not exclude people, restrict movement, or build borders. I am instead arguing that our understanding of why immigrants never fully become legal subjects of the nation-state is not merely because of the exclusionary measures of U.S. immigration law but rather because of its investment in continually including a steady but managed and disciplined stream of ideologies, bodies, and racial visions upon which the future of the nation relies.<sup>13</sup> Lisa Camacho has argued the state has not engaged in a project of “total expulsion” and has instead regulated steady but limited pathways of legalization (Camacho 2010; Schmidt Camacho 2008). Similarly, Moon-Ho Jung argues the story of assimilation has directed the field of Asian American Studies to analyze racial identity through the “paradigm of racial exclusion” and “national inclusion” to understand the place of Asian Americans in U.S. history (2011). Jung’s work suggests that instead, we ought to look beyond those naturalized logics of state power. This would allow the field to analyze the position of Asian Americans within a larger project that seeks to understand how empire has been elided in U.S. history rather than inadvertently naturalizing the logics of the nation-state.

In this dissertation I argue that immigration provisions within the Violence Against Women Act reflect the inclusionary framework of immigration law designed to protect and include the racial figure of “women” in order to expand ideologies of crime and punishment. I ask, why would the state be invested in protecting immigrant women

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<sup>13</sup> To be clear, I am not arguing that Asian American political claims should seek inclusion with the state. I am not making claim to what political claims should, or ought, to be for any community. The inclusionary framework I am suggesting is specific to the theoretical approaches we use to analyze U.S. immigration law.

and how do we understand the meaning of legal protection in relation to growing and expanding forms of legal punishment designed towards immigrants within the U.S. The field is positioned to advance its radical capacity by theorizing and critiquing the terms upon which political identities are visible in order to build sustainable and transformative ways of living.<sup>14</sup>

### Legal Protection as Legal Exchange

I suggest that U and T visas (representative of larger legal schemas of protection) are not merely acts where protections are given, but rather, where an exchange takes place between immigrant women and the state. By approaching VAWA's immigration provisions through the framework of inclusion rather than exclusion, we are able to see how legal protection brings together humanitarianism and immigration enforcement not only in the law but in the development of political practices and popular ideology. I ask, why these visas are made available, what state investments lie within these visas, and what forms of power are produced by the visas regardless of whether or not applications are successful? The legal exchange women undergo shifts the foundational frameworks of innocence that underpin feminist anti-violence agendas seeking increased criminalization as better solutions to violence against women. That is, humanitarian visas such as the U and T are not simply state protections that are given to women as humanitarian gifts. They are instead, visas that require women to undergo acts of exchange that produces a race neutral equality between law enforcement and immigrant women, and thus I argue, a racial inequality.

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<sup>14</sup> I am drawing heavily from the insights of (Han Spring 2006; Noh 2004; Rodriguez 2005).

Women's willingness, credibility, and innocence become the rhetorical and legal terrain upon which women engage in multiple exchanges as they seek protection from the law. Sherene Razack has argued that immigration policies rely upon a "simple logic" that the sovereign nation has the right to know who seeks national belonging. What follows along this logic is that the nation must permanently defend itself against foreign subjects who pose threats to the state by the simple logic that they will always seek to betray the nation and trick it (2002). The figure of the trickster and the trope of betrayal she further argues, exemplifies how colonialism, as Andrea Smith has argued, affects everyone who participates in this simple logic (2010).

My argument about legal protection as a form of legal exchange reveals, firstly, that humanitarian visas come with value and that the "gift" of granting temporary exceptions to battered immigrant women has a price, a value, and hence is exchangeable. Secondly, the phrase "legal exchange" aptly describes why women must undergo cooperation with law enforcement under the premise that providing protection to a woman whose status may be "illegal" ought to result in exchange for the state's prosecution of criminal activity. Thirdly, the terms of exchange are based on a race neutral claim of equality between immigrants and law enforcement. It is precisely the equality of racial neutrality in law reveals the inequalities of legal exchange. If the making of two things into equivalents renders them exchangeable, then their exchangeability is not natural suggesting that the basis of any exchange is always and already an exchange of unequal things (Marx 1978; Lee and LiPuma 2002). Thus, the social relationships established by the law can also possibly be relationships of inequality

even when, as Lydia Liu has argued, the existence of exchange may seem contradictory when “unequal exchange” exists alongside an “exchange of equivalents” (1994).

Christine So has argued that Asian American Studies projects cannot merely strive to reveal how we have not been assimilated or exoticized because of difference. Rather, she suggests we ought to take the time to embrace our need to understand sameness and she argues that it is through acts of economic exchange that Asian Americanness become visible through their sameness to the nation, not merely through difference (2007). While I am not directly arguing, as So has, that assimilation makes visible the impossibility of abstract citizenship, I do draw upon her analysis of sameness to build upon my understanding of immigration law as a national project of inclusion and not merely exclusion.

#### Racial Distance and Asian American Studies

Difference is the anxiety upon which Asian American Studies continues to believe it has an identity crisis. Lisa Lowe’s influential works argue cultural differences are the basis upon which Asian American subjects are positioned in contradiction to the nation and can also allow for the basis upon which political possibilities are achieved (1996). In attempts to define how Asian American political identity fits within multiracial histories of radicalism, scholars have argued that Asian American differences are defined by an “absence” within the black/white paradigm. This absence is often interpreted as the significance (and strength) of Asian American identity politics to the formation of the nation-state (Chang 1997; Chang 1999).<sup>15</sup> But the political formation of “difference” as a

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<sup>15</sup> For a discussion of how this claim of absence as a form of exclusion utilizes anti-blackness, see (Han Spring 2006; Nopper 2006).

racial object of Asian American identity is often invoked as the cause of exclusion from racial groups or from dominant sources of power. I suggest difference is not a counter hegemonic position against the nation but rather, one that is produced by the nation. I argue the differences of Asian Americans can be of benefit to the state and be the basis upon which the inclusion of the immigrant subject is engulfed by the state. Thus, I am deeply interested in how we might think of differences in law and propose to critically theorize difference through a concept of racial distances the law establishes between race, political promises, and citizen and noncitizen subjects.

Immigration laws, both prior to 9/11 and in our contemporary moment, utilize the protection of immigrants as one of the many means through which migration and borders are managed. Current laws display an interdependent relationship between a “security” agenda and existing anti-violence feminist agendas (Sharma 2005; Hua 2011; Brotherton and Kretsedemas 2008). Studies have theorized this relationship but primarily through research on U.S. programs that shape women’s lived experiences outside the nation-state. In my research, I explore how two primary racial figures, the “good” and the “bad” immigrant are distanced from each other and underpin seemingly two separate kinds of laws that “protect women” and those that “fight terrorism.” I argue that this distance is the point of departure through which we can theorize Asian American Studies and Asian American racial identity. In other words, the protection/punishment dichotomy in emergent post-9/11 legislation produces narratives that mark the racial violence of policing and enforcement as not an Asian American political issue.

What investments might state narratives have in claiming to achieve equally and simultaneously the promise to build trust and cooperation between immigrant women,

non-profit organizations, and state agencies? And how have Asian American legal advocates interpreted these legal promises and the work they must carry out as a result of such changes in law? These questions are timely. Changes in federal criminal and civil enforcement of immigration laws post 9/11 have militarized borders and increased the strength of criminalization of immigration monitoring. In 2008, the Bush administration began funding for DHS to launch “Secure Communities” a national program to implement local law enforcement agencies’ resources towards the enforcement of federal civil immigration laws through the use of new technological advancements in monitoring (Homeland Security Advisory Council 2012; Task Force on Secure Communities 2011). Similarly, the 287(g) program established in 1996 uses federal funds to train local police in immigration enforcement tactics and the Criminal Alien Program of the 1980s trains local law enforcement to identify non-citizen aliens in federal, state, and local prisons and jails (Kholi 2011).

The distance perceived between the former as a benefit for the protection of immigrants and the latter as a harm and injury to immigrants, is where anti-violence legal advocacy has had to grapple with the possibility that its position is a part of the expansion and normalization of enforcement in existing immigration laws. More specifically, “bad” immigrants as targets of legislation such as 287(g) is severed from the racial politics of laws designed for “good” immigrants marked as those with potential to become good citizens in civil society (Puar 2002; Volpp 2002). The perceived difference that is both absent yet has established its presence, produces cooperative law enforcement as a new form of policing through participation, which is itself a racial production of a living form of white supremacy.

Regardless of whether a client's case or application is successful or not, the procedures women and their attorneys continue to be part of institutions that produce racial and gendered subordination. Providing benefits and assistance to women can take place even when laws, rules, and institutions reflect subordinating relationships at a broader level. Immigrant women who come before the law seeking protection do not do so as litigating parties. They are not identifiable as racial subjects before the law and their applications for visas are not available through public record. In Congressional hearings, public debate, and media coverage the racial figure of immigrant woman never appears as one that underpins the criminalization practices advanced by the Violence Against Women Act.<sup>16</sup> In popular media and political debate, crime and its punishment produce black bodies as subjects of criminal laws (Roberts 1997; Kelley 1994; Richie 1996; Sudbury 2005). Asian immigrant women who seek protection from violence are part of this existing legal system of criminalization and protection but their racialization occupies a different position. The challenge I take up in this dissertation is to explain and theorize how immigrant women become legal subjects and what this means within the larger racial politics of radicalism in immigrant rights and anti-violence work.

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<sup>16</sup> For a discussion of the "culturalization of racism" where culture, contained to that of women of color and their experiences, is often blamed for bad behavior or for violence, see (Razack 1998; Volpp 1994, 2000). For a discussion of the political questions that remain when community responses strategize around discourses of culture in advocacy efforts for resources and services, see (Rudrappa 2007; Munshi 2011). I should be clear that I am not arguing against the need for culturally specific remedies, resources, or services. Nor am I arguing against existing ethnic specific research. It is the law's ability to hide cultural practices and racial identity that gives us more reason to find ways that our own community responses and scholarly research might not also be entrapped by our own analyses, even or especially those that compensate for an absence that the law has created and one that we cannot ever fill.

## Methodology

Because the majority of legal documentation about specific individual cases is not accessible as stories to the public and because the national records of the U.S. government are protected under privacy law for a minimum of thirty years, my research on laws passed during the 1980s and 1990s relied upon the indispensable stories of legal advocates. Ethnographic stories build their own archive of interviews, publications and materials used by non-profits as part of their community outreach work on emerging laws and legal rights, and personal stories from attorneys about how the law actually unfolded in the lives of Asian immigrant women and their communities. When I first started this project, I assumed stories about law were merely additional pieces of information that could not be found in legal texts themselves.<sup>17</sup> I assumed there was only one way to talk about legal text and then to talk about what people said about those texts. I viewed what people said and what the law said as two sources of information trying to say the same thing. However, the stories the law tells and the stories legal advocates tell about the law have a significant relationship between them. This relationship is the actual site for my research.

As I continued to speak to different attorneys and social workers, their stories did more than supplement the story of law or “fill in the gaps.” Rather, these stories were filled with the emotive and intricate unfolding of how immigrant women become visible

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<sup>17</sup> In U.S. law, the category “immigrant” refers to legal provisions (such as visas) that are created for applicants who intend to stay permanently or long-term in the United States. For example, a tourist visa would be a “non-immigrant” visa whereas a spousal visa is an “immigrant” visa. For the purposes of this project however, I use the term “immigrant” to refer to political and social identities of immigrant peoples outside the context of legal categorization.

as legal subjects. Visibility, who can and cannot come forth as a legal subject, under what conditions, and for what legal questions, is a theoretical concept that cannot be ignored nor taken for granted in our studies of immigration, Asian American communities, and the study of race, gender, and the law. For us to speak of Asian American women and the law we must first look at how one even becomes a legal subject to begin with. The space of the law encompasses more than actual laws themselves. The institutions that make up the legal system, the judges, attorneys, clients, and administrators that manage and navigate this system, and the varying forms of cultural production that take up the portrayals of law in everyday life, all operate to produce legal meanings and knowledge about what is legal, illegal, or extralegal. What we recognize and ultimately deem to be the “law” is produced through the fragments of institutions, legal texts, and cultural productions that are arranged, ordered, and narrated to us. I am interested in how immigrant women become visible as legal subjects and the stories that people, legal texts, and forms of cultural production choose to tell us as a way of narrating what law means, of narrating how it’s all part of the

While I never thought this project about the law, about people, and about violence would entail a discussion of fiction, it first was through ethnography and then through the process of writing that the visibility of non-citizen<sup>18</sup> immigrant women itself became more and more of an actual site where both the law and people used fiction to make immigrant women visible as subjects of legal discourses of innocence, fraud, cooperation, and guilt. Storytelling through a mix of fictional descriptors were used by advocates I

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<sup>18</sup> Non-citizen refers broadly to a range of legal status (temporary, out of status, visa) that covers all categories that are not U.S. citizens. I use this term to refer both to the range of legal categories and to the discourses that accompany these categories in cultural form (illegal, outside the state, and so forth).

spoke with to protect the confidentiality of their clients. They sought not to hide the truth each advocate sought to explain but rather to allow them to more fully articulate their own and “true” interpretations of what they believed operated in the law, in their clients’ experiences, and in the local political settings they worked in. I began to wonder, if fiction was used to tell a fuller picture of how one interpreted legal meaning, could the law itself use fiction to tell what it wished to present about immigrant women, humanitarian protection, and the use of punishment to promise safety and freedom? Sherene Razack argues that storytelling allows women of color experiences to reflect multiplicities, contradictions, and complicities and I want to suggest in the same way that it shifts our attention to those same dynamics within the life of the law and its ability to consistently reproduce narratives. She writes:

Storytelling is a theoretical attention to narrative, to the nature and consequences of this conceptual scheme. Concretely, it is an interrogation of how courts come to convert information into fact, how judges, juries and lawyers come to ‘objectively’ know the truth: ‘Those whose stories are believed have the power to create fact’ (1998).

My research originally questioned the role law played in contemporary Asian American immigrant rights and anti-violence organizing work. But to understand how the power of law is produced both through the word of law as text and through peoples’ organizing efforts that reform and change our laws, we have to develop a way of writing about peoples’ convictions for or against what the law promises as much as we seek to analyze

and interrogate how the law goes about making such promises. What is illegal or legal, a citizen or non-citizen, a victim or a perpetrator and all such meanings are produced by our knowledge of the racial subject and the universalisms of what law is and how it should operate for everyone.

Readers often assume this project is an ethnography of women's experiences as victims of survivors of violence. Dominant perspectives on violence against women have argued that violence should only be discussed through the authenticity of the voice of the survivor. In latter chapters I discuss how this perspective has shaped the way women's experiences are used as evidence. I argue that scholarship must also find a way to be accountable to who is writing and speaking about violence in situations where survivors are not speaking. This is particularly important as a form of accountability as much as it is an approach to theory. If we assume that our discussions of violence are not authentic or complete without the voice of the survivor this places pressure on survivors to always "speak out" and creates an over-reliance and dependency on the voices of survivors, many of whom may not desire to share their stories now or ever.

I do not speak directly to survivors or clients. Instead, my research is a legal ethnography with interlocutors who use the law as a part of their political practice. I place their stories at the same level as the stories the law tells about immigrant women. I make it a point not to speak directly to survivors as I am not researching women's experiences with forms of interpersonal violence, but rather, how laws that are supposed to end violence can themselves reproduce forms of coercion. While the legal ethnography I pursue is not dependent upon the voices of survivors themselves, it is not to say such voices should be erased or excluded from scholarship. Instead, I am arguing

that we ought not to assume that speaking to survivors themselves stands for more “authentic” evidence.

## **Research**

If there is one thing I hope to repeat in any future ethnography, it would be data entry. On August 11<sup>th</sup>, 2009 I finished a week’s worth of data entry, came home, and wrote in my fieldnotes, “I am lost.” I went on to write:

I’m doing some data entry for Claire. I’m basically categorizing all of the cases. For each case, I am supposed to select either “immigration” counseling and representation or “family law” counseling and representation – but I can’t select both. This is straight forward for the most part. Immigration for visas, greencards, deportations, and petitions. Fine. Family law for child custody, divorce, and such. Also, no brainer. But there are some VAWA and U cases that sort of kind of fall under both, or could be considered both. I ended up having to talk to Claire about this a lot, but I didn’t want to make a big deal out of time, but then again I really did not want to be the person to mess this whole system up. We talked about differentiation for a long time, didn’t really come up with any kind of method that seemed to cut across the board, and so we just had this sort of unspoken agreement to go with whatever.

I did not think about this again until I returned to my notes four months later. I began to think about how laws are separated, compartmentalized, and whether in my conversations

with attorneys this categorization shaped how stories were eventually told? What of the VAWA and U Visas that do not fit squarely into any category, how are those explained and told, and has this shaped women's experiences in these cases? I realized the difficulty Claire and I had categorizing these cases was not based on difference, but based on how this difference was established to begin with. In the same way, the identity of Asian American politics is running up against its steadfast hold on differences as the source of definition and distinction of what is "Asian American." Over the years, institutional and cultural forms of multiculturalism and neoliberal agendas have reincorporated the political uses of "difference." In our contemporary moment we might pursue not a more descriptive definition of how Asian Americans are different, but rather, why the politicization of Asian American identity is so often through attempts to find those issues that are just Asian enough.

I spent two years conducting ethnographic research in the San Francisco Bay Area where I worked closely with a non-profit legal organization dedicated to working with survivors of violence and committing the majority of their resources and grant efforts on immigration and family law issues. In addition to working with the legal center, I also conducted interviews with attorneys, project managers, and administrative staff. The majority of my questions did not ask any specific interpretations of the organization itself or its history. Thus, this dissertation does not provide an organizational study of any single or whole entity. Instead, what I present are stories of particular kinds of interpretations and articulations that represent both a critical mass of viewpoints as well as the absence of them. I also interviewed social workers, women's shelter advocates, and attorneys with organizations across San Francisco, the East Bay, and the South Bay.

They were all organizations serving Asian immigrant communities and I only spoke with staff who engaged on some level with the legal system as part of their work. In total I interviewed nineteen individuals whose organizational responsibilities were predominantly focused on violence against women and immigration.

I conducted interviews with legal advocates from seven different organizations but my participant observation took place only with the legal organization mentioned above. While there, I asked if I could spend as much time as possible with attorneys, program managers, and administrative staff in a fashion that would not take away from the organization's capacity (i.e., the need to oversee me) but rather, allow me to volunteer in a way that would build it. This proved very difficult as the existing channels designed for volunteers were either meant for local law students and these positions were few and coveted. I asked instead, if I could carry out administrative tasks, conduct research, or be asked to take up any unfinished tasks. Throughout the two years I carried out fundraising, administrative, research, and any kind of task as a regular volunteer. We agreed this range of work would pay attention to challenges of capacity that all non-profit organizations must consider when taking on volunteers. While graduate research with an organization can provide for the organization's work and its larger goals, such a relationship must always take into account the limited capacity of the organization.

People asked me, if I was not a law student why did I choose on my own accord to "actually hang around this place?" Such questions were often followed by confusion as to why I wasn't in law school to begin with and instead had chosen to subject myself to an advanced degree where I was not paid to continue "hanging around." While living in Oakland I commuted to both San Francisco and downtown Oakland to work with the

legal center over this two year period. I answered phones, conducted short research requests from attorneys, data entry, completed a research survey and report, filed paperwork and organized boxes, painted walls, produced a newsletter, and assisted with small and large scale funding projects.

After my first year, the organization needed to connect with their local partners who were a collective of non-profit organizations across the bay area serving Asian immigrant communities. Many of the clients at the legal center were referred by partner organizations. I helped design a short series of questions to ask each partner for feedback on their experiences working the organization, evaluation of current legal needs, and suggestions for future changes and improvements in the overall procedure through which legal services were organized across a range of non-profit organizations. While this project was completely designed for the organization's own evaluation needs and none of the questions or the report I produced spoke directly to my own research, I was able to meet many other individual advocates through this experience. Indeed, it was through this project that I came to understand how far the legal process reached and eventually defined "legal advocate" in my own research to include more than simply attorneys. That is, the relationships attorneys had with their clients was very much a relationship that included shelter workers, social workers, translators, and community organizers, all of whom were part of the legal process for any one case.

I began to proxy for staff members at local coalition meetings with immigrant organizations across the bay area. Often these meetings were on topics that were not pertinent to my direct line of research but the relationships built as I served as a proxy were invaluable. I was constantly thinking through my position as a researcher and as a

member of the larger and broader Asian American social justice advocacy community. While my work as proxy was very minimal, the constant attendance of meetings, summarizing meetings with notes, and checking-in with those staff on behalf of whom I represented at that time, resulted in an incredibly rich and invaluable insight for my own research. I was able to see how anti-violence work was part of broader political organizing with non-profit partners.

When I spoke with legal advocates about their experiences navigating the legal system, they often shared stories about the clients they worked with and the partnerships formed with other non-profit organizations. I was never told specific names or details about any particular client's cases for reasons of confidentiality. Thus, the advocates I spoke with and I were always aware of the mixing of fiction and fact in our interviews and our casual conversations at meetings or in passing at offices. They used fiction to articulate non-fictional interpretations of law and women's experiences.<sup>19</sup> Lila Abu-Lughod argues all truths are partial truths that can be partially told, unfinished, or partially heard (1991) which does not suggest they are any less "true" or less real, but rather, the possibility that "truth" can be whole and discreet is itself a fiction. Abu-Lughod further argues, not only are truths partial they are also, and always, positioned.

My dissertation provides positioned partial truths that do not tell origin stories of any one person's advocacy work or any one organization's history in the Bay Area. What is positioned however, is the racial and gendered representations of women in contemporary political debates and legal practices across the San Francisco Bay Area. In

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<sup>19</sup> I should be clear that the fiction used to speak truth ought not to be confused with the *legal fictions* that I argue are inventions of the law. I discuss fiction in ethnographic practice and writing in my second chapter and legal fictions as a genre of law's production in the third chapter.

this dissertation I focus on positioning the racial and gendered figure of immigrant women in Asian American anti-violence and immigrant rights politics. I discuss the local landscape through political debates and legal phenomena my interlocutors identified as specific to the San Francisco Bay Area's contemporary moment and its larger political history. Thus, I couch my discussions of the particularities of legal service work at the everyday and minute level within the broader politics around immigration and violence against women across the region. Many of my conversations with my interlocutors focused on very specific and very small rules. Their stories about what a rule was, how it governed the ways in which clients applied for legal relief, and how they organized to shift or reform a rule, was the very backbone of legal work with Asian immigrant women. These stories are fascinating. They are insightful and enraging. The careful description of how one does what one does, was always and already an interpretation of the way race, gender and citizenship were given meaning through the legal process.

I analyzed archival material on the Immigration Marriage Fraud Amendments housed within the National Archives and Record Administration in Washington D.C. I drew print and video records from the history office of the United States Customs and Immigration Service (previously the Immigration Naturalization Services history office) in Washington D.C. I also read and analyzed Congressional hearings on immigration reform, violence against women, and counter terrorism and national news coverage from the late 1980's to the early 2000's. Many of my demographic and statistical data were taken from publications from the Congressional Research Services, the Congressional Quarterly, publications from the Federal Bureau of Investigation, and received from

Freedom of Information Act (FOIA) requests to the Department of Health and Human Services, the Department of Homeland Security, and the Board of Immigration Appeals.

All names are anonymous throughout this dissertation. While the majority of interlocutors chose to have their names printed in this dissertation I do not identify any one individual or organization. One of my first interviewees was very hesitant about my printing the names of public figures, places, or groups. A news reporter interviewed her earlier that year and quoted a few comments that her organization had made about immigration agencies. The day after the story was printed she received two phone calls from immigration and one from local law enforcement questioning her for her comments. Because of the nature of her work, she was concerned that her “cooperation” with law enforcement would be questioned and she needed their cooperation in order to complete work for her clients. I make all names and organizations anonymous in order to be accountable the political conditions this attorney was willing to share with me and for consistency throughout the dissertation.

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**CHAPTER TWO: Against Evidence as Experience: Fiction's Role in Feminist  
Ethnographies of Violence**

**Introduction**

Jill: You know the issues are very important, there was a Chinese girl, actually sisters, three of them and they were abused by the same man who kept them locked up. He was the husband of all three sisters. Then they escaped.

Me: What happened?

Jill: They walked for a long time and started their lives in a separate village. It was very terrible the abuse, very terrible. It's OK now I think. The people in the village helped them.

[Phone rings]

Me: I'll get it. Hello, Legal Center, how may I help you?

Jill and I met in the Bay Area during the sixteen months I spent conducting ethnographic research with attorneys, organizers, social workers, and women's shelter advocates who worked primarily with Asian immigrant women and their communities. She worked with a legal center near downtown San Francisco and we often sat next to each other on days I volunteered with the organization. Our conversation about the sisters continued after I transferred the call and I asked more questions about their age, their parents, and the abuse. Jill's answers were detailed, descriptive, and animated. I then asked how she knew them and she responded, "I don't know them" and I immediately assumed this story about the three sisters must have been a friend of a friend's, or at least someone close to her based on the level of detail and emotional affection she put into describing their experiences to me. But then Jill told me I could watch the same story on my own if I wanted: "I saw it somewhere on TV."

