



# OVCTTAC



## Delivering Victim Services to Human Trafficking Survivors: Confidentiality and Privilege Issues

June 19, 2014

3:15 – 4:15 PM EST

**Presenters:**

Jean Bruggeman, Human Trafficking Fellow, OVC

Lakiesha McCrorey, LMSW, YMCA Houston

Alex Barry, Research Assistant, OVC TTAC

The material presented during today's webinar session will be available on the Human Trafficking Learning Community.

*The session will be recorded and will begin shortly.*



## Roll Call

Your organization name will be called in alphabetical order. If you come on the call late, please wait until we've completed the list and you can then let us know that you've joined.



## Tip of the Month

# An Overview of Adobe Connect



Make sure you are connected on the web and on the phone.

*The main audio for the Webinar is available by phone only.*

*Please keep your phone muted during the presentation.*



## Connect Your Phone

- Use the pop-up on the screen to connect to the audio.

Join Audio Conference

How would you like to join the meeting's audio conference?

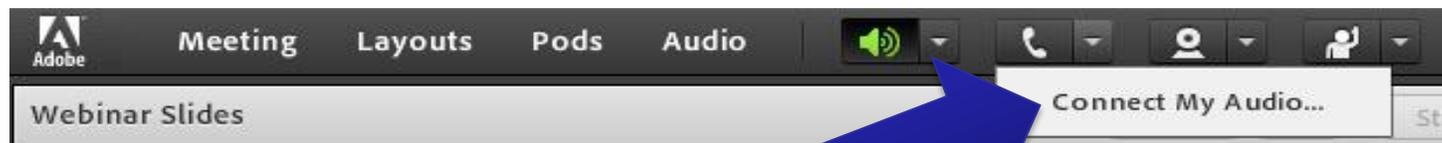
Dial-out [Receive a call from the meeting]

Dial-in to the Audio Conference via Phone

(1 Country code - area/city code - Number Eg. 11 415 555 0123)

Join Cancel

- If you do not see the pop-up on the screen to connect your audio, use the phone icon at the top of the screen and choose **Connect My Audio**.





# OVC TTAC



Adobe Meeting Layouts Pods Audio [Speaker Icon] [Person Icon] [Person Icon] Help

Share

Attendees (1)

- Active Speakers (1)
- Alexandra Barry
- Presenters (0)
- Participants (0)

Chat (Everyone)

The chat history has been cleared

Share My Screen



## Interactive Status Feature

The screenshot displays the Adobe Meeting software interface. At the top, there is a navigation bar with tabs for Meeting, Layouts, Pods, and Audio. A blue arrow points to the status icon in the top bar, which has opened a dropdown menu. The menu contains the following options:

- Raise Hand
- Agree
- Disagree
- Step Away
- Speak Louder
- Speak Softer
- Speed Up
- Slow Down
- Laughter
- Applause
- Clear Status

The main meeting area is currently blank. On the right side, there is a sidebar with sections for Attendees (1), Active Speakers, Hosts (1) (listing Alexandra Barry), Presenters (0), and Participants (0). At the bottom right, there is a Chat (Everyone) section. In the bottom center of the meeting area, there is a graphic of a laptop with various file icons (PPT, PDF) and a musical note.



## Interactive Polls

Meeting

Attendees (2)

Active Speakers

Hosts (1)

Alexandra Barry

Presenters (0)

Participants (1)

Alex Barry

Chat (Everyone)

What is your favorite season?

What is your favorite season?

- Spring
- Summer
- Fall
- Winter
- No Vote



## Technical Issues?

- Write to our technical support representative, Alex Barry, by sending a private chat or e-mailing her at [alexandra.barry@icfi.com](mailto:alexandra.barry@icfi.com).



