LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE
OPEN SESSION

Thursday, January 23, 2014
4:29 p.m.

Hilton Garden Inn Downtown Austin
500 North Interstate 35
Austin, Texas  78701

COMMITTEE MEMBERS PRESENT:
Charles N.W. Keckler, Chairperson
Robert J. Grey Jr.
Harry J.F. Korrell III
Laurie I. Mikva
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:
Sharon L. Browne
Victor B. Maddox
Martha L. Minow
Julie A. Reiskin
Gloria Valencia-Weber
STAFF AND PUBLIC PRESENT:

James J. Sandman, President

Lynn Jennings, Vice President for Grants Management

Rebecca Fertig, Special Assistant to the President

Ronald S. Flagg, Vice President for Legal Affairs, General Counsel, and Corporate Secretary

Stefanie Davis, Assistant General Counsel, Office of Legal Affairs (by telephone)

Carol A. Bergman, Director, Office of Government Relations and Public Affairs

Jeffrey E. Schanz, Inspector General

Thomas Coogan, Assistant Inspector General for Investigations, Office of the Inspector General

Lora M. Rath, Deputy Director, Office of Compliance and Enforcement

Janet LaBella, Director, Office of Program Performance

Robert E. Henley, Jr., Non-Director Member, Finance Committee

Paul Furrh, CEO, Lone Star Legal Aid

David Hall, Executive Director, Texas RioGrande Legal Aid

Stacie Jonas, Texas RioGrande Legal Aid

Alison Paul, Executive Director, Montana Legal Services

Don Saunders, National Legal Aid and Defenders Association (NLADA)
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Motions: 4, 4, 40, 45, 46
P R O C E E D I N G S

(4:29 p.m.)

CHAIRMAN KECKLER: I note the presence of a quorum for the Committee, and therefore call to order the duly noticed meeting of the Operations & Regulations Committee.

Our first item of business is the approval of our agenda today.

M O T I O N

MR. GREY: Move it.

MS. MIKVA: Second.

CHAIRMAN KECKLER: All in favor?

(Chorus of ayes.)

CHAIRMAN KECKLER: The agenda is approved. Next we turn to the minutes of our prior quarterly meeting.

M O T I O N

MR. GREY: Move it.

MS. MIKVA: Second.

CHAIRMAN KECKLER: All in favor?

(Chorus of ayes.)

CHAIRMAN KECKLER: The minutes are approved.
We'll now turn to our first substantive item, which is an update on the variety of rulemakings that the Committee has. Again, given the constraints of time, we'll have to be brief about that.

And I just note that since we do have a number of ongoing rulemakings, it may be necessary for us to have a further briefing, interstitial briefing, prior to the next quarterly meeting.

But with that, I will turn it over to Ron Flagg, the General Counsel.

MR. FLAPP: Thanks, Charles. If Stefanie Davis, one of my colleagues in OLA, is on the line, I'd ask her to do a very brief briefing on the 1614 and 1613 rulemakings.

MS. DAVIS: Sure. I certainly am. This is Stefanie Davis in OLA, and I apologize. The sound seems to be cutting out occasionally on my end, so if I need to repeat anything, please let me know.

The first topic I'll cover is the 1614 rule. That's the private attorney involvement rule. We had had a couple of workshops last year to discuss the Pro Bono Task Force report and its recommendations for
changes to the PAI rule. We also had a comment period that closed on October 16th.

A small work group has been working within OLA to consider those comments and the Task Force's recommendations and to draft a proposed rule. So we are working on that draft rule now, and our goal is to have a Notice of Proposed Rulemaking to the Board in April.

Are there any questions on the PAI rule?

CHAIRMAN KECKLER: Stefanie, thank you. So again, I think that that's something that we can think about in terms of a meeting, in terms of having some paper available for the Committee because it is a complex rule --

MS. DAVIS: Yes.

CHAIRMAN KECKLER: -- for the Committee, and inviting the rest of the Board available, prior to the meeting so that we can get a little bit of a head start.

MR. LEVI: I'm wondering if you won't even want to have a telephonic meeting when that's distributed.
MR. FLAGG: Well, one thing we could do is we will, well in advance of April, and in fact in the next couple weeks, have a draft of the proposed rule itself, which we could --

MR. LEVI: Walk the Committee through.

MR. FLAGG: Right. And we could do that well in advance of April and then --

CHAIRMAN KECKLER: Laurie?

MS. MIKVA: I haven't really looked to see what the comments are online. But in the past, we've also sometimes gotten a summary of comments, and I have found that very helpful. If they're not extensive, maybe that's not necessary. But I assume they are.

MR. FLAGG: Yes. We'll get that to you in the next week.

