

IMMIGRATION LITIGATION

Letter from the Co-Chairs

Inside this issue:

Dear Immigration Litigation Committee Members,

Welcome to the first edition of our Committee's Newsletter. At our Section's Annual Conference in New York we had standing room only attendance at a wonderful workshop on representing children in immigration proceedings.

As all of you know, this has been an exciting time in the field of immigration law, and the times have been equally challenging for our Committee. Founded in the fall of 2001, our Committee has been active and at the forefront of some important immigration law developments. We participated in the drafting, and later co-sponsored, the ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States, which were adopted by the ABA in August 2004. The Standards can be reviewed at: http://www.abanet.org/immigration/Immigrant_Childrens_Standards.pdf. In the fall of 2003, our attention was occupied by a topic that is also timely today – proposed federal legislation that sought to criminalize violations of civil immigration laws and to delegate enforcement authority to state and local law enforcement officials. Through the efforts of our Committee, and the support of the Section of Litigation, the ABA House of Delegates passed a resolution last February urging that the Federal Government retain exclusive jurisdiction over civil immigration matters, opposing delegation of legal authority to state, territorial and local police to enforce federal civil immigration laws, and opposing criminalization of civil violations of immigration law. We are presently busy with considering possible responses to the Real ID legislation, particularly the weakening of judicial review and habeas standards contained in that legislation.

We could certainly use your help! We have four busy sub-committees, devoted to Membership, Newsletter, Website/Technology and Programs, with numerous opportunities to get involved should you so desire. We'd also welcome your comments on our first Newsletter, and your thoughts about what else the Section of Litigation and the Immigration Litigation Committee can do for you. We hope to see you in Chicago.

Sincerely,
JoNel Newman and Karen Grisez

<i>Letter from the Co-Chairs</i>	1
<i>The Locking Mechanism</i>	2-3
<i>Navigating the Department of Homeland Security: Key Links</i>	3
<i>What is LAPP?</i>	4
<i>How Can a Law Firm Participate in LAPP?</i>	4
<i>Sample LAPP Immigration Cases</i>	5
<i>An Asylum Case as a Classroom</i>	6-8
<i>What Clients Want</i>	8-9
<i>Human Trafficking: Seeking to Expose and End Modern Day Slavery</i>	10
<i>Membership Benefits</i>	14
<i>Myths and Facts— Highly Educated Foreign Professionals: Separating Myth from Reality</i>	15

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THE LOCKING MECHANISM UNDER THE IMMIGRATION AND NATIONALITY ACT (INA)

By: Amir Farzenah

Immigration law is a fascinating area of law. One of the reasons for this is the unusual and often harsh treatment of immigrants who violate immigration laws, or become out of status. Violation of immigration laws can occur as easy as filing a petition late, by one day. One interesting concept, that often has harsh consequences for immigrants, is what I call the locking mechanism of the INA. Here is how it works.

Adjustment of Status is applying for, and obtaining legal permanent residence, or green card, while the applicant is physically present in the US. An alien who has entered the US legally but becomes illegal is unable to apply for Adjustment of Status (with the exception of immediate relatives of US citizens). An alien who enters the US without inspection, too, is ineligible for adjustment of status. As a result, an alien who can not apply for Adjustment of Status, but otherwise is eligible for legal permanent residency, should leave the US, apply for an immigrant visa and be properly admitted to the US as a permanent resident. See generally, INA § 245 *et seq.*

On the other hand, an alien who has been unlawfully present in the US for a period longer than 180 days, who leaves the US, is barred to reenter the US for a period of three years. Similarly, an alien who has been unlawfully present in the US for a period longer than one year, who leaves the US, is barred to reenter the US for a period of ten years. INA §212(a)(9)(B).

Therefore, the logical thought for an alien whose period of unlawful presence exceeds 180 days, or one year, who is otherwise eligible for permanent residency is to avoid legalization. For that alien, leaving the US to apply for an immigrant visa means being barred to come back for 3 or 10 years. Therefore, this locking mechanism encourages the aliens who are otherwise eligible for legal permanent residency, to continue breaking US laws by remaining in the US illegally, being employed without authorization, and not paying taxes, while staying hidden.

The way out of the locking mechanism is to either obtain a waiver of the three and ten year bar, or to be grandfathered under INA 245(i). Let's look at these two options.

First, the waiver. INA § 212(a)(9)(B) provides that Attorney General (Secretary of Homeland Security under the new rules) has the sole discretion to waive the three and ten year bar for an alien who can demonstrate extreme hardship to his/her spouse or parent as a result of the bar to reenter the US. According to the same section, no Court has jurisdiction to review this discretionary decision of the Attorney General (or as stated above, the decision of the Secretary of Homeland Security under the new rules). Depending on the adjudicating officer, obtaining a

waiver of the 3 or 10 year bar can often be a very difficult hurdle to overcome.