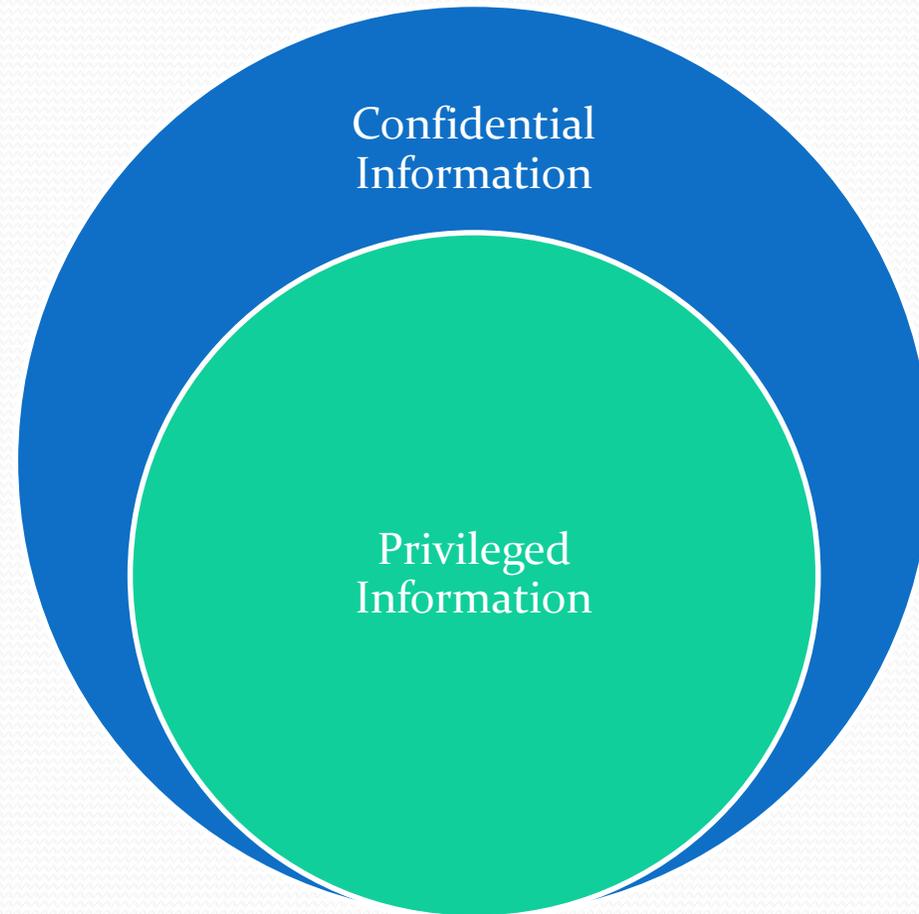
# Delivering Victim Services to Human Trafficking Survivors: Confidentiality and Privilege Issues

OVC TTAC June Webinar

Presenters

Jean Bruggeman, Human Trafficking Fellow, OVC  
Lakiesha McCrorey, LMSW, YMCA Houston

# Confidentiality and Privilege



# Confidentiality and Privilege: Distinctions

## Confidentiality

- Practice of treating information as private.
- Confidentiality is an **ethical duty**.
- Confidentiality covers a broad array of information, anything that is particular to the client, including the client's name, that s/he is a client, etc.

## Privilege

- Protection of confidential communications between a client and her attorney, according to rules of evidence as defined by a court of law.
- Privilege is an **evidentiary rule**.
- Privilege covers only communications that are made in the course of providing legal counsel in a confidential setting.

# Confidentiality

All victims of crime have the **right to confidentiality**. Victims must disclose certain information to their caseworkers in order to receive assistance. Communicating this information is often painful, embarrassing, or frightening for victims of human trafficking. It is critical for victims to have confidence that their caseworkers are on their side and will keep such information confidential, this includes:

- Preventing victims' names, addresses, telephone numbers, and personal identification information from being publicized
- Protecting communication (verbal and written) unless authorized by victim and informing victims of statutory privileges governed by state/federal/tribal regulations to specific confidential information

# Confidentiality and Privilege: Duties

## **Social Worker/Case Manager**

- Protect client confidentiality and safety
- Protect Privileged Information
- Mandatory Reporting

## **Attorney**

- Protect client confidentiality and safety
- Protect privileged information and potential criminal litigation
- Educating necessary third parties (interpreters or others) to protect confidentiality and privilege
- Appropriate consent/release

# Privileged Communication Between Victim and Human Trafficking Caseworker

**Human trafficking victim-caseworker privilege** allows both the victim and the caseworker, on the victim's behalf, to refuse to answer questions in judicial proceedings that would divulge confidential information (i.e. information divulged in meetings between the caseworker and client.)