CHAIRMAN KECKLER: Okay. So I think that we don't have to set this right now, and it's partly up to OLA, when you're at a certain stage where you can come to the Committee for some feedback.

I think that the choice then is between a briefing or a meeting, and I think it might be better to have a meeting, as John suggested, in the sense that
that'll allow the Committee members to have the freedom to go ahead and make comments and to discuss among themselves without that kind of constraint. And if members of the public want to come in and listen, then that's fine as well.

If there is some reason that OLA thinks or that members of the Committee think that they would like a briefing just to the Committee, that's something again to discuss. But I think that my tendency at the moment is towards a meeting when OLA and Management are at an appropriate stage.

MR. FLAGG: We'll be in touch to set something up.

CHAIRMAN KECKLER: Fantastic.

MS. DAVIS: Okay. That sounds great.

The next topic, unless there's anything else on the PAI rule, is the 1613 Final Rule, which is pending. This is the regulation that governs legal assistance with respect to criminal proceedings and the amendments that we made to the regulation in response to the Tribal Law and Order Act of 2010.

That law, as you may remember, expanded the
ability of LSC recipients to provide legal assistance to any defendant who is charged with a crime in a tribal court. The Tribal Law and Order Act also expanded tribal criminal jurisdiction to cover higher levels of crimes beyond misdemeanors and to issue extended sentences.

The comment period on that rule closed on December 4th. We received very few comments, only seven comments, in response to the Notice of Proposed Rulemaking. Those comments were generally supportive of the rule. We received only two substantive comments, and we don't anticipate making any changes in response to the comments. Again, they were generally supportive.

So once again, with this rule, we've reviewed the comments. We're drafting the Final Rule, and our goal is to have the Final Rule to the Board for its consideration in April.

Are there any questions on the Final Rule?

(No response.)

CHAIRMAN KECKLER: Seeing none, I'm looking
forward to seeing it.

MS. DAVIS: Excellent. Well, it is short and sweet and I hope not controversial.

Then moving on to the most substantive part of what we have to discuss today, that is the draft Final Rule on alien eligibility, which you should all have in front of you.

This rule was drafted to amend the alien eligibility rule to account for expanded eligibility to victims of certain crimes, victims of trafficking and severe forms of trafficking, and H-2B visa holders. All of these groups of aliens were made eligible to receive services from LSC recipients by statute in the time since Part 1626 was last amended.

We received 15 comments in response to this rule, and the comments were generally supportive of the rule. The most comments that we received were in response to the three requests for information, and I will just go through those quickly since those were the things that we had sought comments on.

The first request for comment was on the distinction between the VAWA use of the term
trafficking and the term trafficking as used in the Trafficking Victims Protection Act. Commenters generally wanted, if possible, for LSC to adopt the broader definition of trafficking that was contained in VAWA to all of the victims that are eligible for LSC services.

We had proposed using a definition of trafficking that pertained to VAWA, and using the TVPA term "victims of severe forms of trafficking" to recognize the distinction that is made between those two types of victims in statute.

We continue to maintain those definitions in the Final Rule, in part because there are significant distinctions between how the two are treated under those statutes.

Under VAWA, victims of trafficking are only eligible for legal services related to escaping from or ameliorating the effects of the trafficking, whereas under the Trafficking Victims Protection Act, victims of severe forms of trafficking are eligible for the same range of legal services that any other individual who's eligible for LSC services can receive, so any
services that are not otherwise prohibited and that are
within a recipient's priorities.

I'm going to stop there and ask, one, if there
are any questions on that provision, and two, if you
want me to continue stopping for questions or if you
just want me to go through these, given the time
constraints.

CHAIRMAN KECKLER: We have a question on that
point.

MS. REISKIN: This is Julie. What kind of
trafficking is not severe? No, I'm serious.

MS. DAVIS: I'm sorry. My sound dropped out.

MS. REISKIN: What kind of trafficking is not
severe?

MS. DAVIS: The Trafficking Victims Protection
Act defines severe forms of trafficking as any sex
trafficking that involves a minor under the age of 18,
sex trafficking of an adult that is acquired by force,
/or coercion, or labor trafficking that is
acquired by force, fraud, or coercion.

So if an individual, for example, enters into
a sex trafficking arrangement without force, fraud, or
coercion, if they do it voluntarily, if one of those
elements is not involved, they would not be considered
a victim of a severe form of trafficking.

MS. REISKIN: Can I follow up?

CHAIRMAN KECKLER: Yes. Go ahead, Julie.

MS. REISKIN: Who determines if there was
coercion? That's seems like it could be pretty
subjective. It sounds like that almost supposes that
someone could voluntarily be trafficked, which doesn't
make sense to me. That's almost like saying someone
could agree to be raped or something. I don't
understand.