*They weren't real?!*

Later, as I rode the Muni bus home I retold this story to myself. I figured my assumptions that Jill's story was real came from our previous conversation about my work, the people I spoke to, and the struggles I had with research – all of which were to me, quite real. But by the time I transferred to the AC Transbay bus and traveled more than halfway across the Bay Bridge I had completely lost my grasp of the situation. In her five plus years with the organization Jill came across many stories of women at the organization and in her volunteer work in the Bay Area. Yet, the one story she used as a follow-up to her statement "these are important issues," was fiction. Was I less

concerned now that the sisters were visible to me as fiction and no longer as fact? That they were now suddenly characters from a television show and not real women that Jill knew? And why did I feel betrayed by this fiction?

I was bothered and ashamed. Perhaps even fearful that my facial expressions gave away the assumptions I held throughout this conversation, assumptions that stories had to be true if they were to be valued at all. As I felt betrayed by the absence of a true story, I was also pushed to consider the new possibilities that may come our way if we embrace betrayal as a productive mode through which we can understand our desires for stories of truth and their relationship to that of fiction. How does the ethnographer act, knowing what she now knows? Is this conversation between Jill and myself now, somehow insignificant to the study of law? Indeed, how might we consider Jill's particular story fiction within the larger context of her many stories about lived experiences both of her own and of others? I first wrote about this conversation in my fieldnotes. In formal interviews, in conversations that took place in passing, and in meetings, our interactions were always part of "the research" (despite every attempt each of us made to think otherwise). Jill's use of fiction, as an immediate follow-up to our conversation about "important issues" in immigration law, introduced fiction as a way of speaking about both the fictive and the facts that are a part of people's lived experiences.

Our conversation that day was perhaps no different than any other save for the small element of surprise. In our attempts to "get to know each other" she, like many of the other staff, would ask me questions in passing. We usually talked after one of my many panic attacks as a bright-eyed legal receptionist who spoke only two languages but answered phone calls from clients speaking eight different languages. Jill started our

conversation with personal advice couched in the form of questions, Why didn't you go to law school (you should have gone to law school), tell me again why you want to be here (you stick out like a sore thumb). She gave me pointers about my health, we gossiped, and ate pastries brought in from another staff member. But my initial surprise over the mixture between the world of television and that of ethnographic research elevated this seemingly insignificant moment from the level of gossip and pastries to an unforeseen ethnographic moment. Does the appearance of fiction necessarily conjure the absence of truth? And if fiction is used to speak about "important issues" relating to law, can there also be elements of fiction in the law's own telling of who immigrant women ought to be?

### **Fiction and Legal Ethnography**

I am rarely asked why the voices of survivors are not present in this project. At first, I did not think much of this. I eventually came to realize I was never asked this question because it was already assumed a project on violence against immigrant women would undoubtedly include the voices of survivors themselves. Should such a project necessarily include survivors' voices and does the absence of these voices weaken or delegitimize theorizations of gender and sexual violence in Asian immigrant communities? In political organizing and legislative lobbying, a survivor's opportunity to "speak out" and retell her experiences is often upheld as a rare form of empowerment used to "break the silence." The strategy is a response to the historical ways domestic violence, control, and abuse, were silenced. Non-profit organizations and community organizers have sought to develop methods by which survivors' voices are presented in

safe and accountable means that do not place survivors in positions where they have to relive their trauma but rather, where their stories can spread awareness and support changes in law and public policy. This particular practice seeks to make visible what was previously hidden, to reveal that which is unseen, and to rely upon this revealing as the force of political strength. In our contemporary moment twenty years after the passage of the landmark Violence Against Women Act, we are positioned to ask ourselves, what else has this particular strategy produced?

Why does the voice of the silenced survivor reside in political desire and have laws that address violence against women reproduced our inabilities to interpret legal meaning in the absence of such voices? In this chapter I discuss how a specific ethnographic legacy has unfolded from the strategies that seek to unveil the silenced. It is possible and necessary that we theorize the ethnographic dynamics of this legacy without discounting or delegitimizing the influences and impacts such a strategy has had, and continues to hold, in community organizing, legislative lobbying, and public policy work. Indeed, it is precisely because of the profound success of such a widespread practice that we should consider what other ideologies and ways of thinking have become slowly introduced through the proliferation of the voice of the survivor in public service announcements, billboards, commercials, and national holidays.

This chapter analyzes how fiction, fact, and stories have an ethnographic element in the way they operate as political strategies. I argue, experience in legal ethnography is a form of racial critique rather than evidence of the omniscience of law. The chapter considers how fiction appears in ethnographic practice and ethnographic writings that search for truth told through stories. Ethnographic desire for “truth” is a production of

colonial knowledge with roots in structures of subordination and institutional oppression (Smith 1999; Abu-Lughod 1993; Behar 2003). As Audra Simpson has argued in settler colonial societies, the elaboration of objects in ethnography result as an “endurance” of colonial categories and “No situation such as the one we all inherit and live within is ‘innocent of a violence of form, if not content, in narrating a history or a present for ourselves’” (2007). I engage with these critiques as I recount and interpret ethnographic moments where fiction emerged in my conversations with Asian American legal advocates who work with survivors of gender and sexual violence.

This chapter argues legal ethnography is a method that theorizes the relationship between representation and political practice. Rather than argue that legal ethnographies are able to unearth what is invisible or take up experience and storytelling as evidence of a particular legal discourse, Asian American legal advocates use fiction to tell stories they would not otherwise be able to articulate. That is, fiction emerges as a means by which more full and “thick” descriptions were told. Some legal advocates used fiction in order to protect client confidentiality while other cited fictive visual and written works such as the story Jill told. A theorization of the kind of fiction used in specific scenarios is a scholarly project that rests beyond the interests of this particular chapter. Here, I argue that the mere presence of fiction in stories about law raises the need for us to theorize the relationship between experience, evidence, fiction and truth. Whereas scholars have argued that ethnography is able to unearth people’s invisible experiences that have the potential to serve as evidence of the denaturalization of law, I suggest that this approach is short-lived because unearthing can be a form of reinforcement of the dominant narrative used to silence certain experiences. For example, the practice of merely

revealing suggests that ethnographies of violence against women and the law lose authority and “truth” if the voices of survivors are harnessed. I am not arguing against scholarship of peoples, communities, and places that are at the margins of dominant narratives and subversive narratives as well. Instead, I am arguing that when we do this kind of work the theoretical strength does not lie in the newness or the rarity of the object or subject nor does the mere act of studying the unknown automatically translate into significant changes in the field.

As ethnographers we learn about the everyday workings of the legal system, about how legal institutions shape peoples’ lives, and we learn about the ways in which law is understood and interpreted by those who seek it. But rarely, are we ever prepared to unlearn the ethnographic moments we have just participated in. That is, if we are jolted into moments where “true” stories we hear reveal themselves to be fiction, what does this mean for the study of law and ethnographic research? Jill told me neither a full story nor half a story taken to represent a whole. In the past, she had told stories and left names out in order to protect confidentiality. Confidentiality holds certain truths in confidence as a way for the speaker to tell a story without risk. In our conversation about the three sisters however, the usual statements I heard, “I’m telling you a general scenario” or “without naming names” were replaced with, “I saw it somewhere on TV.” The presence of fiction was a betrayal to my ethnographic ear that assumed the absence of truth was occupied only by the need for confidentiality. Here however, not only is fiction used to tell a more full and “true” story, Jill’s use of fiction in a moment we both recognize as “on the record” was not the same as an anonymous story for confidentiality

purposes. Fiction was in actuality Jill speaking truth, her way of articulating the importance of immigration law and “these issues” of violence against women.

The story Jill originally used as a way to translate her emphasis about the importance of legal advocacy work was no less emphatic because it was a televised drama. The betrayal I initially identified as an absence of a true story shored up an ethnographic moment where legal stories are told through the presence of fiction. Furthermore, the presence of this fiction betrayed my ethnographic assumptions that as a researcher interested in people’s lives I would never concern myself with fiction. The televised story about three Chinese sisters and their experiences did not speak to the conditions of this project in the Bay Area, but Jill’s story introduced the component of fiction in legal ethnographic work and the telling stories without the use of legal fact. In this conversation between Jill and myself, what fiction betrayed was not truth per se, but rather, the attachment to whole and discrete truth as the only object through which we study law. Lila Abu-Lughod writes, stories do not merely “lift” or “get behind the veil” and they do not merely reveal the unknown (1993). Rather, stories can actually challenge why and how we look at objects to begin with, be they unknown or familiar. What Jill’s story created was the knowledge that fiction can translate meaning about law, an insight that reminds ethnographers, such as myself, that the relationship between legal advocacy work and legal institutions is interpreted through stories.

After this conversation with Jill I became hyper aware of elements of fiction - can the story of fiction say what the speaker of fact cannot? And does the exploration into stories of fiction allow us other possibilities in our reading of legal facts possibilities to read stories not just about facts, but to read stories into facts (Behar 2003; Cotera 2008).

If fiction crept into conversations about law, then this opens up the possibility that law itself may also compose truth through elements of fiction. This possibility pushes us to rethink the relationship between fact and fiction and to consider the terms upon which we understand and recognize legal fact.

Kirin Narayan's essay "Ethnography and Fiction: Where's the Border?" calls for resistance against the urge to erase borders between ethnography and fiction while at the same time allowing "free reign to our impulses to imagine, elaborate, and distort" when not accurately trying to represent social reality (Narayan 1999). She argues that "finished texts," those polished and well-qualified ethnographies are also, like novels, written through a narrative form. But to erase the borders that form between ethnography and fiction is to ignore the borders that exist within both "genres" and to abandon the potential theoretical richness explorations into the making of such genres may provide. As she writes, "when one shifts attention from reading texts to the micro-practices of writing them" is when the difference between ethnography and fiction become most apparent (Narayan 1999).

Narayan's work written alongside a growing body of literature on feminist ethnographic writing and practice, draws our attention to this difference between the written texts that are blurred between the genres of ethnography and fiction. They argue the blurred borders of written texts are part and parcel to the "work" that takes place before sitting down to write – observing, reading, thinking, and talking. I want to suggest however, that fiction is not simply a question of method in ethnographic writing, it is also a possibility that can become visible during ethnographic moments. For example, the conversation between Jill and myself is an ethnographic moment where fiction is used to

talk about the factual and the non-fictitious. Indeed, Jill could have told, as many other attorneys did, a true yet anonymous story drawn from her many years of experience serving the organization and volunteering in various projects and programs in her community—but she chose not to. Through the careful selection of facts, other staff members I spoke with told anonymous stories as the only way for them to articulate their interpretations of work serving immigrant communities. Their concerns over confidentiality are set apart from Jill’s story of fiction. While an anonymous story of a woman’s lived experience and a story of fiction from television are indeed different modes of speaking, they also share ways of speaking that draw from elements of fiction in order to speak about the law. Stories became in a way, necessary components of almost every interview I conducted and fiction, the screen through which confidentiality could be protected while advocates illustrated how Asian immigrant women were moved within the legal system. And to conceal the identity of their clients, attorneys often used partial facts about the case, revealed only a certain amount of information but did so in order to say something about law that would otherwise remain untold without the use of a story.

Lila Abu-Lughod has argued that the fictitious is not determined by a differentiation from what we believe is real, but rather, the constructed binary between what is “real” and “not real” is itself already fictitious. The stories legal advocates use are no less significant or true if they include an element of fiction, if they only provide a partial set of facts, are few in numbers, or if they lack a “critical mass” of clients (Clifford 1988; Clifford and Marcus 1986). Indeed, legal advocates strategically mix fiction with fact in order to share a more full and descriptive interpretation of

immigration law. Thus, their stories are as Abu-Lughod has argued, partial truths.<sup>20</sup> All truths, are indeed partial truths. Jill's story about a televised fiction ruptures assumptions that ethnography only engages with discrete and whole stories and introduces the element of fiction in ethnography. Such elements, as I have argued, allows us to see more fully the complexities of how stories about law are told through the careful selection of facts and anonymity.

If legal ethnographies seek inquiry into the way law is imagined and lived, Abu-Lughod has further argued that not only are truths partial, they are also and always positioned. In other words, professional, social, and political positions attorneys and social workers occupy shape the particular ways they can and cannot tell stories about law. Some of these stories are fictional creations used to represent a mix of real experiences and other stories are single representations of actual experiences. The mix of fiction and fact is necessary in order for advocates, in the positions they occupy, to speak how they wanted to about the law. This mix of fiction and fact is also cause for ethnographers, to betray our desire for true stories as the only theoretical position from which ethnography has a place in Asian American Studies scholarship.

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<sup>20</sup> Feminist approaches towards ethnographic writing take analyze women as subjects rather than objects and men's others. Scholars who take up this approach in their research and writing have argued that the process of creating a self if done so through the act of opposition to an other inevitably relies on a form of violence that erases and ignores other forms of difference (Abu-Lughod 1991, 140). Thus, a growing body of scholarship argues that the self is always a construction and is never natural, thus, the self is also always split. Abu-Lughod's writing is interested in how this split raises questions and considerations about "positionality, audience, and the power inherent in distinctions of self and other" (140).

## **Evidence and Ethnography**

Joan Scott's seminal essay, "The Evidence of Experience" asks how experience appears in historical text, in what way does this appearance take place, and what is its value in knowledge production? She argues, experience is often offered as evidence that is authoritative, uncontested, and able to stand in as referential. The "appeal" of evidence as a discoverable origin of truth "weakens the critical thrust of histories of difference" (1991). Thus it is not the presence of experience in historical texts that Scott concerns herself with, but rather, particular uses of experience that have been used as evidence. Why, do we desire evidence and what theoretical appeals of our own become fulfilled? When the evidence of experience is written as an origin of knowledge it establishes a fact of difference rather than allowing for an exploration of how differences are established. In other words, differences are rendered to the confines of fact, which hinders the ability of difference to question and deconstruct the naturalization of facts about people, places, and cultures. Even further, when experience stands in for authoritative evidence it is inevitably read as an origin allowing someone's vision (the person who has had the experience) to serve as the foundation upon which explanation, theorization, and description are built.

Scott's arguments are easily read as cautionary tales against engagement with people's experiences even within historical research where the appearance of most experiences come from dead people. But I want to emphasize that it is not the empirical form of experiences per se, but rather the evidence of experience that Scott questions. The appeal of finding, excavating, and harnessing evidence "weakens" scholarship on people's experiences and hinders research methods that seek the difficult task of

engaging with people's experiences. This is a difficult task. Indeed, some scholars have interpreted Scott's article as a call for scholarship to move away from experience, to resist talking or engaging with people's experiences, and to rely instead on how such experiences are produced, manufactured, and reflected as representations in culture and discourse. The interpretation displaces the critique of evidence onto experience thereby severing the theoretical relationship between the two, which is the crux of Scott's analysis. While Scott's article does not discuss ethnography, her insights on evidence speak to ethnographic engagement with experience.

Experience is complex, nuanced, and difficult to ascertain against a legal system built on fact and evidence (Kahn 1999). The difficulty though, gives all the more reason for scholarship to find ways to develop methods that allow us to talk about lived experiences and the law without rendering such experiences as mere evidence. Legal ethnographies are in a way, fundamentally committed to viewing the law as living and understanding how the life of laws are shaped by relationships of power between people, institutions, and the state (Nader 2002). Legal ethnographies have explored how law is practiced in everyday life to examine cultural, political, and social dimensions. A desire to connect broad and large scale laws (legislation, doctrine, constitutions) with localized and specific spaces (states, cities, neighborhoods, tribes) underpins the approach through which the practice of everyday life is most prevalent within the field (Bower, Goldberg, and Musheno 2001; Sarat and Kearns 1993; Sarat and Simon 2003). Multisited projects analyze different regional and geographical locations of people and ideas produced through law and legal institutions operating within transnational circulations (Marcus 1998; Tsing 2005; Riles 2000). Often couched within a comparative framework, the call

for multiple sites of law, legal phenomena, or institutions places emphasis on how things travel, how they are circulated, but still significant in localized or “non circulated” spaces. Additionally, a growing body of literature examines how specific global and international spaces are made through elite actors and social movements not bound to any specific local or non-circulated space but engaged in political strategies with international NGOs and world governing bodies (Merry 2006b, 2006a; Sarat and Kearns 1995).

Each of these approaches develops through methods in cultural studies, anthropology, sociology, and literature, ways of identifying new legal formations. If, as Scott argues, the use of experience as evidence reifies actual experiences themselves, then the use of lived experiences as mere evidence of accepted and unquestioned legal fact reifies universalisms of law rather than denaturalizing or deconstructing the normalization of legal meaning. This is not to argue that all evidence is irrelevant or that researching invisibilities in history is an action of irrationality. Rather, I am concerned with the way in which the complexities of lived experiences are flattened and made to be evidentiary of law rather than constructed or fictionalized by law.

How then, does ethnography approach experience? We might embrace the possibility that experience can come in different forms and not merely through the voice of she who has the experience. Ethnographies of law should also surpass the dichotomy of law/experience as a parallel to real/more-real or phenomena/evidence and engage with experience as a form of racial critique rather than evidence of the omniscience of law.

Jill’s use of fiction pushes us to question not only how experience is equated with evidence but also, how it is we come to perceive certain things as experience in the first place. Her use of fiction to talk about violence as well as other attorneys who use fictive

names, descriptors, and scenarios in order to protect client confidentiality, raise the question of how we interpret such fiction in relation to lived experiences. In my ethnographic fieldwork I did not speak directly with any client or survivors of violence in order to resist ethnographic desires for “true” voices of desire and the deployment of the “evidence of experience.” Indeed, the ethnographic practices of speaking and engaging with legal advocates about their work with the law rather than with survivors themselves, resists this desire by perceiving experience through un-voiced stories.<sup>21</sup> The presence of fiction in legal stories also redefines experience as a non-evidentiary but nonetheless real and significant not only to how Asian American legal advocates articulate their own interpretations of violence and law but how scholars and researchers listen and write about these ethnographic moments. Ethnographic limits of voice can be found “in” what people refuse to tell us. They are not impediments to knowing but rather, limits that can be “expansive in what they do not tell us” and what Audra Simpson has called “ethnographic refusals” (2007). Jill’s ethnographic moment is a practice of refusal. She does not visibly refuse to converse with me or refuse to elaborate on a particular discussion. Rather, her use of fiction instead of her own experience or fictive descriptors of someone else’s experience, refuses the dominant voice through which violence is expected to be heard. As subsequent chapters of this dissertation will show, the law’s solution to the problem of violence against women is not without the practice of violence. Legal ethnographies about the particular set of immigration laws designed to address violence against women then, are particularly positioned to develop methods that are accountable to such violences.

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<sup>21</sup> Further, the practice of asking survivors to re-tell their stories has been discussed itself as a reliving of trauma and violence for survivors.

## **Asian American Experience as Racial Critique**

In 2009, I interviewed Laurie, an attorney whose office was kitty corner to Jill's. Laurie and I met for the first time in the staff kitchen, she was on her lunch break eating leftovers and I was searching in the fridge for non-powdered creamer. As one of the younger attorneys in the office, Laurie was near the end of her first year doing full-time legal work. Born and raised in California her fluency in Mandarin and English were invaluable assets to the organization as she was able to communicate with a large majority of her clients without the need for a translator from partner Asian American non-profit organizations. We scheduled an interview for two months down the road.

My interview with Laurie was an hour and half conversation about her work with domestic violence survivors, women seeking divorces and child custody, and the intersections of family law and immigration law. Here, I want to raise a small portion of our conversation that occurred as almost an after-thought. This brief exchange is not a recollection of what Laurie spoke to me, but rather, what she asked me to speak to her.

Laurie: Why are you asking me these questions?

Me: [Pause]. The last question? Or were you thinking all of the questions maybe?

Laurie: Oh no, no. I'm just wondering, about the questions about law enforcement. Because our clients, Asian women, compared to let's say the Latino community, don't have as many problems with police . . . . The majority of our

clients are married, so we don't need to apply for visas . . . . in comparison they aren't as much at risk of immigration threats from ICE [Immigration Customs Enforcement].

Laurie asked for my response towards the tail-end of our conversation as we discussed the purpose of my research, how I was feeling, and how she was feeling after having such a long conversation. The questions she referred to were questions about the U Visa, available to survivors of domestic violence who needed temporary legal status in order to remain in the United States. In order to qualify, applicants had to obtain certification from qualifying agencies (most often law enforcement) stating their cooperation in the prosecution of criminal activity.<sup>22</sup> I had asked Laurie a series of questions about Asian immigrant women and their experience obtaining these certifications, cooperating with local law enforcement, or cooperating with federal immigration agencies. When she asked, “why are you asking me these questions?” she continued to explain her thoughts on why questions about law enforcement or cooperation with the police seem a better fit for organizations working with Latino immigrant women. Laurie suggested these visas did not represent a “sea change” for the Asian American community – when compared to Latino communities.

I tried to present the best response I could which at the time consisted of no more than a jumble of thoughts about why the absence of a critical mass of Asian immigrant women was not a deterrent for me. I said I needed to think more about her question and spent the next few days wondering, “Am I asking the wrong questions?” Is this not an

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<sup>22</sup> I discuss the U Visa and “cooperation” in full throughout other chapters of this dissertation.

Asian American Studies project, am I not conducting an ethnography pertinent to the field? I wrote these thoughts down in my fieldnotes and did not return to them until a year and a half had past.

Laurie's request for my response and the subsequent jumbled answer I presented lingered in a vague moment between us. This brief ethnographic moment is experience not as evidence but experience as racial critique. The possibility of developing critiques around law enforcement and humanitarian visas are almost foreclosed in Laurie's question and the anxiety ridden confusion as to whether a law, which does not represent a sea change for Asian immigrant communities, should still be part of contemporary Asian American political critique and scholarship in Asian American Studies. It is her very suggestion of what a non-Asian American experience might be that opens up an interpretation of how we might approach Asian Americans, race, and the law. In this way, experience is not equated with evidence and more importantly, the absence of experience is not a reification of how "other" experiences are deemed more appropriate for political critiques.<sup>23</sup> Thus, the response Laurie asks me to speak and my inability to articulate a clear answer was an ethnographic moment of great confusion and strangeness. These moments are the richness through which Asian American experience provides racial critique of how law shapes what we perceive to be, or not to be, an "Asian immigrant" experience. And in turn, what legal solutions have become compartmentalized as only appropriate responses to political issues pertaining to some racial groups and not others.

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<sup>23</sup> This point is furthered explored in my chapter on anti-trafficking and counter terrorism.

While a growing body of literature on the anti-violence movement and the law theorizes the racial context of Asian immigrant communities, a number of studies have explicitly (and in some cases implicitly) defined the particularity of Asian women's experiences through their exclusion from institutions (Wang 1996; Chen 2000).<sup>24</sup> This framework argues the cultural conditions through which Asian women's lived experiences develop are not accounted for in existing remedies sought after by the battered women's movement nor addressed by existing solutions in legislation on violence against. While I do not deny the existence of these "gaps" I question the embedded assumption that legal solutions are able to (one day) wholly address all culturally specific and racially differential needs. Scholarship which defines the particular conditions of Asian women's experiences only as a product of exclusion from "white centered" approach or a "black/white binary" and nothing else, are unable to account for reasons why Asian women are compartmentalized away from other racial groups.<sup>25</sup> More importantly, in our contemporary moment where the Violence Against Women Act and increased humanitarian legislations have sought to include the legal subject of immigrant women by retaining them within the nation-state and legal subjects

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<sup>24</sup> Similarly, Neil Gotanda has argued the Asian Americans are the "other Non-Whites in American legal history as "foreign" and unassimilable within the black/white paradigm (Gotanda 1985). For discussion and critique of this use of Asian American experience as evidence of exclusion and "foreignness" as evidence of the U.S. as a single nation-state see (Johnson 2002; Singer 1998).

<sup>25</sup> Asian American advocates within the anti-violence movement have sought culturally specific resources and programs for their clients. To be clear, I am not suggesting the theoretical approaches above should be equated with political strategies that seek cultural specific programs. Instead, I am arguing that outside the analysis of how "culture" is often invoked as a marker of race by the law, the appearance of "experience" is often written in scholarship as particular to exclusion. For a discussion on how "culture" has been used by courts in domestic violence cases with women of color and how community responses have struggled to operate within such discourses see (Volpp 2000; Munshi 2011; Rudrappa 2007; Dasgupta 2007).

of “foreignness” by bringing them into the nation-state, the exclusionary framework on its own erases women’s experiences and discounts this phenomena.

