This workshop was held at the 2019 Equal Justice Conference in Louisville, Kentucky.

Title:

Legal Services for Trafficking Survivors: Best Practices in Pro Bono Partnerships

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This program will explore successful pro bono partnerships in the delivery of legal services to trafficking survivors. Panelists will offer suggestions on creating and maintain trafficking-related pro bono programs as well as tips and best practices for both the legal services providers as well as their law firm pro bono partners.
Interviewing and Assisting Trafficking Survivors

by Dorchen A. Leidholdt

Barriers to Interviewing and Assisting Survivors

As challenging as it can be to identify human trafficking and recognize victims, the tasks of interviewing and assisting survivors of human trafficking can be even more daunting. Trafficking victims endure the same kind of harms as victims of many commonly occurring crimes. What distinguishes trafficking is that, while most crime victims suffer discrete injuries that occur during a limited period of time, victims of human trafficking are often subjected to a wide array of criminal acts inflicted over a period of months or even years.

Trafficking victims have much in common with other kinds of crime victims and frequently have experienced the same forms of violence as victims of intimate partner violence, rape and sexual harassment, theft and extortion, stalking and torture, and official corruption. Like intimate partner violence, trafficking often involves betrayal by individuals the victim trusted and loved as well as a course of abusive conduct that extends over years. Like rape and sexual harassment, trafficking often involves a profound violation of the victim’s most intimate boundaries. Like theft and extortion, trafficking almost always robs victims of economic resources, leaving victims with urgent material needs. Like stalking and torture, trafficking deprives victims of privacy and peace of mind, instilling in them a state of fear. Like official corruption, trafficking too often denies victims the possibility of justice and protection.

The multifaceted and prolonged nature of the victimization affects trafficking victims in ways that can impede the efforts of attorneys and other service providers to interview victims and develop strong working relationships with them. The many obstacles faced by the legal or social service professional attempting to assist trafficking victims are almost always the direct result of the harm — physical, psychological, and material — inflicted by the traffickers who carry out this profoundly injurious crime.
Trauma

Many trafficking victims have sustained psychological trauma, symptoms of which can range from depression, often accompanied by listlessness or flattened affect, to panic attacks and extreme emotionality. Often victims attempt to distance themselves psychically from their terrifying and humiliating experiences through minimization, memory loss, and dissociation. Many try to numb feelings of anxiety through alcohol and drugs. Post traumatic stress disorder (PTSD) is extremely common among victims of human trafficking.1 A normal response to abnormal degrees of stress, PTSD is characterized by intrusion (emotional reactions, flashbacks, images, nightmares), avoidance (dissociation, minimizing, numbing, denial), and arousal (anger, difficulty concentrating, insomnia).2

Prior to being trafficked, many victims suffer traumatic events that inflict psychic trauma. This prior trauma not only attracts the attention of traffickers, who are adept at seeking out vulnerable victims and exploiting their vulnerability, but also magnifies the psychic harm of subsequent trauma. Typical is the experience of Kika, a sex trafficking victim from Latin America who was a client at Sanctuary for Families, a large New York City not-for-profit organization serving domestic violence and trafficking victims and their families.3 Before Kika met the man who lured her to the United States, pressed her into debt bondage, and handed her over to a brothel manager, she had been beaten by her mother as a child, raped by her mother’s boyfriend, and battered by a boyfriend. Like sharks that scent blood in the water, Kika’s traffickers were attracted by and preyed on her vulnerability. The psychic damage they inflicted was greatly compounded by her previous psychic injury and rendered her so disabled that she was unable to resist the demands of her traffickers and identify routes of escape.4

Many victims display the hallmarks of traumatic bonding, also known as Stockholm syndrome, sometimes viewing their exploiters as their protectors. Mario, a labor trafficking victim from Honduras, had witnessed the murder of his beloved older brother by a rival street gang and had been threatened and held captive by the “coyotes” he paid to smuggle him through Mexico and across the border. Once in the United States he fell under the control of a construction boss who confiscated his passport and held him in a trailer on the construction company’s work site, forcing him to work long hours for no pay. However, the construction boss occasionally wired money to Mario’s family in Mexico. Sporadic acts of apparent kindness like the payments to his family led Mario to feel indebted to the man who was brutally exploiting him. Mario’s traumatic bonding intensified his trafficker’s domination and control.5
High degrees of trauma like that sustained by Kika and Mario heighten the challenges faced by lawyers and other professionals attempting to interview and assist victims. Minimization, denial, and memory loss, all symptoms of psychological trauma, can make it extremely difficult to elicit information necessary to understand whether the exploiter’s conduct rises to the level of actionable trafficking, to draft petitions and criminal complaints, and to prepare the victim to testify at trial.

Physical trauma, especially traumatic brain injury, may also be at the root of difficulties victims have remembering. Traffickers and other abusers know that leaving victims with visible physical injuries can tip off authorities and render victims less marketable. Beatings sustained in and around the head can leave even cooperative victims with enduring difficulties producing a coherent narrative of their histories and details of their trafficking experience.

Interviewing survivors and preparing them for court proceedings require them to recount the traumatic events. Not infrequently this can cause them to reexperience the earlier trauma and trigger traumatic symptoms. For survivors, the pain of reliving traumatic events can discourage them from attending meetings with attorneys and other service providers and cooperating with law enforcement officials. For the providers attempting to assist survivors and not cause further harm, the experience of inadvertently retraumatizing a client during interviews or preparation sessions can be extremely uncomfortable and thwart well-intentioned efforts to provide help.

Anger and irritability are frequent symptoms of the kind of depression and trauma victims experience, and it is not unusual for survivors to misdirect these emotions caused by abuse at the hands of their traffickers to those attempting to provide protection and assistance. Attorneys at Sanctuary for Families provided legal representation to Kristina, an Eastern European trafficking victim who had been serially raped, first by the American man who recruited her on an internet bride website and then, when she fled from him, by a man who falsely claimed to be a police officer. The efforts of attorneys to help Kristina obtain immigration relief and medical assistance for her seizure disorder were frequently met with outbursts of rage and, on two occasions, with physically menacing acts. Staff struggled to maintain their composure in the face of repeated incidents of provocative and even frightening behavior.6

Fear

Traffickers maintain control over their victims by deliberately instilling in them high degrees of fear, often by threatening to harm them and those they
love. Since traffickers often have connections with victims’ communities and know the whereabouts of their family members, victims are acutely aware that their exploiters can make good on such threats. Olga, a Sanctuary for Families client and a labor trafficking victim from the Ukraine, was subjected to chilling threats. Not only was she told that she would be forced into prostitution if she disobeyed her traffickers’ orders, after she tried to escape she was warned that if she did not do everything her traffickers demanded they would murder her two small children in the Ukraine, eviscerate them, and sell their organs. Olga was paralyzed by fear, and when she was rescued had frequent and uncontrollable panic attacks. This made it extremely difficult for her attorney to gather the information she needed to prepare Olga’s application for a T-visa.

Traffickers also instill in their victims fears about the response of law enforcement and immigration authorities. Sex trafficking victims are routinely told by their traffickers that if they try to seek help from the police they will be arrested for prostitution and, if they are immigrants, summarily deported. Sex traffickers threaten victims with children that, if the authorities find out that they were in prostitution, their children will be put in foster care and they will be deported and never see their children again. Labor traffickers tell victims that authorities will separate them from their families, incarcerate them in immigration jails, and deport them back into the conditions of poverty they had hoped to escape.

Sadly, too often these threats are realized. Both sex and labor trafficking victims often experience mistreatment by authorities, not only in their countries of origin, where official corruption may be rampant, but also in the United States. Survivors of sex trafficking often report that law enforcement officers tell them after arrest that they will be released if they provide sexual services to the officers. Sex trafficking victims who are apprehended by the police are far more likely to be arrested and treated as law breakers than identified as victims and offered services. Trafficking victims who are undocumented immigrants are frequently subjected to arrest, detention, and deportation by American criminal justice and immigration authorities more used to expelling “illegal immigrants” than identifying victims and providing them with protection.

Existing in conditions of heightened fear for months or even years not only can exacerbate trauma and its symptoms but also can make it difficult for survivors to trust anyone, especially someone who is or appears to be connected with government authorities, including lawyers. Repeated experiences of betrayal and exploitation, often by those in whom survivors had placed their trust, render them suspicious, guarded, reluctant to disclose important information, and likely to resort to giving those attempting to assist them the false narratives drilled into them by their traffickers.
Shame

Like all those who are victimized, survivors of human trafficking experience shame — shame at having been tricked and deceived, at having been taken advantage of, at having been exploited, and often at failing to provide family members with money survivors had intended to send them. Because the period of victimization is often prolonged, the shame they experience is often deeper and more persistent than that experienced by other crime victims.

Sex trafficking victims almost invariably experience a profound degree of shame. Over and over, they are required by both their traffickers and their customers to perform acts that are degrading, humiliating, and repugnant to them. Deepening their shame, they often are required to feign pleasure in the degradation and to pretend that they are engaging in humiliating acts of their own volition. Not infrequently these acts are photographed or filmed, and the victims are threatened that the pornographic images will be shown to family members and/or publicized on the internet. Victims are often subjected to verbal abuse by their exploiters and their customers, called names like “dirty whore,” “puta,” and “slut” that suggest that their very beings are vile and that they are in prostitution because they are prostitutes by nature.

In most societies, especially traditional ones, prostitution is considered the lowest human condition, one that renders those in it permanently stigmatized and cast out of normal society. Prostitution is considered immoral, a violation of religious precepts, and prostitutes are regarded as “fallen women.” In many countries, including our own, prostitution is a crime. By inducing their victims into prostitution, sex traffickers marginalize them, creating a vast gulf between victims and those attempting to assist them. It is not surprising that sex trafficking victims often find it difficult if not impossible to recount experiences that are mortifying in the extreme.

Isolation

Extreme isolation, the sine qua non of human trafficking, takes place in a variety of settings — private homes, farms and factories, brothels, strip clubs, and sex shops. This isolation does not separate victims from all human contact; indeed, they are usually surrounded by others, they enjoy little if any privacy, and human contact of the most invasive nature imaginable is often pressed upon them. Instead, the isolation that is endemic to human trafficking takes the form of the trafficker rigorously controlling the victim’s ability to communicate, cutting the victim off from systems of support, and curtailing his or her freedom of movement.
Traffickers isolate their victims for many, interconnected reasons: to separate them from sources of help, to prevent them from obtaining information that could facilitate escape, to keep them in a state of disorientation and dependence, to stop them from discovering the truth about the trafficker’s campaign of misinformation, and to shield their operations from detection by law enforcement authorities. Often trafficking victims suffer in conditions of isolation for weeks, months, or years.

The isolation imposed by traffickers amplifies their power and control over their victims and impresses the traffickers’ world view and belief system on them. Sex traffickers often carry this to an extreme, employing a process called “seasoning,” which systematically breaks down and reconstructs the victim’s values, sense of self, and understanding of her or his relationship to society. A victim who has been successfully seasoned regards the trafficker as an omniscient, omnipotent god and offers him devotion and blind obedience. Isolation and its consequences mean that the legal professional trying to connect with a victim may first need to deal with someone deeply influenced by, if not still in the service of, the trafficker.

**Adaptation**

While trafficking is often precipitated by tactics of overt brutality and/or deception, as months turn into years, traumatized, fearful, shamed, and isolated victims may begin to accept their circumstances. They struggle to make the intolerable survivable. They learn that fighting against their exploiters is dangerous and futile. The best that can be achieved is accommodation. If traumatic bonding kicks in, victims come to regard traffickers as family and protectors.

When exploitation in trafficking becomes routine, victims no longer try to escape but instead try to find a way to survive physically and emotionally within its confines. Often it takes an overtly violent experience to rouse the victim from this trauma-induced stupor and precipitate an effort to escape. Kika, one of Sanctuary for Families’ sex trafficking clients, is a good example. Psychologically devastated by having to provide sexual services to twenty customers a night, Kika adapted to life in a brothel by creating a family with the other victims. Annie, a trafficking victim from the Dominican Republic, became her confidante and best friend. Only when Annie was murdered in front of her by an irate customer did Kika’s illusion of safety shatter, and she began to try to find an exit route. Similarly, Olga, the labor trafficking victim from the Ukraine, became inured to life as a labor slave until her trafficker tried to rape her. Then she tried the only exit available to her — suicide.
When she first met with her lawyer at Sanctuary for Families, Katerina presented as a battered wife who needed an order of protection. Later she told her attorney that she had previously been in prostitution, which she described as entirely voluntary. To the attorney’s surprise, a law student intern who had been preparing Katerina’s application for a civil order of protection reported that Katerina was a trafficking victim. In her mid-20’s she had gone to an employment agency in Moscow in response to an ad for babysitters in New York City. When she arrived at Kennedy Airport, she was met by a man, working with a female confederate, who placed her in debt bondage, confiscated her passport, and, with the debt mounting, offered Katerina a way to settle it: stripping in Newark or performing “massage” in Brooklyn. Katerina’s entry into prostitution was far from volitional, and the three years in brothel and escort prostitution that followed left her suicidal, self-hating, and alcoholic. Nonetheless, Katerina continued to insist that she was not a victim and that the other women in the brothel had suffered far more than she.¹²

Katerina’s attorney came to realize that her client was engaged in the psychological strategy of “reappraisal,” “cognitively transforming the situation so as to alter its emotional impact.”¹³ As a team of psychologists explains, “This process may include an individual reappraising an aversive situation as not as bad as it could be, minimizing the harm, [providing] justification for the situation, [making] social comparisons to others who are worse off, or [demonstrating] acceptance of the situation.”¹⁴

Lawyers and other service providers working with possible victims of trafficking who deny sustaining harm or minimize negative effects should be alert to the likelihood that reappraisal or other mechanisms of adaptation may be at work. Rather than simply accepting a client’s disclaimer of harm at face value, as initially occurred in Katerina’s case, the legal professional should sensitively explore all of the facts and circumstances before ruling out the crime of trafficking. Once Katerina was correctly identified as a victim of human trafficking, not only did her self-blame abate but she became eligible for a T-Visa and the many benefits available to T-Visa applicants.
Recommendations to Legal Professionals

Work to Develop a Relationship of Trust

Building the trust that is essential to a healthy attorney-client relationship is not an easy task but there are steps you can take to help create a strong, trusting relationship. Your first task may be dispelling misunderstandings about your role. Even though you may be a private practitioner or a lawyer employed by a public interest organization, your client may assume that you are a government official and regard you with suspicion and fear.

As soon as possible, explain to your client, if it is accurate, that you are not working for the government and that all of his or her communications to you will be kept strictly confidential. Emphasize that your client can speak with you freely and openly, without concern that you will disclose his or her confidences to the government or the traffickers. If your client is an immigrant, broach the subject of immigration status with sensitivity: For example, instead of asking “Are you undocumented?” you could say “We may be able to help you with your immigration legal needs.” Be alert to the power imbalance inherent in the attorney-client relationship and work to diminish it by acknowledging the client’s strengths, listening to his or her concerns, and demonstrating responsiveness to his or her needs.

Prioritize Effective Communication

Effective communication is the foundation of a strong attorney-client relationship. If your client does not speak English and you do not speak her or his language, be sure that you communicate through a competent interpreter who not only speaks your client’s language but, if appropriate, your client’s dialect. Equally important, make sure that the interpreter treats your client with sensitivity, professionalism, and respect. If you can communicate with your client at all without an interpreter, after the interpretation has begun try to ask your client, outside of the interpreter’s earshot, whether he or she feels comfortable with the interpreter’s level of skill and attitude. Both your client and the interpreter must understand his or her duty of confidentiality. If the interpreter is from your client’s ethnic community, inquire as to whether he or she has connections to your client’s kinship group or that of the exploiters and, if so, find another interpreter.

Whether your client speaks your language or not, try to use language that is readily accessible to a layperson and, whenever possible, avoid legal jargon.
Take time to thoroughly explain to your client the available legal remedies, each step of the process, the identities and role of key players, what to expect during interaction with each of them, and what will be expected of your client in and outside of court. The better prepared your client is for each stage of the case, the more comfortable he or she will feel, the better he or she will present, and the more confidence he or she will have in the representation. Because emergencies often arise suddenly in trafficking cases, make sure that your client has a way to reach you if necessary.

**Be Alert to Symptoms of Psychological Distress**

Legal professionals working with trafficking victims need to be alert to the possibility that their clients are experiencing psychological distress and be able to recognize its symptoms. Many trafficking victims suffer from anxiety, depression, and other symptoms of trauma. A normal response to acutely distressing abnormal experiences, these symptoms can interfere with the victim rebuilding her life and working with her attorney on her case. Victims may avoid talking about painful experiences, may deny that they occurred, or may break down when attempting to describe them. You may discover that your client has suicidal ideations or is actively suicidal. If possible, attempt to make referrals to appropriately trained professionals with experience and skill in working with trauma victims. Be aware that your client may have developed substance abuse problems in an effort to alleviate feelings of depression and anxiety. If you see signs that this is the case, identify appropriate substance abuse treatment providers and encourage your client to seek their assistance.