MS. DAVIS: Right. And with respect to who
makes the determination about whether an individual has
been subject to force, fraud, or coercion, those
determinations are usually made by -- I believe those
determinations are usually made by the Department of
Homeland Security, since they are the agency that is
responsible for determining whether or not an
individual is qualified for a T visa, or meets some of
the very basic requirements to obtain certification
from the Department of Health and Human Services, such
as whether a victim is willing to AST law enforcement in the prosecution of the trafficker.

They would have to determine whether or not the individual was a victim of severe form of trafficking, so whether they were brought into the trafficking activity by force, fraud, or coercion.

MR. FLAGG: I'd just state the obvious. These are definitions that are in the statute and that we feel obligated to track. So this is not something that LSC is interjecting into the arrangements.

CHAIRMAN KECKLER: Okay. And so I don't think that there were that many opposing comments to LSC's interpretation of that distinction. Is that correct?

MS. DAVIS: That's correct. To the extent that there were suggestions, it was again that every trafficking victim be able to be covered by the broader definition.

But as I said, the differences between what's available to victims and the standards for victims under the two statutes were different and distinct enough that we felt it was important to retain that language.
CHAIRMAN KECKLER: Thank you. I think we can turn to the next -- oh, Gloria.

MS. DAVIS: So the second question was --

MR. FLAGG: Stefanie, we have a question.

CHAIRMAN KECKLER: I have a question.

PROFESSOR VALENCIA-WEBER: I don't know if this is a question, but it might help resolve Julie's question in some degree.

My academic work includes teaching immigration law, and if you look at the general trafficking offense listed under section 101(a), that's very much a list of offenses that, if actually proven, are about the focus of a law violation in terms of specific parts of the U.S. -- tribes, tribal territory, military installations. It looks at those.

And it's possible, when the Department of Homeland Security, the ICE, is one of the places -- immigration and citizenship services would be where you would have investigation and ultimately determination by one of the DHS prosecutors as to how the individual victim fits into either the list of offenses or the TVPA.
And notice the TVPA is focused on how the victim was brought into trafficking. That's very much a focus of a victim. And it's possible that under the general list of offenses in 101(a), that the relationship between the victim and the trafficker may have been consensual to start with and then turned into something else, which could turn into trafficking.

It may have been an ordinary relational that, under circumstances, turns into the violation that that part of the law focuses on.

MS. REISKIN: Thanks.

CHAIRMAN KECKLER: Thank you, Gloria.

If there's nothing else, Stefanie, we can move on to the next information request and the comments thereto.

MS. DAVIS: Great. I would also note that to the extent that our recipients need to be considering, as they're looking at eligibility -- to the extent that they need to look at whether or make their own initial determination about whether or not a victim may have been a victim of a severe form of trafficking, we did include in the regulation the "any credible evidence"
standard.

So if a victim can make a credible showing that they were subjected or brought into the trafficking activity through force, fraud, or coercion, that may be sufficient under the rule. So I don't think recipients need to be making a definitive call about this. But to the extent that they do need to consider it, there is a standard that they can use.

Moving on to the location of the activity, one of the items that we had requested assistance or that we had requested comment on was whether the location of the activity, the criminal activity, for which a victim was eligible for legal assistance was required to occur in the United States.

The way that section 502 is drafted, the way that VAWA was drafted, it was drafted in such a way that it said that victims of battery, extreme cruelty, sexual assault, or victims of trafficking within the United States could receive legal services.

The interpretation that LSC had put forth in the proposed rule was that victims of battery, extreme cruelty, and sexual assault did not have to experience
the assault, battery, or sexual assault within the United States, but that victims of trafficking did because of the qualifier "in the United States."

That was also true with respect to victims of severe forms of trafficking in the United States. The TVPA uses that term, "victim of severe forms of trafficking in the United States," in the provision that is relevant to LSC.

So we received a number of comments on that. Most commenters opposed our read of the language, and noted that Congress had specifically acted in the 2005 reauthorization of VAWA to remove the requirement that an individual be subjected to battery and extreme cruelty in the United States from the statute.

We looked at the comments, we looked back at VAWA, we looked at the U visa provision, we looked at the T visa provision, and determined that the statute could be read in a way that indicated that it was not required that the victim had to suffer the qualifying crime in the United States.

And in fact, the U visa provision specifically provides that a crime simply has to violate the laws of
the United States. It doesn't have to occur within the United States, but it does need to violate the laws of the United States.

So based on the comments and our reading of the immigration statute, we have revised the rule to now read that the location of the activity does not have to be in the United States, or any of the qualifying crime.

Are there any questions on that point?