The notion of difference occupies much of the historical and contemporary debates over how theory should account for race, gender, nation, and sexuality in Asian American Studies. Difference, while impossible to deny as an empirical condition, is a predominant theoretical concept through which Asian American Studies has sought to ascertain its relationship and separation from Asian Studies. By this I mean, difference is often the marker and recognition of specific ethnic Asian nationalisms within the U.S. and difference is used to explain gendered relationships between men, women, and heteronormative critiques of sexuality within Asian American social movements and cultural productions (Lowe 2011; Espiritu 1997; Hong 2006; Osajima 2007; Palumbo-Liu 1999). Lisa Lowe argues it is less meaningful to act exclusively in terms of a single political interest. Scholarship should instead “acknowledge that social subjects are the sites of a variety of differences” (2011).<sup>26</sup> Lowe further argues, theories of difference while seeking to deconstruct binaries have also run the risk of reinstating identity within binaries as we seek to establish particularities that advance the field’s parameters.<sup>27</sup>

What is often difficult in this approach however (and by difficulty I do not mean to delegitimize the call for attending to differences), is the social subject’s position in relation to law, a system of racial representation that does not visibly mark race or gender. That is, the law does not seek to make race or gender visible but rather seeks

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<sup>26</sup> For a broader discussion of Lowe’s work on heterogeneity, hybridity, and multiplicity see (Lowe 1996)

<sup>27</sup> Lowe argues Asian American Studies scholarship should be built around an “Asian American necessity” that is able to both build and resist without reinscribing sameness and excluding differences (2011). For a different approach to racial sameness, see (So 2007)

neutrality in order to establish legal universality. Attending to Asian immigrants who appear as racially identifiable actors in law cases is one way Asian American Studies has documented the role of law within community formations and the role of race in the shaping of U.S. law (Chang 1999; Ancheta 2006; Shah 2001).<sup>28</sup> Additionally, scholars have theorized how the law itself has sought to racially define social subjects and to use this process of this definition to create universal legal meaning (da Silva 2001; Smith 2007; Shah 2001; Haney-López 2006; Han 2008). The immigrant as social subject is without question, a prominent legal position through which racial differences, cultural production, and identity have been theorized by the field.<sup>29</sup> How then, do we discuss Asian immigrant women's experiences if they do not appear as racially identifiable subjects in legal cases because they are not parties in legal cases but are instead applicants whose visa files are not part of the public record? If we write about immigrant provisions within the Violence Against Women Act when does this analysis become specifically Asian American? I venture to argue the field's existing approaches are inadequate for the study of law, violence against women, and immigration. This inadequacy has led not only to the erasure of violence in the study of Asian American community formations, but the erasure of the theoretical insights gender and feminism can bring to the field.

Jill's use of fiction and Laurie's question redefine how Asian immigrant women's experiences can serve as a racial critique of law. The presence of fiction in ethnography

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<sup>28</sup> The exclusion of Asian Americans from the black/white paradigm or from white centered frameworks serve to be two of the most prominent discussions of race and law. For further discussion see (Han Spring 2006; Nopper 2006; Sexton 2010; Rodriguez 2005).

<sup>29</sup> For a discussion over "immigrant" and "settler" and the relationship between immigration and settler colonialism see (Trask 1999; Dean Itsuji 2010; Kauanui 2005)

draws from experience that is not directly “evidence” yet is no less real or true. As a form of racial critique, the presence of fiction in storytelling about women’s experiences challenges how speaking subjects are valued and legitimized as “voice” and as authority. Women’s experience can come from different forms of storytelling and different practices of ethnography. Women of color critiques over the universal feminist subject moved theorization away from the subject in relation to categories of difference and towards theorization of differences within the subject herself (Morenton-Robinson 2002). Aileen Morenton-Robison has argued however the shift has not changed how white feminist discourses on ‘difference’ are legitimated by “deracialised but gendered universal subject” (2002). Laurie’s question, “why are you asking me these questions?” pushes Asian American ethnography to find ways that difference does not reify itself by guiding the quest for difference through the beacon of this very deracialized yet gendered universal subject of “violence against women” of “immigration” and of law. If we take as our starting point, political issues and experiences that are marked as non-Asian American we can move beyond binaries of difference and the limitations in defining the particularities of Asian American experience only through exclusion. That is, in theorizing the legal subject of immigration laws that address violence against women what emerges is not a subject in contradiction to the modern nation-state but rather one that soothes through humanitarianism, one that is to be protected and included into the folds of the nation-state, and a legal subject whose lack of legal status (alien, non-citizen) is the very means by which humanitarian inclusion is granted – not excluded.

## Conclusion

In her writings on feminist ethnography, Lila Abu-Lughod has asked, “Can there be a feminist ethnography?” and suggests that in order to answer such a question we must first understand what difference feminism can make to ethnographic practice and writing. To argue for feminist ethnography, is to argue for “biased, interested, partial and thus flawed project” (1988). Fiction in moments of “ethnographic truth” are flaws. Interlocutors who ask you to explain and demand a response from ethnographers are flaws. Both are flaws that indeed, rupture objectivity and authority.

I have suggested throughout this chapter that we embrace the possibility of being disloyal (Koyama 2006). A disloyalty to voice as authority, to experience as evidence, and to Asian American experience as the only means by which we theorize and understand exactly that – Asian American experience. In her seminal text, *Fictions of Feminist Ethnography*, Kamala Visweswaran suggests we ought to betray the assumption of universal sisterhood, of common ties that render the assumption of differences. She writes:

‘Betrayal’ is the site of multiple and simultaneous confessional modes . . . .

‘Betrayal’ attempts to reflect back at its readers the problems of inquiry, at the same moment an inquiry is conducted, striking the epistemological paradox of knowing through not knowing. The last issue raised is, of course, the problem of knowledge and responsibility: how does one act knowing what one does?

(Visweswaran 1994)

To betray how we define feminist or ethnic specificity as whole and authoritative is the beginning step towards our abilities to actually account for such specificities in the first place and our positions within ethnography. This chapter has documented my first encounter with betraying my own beliefs in how I heard stories and my position and role as an ethnography. I have then argued that we ought to betray the use of experience as evidence and the fundamental frameworks of exclusion in immigration law. Lastly, I have suggested that we betray our reliance on identifiable Asian American experiences as the means by which we identify how we analyze Asian American experience. This set of betrayals allows the experiences of survivors of violence to “speak” and ethnographers in Asian American studies to listen and hold the ability to write about it.

Martin Manalansan has argued that existing Asian American spaces of circulation question the value ethnographers place on multi-sited ethnographies. Citing the space of Chinatowns as a space that is already “multi-sited” Manalansan brings Asian American ethnography to bear as a racial critique of what constitutes a more thick description (Manalansan 2000). The insight suggests that more rigorous and authoritative elements of ethnography should not work to delegitimize ethnographies, which do not possess the same form. Along the same lines, Linda Trinh Vo has argued we must go beyond the form of “outsider-versus-insider” if we are to account for “ethnic ethnographers” and the practices and writings of Asian American scholars working, researching, and writing from within Asian American communities (Vo 2000). Both Manalansan and Vo profess a disloyalty to structures of ethnography that cannot account for the existing dynamics of Asian American ethnographies. In the same way, we should embrace disloyalty to other

existing dynamics of Asian American Studies if we are to be accountable to dynamics within our communities that are shaped by gender and sexual violence and the law.

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**CHAPTER THREE: “Of the Law, but Not Its Spirit”: Immigration Marriage  
Fraud as Legal Fiction and the Shaping of Anti-Violence Legal Advocacy  
Practices**

**Introduction**

I worked with an immigrant woman who was abused during her marriage with a white man. When immigration interviewed her, the official said, “Why didn’t you call the police every time this happened, I can’t believe you didn’t call the police.” He was mocking her. Instead of the solid evidence in front of him he was looking for fraud . . . . so I tell clients, “My goal is not only to get you the greencard, but to skip the interview with immigration.”

Carol, an Asian American non-profit attorney in San Francisco, shared this story as she described why immigrant women who seek protection from domestic violence undergo interviews with immigrant officers in order to apply for a greencard. Carol continued to describe how immigration officers not only sought facts about women’s experiences with domestic violence but measured these facts against the intentions, consciousness, and desires women demonstrated about their marriage to U.S. citizens. The story Carol shares above is about immigration marriage fraud and her goal not simply to obtain a greencard for her client, but to skip the immigration interview entirely.

In the late 1980s and throughout the 1990s Congress debated national efforts to reform the existing immigration system resulting in the passage of a series of legislative amendments to the Immigration and Nationality Act. In particular, the “Immigration Marriage Fraud Amendments of 1986” (IMFA) introduced the potential threat of fraud on nationally syndicated day-time television talk shows, in Congressional debates, and media reports. Originally popularized and narrated as a mechanism to protect white women citizens from being “duped” into marriages with non-citizen immigrant men, the impact of the IMFA’s legal legacy has since then formed one of the primary constraints non-profit attorneys face in their work to help obtain legal protections for Asian immigrant women who are survivors of domestic violence. How, and to what degree, is the protection of immigrant women included as part of national immigration reform efforts? How has the state’s attempts to include and protect immigrant women created both limits and possibilities for racial justice and feminist political practice?

In this chapter, I discuss the relationship between laws designed to detect “immigration marriage fraud” and the racial interrogation of marriages between non-citizen and citizen subjects. I argue “immigration marriage fraud” is a legal fiction.<sup>30</sup> It is through legal fiction that we are able to see the impossibility of immigration marriage fraud as fact and the violence of law immigrant women undergo when asked to prove such facts. Law does much more than establish fact; as a system of representation itself, law constructs fictions that produce meanings of race and gender. This fiction is the measurement against which the law determines legal fact – whether immigrant women

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<sup>30</sup> To be clear, I am not arguing that the law itself is fictive, “semi” real or “quasi” fact (Barsky 2006), but rather, that the law does more than establish fact – it also produces fictions that circulate meanings of race, gender, and nation.

who are survivors of domestic violence display “bonafide love” or “fraud” based on a desire for U.S. citizenship. Unlike the law’s marking of immigrants as “illegal,” determined by the act of breaking a law, “fraud” can function in the absence of a broken law. The search for “immigration marriage fraud” between non-citizen and citizen subjects surfaces when the consciousness and desires of immigrants are determined to be not of “good faith.” In legal discourse and practice, fraud is not determined by the act of crime, but rather, the determination of whether immigrants who are legally in the United States are “of the law but not its spirit.” As legal fiction and not criminal fact, fraud shifts how studies of immigrant communities and the law theorize the meaning of race and the production of racial identities. Whereas the racial figure of the “illegal immigrant” is the site through which the racialization of immigrants and their place as citizen-subjects of the nation state are contested, theorizations of illegality cannot account for the racial production of “immigration marriage fraud,” which is not based on illegal presence or putative citizenship (Ngai 2004; Luibhéid 2002; Cantú 2005). The racial subjects produced by immigration marriage fraud are not excluded, criminalized, or held back from participating in political, legal, or cultural forms of citizenship. Marriage fraud as legal fiction, has played a much larger role in racial and gendered identity in Asian American Studies than has been previously granted attention.

This chapter begins with a discussion of ideas about “the family” and the “spirit of marriage” that circulated during the political debates of the late 1980s and 1990s. Comprehensive changes were made to existing immigration laws during this period which left a recurring trace throughout my conversations with Asian American attorneys and women’s shelter advocates in the San Francisco Bay Area. I discuss how attorneys

working on domestic violence cases with immigrant women were often charged with “coaching” and how this charge stems from the racial politics of “immigration marriage fraud” debates at the turn of the century. The chapter ends with a discussion of how immigrant women married to U.S. citizens are asked to speak without translation. I theorize how this sets a condition of impossibility for immigrant women asked to disprove fraud.

### **Immigration Marriage Fraud Amendments**

The Immigration Marriage Fraud Amendments (IMFA) passed relatively quickly in the late 1980s before stringent immigration reform efforts were passed at the federal level and California’s massive anti-immigrant ballot initiatives dovetailed with Clinton’s War on Drugs (HoSang 2010; Takagi 1992; Ong 1999).<sup>31</sup> Immigration reform resulted in a reduction in social services and welfare benefits to immigrants, increased deportations, and at the same time created new family preference categories to ease the immigration backlog and “reunify” families (HoSang 2010; Hing 2006; Ong, Bonacich, and Cheng 1994). The IMFA and racial theorizations of “marriage fraud” have been relatively underanalyzed in scholarship on immigration and Asian American communities despite the prevalence of “fraud” as a racial marker of Asian immigrants throughout U.S. history.<sup>32</sup>

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<sup>31</sup> Most notably, the reduction of social services, welfare, and increased levels of deportation set in motion by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The IMFA sought to amend the existing Immigration and Nationality Act (INA), the backbone of U.S. immigration law.

<sup>32</sup> Sociological and political studies have analyzed how campaign finance debates invoked narratives of “traitors” and “spies” to explain the potential threat of Asians within the nation-state as frauds. Similarly, literary studies of the “cheat” and the

National debates over immigration reform in the 1980s centered on the social and political formations of the family as a preferential category and what the Wall Street Journal reported as the phenomenon of “illegal immigration and its handmaidens -- cynicism and fraud” (Levy 1986). Efforts to reform the existing system focused on “the family” as a central ideological component for managing immigration, and “the family” was the main framework through which welfare reform, crime control, visas, and social services were debated (Hing 1993, 2006; Gabaccia 2006; Hondagneu-Sotelo 2003; Naber 2007; Bosniak 2007).<sup>33</sup> Changes to the number of student visas, asylum practices, workers visas, and greencards were debated over a decade-long period and the family stood at the forefront of what Senator Allan Simpson referred to as an issue “filled with emotion, fear, guilt and racism” (CQ Almanac 1987; Pasztor 1986). Executive directors from non-profit organizations, business executives from the private sector, representatives from the armed forces, and researchers from public policy think-tanks testified before Congress in a long series of hearings. They testified both for and against the moral framework of family reunification.<sup>34</sup> Stories about families were, and continue

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“chinamen” as racial and sexual threats have also touched upon how Asian literary figures are narrated as frauds. Despite this presence within Asian American Studies scholarship, there is little theorization of fraud within the specific context of “immigration marriages” and the racial and gendered identities of Asian immigrants. I suggest this lack is due in part to how little attention is paid to the role of anti-violence politics in Asian American organizing spaces.

<sup>33</sup> As the backbone of federal immigration law in the United States, the Immigration Nationality Act of 1965 abolished national origin quotas and the exclusions and restrictions previously placed on immigration from countries across the Third World (Gotanda 1999; Ngai 2004; Park 2004).

<sup>34</sup> Patricia Hill Collins has argued that the family is an ideology and a “principle of social organization” that links hierarchies of gender, race, and nation yet naturalizes this organization so as not to appear hierarchical (Collins 2000, 86). Along the same lines a number of scholars writing on gender, sexuality, race and racism, have theorized the formation of state power through the figure of the family as a rhetorical device carrying

to be, at the forefront of legislative efforts to increase the number of immigration visas granted by the state per year, to secure more funding to process and clear out the immigration backlog, and to provide comprehensive social services and benefits for recent immigrants.<sup>35</sup>

In 1986 the Immigration and Naturalization Service (INS), introduced “immigration marriage fraud” as a newly emerging threat against the sanctity of American families and the true “spirit” of the American legal system.<sup>36</sup> The resulting

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ideological persuasions in political debates over abortion, reproduction, land rights, religion, and popular music (Dobash and Dobash 1998; Eskridge and Hunter 2004; McClintock 1993; Reddy 2005; Smith 2005a).<sup>34</sup> In his work on the figure of the queer and the death drive of contemporary politics, Lee Edelman argues the future is fantasy for politics and the Inner Child transmits the social order of the future’s “perpetual horizon,” “. . . . we are no more able to conceive of a politics without a fantasy of the future than we are able to conceive of a future without the figure of the Child” (Edelman 2004, 3,11).<sup>35</sup> Narratives of immigrants as “fraud” and immigrants as “family” ran simultaneously alongside each other during the legislative reform efforts of the 80s. They fell within a context where massive cutbacks to social welfare programs took place and President Reagan’s “War on Drugs” resulted in the wide sweeping “Anti-Drug Abuse Act” of 1986 and the introduction of national “Lock ‘Em Up” policies that emphasized punishment over rehabilitation ((P.L. 99-570, 100 Stat. 3207). Through the mid 80s, mandatory minimum sentencing for drug offenses was established even while actual drug use at a national level was at its high in 1979, and began declining by the early to mid 80s when the actual “War on Drugs” began (Mauer and Chesney-Lind 2002; Mauer 2007). Scholars have documented correlating relationships between rising criminalization practices over “domestic” poor and working class communities of color and increasingly stringent border policing and surveillance over “foreign” immigrant communities. The 80s are no exception. The Sentencing Project documented statistics collected from the Bureau of Justice Statistics: Drug arrests tripled in last 25 years; Drug offenders in prison and jail increased 1100% since 1980; Nearly 6 in 10 persons in state prison for drug offense have no history of violence or high-level drug selling activity; African Americans are responsible for 14% of regular drug use, but comprise 37% of those arrested for drug offenses, and 56% of those in prison for drug offenses.

<sup>36</sup> The Immigration Naturalization Service under the Department of Justice was abolished in 2003 by the Homeland Security Act of 2002. The INS split into three separate agencies placed under the newly formed Department of Homeland Security: United States Citizenship and Immigration Services, United States Immigration and Customs Enforcement, and United States Customs and Border Protection. For further history on the INS see (Congressional Quarterly Almanac 2003)

“Immigration Marriage Fraud Amendments” (IMFA) passed quickly through Congress and garnered fears that a rising number of marriages between non-citizens and U.S. citizens were not “bonafide” forms of love and were instead acts of fraud and deception perpetrated by immigrants seeking citizenship through marriage. The INS and Congress cautioned against any legislation increasing the number of temporary visas available to immigrants without first strengthening measurements to ward off the potential of marriage fraud. The figure of the family as a site through which the nation imagines its future and the protection of this future against “fraud” were the two primary competing narratives during the 1980s and 1990s immigration debates.

Shortly after the passage of the IMFA, the Judiciary Committee’s Subcommittee on Immigration, Refugees, and International Law held publicly televised hearings on the general state of immigration in the United States. These hearings would later result in massive changes to the Immigration Nationality Act in 1990.<sup>37</sup> On November 29<sup>th</sup> of that year, President Bush said current legislation met “several objectives of this administration's domestic policy agenda — cultivation of a more competitive economy, support for the family as the essential unit of society, and swift and effective punishment for drug-related and other violent crime” (Biskupic 1990).

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<sup>37</sup> 1990 Immigration Nationality Act, [PL 101-649](#)(S 358).

“Amend the Immigration and Nationality Act to change the level of and preference system for admission of immigrants to the United States and to provide for administrative naturalization. Introduced by KENNEDY, D-Mass., Feb. 7, 1989. Senate Judiciary reported, amended, June 19 (S Rept 101-55). Senate considered July 11 and 12. Senate passed, amended, July 13. House Judiciary discharged. House passed, amended, Oct. 3, 1990. Senate agreed to conference report Oct. 26 (H Rept 101-955). House agreed to conference report Oct. 27. President signed Nov. 29, 1990.” (“Public Laws, 101st Congress, 2nd Session” 1991)

The national push to recognize fraud mirrors what Sherene Razack has called the “simple logic” of immigration (Razack 2002). The logic narrates its “simplicity” through a two-fold argument where immigrants are perceived as always seeking to trick the nation, and the nation’s “logical” response is based on a need to always defend itself.<sup>38</sup> In the political context of the IMFA, this simple logic unfolds as the battle against fraud is waged to guard against the introduction of immigrant families and immigration marriages as potential threats to the “spirit” of marriage and the family unit. In addition to Congressional hearings and televised news coverage over these debates, high-level INS officials appeared on day-time talk shows Oprah and Sally Jesse Rafael to discuss immigration reform and heighten the public’s sense of “immigration marriage fraud.”<sup>39</sup> Professor Alexander Alienikoff, quoted in the Wall Street Journal, argued that “the myth is over . . . of the immigrant who sells the farm and buys a steerage ticket to come to the United States. . . . 'Give me your tired, your poor' has turned into 'Give me your families, your skilled laborers’” (Levy 1986). Presiding over the Senate hearings, Chairman Bruce A. Morrison argued that immigration in the 1990s would be of the “New World” with

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<sup>38</sup> Immigration, in this way, can be seen as an anchor of administration for the modern nation-state and one which governs people through the way they govern themselves in a productive manner by participating and engaging with the state. I am drawing broadly from Michel Foucault’s theorization of governmentality as a theorization of state power where the state is faced with “the problem” of “how to govern,” where the productive powers of “government” are not simply to rule by repression but to govern down through regulation of populations and up through the discipline of people who in turn, govern themselves (Foucault et al. 2003)

<sup>39</sup> It is within this historical moment that Congressional members began to introduce a slew of additional bills. These bills placed stringent restrictions on immigration and social services to immigrants and expanded the range of conditions for criminalization of immigrants. Most notably, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), and the Immigration Reform and Control Act (IRCA) of 1986 (Pear 1984; Senate 1986).

families at the forefront of the nation's ability to “. . . maximize the diversity of opportunity from which this immigrant society is drawn . . .” (1989, 2).

The Congressional hearings spanned three days and 3,000 pages of reports, debates, and opening and closing statements of “mediation between the individual and the nation” (Chock 1991). Testimony from individuals like Cecilia Munoz from the National Council of La Raza, Donald Martin from the Irish Immigration Reform Movement, Melinda Yee from the Organization of Chinese Americans, and members of the Catholic Church and the American Civil Liberties Union gave testimony favoring the inclusion of different racial groups in future immigration laws. The racial difference that marked immigrants became visible through the narration of how immigrants would fit into the inclusion of the nation's future: “Family immigrants clearly do more than fulfill our humanitarian objectives, they become hard working members of the labor force, enriching the economy as they do the society” (1989, 203).

Howard Hom's testimony before Congress sought to express the welfare of Chinese communities as not exclusive to Chinese people but of national interest in maintaining the family in immigration law:

The debate the past several years has been centered around how new seed immigrants cannot come to this country because the current system is skewed towards family members and those with specific jobs. But the law was written this way after a careful analysis that it was in the national interest to give priority to preserving the family unit and then to those who can fill jobs here. Those without these ties to the United States were given the lowest priority. If it is the sense of

the Congress that this non-priority group be elevated in status, I say, ‘fine’ but in the process why must the family unit be sacrificed? (1989, 288).

Hom’s articulation of “seed immigrants” described those who were marked as directly outside the social formations of family. The “seeds” were foreign nationals – generally individual workers or students with no relation or ties to families already residing in the United States. Further, if there was no family tie demonstrated by U.S. law then the “seed immigrant” as a legal subject was in actuality an anti-family formation.<sup>40</sup> An existing body of literature by women of color scholars, feminist theorists, and ethnic studies scholars have documented the figure of the family within immigration reform debates as a site of production for heteronormative national narratives (Leslie Marshall 1984; Andree 1985a; Bureau 1985). It is within these debates over family reunification and immigration reform that marriage fraud was televised as an equally important national concern. As INS Commissioner Alan Nelson testified before Congress, “If the reunification of families is a priority of this nation, we should assure that families – and not the paper creation of families – are being reunified . . . .” (Immigration Marriage Fraud S. Hrg 99-325 1985). This call to remember the warning against the “paper

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<sup>40</sup> Nicholas DiMarzio speaking in reference to God’s will and that of the Catholic Church represented himself on behalf of organized religious groups across the United States, many of whom were active in social and political organizing for immigrant rights and sanctuary for those who sought asylum from political persecution. His testimony dedicated a large section of his concern to the “fifth preference” category that benefitted married brothers and sisters of U.S. citizens and restricted the number of *unmarried* brothers and sisters applying for visas. DiMarzio’s testimony argues “While bonds may change as individuals marry or grow older, that change does not intimate a qualitative difference in the relationship . . . It is dishonest, then, to *simply* determine that siblings overseas are somehow not a true part of the original family unit . . . .” (1989, 296).

creation of families” has left a larger legacy beyond public debates, television talk-shows, and Congressional hearings.

INS Commissioner Alan Nelson testified:

Most aliens are ineligible for visas because they have flaunted the law . . . . the aliens then go on to violate the law again by entering into a fraudulent marriage to fulfill the letter of the law, though not its spirit . . . . (Immigration Marriage Fraud S. Hrg 99-325 1985).

The law asks we conflate immigrants marked as “fraudulent” with those marked as “illegal” — both subjects are read to pose a threat and require legal remedies to regulate the nation’s borders. Yet, the subject of fraud not only enters the United States legally but is narrated as the bearer of foreign finances, as someone who can provide funds to U.S. citizens in marriage, few in number, and as a threat already included amongst our own. The “illegal” subject is marked as posing a threat from outside the nation not within, is seen as opening the “floodgates,” is blamed for draining economic and social resources from the state, is already excluded from the state, and has committed a criminal act in order to enter the nation.

Whereas existing laws mark “illegal” subjects as those who have already broken the law and are marked as deserving recourse via punitive measures, the immigrant who “frauds” is of “the letter of the law, though not its spirit” (Immigration Marriage Fraud S. Hrg 99-325 1985). The “crime” the law desires we hold immigrants accountable for is measured by the interiority of the subject and whether her consciousness is “of the spirit.”