Now, we look at INA §245(i). Section 245(i) allows an alien who is the beneficiary of an approvable and properly filed labor certification, or an immigration petition (generally, either an I-130 or an I-140 petition), filed before certain deadlines, to be able to file for adjustment of status, despite being unlawfully present in the US, provided the alien pays a penalty fee and files an additional form. These deadlines are either January 14, 1998; or April 30, 2001 if the alien was physically present in the US on December 21, 2000. One should keep in mind that this is a simplified description of the grandfathering concept under INA §245(i), and other prerequisites and exceptions may apply in individual cases. See generally, INA § 245(i).

The two exceptions mentioned above are the two general options available to those who are stuck in what I call the locking mechanism. Keep in mind that like any other situation, exceptions may exist, and a competent immigration lawyer may very well take advantage of such exceptions. Discussing novel exceptions are beyond the scope of this writing, so I leave it to that.

You may wonder, how on earth did this locking mechanism come about,

“The way out of the locking mechanism is to either obtain a waiver of the three and ten year bar, or to be grandfathered under INA 245(i).”



THE LOCKING MECHANISM (Continued from page 2)

anyway? The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) was enacted on September 30, 1996. This is the body of law that among other changes, amended INA §212 to include the subsection creating the three and ten year bar. When IIRAIRA was enacted, the idea behind creating the three and ten year bar, I imagine, was to deter aliens from staying in the US illegally. Amazingly enough, during the same session, the lawmakers decided not to renew section 245(i) which at that time was a three year pilot program and did not require any grandfathering deadlines for an alien to be able to apply for adjustment of status. How this could make sense, is a question that I have not yet been able to find the answer to. Be it

as it may, IIRAIRA and the sunset of INA §245(i) gave birth to this monster: “the locking mechanism.” As a result, millions of aliens who could otherwise be legal, are forced to remain in illegal status; and many families who could otherwise have a normal life, live in hiding and fear.

An example would clarify the matter further. Muhandar is an Indian born, 24 year old man. He was brought to the US, without inspection through the Canadian border, by his parents when he was a child. He is now married to Mary who is a born US citizen, and they have two children. Muhandar is not grandfathered under INA §245(i). Although as spouse of a US citizen, he is eligible for US residency, to obtain US

residency, he will need to leave the US and obtain an immigrant visa. Leaving the US renders him ineligible to re-enter the US, without a waiver, for 10 years.

Let’s put some icing on the cake and we call it a day. INA §212(a)(9)(C) is the subsection that gives the 10 year bar a climax. It makes it impossible for an alien subject to 10 year bar who leaves the US and then re-enters the US without a waiver, to be able to live in the US legally. No waiver exists for an alien who is inadmissible under INA § 212(a)(9)(C). Now, that is what I call harsh. I do not want to count the number of times that I saw a US spouse shed tears on my conference table when I let her/him know that her/his alien spouse is barred to legally

stay in the US, essentially forever, under INA §212(a)(9)(C)!

It is like watching an enlightening documentary on the Discovery Channel, where the majestic tiger hunts down a deer. You see speed, attack, blood on the face of the tiger. It sure looks exciting to the viewer who is sitting on the couch or the team who makes the documentary. But the poor deer is sure not having fun!

I have not yet figured out the reason behind some of our immigration laws. The only thing I can think of is that our legislators must not know what it is like to be an immigrant in America. Just like the documentary on Discovery Channel, our immigration laws, too, are fascinating. Don’t you think so?

Navigating the Department of Homeland Security: Key Links

- The Immigration and Naturalization Service (INS), an agency within the Department of Justice and overseen by the Attorney General, was the agency that administered all U.S. immigration laws prior to the September 11 attacks in 2001. Following the attacks, effective March 1, 2003, Congress dissolved the Service. All of the INS’s prior responsibilities were assumed by the new Department of Homeland Security. The immigration responsibilities assigned to DHS are 1) border patrol, 2) detaining and removing aliens, 3) immigration intelligence, 4) immigration investigations, 5) immigration inspections and 6) immigration adjudication and services. DHS has created 3 separate units to address these functions.
- Immigration and Customs Enforcement, called “ICE”, investigates document, identity, visa and immigration fraud, immigration violations and smuggling, and detains, prosecutes and removes undocumented aliens. www.ice.gov
- Customs and Border Protection apprehends aliens attempting to enter the U.S. without inspection or unlawfully and is especially charged with preventing terrorists from entering the country. www.cbp.gov
- Citizenship and Immigration Services, called “CIS,” administers all immigration and naturalization adjudications. These include immigrant visa petitions, naturalization petitions and applications for asylum and refugee status. www.cis.gov

What is LAPP?