**Strive to Mitigate the Effects of Recounting Traumatic Events**

Describing traumatic experiences almost invariably forces trafficking survivors to relive them and often sparks traumatic symptoms. Legal professionals cannot avoid such inquiries because an accurate, detailed account of incidents of trafficking, the tactics of the traffickers, and the effects on the victim is essential to almost every kind of case intended to provide survivors with legal relief. While there is no easy solution to this dilemma, there are ways that the psychological harm from participation in the legal process can be alleviated. It may be less injurious, and even therapeutic, for victims to transcribe accounts of their traumatic experiences. If your client is literate, consider asking her or him to prepare a written narrative of her or his experiences. Ask questions in a supportive, nonjudgmental way and affirm your client’s responses in a manner that demonstrates understanding and compassion. Avoid body language,
expressions, or comments that indicate that you find her pitiful or her experiences shocking or disgusting or that you take a voyeuristic interest in her ordeal.

Understand that there may need to be multiple meetings before your client can disclose incidents that are especially painful to remember or humiliating to reveal. Scheduling the interview over several days may help prevent your client from being flooded with feelings of distress. If your client breaks down in the course of a session and timing permits, take a break and consider ending early. Reassure your client that it is not unusual to become upset in an interview when asked to remember traumatic occurrences. Remember that your client has survived an experience in which his or her autonomy was severely curtailed if not destroyed; in the interview, let your client determine the timing and pace to the greatest extent possible. Try to end the interview in a positive way, for example, by acknowledging your client’s strength and courage.15

**Avoid Exacerbating Feelings of Embarrassment, Shame, or Self-blame**

Choose a meeting location that is private and avoid interruptions once your interview begins. Do not disclose your client’s circumstances to anyone other than colleagues who are part of your legal team. Realize that your client may not have disclosed the trafficking to family members or friends, who could be judgmental or critical, so don’t interview her or him in their presence or allude in their presence to her or his victimization. Be careful not to imply in your comments or questions that your client was responsible for the exploitation or stayed in an abusive situation voluntarily. Avoid, for example, asking, “Why couldn’t you leave?” When inquiring about sexual abuse, let your client guide the discussion and reassure her or him that such victimization is common in trafficking cases and that he or she is not to blame. Understand that sex trafficking victims often experience prostitution as rape. Avoid asking questions such as “Was sex a part of your job?” that downplay the seriousness of the violation survivors typically feel.

**Be Sensitive to Issues of Gender**

If you are male and your client is a female victim of sexual exploitation or abuse, ask her if she would be more comfortable talking with a legal professional who is female and, if so, try to enlist the help of a sensitive female colleague. Demonstrate through your words and actions that you are not being judgmental. You may wish to acknowledge the strength and agency that facilitated her survival. Recognize that trafficking victims often have complex relationships with and feelings about their traffickers and that traumatic bonding
may still be at work. If appropriate, explain that it is not unusual for victims to have feelings of love or gratitude toward those who abused them.

**Develop and Implement a Safety Plan**

Safety planning is as essential in trafficking cases as in cases of domestic violence. It may have begun before you even meet your client; inquire about safety considerations from any referral sources, such as law enforcement providers. Ensure that the meeting place for your interviews with your client is in a safe location, ideally one that is confidential. Help your client understand the importance of keeping the fact and substance of your meetings confidential. Find out where your client’s traffickers and any confederates are, and work with your client to develop a plan in which they can be avoided.

Often the next step — and the most difficult one — is identifying a safe place for the survivor to live. Shelter resources for trafficking survivors are scarce. Explore the possibility of your client entering a domestic violence shelter and, if there is resistance on the part of shelter staff, emphasize to them the similarities of trafficking to intimate partner violence. Be sure that the shelter is not near the living quarters or operations of the traffickers and their associates. If local shelter is not available, explore the possibility of your client relocating to another part of the state or to another state with such facilities.

Other safety measures available to domestic violence victims may be equally beneficial to trafficking victims, such as criminal orders of protection, which usually require the initiation of a criminal case against the trafficker, and civil orders of protection, which usually require that the trafficker and victim have an intimate relationship. Because the family members of victims are frequently the subject of traffickers’ threats, your safety plan should include steps that protect the safety of the client’s family members in the home country. In one Sanctuary for Families’ case, a survivor’s attorney persuaded the prosecutor to postpone the arrest of her client’s traffickers, who operated between Mexico and the United States, until her daughter in Mexico, whom the traffickers had under surveillance, could be spirited to safety in a domestic violence shelter in New York City.

**Be Attentive to Your Client’s Material Needs**

Trafficking survivors have an array of urgent material needs. Be attentive to these needs and work to address them. They include the need for a safe place to live, food, toiletries, clothing, and medical care. Survivors who are undocumented may not be eligible for traditional public benefits such as food stamps and cash
assistance; explore the possibility of obtaining benefits for them under New York State’s anti-trafficking law and available to T-Visa applicants. Material assistance also includes providing your client with a glass of water, tissues, and snacks during the interview. Helping the survivor address these needs not only will free him or her from dependence on exploiters but will help facilitate a relationship of trust.

**Conclusion**

Interviewing and assisting survivors of human trafficking pose many of the same challenges as interviewing and assisting victims of domestic violence. For this reason, it can be immensely helpful to reach out to experienced domestic violence victim advocates for suggestions about safety planning and addressing clients’ other needs. While working in respectful partnership to assist a client with the strength and courage to survive the unimaginable will test the knowledge and skill of even the most seasoned legal professional, it is likely to be one of the most rewarding experiences of an attorney’s legal career.
Notes


3. The trafficking victims whose experiences are drawn upon to provide examples for this chapter were all clients of the Center for Battered Women’s Legal Services at Sanctuary for Families in New York City. The author of this chapter is the Center’s Director.


5. Information provided by the victim to the author.

6. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women’s Legal Services, Sanctuary for Families.


8. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women’s Legal Services, Sanctuary for Families.


10. Information provided by the victim to the author.

11. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women’s Legal Services, Sanctuary for Families.

12. Information provided by the victim to the author.


A Hidden Phenomenon

In recent years, human trafficking has become an increasingly recognized phenomenon at the international, national, and state levels. A corresponding awareness on the part of the public at large has been forthcoming, but, even so, there remains a picture of who the victims are and to whom they are in servitude: young women or girls trafficked for prostitution to men, commonly referred to as “johns.” According to this picture, trafficking occurs within a triad: the trafficked woman or girl, the trafficker or pimp who controls and abuses her, and the third party “john” who purchases her sexual services. While such a picture is not incorrect, it is not complete. Although limited, the research that currently exists shows that men and boys are also trafficked for commercial sexual exploitation, both abroad and within the United States, and in ways that may not conform to the conventional triad.

Internal trafficking of men and boys occurs in many countries around the globe. In Pakistan and Afghanistan, for example, the practice of wealthy older men keeping young males for sex is common and tolerated, as recently and graphically featured in the documentary, “The Dancing Boys of Afghanistan.” In Sri Lanka, “beach boys” make up the majority of identified sex trafficking victims, with estimates ranging up to 30,000 affected children. Spain recently reported its first major bust of a sex trafficking ring known to use primarily male victims held under the bondage of unpayable debts.

In the United States, too, males are trafficking victims. As of June 2007, males made up 31% of adults and 18% of children certified by the United States as trafficking victims, whether for sexual or labor exploitation. Within the United States, dynamics of power, abuse, and poverty similar to those abroad create an invisible epidemic of commercially sexually exploited youth of all
A 2001 study using conservative estimates indicated that between 244,000 and 325,000 youth within the United States are at risk for commercial sexual exploitation. This study and various other commentaries suggest that the prevalence of domestic commercial sexual exploitation among boys and young men may be much higher than previously believed and that a constellation of risk factors coupled with subtle tactics of psychological control, rather than overt abuse, may be more likely to precipitate males into situations of commercial sexual exploitation. The authors of one study, “The Commercial Sexual Exploitation of Children in New York City” (New York City CSEC study), had initially expected to recruit mainly girls controlled by pimps, but young males ultimately comprised 48% of the total sample. While its methodology — peer recruitment — undoubtedly contributed to this result, the study underscores the surprisingly high incidence of young males in conditions of commercial sexual exploitation. Additionally, the New York City CSEC study does not capture the possibly greater numbers of boys and young men (as well as girls and young women) subjected to commercial sexual exploitation in settings such as massage parlors, escort services, clubs, or as individuals advertised as providing “adult” services on the internet. Until it eliminated its more overt advertisements soliciting sex for money, Craigslist, a well-known source of online classified advertisements, had a large number of postings for males offering to provide “body work,” “massages,” and more explicit sexual services.

The ways in which young males are initiated into commercial sexual exploitation may be somewhat different from those of girls and young women. According to one commentator:

Although peer introduction is common for both males and females, it is especially so for males who by and large operate without a pimp. A typical peer introduction occurs when a boy complains that he needs money and an older friend suggests that the youth can make quick money by prostitution. These peers haunt bus stations, malls, homeless shelters, or any place where they might find vulnerable youth in need of shelter and money.

Two New York City service providers described the phenomenon of young men and boys engaging in “survival sex,” in which an older man, or sometimes a woman, offers a homeless young male shelter, and perhaps food or drugs, implicitly or expressly in exchange for sex. Other types of encounters include street-based pickups primarily by married or ostensibly heterosexual men or recruitment into pornography, either directly or through peers. One service provider to homeless
lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) youth in New York City believes that the vast majority of clients are commercially sexually exploited and that the phenomenon is evenly distributed across sexes.20

Is This Trafficking? A Dyadic Model

Even when the stereotype of a trafficking victim expands to include those trafficked domestically, it remains that of a young female induced to engage in commercial sexual activity by a pimp who profits from the transaction between her and the man who purchases her sexual services. Thus, the trafficker or pimp exists as one corner of a triad, distinct from the purchaser and the victim. In contrast, the model for many sexually exploited males is that of a dyad: rather than operating under the control of an individual pimp, they are most often subjected to commercial sexual exploitation by an initial patron or at the behest of a peer.21 Patrons often take advantage of the emotional needs of the young males, including the need for a parental figure or consistent caregiver and the need to feel desired and valuable, as well as their often obvious and desperate poverty. Likewise, peers often act as recruiters, and, in this way, the patrons and peers may act in the stead of pimps, holding no less sway over youth susceptible to influence and control. Nonetheless, the assumption of independence based on the lack of an intermediary between young males in prostitution and their patrons has often inaccurately transformed victims into criminals under common but incomplete understandings of human trafficking.

The definition of human trafficking advanced in the United Nations Trafficking Protocol addresses the commercial sexual exploitation of these boys and young men, identifying them not as criminals or independent actors but as victims. Under this definition, trafficking in persons is “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (emphasis added).22 The Trafficking Protocol makes clear that inducing a young person under eighteen years of age to engage in commercially sexually exploitative acts is inherently abusive of a position of vulnerability and does not require force, fraud, coercion, abduction, or any question of consent in order to be considered trafficking. This definition does not require a “broker” who profits from the sexual transaction between victim
and patron. Under this definition, a youth who recruits a younger peer into prostitution is abusing a position of vulnerability, as is the mature adult who offers shelter, food, money, or drugs to a homeless young man in exchange for sexual services. Thus, the Trafficking Protocol encompasses not only the triadic model, but also the dyadic model so common to many male victims.

Although the federal and New York criminal laws are narrower in scope than the Trafficking Protocol in that they require that the exploitation be commercial in nature and that the exploiter have engaged minimally in fraud, they do not require a trafficked person to have been under the control of a third-party broker. New York law states that a person has trafficked another if he or she “intentionally advances or profits from prostitution” under certain circumstances. This language covers consumers of prostitution who intentionally advance such prostitution, including by “unlawfully providing to a person who is patronized, with intent to impair said person’s judgment . . . a narcotic drug.” The high incidence of cases in which a customer or peer recruiter provides illegal substances to boys and young men in the context of “hustling” further supports the identification of these commercially sexually exploited young males as trafficking victims. While a commercial sexual transaction between adult peers that does not involve one’s abuse of the other’s position of vulnerability is not trafficking under even the most inclusive definition, legal and social service providers, as well as law enforcement officials, should exercise great caution to avoid narrow and stereotypical definitions about males as independent actors who operate outside systems of abuse and exploitation when evaluating them for assistance and services.

A Constellation of Risk Factors

The first time I came up here, I was staying with my dad. And he kicked me out when he found out I was gay. . . . I was sleeping at the Pier. . . . Off and on, I was finding guys online and sleeping at their house and all that. I didn’t really have anywhere to go though. I couldn’t go back to Indiana. . . . Adam was this guy, a lawyer that I met online. He was really cute and really charming. And he found out where I was staying and invited me to stay at his house. We had done drugs recreationally, but I didn’t know how bad it was with him, until I moved in. . . . And at the time I was fine with it because I had a place to stay. . . .
Then he started being very controlling, and . . . by that time I was so addicted that I just had to put up with it. . . . It got to the point where I just wanted to quit, and I just didn’t want to be with him anymore, but I didn’t know how to make that transition. I didn’t have anywhere to go. . . . Adam gave me HIV. He told me he was negative. . . . I was having unprotected sex, from being so uninhibited on the drugs. . . . He got very abusive. First it was verbally, then it was emotionally, then at the very end, the last couple of weeks, he started pushing me around. . . .

I had been partying with this other cute guy I had met online. We had partied once for like a week. Finally I passed out and when I woke up two days later, I was in his bathroom. . . . I was bleeding. I had these cuts all over my body and I was covered in glass and I was butt naked. And when I woke up, I had all this money. I had a lot of money. And there was like ten or twelve guys sprawled out, passed out all over the house. I had no idea who they were. It was really scary. I couldn’t have told you my name when I woke up. . . . I didn’t remember people’s names. I had that money, but I didn’t know where to go. It turns out I had been slammed. When I had passed out they had slammed me with crystal meth, you know, injected it into my body. They did all kinds of things to me. . . .

I finally talked to [my mom] about everything. . . . I think a lot of my family relationships is what I was lacking. I’m not saying that’s the cause of it, but I didn’t have any other relationships besides the people I was doing drugs with, any type of relationship where I felt a connection. And I think I was looking for it in a lot of places.

—Benji, resident of a shelter serving homeless youth age 16-24, in Shelter by Lucky S. Michaels.26

As Benji’s story illustrates, the factors that contribute to heightened risk for young men and boys of trafficking and commercial sexual exploitation are manifold, and those who exploit those risk factors — such as Adam, “the cute guy,” and the group of men in the story — do so in myriad ways. Traumatic life events related to the family of origin loom particularly large. Authors of one study highlighted unstable family backgrounds and caretaker fluidity: “Some
had parents that were separated or divorced, while others discussed new caretakers entering the household, such as boyfriends, foster parents, stepfathers, and grandparents. None of the boys were raised by both of their natural birth parents past the age of five.” Unsurprisingly, according to these authors, commercially sexually exploited males commonly report involvement with child protective services, including reports of abuse in foster care and multiple moves through foster homes, and many of the young men and boys had also experienced domestic violence, including sexual abuse, at an early age. In addition to the trauma and consequent psychological effects, which put young males at greater risk for commercial sexual exploitation, these researchers found that childhood sexual abuse plays a disturbing role in the experience of young males in the street economy of commercial sexual activity: “A key connection between childhood sexual abuse and entry into sex work is the knowledge that abused youth have that other youths do not: abused youth know there is a demand for certain types of sexual activity.” These researchers also found that having had caretakers or influential peers involved in prostitution greatly increases the chances that at-risk boys and young men view prostitution as “natural or inevitable” for survival and that alcohol or drug abuse by family members and influential peers is correlated to exploitation in commercial sexual activity. They concluded that “... the elements of work, money, alcohol, drugs, and sexual encounters . . . formed the basis for a kind of practical logic to . . . a street career.”

By far the most salient of the many socioeconomic risk factors is poverty. Service providers report poverty and a lack of economic opportunity as the most critical, predisposing factor for vulnerability to sex trafficking for young males, and one of the more difficult to escape. Some sexually exploited youth do hold regular employment but continue to be exploited in commercial sexual activity and other street-based ways of generating income, such as drug distribution, or live with someone who exchanges shelter for sex, to supplement a meager paycheck. Indeed, youth report the inability to find work earning comparable income to commercial sexual activity as a primary reason they cannot escape involvement in it. The addition of a non-conforming sexual or gender identity and homelessness to the reality of poverty forms a trifecta of vulnerability and the emergence of a demographic profile: that of a young, homeless, gay, bisexual, or otherwise sexually-non-conforming male. The New York City CSEC study states that:

[Research indicates a relatively high percentage of homeless youth — between 13 and 35% — identify as a sexual minority,
such as gay, lesbian, bisexual, transgender, or other. Gay-identified male homeless youth are at high risk to engage in male sex work. However, straight-identified male homeless youth also undertake sex work with other men. . . . 36

Indeed, an estimated quarter or more of homeless LGBTQ youth and up to 50% of gay or bisexual boys who have been victims of commercial sexual exploitation left home because of their sexual orientation or gender identity.37 Consequently, the service providers most in contact with trafficked and commercially sexually exploited boys are those who aim to address the needs of either LGBTQ youth or homeless youth or both.

