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**OVC**  
**Webinar Transcript**

**Human Trafficking, Domestic Violence, and Sexual  
Assault:  
Strategies to Strengthen Community Collaboration to  
Respond to Survivors' Needs**

**June 18, 2015**

## Welcome

Neelam Patel: Hi, everyone. I think we are going to begin the Webinar as it is a minute after 2:30. Thank you, everyone. Welcome. My name is Neelam Patel, from the Office on Violence Against Women, and before we get started, a couple of technology notes. As a reminder, with all technology, we may experience a momentary lapse in the Webinar session. In the event of a problem, please be patient and remain on the line. The Webinar session will resume shortly. We also encourage you to keep a copy of the PowerPoint accessible in case of any technical difficulty. Please note that these sessions are being recorded. Because we have such an incredible turnout for the series, the line will be muted. We will only be taking questions via the chat box, or through the e-mail address. We will do our best to respond to as many questions as we can. There will be breaks during the Webinar to provide time to respond to questions. Thank you. Next slide, please.

## **Human Trafficking, Domestic Violence, and Sexual Assault: *Strategies to Strengthen Community Collaboration to Respond to Survivors' Needs***

# Human Trafficking, Domestic Violence, and Sexual Assault: *Strategies to Strengthen Community Collaboration to Respond to Survivors' Needs*

As part of the ongoing implementation of the *Federal Strategic Action Plan: Services for Victims of Human Trafficking in the United States 2013–2017*, this webinar series is co-sponsored by:

U.S. Department of Justice's Office for Victims of Crime, Office on Violence Against Women, and Office for Victims of Crime Training and Technical Assistance Center

U.S. Department of Health and Human Services' Family Violence Prevention and Services Program

State Justice Institute's Human Trafficking and the State Courts Collaborative

Neelam Patel: So, just to let everyone know, this is a part of a series of Webinars that the Department of Justice's Office for Victims of Crime, the Office on Violence Against Women, and the Office for Victims of Crime Training and Technical Assistance, as well as the U.S. Department of Health and Human Services' Family Violence Prevention and Service Program, the State Justice Institute's Human Trafficking, and the State Courts Collaborative, working together to address the prevalence of human trafficking across the country, particularly in the intersectionality of domestic violence and sexual assault.

Neelam Patel: This is a five-part Webinar series, which offers strategies, practical tips, case studies, and resources to help domestic violence and sexual assault service providers improve outcomes for human trafficking survivors. Each Webinar highlights models for potential replication, and features local and national subject matter experts. Next slide, please.

## **Learning Objectives for the Collaboration Series**

### Learning Objectives for the Collaboration Series:

- **Understand the overlap between human trafficking, domestic violence, and sexual assault;**
- **Explore ways to effectively engage the justice system and community stakeholders and sustain involvement;**
- **Consider examples of partnerships to build agency capacity and enhance victim identification;**
- **Explore strategies for promoting collaboration while protecting confidentiality;**
- Identify effective collaboration strategies that leverage culturally specific resources on behalf of survivors;
- Learn about examples of successful law enforcement collaborations; and
- Identify court-based strategies to address the needs of trafficking victims and understand the role and significance of the court and judicial leadership in developing a response to human trafficking.

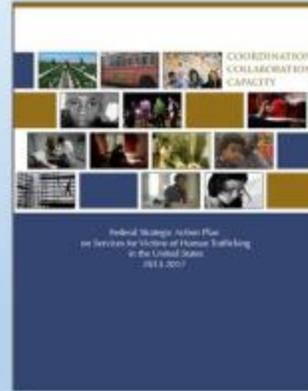
## Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013–2017

“Victim services should promote safety, healing, justice, and rights for victims, and should empower them to participate in efforts to bring traffickers to justice.

Survivors play a key role in elevating understanding and awareness of human trafficking, improving service delivery, and informing policy.

Anti-trafficking efforts should be victim-centered and culturally relevant, holistic, comprehensive, evidence-based, gender-responsive, and trauma-informed.”

<http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>



Neelam Patel: So this is part, this series is a part of a joint federal government strategic action plan on services for victims of human trafficking. We have reviewed the common themes that came across all of the organizations, and are critical in the implementing and the responses of crime victims, including human trafficking victims. Throughout each of these Webinars, these themes will be reinforced. Next slide, please.