The Litigation Assistance Partnership Project (LAPP) is a project of the ABA Section of Litigation. Created in 1989, LAPP works to link pro bono resources of private firms with legal service and public interest programs across the country. LAPP's core function is to identify and place significant pro bono litigation with private law firms nationwide. These are complex, often time-consuming cases that require resources unavailable to public interest programs. LAPP works with programs and issues involving subject areas not handled by other national pub-

lic interest programs and clearinghouses. LAPP also serves rural programs without local pro bono resources for major litigation and finds out-of-state attorneys when necessary because of local conflicts or other limitations. LAPP is meant to complement, not replace, other pro bono resources.

As a national clearinghouse for major pro bono litigation, LAPP fills a critical void facing legal services and public interest programs. Since its inception, LAPP has placed hundreds of cases, on behalf of

welfare recipients, abused and neglected children, and migrant workers, patients with mental illness, and public housing residents, among many other clients. Through their participation in LAPP, law firms have donated thousands of hours of attorney time and other

resources, representing underserved populations in all regions of the United States.

LAPP operates under the direction and oversight of the ABA Litigation Section's Pro-Bono and Public Interest Practice Committee.

How can a law firm participate?

LAPP cases are available for placement with any member of the ABA Section of Litigation, or with the member's colleagues within the firm. If a case cannot be placed with a Section member, LAPP will seek to place the case outside of the Section.

In some cases, the organization referring the case may choose to establish a co-

counsel relationship with the attorney accepting the referral. In other cases, the attorney accepting the referral will have the sole responsibility for the matter. The LAPP Director can help facilitate the relationship between the referring organization and the pro bono attorney(s) if requested. Attorneys accepting LAPP referrals provide updates of the case status to the LAPP Direc-

tor on a quarterly basis, or more frequently when major developments occur.

Accepting a LAPP referral gives a law firm an exciting opportunity to engage in significant, cutting-edge pro bono litigation that in all likelihood would otherwise not be brought. To volunteer to accept a LAPP referral, contact the LAPP Director.

How can I contact LAPP?

Call, e-mail or fax LAPP at:

Nina E. Vinik,
Director
Litigation Assistance
Partnership
Project

P.O. Box 7077
Evanston, IL 60204

Ph: 847-733-1855
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Email:
Nvinik@abanet.org

Or visit LAPP's website,
www.abanet.org/litigation/lapp/

Sample LAPP Immigration Cases

Santillan v. Ashcroft (N.D. Cal)

This nationwide class action challenges the Department of Homeland Security's failure to issue documentation to persons granted lawful permanent resident status in deportation proceedings. John Dwyer, Maureen Alger, Michelle Rhyu and Reuven Chen of Cooley Godward are co-counsel for the plaintiffs along with Javier Maldonado and David Armendariz of the Lawyers' Committee for Civil Rights Under Law of Texas.

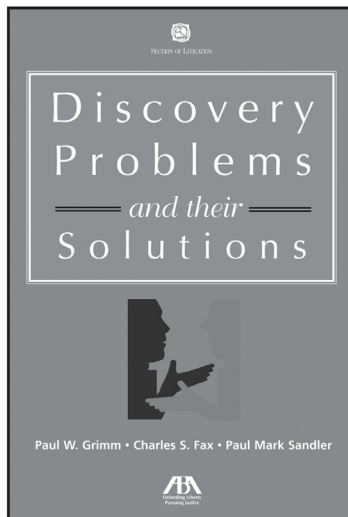
Lopez v. Ashcroft (M.D. Texas)

This immigration class action challenges a practice in the San Antonio District of U.S. Immigration and Custom Enforcement of obtaining coerced stipulated orders of removal (which result in summary deportation) from non-citizens in custody, and the failure of immigration judges to hold hearings to determine whether the orders of removal are voluntary, knowing and intelligent. In July 2004, the District Court granted a motion to dismiss on the narrow ground that the Constitution and Department of Homeland Security regulations do not require an unrepresented alien who has signed a waiver to be presented to an immigration judge for a voluntariness determination. Meanwhile, Mr. Lopez's individual case, seeking to reopen his removal proceedings, is on appeal to the 5th Circuit, which is considering the issue of whether the Constitution and DHS regulations require an unrepresented alien who has signed a waiver to be presented to an immigration judge for a voluntariness determination. Jenner & Block is handling both cases (Dan Hurtado and Matt Basil), along with the Lawyers' Committee for Civil Rights of Texas.

New

Discovery Problems and their Solutions

Paul W. Grimm, Charles S. Fax and Paul Mark Sandler



Lawyers and clients today devote enormous time, effort and expense to discovery. More often than not, discovery, and not trial, is the central battleground of a case. This concise handbook, written by a federal judge and two experienced practitioners, describes the problems that civil litigators encounter most frequently in pretrial discovery and presents suggestions and strategies for solving these problems. Following a background discussion on the scope and types of discovery, discovery problems are presented as hypotheticals (many of which the authors have encountered in their experience) followed by a discussion that includes the law and helpful practice tips.