The exploitation of these youth occurs within the context of increasing normalization of commercial sexual activity in the broader culture. While the adage “sex sells” has long been commonly understood as the reason for the widespread use of sexual images to sell mundane goods and services, in recent years the prevalence of the glamorous depiction of commercial sex has grown.38 Within particular LGBTQ communities, the trend may be amplified. The aims of the early gay liberation movement included dismantling the social, psychological, legal and other institutional factors that contributed to the long history of demonization of homosexuality and the oppression and marginalization of gays and lesbians. Consequently, many activists were wary of attempts to limit sexual expression in any form and resisted feminist critiques of the eroticization of power hierarchies, violence, and pornography.39 These emphases have provided LGBTQ communities with a distinctive culture of sexual freedom and tolerance but may have contributed to its sexualization, including heightened focus on conformity to body stereotypes40 and normalization of advertisements for commercial sexual activity in magazines, on websites, and in social gathering places.41 As a result, LGBTQ youth without stable means of financial and emotional support are particularly susceptible to commercial sexual exploitation.

### Social Issues for Legal Service Providers

Because of the pervasive belief that commercial sexual exploitation affects only females, exploited boys and men receive little legislative attention, and the services available to trafficking survivors may either explicitly exclude male victims or not appropriately recognize their needs. Also, lawyers may find it necessary to help courts understand that males may be victims of trafficking and commercial sexual exploitation. Two studies note a tendency on the part of male
participants to downplay the exploitative dynamics of their commercial sexual activity, and they document the ways that young male survivors of commercial sexual exploitation often adopt an indifferent attitude even when recounting extreme abuse or power imbalances with customers. While this stoic attitude may facilitate a lawyer’s ability to obtain relevant information, it could mask mental health issues and also undermine a victim’s credibility, allowing a court to deem him a free actor responsible for participation in commercial sexual activity. Frequently, a victim’s lack of emotional responsiveness is a telling sign of acute trauma; indeed, the definition of post-traumatic stress disorder (PTSD) includes a “feeling of detachment or estrangement from others” and a “restricted range of affect.” This seemingly nonchalant or “flat” affect of many victims may arise from a mistrust of authority due to negative encounters with police and authority figures. A lawyer will have to cultivate the attorney-client relationship with extra care to build the level of trust necessary to represent a male trafficking victim, and some victims may require additional supportive services to participate meaningfully in their legal cases.

The New York City CSEC study also found that a number of males volunteered enthusiastic claims of serving female customers, and, ultimately, the researchers excluded some males because their statements about pursuit by women were not credible. Several boys, however, admitted that their customers included men. This suggests that commercially sexually exploited boys and young men, particularly those who do not identify as gay or bisexual, are reluctant to volunteer information about sexual activity with men. Internalized homophobia, the taboos that may lead ostensibly heterosexual men to solicit sexual services from them, and rigid concepts of gender may contribute to male survivors’ reluctance to acknowledge the sex of their customers. Some of these boys and young men may wrestle with guilt over their sexual exploitation and the social mores against same-sex sexual activity. Those who identify as gay or bisexual may fear retribution or discrimination if their sexual identity becomes known, or they may come to believe that their sexual orientation led them into commercial sexual exploitation. Lawyers and other service providers should be aware that their trafficked male clients may initially provide inconsistent stories about their customers and may reveal more accurate information over time.

Anxiety, depression, and suicide attempts are widely observed in commercially sexually exploited males, and there exists a strong correlation between commercial sexual activity and substance abuse. In addition, male victims of sex trafficking and commercial sexual exploitation are at high risk of police contact and arrest for reasons other than commercial sexual exploitation,
such as assault or drug possession. Lawyers and other service providers should remain alert to the potential for a history of commercial sexual exploitation among low-income or homeless young men and boys with mental health problems or histories of arrests.

One observer has suggested that boys and young men commonly identify their commercial sexual exploitation as “hustling” or “escorting,” casting themselves as entrepreneurs rather than as victims. Although prostituted girls and women, especially those under the control of an intimate partner pimp, can sometimes obtain shelter from domestic violence organizations, there are few domestic violence shelters available for males, who must turn to an array of alternatives, including homeless shelters, churches, and hotels. However, some boys and young men are exposed to, or enter commercial sexual activity through, contacts made at homeless shelters. Thus, male survivors may need extra support in overcoming the psychological and practical obstacles to exiting commercial sexual exploitation, and legal and social service providers should strive to ensure that shelters do not inadvertently facilitate the commercial sexual exploitation of their vulnerable male clients.

Legal Issues

Commercially sexually exploited males may face many legal issues. For example, the New York City CSEC study reported arrests for prostitution, drug possession or distribution, assault, and robbery, among other less common charges. The current legal framework provides some remedies for trafficked boys and young men in certain situations, but many commercially sexually exploited boys and men avoid the legal system because they fear authority and prosecution for prostitution or other offenses; they may only encounter lawyers as a defendant with court-appointed counsel. Furthermore, existing evidence suggests a tendency to view boys as more responsible and, thus, criminally liable for their commercial sexual activity, notwithstanding their inability to consent to sexual relations because of their youth or the exploitative dyad between the boy and his patron. One commentator observed that “This tendency for boys to rely on peer rather than on pimps or parent-equivalent adults can be problematic in viewing sexually-solicited boys as victims of CSE. Presumably, when juveniles are pimped by adults they will tend to be seen as victim, and when they take a more active role in soliciting sexual activities, they will tend to be seen as offenders.”
Of some assistance to sexually exploited men and boys is New York’s Safe Harbor for Exploited Children Act, which creates a rebuttable presumption that youth under eighteen charged with prostitution meet the definition of human trafficking victims under federal law. The law requires courts, with a few exceptions, to find that a young person arrested for prostitution is a Person in Need of Supervision instead of a Juvenile Delinquent. Under this designation, sexually exploited youth charged with prostitution may be diverted to “safe houses,” interventions for runaway and homeless youth, and other supportive services in lieu of adjudication on criminal charges. This statute employs gender-neutral language, indicating the legislature’s intent to apply it to boys and girls alike, and includes an explicit recognition that “sexually exploited youth have separate and distinct service needs according to gender,” albeit without a promise that gender-appropriate services exist to meet those disparate needs. Given one service provider’s indication that youth consider incarceration at Rikers Island less severe and thus preferable to commitment to a juvenile detention center, lawyers and judges encountering commercially sexually exploited boys should be aware of the Safe Harbor Act’s protections. Concerns also exist over incidence of abuse, discrimination, and negative experiences commercially sexually exploited young men and boys have with the child welfare system’s administration of the “safe houses” and supportive services, especially for those who identify as gay or bisexual.

Young men who are too old for protection under the Safe Harbor Act may have grounds to vacate prostitution charges if they can prove that they meet the definition of a human trafficking victim and have either escaped trafficking or accessed supportive services. Sex trafficking victims must have engaged in commercial sexual activity through “force, fraud, or coercion,” and the assumption is often that the coercive force will have come from an identifiable pimp. While some young men over eighteen may meet this narrow definition of trafficking, the law excludes the vast majority of those for whom the initiation into commercial sexual activity originated from the solicitor in an exploitative dyad or through similarly manipulated peers. Given that boys are commonly initiated into commercial sexual exploitation at age thirteen or younger and almost universally show despair over ever escaping it or surviving without the income it generates, it is easy to predict that many young men will continue to be commercially sexually exploited after “aging out” of protections afforded to minors. Some commercially sexually exploited young men in particularly dire circumstances may seek a dismissal of criminal charges against them in the form of a “Clayton motion,” or a motion to dismiss in the interests of justice.
this mechanism has been invoked by people with advanced AIDS so that they may seek better medical care.65

Patrons, peers, and pimps as well as other street contacts commonly commit crimes against young male victims besides inducement to engage in commercial sexual activity. Robbery, sexual assaults, physical assaults, forced drug injection, and kidnapping occur with alarming frequency according to statements made by commercially sexually exploited young men and boys about their experiences.66 Because of their aversion to police out of fear of arrest, however, commercially sexually exploited young men and boys rarely report the crimes committed against them.67 This is exacerbated by patrons’ tendencies to reinforce the young men’s and boys’ feelings of guilt and shame and to emphasize the victims’ isolation and the low probability of fair treatment or help from police. Because trafficked young men and boys may also encounter judges and court staff with limited familiarity with males as victims and with issues of sexual orientation, a zealous advocate will need to be prepared to address and navigate these various barriers to justice.

These crimes, if committed against immigrant commercially sexually exploited boys and young men, may open a path to permanent legal residency for victims willing to cooperate with law enforcement authorities. Victims of crimes who have been trafficked across international borders and who can demonstrate “extreme hardship” if deported may establish legal residency under the T-Visa.68 A few trafficked males may be able to seek asylum in the United States because of the persecution they experienced or feared within their countries of origin and which may have included or set the stage for their commercial sexual exploitation.69 Undocumented immigrant survivors who have suffered “substantial physical or mental abuse” as a result of certain crimes, including rape, domestic violence, trafficking, and sexual exploitation, may also apply for U-Visas.70 To qualify for the U-Visa, victims must disclose information useful to law enforcement in prosecuting the crime against them.71 Since the U-Visa does not require a showing that the applicant would endure “extreme hardship” in his or her country of origin if deported and does not require that the applicant was brought to the United States for the purpose of trafficking, it may have broader applicability.72
Conclusion: Expanding the Movement

Despite the stereotype that young males are independent actors who engage in “survival sex” and related commercial sexual activity of their own volition, nascent research and testimonials from service providers indicate otherwise. While less likely to have a conventional pimp than girls and women, these young men and boys may be no less exploited. What may be notable is the degree to which patrons of sexual services from young men and boys employ a variety of coercive tactics, from exerting power differentials of race and class to exploitation of positions of vulnerability of homeless youth. Lawyers and advocates would do well to forge collaborative relationships with organizations providing services to homeless youth — particularly gay, bisexual, or questioning young men and boys. These relationships may further the recognition of trafficking’s universal scope, as well as garnering widespread support for its redress.
Notes

1. An example of the initial concern of the anti-trafficking movement is the very name of one of its leading international organizations: the Coalition Against Trafficking in Women (CATW), founded in 1988.


3. In this article, we focus on the experiences of commercially sexually exploited men and boys, particularly those who identify as gay or bisexual or who are questioning their sexual identity. We recognize that transgender people are also at pronounced risk for trafficking and commercial sexual exploitation, and lesbian, bisexual, or questioning girls and women also endure trafficking and exploitation. Their experiences are both unique and under-researched, and the development of more resources for those assisting these victims should be encouraged.


10. *Id.* at 6-7.

11. Richard J. Estes and Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico*, at 10-14 (2001). Given the hidden nature of commercial sexual exploitation of youth and the nearly ten years that have elapsed since this data was collected, this is
very likely an underestimate of the problem. For example, this study may fail to capture youth exchanging sex for shelter. In addition, nearly 105,000 children are identified each year as survivors of sexual abuse. *Id.* at 10.


13. Ric Curtis, Karen Terry, Meredith Dank, Kim Dombrowski, and Bilal Khan, *The Commercial Sexual Exploitation of Children in New York City, Volume 1: The CSEC Population in New York City: Size, Characteristics, and Needs*, Center for Court Innovation (2008) (*hereinafter* “Curtis *et al.*”). In this study, researchers conducted in-depth interviews with a cohort of young people aged eighteen years and under. The young people were ascertained through “seeds” who recruited study participants through their acquaintances.

14. In reference to the unexpectedly large number of boys recruited into the CSEC study, the authors observed that “The large number of boys that were recruited was a surprise to the researchers because even though boys had been occasionally mentioned by policymakers, practitioners, and some researchers prior to the beginning of data collection for this project, no one focused on boys as a significant segment of the market or said anything about the unique sets of problems — quite different from those of girls — that these boys face. . . . [T]hey remain almost entirely invisible in the shadow cast by the stereotypical CSEC victims: pimped girls.” *Id.* at 113 (emphasis added).

15. Further research targeted at this still less visible “indoor” population could greatly inform legal and social service providers on the backgrounds, needs, and policy issues facing the full range of commercially sexually exploited men and boys in New York. A casual perusal of the “men seeking men” personals section of Craigslist continues to yield multiple profiles seeking “donations” in return for sexual services. *See* http://newyork.craigslist.org/m4m/.

16. Moxley-Goldsmith, *supra* note 12, at 1. In these types of scenarios, peers behave functionally as pimps, whether or not an ongoing, abusive brokerage relationship is established.
17. Author interview with John Welch, Director of Client Services, Safe Horizon Streetwork Lower East Side Drop-in Center, Aug. 29, 2010 (hereinafter “Interview with John Welch”); author interview with Lucky Michaels, Director, Sylvia’s Place, Shelter for Homeless LGBTQ Youth, New York, Sept. 7, 2010 (hereinafter “Interview with Lucky Michaels”).

18. Author interview with Trudee Able-Peterson, author of Children of the Evening and founder of The Streetwork Project, Sept. 11, 2010 (hereinafter “Interview with Trudee Able-Peterson”).

19. See Doe v. Menefee, 391 F.3d 147, 150 (2d Cir. 2004) (predatory network of adult males called the “Boy Lovers” recruited boys into commercial sexual activity with attention, food, and money; shared them among themselves; used them in pornography; and sent some boys out as “seeds” to recruit peers).

20. Interview with Lucky Michaels, supra note 17.

21. Young people’s reasons for initiating others into commercial sexual exploitation may vary widely, and more research on recruiters would help to explain this complex phenomenon. However, it appears that, among other reasons, some young people recruit other youth out of a wish to help untempered by a full understanding of the implications of their actions. Also, for the recruiting, “helpful” peers, this may be the only way that they know to make enough money for self-support. See Stephen E. Lankenau, Michael C. Clatts, Dorinda Welle, Lloyd A. Goldsamt, and Marya Viost Gwadz, Street Careers: Homelessness, Drug Use, and Sex Work Among Young Men Who Have Sex with Men (YMSM), 16 Int’l J Drug Pol 12, 15 (2005) (hereinafter “Lankenau et al.”); Curtis et al. supra note 13, at 49, 51; Moxley-Goldsmith, supra note 12, at 1.


23. N.Y. Penal Code § 230.34.


27. Lankenau et al., supra note 22, at 16.
28. Id. at 13.
29. Id.
30. Id. at 11, 16.
31. Id. at 14, 16.
32. Id. at 15, 16.
33. Interview with John Welch, supra note 17; Interview with Trudee Able-Peterson, supra note 18; Curtis et al., supra note 13, at 101.
34. Interview with John Welch, supra note 17; Curtis et al., supra note 13, at 67.
35. Curtis et al., supra note 13, at 100-01.
36. Id. at 11, 16. Service providers’ estimates of the percentage of LGBTQ-identified youth among those accessing their services range up to 50-70%. Interview with John Welch, supra note 17; Interview with Lucky Michaels, supra note 17.
37. The U.S. Dept. of Health and Human Services reports that 26% of gay and lesbian youth are forced to leave home because of conflicts over their sexual orientation. Clawson, et al., supra note 2, at 10.
38. See, e.g., Meredith Levande, “Women, Pop Music, and Pornography,” 8 Meridians 293, 314 (2008) (arguing that the 1996 Telecommunications Act permitted media conglomerates to profit more directly from adult entertainment, resulting in a drastic increase in pornographic imagery in media since the 1990’s).
39. In the aftermath of the AIDS epidemic, prevention of the spread of HIV through safer-sex practices remains a paramount priority of the movement and community, perhaps to the exclusion of other analyses of sexual ethics.
41. See, e.g., Chong-suk Han, “Sexy Like a Girl and Horny Like a Boy: Contemporary Gay “Western” Narratives about Gay Asian Men,” paper presented at the annual meeting of the American Sociological Association, Montreal Convention Center, Montreal, Quebec, Canada, Aug. 10, 2006, at 15 (“While advertisements in gay periodicals seem to advertise to gay white
men, they advertise gay Asian men as a commodity for consumption.”). Han also notes the open sexual commodification of Asian men at LGBT community events.

42. Curtis et al., supra note 13, at 113 (“As traumatic as these various incidents of violence must have been, most youth rattled off the accounts in somewhat emotionless terms, and they seemed to accept them as part of the danger of the business.”); Lankenau et al., supra note 21, at 14.


44. Interview with John Welch, supra note 17; Clawson et al., supra note 2, at 35.

45. Curtis et al., supra note 13, at 24.

46. See Curtis et al., supra note 13, at 77.

47. Id. at 113.

48. Interview with Lucky Michaels, supra note 17; Clawson et al., supra note 2, at 13; Clatts et al., supra note 26.

49. Lankenau et al., supra note 22, at 11; Clawson et al., supra note 2, at 13; Curtis et al., supra note 13, at 93; Clatts et al., supra note 26, at 207-08 (finding that onset of drug use and initiation into commercial sexual activity tended to occur at roughly the same time among current or formerly homeless young men who have sex with men).