CHAIRMAN KECKLER: Stefanie, this is looking ahead a little bit to the next point, in which a number of classes of potential eligible aliens are required to be in the United States, but then there's a set of persons who are not required to be in the United States upon receiving services.

MS. DAVIS: Right.

CHAIRMAN KECKLER: Obviously, we don't go into them too much -- and there's no need for us to in the regulation -- laws of the United States that can be violated outside the United States. But this creates a class of potential LSC clients who are not in the United States and who have suffered harms for which
they're seeking some form of redress or assistance outside the United States. Is that correct?

MS. DAVIS: I guess the question I would have is, when you are talking about seeking redress outside the United States, are you referring to applying for immigration relief from outside of the United States or for seeking relief from an international authority?

CHAIRMAN KECKLER: Well, those are part of the questions. Something happened to you outside the United States. You're not in the United States.

MS. DAVIS: Right.

CHAIRMAN KECKLER: But you have a United States lawyer, funded by the United States taxpayers. Now, that might be the only read we have of these statutes, but to my mind it's an anomaly.

MS. DAVIS: Right.

CHAIRMAN KECKLER: And if it's truly a rare anomaly, I'm less concerned about it. But if it turns out to be a little bit more common, I think it's concerning.

MS. DAVIS: Well, I can tell you that what was contemplated here is there are two particular
situations that we have in mind -- or specifically here, there's one situation, which is that individuals who have been subjected to a crime outside the United States can apply for U visa relief. And so if they are seeking immigration relief from the United States, they do have a nexus and they are seeking some benefit from the United States. And that seems to be permissible, and in fact expected, under the statute.

With regards to purely extraterritorial remedies, I don't think that that's really what we were thinking about. I think in our minds there has to be some nexus with the United States. We don't think a purely extrajudicial crime with a purely extraterritorial remedy is envisioned here.

MR. FLAGG: I think the other fact pattern which would not necessarily be uncommon would be to have a parent, for example, in the United States seeking asylum and having a child still abroad subject, perhaps, to the same abuser. And I think under the Department of Homeland Security interpretations of the immigration and asylum
regs, that child who is outside of the United States is potentially entitled to relief, and correspondingly, we had proposed to give that child, where the parent is already seeking relief and has representation, also representation.

CHAIRMAN KECKLER: Right. There are, obviously, laws that are applicable, for instance, to the military operating abroad that would qualify as laws of the United States, and other issues.

It may not be a problem. I may just be a little bit overly concerned here. But the fact that there are categories, as I've described, that are -- and in the regulation, it's not clearly limited to U visa relief or what the General Counsel has described.

That may turn out to be how it eventuates. But it seems like there's some openings there that are a little broader. And obviously, there are laws, as I mentioned, with the military. There are also laws that involve United States citizens going abroad involving sexual activities with minors and so forth.

And those people -- that's very abhorrent. They are violating laws of the United States, but not
in the United States.

MS. DAVIS: Right.

CHAIRMAN KECKLER: But the question is, is there congressional intent to have those who suffer from crimes committed by the military or crimes committed by these sex tourists, or whatever they are, be given relief? For instance.

MR. FLAGG: I think the intent -- we have drafted these regulations to comport with the interpretations given them by the agencies that are interpreting these statutes every day, the Department of Justice and the Department of Homeland Security.

And we are not giving a right to an LSC-funded lawyer in a case in which DHS or DOJ would not recognize a substantive right. So again, we are not in these regulations expanding the substantive rights of people, of aliens or anybody else, under these statutes.

CHAIRMAN KECKLER: Okay. That makes sense. Are there other comments and questions?

Julie?

MS. REISKIN: What about a situation where
someone was a victim of severe trafficking, came to the States, is getting represented on some issue, and then they either against their will or voluntarily go back, leave the United States? Can they still get help finishing the issue?

MS. DAVIS: I'm sorry. Could you repeat the question? I'm still having issues. I'm trying to dial in from another line.

CHAIRMAN KECKLER: I think, if I can restate Julie's question, which is a very good one, is that because these people obviously have associations with countries other than the United States, if somebody were to initiate representation while in the United States but then, either voluntarily or involuntarily, have to leave the United States, is it perceived within the regulation as drafted that the attorney could continue their representation of that person if representation had been initiated by a United States-present individual?

MS. DAVIS: I believe it would. And the reason that I say that is that I believe that that's the approach that's been taken with H-2A visa holders,
that if there is still a claim that is within the
United States, so long as the individual still has a
claim pending and initiated that representation while
they were in the United States, the representation can
continue.

CHAIRMAN KECKLER: That sounds right. I think
that's something that is probably common enough it
might be worth putting in the preamble, a line of that
nature.

MS. DAVIS: Okay. And --

CHAIRMAN KECKLER: Go ahead.