**Some states** have adopted laws providing for a “caseworker privilege” similar to the attorney-client or doctor-patient privilege.

For example, the District of Columbia's statute provides that a human trafficking counselor may not disclose a confidential communication from a victim except:

1. required by statute or court of law (**Mandatory Reporting**)
2. authorized in writing by the victim
3. necessary to protect the victim or others from risk of imminent harm (**Duty to Warn /Duty to Protect**)
4. necessary to defend against a lawsuit filed by the victim

[http://www.polarisproject.org/storage/documents/2013\\_Analysis\\_Category\\_8\\_-\\_Victim\\_Assistance.pdf](http://www.polarisproject.org/storage/documents/2013_Analysis_Category_8_-_Victim_Assistance.pdf)

check your state status' see attached

**Summary of U.S. State Laws Related to Advocate Confidentiality**

# Social Worker/Caseworker Duty to Warn, Duty to Protect & Mandatory Reporting

Courts have established that Social Workers have a legal obligation to warn the potential victim if they believe their client presents an imminent threat to that individual. This is called the “**duty to warn.**”

Social Workers may also have a legal obligation to seek hospitalization for the client, to inform law enforcement of the potential threat, or to take other steps to protect the potential victim from harm. This is called the “**duty to protect.**”

Social Workers have regular contact with vulnerable people such as children, disabled persons and senior citizens and are therefore legally required to report (or cause a report to be made) when abuse is observed or suspected. This is called “**Mandatory Reporting.**”

# Informing Human Trafficking Survivors about Confidentiality & Privilege

- Educate Victim on Client Confidentiality
  - Include written client agreement
  - Review during each meeting
- Identify limits to Confidential & Privileged Information
  - Clarify with client when any requests or plans may impact confidentiality or privilege
  - Ensure client is able to make an **informed decision**
- Obtain Consent to Release and Obtain Information
  - Written, time-limited, and specific
  - Review right to revoke consent with client

# Poll Question

One day you receive a telephone call from someone whose voice you do not recognize. The caller asks, “do you see \_\_\_\_\_ (insert the name of one of your clients) as a patient in your practice?” Because you are trained in your ethical and legal responsibilities, you answer appropriately. Later that week, in a consultation with a colleague, you explain that you answered the way that you did because the information requested was:

- a.) Not protected
- b.) Privileged
- c.) Confidential
- d.) None of the above

# Third Party Implications

- The presence of a **third party** (interpreter, law enforcement, friend) **does not impact the duty of confidentiality**. No matter how public a client is, their attorney/social worker/case manager must refrain from discussing anything about the client and the case publicly.
- The presence of a **third party** who is **necessary** to the provision of services (interpreter, forensic accountant, etc.) **will not impact attorney-client privilege** and **may not impact case worker privilege**, if it exists.
- The presence of a **third party** who is **NOT necessary** to the provision of services (friend, support person) **can breach attorney-client or other relevant forms of privilege**.

# Attorney's Duty to Supervise

- When a third party is necessary to the provision of legal services (for example, an interpreter or law clerk), the attorney has a duty to **reasonably train and supervise** to ensure confidentiality and privilege are protected.
- The **attorney can be held responsible** for breaches of confidentiality and privilege or the unauthorized practice of law committed by the third party if the attorney failed to adequately train and supervise the third party.

# Protecting Confidentiality & Privilege Within a Multi-Disciplinary Team

- Discuss with client the nature of confidentiality and limitations of clients' right to confidentiality.
- Discuss confidential information in setting in which privacy can be ensured.
- Protect the confidentiality of clients during legal proceedings to the extent permitted by law.
- Protect the confidentiality of clients when responding to requests from members of the media.
- Protect the confidentiality of clients' written and electronic records and other sensitive information.
- Do not disclose identifying information when discussing clients for teaching or training purposes.
- Protect the confidentiality of deceased clients.