50. Curtis et al., supra note 13, at 87.


52. Clawson et al., supra note 2, at 13.

53. Lankenau et al., supra note 22, at 16.

54. Curtis et al., supra note 13, at 87.

55. Interview with John Welch, supra note 17.

56. Clawson et al., supra note 2, at 18.


58. N.Y. Family Court Act § 311.4 (3).

59. Interview with John Welch, supra note 17.


63. Clawson et al., supra note 2, at 9.

64. N.Y. C.P.L. § 210.40.


66. Interview with John Welch, supra note 18; Interview with Trudee Able-Peterson, supra note 19; Interview with Lucky Michaels, supra note 18; Curtis et al., supra note 13, at 81-83.

67. Interview with John Welch, supra note 17.


71. Id. at 192. Some further exceptions exist for very young or incompetent crime victims.

72. Id. at 200.

The authors wish to extend special thanks to Allie Bryan for her diligent compilation of materials and for her moral support.
Meeting the Legal Needs of Human Trafficking Victims: An Introduction for Domestic Violence Attorneys & Advocates
Meeting the Legal Needs of Human Trafficking Victims: An Introduction for Domestic Violence Attorneys & Advocates

Authors: Jean Bruggeman & Elizabeth Keyes
Editors: Amanda Kloer, Irena Lieberman, Robin Runge
The American Bar Association is pleased to provide you with Meeting the Legal Needs of Human Trafficking Victims: An Introduction for Domestic Violence Attorneys & Advocates, which we hope will serve as an important and timely resource for you in your practice representing human trafficking victims. This publication was developed pursuant to a generous grant from the ABA Enterprise Fund, as part of a collaborative effort by several ABA entities aiming to provide attorneys with leadership and training to better represent victims of human trafficking.*

Human trafficking and domestic violence are crimes which occur at alarming rates in the United States. Notably, there is also a high co-occurrence of these crimes. Many victims of human trafficking are also victims of domestic violence and many victims of domestic violence have also been trafficked. However, the legal needs of, and remedies available to, victims of domestic violence and human trafficking can be distinct. As a result, it is imperative that attorneys who represent victims of domestic violence are able to identify if their clients are trafficking victims as well, and be familiar with the range of legal remedies available to human trafficking victims as well as the relevant resources in their communities.

The impetus for the creation of this publication came from the many domestic violence attorneys who contacted the ABA Commission on Domestic Violence seeking information about human trafficking and wanting to ensure that they were providing comprehensive legal assistance to their clients.

Like domestic violence cases, human trafficking cases are often complex and multi-dimensional. This guide serves as an overview of the unique issues and remedies which are often present in such cases, and is not intended to be comprehensive. We have included references to many other resources on related topics throughout.

Through this guide, we hope to support your efforts to serve a very vulnerable population in desperate need of high-quality legal assistance. We applaud you for the heroic work that you do on their behalf.

Regards,

Karen Mathis & Laura Stein
Honorary Co-Chairs
American Bar Association Civil Legal Remedies for Human Trafficking Victims Project
April 2009

*The ABA Enterprise Fund collaborating entities are the Commission on Domestic Violence, Commission on Immigration, Rule of Law Initiative, Center on Pro Bono, Commission on Youth at Risk, Section of Individual Rights and Responsibilities, and the Center for Human Rights.
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What Will I Learn From This Guide?

It is our hope that as a result of reviewing this guide, you will be better able to:

➤ Recognize trafficking victims among your existing domestic violence caseload;

➤ Identify the key civil legal remedies and other issues that you will need to explore in order to effectively assist human trafficking victims; and

➤ Identify and use other resources to pursue specific legal remedies and secure social services and other benefits for your clients.

Just as the experiences of domestic violence and human trafficking victims overlap, so do the available remedies. Some civil and immigration remedies are available to victims of all forms of abuse, while others are available to only a portion who met certain requirements. Exploring these intersections will allow you to think more holistically and creatively about legal remedies and auxiliary services available to clients.

Despite these advances the civil justice system is still inaccessible to many trafficking victims. They are largely unaware of the legal recourse and services available to them; psychological trauma, threats to their lives and safety, and lack of resources often prevent them from seeking help. Without assistance and support, victims who do manage to escape are at risk for being re-trafficked.

Because anti-trafficking laws are still relatively new, too few attorneys possess the depth of knowledge necessary to competently, safely, and holistically assist victims. In particular, lawyers must be prepared to plan for the safety of their clients, employees, and others.

Promoting the competence of domestic violence attorneys who represent victims of trafficking, and giving them the tools they need to identify victims among their clients will better enable victims to seek the justice that they deserve. That is our purpose and our goal in producing this guide.

As a Domestic Violence Attorney/Advocate, Why Should I Learn About Human Trafficking?

There is much to be gained from cross-training attorneys and advocates working with victims of domestic violence and human trafficking. Serving an individual client through both a domestic violence and human trafficking lens increases the likelihood that the entirety of the client’s needs will be addressed appropriately. Clients who have access to a larger field of experienced attorneys will be more likely to achieve a measure of justice. Similarly, attorneys who develop a larger, better-rounded skill set and diversify their daily work will be better equipped to provide the most

The Need for Competent Legal Representation in Civil Law Matters Involving Human Trafficking

The issue of human trafficking has begun to receive more and more attention in recent years. Laws specifically designed to prevent it from occurring, protect and support its victims, and hold perpetrators accountable have been enacted. As a result, new civil causes of action and social services are available to victims. Collaborations at the state, local, and federal levels within and among government agencies as well as service providers have emerged and have provided victims with enhanced community-wide safety nets.
comprehensive and appropriate legal services to all of their clients. An added benefit for attorneys is broadening their expertise and professional development, which often leads to increased job satisfaction.

The Overlap of Domestic Violence and Human Trafficking

As an attorney or advocate serving victims of domestic violence, it is likely that you have already served trafficking victims, without you or your client necessarily framing the case as such. There are several common ways in which domestic violence and human trafficking overlap: there are individuals whose experience with domestic violence makes them vulnerable to traffickers; there are trafficking victims who are vulnerable to domestic violence upon their escape from trafficking; and there are the “intersection” cases which contain the elements of both domestic violence and human trafficking, occurring simultaneously.

In reading descriptions of these three types of situations, you may recognize some of your current or former clients. We encourage you to use this information with insights about prior cases you have handled in order to adapt your intake and screening tools to ensure that you identify these cases in the future.

People experiencing domestic violence are often vulnerable to traffickers, especially when economic abuse is part of the power and control dynamic in which a victim is caught. Many trafficking victims explain that they were willing to take a job abroad, or to accept unclear or risky employment conditions, as it was the only way to earn enough money to be able to care for their children without an abusive spouse’s economic support. Other victims recount that they were willing to accept the risks because they already were facing great danger at home. Where abuse intersects with poverty, human trafficking is more likely to occur. This pattern of victimization will be easy for domestic violence attorneys familiar with the cycle of violence to recognize.

Similarly, trafficking victims are often vulnerable to domestic violence, especially if they escaped their trafficking situation unassisted or unsupported. Trafficking involves a deprivation of liberty, financial resources and independence, as well as emotional and physical abuse. Victims are often left in poverty with few marketable skills and greatly damaged self-esteem. Traffickers, like perpetrators of domestic violence, often use isolation to increase their power and control, leaving victims with no social network or support system. Trafficking victims who also lack legal immigration status are especially vulnerable to repeat victimization. A thorough discussion with a domestic violence client may reveal a past experience as a human trafficking victim, which may or may not have been previously recognized.

CASE STUDY

Carmen came legally to the United States to work as a housekeeper for a family of diplomats.\(^1\) The husband sexually assaulted her, and the family only paid her $50 a month. The wife yelled at her for the smallest perceived shortcoming and made Carmen work 12 hours each day. Carmen spoke little English and only left the house to go to religious services with the children of the family. She finally found someone at her church to talk to about her situation, a man in the choir, who offered her sympathy and found her a place to stay if she decided to leave. When she finally left, she moved in with his sister-in-law. They began dating within a few weeks, but he quickly became

\(^1\) Throughout this guide, names and identifying details have been altered to preserve confidentiality.
violent toward her and said she owed him everything for his help in getting her away from the diplomats. By this time, however, Carmen knew other women at her church and was able to get help. Carmen was a human trafficking victim, whose trafficking made her vulnerable to the domestic violence that she encountered upon escape.

Finally, the most extensive form of overlap is the client who is being trafficked within an intimate partner relationship. These situations are referred to as “intersection” cases, as they represent a direct intersection between domestic violence and human trafficking. While each case is unique, intersection cases share many characteristics. First, they involve intimate partner relationships. Second, they involve forced labor and/or commercial sex. Third, they are complicated. Often, there is a complex emotional relationship between the abuser/trafficker and the victim that can prevent her from seeking assistance, decrease the opportunities for support and assistance from her community, and cause confusion for law enforcement and benefits-granting agencies. The emotional ties and other complexities inherent in these cases are very familiar to domestic violence attorneys, and intersection cases are more common than many people realize.

CASE STUDY
Charu met her husband while they were both students at the University of Indiana. They married within months and Charu thought that she had found the traditional groom of her dreams, as he was living with his parents. However, it became shockingly clear to Charu, almost immediately, that what had been a love match for her was going to be nothing more than exploitative housekeeping for this family. Her mother-in-law forced her to do all the family’s cooking, laundry and cleaning. Charu had studied accounting, so her husband made her help for 10 hours a day in his small business, without compensation. He also forced himself on her sexually, including once immediately after she suffered a miscarriage. Twice, he struck her with such force that she fell on the floor. He told her that he would tell her family that she was a lazy, infertile whore if she complained or found outside employment. Charu was a victim of human trafficking within her intimate partner relationship.

2 “Intimate partner relationship” includes, for the purposes of this guide, any dating or marital relationship. Trafficking can also exist in other types of relationships including families and friendships, but this guide focuses on cases within a dating, marital or other intimate partner relationship. Many of the same remedies and services will be available for other types of relationships.

3 See supra note 1.
CHAPTER ONE
Identifying Potential Human Trafficking Cases

What is Human Trafficking?

Human trafficking involves a pattern of power and control used to extract labor or services, often, but not always, for financial or material gain. U.S. law, through the Trafficking Victims Protection Act (TVPA), defines trafficking as:

Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹

One of the most common misconceptions about human trafficking is that it is primarily a crime of movement. It is not. In fact, the law does not require any movement or crossing of jurisdictional boundaries for a trafficking crime to occur. Human trafficking is primarily a crime of exploitation. Human trafficking occurs when an individual’s freedom is curtailed and labor or other services are extracted through force, fraud, or coercion by another individual. This is an important nuance to keep in mind when working with clients who have not been transported across borders, as they may still be trafficking victims.

Another important element to trafficking is the other party’s gain; for a crime of trafficking to occur, one person must materially benefit from the exploitation of another by receiving something of value. While traffickers often benefit from the money that they earn from the exploited labor of the victim, this component is fulfilled if anything of value is exchanged, such as food, drugs, goods, and labor.

CASE STUDY

Sally was born and raised just outside of Chicago, in a small middle-class suburb. Sally’s mother died when she was 16, leaving her confused and angry at a difficult time. Sally’s boyfriend, Tom, was 18 and already living on his own. Within a year Sally was living with Tom and helping to pay the bills with a part-time job at a convenience store. That winter, construction jobs were hard for Tom to find, and the couple were about to be evicted. Tom convinced Sally that she owed him for all of the months of rent he had paid. He told her that she could make some quick money by having sex with a few guys; that no one would need to know; that Tom would protect her. To get through it, Sally got drunk. The next time, she got high. Each time, Tom took all of the money. He said it was safer if she didn’t have to handle the money. When Sally told Tom she wanted to stop hooking, he would hit her. Then he would get her high. Then he would remind her of those months after her mother died.

died when he held her all night long while she cried. He told her that he loved her, but that they needed the money; that she owed him. Sally is a U.S. Citizen victim of domestic violence and trafficking. Tom is using emotional coercion and physical violence to enslave Sally, but since Sally is a minor these factors are not required for a criminal prosecution of Tom as a human trafficker. Sally may be eligible for a range of social and legal services, but will not need immigration services.

Finally, people of all nationalities are trafficked, both within their own countries and/or to other “destination” countries. The TVPA created special remedies for trafficking victims who are non-U.S. Citizens or Lawful Permanent Residents (LPRs). These remedies include immigration options and social services.

**CASE STUDY**

Elizabeth lived with her abusive husband in Benin, and he denied her the money she needed to adequately provide for their children.⁵ Desperate to leave the violence and find a way to support her children, she responded to an ad that promised to place women in housecleaning agencies in the United States, where they would earn $500 per week. She accepted the job, only to find herself trapped in involuntary servitude working in a restaurant in New York City for a man who failed to pay her, confiscated her documents, threatened to have her arrested if she complained, and denied her any contact with the outside world, including her children in Benin. Elizabeth was a domestic violence survivor who was vulnerable to, and became a victim of, human trafficking.

Special services for trafficked youth, including U.S. citizens, were authorized by the Trafficking Victims Protection Reauthorization Act of 2005.⁶ Similar to the creation of the Violence Against Women Act (VAWA) self-petition process for battered immigrant women,⁷ specialized immigration remedies have been developed to prevent the use of immigration status as a weapon by traffickers. The specialized social services were made available because undocumented victims were not otherwise eligible to receive many public benefits. However, immigration or citizenship status is irrelevant to the definition of human trafficking. U.S. citizens of all ages may be trafficked in a variety of settings and may be eligible for a host of civil legal remedies and federal, state, and local social services (including food stamps, WIC and Medicaid).

**A Note on Gender**

Human trafficking, like domestic violence, affects all genders and ages within all types of relationships. In this guide, however, we will generally use female pronouns when speaking of clients because domestic violence providers are most likely to encounter female trafficking victims within their predominantly female client population.⁸ We note, however, that the type of labor or services for which victims are exploited is certainly gendered. Women and girls are more often trafficked for commercial sex, domestic servitude, violence,

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⁵ See supra note 1.
⁷ See Chapter Two of this guide for a more comprehensive discussion of this remedy.
and garment factory work; whereas men and boys are more often trafficked for machine factory and farm labor. This guide, however, focuses on clients at the intersection of domestic violence and human trafficking where, in our experience, females are the majority of the victims. We in no way intend to minimize the reality that men can be, and are, victims of domestic violence and human trafficking, but for ease of reading we have selected this approach.

How Do I Identify Human Trafficking Victims Among My Clients?
Domestic violence attorneys have a unique opportunity to identify victims of human trafficking and to assist them in seeking legal relief.

First, it is important to educate yourself on the dynamics and circumstances common to human trafficking situations. Learn the definition and the warning signs and understand that human trafficking occurs in contexts other than those most often depicted by the media. For more general information about human trafficking, please see the resource section of this guide.

Second, review your intake forms and procedures. Consider adding some additional questions, such as those in the text box on this page.

Interview Questions
The following questions may be useful in screening your clients for human trafficking.

➤ Have you ever been forced to work?
➤ Did anyone ever threaten to hurt you or your family if you did not work?
➤ Did anyone force you to cook or to clean the house?
➤ Were you lied to about the kind of work you would be doing?
➤ Did anyone take your money?
➤ What would have happened if you did not give that person your money?
➤ What did you fear would happen if you left?
➤ Were you ever forced to do something sexual for your abuser or someone else?
➤ Have you been involved in commercial sex?
➤ Did you know others in the same kind of situation as you were in?
➤ Were you able to keep your identification documents with you, or did someone take them from you?

And for immigrant clients:

➤ How did you enter the United States?
➤ Were you able to keep your passport, visa or identification with you, or did someone take it from you?
➤ Were you working to pay off a smuggler or other debt?
➤ Were you free to find another job to pay the debt, or were you forced to work at a certain place?
Third, prepare yourself to represent trafficking victims, or to refer them to another attorney. The following chapters provide an overview of the legal remedies available to trafficking victims, some key practice pointers, and some important resources for practitioners representing trafficking victims. Whether you intend to represent trafficking victims yourself or refer them to others, you will need to develop a network of local resources. Victims will need access to legal, social service, medical and mental health providers who are familiar with human trafficking and who are willing and able to serve them. This area of the law is relatively new, so services can be difficult to find. Collaboration is essential. Fortunately, there are national resources available to provide technical assistance and to guide you to local organizations with expertise in social and legal services for trafficking victims. For more information about national and local resources, please see Chapter 4.