MS. DAVIS: Oh, no. Just to go back to the
previous point, the previous discussion regarding
whether there are limits on who is outside the United
States who could be assisted, did you have language or
did you have something you were thinking about it that
would be worth including in the rule? Or was that just
--

CHAIRMAN KECKLER: I was raising -- Stefanie,
I'm sorry -- I was raising it for discussion. And if
there is language that's useful -- maybe there isn't --
but I think it's something that, as we proceed along in
this area, that everybody just needs to be cognizant of.

It's a complex area. It's designed for relief of specific individuals, and we do want to give them their relief. But there are limits.

MS. DAVIS: Sure.

CHAIRMAN KECKLER: And maybe those limits all are perfectly expressed in our regulation and the Corporation and everybody needs to be aware of them, which I think they are. But I'm open to any language suggestions, of course.

MR. FLAGG: Stefanie, why don't you move on to the last question.

MS. DAVIS: I certainly will. So the last question that we asked was whether an alien had to be present in the United States in order to receive legal services, to be eligible for legal services. And we've discussed that some with respect to the preceding section.

We received eight comments in response to that inquiry. Seven supported the reading that we had put forth. And in the Notice of Proposed Rulemaking, the
Corporation had indicated that it looked at VAWA and the U visa provision of the Immigration and Nationality Act and the P visa provision, and determined that the statutes could be read together to say that an individual did not have to be present in the United States in order to be eligible to receive legal services. And seven of our commenters supported that reading.

After getting the comments back, we looked again at the immigration laws in this area and determined that it was necessary to make some changes to that provision.

With regard to individuals who are applying for assistance under the U visa provision or as individuals who have suffered battery, extreme cruelty, or sexual assault, we determined that they did not have to be present in the United States in order to be eligible for legal assistance from our recipients.

However, based on the fact that VAWA uses the term "victims of trafficking in the United States," and the TVPA uses the term "victims of severe forms of trafficking in the United States," we determined that
in order to give those phrases meaning, victims of trafficking have to be in the United States in order to be eligible for legal services.

They don't necessarily have to be trafficked into the United States, and the trafficking doesn't have to have occurred here. But they must be here in order to be eligible.

There is also a further detail or a further nuance to the victim of severe forms of trafficking, and that's because the T visa provision of the Immigration and Nationality Act requires that in order to be eligible for a T visa, an individual must be in the United States on account of the trafficking.

So the individual can be trafficked here, or the individual can be brought to the United States by law enforcement to AST in the investigation and prosecution of a trafficker. But the individual's presence must be as a result of the trafficking in order for them to be eligible for a T visa.

So given that language in the immigration statutes, we have revised this provision to retain the lack of the presence requirement for individuals who
are eligible under VAWA as victims of extreme cruelty, battery, or sexual assault, to state that a victim of trafficking under VAWA must be present in the United States to be eligible, and that a victim of severe forms of trafficking under the TVPA must be in the United States as a result of the trafficking.

I know that's very nuanced. Are there any questions?

MR. FLAGG: I would just note that I think that I understand from Mr. Saunders that there may be public comment on this last proposal which, as Stefanie outlined, did entail a change in the proposed Final Rule that had not been originally proposed in the Notice of Proposed Rulemaking. And I assume we'll hear about that in the public comment.

CHAIRMAN KECKLER: Julie?

MS. REISKIN: Same question. Is that answer the same as the question I just asked? If they're here and representation starts, and then they leave for whatever reason, can it continue?

MS. DAVIS: I believe the answer is the same.

CHAIRMAN KECKLER: Yes. This gets into the
prior discussion, which is linked, as I understand it.

MS. DAVIS: Yes.

CHAIRMAN KECKLER: Because the change in one is linked to the change in the other in order to give effect to "in the United States," which is in the statute and creates a nexus with the United States in those areas that it covers.

Some language to consider -- and I wish I'd recorded you verbatim, Ron. But you pointed out that what we're trying to do here is we're trying to provide a procedural assistance to substantive rights that are being created in the Department of Homeland Security and the Department of Justice.

And if there's some good language and thoughts on that concept, that might again be worth putting in the preamble. It's not regulatory language, but it's something that is worth thinking about.

Does the Committee and the Board have further questions on this?

(No response.)

CHAIRMAN KECKLER: I'm going to create a public comment on this right now. I'm going to invite
public comment on the regulation as a whole, but as I understand, specifically on this question.

For the record, just announce yourself.

MR. SAUNDERS: Good afternoon. I'm Don Saunders with the National Legal Aid and Defender Association.

MS. JONAS: And I'm Stacie Jonas with Texas RioGrande Legal Aid.

MR. SAUNDERS: Thank you, Mr. Chairman and members of the Committee. We will be brief. We understand your schedule.