# Making Appropriate Disclosures

- Take precautions to ensure and maintain the confidentiality of information transmitted to other parties, disclosure of identifying information should be avoided whenever possible.
- Maintain files or notes within locked filed cabinets and password protected electronic devices.
- Case files or notes are not protected in most states by case worker privilege and are subject to be subpoenaed, document only necessary information needed to receive services and do not note details in case files or notes.
- Disclose confidential information to third party only with valid consent from a client or a person legally authorized to consent on behalf of a client.
- Disclose the least amount of confidential information necessary; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.
- Obtain counsel whenever served with a subpoena or otherwise asked to reveal protected information

# Common Challenges Surrounding Confidentiality & Privileged Information

- Defense Attorneys
- Case Manager Limits
- Collaboration with other NGO(s) and Law Enforcement Agencies
- Legal Liability

# Strategies: Defense Attorney

- Defense Attorney calls Case Manager/Attorney asking questions
  - Do not answer any questions, do not even confirm that you are serving/representing the client
  - Record the name and contact information of the caller
  - Inform the client, conduct safety planning, discuss next steps
    - Inform organization, review protocols
    - Inform the law enforcement/prosecutor working the case
    - Inform the civil attorney
    - Engage counsel, prepare for possible subpoena

# Strategies: Case Manager Limits

- Client wants to discuss details of victimization with Case Manager who does not have a privilege
  - Explain risks, to client and to Case Manager
  - Explain organizational policy
  - Offer options: therapist, attorney, other privileged resource

# Strategies: Partners

- Partner organization wants information from Case Manager/  
Attorney
  - Discuss information request with client
  - Offer options: no disclosure, disclosure from staff person with signed release, disclosure by client with staff support
  - Offer support regardless of choice

# Legal Liability

## Social Worker/Case Manager

- Breaches of confidentiality or privilege is considered unethical and can be the basis of state board of social worker examiner complaint or **malpractice suit** resulting in **denial of license** or order of recognition of specialty, disciplinary action and/or monetary judgment.

## Attorney

- Breaches of confidentiality or privilege can be the basis of a bar complaint or **malpractice suit**, resulting in **disbarment** and/or monetary judgment.
- Breaches of attorney-client privilege can also give rise to the unauthorized practice of law, a crime in some jurisdictions.

# References

<http://www.polarisproject.org/what-we-do/policy-advocacy/assisting-victims/victim-assistance>

<https://www.socialworkers.org/pubs/code/code.asp>

[http://www.polarisproject.org/storage/documents/2013\\_Analysis\\_Category\\_8\\_-\\_Victim\\_Assistance.pdf](http://www.polarisproject.org/storage/documents/2013_Analysis_Category_8_-_Victim_Assistance.pdf)

[http://www.socialworker.com/feature-articles/ethics-articles/Duty\\_to\\_Warn%2C\\_Duty\\_to\\_Protect/](http://www.socialworker.com/feature-articles/ethics-articles/Duty_to_Warn%2C_Duty_to_Protect/)

[Jessica Mindlin and Liani Jean Heh Reeves, 2005, Confidentiality and Sexual Violence Survivors: A Toolkit for State Coalitions, Portland, OR: National Crime Victim Law Institute, 11-12.](#)

[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/confidentiality\\_or\\_attorney.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/confidentiality_or_attorney.authcheckdam.pdf)

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html) (especially Rule 1.6 Confidentiality of Information and Rule 5.3 Responsibilities Regarding Nonlawyer Assistant)

# Contact Information

## **Lakiesha L McCrorey, LMSW**

Social Responsibility Leader - Case Manager  
Trafficked Persons Assistance Program (TPAP)  
YMCA International Services  
6300 Westpark, Suite 600  
Houston, TX 77057  
Phone: 713.339.9015  
Fax: 713.339.1159  
[Lakiesha.Mccrorey@ymcahouston.org](mailto:Lakiesha.Mccrorey@ymcahouston.org)  
[www.ymcainternationalservices.org](http://www.ymcainternationalservices.org)

## **Jean Bruggeman, Esq.**

Human Trafficking Fellow  
Office for Victims of Crime (OVC)  
Office of Justice Programs (OJP)  
U.S. Department of Justice  
810 7th Street, NW  
Washington DC 20531  
202-307-7066 (phone)  
202-305-2440 (fax)  
[Jean.Bruggeman@usdoj.gov](mailto:Jean.Bruggeman@usdoj.gov)