## Webinar Schedule

Webinar Schedule	
<i>Getting Out of the Box: The Key Ingredients to Cultivate Collaboration</i>	Completed
<i>Balancing Collaboration, Confidentiality, and Privilege in Human Trafficking Cases</i>	June 18, 2015 @ 2:30 p.m. ET
<i>Collaborating With Culturally Specific Organizations to End Human Trafficking, Domestic Violence, and Sexual Assault</i>	July 9, 2015 @ 2:30 p.m. ET
<i>Working Together Part I: Law Enforcement</i>	August 13, 2015 @ 2:30 p.m. ET
<i>Working Together Part II: The Courts</i>	September 24, 2015 @ 2:30 p.m. ET

Neelam Patel: So, this is the schedule for the Webinar series. We just had our first one, which was completed, and was recorded, and will be posted shortly onto the OVC TTAC website. Today's Webinar is on *Balancing Collaboration, Confidentiality, and Privilege in Human Trafficking Cases*. We have three more Webinars that are scheduled for this series, and if you are interested, you can please register for these specific Webinars through the flyer that was provided to everyone. Next slide, please.

## Polling Question – Who is Participating Today?

### Polling Question – Who's Participating Today?

- Please check the box that best represents your role:
  - Dual Domestic Violence/Sexual Assault Coalition
  - Domestic Violence Victim Service Provider/Coalition
  - Sexual Assault Victim Service Provider/Statewide Coalition
  - Human Trafficking Victim Service Provider
  - Runaway and Homeless Youth Service Provider
  - Legal Service Provider
  - Civil Law Enforcement (Dept. of Labor, EEOC, etc.)
  - Criminal Justice (Law Enforcement, Prosecutor, Judiciary/Court Staff)
  - Medical/Mental Health Practitioner
  - Training/Technical Assistance Provider
  - Other

Neelam Patel: So, this is a polling question, and we would like to start off by checking our technology and learning who we have got on the phone. So, please click on the option that best represents your role.

Neelam Patel: All right. What is our result? We got the results? Okay. Let us do it again. I do not think it is...

Cindy C. Liou: [inaudible]

Neelam Patel: Cindy?

Cindy C. Liou: Yes. We are trying to figure out how to display the results. Jenna?

Jenna: Hi, Cindy. I am just waiting for some more people to respond. So, I wonder if you could just click whatever response best matches your role, and then I will share them momentarily.

Jenna: So, we got some feedback. It looks like we have some 6 percent for domestic violence victim service providers, 5 percent are dual domestic violence. We have 12 percent listed as other. We have a fair amount of criminal justice on, and some legal services providers.

Neelam Patel: Great. Thank you, everyone. Next slide, please.

## Balancing Collaboration, Confidentiality, and Privilege in Human Trafficking Cases

# Balancing Collaboration, Confidentiality, and Privilege in Human Trafficking Cases

June 18, 2015

11:30a.m. PST/2:30 p.m. EST

Speakers:

Cindy C. Liou, Esq.

Orchid Pusey, Asian Women's Shelter

Neelam Patel: And so, I am now going to pass over the Webinar to Cindy and Orchid, who will introduce themselves and continue on with the Webinar. Thank you.