We did want to make a quick comment. As you know, we have been very supportive of this change, and we're very appreciative of the work that Ron and Stefanie as done, as well as the whole OLA staff, and are generally supportive of the proposed rule. But since this is a final consideration, we did want to comment on the revision that Stefanie referred to.

This, as you can tell, is a very, very complex set of laws and regulations and things of that sort. When the initial position was released in August with an October deadline for comment, I think many
commentators were very supportive of the position that you were eligible for legal services if you met the other criteria even if you weren't geographically located within the United States.

The change here, I have heard from a number of LSC grantees as well as some non-LSC immigration rights groups who were very concerned with this proposal. But since the comment period ended in October, they asked if we could, at least with respect to this one issue, have an opportunity to provide more thoughtful comment based upon the importance of the change.

That is what we are suggesting to you. I'm joined by one of the leading experts in this field in the country, and I don't want to take her time away. I want you to hear from somebody on the ground who deals with these issues every day.

So Stacie?

MS. JONAS: Thanks. Actually, we came here today to express a concern about the proposed rule, and have realized that we also have a question. And I'm hoping that maybe Stefanie can clarify one thing for me before I say anything further.
You mentioned that aliens who qualify for what's known as U visas do not need to be present in the United States in order to receive related legal assistance, but that victims of trafficking do. Now, I think you're aware that victims of trafficking are also eligible for U visas.

MS. DAVIS: Yes.

MS. JONAS: And so what I would like to clarify is whether this proposed Final Rule would mean that a victim of trafficking who is also qualified for a U visa has to be in the United States in order to receive services.

MS. DAVIS: And I think that is a difficult that we struggled with in coming up with the rule that we drafted. And it is not a perfect solution.

The solution that we developed in the relevant section is, essentially, if you are qualifying as a victim of trafficking under a U visa -- that is the basis under which you are seeking eligibility -- then you do not need to be in the United States.

But if you are seeking legal services, for example, as a victim of severe forms of trafficking
who, granted, are also eligible for a U visa, but if
you were seeking eligibility for the full range of
services that are available to victims of severe forms
of trafficking, yes, you would need to be present in
the United States.

It is not a perfect solution. It's not a
great solution. But, as I'm sure you can appreciate,
those are the statutes that we have and those are the
provisions that we have to work with.

Does that answer your question?

MS. JONAS: It does, and it's really helpful.

And I think that that was a point of a lot of
confusion for some of us in the field because the way
that the proposed rule is currently written was a
little confusing to us on that point.

I don't want to take too much time except to
say that, obviously, TRLA in our comments, and some
other commenters, were supportive of a broader read of
the geographic presence requirement for victims of
trafficking.

We realize that there were these two
provisions that refer to victims of trafficking or
severe forms of trafficking in the United States.
There's very little guidance, really, anywhere as to what that actually was intended to mean.

We understood the underlying concern to be having a nexus to the United States, and it seems to be part of your concern as well. In our proposal, it was to try to read it as either requiring that the victim be physically present in the United States or requiring that the trafficking have occurred in the United States.

And we thought that would be the most expansive read that would be in keeping with the purposes of the anti-abuse statutes, but would still give some meaning to that.

I do understand what you are saying about looking to the T visa language and the requirement under the T visa program that a victim must be in the country on account of the trafficking, although it is also true that the provision that we're looking at in the Trafficking Victims Protection Act allows a victim access to all legal services, not just representation on the T visa.
And in fact, a victim of a severe form of trafficking is not required to be in the country on account of the trafficking. That's an extra requirement for the visa.

But I do understand better your position now that you've clarified the U visa eligibility. I'll just take two seconds to say, TRLA and the other LSC organizations that we work with on trafficking issues, we do feel that the geographic presence issue is an important one.

I will assure you that I think it's very rare that we have cases involving somebody who has no nexus to the U.S, they're both outside of the United States and their crime occurred outside of the United States.

In my personal practice, I've never had a case like that.

But we do have cases in which representation begins in the United States, and for a number of reasons, especially for people who have come on a temporary visa, never intended to stay here.

Victims want to leave because they don't want to be in the country unlawfully or because of family
emergency. We have traffickers who will forcibly remove people and take them out of the country. Our attorneys in the Rio Grande Valley who work on the border are only a couple minutes from the border.

And as an attorney mentioned to me today, you'll have a trafficker drop somebody off on the other side of the border, separating her from her children, in fear that the trafficker is going to victimize those children as well.

And we were deeply concerned that the new rule might mean that that person, by virtue of having been forced out of the country by the trafficker himself, would lose the opportunity for legal assistance.