How Cultural Beliefs and Practices Can Affect Trafficking Case Recognition

Thuy's aunt introduced her to Thang, a Vietnamese man who had immigrated to the U.S.⁹ They corresponded by phone, mail and email for six months until Thang asked Thuy to marry him. Thuy was excited, but knew that her parents' permission was critical. Thang arrived in Vietnam and stayed with Thuy's family for two months. With Thuy's parents' approval, Thang and Thuy had a traditional Vietnamese engagement ceremony. Families and friends of the couple attended, including over 250 guests. As is common after an engagement ceremony, Thuy then moved in with Thang's family (an aunt and uncle who lived several hours away from Thuy's family in Vietnam) and lived there for four months while waiting for her visa. Once Thuy finally arrived in the U.S., she was excited to begin building a life with Thang. However, Thang was not the loving suitor he had been while visiting Vietnam. He left Thuy living with a friend, claiming that he needed to finish preparing their marital home. She was forced to work in the friend's restaurant for 12 hours a day and was not paid. Thang would visit weekly and spend the night with Thuy. She believed it was her duty to repay the friend for her room and board and to show that she was a hardworking and obedient wife. Thang warned her that if she displeased him she would be returned to her family in Vietnam, a potent threat for a traditional Vietnamese woman. Thang threatened that he had sponsored Thuy and that he could have her deported. He pointed out that the Vietnamese engagement ceremony was meaningless to U.S. authorities and that if she did not please him he would not complete the marriage and Thuy's visa would expire. Thuy knew that her family would be devastated if she returned home from the U.S. without a husband. Since the entire community had attended her engagement ceremony, if she returned they would believe that she was a bad woman and worthless as a wife. The government had removed her from her family's household registration when she moved to the U.S. If she returned, she would face discrimination in housing, schooling, and employment.

Thuy is a victim of trafficking within her intimate partner relationship, but this may be a difficult case to present for criminal prosecution or immigration relief. Since Thuy is not married to her abuser, she is not eligible for a VAWA self-petition, although this wouldn't be a bar for the U or T visa. Because she was not enslaved through force or threats of force, but rather through cultural factors unique to her community, immigration and law enforcement officials may not recognize human trafficking without extensive education and advocacy.

⁹ See supra note 1.
The Special Complexities of Intersection Cases

Recognizing cases and clients that raise issues related to both domestic violence and human trafficking is critical and these cases are complex. These cases may present as either pure trafficking or pure domestic violence cases or even simple wage and hour cases. As is common for domestic violence victims, clients may be unwilling to describe their relationship, uncomfortable or emotionally unable to discuss the abuse in detail, or unaware that the abuse is unlawful. The legal requirements for relief may not coincide with the elements of the relationship that were most painful for the client and the words she uses to express them. Cultural beliefs (held by the client, advocate, law enforcement officer or prosecutor) about the role of women in relationships also can serve to camouflage these cases.

The existence of an intimate partner relationship, especially marriage, generally leads advocates, attorneys, and law enforcement to assume an abusive or exploitative situation is domestic violence and to discount human trafficking. Do not let the existence of the intimate partner relationship and of familiar legal remedies end the inquiry. The client may have additional remedies available and pursuing them may not only benefit her, but result in the protection of other women from the same fate.

Family-Based Immigration: A Modern Day Slave Route

In an attempt to evade increasing immigration enforcement, some traffickers look to family-based immigration options to entrap a slave from overseas. These options include both marriage and adoption. A marriage, for example, may have been arranged by family members through family friends or acquaintances, via an internet connection (including “mail order bride” websites or marriage brokers) or have developed out of a romantic relationship. The couple may have known each other or each other’s families for many years or have only met at their wedding ceremony. Enslavement also occurs through adoptions, when a child is adopted legally, but the adopting family intends only to force the child to engage in labor or commercial sex. The victim may believe that he or she is indebted to, and/or legally bound to the trafficker. The victim may believe that he or she cannot leave without fear of deportation or imprisonment. The victim may have family ties that would lead to great shame, severe ostracism, or further abuse upon ending the relationship.

To determine whether a case constitutes a domestic violence and human trafficking intersection case, two key components must be satisfied:

1. **Presence of an intimate partner relationship.**
   The victim is/was in an intimate relationship with the abuser/trafficker; and

2. **Presence of labor, commercial sex or “involuntary servitude” performed under force, fraud or coercion, or commercial**

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10Marriage has a special connotation in many cultures of being beneficial, loving, safe, and important to society. These associations make it especially difficult for many people to identify trafficking within the relationship.

11“Involuntary servitude includes a condition of servitude induced by means of, “any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint.” 22 U.S.C. § 7102(5)(A) (2008).
sex involving a minor. This includes any commercial element in which the abuser/trafficker benefits from the victim’s labor. The labor performed may be highly varied, including cleaning the home, performing sexual acts for the abuser or others or working in a business owned by the abuser, his family, or others. The victim may be unpaid, underpaid, or face confiscation of her pay. The labor is mandated by the abuser through force, threats of force, or psychological coercion. The abuser may threaten deportation, arrest, harm to family members in the U.S. or elsewhere, or damage to the victim’s reputation (or the reputation of her family). Sex trafficking of a minor does not require a showing of force, fraud or coercion.

Practice Pointers for Intersection Cases

Keep the following tips in mind as you explore potential intersection cases:

Ask about all kinds of work: Clients may not describe themselves as having been forced to work, but a discussion may reveal that when the client was sick and unable to clean the house, she was beaten. You may find that she was expected to clean not only the home that she shared with the abuser, but also that of the abuser’s mother/sister/friend. You may find that she was forced to work in the business operated by the abuser or his family members. You may find that seemingly routine housework was required to an abusive degree. For example, the victim was beaten if any dust was visible.

Ask who chose the work: Exploitative labor situations abound with low pay and terrible working conditions. The key distinction between labor exploitation and trafficking is that trafficking victims cannot choose their employer or decide when to leave. A domestic violence victim may be working at her abusive spouse’s restaurant because she does not have a car or because she shares in the proceeds. A trafficking victim works in the restaurant because she is told that if she tries to get another job she will be thrown out on the street or because she is taken there every day and told she cannot leave until she finishes the dishes from the dinner service.

Ask about sexual abuse: Sexual abuse is always difficult for a client to discuss, but when you do discuss it you may find that the client was forced to engage in sexual acts with others as repayment for her abuser’s debt or for payment (collected by her abuser). U.S. law describes sex trafficking as any sexual act induced by force, fraud, or coercion for which anything of value was exchanged. Sex trafficking of a minor does not require force, fraud, or coercion, just a sex act in exchange for something of value. The premise of the law is that sexual consent from a minor is not possible.

Follow the money: If the client received any money for any labor or services, but the money was taken by the abuser, ask more questions. If she was working, but not keeping any of the money, find out why. This is a classic marker of trafficking—labor without adequate pay. If she really enjoyed her work but believed it was best for her spouse to handle the finances of the home and generally agreed with his financial decisions, it is probably not trafficking. Any situation short of that is potentially trafficking, but the coercion may be very subtle and culturally embedded.

Once you have identified an intersection case, you have a lot of decision-making to do. There are a variety of remedies available, but you may have to choose which to pursue and in what order. Keep in mind that the client may have remedies that

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are unrelated to the victimization. For example, immigration remedies unrelated to victimization include temporary protected status, a family-based visa, a student visa, and/or an unrelated asylum claim. Those options are important to keep in mind but are thoroughly explored in other training materials. Please see the resources section for additional information on these remedies. Here, we will discuss only the remedies that directly relate to human trafficking and domestic violence.

Law Enforcement Referrals: What Will You Do?

Domestic violence programs around the country are increasingly being asked by law enforcement agencies to serve human trafficking victims. These clients’ cases may be trafficking but may or may not be domestic violence cases. The victims are usually (but not always) women. The law enforcement agency is trying to find the most appropriate provider to serve these high-need clients, and there may not be a trafficking program in your area. Referrals from law enforcement tend to be for clients who were identified during a workplace raid or an anti-prostitution enforcement action. Before accepting such a referral, your agency should consider the ways in which trafficking clients may be different from domestic violence clients. Some key distinctions include:

➤ Trafficking victims who were “rescued” from the trafficking situation may not identify themselves as victims. They may be skeptical, or even resentful, of your services;

➤ The clients may have been arrested and detained in a jail for some time before being referred to you. They may think that you are connected to law enforcement and may have trouble trusting you;

➤ The clients may be emotionally connected to the trafficker and eager to return to the trafficker as soon as possible. They may be contacting the trafficker by phone and revealing your location;

➤ The clients should not participate in group therapy or discuss the trafficking situation with anyone who does not have a legal privilege (such as a lawyer or doctor);

➤ It is unlikely that law enforcement will tell you the whole story, either because they do not know it yet or to protect their ongoing investigation;

➤ Law enforcement may not understand that you have privacy protections for your clients and may expect that you will actively assist with their investigation;

➤ Law enforcement may not understand that you run a voluntary program and may expect that you will keep the client with you regardless of her desire to leave your facility.

These clients are often in need of very intensive case management and may need immediate medical and mental health care. Increasing access to comprehensive services for trafficking victims is an important goal. Your agency may be able to expand services to accommodate this incredibly vulnerable population, but it must be done thoughtfully. Begin to explore these issues with your organization before the referral comes to your door, and you will be better prepared to set reasonable limits with law enforcement and to provide appropriate services to these clients.
CHAPTER TWO

Civil Legal Remedies for Human Trafficking Victims

Litigating Civil Actions for Trafficking and Domestic Violence Victims
Once you identify a trafficking victim among your clients, you may choose to take the case yourself or refer the client to another attorney depending on a variety of factors, including the availability of resources and expertise. The following is an introductory roadmap to the civil remedies that may be available to your client should you decide to take the case.

Civil litigation can be an enormously powerful tool to seek redress for the harms done to trafficking and domestic violence victims. With some remedies, litigation may restore earnings, help victims pay off trafficking-related debts, or give victims a sense of justice in punishing the trafficker. In all cases, the victim drives the decision-making; as opposed to being the victim-witness in a criminal case controlled by the prosecution, the client is the center of the civil case. This role can be particularly vital in the process of empowerment.

It is crucial, however, to advise the client about the potential negatives of civil litigation. It can be time-consuming and drag on well past the time that the client just wants to move on with her life. It can be arduous, particularly during the discovery phase, requiring that the client provide ever greater levels of detail about her story. It can be frightening to face the trafficker across the litigation table, in a deposition or during trial, and it may increase the risk to the victim’s safety. All of these aspects need to be discussed with the client before considering whether to pursue a civil cause of action at all.

There are many different civil claims that can be brought on behalf of a trafficking victim. In intersection cases, a victim may benefit from a civil protection order. Causes of action exist at the federal and state levels, and in any given case, a different combination of these may be appropriate. Just like any complex civil litigation, strategy and timing are essential to effective representation. This chapter is not intended to be a comprehensive exploration of those issues. Several other extensive, more appropriate resources are available to assist you if you decide to litigate a case on behalf of a victim of trafficking. Please see Chapter 4 for information regarding additional, similarly helpful resources.

Please note that most of these claims may be brought in the same lawsuit. It is not necessary to file, for example, one case for wages and another for assault. One single case might have a dozen or more different causes of action. Statutes of limitation for some of these causes of action run fast, however, so it is best to determine if your client is eligible for this range of remedies quickly.

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The Trafficking Victims Protection Reauthorization Act and State Law Trafficking Claims

The Trafficking Victims Protection Reauthorization Act of 2003 provides a specific mechanism to allow many trafficking victims to file civil lawsuits. The claim must allege one of three kinds of harm: (1) forced labor, (2) trafficking into servitude or (3) sex trafficking by force, fraud, or coercion, or of children under 18. The 2003 TVPRA does not specify remedies but permits victims of forced labor, trafficking into servitude, or sex trafficking to seek damages generally. Punitive damages in such cases can be extensive, so this claim may provide a valuable opportunity for compensation if the underlying elements of the claim are all present. As of the writing of this guide (Summer 2009), there is no statute of limitations for filing a claim under the 2003 TVPRA.

In addition to federal claims, you may want to explore state anti-trafficking laws in your jurisdiction. Most states have criminal code provisions making trafficking a felony. Some states may also provide benefits and services for human trafficking victims while federal TVPRA claims are pending, and some have created causes of action for a civil case to recover penalties, actual damages, and statutory damages. For more information, please see Chapter 4.

Employment Law Claims

Trafficking victims are often forced or otherwise coerced into slave labor, including involuntary servitude in private homes, restaurants and sweatshops, among other places. State and federal employment law protections may provide victims with much-needed economic resources, in addition to penalizing the trafficker financially. Trafficking victims may have access to employment protections from one or more of three sources: (1) federal and state wage and hour laws; (2) federal and state laws such as anti-discrimination and anti-harassment in employment; and (3) tort remedies.

Federal and State Wage and Hour Claims:
The federal Fair Labor Standards Act (FLSA) and analogous state wage and hour laws provide several possible economic remedies for a victim who was denied or deprived compensation for work performed. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments. Covered “nonexempt” workers are entitled to a federally-established minimum wage.

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20 29 U.S.C. § 213(a)(1) (2004) and § 213(a)(17) (2004) provide an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional, outside sales employees, and certain computer employees. All other employees (including most trafficked employees) are “nonexempt,” and are therefore subject to the terms of the FLSA.
Many states and localities also have minimum wage laws. In cases where an employee is subject to both local and federal minimum wage laws, the employee is entitled to the higher minimum wage.\(^{22}\)

Covered nonexempt employees must receive overtime pay (at least 150% of regular pay) for hours worked over 40 per workweek.\(^{23}\)

Importantly, FLSA applies to employees regardless of their immigration status.\(^{24}\) This is important because many trafficking victims are undocumented immigrants. Moreover, courts have held that it is illegal under FLSA to report a worker to the Department of Homeland Security as retaliation for a wage and hour complaint.\(^{25}\)

An employer who violates FLSA is liable to the employee for the unpaid wages and an additional equal amount as liquidated damages.\(^{26}\) If the employee is successful in her FLSA claim, she can also be awarded reasonable attorneys’ fees and costs to be paid by the defendant.\(^{27}\) As a result, there should be experienced attorneys interested in working with you to bring these claims. Some large firms are willing to take such cases on a *pro bono* basis and donate the recovered fees to the non-profit organization which is primarily serving the client.

**Federal and State Anti-Discrimination in Employment Claims:** When a human trafficking victim experiences sexual harassment or sexual assault at work, either inside the building or on premises controlled by the employer (who is often also their trafficker), she may be able to avail herself of protections under state and federal anti-discrimination laws if her employer fails to take action regarding the assault or retaliates against her for reporting it.

Title VII of the Civil Rights Act of 1964 (Title VII), as amended, prohibits discrimination against an employee in hiring, in the terms and conditions of employment, and in firing based on sex (including pregnancy), race, national origin, religion and color, for employers with 15 or more employees.\(^{28}\) Courts have also recognized that sexual harassment is a prohibited form of sex discrimination.\(^{29}\) An employer can be held liable if it failed to exercise reasonable care to prevent and correct the behavior, and the employee did not unreasonably fail to take advantage of corrective opportunities provided by the employer.\(^{30}\)

Sexual assault may also constitute sexual harassment when the perpetrator is a supervisor or otherwise an agent of the employer, and commits an act of rape or sexual assault on the job. Rape may create a sufficiently severe or pervasive hostile environment to hold an employer liable for the


\(^{30}\)Id.
resulting damages. It may also constitute sexual harassment when the perpetrator is a co-worker or non-employee such as a customer, and the employer knew or should have known of abuse that involved the workplace and failed to take prompt and appropriate remedial action. Sexual harassment laws apply to all employees, regardless of the relationship between the perpetrator and the victim.

Importantly, like FLSA, Title VII applies to employees regardless of their immigration status. Because lawsuits filed under Title VII provide for attorney’s fees and substantial damages, it is often possible to find lawyers who will undertake these cases, if the considerable demands of a Title VII case are beyond your own resources.

Civil Rights Act of 1866 and 1870, 42 U.S.C. §§ 1981, 1983: Claims for race and national origin discrimination may also be brought under the Civil Rights Acts of 1866 and 1870. Known more broadly as section 1981 and section 1983 claims, these sections were specifically created to prevent race discrimination by private actors, but they have been applied to address discrimination based upon national origin. Section 1981 protects the rights of all persons to enter into and enforce contracts. Amended in 1991, the law also provides expanded remedies for intentional discrimination. Importantly, there is no minimum size requirement, thus small businesses and companies may be sued.

Intentional Torts: Assault and Battery

In many intersection cases, there has been battery, assault, or sexual assault. One strategy in a lawsuit may be to include these intentional torts as claims within the lawsuit, for at least three reasons. First, the harms were done and including them more fully captures the harm done to the victim than a case that only seeks payment of wages. Second, these claims can yield significant damages for physical and emotional harm and punitive damages. Third, this may be the best option for sex trafficking cases or more subtle cases of labor trafficking when it may not be possible to recover wages.

The statutes of limitations for intentional torts vary by state. Therefore, these claims must be monitored carefully so that they are not lost.

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31 See, e.g., Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986) (sexual assault by supervisor with whom employee had a prior social relationship); Little v. Windermere Relocation, Inc., 265 F.3d 903, 911 (9th Cir. 2001) (serial rape on one occasion during business trip); Tomka v. Seiler Corp., 66 F.3d 1295, 1305 (2d Cir. 1995); Brock v. United States, 64 F.3d 1421, 1423 (9th Cir. 1995) (every rape committed in the employment setting is also discrimination based on the employee’s sex); Jones v. United States Gypsum, 81 FEP Cases (BNA) 1695 (N.D. Iowa 2000).