Unlike the “criminal” who the law determines ought to know the law but has still continued to break it, the subject who frauds must also know the law but is still imagined to be a threat to the law regardless of any act to break it. Indeed, it is the absence of a non-negotiable, non-debated act that allows for the fantasy of fraud to continue. This absence is what drives the law’s requirement that “bonafide” love be proven as legal fact between non-citizen and citizens, despite the violence Asian immigrant women may endure.

In our contemporary moment, attorneys and women’s shelter staff tread through explicit as well as hidden moments where “simple logic” plays out in their clients’ experiences. Often faced with having to question whether they are seen as potential frauds, immigrant women who navigate the legal system need the complex set of rules translated, explained, and de-mythologized. In my conversations with Asian American attorneys across the San Francisco Bay Area I often asked for this translation and an explanation of the rules: how does one go about seeking a greencard? How does this change if the client is a survivor of domestic violence? What are the steps from start to finish for a visa application? On many occasions, a long-winded explanation of a single rule would often end with “this is because they are worried about fraud.” But as all traces of discourses and racial meaning have in history, the legal legacy of the IMFA shapes not only specific charges of fraud but also the intricate and everyday engagement immigrant women and their attorneys undergo as they walk through the step-by-step tasks of seeking a greencard or a visa, filing for a divorce, or obtaining a restraining order. Indeed, it is perhaps these areas of legal experience that are not highlighted as examples

or evidence of “fraud” that can reveal the extent to which this simple logic shapes politics, culture, and law.

### **“Coaching”**

Carol: I’m not talking about coaching clients. We just need to prepare them for what to expect, it’s my job. I know they know it’s not going to be touchy-feely, but most cases, clients are never really prepared for what they have to endure.

Me: Oh, I wasn’t thinking about coaching, but just so you know, I have no problem with it!

Carol: But we really aren’t coaching our clients.

Me: I know, I just meant . . . . (struggling to change the subject)

This was a very awkward end to an incredibly amazing interview. Carol, a Chinese American attorney, was one of the hardest people for me to schedule an interview with and even though we had talked in passing many times before, I was unable to match her availability for over three months. This brief exchange between the two of us came at the tail end of our conversation. I felt strange about this split between our two different viewpoints on coaching and even stranger about how our words were misread to each other. For me, it made complete sense that a non-profit attorney would want to coach her

clients. Particularly for attorneys working with immigrant women who were unfamiliar with the legal system and potentially the language, I felt it plausible, logical, and acceptable that attorneys coached their clients. Indeed, not to coach a client seemed careless, unprepared, and dangerous. I was actually eager to demonstrate my acceptance and support of coaching . . . until I realized Carol was trying to stop me from thinking her work had any relation to coaching. I quickly learned, “coaching” was not something attorneys wanted to be affiliated with.

It wasn't until I found myself in the National Archives, poring through congressional documents, that I remembered this conversation. IMFA records documented a particular testimony presented to Congressional members during the IMFA hearings. Jose Carnigal from Southern California was called before Congress on July 26, 1985. Carnigal worked for an attorney “in the business of arranging marriages” in Los Angeles (Immigration Marriage Fraud S. Hrg 99-325 1985). He had cooperated as an informant with the Immigration and Naturalization Service's investigation of law firms processing marriages licenses between citizens and non-citizen immigrants.

Senator Simpson: And what was it that you did for him [attorney in Los Angeles] would you describe that, please, for a second?

Mr. Caringal: I was the legal assistant in the law office . . . I will have to coach them on the probable areas of examination down the Immigration. We have some sort of a questionnaire or a question sheet, where we caution the applicants, our client, to master, to avoid getting caught in the Immigration during the interview.

Senator Simpson: What was the coaching? What did the coaching consist of?

Mr. Caringal: The coaching consist of principally the behavior of the petitioner, and the alien during the interview, that they should be very convincing that they are indeed husband and wife. OK. And we coached them on the areas of cohabitation, like they should know the activities of each other, how the house looks inside-you know-their daily activities, the time when they get off, and on to work, things like that.

Senator Simpson: Who hid the toothpaste?

Mr. Caringal: Something like that, Mr. Senator.

Senator Simpson: So that was done just to disclose that they had cohabited, they had lived together, and that that was shown?

Mr. Caringal: Yes, sir.

Senator Simpson: Trying to show habits of a married couple, that was the coaching?

Mr. Caringal: Yes, sir.

After speaking with Carol, I returned to this text and reread this hearing in its entirety. This particular section illuminated the awkwardness between myself and Carol and the quick moment of missed interpretations. In our conversation, it was very important to Carol that she distance herself from the kind of “coaching” Jose Caringal was asked to confess in his testimony before Congress – the coaching that implies a lack of truth and an attempt at fraud. The distance she sought to establish spoke loudly to me and represented the strength and the reach of fraud’s racial meanings for identity and for truth, not only for immigrant women who are clients, but for the restrictions and conditions under which Asian American non-profit attorneys operate. In our conversation, had Carol told me she prepared her clients to explain what kinds of stories would portray “habits of a married couple” or how to explain to an immigration officer why, when, and how a marriage took place, this would have seemed no different than the kinds of “coaching” Caringal performed. This all seemed to me, in this brief moment, practical steps to “prepare a client” and not to establish fraud.

The heightened visibility about immigration marriage fraud shapes the very work attorneys are trained to do. This became laced with impossibility in the post-1980s era. Without detailed documentation from women who had traveled across countries and many of whom no longer had access to their homes, coaching seemed to be a plausible and almost necessary means by which attorneys could best prepare their clients to endure the task of speaking before the law. The difference between “preparing” a client and “coaching,” however, was not only a difference of magnitude, it was now a difference that could determine whether an immigrant woman was a “fraud” or of “good faith.”

## Translation

In 2010 I met Sara in her office in San Francisco. Sara was an immigration and family law attorney, born and raised in the Bay Area, who had worked with her organization for close to four years. Many of her clients were Asian women from immigrant communities, born outside the U.S., who spoke languages other than English as their primary language. Like most of her colleagues at her organization, Sara accompanied her clients to court appearances but spent an equal amount of time with clients as they were interviewed by immigration officers. I asked if she would describe what was most significant about immigration interviews. Sara shared this story:

. . . . for clients where they've married US citizens and then they are abused and divorced, you go to interviews, you file an application and I would have to say that most of the time those interviews are really hostile they are just looking for fraud. They are assuming there is fraud they are assuming my clients married these men to get status... you know I've been refused translators where a client wanted to bring in a translator and immigration [official] said no because they said 'I want to hear her speak in the way that she spoke to him' because he was white and she was Chinese. They didn't want her to have the benefit of a translator because they wanted to see how she was able to communicate with this white guy that she supposedly married in good faith . . . .

Sara's client, a non-citizen immigrant woman asked to "speak in the way that she spoke" to her citizen spouse, was denied translation services in a moment where her position as a

legal subject was ushered by the law towards only one of two separate paths, that of a “good faith” marriage or that of fraudulent one. But since Sara’s client was legally married, the legal binding of this marriage was not under investigation. Thus, the component of “good faith” she was asked to prove seemed to go beyond the contract of her marriage. The law asked instead, that Sara’s client translate the interiority of her marriage with her spouse for the immigration officer, but without an English translator.

The possibility that a non-citizen could tell a true story about a citizen spouse is illegible to the law. Thus, to create legibility, the law removes translation in order to obtain the truth about this particular marriage. This absence of the possibility of truth, not a criminal act, is what rationalizes the removal of a translator. I want to emphasize that my reading of Sara’s story does not see the denial of translation as a legal mechanism used to interrogate “the truth” from immigrant women, for interrogation seeks to find truth from a subject already marked as guilty of a crime. Here though, the law has not marked Sara’s client as guilty of any crime and instead claims to question the consciousness and intentions of Sara’s client. Thus, it is not the non-citizen subject’s actions that the law is able to measure and interrogate, but rather the consciousness, intentions, and desires placed against that of the citizen-spouse.

Sara’s client actually seeks translation in order to speak the truth the law demands of her, yet is denied translation in an act the law declares will allow truth to come forward. As a woman who speaks an Asian language as her primary language, Sara’s client is forced to use English to “speak the way she spoke to him.” She is asked to reenact a marriage she must prove is of “good faith” while at the same time coming before the law because of violence experienced in this very same marriage. If she chooses to

continue without translation she already speaks that which she did not originally intend. She is also placed in a position where the words she speaks without translation are marked as somehow more true than the words she would have said with translation, words which her legibility as a legal subject will now always lack. In a way, the law asks that Sara's client betray herself by speaking in English, a language she has not used since the many months she had been separated from her spouse.

Crystal Parikh has argued acts of betrayal are performances of social difference that mark the parameters of loyalty, agency, belonging, and authenticity (2009).<sup>41</sup> These acts expose social bonds as particular and partial, not as whole, natural, or timeless. While the law asks that Sara's client demonstrate her marriage was "bonafide" through the use of English language, the law also recognizes that Sara's client was indeed already in a legal marriage with a U.S. citizen. Thus, what she is asked to perform is not whether this marriage was indeed a real legal fact, but rather, that her desires and original intentions were to marry this white man out of "good faith." It is clear that in order to prove good faith, she must disprove any desire for citizenship. This is a moment of impossibility. The law asks Sara's client to prove a lack of desire for citizenship by showing "good faith" in a marriage which by legal contract has already offered Sara's client the potential option for marriage due to the citizenship status of her spouse.

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<sup>41</sup> For Parikh, betrayal holds the possibility of unlinking these social bonds and thus, creates shifts in the way we understand ethical being and relationships between subject, Other, and the other others. The larger project asks how the subject of U.S. racial and national discourse, which is already quite visibly not "at home," can find refuge to make a home. Parikh argues if racial minorities are both subjects and objects of betrayal in U.S. social relations then the promise of democratic futures are always and already fraught (22).

Whether the immigration officer believes her client was acting in good faith or whether Sara's client can convincingly speak "the way she spoke to him," neither can avoid the fact that when the officer asks for the removal of translation the law already assumes a foreign element (such as the need for translation) defines the difference between marriages with U.S. citizens and those "immigrant marriages" between citizen and non-citizen. In this moment, where Sara's client must speak without a translator, the law reveals its anxieties about the betrayal of the bonds of national allegiance. To remedy this, the law asks that Sara's client betray herself.

In her interpretation of this client's experience, Sara shared:

So now I know, what I tell my clients, If you are married to a man from your own culture and you spoke the same language then they'll let you bring an interpreter but if you married a white guy, they're not going to let that interpreter in there because they are going to say, like - If you can't communicate with me to tell your story then I can't believe that you were married to someone in good faith because how did you communicate daily with "Joe Schmo" in English. But if you're living day to day with someone who speaks English that's a whole lot different than not speaking it for two years and then going into a stressful interview. . . .

Fraud sets a condition where some act of betrayal must always take place. So long as the words Sara's client may speak are marked as translatable and coming from an origin that is different from her spouse's, she cannot speak with translation. Thus, the only words

she can speak will always and already be measured unequally from her spouse's, as requested, "in the way she spoke to him" not, for example, in the ways they spoke to each other. When translation enters an immigration interview in this way, the absence of translation to seek truth becomes equal to the use of translation to allow someone to speak truth through one language that they would not be able to in another. In other words, translation is used to garner truth from a witness just as the denial of translation is used to garner truth from a non-citizen. Yet the two spouses, one a white man who is a citizen and the other an Asian woman who is not a citizen, are never equal to each other before the law. The law has already asked that Sara's client, and not her client's spouse, prove the marriage was entered into on "good faith" by betraying the presence of citizenship benefits. Sara's client is asked to carry the burden of "good faith" through the absence of English translation and this is a gesture the law can never ask of her English-speaking spouse. Not simply will not, but cannot, because only Sara's client can exchange an origin of difference.

Immigration marriage fraud is a legal fiction that cannot be disproven as its "proof" is based on the absence of a "bonafide" love or "good faith" intentions and desires. Without breaking a law and in the absence of any crime, the charge of "fraud" cannot be defined by an act. Thus, in the absence of an actual act, "immigration marriage fraud" circulates instead as a legal fiction that is accepted and embraced. We might also argue that immigration marriage fraud is buttressed by the larger "simple logic" of the state's relationship to immigrants. How does one show an absence of desire for citizenship when the legal benefit of citizenship is already built into the contract and is designed specifically for immigrant spouses married to U.S. citizens? How can Sara's

client show she does not desire a legal benefit the law already gave her when she entered the contract of marriage two years prior? A “good faith” marriage built on “bonafide” love between a non-citizen and a citizen without any trace of the desire for citizenship is an impossibility. Furthermore, how can Sara’s client show good faith when the law itself, under a commitment to “family reunification” created legal pathways for non-citizen spouses to become U.S. citizens?

Rey Chow has argued, translation asks the translator herself to serve as a mediator between two cultures inherently placed in tension by the need for translation. When the subject whose culture is “Other” is asked to translate, two movements of this translation can occur. The translator is either asked to be a “native informant” and must act as a translator/traitor who betrays her native culture by translating the origin of meaning into another space not of this origin, or the translator is a translator/mourner who cannot fully translate the true meaning of the origin because the origin “is rendered inadequate and inferior precisely through the act of translation” (Chow 2008). Thus, the translation mourns the loss of the original. In translation the original takes precedence. The removal of translation for Sara’s client confuses what the “original” is. Is the original the Asian language she spoke or is the original the English language the judge assumes she only spoke in the presence of her husband? With removal, the court decides English is the original and removes translation in order to give precedence. Without a translator then, Sara’s client becomes, in effect, her own translator. And yet, as translator she must simultaneously perform the absence of translation of a non-original language as the “original.”

## **Fiction and Temporality**

Immigration Marriage Fraud Amendments (IMFA) made several changes to the existing Immigration and Nationality Act (INA) in order to prevent “sham marriages” or marriages determined to be based not on “bonafide” love and instead based on the desire for legal status, or “immigration marriage fraud.” The IMFA introduced a number of new restrictions placed upon aliens who were married to U.S. citizens and legal permanent residents. Most notably, non-citizens were required to remain married for a conditional two-year period at the end of which they must return to immigration and show proof the marriage was still in “good faith.” Existing scholarship on gender and sexual violence cites the IMFA as “locking-in” battered immigrant women who navigate between the risk of deportation if they leave their marriages before the end of the two-year conditional period and the risk of violence if they stay in an abusive relationship in order to prove good faith (Kwong 2002; Bhuyan 2008). Fraud as legal fiction drives the rationale behind the two-year conditional requirement and creates a very particular temporality in contemporary anti-violence work. Now, attorneys and women’s shelter staff must first prove women are of good faith and once proven, can then move on to attempt to prove that violence and abuse were present in the marriage. The temporal sequence couches women’s experiences in the legal fictions of the IMFA.

In 2010, I met Elaine, an advocate with a Bay Area women’s shelter for Asian women and children who recently graduated from a university in the Bay Area and spent the last four years working with the shelter in different capacities. Most of her clients were Chinese immigrant women who had fallen out of status or whose legal status was near expiration. They were all clients who the organization had agreed to work with

because they were survivors of violence and sought divorces, visas, child custody, and restraining orders. As we talked, Elaine was most interested in explaining the step by step procedures she carried out from start to finish:

. . . . we work with [attorneys] to submit all the documents, marriage photos, correspondence, to prove that it was a good faith marriage. But you know Chinese are very subtle, especially if you don't see that person, you don't say, you seldom say I love you on the letter. They say – Oh, your permit, I submit everything to the immigration office, and you should receive a copy of it, within the two weeks, and then say hello to your mother and father, and pay my respects, that I respect and honor them – and that's it. No love letters. Actually, these are not love letters, all are business, like – 'Did you send in your papers, how much did you pay for it, should I send you money.' Those are the things (laughing) so that's why it's hard, we actually from the whole stack of letters, we pick the one that we feel that the immigration officer, may find interesting and also may sense that this is a good faith [marriage], they are establishing a relationship, they are trying to establish a relationship.

She was flustered. There were “no love letters” and based on her past experience and the legacy of popularized “immigration marriage fraud” from the 1980s, Elaine knew the available letter between her client and her client's spouse would be seen as “all business” and not “love.” Lacking and insufficient evidence was a recurring concern. The ability of immigrant women surviving violent relationships to put together evidence, when many

of them did not have access to such evidence and were not in positions of power, often determined whether a client chose to continue with the legal process.

In Elaine's experience, women were often unable to prove "love" based on the kinds of documentation exchanged back and forth with their spouses. As she explained, the documentation her clients presented were all based on "business" transactions and logistics that were the basis upon which her clients and their spouses expressed love. She asked, "what did they [officers] expect? The marriage is between a citizen and an immigrant . . . there's always logistics and business!"

As she described the scenario further, Elaine expressed how hard it was to "establish the relationship . . . we are trying to establish a relationship" that would pass muster as a "good faith" marriage — proof of "good faith" not simply to receive something from the law, but proof in order to even appear as a subject of the law in the first place. Elaine's story was at once an account of those coming before the court to prove their marriages were of good faith, while at the same time seeking protection from the violence of that same good faith marriage. The "evidence" of a love letter strives to serve as a legal fact, but one Elaine shows has already been shaped by the legal fiction of fraud. It is a fiction that imagines non-citizens attached to an absence of a "bonafide" object.

In 2011 I met with Terry, a staff member who worked with a women's shelter in the Bay Area. I asked Terry if she felt there were certain challenges in her work with Asian immigrant women that perhaps other advocates did not necessarily face. Terry told me the following story:

. . . . For our clients, usually their spouses have sponsored them and the law allows them to stay for two years under a conditional period after which their husbands have to apply for a greencard for them. They go back to immigration to verify that they have a son or daughter, or that they are in good faith and married together and the spouse is willing to continue to sponsor her to stay in the U.S. But, if there is domestic violence or a dispute, usually the husband is not willing to verify that their marriage is still in good faith, then there is a problem. So we help women apply for a “waiver” to see if they can obtain legal status without their husbands. We submit to immigration - police reports, medical reports, mental health reports, a letter from a women’s shelter if she was there, a letter from us showing we provided legal services. So all these legal documents have to be submitted after we’ve already proven the marriage was in good faith first, then we prove abuse. But this is an example of a very perfect case. Most often the time, evidence, the lack of evidence, is shaky.

The description Terry shared was an example of a “very perfect case,” which began first with proving a marriage was of “good faith” as a precursor to whether women would even be able to prove abuse in the marriage. Terry interprets the collection of documents to be the “perfect case.” However, it is the temporal sequence Terry describes, and not simply the collection of documents she lists, that define the “perfect case.” In effect, immigration marriage fraud has produced the fiction that if immigrant women are not in bonafide marriages then their subsequent claims of abuse and violence are not of good faith either. While the law claims women are “of the law, but not its spirit” when

charged with fraud, the spirit of the U.S. immigration law is assumed to be just and non-violent.

While the stories Sara, Elaine, and Terry share take place more than twenty years after the passage of the IMFA, the institutional life of these legal rules and their intended focus on “fraud” are able to carry the fictive element of law that was originally created to protect white women citizens from being “duped” into marriage with non-citizen immigrant men. The fantasies these stories created in the late 1980s shaped the limits of legal protection for battered immigrant women in the stories Asian American legal advocates shared in 2009 and 2010.

In 1985, The New York Times ran articles to familiarize the public with the victim of fraud - the mother of white households whose economic responsibilities and emotional burdens explained and outlined their innocence: “Financial plight and emotional needs of women who are raising children alone have made them a popular target for the growing number of foreigners seeking a partner for a ‘green card’ marriage, according to leaders of single-parent organizations and the Immigration and Naturalization Service” (Andree 1985a, 1985b). And at the same time, the INS arranged for testimonies at the 1985 Congressional hearings on the IMFA from white women who were “duped.” High- ranking INS staffers appeared on day-time talk shows to talk about immigration marriage fraud as a phenomenon complete with undercover video recordings from marriage ceremonies and interrogation interviews with immigrants and U.S. citizens.<sup>42</sup> “Who are they?” Sally Jesse Rafael asked on her talk show with specific

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<sup>42</sup> 1985 Congressional Hearing on IMFA, Patricia Beshara and Nancy Marrero: . . . . So he started asking me out, and to use an old-fashioned word, courting me. He could not have been more wonderful. I do not know what your initial experience was,

guests from the INS. On her January 16<sup>th</sup> show in 1991, Oprah requested her audience first, “Imagine you meet and marry the man of your dreams, he is a Latin lover, an amorous Frenchman, or an African prince, he showers you with compliments and fills your nights with passion. . . . American women marrying foreign men, is it for love or a work permit?” (Oprah Winfrey Show 1991).

During the 1985 Congressional hearings, David North and INS Commissioner Alan Nelson assured Congress “not all” immigrants were frauds, not all citizens become duped, and some citizens willingly accepted payment to marry an immigrant. Thus, they suggested U.S. citizens who married “frauds” were not themselves frauds. They were to be differentiated based on the level of their innocence and involvement with fraud. For North and Nelson, the two-year conditional period was the means by which the state could detect fraud in hopes that over time, evidence of fraud would surface. To caution against any claims that the two-year period was unwarranted, North and Nelson reinforced the belief that the INS would develop a system that could determine who was innocent and who wasn’t. They argued there were two kinds of immigration marriage fraud:

Mr. North: . . . there are two different kinds of marriage fraud . . . the one-innocent cases....[and] the no-innocent cases. In the no-innocent cases, the alien

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but, I mean, the flowers, the gifts. He did not want to go anywhere without me. He was the perfect companion. Any suspicions that I might have had were alleviated, and even my friends in Italy said, ‘Patricia, this man is so wonderful; I mean, really, you have just picked a winner.’ This happy state of affairs continued until we got married (1985, 9).

pays money to the citizen to go through a marriage that both [parties] realize is fraudulent . . . . [in the one-innocent cases] the alien woos a citizen, or a greencard holder for the purpose of securing an immigrant visa. The no-innocents cases are easier for the INS to do something about. It is not easy to do anything about any of them, but they are easier to cope with than the one-innocent case.

. . . . the woman [Ms. Marrero] who was sitting here just a few minutes ago was an innocent, and she could not tell the INS, at the moment she was filing for an immigrant visa, or the consular officer in that case, that there was anything wrong, because she did not think that there was anything wrong . . . . (57,1989).

North argues “one-innocent” cases are marriages where a citizen spouse is the one who is innocent. The “no-innocent” cases are where both the citizen and immigrant are marked as entering a marriage without bonafide love. In their intentions for the law to be fair and just, Nelson and North actually reveal that the law’s ability to determine one-innocents from no-innocents is a legal fiction. As North argues, it is the one-innocent cases that prove difficult for the INS. What does it mean when the law has to prove that a citizen was unknowingly in a marriage that was not based on bonafide love? To prove that a citizen entered a marriage that was not of “good faith” but believed it to be of good faith the whole time? It is the “no innocent” cases where both parties are culpable that North argues are “easier for the INS to do something about.” In his argument he references testimonies from U.S. citizens, women who were married to immigrant men. Both North and Nelson speak of the possibility of innocence only when referencing the participation

of citizens and never raise the possibility that immigrant spouses might be the “one-innocent” in cases of abuse.

Ms. Marrero, the woman who could not tell the INS “that there was anything wrong” had received payment to marry an immigrant. Marrero was referenced as an adult entertainer in New Jersey who was asked to marry an immigrant man in exchange for monetary payment of \$10,000 and offered an additional compensation of \$1,000 for every woman she referred as a possible interested spouse. Despite this, Nelson and North argue that Ms. Marrero is the “one-innocent” because by cooperating with law enforcement and agreeing to testify before Congress she proved she did not desire to fraud the state. Cooperation with law enforcement sets the stage for how innocence is determined.<sup>43</sup>

Senator Simpson: And your agreeing to go ahead with that situation, what were some of your thoughts as to why that was good for you?

Ms. Marrero: I was OK until I received the papers, the application for immigration, and then I started reviewing over it, and when I got to the part that said 10 years imprisonment if you get caught, I thought, oh, my God, what am I doing? and I was a little scared and sorry that I did it, and it was already too late, but it kept me from being pushy, and more hesitant, and so I finished, went through with it. And the Immigration Office was really-it was fast, simple and easy, and completely surprised me, but I was still scared and conscious of it afterward, but it was too late.

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<sup>43</sup> I return to this point in later chapters that discuss how law enforcement seeks cooperation from immigrant women.

I had already done it.

Senator Simpson: But the money was, I am certain, a great part of that [decision], was not it not?

Ms. Marrero: Yes.

Senator Simpson: I mean was that one of the reasons you did it?

Ms. Marrero: That was the only reason I did it.

Senator Simpson: The only reason?

Ms. Marrero: Yes.

. . . .

Senator Simpson: Well, let me thank you very much and let me note for the record that Miss Marrero fully assisted the Immigration and Naturalization Service in the investigation of this marriage arrangement, and served as a key witness in the INS's successful prosecution, and I thank you . . . . You have, through your own sharing and willingness to expose your vulnerability in the situation. . . . And I think it is very real, or I would not have had this hearing. I do not do hearings to see how many people will show up or how many lights will bounce off my bald dome . . . .