While I think the number of people who are seeking assistance while outside the United States is not really huge, it's not insignificant. And that was a concern that we had. And we didn't think the statute necessarily required the outcome, particularly with regard to the U visa eligibility, which you've now -- thank you -- clarified has not been precluded here. And I don't think that there were any commenters that explicitly had expressed support of such a broad
prohibition.

So we would maintain our position that the "in
the United States" language could be read more broadly,
and would think that that would be in keeping with the
purposes of the statute. But we do also appreciate the
clarification that, to the extent a victim of
trafficking is still qualified for a U visa, if they
are, for whatever reason, outside of the country, they
could continue to be eligible.

And I would conclude by saying I think it
would be fabulous if it was clarified in the preamble
that if representation begins in the United States and
the person needs to leave, which is really the majority
of the cases, that it may continue after the victim has
left.

CHAIRMAN KECKLER: Thank you for your
comments, and I think that's something, certainly, that
we've now raised. And so thank you for giving a
perspective from the ground about the importance of
that.

Are there further questions and comments from
the Committee?
(No response.)

CHAIRMAN KECKLER: Hearing none, I think at this time what's asked of the Committee is a recommendation that this Final Rule be passed on to the Board.

But I would ask that certainly the issue about continued representation be offered as an amendment to the preamble -- it's been raised -- and also, perhaps, some consideration if there's language to express our linkage between the substantive rights granted by Department of Justice and Department of Homeland Security and the procedural and attorney representation rights that we are trying to provide. If there's good language for that, then I think we'd be interested in seeing that.

MS. DAVIS: Certainly. We will work on that.

CHAIRMAN KECKLER: So if there are no further proposed amendments and changes to the rule, I will ask that a motion to recommend the rule be offered.

MR. GREY: With the proposed amendments forthcoming?

CHAIRMAN KECKLER: Yes.
MOTION

MR. GREY: So moved.

CHAIRMAN KECKLER: Is there -- Mr. Saunders?

MR. SAUNDERS: Thank you, Mr. Chairman. I just wanted to clarify the issues that Stacie raised were broader than simply representation that began in the United States and then the client was no longer in the country, but that we really do need some more clarification, if not an opportunity to comment, on the broader question when that's not the situation.

CHAIRMAN KECKLER: Okay, Mr. Saunders. In that case, is there a proposal which would -- the proposal that you're discussing could take one of several forms, which could include a further Notice of Proposed Rulemaking. It could involve us tabling this till the next meeting. I'm open to suggestions from the Committee.

MR. FLAGG: Could I make a suggestion? We already have built into this rulemaking process a 30-day comment period on a proposed program letter which, I think, nobody has commented on and is pretty straightforward because it's just carrying forward
materials that are currently in an appendix.

We could, on a limited 30-day basis, request public comment on this what I think is -- well, it may be broader than just a continued representation issue -- quite limited to one provision of the proposal.

So it would not be a new NPRM other than a request for comment on this one issue which we've been talking about for the last 15 or 20 minutes. And then we would have this interim Committee meeting, at which the complete rule could be adopted with the additional comments on both the program letter and this one paragraph.

CHAIRMAN KECKLER: So as a legal matter, assuming that that were to be the model we would follow, what motion would Management then wish us to make as a Committee at this time?

MR. FLAGG: A motion to approve the NPRM as included in the Board book, with the modifications to the preamble that have been discussed, mainly with respect to continued representation where it starts here, to an explicit link between our interpretation of the relevant statutes, mainly the Immigration and
Naturalization Act and the interpretations of those acts by the Department of Homeland Security and DOJ; and, in addition, with the modification that the Board would seek comment on the issue with respect to area regarding whether an alien must be physically present in the United States to receive legal assistance.

And the justification for doing that would be because we have, as Stefanie described, modified the proposed rule from what was in the original NPRM. So for that limited provision that was changed in the proposed Final Rule, there would be 30 days to comment.

CHAIRMAN KECKLER: Right. But as a consequence, would the rule, as drafted, go into effect upon approval by the Board?

MR. FLAGG: Well, you could do it one of two ways. You could either have the entire rule -- the status quo would remain the same in terms of the rules until the entire rule was approved by the Board subsequent to the 30-day comment period; or, and it depends on how the motion is stated, the proposed Final Rule could go into effect with the exception of the provision of the rule dealing with whether an alien
must be physically present in the United States to receive legal assistance. And that one provision alone would not go into effect, and would remain subject to the status quo.

So you could do it either one of two ways. You could either have the whole rule go into effect at some period after the comments, or everything go into effect upon approval by the Board now except for this paragraph and the program letter. And either of those would be --

MR. LEVI: And you're going to have to decide that within the next seven minutes because this Committee has a hard stop at 5:30 today.