33 See, e.g., Fuller v. City of Oakland, 47 F.3d 1523 (9th Cir. 1995) (holding city liable for failing to take steps to stop a police officer from harassing another officer after she ended their relationship); Excel v. Bosley, 165 F.3d 635 (8th Cir. 1999) (finding that sexual harassment at work by employee’s ex-husband violated Title VII).


Contractual and Quasi-Contractual Claims

A civil lawsuit may also raise contractual and quasi-contractual claims. These are important where either the promised wage was significantly higher than the minimum wage, or where the market value of the labor was significantly higher than the minimum wage.

A claim based on breach of contract simply needs to allege the basic elements of any contract case: formation of a contract, breach of contract, and harm. In a trafficking case, contracts are often fraudulently made by the trafficker but accepted in good faith by the worker. Courts will enforce such a contract when breached and when your client has suffered harm. No liquidated or punitive damages are available, however, under a pure contract claim. Generally, a contract claim seeks only compensatory damages.

A claim based upon unjust enrichment is a quasi-contractual claim recognizing that sometimes people are hired without an explicit wage being set but with an understanding that they will be paid appropriately for their services. In your lawsuit, you could seek redress for unjust enrichment when the trafficker wrongly benefits from the labor of your client. In such a case, the money sought would be equivalent to the prevailing wage for such labor, which will almost always be higher than the minimum wage and is therefore worth including in case a particular job is found not to fall within the FLSA’s protections.

Similar to unjust enrichment is the principle of quantum meruit which allows the worker to seek compensation for work performed.

Civil Protection Orders

Domestic violence attorneys are already well aware of the utility of civil protection orders (variously known as CPOs, PFAs, peace orders, or restraining orders, depending on the jurisdiction). Civil protection orders for victims of domestic violence are available in every state, and jurisdictions have begun to enact statutes creating CPOs specifically for victims of sexual assault and stalking.

Clearly, the same factors that would encourage a client to seek a CPO in any domestic violence, sexual assault, stalking or harassment case also may exist in a case that intersects with human trafficking. The CPO may be a valuable tool, especially in the short term, to assist with some of your client’s immediate needs and to facilitate future legal actions. The majority of states have “catch-all” provisions in their CPO statutes that can be used for relief above and beyond the basic “stay-away” provisions. This can be extremely useful when the trafficker has control of your client’s passport or immigration documents, or if your client left photos or documents behind which might help her with one of her civil claims (e.g. a marriage certificate, or an original contract). Clients also may have fled in fear and simply left behind personal items that are not replaceable (phone book, gifts, items with sentimental value). Where possible, the CPO should seek return of all of those items, especially anything that could make the client’s immigration or other civil case easier.

Immigration Remedies

There are a variety of immigration remedies that may be available to victims of domestic violence and human trafficking who are non-U.S. citizen

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36For additional information about civil protection order statutes, see the Statutory Summary Charts section of the ABA Commission on Domestic Violence website, at www.abanet.org/domviol (last visited Apr. 13, 2009).
(and generally non-LPR\textsuperscript{37}) victims. The remedy crafted specifically for trafficking victims is the T visa. The options that exist specifically for domestic violence victims are the Violence Against Women Act (VAWA) self-petition, the battered spouse waiver, and VAWA cancellation of removal. Other options may be the U visa for victims of crime (including domestic violence, trafficking, and other crimes) and asylum.

There are other forms of permission to remain in the U.S., such as continued presence (for trafficking victims assisting a law enforcement agency with the investigation or prosecution of a trafficking case) or the S visa (sometimes called the “snitch visa” for victims or witnesses assisting law enforcement with the investigation or prosecution of organized crime), but these do not confer long-term legal status. These options are initiated by the government only and may enable your client to remain here temporarily with employment authorization while a case is being pursued against a trafficker. Depending on the particular facts of your client’s situation, she may be eligible for several of these options. In most cases, it is possible for your client to pursue multiple remedies concurrently.

Please bear in mind that children may have their own immigration remedies, some of which are the same as those described in this guide and some of which are child-specific. For more information on representing trafficking victims who are minors, or who were minors during their victimization, refer to Eva Klain & Amanda Kloer, Amer. Bar Ass’n, Meeting the Legal Needs of Child Trafficking Victims: An Introduction for Children’s Attorneys & Advocates (2008).

\textbf{VAWA Self-Petition:} In the normal course of events, a U.S. citizen or lawful permanent resident (LPR) may petition for a spouse or child to gain lawful permanent residency. However, in abusive relationships, the abuser often refuses (or “forgets”) to complete (or even begin) this process, because he is aware that gaining immigration status removes one of the spouse’s sources of vulnerability and dependence.

\begin{quote}
\textbf{CASE STUDY}

The story of Charu (described in the Introduction), who married her abuser/trafficker, is an example of a case where a trafficking victim also could be eligible to file a VAWA self-petition. Because her abuser/trafficker was a U.S. citizen, and they were married, Charu would be able to file an application for her green card at the same time that she files her VAWA self-petition. This may make the VAWA self-petition the remedy of choice for Charu, despite her eligibility for other kinds of relief. It might be advisable to concurrently pursue a T visa or continued presence, however, if Charu is in need of public benefits or specialized social services reserved for trafficking victims.

The Violence Against Women Act of 1994 (amended in 2000, and again in 2005)\textsuperscript{38} recognized this problem and provided a route for abused spouses and children to petition for themselves and not be reliant upon the abuser to file the petition.
\end{quote}

\textsuperscript{37}Victims who are lawful permanent residents (LPRs) may not need any further immigration remedies that are specific to their victimization; they will be eligible for U.S. citizenship within three to five years and can apply independently. However, if the client may have obtained her status fraudulently (perhaps due to the abuse) or if she has family members in her home country that she would like to bring to the U.S., she may need to renounce her LPR status and apply for one of the remedies described here to correct the fraud or to more expeditiously bring the family members to the U.S.

The spouse must show that:

1. The abuser is a U.S. citizen or LPR;
2. There is/was a valid good faith marriage, i.e., not entered into solely for immigration purposes;
3. There was physical or emotional abuse;
4. The petitioner resided with the abuser; and
5. The petitioner is a person of good moral character.

An approved petition will generally lead to an employment authorization document (or “work permit”), limited eligibility for federally-funded public benefits, and eventual (in some cases more immediate) eligibility to adjust to LPR status and then citizenship. Petitioners can include their children as derivative beneficiaries, and there are provisions relating to self-petitions based on the abuse of one’s children. The government is not permitted to divulge information about a petition to an abuser, and the government cannot rely solely on information from the abuser in taking action against a victim. There are several excellent resources that detail this well-established remedy. See the list of resources in Chapter 4.

**Battered Spouse Waiver:** Sometimes the LPR or citizen abuser will petition for the spouse to gain LPR status. If the application is approved during the first two years of the marriage, the spouse receives conditional residency, which is valid for two years. At the end of two years, the couple petitions jointly to “remove the conditions” and make the residency permanent. However, abusers often use this requirement as a tactic to assert their power and control over their spouse by refusing to file the joint petition or to follow through with the process.

### CASE STUDY

Josephine was living in California when she met the U.S. citizen who would become her husband. He filed for her green card after their marriage, and she was granted conditional residence. A year into their marriage, he became violent toward her. To finance his drug use, he forced Josephine to take over the daily operations of his small convenience store, and confiscated the profits. For her 14-hour days, she earned no money, and he used the store’s security cameras to make sure she was not engaging in conversations with the customers. When she did, he beat her. He told her he would have immigration officials arrest and deport her if she ever left him, and he refused to file the paperwork necessary to make her conditional residency permanent. Josephine is a trafficking victim whose most immediate immigration relief is through a battered spouse waiver, although she also may be eligible for other immigration remedies.

There is a waiver of the joint filing requirement for domestic violence victims, generally referred to as the “battered spouse waiver.” It permits abused spouses to petition to remove the conditions independently. A similar provision exists where a

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39 The two year conditionality is a result of the Immigration Marriage Fraud Act, which responded to concerns over immigration fraud by requiring that all marriage-based residency cases granted while the marriage was less than two years old would be required to undergo a second review two years after the first review. The same legislation created a waiver of this requirement for victims of domestic violence, the first immigration remedy created specifically for domestic violence victims. Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537 (codified as amended at 8 U.S.C. §§ 1154, 1184, 1186a (1994)).

40 See supra note 1.
good faith marriage nonetheless ends in divorce. Children of victims who have conditional residency may qualify to be included in this petition.

The battered spouse waiver was the first immigration remedy crafted for domestic violence victims. It was included in the Immigration Marriage Fraud Amendments of 1986.41 It is a written petition that confers LPR status, and the petitioner needs to show that:

1. There is/was a valid good faith marriage, i.e., not entered into solely for immigration purposes;  
2. There was physical or emotional abuse;42 and  
3. The petitioner is currently a conditional resident.

There are several excellent resources that detail this remedy. See Chapter 4 for further information.

**VAWA Cancellation of Removal:** For victims who are in removal (also known as deportation) proceedings, a special remedy called VAWA cancellation of removal may be their best option. The “cancellation” refers to cancellation of the removal proceedings and the granting of lawful permanent residence. The victim must prove to the immigration judge that:

1. The abuser is a U.S. citizen or LPR;  
2. There is/was a valid good faith marriage, i.e., not entered into solely for immigration purposes;  
3. There was physical or emotional abuse which occurred in the U.S.;  
4. The victim has at least three years of physical presence in the U.S.; and  
5. The victim and/or her parents or child(ren) would suffer extreme hardship from her deportation.

CASE STUDY

In the example of Thuy and Thang (described in the Introduction), Thuy was forced to work for her abusive spouse as soon as she arrived in the U.S. Thang, her husband, left her to live with, and work for, others. Thuy may not be eligible for a VAWA self-petition, since she did not live with her spouse. However, if Thang does marry her, and if she has been in the U.S. for three years, VAWA cancellation of removal might be an option for her, especially if law enforcement is unable to recognize that her experience constituted trafficking or if she is unwilling to report Thang to law enforcement. Many trafficking victims in intersection cases are unwilling to make reports to law enforcement because they are related to the trafficker and reporting them would bring great shame and humiliation to the family. If Thuy is not already in removal proceedings, she would have to present herself to DHS to request being placed in removal proceedings in order to apply.

This remedy is less commonly used than others because denial leads to deportation. Victims may be eligible for employment authorization (“work permit”) during the removal proceedings which can last for several months to several years. A non-abused parent can file for cancellation as the parent of an abused child. However, a child cannot be included in the parent’s application but can apply for cancellation directly if s/he was also abused (note that several studies show that witnessing abuse of the parent causes injury to the child). Alternatively, once the parent’s application is approved, children can be granted parole which will last until the child is granted lawful permanent

41See supra note 39.  
42Although the regulations contain a requirement for a psychological evaluation for applications based on emotional cruelty, that requirement was eliminated and is not required by USCIS.
residency through another process (for example, the parent can file a family-based petition for the child).

**T Visa:** The Trafficking Victims Protection Act (TVPA) of 2000\(^{43}\) provided an avenue for lawful immigration status for trafficking victims. Applicants must prove that they are:

1. A victim of a severe form of trafficking in persons;\(^{44}\)
2. Physically present in the U.S. on account of the trafficking;
3. Cooperating or have cooperated—or made reasonable efforts to cooperate—with law enforcement in the investigation of the trafficking; and
4. Likely to suffer extreme hardship if removed.

The T visa provides legal immigration status for four years, work authorization, and the opportunity to apply for lawful permanent residence. Certain close family members also can be included in the application as derivatives.\(^{45}\)

**CASE STUDY**

Hope came to the U.S. to be with her boyfriend, a man who had been violent toward her in their home country, but who she believed had changed.\(^{46}\) When she arrived, however, the violence persisted with the added humiliation of it happening in public because they shared their living space with some of his friends. Hope’s boyfriend found her a job at the upscale market where he was a manager, but he confiscated all of her earnings. He kept her passport and told her how the police in America beat immigrants when they arrest them. After two months, Hope realized things would never improve and that she had to leave him. Hope may be eligible for a T visa if she is willing to file a report against her abuser (either to local police or federal authorities).

The T visa may be superior to other immigration options for two reasons. First, T visa recipients also are eligible for a wide range of specialized social services and benefits. Second, the victim’s cooperation need not be certified by law enforcement (unlike the U visa, as explained later); instead, the victim may show the ways in which she attempted to cooperate, for example, by making reports to different law enforcement agencies about the trafficking. Minors are not subject to the cooperation requirement to get a visa, but may need to at the adjustment of status stage. For more information about filing T visas for minors, refer to the list of resources in Chapter 4.

This is a relatively new remedy, and many nuances of eligibility remain. Adjustment of Status regulations have recently been published, so the path to lawful permanent residence and citizenship is still being clarified for T visa holders. A report to law enforcement is required (except for minors), but a certification of cooperation is not required; secondary evidence of cooperation is acceptable. There is a filing deadline (with possible exceptions) only for cases where the victimization ended before October 2000; victimizations that

\(^{43}\)TVPA, *supra* note 5.

\(^{44}\)Defined as “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. § 7102(8) (2008).

\(^{45}\)Victims over the age of 21 may include their spouse and/or children on their applications. Victims under the age of 21 may include their spouse, children, parents and/or unmarried siblings. 8 U.S.C. § 1101(a)(15)(T)(ii) (2009).

\(^{46}\)See *supra* note 1.
occurred or lasted after that date have no application
deadline. Applicants are eligible for social services
and benefits, and can include their spouse and/or
child(ren) in the application. Unlike previously
described remedies, minor victims can also include
their parents and unmarried siblings in the T visa
application.

U Visa: A U visa is a special visa for victims of
certain criminal activities—including domestic
violence and human trafficking—who cooperate
with law enforcement in the investigation or
prosecution of those crimes. The visa lasts for four
years and a recipient may apply for a work permit.
Certain close family members also may be included
in the application.\footnote{As with the T visa, victims over the age of 21 may include their spouse and/or child(ren) on their applications. Victims under the age of 21 may include their parent(s), spouse, child(ren) and/or unmarried siblings under the age of 21. 8 U.S.C. § 1101(a)(15)(U)(ii) (2006).}

\textbf{CASE STUDY}

Maryam was living undocumented in the U.S. when
she began a romantic relationship with a U.S. citizen
who refused to marry her and became emotionally
and psychologically abusive.\footnote{See supra note 1.} She was working
but he made her put all her earnings in a joint bank
account, for which he had the only ATM card, and he
spent all of her money. She was frustrated by this but
was raised to believe that a woman should support
the man and provide whatever he needs. She felt
that she needed to prove her value to him so that he
would marry her. One day, he threw the telephone
hard at her head when he thought she was talking to
a man. Bleeding, she fled from their apartment, and
a passerby called the police. The police took a report,
and the abuser was arrested but never prosecuted.
Maryam is eligible for a U visa on the basis of the
assault, despite the fact that it was never prosecuted.
She also may have a T visa option, but it is a more
challenging case factually, particularly since she had
friends and stayed not through force, but from hope
and culturally-based beliefs that were manipulated
by her abuser. Law enforcement and immigration
officials do not always understand the more subtle
forms of coercion that are based in cultural beliefs
and practices.

Unlike all of the other immigration remedies
discussed here, a U visa petitioner \textit{must} submit a
certification from law enforcement. Chapter Three
addresses this requirement in more detail.

As long as the victim never refused reasonable
requests for cooperation from law enforcement,
there is no requirement that the case results in an
investigation or prosecution; however, in practice, it
is easier to get certifications where there has been,
at the very least, a criminal investigation.

This is a new remedy; the regulations were recently
published as of the publication of this guide, so
there are many unanswered questions. Practitioners
may need to devote considerable time to
convincing law enforcement to set up a certification
process. The victim may have any relationship
to the trafficker or no relationship at all, making
this the remedy of choice for domestic violence
victims who were not married to their abusers;
whose abusers are neither U.S. citizens nor LPRs;
or where the abuse does not amount to trafficking.
Unlike the T visa, the U visa does not require a
showing of hardship upon removal. Approved U
visa holders may be eligible to become lawful
permanent residents after three years, but relevant
regulations have just been published and the
process is still slow and confusing. Applicants
can include their spouse and/or child(ren), and
minor victims can also include their parents and unmarried siblings.

**Asylum:** Asylum may be available for someone who is “outside of his or her country of nationality who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

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### CASE STUDY

Edith came to the U.S. on a student visa. She fell in love with a fellow student from her country and moved in with him after a few months, although she knew her family would strongly disapprove. Threatening to tell her family if she left him, he started beating her when they fought. When money grew short, he forced her to work as a dancer in a topless bar where he was the bouncer. On two occasions, he acted as her pimp and forced her to have sex with the bar’s customers. She finally fled and, with help from a domestic violence services agency, filed criminal charges against him. Edith may have an asylum claim based on her fear of persecution by him or her own family if she were returned to her home country. He might be deportable, if convicted, which would add to her fear. Her asylum claim might also be based on the persecution she might face for having done commercial sex work, or for living with a man outside of marriage.