The Senator calls Ms. Marrero to testify and exemplify what the INS would describe as a successful prosecution of immigration marriage fraud. What plays out in this line of testimony, and continually throughout the hearing, is the establishment of how “innocence” is defined through its opposition to “fraud.” Conducting a hearing based on what the Senator argues is the revelation of truth and not the mere desire to show “how many lights will bounce of [his] bald dome,” Ms. Marrero’s innocence is articulated twice in this hearing. The first occurrence takes place when she is recognized for her cooperation in the investigation, rendering her role as a snitch to be the definition of her “one-innocent” position. Secondly, she is repeatedly asked to state she married an immigrant only for monetary exchange and not a desire to fraud. As Simpson continues his line of questioning, the monetary exchange differentiates Marrero as innocent for receiving payment and immigrant men as frauds for giving payment.

Marrero’s testimony was given during a three-hour section of the hearing documenting stories of successful INS prosecutions, but it is not the prosecution itself we ought to dispute. Rather, the continual reference to the act and fact of fraud throughout this hearing and the subsequent passage of the IMFA disputes the fact of fraud by revealing its impossibility as a crime or illegal act. Even attempts to prove what fraud is not depends on creating a fiction that one kind of “bonafide” marriage exists which cannot possibly include monetary exchange or pre-arranged conditions. If fraud can be defined from what it is not – the “bonafide” and true marriage – only then can the INS claim to be able to determine clearly and justly what “innocence” and “fraud” is. But as Sara, Elaine, and Terry’s stories have shown, this is indeed a legal fiction.

## **Conclusion**

Throughout this chapter I have argued that immigration marriage fraud is a legal fiction that produced the racial figure of immigrants as frauds through their interiority and the establishment of what the “spirit” of immigration law should be. Immigrant women who are asked to prove they are not frauds are placed in positions of impossibility when asked to prove a desire for a legal benefit that is already built into the marriage contract they entered. Fraud implemented changes to existing immigration law in the late 1980s in order to protect the sanctity of marriage and to ensure white women would not be “duped” by fraudulent immigrant men. Since then however, the legal fiction of immigration marriage fraud’s legacy has shaped how immigrant women seek protection from the law when they are in abusive marriages. The legacy’s changes to the legal system have in turned created an awkwardness and hesitancy through which Asian American legal advocates explain and defend why and how it is they do what they do.

Oddly, as I have argued that the figure of the family is narrated as the centerpiece which rationalizes certain kinds of immigration reform efforts in the 80s, I found in my conversations with advocates in 2009-2010 that “fraud” was often the centerpiece of the stories advocates told me about immigrant women and the legal system. The nuanced narratives about fraud, the threat of fraud, the remedies to fight fraud, or the undue prioritization of fraud, resurfaced in my conversations with social workers and attorneys from the anti-violence movement in Asian immigrant communities. Indeed, I never once had a conversation with an attorney or a social worker about violence and immigrant women without a reference to fraud and the law. Fraud is a legal fiction produced by the racial othering of immigrants who have broken no law, for they are here legally in the

United States as immigrant spouses; but they constitute “fraud” because they do not embody “the spirit” of marriage law. Because “fraud” is a legal subject who has not yet come into being, but is temporally located in the future as potential fraud in immigrant marriages, we need to consider the role of affect in the making of legal subjects (Buchanan 2009). The racial subject of immigrants as “frauds” was articulated by a mix of sources from cultural production, news media, and governing institutions at a moment where national changes were taking place to “reform” federal immigration law.

Immigration marriage fraud is a legal fiction that has designed how women prove their marriages are “of the spirit” in order to again prove that these same marriages were relationships of violence. At the same time, a number of survivors of violence have been trafficked or live under forced conditions as spouses of U.S. citizens in marriages that are pre-arranged to result in servitude, violence, and control. Are legal mechanisms designed to prevent immigration marriage fraud used in these situations? Future scholarship stands to grapple with these complexities.

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**CHAPTER FOUR: Legal Protection as Legal Exchange: Violence Against  
Immigrant Women as the Establishment of “Cooperation” between Law  
Enforcement and Immigrant Communities**

**Introduction**

I mean honestly, this is a criminal law issue, women who are battered are protected by the criminal law system, people who are being trafficked are being protected by the criminal law system. How do you propose to stop or ameliorate it, if you stop working with law enforcement agencies? Is there a way, can you think of any way, I can't. I mean I don't think you can legislate out domestic violence without enforcement, there needs to be enforcement.

Flustered by the memory of a long string of stories she just finished sharing, Rachel and I began to talk about why most of her stories about her work as an attorney involved a story about law enforcement. Born and raised in the San Francisco Bay Area, Rachel became an attorney because of her personal history in social justice organizing and her commitment to working with immigrant communities and addressing violence against women. After sharing a number of stories with me about how legal advocacy work played out within the larger community organizing efforts around violence, Rachel shared that prior to her work as a non-profit attorney she always felt she was “someone who supported the rights of defendants” and was a person who “never dreamed of

working with cops.” We continued to talk about what the everyday practices of her work looked like, how often she need to work with law enforcement, and why providing legal services to immigrant women as survivors of violence began to challenge some of her previously held political commitments.

In her frustration, Rachel asked if there was any way we can imagine how legislation can address domestic violence without engaging and including the use of law enforcement? To be clear, she was frustrated not because she disagreed with the use of law enforcement to protect women; rather, she was frustrated because people with other political positions might question the relationship between law enforcement and non-profit organizations working within social justice communities. This, she argues, is “a criminal law issue,” and I interpret Rachel’s frustration to stem also from the way legal advocacy work around gender and sexual violence in immigrant communities has already been shaped by law to rely heavily upon the practices of law enforcement. In what ways has the relationship between law enforcement and legal advocates formed as a result of existing laws designed to provide protection to immigrant women? How do we understand the everyday practices attorneys like Rachel undergo alongside the formation of political ideologies like “there needs to be enforcement?”

In the last three decades, criminal approaches to violence against women have not only shaped legal “solutions” to the problem. They have also framed the racial rhetoric with which we debate who deserves punishment, who is worthy of protection, and what kinds of questions are contained to law in our determinations for racial justice and radical political possibilities. Indeed, the making of domestic violence as a crime punishable by the state is one of the expansive means through which our existing law enforcement

systems have rationalized the strength and growth of punishment as a form of American democracy.<sup>44</sup> The protection of women is a central means through which punishment is established in law, government, and political ideology. Kristin Bumiller has argued that the feminist anti-violence movement of the 1990s celebrated its success with the passage of the Violence Against Women Act but has not come to terms with how the feminist agenda of this era was coopted by the state's neoliberal agenda. That is, in light of how crime control laws targeted communities of color throughout the 1970's and 1990s, the anti-violence agenda's promotion of increased criminalization as the means by which women are protected puts the terms of this protection in question. Bumiller further argues, "One clear piece of advice is that it no longer makes sense to single out violence against women as a specific issue for policymaking because there are advantages to seeing it as part of a larger project of enabling women to be more effectual citizens. It is critical to "protect" women by removing the economic and social obstacles they regularly encounter rather than by expanding the capacity of the state to reproduce violence" (2008, xv).

The Violence Against Women Act of 1994 (VAWA) was the first piece of comprehensive legislation to address the issue of violence against women. Championed as a national success of the feminist anti-violence movement, VAWA is rarely referenced as a piece of legislation passed under the nation's largest omnibus crime control bill, the Violent Crime Control and Law Enforcement Act. Social justice movements and a

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<sup>44</sup> The 1994 Violence Against Women Act was the first comprehensive piece of federal legislation to address violence against women. VAWA was passed as a subsection of the Violent Crime Control and Law Enforcement Act of 1994, the largest omnibus crime bill legislated at that time. VAWA's most significant contribution to the criminal justice system was the making of domestic violence and other forms of gender and sexual violence federal crimes.

growing body of literature have documented how the feminist anti-violence agenda utilizes racial figures of black criminals and white women as innocent victims of crime as the cause for advancing harsher law enforcement mechanisms to advance “public safety.” VAWA added gender and sexual violence alongside the growing list of public safety concerns and the racial crusade to enhance the presence of police, sentencing, and cultural wars through President Clinton’s War on Drugs during the 1990s (Chin 2005; Marylee 2008; Mauer 2007; Silliman et al. 2002). Further, criminalizing mechanisms to punish violence has not necessarily lead to less women being killed or abused and has instead buttressed the popular support of mandatory sentencing, harsher forms of punishment, and the shuffling of women from lived experiences of interpersonal violence into the racial and gendered violences of the legal system (Smith 2005b; Sokoloff and Pratt 2005; Richie 1996).

This chapter analyzes how VAWA law has designed legal protections for immigrant women through a framework of exception and how this shift bases a new era of “cooperation” between law enforcement and immigrant communities on the racial figure of the immigrant victim of violence. VAWA provides visas as a form of legal protection for immigrant women. In this chapter I focus on one visa in particular, the recently established “U.” I argue, rather than view the U merely as a form of legal protection over women, we ought to view the U as a form of legal exchange between women and the state. Thus, throughout this chapter I discuss what forms of exchange take place and how the basis upon which exchange is made is inherently and already unequal. While paying particular attention to how the saving of women has historically supported law enforcement’s cause for better public safety, I discuss how particular

aspects of VAWA are also disassociated from the racial project of the ongoing War on Drugs. Rather than arguing that VAWA is equivalent to the Crime Bill or that the political ideologies espoused by the feminist anti-violence movement are unjust because they are the same as those produced through Clinton's War on Drugs, I argue the political distance established between the protection of women and the punishment of criminals drives my analysis of immigrant women as racial subjects of VAWA law.

Existing scholarship on violence against women and the criminal legal system have largely sought to identify and analyze points of overlap and similarity between two seemingly opposite uses of law. In particular, radical political critiques of VAWA have argued that the use of criminalization as the means by which protection is provided to women of color is the same means used to police and lock down the communities women come from. Further, scholars have argued the racial narratives of Black and Latino communities as the origins of crime and public threats does not exclude women and shapes their experiences of seeking assistance from the law. While a small grouping of scholarship also looks at the role of immigration in this relationship, the focus of such scholarship has relied heavily on the framework of exclusion to argue that VAWA has left immigrant women "in the cracks." The exclusionary framework implies that the relationship of criminalization to women has not already relied upon the inclusion of immigration law as basis upon which the legal rationale of punishment is made possible. Rather than argue immigrant women have fallen in the cracks and gone unnoticed by the feminist anti-violence movement, I suggest that VAWA's target is indeed not immigrant women nor the use of immigration law as the primary foundation of its legality and this position is the point through which we can better analyze race and gender in VAWA's

proliferation. Because of this, we ought to consider seriously why VAWA has frames its few immigrant provisions as “exceptions” to the norm immigration law.

In 2000, Congress legislated a new visa, the “U Visa” heralded by activists and advocates within the feminist anti-violence movement as the first form of legal protection for undocumented survivors of gender and sexual violence (Kaguyutan 2001; Kwong 2002). Congressional lawmakers introduced the visa as a humanitarian exception designed for a group of women who would otherwise be marked as illegal and potentially removable from the United States, rather than granted the opportunity to remain temporarily. Ilana Feldman and Miriam Ticktin have argued, “Humanity not only means different things, its meaning are often contradictory. . . . Similarly, human rights and humanitarian perspectives on how best to protect human life can mandate conflicting courses of action” (Feldman 2010). While feminist anti-violence proponents of the visa relied on the language of humanitarianism to support the passage of the visa, opponents of the visa also embraced the framework of humanitarianism and while many of these opponents were already arguing for more stringent immigration laws and a reduction in the number of immigrants admitted into the U.S., they did not challenge the humanitarian gesture of American democratic values and commitments to benevolence. Instead, their opposition to the visa argued that if undocumented or “illegal” immigrants receive humanitarian aid, the law should include a component requiring visa applicants to cooperate with law enforcement in the prosecution of criminal activity in exchange. Any organized opposition to the visa sought not to eliminate the visa altogether, but rather, to engage a proposed form of American humanitarianism that had to be earned. They argued, for women who were undocumented and culpable for remaining in the United

States without legal status, humanitarianism is justifiable if “illegals” are required to cooperate with law enforcement. Thus, while the U Visa is narrated as a unique and humanitarian gesture, the critical component that requires cooperation in exchange for protection is designed less for legal subjects who are innocent of the harms they have endured than for those the law marks as guilty for remaining “illegally” in the U.S.

The U Visa was created as provision under the Battered Immigrant Women Protection Act, Title V of Division B under the Violence Against Women Act’s reauthorization in 2000.<sup>45</sup> Every five years, Congress considers the reauthorization of VAWA’s original programs from 1994, the creation of new programs and funding, and changes to the original statute. Under BIWPA in 2000, a new nonimmigrant visa category was created, the “U,” for victims of 26 qualifying crimes, of which domestic violence and forms of gender and sexual violence are a few (Pendleton 2009). As a “nonimmigrant” visa, the U does not fall under the “immigrant” visa categories for those who intend to live and work permanently in the U.S. Instead, the U is designed for those the state views will remain only temporarily. If applicants are victims of one or more of the 26 qualifying crimes and agree to assist law enforcement with the prosecution of criminal activity, they can demonstrate substantial physical or mental abuse as a result of being a victim of this qualifying criminal activity, and possess information about this criminal activity, then they are eligible to apply for a U Visa.<sup>46</sup> If successful, the

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<sup>45</sup> Pub. L. No. 106-386, 114 Stat. 1464 (2000)

<sup>46</sup> In a memorandum distributed by the National Network on Behalf of Battered Women, the network argued the U law “. . . targets ‘criminal activity’ as opposed to ‘crimes’ because prosecutors and other criminal investigators must obtain witness help and cooperation at every stage of a criminal investigation. The law is available to those who are ‘helpful’ regardless of whether they serve as a witnesses or whether the investigation or prosecution results in a conviction” (National Network on Behalf of Battered

applicant receives temporary “U” status, receive a work permit, become eligible for deferred action (holding on removal), and after three years may become eligible to apply for permanent residency if all qualifications are met (Department of Homeland Security 2006; U.S. Citizenship and Immigration Services 2007).<sup>47</sup>

The original 1994 VAWA included provisions for immigrant women, but only those who were married to U.S. citizens or legal permanent residents. In 2000 then, the momentum behind the U was driven by a set of politics seeking to address how the stringent conditions of the U.S. immigration system created “barriers” for women who were not married, who were undocumented, or who had fallen out of status.<sup>48</sup> Indeed, much of the publicized debates over the U Visa focused on the law’s uniqueness as a humanitarian gestures towards battered immigrant who were “left in the cracks” (Owen 2006; Wood 2004; Wang 1996). There was very little discussion of the law’s position within the betterment of law enforcement practices.

If we can view laws such as the U Visa as a law based on exchange rather than protection, we can better locate the experiences of violence in women’s lives.

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Immigrant). In their argument, the Network argues that this implementation and framework is how lawmakers should construct the federal regulations that will provide guidelines for how advocates can access the U for their clients. As we shall see later in this chapter, one’s willingness to be “helpful” is a site of power and where social and legal relationships unfold between advocates, immigrant women, and law enforcement.

<sup>47</sup> 8 C.F.R. § 214.14

Qualifying criminal activity includes: Abduction, Abusive Sexual Content, Blackmail, Domestic Violence, Extortion, False Imprisonment, Female Genital Mutilation, Felonious Assault, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trade, Torture, Trafficking, Witness Tampering, Unlawful Criminal Restraint, “Other” related crimes.

<sup>48</sup> To be clear, an approach that argues that immigration is a “barrier” to survival is much different from one that argues that immigration itself, both as a legal and institutional structure, relies on violence to maintain itself. Or even a perspective that argues that immigration reproduces violence.

Immigration, citizenship, and law enforcement are inevitable forces in existing legal structures and popular ideas of who and how undocumented immigrants are in the space of the nation-state and whether their innocence or their guilt matters. Thus, if we are to discuss how the law approaches violence against women and questions of immigration we must necessarily look at how existing cultures of crime and punishment are changed by immigration laws that seek to provide humanitarian protections for undocumented survivors of violence.

### **“Cooperation” and the New Era of Law Enforcement**

The Federal Bureau of Investigation publishes the FBI Law Enforcement Bulletin, a regular trade magazine for employees and agencies connected to the FBI. The magazine generates news articles reporting on trends in the field, “hot topics,” and emerging issues that are pertinent to the staff and business operations of the agency. Each month, the Bulletin distributes approximately 40,000 complimentary copies of the magazine to police chiefs, sheriffs, National Academy graduates, libraries, and leading members of the agency. The first magazine issue published in 1932 in the U.S. is now mailed and distributed to over 150 countries, is available online, and estimates a readership of approximately 200,000. In a special issue on life after the “Thin Blue Line” in October 2009, The Bulletin published its first article on the U Visa. The four-page article came second following the cover story on “pre-retirement training” for seasoned officers who were preparing to leave the field and enter retirement.

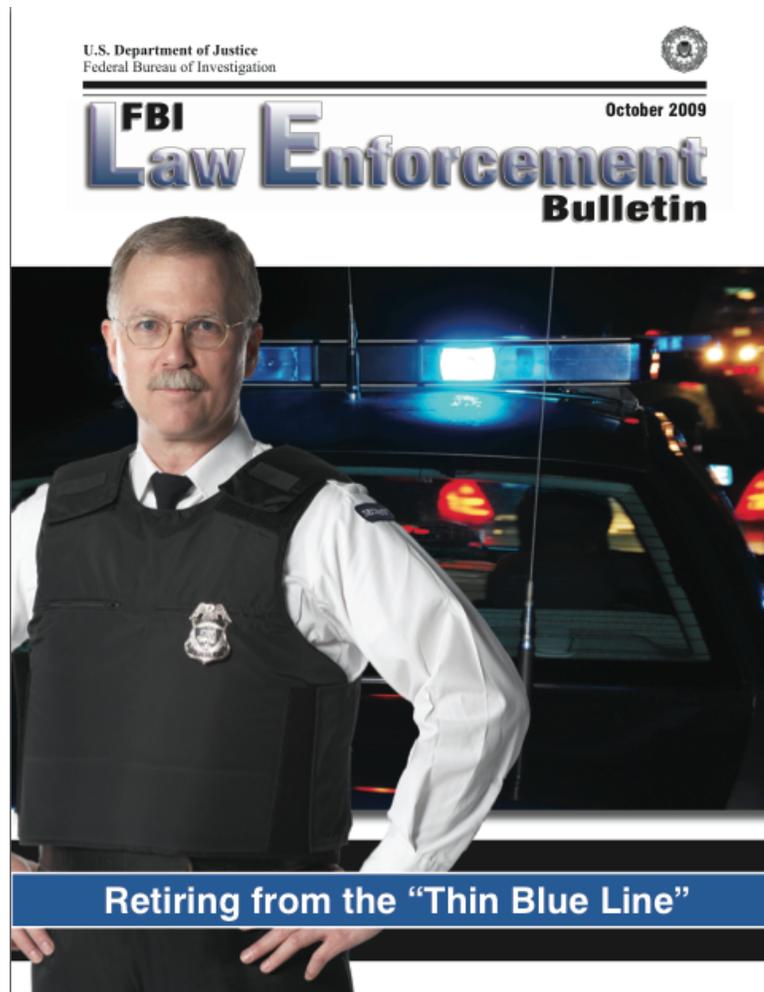


Figure 1: Retiring from the Thin Blue Line

On the cover, a close-up of a silver-haired Bureau agent stands with a crisp white shirt, bullet-proof vest, and with a smile. He is poised in the forefront and an image of a police car with flashing lights stands in the backdrop behind him creating a distance between himself as an agent and the law enforcement vehicle. The distance, the aged agent, and his serene smile create a visual image of the temporality of “life after the thin blue line.” The crispness of his white-collared shirt set against his rugged bulletproof vest places him in this space between work and leisure as a marker of the transition period between

active and retired law enforcement. In the cover story on retirement, the newsletter calls for better training to help prepare agents for the trauma and “lack of identity” they will likely face after they retire.

The content of the magazine in this particular issue does not detail the actual life of retirement, but rather, discusses the ways in which the Bureau can help prepare active agents for the future of retirement by implementing training “pre-retirement,” vocational traumas, and the stress of law enforcement as a profession. As the magazine outlines what the Bureau should change in its present moment narratives about the futurity of law enforcement are inevitably envisioned. What will life after the blue line possibly entail and based on what is included in this vision, what kinds of changes are needed in the present law enforcement agency? In this overall theme about new and old, agents of the past trained and prepare for their future, that we see the U Visa for the first time in this widely circulated publication. The “new” U Visa is introduced as part of the Bureau’s future plans and like the pre-retirement preparation plans for aging FBI agents, the visa too is introduced as a time appropriate law enforcement tool that will assist with the transition from the old to the new.

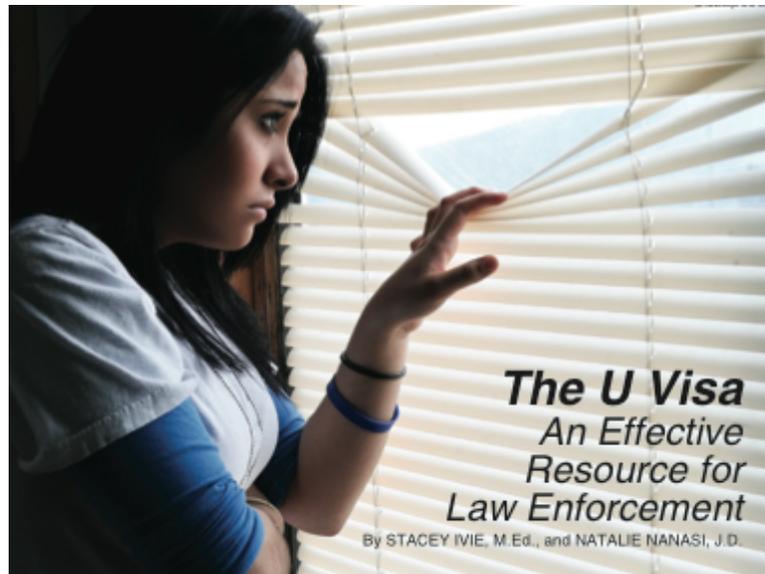


Figure 2: The U Visa

The story, “U Visa: An Effective Resource for Law Enforcement” opens with an image of a young woman of color standing inside a room. She is positioned next to a window peering out through a set of closed blinds, looking between the cracks, and waiting for someone to arrive. Her face is partially cast in shadows. She is visibly upset, worried, and stands with one arm folded against her body and the other pressed against the window blinds. This is the image the story is centered on — a young woman who is worried, terrified, waiting and looking for someone to arrive. The story begins with a narration of the image we are presented with:

Law enforcement personnel strive for strong connections with all citizens. In pursuit of this goal, striking an appropriate balance—one that punishes wrongdoers while protecting victims—can present a challenge. One way that officers not only can foster better relationships with immigrant

communities but also increase offender accountability, promote public safety, and help ensure that crimes translate into convictions is to promote awareness of the U Visa, which provides important immigration benefits to cooperating crime victims (Ivie 2009)

The magazine gestures to the feeling of discomfort generated by the image of the young woman's fear, a fear the magazine suggests law enforcement shares and wishes to remedy, "law enforcement personnel strive for strong connections with all citizens." The story continues on to describe the purpose and justification for the U Visa based around the promise of eradicating the feelings of uncertainty and fear we are first presented with at the start of this story. The authors argue a better future for both the young woman waiting inside the room and law enforcement agents on their way can materialize through programs such as the U Visa that establish "trust" through "community partnerships" between citizens and police (13). Couched within the larger theme of the magazine's special issue on "life after the thin blue line," the U Visa's call to establish trust and community partnerships also promises a new kind of future life for law enforcement and immigrants. This future of cooperation promises to be a different kind of "thin blue line" and something that law enforcement "strive for" as a "pursuit of this goal."

Even though the mechanisms of the visa are designed specifically as a tool that will assist law enforcement, the magazine does not present us with an image of law enforcement agents arriving somewhere or greeting immigrant women in an office. Instead, we are given the image of an immigrant woman who is upset and scared, but waiting and willing to cooperate. With willingness from immigrants, the story argues the

law will do its part by facing the “challenge” that immigrant women are unwilling to approach law enforcement because they are fearful. In response, the law seeks to “[strike] an appropriate balance – one that punishes wrongdoers while protecting victims.” The “challenge” is not simply that immigrants fear the police but that because immigrants are fearful and unwilling, law enforcement has been unable to do its job of punishing those “wrongdoers” and protecting “victims.” In order to strike this balance between punishment and protection the law argues that fostering trust and active cooperation between immigrant women will help law enforcement to determine the good from the bad, the “wrongdoers” from the “victims.” This claim that an appropriate balance is struck is something the U Visa can almost not do without because of its design targeting immigrant women who the law marks as “wrongdoers” because they are undocumented and without legal status and “victims” because of the violences they have survived. In the descriptions we read about the U Visa however, only one kind of subject that become visible as a petitioner, that of immigrant women who are victims of crimes they are innocent of. In stories we hear about the U Visa, the figure of the innocent victim of crime is the site through which a future of “cooperation” falls within the humanitarian gestures lawmakers establish. Proponents do not tell the story of the visa as a promise of better trust and cooperation between law enforcement and the “wrongdoers.” Yet both stories apply to the experiences of undocumented immigrant women who are both “victims and “wrongdoers” for remaining illegally in the U.S. The ability of “cooperation” to manifest as the fiction through which our prominent ideas and understandings about the U Visa are told, relies upon the legal subject of an innocent victim. How then do we understand this fiction’s ability to obscure the material legal

constraints undocumented women face not only as innocent victims, but as women whose lack of legal status marks them as “wrongdoers?”