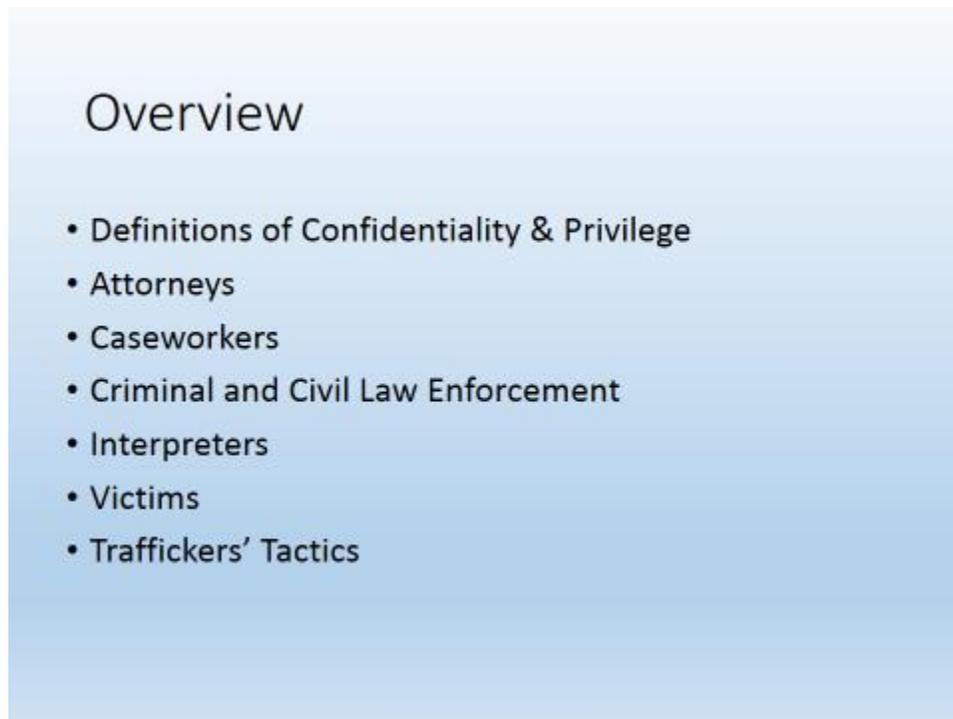
Cindy C. Liou: Good morning, everyone. Well, morning here on the West Coast for us. Thank you for joining us for today's Webinar. And, our topic today is on balancing collaboration, confidentiality, and privilege in human trafficking cases. And, in this particular training, it is meant to be more advanced to talk about how to address these issues of confidentiality and privilege in these particular kinds of cases, which tend to be complex, multidisciplinary, and collaborative efforts. Obviously, most people who are on this Webinar, if not all, are professionals who have familiarity with confidentiality and privilege, but the real question is how to work most effectively with trafficking survivors who have suffered trauma, and how to work together in varying different kinds of scenarios and to address these issues to protect the safety of not only the survivor, but to effectively work together and build proper protocols.

Cindy C. Liou: Why are we talking about confidentiality and privilege? We know that, for most of us, the primary issue is about the safety of the client, but a lot of this is also about what it means to have a successful case, and also how to have sustainable, longstanding partnerships and relationships in the many task forces and multidisciplinary teams that work together on anti-trafficking cases.

Cindy C. Liou: In this particular Webinar, because we will be talking a lot about the law, we will be using the term "victims," although we want to recognize most commonly that, for many of us, we tend to use the term "survivor," but I just want to kind of flag that for consistency for this particular training.

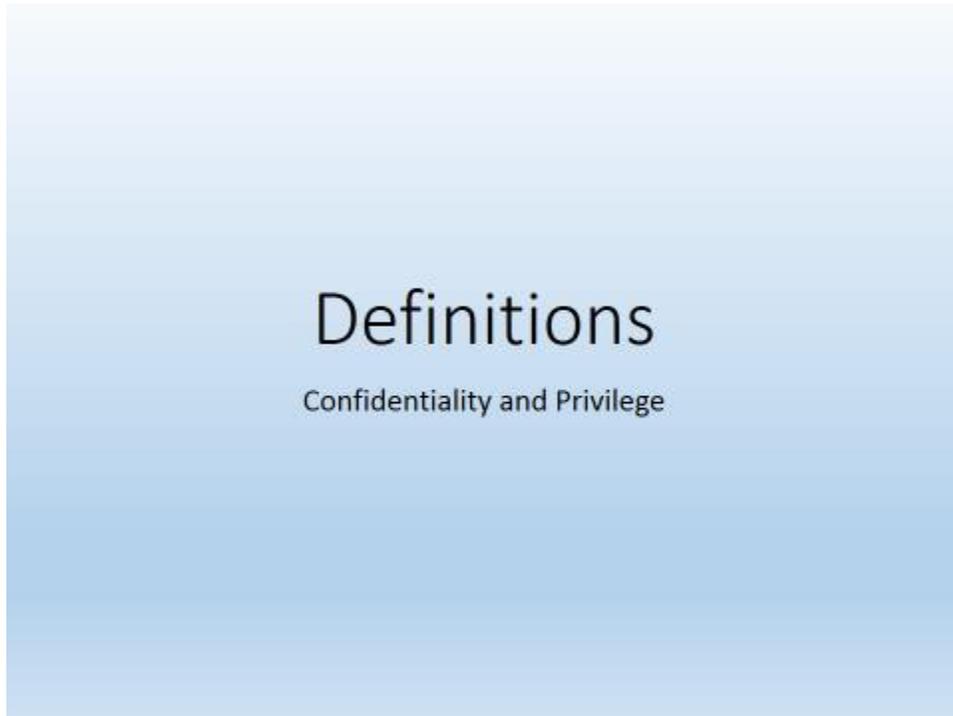
Cindy C. Liou: What makes anti-trafficking work regarding confidentiality and privilege issues different from other kinds of victims' rights work, and what we are more so familiar with usually in the domestic violence and sexual assault settings? Well, again, there are more actors and stakeholders that are involved. There are a mixture of federal and state laws that tend to become involved, different criminal and civil legal proceedings, immigration, tax benefits, housing.