A victim may have a fear of return because of several of these factors, but in cases involving domestic violence, the category “membership in a particular social group” is of great interest. “Social group” claims are typically articulated with gender or sex as the immutable core of inter-related characteristics that help to more precisely define the persecuted social group. For example, arguing in support of asylum on the basis of domestic violence persecution in the prominent case *Matter of R-A*, the Department of Homeland Security itself argued:

> It would . . . be inaccurate to say that the social group is broadly defined by gender, the marital relationship, by her inability to leave the relationship or nationality. Rather, it is the space occupied by the intersection of these factors – married women in Guatemala who are unable to leave the relationship – that is the targeted characteristic.

A woman who took steps to denounce her abuser might have a claim based upon her assertion (or the imputed assertion) of a political opinion in doing so. A woman may fear severe ostracism or physical harm from her family or community as the result of protesting an abusive marriage or divorcing. A woman trafficked into prostitution might likewise fear harm if forced to return. Abuse directed at your client because of her race, religion or ethnicity presents another potential ground for asylum. These grounds may all exist within the same case.

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50 See supra note 1.


52 Dep’t of Homeland Sec.’s Position on Respondent’s Eligibility for Relief, Feb. 19, 2004, at 27 (“DHS Alvarado Brief”), available at http://cgrs.uchastings.edu/documents/legal/dhs_brief_ra.pdf (last visited May 8, 2008). The DHS Alvarado Brief constitutes an authoritative interpretation of a statute, signed by the general counsel of the agency charged with the execution of that statute, and as such, should be accorded considerable deference. After briefing, the Attorney General remanded the case to the BIA in January 2005 where it sat until Sept. 2008, when Attorney General Mukasey certified the case to himself and ordered the BIA to reconsider it without waiting for further regulations. On Dec. 4, 2008 the BIA granted a joint motion to remand the case back to the Immigration Court for the development of additional facts.
An applicant for asylum must prove that:

1. She was a victim of past persecution or that she has a well-founded fear of future persecution;

2. The persecution is/was/will be committed either by the government or by persons or groups that the government is unable or unwilling to control;

3. The persecution is on account of the race, religion, nationality, political opinion, or membership in a particular social group (including family group or gender) of the applicant; and

4. The application was filed within one year of arriving in the United States (limited exceptions exist where a change in circumstances materially affects your client’s situation, or where exceptional circumstances prevented your client from filing within one year).

Victims can include a spouse and unmarried children in the application, and if granted, are eligible for a range of public benefits. Asylees are eligible to work immediately and can apply for LPR status one year after the grant of asylum. Applicants who are denied are referred to the immigration court if they have no other lawful status; if denied by the immigration court, the client will face deportation (but may be able to appeal). Asylum based on family groups or social groups defined by domestic violence or trafficking are cutting edge claims; there is little binding case law to support these claims, and that case law needs to be navigated very carefully to avoid undermining the claim. Please see Chapter 4 for additional information.

**Additional Considerations:** To gain legal immigration status, your client needs to be *admissible* to the U.S. The Immigration and Nationality Act defines grounds of inadmissibility, including entry without inspection, having a significant communicable illness (like HIV), misrepresenting one’s intentions to an immigration official, or commission of a crime.

Fortunately, in many (but not all) cases, waivers of inadmissibility are available, or the grounds of inadmissibility may not apply to your client, for reasons related to the abuse she has suffered. If a client presents any of these issues, we recommend consulting with a more experienced practitioner.

**Companion Criminal Remedies**

In addition to the civil claims listed in this guide, civil attorneys should be aware of certain criminal actions which provide for civil remedies as well.

**Racketeer Influenced and Corrupt Organizations (RICO) Act:** RICO makes it a crime to participate in an enterprise that affects interstate commerce and involves a pattern of racketeering. Some prostitution and sex trafficking networks are, therefore, being prosecuted under the RICO statute. RICO includes civil remedy provisions under 18 USC § 1694, which allow for an injured party to seek threefold damages suffered as a result of the RICO violation, as well as costs including reasonable attorney fees. The statute specifically addresses injuries to business or property.

**Civil or Criminal Forfeiture:** Defendants may be subject to civil or criminal forfeiture of any property used or intended to be used to commit or promote

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53 Persecution is “harm or suffering inflicted upon an individual to punish that individual for possessing a belief or characteristic that the entity inflicting the harm or suffering seeks to overcome.” It may be “broad enough to include governmental measures that compel an individual to engage in conduct that is not physically painful or harmful but is abhorrent to that individual’s deepest beliefs. . . . [such] as requiring a person to renounce his or her religious beliefs.” Matter of Kasinga, 21 I & N Dec. 357, 365 (BIA 1996).


commission of any offense. Forfeiture may include loss of property or businesses used as fronts for trafficking enterprises, or any property traceable to gross profits or other proceeds. The Mann Act also allows victims of sexual abuse, sexual exploitation, and Mann Act violations to recover actual damages and the cost of any lawsuit (including reasonable attorney fees).\(^{56}\)

State criminal statues may include forfeiture provisions as well, and will often specify how the assets acquired may be used. In some circumstances, forfeiture funds may be available to your client.

**Restitution as Part of Sentencing:** A federal court can order restitution for a victim of trafficking, slavery or peonage as part of criminal sentencing. When a defendant is convicted of a trafficking crime, the court is required to order restitution for the victim.\(^{57}\) When a defendant is convicted of a non-trafficking crime that includes a scheme, conspiracy, or a pattern of criminal activity, a federal court can, and in certain situations, must, order restitution.\(^{58}\)

Restitution to victims of trafficking is often part of sentencing in state as well as federal court. For example, under the New Jersey human trafficking statute, victim restitution can be ordered for the greater of the gross income or value of the victim’s labor or services.\(^{59}\)

When there is a criminal case, it is important to develop and maintain regular contact and interaction with the criminal prosecutor (and crime victim compensation and services personnel) in your client’s case. Prosecutors can recommend that a defendant’s sentence include, for example, payment of a victim’s medical or counseling expenses.

**Victim Assistance Services:** Your client may also be able to access victim-assistance services available through the criminal or civil court or an outside agency. Often, such services include access to a victim compensation fund. Check whether your jurisdiction has explicitly, or in practice, added human trafficking to the list of offenses that entitle victims to compensation. For example, Iowa includes trafficking in its victim compensation provisions.\(^{60}\)

**Litigation Practice Pointers**

**Reducing Trauma:** Some practices to reduce re-victimization and trauma during the litigation process include:

- Avoid unnecessary interviews by various professionals involved in the criminal and civil cases involving your client;
- Evaluate your client’s ability to testify in front of the defendant and court;
- Discuss your client’s rights as a crime victim;
- Help your client prepare a victim impact statement for use during sentencing;
- Consider motions for protective orders that may prevent improper questioning or bullying of your client as a witness; and
- Collaborate with a mental health provider or other support person to ensure support after difficult experiences.

**Bring Both State and Federal Claims:** Since FLSA establishes only minimum standards for states, an employee may be able to benefit from additional protections provided under state law. Thus, it is

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\(^{58}\) See 18 U.S.C. § 3663 and § 3663A (2008) (ordering mandatory restitution for victims of certain crimes, such as violence and consumer tampering).


\(^{60}\) Iowa Code Ann. §§ 915.80 - 915.94 (2008).
important to allege violations of both FLSA and more expansive state laws if they apply to maximize remedies. Similarly, every state in the U.S. has its own anti-discrimination in employment laws, as to many local jurisdictions. It is important to become familiar with these state laws which often provide increased protections, and also have different statutes of limitations and administrative filing requirements.

**Immigration Status:** Courts in many states are reaching the conclusion that immigration status (past or present) is irrelevant to discrimination, wage and contract claims. The case law on this point is clear. However, your client may feel much more confident going into the process if you already have been able to help her secure legal immigration status (even if it is temporary) in the U.S. If it seems possible to at least file for immigration relief before any statutes of limitation expire, then perhaps that would help your client. Simultaneously, you can reassure the client that you will fight to keep her past and present immigration status out of the proceedings, from discovery through trial. Excellent sample briefs arguing in support of protective orders on the question of immigration status are available from organizations that have confronted this issue, should it arise in your case. Refer to Chapter 4 for more information.

**Concurrent Criminal Case:** The existence of a criminal case may require that your civil action be stayed, once filed. For example, the TVPRA of 2005 specifically states that a civil matter based on similar facts to a criminal proceeding shall be stayed. Other claims can be stayed or allowed at the discretion of the court. Because an admission or finding of guilt in a criminal case is admissible in a civil case, it is usually to your advantage to stay the proceedings until the criminal case is concluded. If, however, the case is moving forward slowly, and your client is in urgent need of compensation, it may be possible to proceed with at least some of her claims. Keep in close contact with the law enforcement officials working on the criminal case so that the civil case does not inadvertently disrupt their case in ways that are preventable.

**Filing Multiple Claims:** As noted above, most of these claims can be filed within the same lawsuit. (This is true of any claim with a private right of action.) As long as you can include in the pleadings sufficient factual allegations to withstand a motion for summary judgment, you can include the claims. Consider a broad mix to cover the different kinds of damages available to your client and to ensure that if one part of your case is weak, a claim is alleged that will play to the strengths of your case.

There may be strategic reasons, however, to include some claims but not others. For instance, you may strongly want a jury trial if you believe jurors would be sympathetic to a human trafficking case and if you are seeking punitive damages. However, if your client is an immigrant, and you fear your jury may be biased as a result, then a bench trial may be preferable. Another consideration is whether you want to litigate in state or federal court. Think about your jury pool, the reputations of the judges who might preside over the case, and the time and expense of federal litigation versus state litigation. You can include state and federal claims in one case, but if you file in state court and include a federal claim, the defendant(s) can remove the case to federal court.

**Negotiations and Settlements:** Prior to, or in lieu of, filing a civil claim, you may wish to enter negotiations with the trafficker to obtain compensation or other relief for your client. Negotiations can be formal or informal, but it is a good practice to initiate the negotiation in writing.

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laying out the allegations in a letter clearly marked “for negotiation purposes only” (so that the letter cannot be used to impeach your client in any related civil proceeding), and making the request for relief. The letter should advise that, as this is a legal matter that could result in a lawsuit, the trafficker may wish to consult an attorney.

Negotiations with traffickers rarely result in settlements that come close to approaching the full amount of money that your client is owed. However, they are completed more quickly, do not require face-to-face interactions between your client and her trafficker, and can be concluded in complete secrecy. These can be important considerations for clients who fear retaliation from their family, community or the trafficker.

If you do reach an agreement with the trafficker, get that agreement in writing. We advise never putting a confidentiality clause into the agreement, unless the negotiation falls apart without it. If the other party insists upon such a clause, it should be carefully limited so that the client is able to talk to her loved ones, therapist or other support persons about what happened to her without fear of being sued for breach of contract. Sometimes it is possible to limit the clause to not disclosing the amount of the settlement.

Tax considerations are important to the structuring of the agreement. Generally, any money your client receives through a settlement will be taxable as income. However, if there was physical abuse in the relationship, you can try to structure the settlement agreement as compensation for that abuse; money paid to settle a physical abuse claim is not taxable as income. Finally, if the settlement primarily covers unpaid wages, then the employer is still responsible for payroll taxes and FICA.

**Diplomatic Immunity:** Unfortunately, when a trafficker is a diplomat, diplomatic immunity provisions may affect a client’s ability to pursue certain remedies. The basic rule is that diplomats have full civil and criminal immunity under the Vienna Convention on Diplomatic Relations if they raise immunity as an affirmative defense. This basic rule may not apply, however, if the trafficking situation involved commercial activities, such as the diplomat running a catering business from his or her home.\(^63\) It is also vital to realize that not everyone who calls themselves a diplomat is entitled to immunity. There are much lower levels of protection for non-diplomatic embassy staff and consular staff, for example. Inquiries can be made at the Department of State Office of Protocol to ascertain if the diplomat is immune. The only certain way to find this out is to sue the diplomat and see what proof is offered as an affirmative defense. The Department of State can request that the trafficker’s home country rescind or waive immunity, but that is a very long process and unlikely to be successful in all but the most egregious cases. Significant media attention may be required to prompt the State Department to act. However, the threat of media attention or reports to the government that employs the diplomat can sometimes encourage a diplomat to agree to a settlement. These cases are difficult and require a careful analysis of the politics of the situation.

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\(^63\) Many advocates contend that hiring a domestic servant also constitutes a commercial activity. Circuits are split on this issue. A suit brought under the Vienna Convention disagreed with that view, although a suit brought under the Foreign Sovereign Immunities Act, *did* recognize domestic work as a commercial activity. Compare *Tabion v. Mufti*, 73 F.3d 535 (4th Cir. 1996), (holding that employing a domestic servant is not “commercial activity” under the Vienna Convention) with *Park v. Shin*, (holding that a domestic servant falls within the commercial activities exception) 313 F.3d 1138 (9th Cir. 2002). The arguments for the commercial activities exception to apply are arguably weaker in the context of an intersections case where there is not likely to be any formal hiring process or contractual employment relationship.
Comprehensive Client Care

Human trafficking cases can be very complex, with multiple legal remedies and social services available. Similar to domestic violence victims, trafficking victims benefit from a holistic approach that identifies and addresses all of their needs. Trafficking victims may have just recently escaped and have no safe place to stay, or may already have built a new life. New clients should be screened for their complete legal and social needs. Ideally, an attorney will have a close partnership with a social service agency and in some cases, an in-house case manager that can provide case management services. Domestic violence attorneys may need to expand their list of potential partners to comprehensively serve trafficking victims.

It is critical that all of the providers working with a specific trafficking victim communicate often about their roles and any common challenges. Defense attorneys for the traffickers may contact the immigration attorney or other providers seeking information. It is important to inform all who are assisting the victim of such tactics so that they are ready to respond appropriately. It is important for all to know who the client’s representative or advocate is for purposes of any criminal prosecution, and what exactly that person’s role is. This is likely to be either the attorney filing any civil claims for back wages or damages or the immigration attorney. For trafficked immigrants, it is critical that the immigration attorney be involved in any communication with law enforcement since most trafficking-related immigration remedies require, or are greatly supported by, reports from law enforcement. Clients will be bewildered by the various government agencies involved and legal cases contemplated. Social service providers need to have enough context to respond to the client’s concerns and assist in clarifying the process.

Safety Planning: As with domestic violence clients, the first step with trafficking clients is to develop a safety plan. The process is very similar for both client groups, but trafficking victims may have some additional issues to consider. Traffickers may be part of a larger network, even an organized crime ring. If so, safety issues may be more urgent and may require relocating the client to another city or state. The involvement of law enforcement may be necessary to adequately protect both the victim and the provider. Trafficking victims may need to avoid the trafficker’s or victim’s ethnic group (which may be the same or different) or certain parts of town that are well-known to the trafficker. Always ask the client if she has a cell phone or bank account or other documents that might be traceable by the trafficker. Finally, be sure to conduct safety planning for your own agency and other providers working with the client. Address the safety of personnel, property, and data.

Housing: Domestic violence shelters may or may not have received training on human trafficking. They have probably encountered intersection cases before, but may not be aware of it. Many shelters have requirements and rules that may not be appropriate for trafficking victims. Particular attention should be paid to policies that restrict
Trafficking victims may be witnesses for a federal or state criminal prosecution of the traffickers, and discussing the case in a group setting could cause problems with the case. Additionally, trafficking victims may have experienced very different forms of abuse which would not be easily understood by other members of the group. Trafficking victims may have debt that led, in part, to their vulnerability to the trafficker. They may be completely focused on working to repay that debt. Policies that restrict their ability to work and repay their debt (curfews, mandatory meeting times, mandatory classes, mandatory savings plans) may not be appropriate and may put them in danger. Alternatively, trafficked immigrants may not be permitted to work immediately. As with battered immigrant women, trafficked immigrants may have to prepare and submit a thorough application and wait for approval before being issued employment authorization (commonly referred to as a “work permit”). This may take months or years. Emergency, temporary, and transitional housing programs which require proof of legal status or legal employment could be problematic.

Medical Care: Trafficking victims generally receive little to no medical care during their enslavement. They may have been exposed to dangerous chemicals or viruses, or they may suffer from long-term conditions like heart disease that have gone untreated. A trafficking victim should be taken for a thorough medical exam as soon as possible. The client should be asked about prior illnesses, pains, or problems that were not treated (or not thoroughly treated) before and during her victimization, including dental problems.

Mental Health Care: All trafficking victims should be offered mental health care. Depending on the client’s background and experience, she may not be comfortable with American mental health care. Clients should not be forced to attend counseling sessions, but the advocate may need to think carefully about how to explain and introduce the option. Terms like “counseling” and “therapy” may not be understood or accepted by some clients. Instead, it may be helpful to offer to introduce the client to someone who is a “very good listener.” It might also be important to emphasize that this person (if your state provides a mental health provider privilege) will be able to keep everything a secret and that the case manager cannot (if your state does not have a trafficking advocate privilege). Privilege is an important issue to consider when selecting a mental health provider for trafficking clients. Because a federal and/or state prosecution is possible, it is important that the client discusses the details of the trafficking experience only within the context of a privileged relationship. Thus, a case manager with no privilege should not discuss the trafficking experience with the client.