In 2010, The New York Times reported the U Visa was a “compassionate twist on the idea that felons should be imprisoned, victims who can show that guns (or knives or fists) were used against them can be released from the fear of deportation” (Ellison 2010). In a previous story half a decade earlier in 2005, The San Jose Mercury News ran a story about U Visa applicants in California. Ira Mehlman, a spokesman for the Federation for American Immigration Reform commented, “This is the sort of thing that will be abused . . . . You have two separate crimes you’re dealing within in this issue. . . Just because you become the victim of a crime doesn’t mean we should forget about the law you violated by being here illegally” (Mangaliman 2005). The skepticism of the U Visa Mehlman illustrates draws from the organization’s history of lobbying for stricter regulations in immigration law.

Ira Mehlman’s remarks “just because you become the victim of a crime doesn’t mean we should forget about the law you violated by being here illegally” is easily marked as anti-immigrant dogmatism. And it is. But what I want to draw our attention to is how Mehlman’s critique of the U Visa relies on the visa’s fiction of innocence. Mehlman suggests the rationality of the visa forgets women’s illegality and remembers only their innocence. He argues that petitioners are innocent but they are also guilty of a crime the law “forgets.” Yet, the U does not forget the culpability of undocumented status, but instead, rewrites this illegality as an act of cooperation between women and law enforcement. In other words, the law argues women are not illegal for remaining in the state without legal status, they are instead, cooperating with law enforcement to

receive this status. Innocence then, is never forgotten but it is isolated and used to mask the law's very careful attention to women's culpability. Thus, while Mehlman is able to identify a relationship between innocence and guilt, he is conveniently blind to the presence of this relationship in the law allowing him the ability to argue that the visa will lead to abuse of the system when women present fraudulent claims of victimhood. Put in light of The Bulletin's call for an "appropriate balance" between the victims and the wrongdoers, the many layers of the U Visa make the appropriateness of this balance not only seem inappropriate but impossible.

### **Coercion, Innocence, and Legal Exchange**

While working and conducting research in the Bay Area I spoke often with Jessica, an attorney who was part of a small but growing group of advocates working with Asian immigrant women. As part of her work, Jessica had grown familiar with the U Visa and participated in a local network of social workers, attorneys, and health care providers.<sup>49</sup> I asked how she met most of the women she worked with? How did her clients first come in contact with the organization? Most of her clients were women who were referred by partner organizations. By partner organization, she explained the legal office formed

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<sup>49</sup> The group originally formed in order to strategize around the Department of Homeland Security's delay in release regulations and guidelines for how applicants could submit materials for U Visas. In addition, there were no regulations about how applicants should obtain law enforcement certifications or what a certification entailed. During this "interim" period between the passage of BIWPA and the DHS release of regulations networks both locally and nationally were instrumental in developing methods by which they hoped clients could access the U. In 2008, USCIS received 13,300 applications and granted "interim relief" to 10,300 applicants, in 2009 USCIS approved 6,055 U Visa principals and 4,659 derivatives and recently in 2010 USCIS reported 10,000 approved applications. USCIS FOIA response: 8,863 approved I-918 forms in 2009. I-918 forms are the "Petition for U-NonImmigrant Status" under USCIS. On file with author. U.S. Citizenship and Immigration Services, D.H.S. March 11 2010.

cooperative relationships with Asian immigrant community groups, women's shelter, social service providers, and family centers across the Bay Area. In many cases staff members from these organizations accompanied women to all of their legal meetings, court appearances, and immigration interviews in order to provide in-language translation or to provide support.

When I asked specifically about U clients, I was surprised to hear Jessica explain how all of her U visa clients were referred by local law enforcement. After already being brought in to a local agency, some officers had the option of notifying women about the U Visa and referring them to Jessica. Thus, while the referral between her organization and law enforcement was similar to that of the organization's work with Asian American non-profit groups, it was unclear whether the politics upon which "cooperation" with law enforcement was built was equivalent.

. . . . in this particular case of the woman who has the prostitution record, she was beaten up by her pimp so, she's a victim of a crime that is related to criminal activity that she was engaged in so she shouldn't be penalized because she would never report it. If you penalize people for doing something that kind of takes them to the point where they become a victim of crime then why would she report it right? So I think it's actually people like her that the U Visa is designed to protect.

In her description, Jessica's interpretation argues it is "actually people like her [client]" that the U Visa is "designed to protect," someone who is a "victim of a crime" but also a

crime “that she was engaged in.” Where do we locate her client’s experience, how is her client legible to the law in this particular story Jessica chose to share? Is Jessica’s client culpable for sex work or is she culpable for remaining in the U.S. without legal status, or both? And if she is culpable for both, how does the law read her and how is her innocence legible to the law? In her interpretation, Jessica explains, “If you penalize people for doing something that kind of takes them to the point where they become a victim of crime then why would she report it right?” Should her client agree to cooperate with law enforcement by providing information that could result in the prosecution of her pimp, Jessica’s client exchanges her culpability as a sex worker for that of her pimps. Indeed, it is this particular dimension of culpability that is explained away within the U Visa scheme when Jessica argues that an undocumented immigrant women who is a victim of a crime (violence by her pimp) should not be punished for engaging in sex work but instead be protected because she is willing to report the crime and assist in the prosecution. Thus, the legibility of her client’s innocence is dependent upon a willingness to provide information to law enforcement, “. . . she shouldn’t be penalized because she would never report it.”

In the U visa scheme then, “cooperation” is not a form of protection, it is an act of exchange. Women exchange information for the opportunity to submit an application form and await the possibility of receiving a visa. While these terms are able to open the possibility that Jessica’s client will not be punished as a sex worker, they contain her innocence to the realm of fiction. That is, despite one’s innocence or victimhood of violence, it is the possibility of culpability and the incentives to exchange that culpability that the U Visa is designed to harness. Her client is not innocent; it is because her client

is culpable for legal status that she is even a subject of the U Visa to begin with. This questions another act of exchange that takes place, the exchange of one's lack of status for temporary legal status. What must women undergo for this exchange to take place? Jessica continued to explain how her client was cooperative but as we talked her client's innocence as a victim of violence was not entirely unmoored by her culpability for sex work and for remaining in the U.S. without legal status. The law is never blind to legal fact of women's illegality but the law is willing to create the fiction of their cooperation. As we continued to talk, she shared:

I think again, this is all part of this thing where everyone wants to save someone. And again, people are will be disappointed if they expect victims of domestic violence or trafficking to be a quivering innocent and helpless person.

Jessica's client is never read by the law as only innocent but undergoes an exchange that is based on the concept of her innocence. Jessica discussed further, "the mere fact that my client is already willing to testify should be considered cooperation" and makes the certification obsolete given the already existing conditions of the case.

In 2010 I met with Stacy, an attorney in the East Bay Area who worked with a legal center serving women from both Latina and Asian immigrant communities. Stacy was part of a number of multiracial coalitions in the bay area serving immigrant women who were survivors of violence, seeking asylum, or were refugees in the U.S. As we talked about the U Visa, she shared this particular story:

A lot of subordinated communities say that crime itself, is bad, but nothing is worse than telling police about crime, that the police the oppressive, are the oppressor and so anybody who cooperates with police is the oppressor, and so we have clients who feel, “I was a crime victim and I have no status, if there was amnesty I would go for amnesty, but being a crime victim is the only way available to me and so I have to do it. It’s absurd that people have to use this, this strange thing. Because the U Visa is a bizarre way of relating to the community by saying, you can’t get status until you say that somebody did something to you and that’s a weird way to conceive of one’s self.

Stacy used these scenarios to articulate her own interpretation of what the U Visa looks like to undocumented women, how they have interpreted the visa’s meaning, and how Stacy herself as an attorney understands the disconnect between what the U Visa promises to do and how women view themselves in relation to the way they anticipate how the law reads them. The visa was a “bizarre way of relating to the community,” bizarre not merely because of the risk of engaging with law enforcement but bizarre because one has to earn status by locating one’s self within the law as a willing and cooperating informant. Even further, Stacy’s insights suggest the U is indeed a “bizarre” way of transitioning noncitizens to becoming Americans. As a potential pathway to temporary legal status and the possibility of applying for green card, the U’s way of processing this road to citizenship is determined by whether women are willing and credible informants.

Earlier in our conversation Stacy described the U as “good small piece of law” that brought together other things that were already in place. By this she meant, there was already a pool of immigrant women, there always would be, who were detained or brought into local law enforcement offices. For a range of reasons and by a range of different methods, immigrants were continually processed by local police and if this was to continue, Stacy felt the U should at least be there until things changed. Her decision about the U’s usefulness however, did not shift her larger interpretation that the law was a “weird way to conceive of one’s self” as deserving legal status based on the demonstration that someone else victimized you and someone else from your own community. To extend Stacy’s analysis of the complexities of victimhood for immigrant women, the tensions around reporting a crime and playing a role in the punishment of that crime against someone either from your own community or immediate family, is not specific to the U Visa law and is indeed foundational to snitch laws or visas like the “S” or “snitch” visa (Natapoff 2009).

David Kazanjian has argued “universal egalitarianism” coincides with the rise of numerous hierarchies of particular differences (2003). Drawing from Marx, Kazanjian argues that the emergence of the value form shows that relations between things are not only given new value as social relations under capitalism, but more significantly perhaps, particular and concrete social relations are transformed into “abstract relations of formal equivalence” (2003). If capitalism revalues social relations then, the formal equality of citizenship relies upon the making of unequal particularisms into equals of each other, “In other words, the normative homogeneity of racial and national particularities entails a

certain universality” (2003). The legal act of including formerly excluded subjects from the nation, relies on a revaluation of social relations under capitalism.<sup>50</sup>

For Marx, who was concerned with economic value as social value, the exchange of two commodities, or their exchange value (what makes them exchangeable), must be reduced to a third thing. This third thing is foreign to both commodities, is alien to them, and is what makes any one unit of any given commodity equal to another. Marx’s work critiqued the idea of a free market exchange. What underpins the free market, is the notion that commodities are and can be equal. Marx argued labor time was the foreign quality to two commodities. The unequal exchange of labor time used to produce two qualities is what in actuality facilitates the exchange of two commodities as equivalents

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<sup>50</sup> What I draw most heavily from Kazanjian’s work, is that concrete social relations that are otherwise particular because they are unequal become transformed through the process of exchange. Marx is examining the exchange of commodities and Kazanjian is extending his critique of formal equivalence under capitalism modes of production to explain why universalisms of race and nation are at particular. For the study of the U Visa’s legal exchange, both Kazanjian and Marx draw our attention to how one’s culpability is rendered to be of equal value and thus exchangeable with another’s. Marx’s emphasis on the inherent inequality of commodities that are made into equivalents draw from his analysis of the exchange value of commodities, or in other words, two values of two separate commodities that are abstracted from the labor used to make each commodity become equivalent to each other. Kazanjian’s work argues exchange value, as the appearance of value in a particular cultural and historical form, revalues excluded and included subjects as equivalents of the nation-state. Thus, the particularisms of exclusion and inclusion are the inherent inequalities “universal egalitarianism” (such as nationalism and citizenship) encompasses as part of the production of citizenship and nationalism. Not only do social relations have value, the exchange of exchange values is the basis for equality (Kazanjian 2003). Thus, while formal equality, abstract citizenship, and pathways to citizenship may not exist primarily or solely in the realm of the economic, the work of both scholars shows the universal egalitarianism of citizenship, while not monetized, is still very much *produced*. Visas are legal methods that regulate who can and cannot have temporary status and whether a pathway to citizenship can form as a result of receiving this status. In this way, the particular components of the U Visa’s own pathway to legal status within the framework of production in order to think about how the exchange of crimes has a value within the realm of law.

of each other. His work challenged not only the concept of the free market, but that of free market equality. Thus, if an exchange value of equality must be established between two things prior in order for a transaction of exchange to take place, what follows is that an exchange is a transaction of two unequals made into equivalents. Or in others words, exchange is inherently unequal.

We might then, call the exchange women undergo a legal exchange. While the U Visa is not a law governing the exchange of commodities nor is the applicant for a visa engaging in an economic transaction that involves money, the exchanges of crimes has a legal value of its own. In other words, the foreign element that renders two crimes equivalents for the purpose of exchange, must carry a legal meaning of its own. What Marx has argued to be the inequality of the exchange, or the insight that an exchange of equivalents is always unequal, is made visible when we analyze the relationships between two parties who enter an act of exchange. In the same way, we might consider the law as a site where unequal relations are masked by equality during exchange. These new relations are also given meaning that otherwise would not have formed outside the act of exchange. For example, despite whether women successfully obtain visas or whether law enforcement is successful in their prosecution, a surplus continues in the fiction that women and law enforcement “successfully” cooperated with each other. The establishment of the future of law enforcement as a cooperative future based on newly formed social relations with immigrant communities then becomes dependent upon the fiction of women as innocent victims but whose experiences shuttled through the visa process is that of culpable clients serving as witnesses.

In the earlier scenarios Stacy provided, she reflects broadly on how the law tells the story of cooperation, how her clients read their role within the larger history of snitching and what this means for how they interpret their own position not only in relation to the law, but their conceptions of their own selves. Stacy's colleague Elaine, who was also an attorney in the Bay Area, spoke with me about her interpretations of the U Visa that were similar to Stacy's but also how her views of the U Visa brought up struggles she felt in her advocacy work with T Visa clients, or women who were applying for humanitarian visas based on forms of human trafficking. Indeed, the U and the T are often discussed separately from each other. Both are introduced under separate subsections of VAWA's 2000 reauthorization, the U debated for its association with "illegal" women who are not married but are battered immigrants and the T marked as the visa designed for women who are sex workers often as a result of human trafficking. Might we not differentiate based on forms of, but rather question why different forms of violence render differently "appropriate" legal rules? While certified cooperation with law enforcement is required for a complete U Visa application, cooperation with law enforcement always takes place for T applications but certified form is not required.

Me: Are there any particular legal challenges that you have seen repeatedly in your work with Asian immigrant women clients, anything that has been a repeated pattern?

Elaine: there have been so many clients...you can help them with immigration visas, right, so they can be here lawfully in the U.S., they can

work, lawfully...they are getting assistance, with housing, and so their material needs are met....But the thing that made them vulnerable in the first place, which is tied to their gender, is well...what is your place in life, what's your understanding of that....? One huge example of this, this one time there was a client...Lily...we went into a law enforcement interview and the U.S. attorney and FBI agents are asking her questions, all white men, and she is giggling...downplaying a lot of the harm that happened to her. And so I ask for a moment to talk to her in private...And she says, 'Well they [FBI] are the ones that have the power, and I have a feeling that the more innocent and clean I am, the more they will want to help me.'

In the Bay Area, Elaine was a lead attorney amongst Asian American non-profit organizations working with immigrant women survivors of gender and sexual violence and trafficking. We met in the early morning and talked in her office where boxes upon boxes of paperwork lined the walls and a long list of client appointments filled the calendar next to her desk. The interview was highly anticipated on my end – after three months of rescheduling I was eager to talk with her about her work with immigration and family law. During law school and in the years thereafter, she focused her legal advocacy work on the needs of Asian American communities across the Bay Area and at her current organization she helped build many of the collaborations with legal centers, shelters, and advocacy groups serving Asian immigrant women survivors of violence.

For over an hour she described the laws she used to help clients who are without citizenship, home, money, or English language capacity and come to the organization in

hopes of receiving help from the legal system as they struggle to survive experiences of trafficking, domestic violence, sexual and gender violence, and abuse. There were never enough resources for clients, too few legal options, and a long list of reoccurring stories about clients who were close to walking away from using the legal system because of the system's requirements for proving credibility, correct paperwork, and the many years of waiting and repeated meetings (Orloff 2001).

Throughout our conversation she returned to Lily's story, the client who was referred to the legal center by FBI after she was taken into custody during an immigration raid. Lily was a survivor of trafficking and Elaine was going to help her apply for a T Visa. Lily told Elaine detailed accounts of her experiences in their private meetings but downplayed her life when she re-told her story to the FBI agents who interviewed her. In her case, the law did not require a certification form proving her willingness to cooperate and she was not required to cooperate with law enforcement in the prosecution of a crime. As a victim of trafficking, Lily was already eligible for a T Visa. However, she was brought into custody because she was picked up during an immigration raid and so law enforcement had to interview her. Like the U scheme, Lily was providing information to FBI agents and was aware that she would need their help, but further interpreted that her presence in the interview room and the information she was providing would not determine whether she would receive help.

Against the advice of her attorney, Lily downplays the harm she has endured in order to show she is more "innocent and clean" so that law enforcement will want to help her. While "cooperating" in this interview Lily reveals to Elaine how she is changing what she feels and thinks, what her experiences are based on, and draws from other

knowledge sources about what an interview with law enforcement means for someone who is undocumented. The cooperation which takes place in this room involves a form of coercion where Lily seeks to separate herself from the very violence that she is innocent of — sex trafficking. There is a disconnect between what Elaine views is happening in the interview room and what Lily sees. For Elaine, the violence experienced is downplayed and thus, the innocence is downplayed. But for Lily, her attempt to seem more innocent and clean was an attempt to downplay the mark of guilt the law puts on sex trafficking. Cooperation involves a form of coercion that pushes Lily to erase her own experiences of violence in order to draw attention away from her status as an undocumented immigrant women who is in the U.S illegally because of forced sex trafficking. To appear more “cooperative” she sought to appear more innocent and clean knowing that a law targeting victims of crime could not be severed from the laws that target those culpable of those very same crimes. The humanitarian visas I have discussed protect women through what we might call a legal exchange of crimes, the culpability of one in exchange for that of another, and the possibility of prosecution for one for that of another.

At various moments in our conversation Elaine referenced Lily’s story when she talked about the length of the legal process and the specific acts non-citizen immigrants must struggle with if they choose to use the legal system. When she spoke about her own impressions about legal advocacy work she often returned to Lily’s story, “And so it plays out, are we really helping women, ten years from now, are they going to be better off, are they going to have the choices that we assume people should have...And that’s what I think is the most frustrating thing, is that you don’t know, at the end of this,

whether or not they really feel that they have free choices.” Elaine reflected about her own work as a legal advocate and the way her clients viewed themselves as they engaged with the law. What did it mean to obtain a successful visa for your client but to hear your client speak of herself as not “clean” enough? She makes an argument that her client’s legal freedom from immigration enforcement is not the same as her client’s freedom from violence, in particular, the violence that takes place when one’s understandings of the self are based on whether the state views you as “innocent and clean.”

### **Exception and The U Visa**

In 1999, the Subcommittee on Immigration and Claims held hearings to debate the components of the newly introduced Battered Immigrant Women Protection Act, which would later include the passage of the U Visa. Dwayne “Duke” Johnson, a previous senior official with the former Immigration Naturalization Service (INS) warned Congress against measures to protect immigrant women in fear that the U Visa would push the nation into “becoming Solomon,” the biblical King of Israel, whose story is told as the builder of a once expansive empire but fallen by the whiles of women and the worshipping of idols:

The net effect of this legislation would be to burden the INS with another impossible task of becoming Solomon, judging applications in Vermont dealing with possible abuses in some remote corner of the world with only a self-initiated affidavit. The adjudicator will be faced with two choices: One, to hold the application and attempt to obtain additional information from some source of

which I am unaware, which will result in increased delays and more backlogs, or the adjudicator can rubber stamp the applications based solely on the affidavit without any additional information, which is a recipe for fraud (Battered Immigrant Women Protection Act of 1999)

Johnson's tale cautions against the impossible task of becoming Solomon, or put more clearly, he warns against the legislation's plan to build a national immigration open up floodgates for the potentially fraudulent claims of violence from noncitizen immigrant women. The "exception" the law will make for noncitizen survivors of violence poses a threat for Johnson. While there were many concerns raised during this hearing, the most prevalent tension came from supporters of "humanitarianism" and saving women but not the saving of immigrant women whose noncitizen status required "exceptions" not normally provided by existing U.S. immigration law. As Johnson argued,

Any professional public affairs practitioner would tell you that it is unwise, if not foolhardy, to come in here and testify against a bill entitled -Protection of Battered Women. However, the bill is unnecessary . . . . The bill is a collage of exceptions of existing immigration law, and the bill will be an instrument of fraud (Battered Immigrant Women Protection Act of 1999)

Johnson framed the visa as an "exception" to the existing means by which the U.S. grants legal status and is careful not to argue that saving women from violence should be considered an exception as well. In fact, by framing visas and legal status as the

exception Johnson establishes the protection of women as normalized function of law. Throughout the BIWPA hearing, dialogue drifted between both proponents and opponents of the visa, none veering from the political path of humanitarianism and the saving of women. What emerges quite clearly as an “exception” is whether “illegal” immigrant women should be protected in the same way as other legal subjects of protections against gender and sexual violence. The exception Johnson points out is not the act of violence or the existence of violence in women’s homes, but rather, the granting of legal status to noncitizen women who have remained in the U.S. “illegally.” Thus, it is despite the lived experiences of violence, that the rhetoric of “exception” emerges in this particular Congressional debate.

In a dialogue between Representative Lamar Smith from Texas, and Leslye Orloff a lead attorney with Legal Momentum, “cooperation” between women who receive visas and local law enforcement

Mr. Smith: Do you not think the bill could be improved if we required cooperation with law enforcement officials to go after the abusers?

Ms. Orloff: One of the problems with that approach is that if you look at FBI statistics it is very clear that the risk of violence goes up upon separation and particularly when there is involvement with the criminal justice system or a divorce pending. And so lots of times you have women who may want to cooperate but are legitimately terrified that if in fact they cooperate with law enforcement they will get killed. And so I

don't think it would be wise to have any piece of legislation that requires such cooperation, and, in fact, original VAWA did not for that reason.

Mr. Smith: If you do not require the cooperation, you are unlikely to get it. My point is if you wanted to carve out an exception, perhaps the example that you gave, that would be fine. But I have a major disagreement with the bill if it is not going to require cooperation with law enforcement officials to try to stop the abuse from occurring. Otherwise the abuse may occur with another spouse and you are not really going to the core problem in my judgment.<sup>1</sup>

Smith introduces “cooperation” as a mechanism through which law enforcement can “stop the abuse from occurring” and without which, he worries the continuation of funding to address abuse will not really get “to the core problem in [his] judgment.” To better protect the life of woman, the Congressman argues for better punishment mechanisms and draws a very distinct correlation between the betterment of law enforcement which will function to better the lives of battered immigrant women. The law’s intentions to protect women he argues, particularly in the presence of visas as humanitarian “exceptions” and without the mechanism of punishment, will result in the death of women. In this very brief dialogue between Smith and Orloff the life and death of women are formulated as effects of the law’s ability to use punishment as a means of “stop[ing] the abuse from occurring.” Where he argues the life of women will be protected by law enforcement, Leslye Orloff argues the death of women who worry “they

will get killed” is likely to result if Congress starts down this path of required cooperation. Orloff, speaking on behalf of Legal Momentum, a national organization at the forefront of legislative reform and the original creation of VAWA, emphasized that no previous provisions under VAWA required survivors to cooperate with law enforcement for this very reason, “And so I do not think it would be wise to have any piece of legislation that requires such cooperation, and, in fact, original VAWA did not for that reason.”<sup>51</sup> This brief opposition’s surface is able to deny the U’s context within the larger legislative discourse of VAWA and its position within the expansion of criminalization practices during the 1990s. As Orloff begins to articulate the U’s position as an “exception” this framework is able to disavow the normalized structure of criminalization that predates this hearing in the year 2000.

Orloff’s ideological positioning argues that VAWA is able to continue protecting the life of women without requiring cooperation with law enforcement, so too then the logic follows, the U Visa should be able to protect immigrant women without requiring cooperation. In other words, despite their opposing views, Smith and Orloff both elide any recognition of coercive forces in the U Visa (Smith) and the over arching framework of VAWA (Orloff) in order to compartmentalize their debate over the question of “cooperation.” Yet, the description of the U Visa’s requirements as mere “cooperation,” erases its own material relationship to the coercion that takes place when undocumented women are told if they want protection they will be used by law enforcement in the attempt of successfully prosecuting a crime. One political position worries women will die if they cooperate, the other worries women will die if they don’t, yet both positions

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<sup>51</sup> For a continued discussion of this perspective, see (Orloff 2010)

continue to entrench the fictive narrative of cooperation as a means by which the past and future are free of coercive elements without actually grappling with the criminal logics that predate this moment.