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An Asylum Case as a Classroom

By: Neel P. Parekh

In the spirit of the Firm's commitment to pro bono, I responded to an email in the spring of 2004, seeking an attorney to represent an applicant for asylum before the EOIR in New York. I quickly jumped at the opportunity.

As a young attorney, I was driven to take on *pro bono* work for a familiar reason: *pro bono* matters make lawyers feel and do good. Through this work, we can give to the community and help individuals in need. One likely needs no further motive to take on *pro bono* projects. For that reason, I agreed to assist an Indian citizen's attempt to obtain asylum in the United States. As expected, that representation satisfied the soul. But, as my case progressed, I became acutely aware of the other benefit of *pro bono* work — it provides phenomenal experiences and teaches young attorneys crucial lawyering skills.

Mr. P. S. arrived in the United States under peculiar circumstances. Unlike many Indian nationals who travel to the U.S. to study, for business, or to visit family, P. left his native Punjab and came to America in an attempt to escape those who kidnapped him and his father on multiple occasions. It is unclear why his kidnappers targeted P. or his father — P., then seventeen, knew only that they were demanding that he join an unidentified militant group or, in the alterna-

tive, pay a hefty ransom. Regardless of the harassers' motives, P. fled for safety to the United States on a bizarre journey that ended when local police apprehended him after he crossed the American border by foot in the dead of winter, having tramped for four hours through inches of Canadian snow. P. already had spent several months in juvenile detention when I met him as his *pro bono* counsel in a conference room at the New York offices of Latham & Watkins LLP, far from the dangers of Punjab, but facing removal proceedings before the Executive Office of Immigration Review ("EOIR").

The child of Indian immigrants myself, my "path" from India to the United States diverged dramatically from P.'s experience. My parents arrived in the country in the late 1960s, raised two children in suburban New York, and shepherded me through both college and law school. After my studies, I joined Latham and handled a series of engaging criminal and civil antitrust enforcement matters. During my first year, I gained substantial litigation experi-

ence, including challenging assignments, daily training from exceptional attorneys, and client contact. In the spirit of the Firm's commitment to *pro bono*, I responded to an email in the spring of 2004, seeking an attorney to represent an applicant for asylum before the EOIR in New York. I quickly jumped at the opportunity. It was a few weeks later that another Latham associate and I met P. and began working on his case. Now, nearly a year later, I can confidently convey that my experience as P.'s *pro bono* counsel has been and continues to be one of the most compelling experiences I have had at the firm.

Rewarding your soul. At the core, the most tangible benefit of representing P. in his asylum proceedings (which still continue today) has been the prospect of securing a safe life for P. in the United States. Like most *pro bono* matters, I am completely engaged and interested in P.'s case, during which I have the privilege to utilize my legal training and skills to help secure a better life for another person. Helping P. negotiate American law and grasp



An Asylum Case as a Classroom (continued from page 6)

for a chance at a free life gives P. hope; it is precisely that hope which drives me in my work and paints a significant smile on my face — even before the EOIR issues a final ruling on P.'s case. While we hope for a favorable outcome, my immediate reward is providing P. an opportunity he otherwise would not have had. (Of course, a victory is more than welcome!)

Lost in translation? Beyond the personal reward, there are significant practice benefits that I, as a young lawyer, have obtained from the asylum case and my work with P. The most obvious is the regular client contact. My colleagues and I met with our client a number of times to parse out his story and to dissect his case. In those meetings, I learned valuable communication lessons. Most importantly, I learned to avoid providing false expectations, to insist on clarity and honesty, and to communicate and re-communicate to ensure that chatter becomes coherent ideas and mixed messages do not morph into missed opportunities. Although I know there is much more to learn, my representation of P. has

certainly developed my client communication skills.

Becoming management.

As a junior associate, it is sometimes difficult to direct an entire case from start to finish. Those management tasks are largely the purview of partners, counsel and senior associates. However, with my *pro bono* asylum case, I am completely responsible for an entire litigation matter. While there are supervisors available at all times to answer my questions and monitor my performance, I am ultimately accountable for my client's case. From drafting an intake memorandum and retaining letter to providing the client with routine updates and conferring with the Court and opposing counsel on scheduling, the case is my own. Any failure to manage the case rests solely on my shoulders. As such, I have had a crash course in case management—lessons I otherwise might not have had so early in my career.

Challenging the brain.