Education: Trafficking victims may have limited previous education. Identifying appropriate educational resources will empower the victim and help her to find new employment opportunities after completing her studies. Trafficked immigrants may not be immediately eligible for financial aid but may become eligible once they secure immigration status (grants of asylum, T visas and continued presence all lead to eligibility for federally-funded financial aid). All minors should be accepted, regardless of their immigration status, by publicly funded schools up to grade 12. Trafficked immigrants may also benefit from English classes. All trafficking victims are likely to benefit from basic job skills or computer skills classes.

Employment: Most trafficking victims are eager to work. Working without authorization is not legal, and if the workplace is raided by Immigration and Customs Enforcement (ICE), the client could be detained and put into deportation proceedings. It is important that all undocumented clients are provided with multiple copies of their lawyer’s business card and a letter stating that the client is
a trafficking victim pursuing a T visa (or whatever immigration remedy is being sought) to be presented to ICE or other law enforcement agents if detained. This will generally reduce the chance of a client being transported to a distant facility or immediately removed (deported).

**Access to Benefits:** Trafficking victims often have difficulty accessing the benefits that they need. U.S. citizens and lawful permanent residents (LPRs) face challenges proving their eligibility if the trafficker confiscated their documents. This is compounded by challenges faced by some trafficking victims who have been enslaved for so long that they do not know their birth names or ages. Once identity documents are obtained, victims will find that the services often are limited, and the waiting lines are long. Clients may benefit from food stamps, subsidized housing, and free medical care for the uninsured. Cash benefits are rare and generally reserved for mothers with young children, the elderly, and individuals with disabilities.

Trafficked, undocumented immigrants generally are not immediately eligible for any federally-funded public benefits. They must first obtain recognition as a trafficking victim from the Office of Refugee Resettlement within the Department of Health and Human Services (HHS). In order to obtain such recognition, a victim can file for a T visa, or be granted continued presence. For further information, please consult the resources listed in Chapter 4.

**Working with Law Enforcement**

Domestic violence attorneys may have some experience in working with law enforcement, but most legal remedies traditionally pursued by domestic violence attorneys do not require any ongoing interaction with law enforcement. Trafficking cases, however, are different. Law enforcement is much more present, either because the victim needs assistance from law enforcement in order to access benefits or legal remedies or because the client has been charged with a criminal incident related to the trafficking. Attorneys working with trafficking victims need to be prepared for this increased interaction with law enforcement and be prepared to act strategically. The key roles of the attorney in a trafficking case, however, are the same as in a domestic violence case: closely follow any criminal cases, facilitate communication between law enforcement and the client, and advocate for your client’s interests at all times. There are, however, a few key differences.

First, the stakes may be higher in trafficking cases. Domestic violence is a matter of state and local law, and can often be minimized by law enforcement. Prosecutions are few and the penalties handed down in the rare convictions are, in all but the most horrific cases, comparatively light. Human trafficking, on the other hand, is a federal crime. It has been highlighted as a human rights focus of the U.S. government. Significant resources have been dedicated to identifying and prosecuting traffickers. The penalties are steep. Under the TVPA, traffickers can be sentenced to 20 years to life for trafficking crimes. Additionally, many states are implementing trafficking laws that include a state crime of trafficking.

Second, both the T and U visas require your client to engage with the criminal justice system. The familiar immigration remedies for domestic violence victims (VAWA self-petition and cancellation, battered spouse waiver, and asylum) are certainly strengthened by corroboration from law enforcement, but do not require it.

Third, there may be additional safety concerns in a trafficking case. The trafficker(s) may be part of a criminal network or may simply have powerful connections in your client’s community or home country. Both of these scenarios greatly raise the risk of retaliation against your client and her family members, as well as any advocates and attorneys working with her. The client, and even members of her family, may be eligible for asylum simply
because of the fear of retaliation. Every effort, therefore, needs to be made to protect your client during the investigation and the prosecution. It is also wise to conduct safety planning for your office.

Note, however, that involvement with law enforcement may not be necessary. Trafficking victims may be able to achieve all of their objectives with the traditional civil remedies available to domestic violence victims. Clients may be uninterested in the criminal justice system, wanting only to get away safely and to move on. Generally, U.S. citizens have that option. Trafficked immigrants, however, often must work with law enforcement in order to secure immigration remedies, reunite with family, and access social services. Clients should carefully consider their priorities and understand the pros and cons of all available resources and remedies before deciding to contact law enforcement.

**Timing:** If your client has not yet reported the crime to law enforcement, there are some benefits to taking time before making the initial approach. In particular, a traumatized client may be receiving counseling that will help her tell her story to you and later to law enforcement in a more effective, coherent way. Some clients are not able to discuss the trafficking situation for several months regardless of the benefits available. Time also allows you to develop a more nuanced understanding of your client’s situation; the average trafficking case takes two or three multi-hour interviews before even the broad parameters of the story are known and settled. It may take even longer if you are using an interpreter to communicate with your client.

With the T visa particularly, although your client may be eager to secure immigration relief due to safety and other concerns, it ultimately will benefit the client to develop the case thoughtfully and accurately to avoid inconsistencies and errors that could prolong adjudication of her application down the road. There is no deadline for filing a T visa application.\(^64\)

With the U visa, however, there may be significantly more risks associated with delayed reporting. Although there is no statute of limitations, the requirement that law enforcement certify the victim’s cooperation means that in practical terms, reports must be made in such a timeframe that law enforcement is likely to actually investigate or at least document the crime. As domestic violence attorneys already know, the likelihood of domestic violence charges being investigated, let alone prosecuted, diminishes with each passing day. There are also specific criminal statutes of limitation affecting law enforcement’s ability to prosecute. Therefore, if the U visa is your client’s best route to immigration status, you may not have the luxury of working with a therapist for a significant period of time to help the client tell her story in the most effective way. The practicalities of launching an investigation may demand a much quicker response. This time also should be used to investigate to which law enforcement agency the report could be made.\(^65\) Some agencies, offices, and individuals are more likely to investigate trafficking cases. Some are known to be more victim-centered in their approach. Contact local or national trafficking advocates to research your options. Determine the client’s priorities. Does the client want to see a prosecution go forward, or is she just willing to do whatever is necessary to bring her children to

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\(^64\)A one year filing deadline exists for trafficking cases which occurred before the passage of the TVPA, with limited exceptions. However, the deadline was not in the statute and the regulations are thus arguably ultra vires. Alternatively, advocates can argue the trafficking continued past the October 2000 date, e.g. threats made to family members subsequent to the victim’s escape.

\(^65\)Reports can be made to a variety of agencies including: Department of Justice, Criminal Section, Civil Rights Division; Federal Bureau of Investigation; Department of Homeland Security, Immigration and Customs Enforcement; Department of Labor; the local U.S. Attorney; and state and local law enforcement.
the U.S.? If the former, find the agent who is most interested and experienced in trafficking cases.

There are good faith ways to make the report while assuring your client that law enforcement will display sensitivity in handling the report. For example, the Department of Justice Trafficking in Persons Hotline will keep the client’s identity protected during the phases of an investigation prior to determining whether they will bring a criminal case forward or not. Many local law enforcement agencies have been well-trained on these issues and can be valuable allies in supporting victims during a trafficking investigation. See Chapter 4 for additional information.

Finally, you should work to control the timing of the various interviews and other related appointments. In some cases, clients benefit from scheduling an appointment with their therapist or other support person immediately after a law enforcement interview. Communication among all providers working with a client is especially important during an active law enforcement investigation, when a client is likely to be re-traumatized to some degree.

**The Trafficking Victim as Victim-Witness:** In the criminal case, your client transforms—often unfortunately so—from “client” who has agency over her case to “witness” who has little control over the process. The civil lawyer’s role in this process is to advocate for the client’s interests, to help the client maintain some agency during the process, and to help the client make sense of the often bewildering process (particularly for traumatized clients).

Specifically, the lawyer can be an invaluable advocate helping to communicate the client’s interests to law enforcement. Does your client have fears about making the abuser deportable? Does she fear retaliation against herself or her family? Will your client be devastated if the abuser is allowed to serve merely a few hours of community service in return for a guilty plea? Being able to help law enforcement understand the client’s goals may help to obtain a better outcome for your client.

In interviews with law enforcement, your presence also may be reassuring to the client. Although the interviewer will prefer fewer interruptions, you may be able to help clarify where you see a misunderstanding, or ask for a break to speak with your client when you sense she is unable to talk about the most traumatic aspects of her case. You may need to ask for more time (weeks) to allow your client to start processing the trauma with a therapist. Your understanding of the case and your relationship with the client are a tremendous asset to the law enforcement investigation, so you must not be shy about embracing this role.

Your role is also to advocate for law enforcement to understand the case in its entirety. As noted above, a prosecutor experienced in domestic violence cases may not be on the lookout for signs of human trafficking. You can argue the case to him or her so that the investigation covers what is important to your client.

You also may need to ensure that your client’s rights, as a victim, are being protected. The U.S. Department of Justice’s *Attorney General Guidelines for Victim and Witness Assistance* outlines crime victim rights fairly clearly. Notably, the client is entitled to notification about the status of the case, assistance in accessing services and protection from the perpetrator. The client also has the right to attend the trial or to prepare a victim impact statement. You can argue the case to him or her so that the investigation covers what is important to your client.

Finally, where your client is pursuing a T or U visa, your role is certainly to advocate for law enforcement to certify your client’s cooperation. For the T visa, the lawyer can document the client’s efforts to cooperate if law enforcement is unwilling to provide an official certification. Some law enforcement agencies have excellent systems in place to certify. Many others will require education about the certification purpose and process, and will need follow-up from you to get the certification done. For the latter, drafting the form itself, and/or talking with local service providers, the victim advocate, prosecutor, detective, or responding officer may help.

**Standards for Cooperation: Ongoing Cooperation, Reasonable Requests:** When considering whether or not to certify your client, law enforcement can consider whether your client has cooperated on an ongoing basis. A client who files a police report but then refuses to speak with a detective is unlikely to be certified. Likewise, a client who refuses to testify may, possibly, be deemed to have stopped cooperating. If an official certifies your client, and at a later date the client stops cooperating, the official has the ability to revoke the certification, so the “ongoing” character of the cooperation is very important.

This requirement is tempered, however, by the requirement that a law enforcement request be *reasonable*. Clearly a request that puts the client or her family in danger, or a request for testimony in another state without any provision for transporting the client, could be unreasonable. The context matters greatly, and the lawyer must ensure that the client continues to be seen in the best possible light, explaining why a specific request is not possible while seeking ways to continue to be helpful generally. Specifically, the client’s physical and mental state should be considered. Where a client has suffered psychological trauma, and interaction with law enforcement is interfering with her recovery, even an interview request may be seen as unreasonable.

**When Law Enforcement Resists Identifying a Crime as Trafficking:** Intersection cases are opportunities to bring many criminal statutes to bear in the effort to hold traffickers accountable. However, too frequently, law enforcement sees these cases as “either/or.” Prosecutors who specialize in domestic violence may have only a cursory understanding of human trafficking, and of the breadth of the related federal criminal statute. Sadly, law enforcement agents also may be unwilling to “turn over” a case to another agency for prosecution and may choose to sit on it instead; or it may be determined that jurisdiction rests with the agency that is least interested in pursuing trafficking cases (especially intersection cases which are particularly hard to prosecute). This pigeon-holing and turf mentality precludes the fullest possible prosecution of the case.

It is entirely appropriate for you to encourage law enforcement to think about all the crimes embedded in an intersection case, emphasizing that the more charges that can be filed, the greater the leverage the prosecutor has during any plea negotiations.

**The Trafficking Victim as Defendant:** Some trafficking victims are discovered only after they have been charged with a crime. Generally the crime is related to the trafficking. Domestic violence attorneys may have experienced this with clients who, for example, turned to theft to feed themselves and their children. Trafficking victims may have been forced into theft, prostitution, drugs, fraud or any number of crimes. It is crucial that the attorney defending the client in the criminal case be made aware of the circumstances surrounding the criminal acts. It might be beneficial to report the trafficking crime quickly to an experienced and victim-centered law enforcement agency. The agent investigating the trafficking also should contact the prosecutor’s office to possibly convince the prosecutor to reduce or drop the charges.
This conflict is often seen with sex trafficking victims who are arrested on prostitution-related charges. Increasingly, local law enforcement agencies are screening for trafficking victims, but not all do. For all trafficking victims, the arrest makes it more difficult to find appropriate services and support, and further erodes their self-confidence and belief in the system. The trafficker has likely been telling the victim that no one will believe her, that she is a bad person and will be arrested and (if applicable) deported if she calls the police or tries to escape. This arrest has reinforced these threats. In any case, additional psychological support will likely be necessary. Individuals seeking immigration relief will have to disclose and explain this criminal history in the context of their immigration application, although a waiver will likely be available.  

**Working with Media: Opportunities and Cautions**

Human trafficking is an atrocious crime, and as such, has generated vast media interest. Organizations known to focus on human trafficking are often inundated with requests to interview “victims,” requests to go on rescue operations, and so forth. As with any kind of legal representation, media can be strategically useful, but only after careful analysis with the client about the risks and benefits.

The risks of working with media include direct retaliation to the client and/or her loved ones by the trafficker. This is especially true in the internet age when even a local media outlet’s story will be commented upon, blogged about and emailed instantaneously around the world. The dangers also may include condemnation in the home country for bringing shame to a fellow national (where the trafficker is from the same country), or harassment of the client if she wins large money judgments in court, regardless of whether she ever collects money on those judgments. A client may also be re-traumatized by the telling or viewing of her story.

Apart from personal risks to your client, a separate but significant risk is the loss of control over the story; once an interview has been done, your client usually has little to no control over the editing process. Comments may be taken out of context, or key facts confused, which could then complicate ongoing civil, criminal or immigration cases. Finally, prosecutors understandably shy away from media during an investigation or prosecution for fear that the victim will make inconsistent statements that can then be used to attack credibility during a trial.

On the other hand, the benefits to engaging with the media can be considerable, depending on the circumstances. First, working with the media may help the victim to have more agency in holding her abusers accountable by publicly shaming them. Media exposure can also bring pressure to settle ongoing litigation or pressure traffickers to honor court judgments. In the specific case of traffickers who are diplomats with diplomatic immunity, media pressure (or the threat of it) may be the **only** way to start a negotiation process. Finally, many victims voice a hope that by telling their story, they can shed light on a terrible crime and prevent the victimization of others. This can also be therapeutic. In any case, it is likely that positive, responsible media coverage will generate interest in the case in ways that make an investigation by law enforcement and/or an immigration application even more compelling.

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67The process is not yet entirely clear as adjustment of status regulations have just been published for the T and U visas as of the writing of this guide.

68Any solid media coverage of a client’s case could be submitted in support of an immigration application.
For some clients, no matter how great the benefits, her fear of speaking publicly about her experiences will rule out working with the media. For others, the time may not be right. For yet others, it is difficult to convince them not to talk to the media. There is no hard and fast rule for or against working with media, and we recommend simply helping your client think through all the options, the risks and the benefits, and documenting your advice for the client to reflect upon later. Clients should also be encouraged to consider what limitations they want to place on the media coverage (disguised face or voice, use of a false name) and have signed agreements from media outlets specifying these limitations.
CHAPTER FOUR

Resources for Attorneys & Advocates

This guide is meant to serve as a basic introduction to the variety of issues you will encounter and need to be aware of when assisting victims of human trafficking. Comprehensive resources relating to the topics outlined in this guide already exist and are constantly being updated to reflect changes in law. We hope the following information will be useful to you in locating these additional resources.

Additional Resources

Additional resources are available at www.abanet.org/domviol/tip.

Useful Organizations

There are many local and national organizations that have resources for attorneys representing human trafficking victims. Some of these organizations are:

➤ ASISTA: www.asistaonline.org
➤ Center for Gender and Refugee Studies: www.cgrs.uchastings.edu/
➤ The Freedom Network USA: www.freedomnetworkusa.org
➤ The Legal Aid Foundation of Los Angeles: www.lafla.org
➤ Humantrafficking.org: www.humantrafficking.org
➤ The Immigrant Legal Resource Center: www.ilrc.org
➤ Legal Momentum’s Immigrant Women Program: www.legalmomentum.org
➤ The National Network to End Domestic Violence: www.nnedv.org
➤ The U.S. State Department Office to Monitor and Combat Trafficking in Persons: www.state.gov/g/tip
➤ National Employment Law Project: www.nelp.org
➤ National Employment Law Project’s Immigrant Worker Project: www.nelp.org/iwp
➤ National Immigration Law Center: www.nilc.org
➤ Legal Aid Society, Employment Law Center: www.las-elic.org
➤ U.S. Committee for Refugees and Immigrants, National Children’s Center Resource Library: www.refugees.org/article.aspx?id=1556&subm=75&area=Participate&ssm=118
Print Manuals


Eva Klain & Amanda Kloer, Amer. Bar Ass’n, Meeting the Legal Needs of Child Trafficking Victims: An Introduction for Children’s Attorneys & Advocates (2008), available upon request at www.abanet.org/domviol