An understanding of “Cooperation” severed from that of coercion has continued to frame how the public understands the legal significance of the U Visa. Congressman Smith gestures to the fundamental shift he views will occur if the state provides status to “illegal” immigrants when he responds to Orloff, “My point is if you wanted to carve out an exception, perhaps the example that you gave, that would be fine. But I have a major disagreement with the bill if it is not going to require cooperation . . . .” (My emphasis). By his judgement, the possibility that women may be killed after speaking with law enforcement is an exception to what he views are the normal outcomes of law enforcement who “go after abusers” with the intentions of ending violence. Put more clearly, the possibility that a more violent outcome may occur as a result of undocumented immigrant women coming in contact with law enforcement is viewed as an exception and not a norm. If the U was designed around this particular exception, his view and that of many others is that exception upon exception would be “carved out” in the existing immigration system for “illegal” subjects of law to pursue pathways to citizenship. What is easily overlooked in Smith’s interjection, is his resistance to claims that law enforcement can result in violence. He writes this possibility as an exception which establishes the norm of law enforcement as violence free and thus a space where “cooperation” and not coercion, can materialize. It is within this context that Smith does not want to “carve out” the U Visa as a special humanitarian gesture but rather, seeks to design the visa as something that fits within the existing logic of crime control in the U.S.

Feminist scholars have written that humanitarian laws such as those that protect women from violence rely on a logic of exception that seeks to provide humanitarian aid only to forms of violence marked as the most exceptional and extreme. Feminist analyses of humanitarianism have shown us that the state pays attention to only exceptional or extreme forms of victimization when justifying the use of federal funds and resources to protect women from other cultures both outside and inside the nation-state (Ticktin 2008, 2005; Hua 2011). This illusion of “good will” they argue, protects only those women whose stories and experiences can demonstrate extreme victimization and extravagant humanitarian efforts of aid. These insights have developed through theorizations of the nation-state’s reach outside, the tension of reaching inside however is not equivalent.

In my reading of the U Visa, however, the language of exception does not position violence as the exception. Rather, the U incorporates violence as unexceptional and wanted, as violence that reoccurs as a cycle and thus justifies normalized means of law enforcement to end the cycle. What this normalization does is to then place the language of exception not on violence, but instead, on the granting of temporary legal status to illegal immigrants. It is this act, this pathway to citizenship, that Johnson and Smith view as an exception to the normal functions of the immigration system. Lamar Smith and Leslye Orloff’s dialogue in the Congressional hearing discussed above, while brief, have echoed throughout popularized media stories. It is not that the expansion of coercive police powers operate under the logic that women’s violence and protection are exceptions, but that violence and protection are necessary norms that need law enforcement.

## Conclusion

The only thing in which, the only way in which I find that the U Visa makes progress at all, is if Congress can't get the enormity of the harm that they cause at least I hope they think that they're doing the right thing by creating these little fixes. I just hope that they will feel humane, that little by little, if the stories get out, they might humanize those law makers a little bit. So I keep thinking that hopefully, if they are generous in certain ways that they will say, huh, that felt good that was the right thing to do, the world didn't collapse when we let these few people get status, and so I guess that's sort of my hope. I'm working with the press to get them to not just say, "the U Visa helped this poor battered woman" but "there's an island of criminals that bad for society." So I'm kind of hoping that, as the U Visa develops, but it's still so young, as it begins to solve crimes, or, even better prevent crimes, from, this community, hopefully, we can let ourselves be a little softer and gentler toward immigrants.

This attorney's conversation with me has struck me in many ways. Humanitarianism is able to make lawmakers and the public become "softer and gentler toward immigrants" but the terms of this humanitarianism are coercive to the point where immigrant women feel they must hide their experiences to appear more "innocent and clean." The fiction of "cooperation" between law enforcement and immigrant women runs much deeper than we perceive. Women who are in conditions where they must remain in the U.S. without legal status and their fictive "innocence" through which benevolence and goodwill are imagined are now not only a concern for those who critique Western forms of

humanitarianism but are also crucial elements of how immigrant rights organizations have begun to form the politics of legal advocacy in Asian American communities.

In the early years of the U Visa, the New York Daily News ran a story in 2005 with the headline “Her Long Trail of Tears Ends in Joy. How a poor, immigrant mom saved kids from horrid hubby after five years and 3,000 miles” followed by a story of Marisol, an immigrant women from Ecuador who tried to “rescue her children from a man who abused her – and them – for years . . . . story of a mother’s love, a mother’s guilty and a mother’s desperation to be with the children she was forced to leave behind . . . (Evans 2007). The article was a feature on Marisol’s struggle to obtain a “U Visa” as a survivor of violence and as a woman whose legal status had expired. A Contra Costa Times headline in 2006 read, “Domestic Violence Victims Offered Way to Stay in the U.S. – An Innovative Work Permit Program Allows Immigrants to Feel Safe Cooperating with Police and Prosecutors” and opened the story about the cooperation between applicants and the police with, “He hit her, sexually assaulted her and vowed to kill her. One time he slugged her so hard a bone now just out one side of her face” (Myers 2006). The story described the U Visa as an innovative tool that encouraged victims to “speak out” and “feel safe” approaching law enforcement for help. As Stacy and Elaine’s earlier stories provide however, those women who apply for U Visas have already come in contact with law enforcement because culpability rather than a “safe feeling” or their desire to suddenly “speak out.”

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**CHAPTER FIVE: “Big Guns, and Green Cards”: Asian American Political  
Identity, and the Whiteness of Racial Distance in Anti-Human Trafficking Law  
and The War on Terror**

**Introduction**

In 2009 I met with Marisa and Chris, both Chinese American attorneys with Asian American non-profit organizations. Marisa was new to the organization, having previously worked with a private law firm a few years earlier. Chris was well into her twelfth year working in with the organization, first as an organizer and then later as a staff attorney. We met to discuss the T Visa, a new category of legal status available for survivors of “severe forms of human trafficking” and physically present in the United States but have fallen out of status or they are risk of becoming so.<sup>52</sup> In order to be eligible for a T, most women are asked, and must comply, with requests to cooperate and assist law enforcement. Marisa, Chris, and I spoke at length about how the “cooperation”

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<sup>52</sup> The T Visa was legislated through the Victims of Trafficking and Violence Protection Act of 2002, under the 2000 reauthorization of the Violence Against Women Act. P.L. 106-386. Noncitizen victims of human trafficking are eligible, those who are either on temporary visas or have fallen out of status and have remained in the U.S. Legal permanent residents or those “aliens” whom the U.S. categories as “immigrant” are defined as already lawfully residing permanently in the U.S. Thus, the T is a “nonimmigrant” category and grants “status” despite its title as a “visa” which typically is granted by Department of State to those outside the U.S. and who wish to enter. For definitions of “severe forms of trafficking in persons,” statistical data on T Visas, and the history and implementation of the VTVPA, see (Wyler 2010). The VTVPA is often referenced as the “TVPA.”

element of their work shifted the kinds of political practices used to come in contact with their clients.

Marisa:

We have a good relationship with federal and local agencies . . . . We work very closely with the San Francisco Police Department on language access issues and things have changed because they do listen to us, we work closely with the District Attorney's office in San Francisco, we try to build relationships with law enforcement and the state as much as possible.

Chris:

Some people say - San Francisco should not cooperate with law enforcement and that law enforcement is the enemy. We don't take that view, they are our partners and we work with them closely. You know we still make critiques of them, we speak with them very candidly, actually, and they listen to us, the difference is, there's more of a tone of respect, between us, as opposed to one of you know, disdain, or just direct opposition. We've built respect with them, and I think that's how we work.

As they explained new strategies used to work with Asian immigrant communities, both Megan and Chris consistently returned to questions about their relationships with the state. In the early development of the U.S.'s War on Terror, many new legal options (visas, residency, citizenship) available to women who were survivors of violence

established relationships of trust and cooperation between women, immigrant rights organizations, and law enforcement agencies. Scholarship on the War on Terror and immigrant communities has not grappled with the specific relationship between legal protection over women and the growth of legal punishment over immigrant communities in spaces within the borders of the nation-state. The protection/punishment framework produces racial figures of immigrants as either “good” or “bad” subjects of law where the former serves as the target of laws that protect immigrant women from criminal activity, and the latter the target of laws that punish criminals who pose threats. In this chapter I discuss how laws that save women and fight terrorism form the political imaginary of Asian American immigrant rights politics. I argue in our contemporary post-9/11 era, the racial distance established between the legal protection of women as “good immigrants” and laws that punish “bad immigrants” in defense against terrorism operates as a space of whiteness.

What investments might state narratives have in claiming to achieve equally and simultaneously the promise to build trust and cooperation between immigrant women, non-profit organizations, and state agencies? And how have Asian American legal advocates interpreted these legal promises and the work they must carry out as a result of such changes in law? These questions are timely. Post-9/11 changes to federal criminal and civil enforcement militarized borders and increased the strength of criminalization of immigration monitoring (Hines 2006). In 2008, the Bush administration launched “Secure Communities” a national program that implemented new technological partnerships between federal and local immigration databases and information sharing (Homeland Security Advisory Council 2012; Task Force on Secure Communities 2011).

Funding for previous programs were also increased. Most notably, the 1996 “287(g)” program trains local police to assist in federal matters regarding immigration. The 1980’s Criminal Alien Program also trains local law enforcement to identify non-citizen aliens in federal, state, and local prisons and jails (Kholi 2011). At the same time, post-9/11 legislation has attempted to include the participation of immigrant organizations in law enforcement.

In 2004, The Department of Homeland Security established the Human Smuggling and Trafficking Center to serve as a clearinghouse of “intelligence” and design “new and innovative” efforts to “address the separate but related issues of alien smuggling, trafficking in persons, and criminal support of clandestine terrorist travel” (U.S. Department of State 2012).<sup>53</sup> The agencies conceptualization, borne out of departmental reshuffling that emerged out of the U.S.’s continuous War on terror, the HSTC sought to bring together the legal efforts to address trafficking and terrorism, a move that also lead to the merger between the Department of Homeland Security and the Department of Justice (Establishment of the Human Smuggling and Trafficking Center 2005). The merger between two pathways takes place through the promise to build a new future for both agencies that is more efficient and innovative than their in the past.

But what might appear to be a trivial bureaucratic issue – the departmental reshuffling that was initiated during the governmental responses to 9/11, also leads to a set of important questions about how existing anti-trafficking legal advocacy within immigrant rights organizations are related to the nation-state’s counter-terrorism efforts. What does it mean to bring human trafficking and terrorism together under a new

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<sup>53</sup> Section 7202(d) of the *Intelligence Reform and Terrorism Prevention Act of 2004*

narration as “separate but related”? On one hand, human trafficking legislation on the one hand, is largely visible through the legal figure of women and children as “good” victims of crime and markers of innocence. On the other hand, counter-terrorism legislation relies on the “bad” legal subject of the maker of crime and the taker of innocence (Chacon 2010; Chapkis 2003). How then, are these two legal figures and two different kinds of law brought together in the post-September 11<sup>th</sup> legislative legacy of “separate but related” issues? How might the clarity of this new future fog our vision in other areas? A large body of scholarship on humanitarianism and the War on Terror has focused on U.S. foreign aid abroad, but there is little scholarship that situates these “separate but related” issues on immigrant women from Asian and Asian American communities already residing in the U.S. In this chapter I discuss how saving women and fighting terrorism forms the political imaginary of Asian American immigrant rights claims.

The San Francisco Chronicle reported in 2004, “Authorities say Northern California is a ‘prime destination point for people who are kidnapped abroad or lured to the United States and forced into prostitution” (Lee 2004). A broad coalition of legal non-profit organizations funded under the federal grant “Campaign to Rescue and Restore” formed partnerships with federal and local law enforcement agencies to address severe forms of human trafficking in San Francisco County. Similar projects in the South Bay were funded in the amounts of \$300,000 and upwards (Rodriguez 2009). The Oakland Police Department was awarded \$450,00 in federal grants to address human trafficking through partnerships with the Federal Bureau of Investigation, the Internal Revenue Service, and the Department of Labor (East Bay Bureau 2004). Federal funded programs

like “Rescue and Restore” propose to assist immigrant women already residing within the United States, who are without legal status and are survivors of human trafficking and forms of gender and sexual violence. These new legislative programs and shifts in the reorganization of government are significant to the study of Asian immigrant attorneys and women’s shelter advocates who participate in these programs throughout the “prime destination” of the San Francisco Bay Area.

In what follows, I discuss Asian American non-profit organizations that participate in immigration raids across the San Francisco Bay Area. They interpret how their participation in these raids are necessary means by which organizations are able to provide legal and social services to victims of human trafficking. In our contemporary post-9/11 era, these interpretations about the relationship between law and political participation with the state, the complexities and contradictions of radical political possibilities, and the central role of gender and innocence upon which protecting the “good” and punishing the “bad” is built upon, become central to our understandings of contemporary immigrant rights discourses.

Immigration laws, both prior to 9/11 and in its wake, utilize the protection of immigrants as one of the many means through which migration and borders are managed, bringing together a “security” agenda with existing anti-violence “feminist” agendas (Sharma 2005; Hua 2011). The marking of human trafficking and counter-terrorism as “separate but related” laws maintains a turbid distance between the two that is distinct yet cloudy and confusing. Are these separate laws or are they the same? Can they be related yet still different? Who do we protect, and who do we expel from the nation-state? I argue the space where confusion and lack of clarity sets in should be read as a form of

racial violence. Secondly, I discuss how the perceived distance between these two racial figures of “good immigrant” and “bad immigrant” is a space of whiteness made visible by feelings of “confusion” and “wrong” as legal affect. Lastly, I discuss how whiteness and the protection/punishment dichotomy produces narratives that mark the racial violence of policing and enforcement as not an Asian American political issue. This racial unmarking curtails the scope of Asian American political critique against policing, law enforcement, and the debate over “victim’s rights” versus “immigrant rights.”

Jasbir Puar has asked, how might the participation of the ethnic aid in the establishment of whiteness (Puar 2007). That is, Puar argues the ethnic as a subject of law is not merely repressed or locked outside the possibilities of legal recognition but can at moments be the subject through which the state produces itself through the inclusion and participation of ethnic subjects. In the same way, we might consider whether and to what extent legal advocacy work is a form of participation in state mechanisms and whether this participation reproduces an ethnic figure whose protections, saving, and inclusion can aid the establishment of criminalization over immigrant communities as a form of white supremacy. We need a better way of thinking about what it means to “participate” with the state as not simply “being” the state or “claiming” the state, but rather, how the complexities of participation form relationships of cooperation that are not equal for both parties and thus challenge our existing means of thinking through such formations.

The difference, or more specifically the distance perceived between legal protection and legal punishment is where legal advocacy work on behalf of immigrant women can aid in the establishment of political claims that reinforce and give meaning to

the expansion and normalization of enforcement in existing immigration laws. The racial politics of Secure Communities and 287(g) target the monstrosity of the uncivilized terrorist in opposition to the non-citizen woman as the innocent victim with potential to become a citizen of civil society (Puar 2002; Volpp 2002; Rana 2011). This chapter takes as its point of departure an expansive view external to the goal of obtaining legal relief in order to ask, regardless of whether a client's application for a T visa is successful, how might the very terms of this application reproduce gender and racial subordination? Asian American scholarship and contemporary politics both stand to gain from grappling with the pressures and stakes that form when the only provisions available for immigrant women are through the deployment of programs and ideologies of "cooperation" and "trust" between law enforcement, non-profit staff, and their clients.

### **Sanctuary**

In 1989, San Francisco County passed the "City and County Refuge Ordinance" or commonly referred to as the Sanctuary Ordinance prohibiting "[c]ity employees from helping Immigration and Customs Enforcement (ICE) with immigration investigations or arrests unless such help is required by federal or state law or a warrant" (City and County of San Francisco).<sup>54</sup> Immigrant rights groups across the Bay Area supported the ordinance's ability to shield undocumented immigrants from unwarranted and excessive stops, arrests, and investigations. The sanctuary ordinance was able to reduce the number of immigrants who were brought into local law enforcement agencies for investigations and were automatically turned over to ICE for deportation. In 2007, Mayor Gavin

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<sup>54</sup> For further discussion of legal issues and "Sanctuary Cities" see (Garcia 2009)

Newsom amended the ordinance and established protocols for local law enforcement to report to ICE any suspected “illegal” immigrants convicted of crimes, not referrals upon arrest but referrals to ICE only after a conviction (McKinley 2009; Galbraith 2008; City and County of San Francisco). Sanctuary defines protection based on the ability to resist cooperation with federal immigration. A politics in support of sanctuary against unwarranted punishment is perceived to be fully at odds with laws that require cooperation as a prerequisite for protection. In other words, deportation due to cooperative referrals from local law enforcement to federal immigration agencies brushes up against the T Visa which builds relationships of cooperation between local law enforcement and immigrant communities. I suggest however, legal protection and punishment become paradigmatic of the political meaning of both sanctuary and cooperation, binding them in their opposition rather than completely severing them.

In 2008, Tony Bologna and his two sons were murdered in San Francisco’s Excelsior District. Edwin Ramos from El Salvador, was charged and local newspapers began reporting on Ramos’ gang affiliations while focusing on his lack of legal status. The San Francisco Chronicle ran an investigation of Ramos documenting his previous engagements with the juvenile justice years prior. Reporter Cinnamon Stillwell argued,

But thanks to San Francisco's sanctuary city status, instead of being reported to federal immigration authorities and deported, Ramos was allowed continue to roam the streets of San Francisco until his arrest for the Bologna killings. . . . Providing sanctuary for law-breakers at the expense of law-abiding citizens is neither a compassionate nor a moral approach. The issue is not one of callousness

towards illegal immigrants, but rather, the duty owed American citizens by their government (Stillwell 2008).

A heightened anti-immigrant sentiment grew amongst those politically opposed to the concept of sanctuary. Based on a fear that excessive resources were used to assist “illegals,” sanctuary opponents argued the city’s crime rate would go down if immigrants were deported rather than sanctioned. If the ordinance was not amended, opponents argued the city’s safety and security would be jeopardized.

In 2009 I met with Stan an attorney in the East Bay to talk about legal work with survivors of violence. After working for many years as an educator and organizer in the Asian American community he went to law school and then returned as an attorney servicing the specific needs of clients who were survivors of domestic violence in Asian immigrant neighborhoods. As we talked, he recalled his memory of Tony Bologna and the sanctuary debate:

So the young man who then became an adult, killed somebody and then the Chronicle did this whole exposé talking about how basically this guy was out there able to kill somebody because of the sanctuary ordinance this guy wasn’t deported . . . there was this knee jerk response from local government because of this story. And basically the mayor said from now on, he instructed the juvenile probation department to start reporting undocumented immigrants to ICE, juveniles, upon their arrest, so even if it’s a wrongful arrest or an improper arrest,

the fact that they are undocumented could be reported to ICE just by having contact with police. So that was his response to all of this.

So the local immigrant rights community also responded with a defense of the sanctuary ordinance that actually this ordinance makes our communities safer because immigrants would not be fearful of coming forward as victims of crime and having contact with law enforcement due to their lack of immigration status.

Stan's organization was one of many different non-profit groups working within Asian, Latino, Pacific Islander, and Arab American communities who met formally and informally to discuss how collective responses to the debate could form. Stan described these gatherings as hard. Each organization served immigrant populations, he explained, "[and] we all deal with different laws and not everyone deals directly with law enforcement the way we do." For organizations working with women from immigrant communities, legal advocates must cooperate with law enforcement in order to obtain visas and other forms of protection for their clients. How then, do they articulate their position within larger "immigrant rights" politics that argue cooperation leads to racial violence when undocumented or "illegal" immigrants are deported?

Given the structure of cooperation as a practice closely involving advocates, there is little room for both anti-violence work and immigrant rights work not to come at odds with each other over their positions against, or with, immigration enforcement. If a call to stop all cooperation with immigration or local enforcement can potentially disrupt the work of anti-violence legal advocacy with immigrant women, then can the participation

of advocacy work within existing “cooperative” partnerships work against immigration reform efforts as well?

In 2010 I met with Hannah, a women’s shelter advocate in the East Bay who argued that the women she worked with were primarily positioned as victims and as immigrants but both positions were without any “rights.” She shared this particular interpretation of the sanctuary ordinance debates:

As a victims’ rights org [and] as being advocates for victims and survivors of violence, we have to be sensitive to the survivors of violence. And in this case, there was a family who had someone murdered and so as advocates for survivors of violence [...] we didn’t feel comfortable jumping in the fray and disregarding really valid feelings that this family who had just lost a loved one, feelings regarding how they came to this point in terms of this young man killing their loved one. And so we weren’t ready to jump in there and take the positions that many other organizations took. [...] Because of the nature of the work that we do, we’re the lone voice in these discussions. We don’t support what the mayor argued for—that anyone who is picked up by police should be reported, we definitely don’t support that.

As Hannah spoke, her description of the sanctuary debate was focused largely on how a wholesale and blanket approach to sanctuary, to non-cooperation with law enforcement on behalf of the city or that of non-profit organizations, would drastically limit the

“nature of [their] work” as an organization focused on victims of gender and sexual violence.

If “victim’s rights” for survivors of violence and “immigrant rights” for immigrants who need legal status are viewed through their similarities, the differences between these two sets of political claims are not as clear. The former occupies the position of cooperation in order to receive protection for survivors and the latter, a position of protest against any cooperation with law enforcement. Yet, the punishment/protection dichotomy that underpins how “cooperation” is understood in the first place (the racial figures of the “good” and the “bad”) relies upon both the participation and the protest against it.

Returning to Jasbir Puar’s suggestion that we might question whether the participation of the ethnic can aid in the establishment of whiteness, can the participation of advocacy work within the existing criminal legal system support the establishment of law enforcement’s white supremacy? As a system of modern government, the rule of law and subsequent agencies of immigration and enforcement require the participation not only of its citizens, but of racial subjects and in particular, their cooperation. My interpretation of the sanctuary debate is focused on how the maintenance of modernity’s claim of social relations between the state and people develops a need not only for the participation of the racial subject as Puar has suggested. But in extending her insights, it is both the participation (cooperation) and the protest (no cooperation) that holds the logic of punishment and criminalization in place.

Mark, an attorney who often represented Hannah’s clients, interpreted immigrant rights political claims for wholesale sanctuary in this way:

In this context, in San Francisco, there are a lot of agencies and legal agencies that are extremely on the far left, like even beyond progressive, that view a very hard line on law enforcement; they view immigration and customs enforcement as their enemy; they view law enforcement as their enemy, right, because, and rightfully so, because their communities have been the people who have been the victims of raids. They're the groups that have seen family members deported, jailed, constantly, consistently, overtime, sometimes justifiable, sometimes not, but they've seen those things happen. And they will say—we want zero cooperation with law enforcement. But here's the problem. A bunch of the legal relief that's out there for us, is based on cooperation, under our current system.

The “problem” was a roadblock created by sanctuary law. For Mark, a number of local law enforcement agencies in San Francisco were unwilling to sign certifications non-profit attorneys needed in order to complete their client's applications for T visas. Many agencies couched their unwillingness to sign based on the argument that if they signed their office would be in violation of the sanctuary ordinance for providing local information to federal agencies. Thus, the sanctuary ordinance debate moves well beyond the realm of immigration reform and into the work of humanitarianism towards immigrant women where a city's protest against cooperation with immigration enforcement muddies non-profit attorneys who are positioned in mandatory participatory relationships with immigration and with local law enforcement.

Immigrant women do not fit as clear cut subjects of either the victims' rights agenda or the immigrant rights agenda. Both approaches produce a distance between each other that prevents immigrant women's experiences from ever occupying both positions of injury from racial violence and sexual violence despite their lived experiences as immigrants and as women.<sup>55</sup> Instead, their position as subjects before the law becomes trapped by the limits of visibility only as innocent victims of sexual violence. Sherene Razack has argued that when sexual violence is understood only through innocence, the visibility of women as legal subjects are captured by this innocence and cannot be visible, understood, or legitimated outside the terms of innocence (2005).<sup>56</sup> Immigrant women who are sex workers, trafficked, or survivors of violence remaining in the U.S. occupy an ambivalent subject-position before the law: that of "innocence" as victims of crime but also as "culpable" for their sheer physical presence in the U.S. without legal status. Thus, the captivity not only traps them within the imagined space of pure innocence, it binds them against a politics that supports sanctuary's protest against cooperation. Immigrant women do not fit into the victims' rights framework if their lack of legal status marks their racial visibility as culpable. Immigrant women also do not figure squarely into the immigrant rights agenda if they

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<sup>55</sup> I draw from Kimberle Crenshaw's work on intersectionality as an approach which places women of color at the center in order to articulate the political power of the margins they occupy in anti-racist politics (that does not account for sexual violence) and feminist politics (which does not account for racism). In the same way, an "immigrant rights" approach which binds itself in opposition to "victim's rights" produces power. This power is the ability to mask the captivity of sexual violence and the experiences of immigrant women (Crenshaw 1995).