And this brings me to another topic, so as soon as you vote that, I do want to discuss time management of this Committee, particularly when these kinds of topics come up. It has occurred now time and again, that when these topics come up, the guesstimate as to the amount of time that the Committee wants to take with them is way low.

And therefore, the Ops & Regs Committee from now on, as far as this Chair is concerned, when it has
these kinds of issues coming before it, it has to have a pre-meeting with respect to them telephonically before it gets to the formal Board meeting.

CHAIRMAN KECKLER: I fully agree with that, John. And --

MR. LEVI: Well, it's unfair to the other Committees.

CHAIRMAN KECKLER: Yes. Well, I guess my thought on this is that the rule is -- and it's so obvious upon reading the preamble and the changes.

The core issue of the United States nexus is completely integrated, one to the other, because either "in the United States" means that the activity took place in the United States in the relevant statutes or it means that the person's in the United States. You could say it means one or the other. My own preference, thought, is that it probably means one thing, whichever one it means.

So it seems to me that separating out is not a good idea. So it seems like we have to hold this in abeyance. We can seek further comment on a specific section of it, but we have to hold in abeyance the
approval of the rule until we decide what to do with
that section.

MR. FLAGG: Then I would request that the
Committee recommend that additional comment be sought,
a 30-day period, with respect to the nexus to the
United States issue.

CHAIRMAN KECKLER: Okay.

MOTION

MR. GREY: Move it.

MS. MIKVA: Second.

CHAIRMAN KECKLER: All in favor?

(Chorus of ayes.)

MR. LEVI: Good. That'll be good. Now the
question is what to do with the rest of your agenda and
how to hold your meeting, then. So I have to figure
that out. We have to figure that out.

CHAIRMAN KECKLER: Right. Yes. Well, since
we do have three minutes and we do have an obligation
to the strategic plan to review how the strategic plan
is going --

MR. LEVI: Please do that. But I didn't wish
to -- the question was --
CHAIRMAN KECKLER: And some other important matters. The question is, then, passed back to the Board Chairman of considering our default, for which we have some excuse here but we indeed have some default here. Is there an opportunity on the schedule, remaining schedule of the meeting, to continue this?

MOTION

MR. LEVI: Yes, at 7:00 in the morning.

CHAIRMAN KECKLER: I'm a morning person, John, so it's no harm to me.

MS. MIKVA: Could we meet during the Institutional Advancement?

MR. LEVI: Well, you could, although you're going to lose a number of us.

MR. GREY: Let's do it at breakfast.

MR. LEVI: But that's okay. But you're going to lose some of the Committee. It's going to divide Jim, too, which I don't really like to do.

CHAIRMAN KECKLER: Yes. Breakfast tomorrow.

(Several yeses.)

CHAIRMAN KECKLER: So a proposal has been made to continue this meeting and adjourn it till 7:30?
MR. LEVI: Let me just look what time --

MR. FLAGG: There's an Institutional

Advancement Committee meeting tomorrow at 7:45.

CHAIRMAN KECKLER: Yes.

MR. LEVI: Yes, there is. That's correct.

There's a close Institutional Advancement --

CHAIRMAN KECKLER: So 7:00?

MR. LEVI: Well, 7:15.

CHAIRMAN KECKLER: 7:15 is when breakfast is

scheduled to begin. I was going to give everybody a

chance to get coffee, but they'll just have to talk and

eat and get coffee all at the same time.

MR. LEVI: That's at 7:15? Now, I don't even

think you're going to finish what I see on this agenda

in 30 minutes.

CHAIRMAN KECKLER: 7:00?

MR. FLAGG: I think we could do it in 45

minutes.

CHAIRMAN KECKLER: You think we can do it in

45 minutes? 7:00, then. So your suggestion, John, has

been carried and I believe seconded by Mr. Gray to have

this meeting continued at, bright and early, 7:00 a.m.
tomorrow morning.

MR. LEVI: It's going to be a breakfast meeting, a breakfast meeting with barbecue.

MR. FLAGG: But we actually need to have a vote on that.

MR. LEVI: We'll have a breakfast barbecue.

CHAIRMAN KECKLER: We need to have a vote on that.

MS. REISKIN: That was really smooth, how it became --

MR. LEVI: I don't mind.

CHAIRMAN KECKLER: So all in favor of continuing this meeting at 7:00 a.m. tomorrow morning?

(Chorus of ayes.)

CHAIRMAN KECKLER: The meeting stands not adjourned, but will be continued at that time. Thank you all.

MR. LEVI: Just look at it this way. It's 8:00 a.m. in the East and 9:00 a.m. in Bermuda.

(Whereupon, at 5:28 p.m., the Committee was recessed, to resume the following day, January 24, 2014 at 7:00 a.m.) * * * * *