My representation of P. also honed both my writing skills and my ability to think creatively. The drafting responsibilities in an asylum case, from

submitting an I-589 application for asylum to authoring a trial memorandum, are substantial. That, in and of itself, continues to be a fantastic learning experience. But in P.'s case, where certain facts made his claims for asylum unique, the drafting opportunities also challenged my case team to think creatively, to analyze the limits of the relevant precedent and law, to craft novel arguments, and to present them to the court. As such, asylum proceedings provide precisely the written and intellectual experiences that drew many of us to law school and continue to drive us every day in our practices.

Standing up? Modern litigation often steams full speed toward settlement or dismissal, never seeing trial. Also, many hearings before judges are argued (quite appropriately) by senior attorneys whose own experiences before courts made them seasoned advocates. As a result, for many junior associates, stand-up experience before a judge is rare. *Pro bono* representation fills the void by providing valuable opportunities to get associates into the courtroom. For

P.'s asylum case, I appeared in court three times, including an individual merits hearing during which I examined witnesses on direct, defended witnesses on cross, and became more comfortable with asserting myself before a judge and opposing counsel.

This stand up experience was critical for another reason. It was my impression that the judges I encountered valued my willingness to extend myself beyond my typical practice area and appear on a *pro bono* basis before the court. Perhaps simply because I was a volunteer attorney, they provided me with cushion room to correct mistakes, in some instances going so far as to suggest how I might rephrase a question to overcome an objection or to elicit specific testimony. I can't think of a better on-the-job training for a rookie attorney. While these were very real and serious proceedings, my stand up time before the court was at the same time a fantastic training ground before a judge, the ideal teacher for the future appearances I will make in federal, state or administrative courts.

Training for the future of the firm. While I grew as

An Asylum Case as a Classroom (continued from page 7)

Neel P. Parekh is an associate at Latham & Watkins LLP in New York.

an attorney by representing P., my experience in P.'s case also serves the Firm at large. Most firms focus extensively on attorney training. After all, helping associates become better lawyers ensures a strong future for any firm. But while many institutions have formal educational programs and review processes geared for training, a strong *pro bono* program can buttress the firm's traditional training efforts by providing another pedagogical tool to

educate attorneys.

* * *

P.'s application for asylum is still pending before the EOIR. In a few months, I will return with my client to immigration court to hear the judge's ruling. If all goes well, P. will be able to live in the United States without the threat of deportation, thousands of miles from the dangers that faced him in Punjab. Alternatively, if the court rules against him, P. will no doubt pursue a strong appeal, perhaps with *pro*

bono counsel. Despite the possible outcomes, I take comfort in knowing that my asylum team and I acquired a personal stake in P.'s case and offered our best efforts to assist his claim. We hope for the best for P., but regardless of the final ruling, I will be sure to thank him for the valuable lessons I learned managing his case, and to let him know that, by taking me on as his *pro bono* counsel, he helped me become a better attorney.

What Clients Want Christina Meyer Hinckley*

Unlike some other commonly held beliefs, size isn't everything when it comes to law firms. Although large law firms will always be needed for certain cases that require involvement of a significant number of attorneys and support staff (e.g. large antitrust cases, or large time constrained acquisitions or mergers) large law firms are not necessarily needed for the majority of legal problems. As always, it is the quality of the legal counsel selected that is important. Confirming the old saying that size isn't what is important; it is what do with it.

So what is it clients want from their lawyers? There are some universal desires, regardless of the sophistication of the client or the complexity of the case. Clients will have these desires whether the firm has five attorneys or 500. Some of these

universal truths are:

- 1. Know your area of expertise.** There is no excuse for holding yourself out as an expert and not knowing your subject matter cold.
- 2. Return phone calls.** Even if there is nothing to report, or you are waiting for opposing counsel to return a call, file a paper or take some other action, let your client know the status. If you don't have time to pick up the phone personally have someone in your office (associate, paralegal, secretary) call and give the status of the case.
- 3. As they say in aviation, don't quit flying your airplane.** Stay ahead of the case or the matter that you are handling for your client. Know your deadlines, trial dates, mediation dates, or other critical dates, and think ahead concerning them. By deadlines, I don't mean court

imposed filing deadlines. I mean any date, deadline or goal that has been set by your client, opposing counsel, or you. For example, nothing is more irritating for a client to get answers to interrogatories for his review and signature the day before it has to be filed. Watching those deadlines is your job, and you should get all documents and pleadings requiring your clients review and comment to them well before their due date so that they have time to work the review into their schedule. Not doing so tells the client several things, none of them good, such as (a) you are hopelessly disorganized, (b) you have many other

"There are several universal desires, regardless of the sophistication of the client or the complexity of the case. Clients will have these desires whether the firm has five attorneys or 500."



What Clients Want (continued from page 8).

things more important than your client's case to work on, (c) you don't care, or (d) you have too much work to do and are not adequately staffing your office to properly address your clients' work.