<sup>56</sup> Captivity is a form of victimization by a law that seeks to provide freedom to victims of sexual violence.

and their attorneys are required to cooperate with law enforcement in order to apply for legal status.

### **Distance Between Law's Racial Figures of "Good" and "Bad" Immigrants**

In the wake of 9/11, counter terrorism policies targeting Arab immigrants and their communities heightened the urgency and popular acceptance of national security and threat. The Homeland Security Act of 2002 abolished the Immigration Naturalization Service (INS), the federal agency that processed, administered, and managed immigration. The INS was folded into the newly formed Department of Homeland Security in 2003 (U.S. Citizenship and Immigration Services 2011; Congressional Quarterly Almanac 2003).<sup>57</sup> Three new immigration agencies were established transferring all administrative duties and applications under the newly formed Department of Homeland Security whose mission is to "secure the nation from the many threats we face" and to make the nation "stronger and more resilient than ever before" (U.S. Department of Homeland Security 2012a, 2012b).

Leti Volpp has argued that post 9/11 policies reproduced two particular racial figures of the "citizen" and the "terrorist" to justify and describe immigration laws in this era. She argues that the racial figure of the immigrant subject is produced through war and through a specific racial identity that disidentified Arab Americans as citizens and

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<sup>57</sup> Pub. L. No. 107-296, 116 Stat. 2135. Immigration Naturalization Services agency was split into three components under the Department of Homeland Security, forming two primary agencies, United States Citizenship and Immigration Enforcement (USCIS), Customs Border Protection (CBP), and Immigration Customs Enforcement (ICE). See "Our History" at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=e00c0b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=e00c0b89284a3210VgnVCM100000b92ca60aRCRD>

repositioned their already existing racialization within political debates over threat and terror (Volpp 2002). Evelyn Alsultany's work on representations of race and Arab Americans in media documents the production of the "bad" and "good" immigrant as racial figures reproduced through narratives of war (Alsultany 2012).<sup>58</sup> The racialization of immigrants after September 11<sup>th</sup> popularized through media and lived through experiences of racial violence, deportations, and mass detentions of immigrants rationalized and gave meaning to swift changes in government and legislation on immigration, enforcement, and civil liberties (Cainkar 2009; Bohrman 2005).

Nadine Naber has argued that post-9/11 policies not only rely on the racialization of Arab Americans, Muslims, and South Asians as "good/bad" and "citizen/terrorist" but also on political efforts to include immigrants in the folds of the government programs during times of war (Naber 2007). Specifically, new federal funds developed government-sponsored educational and social services to include Arab immigrants in projects with multicultural and liberal agendas alongside those that exclude immigrants based on perceived national threats. In 2002, Special Agent Joe Navarro published "Interacting with Arabs and Muslims: Perspective" in the widely circulated trade publication, the FBI Bulletin. In his description of how officers should conduct themselves when they are in the homes of Arab immigrants, Navarro writes, officers should build trust and "avoid showing the soles of their shoes to their hosts" and when

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<sup>58</sup> Both Volpp and Alsultany draw from Edward Said's theorization of Orientalism through which notions of the "East" and the "Orient" were imagined as cultural and religious Other, mystic, foreign, and through which the civilization of the West was defined. For a discussion of how Orientalism has produced gender and femininity see (Naber, forthcoming) and for a discussion of how Orientalism places the nation-state in a perpetual state of war see (Smith 2006)

conducting an interview “allow for the person to save face if caught in a lie” (2002). To build trust, Navarro concludes:

Interviewees often willingly tell officers about their backgrounds and their lives. This information can prove educational and enriching, enhance communication, establish empathetic channels, and prepare officers for the next interview where knowledge of the region and customs oftentimes can offer additional investigative opportunities and improve relations between the law enforcement agency and the cultural group. [...] The Arab community deserves law enforcement's best efforts and protection, which can be accomplished ably with understanding, dignity, and respect (2002).

Navarro’s attempts to include and trust immigrants in order to carry out more efficient and effective counter-terrorism FBI projects exemplifies the racial figures Volpp and Alsultany analyze as well as Naber’s discussion of the post-9/11 national investments to include and protect immigrants with “understanding, dignity, and respect.”

Transnational feminist scholarship has critiqued U.S. humanitarian projects to “save brown women from brown men” arguing that the racial production of the good/bad dichotomy relies upon the gendered figure of women in need of protection and Orientalist definitions of innocence and cultural degeneracy (Abu-Lughod 2002; Alexander 2005; Volpp 2000). Scholarship in this area has focused primarily on the deployment of U.S. humanitarian projects to save women in “international” spaces. Current scholarship on the legal legacies of humanitarian projects developed during the U.S.’s War on Terror has

yet to engage with the simultaneous expansion of legislative efforts to protect women from gender and sexual violence at the turn of the century.<sup>59</sup>

Megan, an attorney with a San Francisco based legal non-profit described one of her organization's current projects to assist survivors of human trafficking. Heavily funded by federal grants, she described the history of the project by suggesting, "if there was no 9/11 [...] we would not have this money right now." Her organization and other groups across the Bay Area partnered under the "Rescue and Restore" program with the FBI and ICE. The organizations role was to provide legal and social services resources to victims of human trafficking primarily from Asian countries and who may be eligible for social services, legal relief such as the T Visa, and other immigrant benefits<sup>60</sup>. Indeed, all of the women she currently worked with who were sex workers through trafficking rings came into contact with the organization through this partnership.

The Department of Health and Human Services was funded in 2000 to develop a new project, The Campaign to Rescue and Restore.<sup>61</sup> In 2008, HHS worked with coalitions across 25 different cities and states and awarded \$350,000 to partnerships and coalitions formed between federal agencies, non-profit organizations, social services providers, health care professionals, faith-based organizations, and law enforcement

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<sup>59</sup> Federal funding for domestic violence shelters or non-profit organizations that serve survivors of violence and human trafficking are small pools of monies within larger funding programs earmarked for post 9/11 policies promoting the fight against the "War on Terror" while at the same time promoting campaigns against the human trafficking of women, children, and families (Bergoffen 2011; Chapkis 2003; Haynes 2004; Yvonne 2010).

<sup>60</sup> The T Visa, designed specifically to provide temporary legal status for victims of severe forms of human trafficking was included as part of the Trafficking Victims Protection Act of 2000, a section of the reauthorization of the Violence Against Women Act of that same year, Pub. L. 106-386.

<sup>61</sup> For more information on Rescue and Restore, see:  
[http://www.acf.hhs.gov/trafficking/rescue\\_restore/index.html](http://www.acf.hhs.gov/trafficking/rescue_restore/index.html)

personnel to build relationships between national and local entities enlisted in identifying victims of human trafficking (Attorney General 2009).

Megan's primary role as a partner of Rescue and Restore was to help immigrant women who are survivors of trafficking apply for T Visas and social services. In order to come in contact with women who were potential clients, Megan and other partners within the program participated and assisted in immigration raids:

When we're notified by the FBI that they are going to conduct a raid, we call volunteer interpreters and attorneys who are our partners. And then we wait. [...] After the raid, if there are twenty victims, we at least have to have five groups, each group has three people. So it's 15 people waiting there. [...] I keep on saying that this cannot solve the problem of course. [...] Imagine you are being investigated by some people with uniforms – FBI with big badges, walking around with guns. And then we come in and say we are the saviors, “We are here help you, help you to try and get a green card, and we try to give you housing and we get you benefits.” (laughing) The victims are so confused, within 12 hours there are two groups of people, one group saying I am going to kick you out of country for doing illegal things, and another group saying, I am your savior I am trying to save you this, (sigh). So it's really interesting, all these procedures, its interesting to look at all this and say, wow, something is going on.

Here, Megan describes herself and other attorneys as the “saviors” who are brought in to participate in the raid and to assist trafficked women. The state is not the humanitarian savior in her description. They are instead the ones “with big badges, walking around

with guns.” In her interpretation of how women in the room must feel, Megan describes the situation as “so confused” in a room where two groups of people stand together one saying “I am going to kick you out of the country” and the other saying we are here “to try and get a green card.” Her own position within this scene is clear to her. She understands her work and that of her partners to be the provider of legal assistance and services precisely because this is a position that cannot be occupied by the FBI agents in the room. Megan’s role is not to assist in the deportation of women from the country for their lack of legal status or as sex workers. Her description of the FBI agents and their role comes clearly to her as well. What is less clear, however, is the understanding on behalf of the women who are survivors of trafficking. Will they view her as separate from the FBI as she anticipates they will? And is it possible even for this separation, or this difference, to be clearly severed? Even prior to this scene, an assumption is held that women who are brought in and held by law enforcement will, under such conditions, willingly accept legal assistance and aid.

Megan paused briefly after sharing the description of her organization’s role. She began to talk about how her organization had formed closer relationships with other partners in the network. She had become familiar with the particular FBI agents who were also part of the partnership. Megan dreaded long weekends and holidays when she was unsure if a raid would take place and her organization would have to drop everything to wait to service any women who were trafficked. “Sometimes they do not want services. It’s their choice [...] and it’s common for them to choose not to try the legal system, they would rather be deported.” As the “savior” separated from FBI agents, Megan describes how “confusing” the situation can appear to victims of human

trafficking. But her laughter and her suggestion that “this cannot solve the problem” suggests the distance between the two positions is somewhat unconvincing.

Laws that protect women and the legal subject of innocence and laws that punish legal subjects who commit crimes from within immigrant communities come together in these waiting rooms. The distance of difference established between Megan as the protector, and the FBI agent as the punisher, forecloses the possibility of analysis of Megan’s participation in a raid. Her participation not only as an advocate on behalf of women, but as an advocate who has a specific role to play in the overall process of an immigration raid is masked. In a way, the confusion or the “distance” perceived between protection and punishment hides how the similarities that make both the role of “savior” and “FBI” interdependent in this partnership. Put differently, the participation of the ethnic as an in-language interpreter or advocate aids in the ability for this specific immigration raid to take place under government programs to “Rescue and Restore.”

In 2010 I met with Caroline, an attorney who began working on domestic violence and trafficking cases three years prior.

A lot of our trafficking clients have actually come from these very ICE raids and so while we don’t support ICE raids ruining families and generally deporting people, it would be very hypocritical for us to say that ICE raids are wrong. Do I think they are traumatizing for our clients in the past? Yes. But can I definitively say that our client would have never surfaced if ICE had never raided that massage parlor? No, I cannot.

Caroline poses a question at the end of her description about her own work. Can she even be sure that the very existence of clients would be a reality to her organization if they had not engaged in assisting with an ICE raid? The question opens up inquiry not only into the kinds of clients she primarily works with, but the extent to which the organization's relationship with ICE can have on the existence of clients. A client is the primary figure, the target, and the goal, of an attorney's work. Caroline prefaces her question by interpreting raids as "wrong." The articulation of what she is unsure about and cannot definitively describe is whether her participation with, or without, ICE is wrong as well.

In Megan and Caroline's stories, feelings of "confusion" and "wrongness" round out their interpretations of their own participation in immigration raids. The confusion and wrong becomes identifiable within the space of distance established between seemingly two separate descriptions of law. The protection of women on the one hand, as innocent victims of the crime of human trafficking is marked not only as a separate legal approach to the increased criminalization efforts that stem from the "War on Terror" but also, as an approach that aids in the laws and policies that seek to enforce harsher criminalization of borders and the communities who cross them. Megan and Caroline's discussion about confusion and feelings of wrong become incredibly significant to interpretations of the distance established between laws that protect and those that punish (Kempadoo, Sanghera, and Pattanaik 2005).<sup>62</sup>

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<sup>62</sup> Kemala Kempadoo's critiques of Western feminist anti-trafficking discourses draws links between the 2000 Victims of Trafficking and Violence Protection Act and the United Nations Convention on Transnational Crime. Trafficking became part of a larger conversation on the "fight against international crime" a form of rhetoric ultimately in support of immigration control. The trafficking of women, Kempadoo argues, does not

Thus, the distance we perceive between the racial figure of the “good immigrant” and that of the “bad immigrant” is suspended as a space of whiteness, not as a form of racial identity but rather, as a source of racial separation which is unmarked, unnoticed, and unaccounted for in the establishment of the subordination of the racial binary of “good” and “bad.” Robyn Wiegman has argued that the political project of the study of whiteness goes beyond the description of its particularity, but rather, articulates the ways the particularity of whiteness allows for the reproduction of universal power (1999). In the same way, the untethered distance between two racial figures operates as a form of whiteness by erasing the racial sameness between the law’s treatment of the “good” and the “bad” immigrant so that we might perceive the law treats these two racial figures differently. In other words, the strength of this distance lies in its ability to erase the possibility that the law would also mark immigrant women as “bad” immigrants even when the law marks them as culpable for remaining in the U.S. without legal status – “big guns” and “green cards.”

Caroline and Megan’s stories describe the frozen figure of immigrant women as innocent and “good,” which in turn bely the legal pathways that place women not only before their “saviors” but before those with “big guns.” Women’s legal subject is held captive within this narrative of “good” innocence but in the room with Megan and Caroline they are moved back and forth between the “good” and the “bad.” As Rey Chow has argued, “The power of the captivity lies in its twin capacity for sustaining

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change trafficking but rather, laws such as the TVPA do end up creating harsher conditions of migration and work patterns for immigrations. And people being re-trafficked, does not change trafficking but rather these laws end up changing migration and work patterns for those who are trafficked in addition to laborers and migrants (2005).

victimhood (as a way to legitimize social protest) and for transforming victimhood into the very means of cultural domination itself” (1999).

The suspension of this distance between innocence and culpability, between the “good” and the “bad,” between the victim and the criminal, produces a form of whiteness within this racial distance. By whiteness, I mean the distance is able to engulf both racial figures by bringing them into the protection/punishment binary and marking them as racial others while maintaining unmarking the significance of the distance we perceive to exist between them. To be clear, I am not making a sweeping or universal argument that we ought to be blind to particularity or that anyone who comes before the law should be seen as occupying the same historical experiences or material positions as everyone else. Instead, I am merely suggesting that we pay particular attention to the distance between two racial figures as a site of hidden racial meanings.<sup>63</sup> The confusion and the feelings of wrong that both Megan and Caroline suggest, are nuances that reveal how powerful the perception of distance between these two racial figures can be for the overall visibility of the legal meaning of protection, punishment, and racial justice. Further, they challenge us to analyze forms of subordination not only through legal exclusions, but through the gendered and racial forms of inclusion.<sup>64</sup> To ask, why might the state be invested in

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<sup>63</sup> In the same way, the distance between the “good” and “bad” immigrant as a racial figure of legal meanings, of law, pertaining particularly to violence against women and national security reveals how it is not merely the production of the threat against citizenship or the protection of citizenship itself but rather the ways in which we are made to understand the differences between the threat (the “bad” racial figure, criminals that threaten the citizen politic) and the protection (the “good” racial figure, immigrant women as potential citizens) to begin with.

<sup>64</sup> Indeed, this is as Denise Da Silva has argued, that the globality of race relies on a strategy of engulfment which shifts how contemporary political claims may view this globality as a form emancipation (2007).

promising to protect women while equally building the strength of criminal enforcement over immigrant communities?

### **Asian American Political Responses to Policing**

In December of 2009 I spoke with a shelter advocate in the South Bay area about her organization's outreach programs. While most of her time was dedicated towards one-on-one work with clients, she also conducted workshops and information sessions on domestic violence at local churches and high schools. Throughout our conversation she referred to Santa Clara County law enforcement as "better than most" and described her position as a "lucky one" in comparison to other non-profit staff working in Alameda County. When I asked her to expand a bit more on what she meant, I heard stories about "working relationships" with local law enforcement. Funded by the federal program "Grants to Encourage Arrest" a number of non-profit organizations participated in local meetings with law enforcement and medical staff to discuss a revolving set of issues that ranged from family violence, public safety, crime, and health and mental services for in Santa Clara County. Funding was originally legislated under the Violence Against Women Act to "encourage State, local and Tribal government [...] to treat sexual assault, domestic violence, dating violence, and stalking as a serious violations of criminal law requiring the coordinated involvement of the entire criminal justice system. The Arrest Program challenges the entire community to listen, communicate, identify programs, and share ideas that will result in new responses to ensure victim safety and offender accountability" (Office on Violence Against Women 2012).

In the structure she described as “better than most,” I asked how clients’ perceptions of police played a role in her work with survivors of violence. She shared this particular interpretation:

Advocate:

So the U. S. has a pretty decent legal system, not the best in the world, but better than a lot. In other countries, the police aren’t your friends, they’re the enemies, they’re the people who kidnap people, they are the ones, they’re the ones who commit crimes against you, shake you down for money. So the South Asian community, for the women I work with to be speaking with law enforcement is one of the scariest things, even when they have the attorney, they are still very much afraid.

Me:

In your experience is the “police as enemies” viewpoint drawn from both here and other countries?

Advocate:

I’m not sure. It’s different. Some of my Latino clients have a different viewpoint, I’ve seen they have more of a negative perception of police based on those police that are here. But for Asian clients, their perceptions are based on police abroad in other places, not here.

Me:

Why do you think that's so?

Advocate:

The scrutiny placed on our [Asian] groups here, is far less, than, let's say for example, a person who is Hispanic or African American even.

In our conversation, Asian immigrant perceptions of police in San Jose were described only in reference to those “back home” who were not your friends but were instead, the enemy. Police in San Jose were described as unlike those back home, unlike the enemy, and unlike those who were not your friends. The conversation above is a dialogue where immigrant women's perceptions of police are drawn from experiences outside of an engagement with law enforcement. The externality in turn, is the reference point through which the advocate tries to explain why clients view police in San Jose as different and unlike police “back home” who “commit crimes, shake you down for money” but who are also described by the advocate as scared to call San Jose police. Even further, negative perceptions of police “that are here” she shared, were present in the experiences of her clients who were women from Latino and African American communities. Not Asian immigrant women's experiences.

In Asian American Studies, scholarship on policing, punishment, and prisons have relied on whether and to what extent a critical mass of people exist within structures of policing or prisons in order to theorize how prisons are an Asian American issue or part of the formation of political identity. In a related context, Dylan Rodriguez has

argued, the field has de-mystified? the model minority myth, but is still developing theorizations of how the terms upon which the demystifying process takes place can reinforce other narratives of subordination against communities of color (Rodriguez 2005). In the conversation above, the advocate articulates what she sees in her work – critiques of policing and prisons represent less of a critical mass amongst her Asian clients when compared to Latino communities. I do not interpret this gesture towards the absence of a critical mass as a move away from Asian American analysis, rather, it seems this gesture is the precise moment where Asian immigrant women’s experience are articulated within racial politics over policing.<sup>65</sup> The absence shapes what we see as unrelated, unidentifiable, and unrecognizable as pertaining to Asian American political identity and theory. That is, we might ask instead, how has the field articulated prisons and policing to not be an Asian American issue?

Like the absence perceived between the “good” and “bad” racial figures of the innocent victim of gender and sexual violence and the immigrant who commits criminal activity, the dependence upon a critical mass as proxy to the presence of racial analysis and theorization, becomes trapped within the paradigm of unmarked whiteness of racial space held by the binary of protection and punishment in legal formations. Whiteness of this distinction is held by what Toni Morrison has written as the whiteness of the American literary imagination based on either a real or fictive black presence. Be it real or fictive that other communities of color experience more oppression from law enforcement or not, Asian women are distanced from them in the advocate’s description. Aileen Morenton-Robinson has argued that critiques from women of color on the

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<sup>65</sup> For a discussion of Asian American Studies “after critical mass” see (Ono 2005)

universal feminist subject has led to a shift from theorizing the subject in relation to categories of difference, to theorizing differences within the subject. She argues, that in spite of this shift discourses of “difference” continue to produce whiteness through the making of deracialized but gendered universal subjects (2002). In the same way, the differences in black and Latino womens’ experiences in this very specific distinction over law enforcement cannot account for how a marking of no racial violence from law enforcement (Asian women) can be itself a form of racial violence when the racially unmarked position of “none” operates as whiteness in the Asian American imaginary.

## **Conclusion**

I mean honestly, this is a criminal law issue, people who are battered are protected by the criminal law system, people who are being trafficked are being protected by the criminal law system. How do you propose to stop or ameliorate it, if you stop working with these people, I mean, is there a way, can you think of any way, I can’t. I mean I don’t think you can legislate out DV without enforcement. There needs to be enforcement.

Emphatically, and with great frustration, the attorney quoted above ends her long thoughts about cooperation and sanctuary in the Bay Area. Is there any way, she asks me directly, that I can think of how we can address violence against Asian immigrant women -- all the messiness and all the violence she and I have discussed throughout our

conversation -- without the protections of the criminal justice system? I cannot think of any other way, I respond. We sit there in silence.

What we can think of however, and what both spent over an hour discussing, is how the current way of both participating with the state and protesting against it, has indeed allowed some women to obtain T visas. Neither her nor any attorney or women's shelter advocate I spoke with ever suggested they stop helping clients apply for visas in order to avoid cooperating with law enforcement. Regardless of whether an application is submitted, or if it is successfully accepted, the whiteness of this racial distance established by the protection/punishment binary of immigration law can continue to mark the visibility of women to the law only as innocent and "good" racial figures in order to unmark how their actual experiences are that of being shuttled back and forth between the racial figure of "good" and "bad."

The distance between victims' rights and immigrant rights agendas reproduces itself, by engulfing both the participation and the protest against cooperation with law enforcement as the terms upon which "rights" are debated. As many women of color feminist scholars have argued, white supremacy is able to produce universalist notions of rights not merely through the establishment of the particular, but rather, made visible as whole and discrete by gendered binaries such as the racial figured of victimized and innocent women in need of political rescue. At the same time, the immigrant women who are survivors of violence are not pure subjects of either of these political agendas and are the racial figures that we claim to be unaccounted for by both sides of the political debate. Here, white supremacy operates by foreclosing analysis of how victims rights and immigrant rights political claims are not merely in opposition to each other,

but can serve the same purpose of establishing the rationale that laws that protect women are unconditionally distinct from laws that punish criminals. In the same way, the racial distance perceived between Asian immigrant women and Latino immigrants forecloses the development of an Asian American critique of policing by producing a perspective that anti-prison or anti-police approaches are not an Asian American issue.

In the middle of my conversation with Megan, the attorney whose story we first read in this chapter, she began to talk about how she perceived herself in relation to the state. Indeed, how radical political possibilities configure with growing, expanding, and shrinking state agencies is central not only to the practice of legal advocacy work but the development of political thinking, ideas, and the production of knowledge. She shared:

I see us as separate from the state. There is a stark distinction in my mind because I have to make that distinction to my clients. They need to understand that we're not an arm of government, we're totally separate, and that means that if they don't want to cooperate with government in order to get relief, then we will help make that happen, so they have to understand there is a distinction. As a social justice organization, you cannot be a part of, you can't be a part of the system, that's victimized the people in the first place . . . . I think we collaborate with the state but you can't ever be part of them, you know?

To collaborate with the state but to view oneself as not part of them is a strategy

and one that speaks to the production of race and gender I have discussed through this chapter. It is an approach to understand how one's work, which must take place in order to obtain relief for a client, is part of larger racial debates.

In a recent publication of *The Abolitionist* organizers Mimi Kim, Morgan Bassichis, Felipe Hernandez, R.J. Maccani, Gaurav Jashnani, Bench, and Jenna Peters-Golden discuss what "safe spaces" and "safety" look like and how they can be maintained after the abolishment of the prison industrial complex without sustaining mechanisms of policing, surveillance, and imprisonment. Their conversation and insights theorize how current work in communities across multiple spaces has already developed practices for us to address violence and harm without the use of policing and imprisonment (Kim 2010). Her closing chapter to the anthology, *Domestic Violence at the Margins*, Andrea Smith asks, 1) how we might look to the future by centering women of color in our analyses of violence, 2) who is most marginalized within women of color groups, and 3) what it will take to end violence. Rather than looking only at interventions from the point of crisis social change is necessary if we are to end violence which operates not simply as a mechanism of patriarchal control but a tool of racism, colonialism, and economic oppression. Thus, Smith argues, "a criminal justice approach ultimately cannot stop domestic violence – because it only works at the point of crisis rather than preventing the abuse from happening" (Smith 2005b).

Why raise these questions about how laws, legal subjects, racial figures, and political claims are similar rather than spending the time to understand how and why Asian immigrants and Asian American political identity is different from others? I am suggesting that a gender analysis of racial justice and of legal violence particular to laws

earmarked in the post-September 11<sup>th</sup> era both draw upon the past and bring forward a new era of understanding about law enforcement and violence against women. It is not the intentions of any individual attorney or women's shelter advocate, or even the specific policies or decisions of their organizations. Rather, this chapter is an attempt to understand how racial distance makes protection and punishment legible to us.

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