4. Communicate, Communicate, and Communicate.

Communication does not need to be in the form of lengthy memos or letters. In fact, your client will probably not want to pay for lengthy memos or letters. But keep the client constantly informed of the status of the case—changes in strategy, changes in negotiation, trial or deposition dates, the results of an important deposition or hearing. The communication can take the form of voice mails, telephone conversations, or emails. At the very beginning of your relationship with a client, you should establish communication "protocols" so that the methods of communication are the ones your client prefers. Be particularly diligent about communications regarding deadlines. Your client will expect to hear from you concerning them. Even if all that happens and there's an extension or continuance—communicate that to your client.

5. **Plan ahead.** Give your client options and have contingency plans.
6. **Don't do what I call the "duck and cover."** By that I mean

a) **Don't "duck" giving your client an honest opinion of what you think that he/she should do— even if it is not an entirely "legal" issue.** In particular don't hide behind the classic line "It's a business decision". Ultimately your success depends on your client's success, and a

good client/lawyer relationship has the client respecting his counsel's knowledge and judgment about your client's bus-

ness, not just "legal" issues. Your client's priority is his business, and legal matters are either only a tool to reach a business goal or an obstacle threatening his business. You must also accept that you will have to give your opinion even though some issues are open or unknown. That is why they call it a judgment call and ultimately that is what your client is paying you for.

b) **Don't "cover" your down side with unnecessary caveats.** Particularly, if it is after the fact, DO NOT SAY "I was afraid this would happen" or "As you remember, I told you this would happen." If you are facing a situation that requires a judgment call, explain that to your client,

and then go through the possible good and bad outcomes. The time to discuss the downside is at the time of making decision. If there is a bad result, then deal with it, but don't look like you are constantly reminding your client of how smart you are— in retrospect. Particularly don't voice these sentiments if you did not cogently outline the possible downsides at the time the decision was made.

7. **"Play nicely in the sandbox."** In other words, don't sabotage your co-counsel or other people you need to work with on a project. The client only cares about getting good results on a particular task, and if you pitch in and are a team player, the client will appreciate your efforts much more and be inclined to give you more work in the future. This doesn't mean you have to be a

"Pollyanna." You can object to a course of action and voice your concerns, but once the client makes the decision, accept it with good graces and move on.

8. **(Staying with the sandbox theme)— be polite to opposing counsel.** Even if you disagree, be polite. You gain nothing by being rude.
9. **Speak English.** Using overly legalistic language is pretentious and will not help your client's understanding of the issue, which can only work to your detriment. Don't use Latin, unless you absolutely have to. Using Latin will only impress dead Romans and some Latin professor.
10. **Be Proactive.** Get to know your client's business plans and objectives. Help him run a better, more cost effective business.
11. **Always be sensitive to costs.** Your client can't pay if he is not in business.
12. **Dress Professionally.** Your client is paying you hundreds of dollars per hour for your advice, so look like a professional. I personally think that casual dressing has gotten out of hand.
13. **And this should not have to be said, but at all times be Ethical and Forthright.** Even if it means giving your clients news or answers they may not want to hear, in the long run they (and you) will be better for it.

None of the above is dependent on size but this is what clients want. Small law firms and solo practitioners can deliver the same, if not better, quality of service to their clients as the large firms by following these simple, practical rules.

"Speak English. Using overly legalistic language is pretentious and will not help your client's understanding of the issue, which can only work to your detriment."

**Editors' Note: While this article was developed by attorneys practicing in a different field, many of our members practice in the small or solo firm settings in which these rules should be useful, particularly those who assist employers with immigration issues.*

Human Trafficking: Seeking to Expose and End Modern Day Slavery

By: Robin Hassler Thompson

The U.S. government estimates that between 18,000 and 20,000 persons are trafficked in the United States.

“And even though trafficking is a clandestine activity, trafficked persons can be right before our eyes working in restaurants or hotels, or begging on the street.”

Hundreds of thousands— if not millions— of women, men, and children are bought, sold and enslaved across the globe. Their bodies and spirits are broken in brothels, factories, and fields. One estimate is that over 700,000 persons are trafficked globally each year. The US Government estimates that between 18,000 and 20,000 persons are trafficked in the United States. However, owing to the clandestine nature of trafficking, and the way which its victims are hidden and controlled, it is impossible to give exact numbers as to the scope and extent of human trafficking.

No nation or state is completely free from the presence or implication of this horrific phenomenon, although in some places it is much worse than others. Poorer parts of the world, or ‘countries of origin’ are hotbeds for recruitment of victims, and other countries are ‘transit’ nations, as it is through them that traffickers transport their victims. Wealthier, stable countries, such as the United States and those of the United Kingdom, are ‘destination’ countries. But, there are few hard and fast rules as to the recruitment and exploitation of people – legal citizens of richer, destination countries are also recruited and trafficked within their own borders.

What is human trafficking?

Human trafficking has been defined in a variety of ways in international and national

laws. Most definitions have the same essential elements. First, persons must be recruited, transported, harbored, transferred or obtained, through force or coercion, fraud or other kind of deceit or abuse of power. The victims must be forced into some form of labor or exploitative activity. Some laws are general and cover any type of labor or slavery including involuntary servitude, debt bondage and menial labor; others explicitly include in the definition of trafficking general labor, sexual exploitation or sex trafficking and organ removal. The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children and, in the United States, the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) are good definition examples.

Traffickers and victims

Traffickers vary widely in terms of the scope and sophistication of their operation, dangers posed and organization. Traffickers can be part of sophisticated organized crime syndicates and may regularly transport scores of people through the airports and across borders, forcing them into prostitution or the drug or weapons trade. Traffickers can be farm labor contractors who recruit poor and drug-dependent men from local homeless shelters or they can be the married couple who bring a teenaged

girl from their native land to another country and enslave her as a domestic worker.

Trafficked persons can be found in almost every industry where cheap labor is in demand: bars, restaurants, throughout the food industry, hotels, agricultural work, factories, service industries such as nursing homes, amusement parks, cleaning services, the illicit drug trade, domestic work, the sex trade, begging and mail order bride schemes. And even though trafficking is a clandestine activity, trafficked persons can be right before our eyes working in restaurants or hotels, or begging on the street.

Trafficking is fueled by highly restrictive immigration policies that make it difficult for people to cross borders for work and to improve their lives. Poor labor conditions are fertile grounds for trafficking to thrive.

Where workers’ rights are weak or ignored and where labor practices and working conditions are shoddily policed, it is easy for traffickers and their victims to remain undetected.

Traffickers prey on the most vulnerable among us, such as the very young or the very old, people who are poor, suffer disabilities, are illiterate or unable to speak English (or the language of the place to which they are trafficked), or are displaced due to war or political or economic instability. While men, women and children



Human Trafficking (continued from page 10)

are all trafficked, most agree that women and children are especially vulnerable owing to their relative lack of power and pervasive gender inequities that subordinate women (and children) to men politically and economically. For instance, anti-trafficking groups report that in places like Burma and Thailand, girls are more 'expendable' and less valued than boys and so are sold to traffickers by their parents. Girls are also less likely to receive an education so the girl child's job prospects may well never go beyond prostitution or the most menial labor.

Legal remedies and other responses

The most effective laws will approach human trafficking comprehensively, offering relief to victims, punishing traffickers and helping to create comprehensive community responses to it such as public awareness campaigns, targeted professional training and other means to create an across the board understanding of the reality of human trafficking. In the United States, the VTVPA created federal trafficking crimes, provides specific immigration relief and public benefits for victims of trafficking, funds organizations and communities to assist victims of trafficking and has slowly begun to create a greater public awareness of human trafficking. The Act mandates that the Department of State report annually on the level of trafficking

activity around the world, and the Government can withhold aid to nations who fail to make significant efforts to address human trafficking. While this relatively new law is a good beginning in terms of a national response, there is much more to do to implement it and to support anti-trafficking activities in the United States.

Clearly, legal reforms are important to combating and ending modern-day slavery, but attitudinal changes, prompted by greater public awareness, are crucial to long-term reform. To that end, the Center for the Advancement of Human Rights at Florida State University has just completed the first year of a multi-year human trafficking project. As part of this project, researchers interviewed a number of women who were victims of one of the most infamous trafficking rings in the United States. Members of this ring systematically recruited women and children from Mexico through deceit and trickery and enslaved them in brothels throughout Florida and the south-eastern United States. These women and girls were forced into prostitution, regularly beaten and raped and held as prisoners in despicable living conditions, where they suffered years of physical and emotional brutality at the hands of their traffickers. Several of the traffickers were convicted and are serving time,

some have completed their sentences and have been released, and others are still at large. Their former victims, who were key witnesses for the prosecution, are living not only with the physical and emotional scars from their captivity, but also with the danger that the traffickers pose.

The interviews of these women focused not on the horrors of their past, but rather on how they might have been helped during their captivity and afterwards. Researchers concluded after the interviews that individuals from a wide range of governmental and non-governmental organizations must understand trafficking, know how to identify and assist trafficked persons and begin to develop relationships so that they can work within communities to meet a victim's needs.

The women interviewed received help from law enforcement officers and advocates, immigration advocates, the local domestic violence shelter, interpreters, mental health counselors, local *pro bono* attorneys, health care providers, employment assistance programs and refugee service providers. They, and others such as the faith community, local businesses and 'good Samaritans', are also important to a victim's safety, rescue and restoration.

However, just as some

"Clearly, legal reforms are important to combating and ending modern-day slavery, but attitudinal changes, prompted by greater public awareness, are crucial to long-term reform."

Human Trafficking (continued from page 11)

Advocates who work with victims of human trafficking must be able to provide the trafficking victim with “safety and full information about their options and the consequences of decisions they are making.”

agencies and people came together for these victims, there were others who did not. The women reported that the traffickers always accompanied women to public health clinics and health care personnel did not speak to them alone, nor were any health professionals able to speak Spanish. The trafficked women and girls watched Spanish language television and learned that calling ‘911’ on the telephone brought police help. However, when they surreptitiously found a phone and plugged it in, emergency dispatch operators could not speak Spanish and did not understand that the person making three ‘911’ emergency calls was a woman who was being held in slavery. Emergency responders also could not speak Spanish and when they arrived at the scene, they were intercepted and lied to by the traffickers. The victim gave up after the third 911 call, unable to communicate to operators or the police and afraid to take further risks. In addition, at least one neighbor who knew of the women’s imprisonment never called authorities.

To avoid missing rare and important intervention opportunities like these, people and organizations that have a role in assisting victims should establish regular communications and build comprehensive collaboration on local and regional levels. Trafficked

persons often suffer multiple victimizations and have a plethora of needs: an enslaved farm laborer might also be raped by the crew boss, may have never had health or dental care and may be functionally illiterate. Those who assist them must work within multiple systems. For instance, victims may need help negotiating the legal system as there may be criminal cases pending as well as immigration relief and civil causes of action for lost wages and benefits available. Victims will also need to access the social services system, as they may be eligible for public benefits and job training.

It is also important for those who work with victims to understand that effective advocacy means providing the trafficked person with safety and full information about their options and the consequences of decisions they are making.

The simple act of calling the authorities can place a victim in danger and all care should be taken to evaluate the impact of each contact and each step that victim takes. Attorneys and legal advocates, in particular, have a special duty to act on behalf of that victim with his or her consent and in ways that provide the victim with access to rights and benefits to which he/she is entitled. This means responding to each person as an individual and, very im-

portantly, always providing for that person’s security. Strict confidentiality is crucial to a victim’s safety.

Working together

How can communities work together to respond to trafficking? The first step is training and awareness. A law enforcement officer who raids a brothel has to understand that the women working there may in fact be victims of trafficking, and so should treat them as such, and not arrest them or turn them over to immigration officials for deportation. Health care providers have to be alert to the signs of trafficking so that, just as with victims of domestic violence, they should know how to access safe and competent translators, talk to the person alone (outside earshot and eyeshot of any ‘husband’ or ‘friend’), ask about injuries and needs non-judgmentally and make competent referrals.

Whether by assisting a trafficked person directly, learning about national and international laws on trafficking, supporting local organizations that advocate on behalf of trafficked persons, auditing businesses to insure trafficked labor is not present, being a ‘good Samaritan’ and keeping an eye out for and knowing how to assist enslaved domestic workers who are often isolated in private homes to labor practices,

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Myths and Facts

Highly Educated Foreign Professionals: Separating Myth from Fact Reprinted with permission from the American Immigration Lawyers Association

Highly educated foreign professionals (commonly known as H-1B professionals) infuse U.S. companies with needed talent, increase innovation and help to revitalize our economy. Despite these benefits, opponents of the program raise allegations that are not based in fact and do not reflect the realities of the H-1B visa program. Below we shatter the most common of these myths with the real facts.

MYTH: The H-1B visa is an Information Technology visa.

REALITY: The H-1B program was created in 1952 to provide American

employers with access to highly educated foreign professionals who have unique knowledge in specialized areas. H-1B professionals work in all sectors of the economy as accountants, architects, teachers, lawyers, doctors, engineers, researchers, and in many other professional occupations, including information technology fields.

MYTH: H-1B professionals are flooding our markets.

REALITY: Because the number of H-1B visas requested is sensitive to market demand, the number of applications submitted in FY2002 was

107,000 less than the number submitted during the previous fiscal year. By the end of FY 2002, only 79,000 applications approved for H-1B visas were subject to the numerical cap—a dramatic decrease from the 195,000 visas permitted under this category. Furthermore, at the height of the usage, H-1B professionals comprised less than one tenth of one percent of the U.S. workforce of more than 127 million people.

MYTH: H-1B professionals reduce the number of American jobs.

REALITY: By helping to develop new prod-

ucts and services and enabling companies to expand their client base, H-1B professionals create jobs for American workers.

MYTH: H-1B workers are “indentured servants” who are trapped by an employer.

REALITY: H-1B professionals are able to change jobs as soon as another employer files a visa petition for them. (This portability provision does not affect the length of time that the H-1B visa workers may remain in the United States.) Thus, if their original job is unsatisfactory, H-1B visa holders may change jobs in a similar manner to a U.S. worker.

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