## **Overview**



Cindy C. Liou: So, with that in mind, here is an overview and outline for the training today. First, we will go over basic definitions of confidentiality and privilege so that we are on the same page. We will talk about the limits and the kind of work that attorneys, case workers, criminal and civil law enforcement, interpreters, and the role of victims themselves in confidentiality and privilege in these cases work. And how to address some of the more common traffickers' tactics, and how to protect the survivor and the case and collaboration in the light of these scenarios.

## Definitions – Confidentiality and Privilege



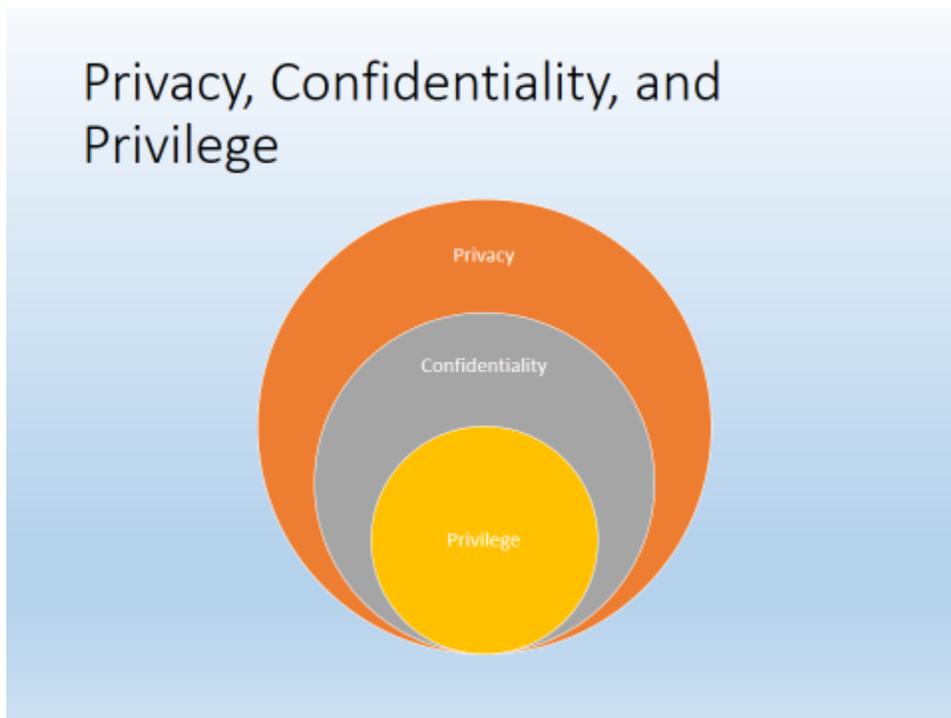
Cindy C. Liou: Okay. First, we will talk about definitions, so we are on the same page.

## Different Relationships



Cindy C. Liou: So, in a single trafficking case, it can be quite complicated just simply from the many different relationships that exist. So, here are just – this is just a small example of some of the few that we could think of in a really basic case. So, there is the attorney and the client’s relationship. The attorneys and the case managers. The attorneys and the clients. Doctors and the survivors. Law enforcement with the attorneys, and so on and so forth. And so, how do we maintain collaboration and communication, while at the same time protecting the survivor’s safety and information by maintaining confidential and privileged information?

### **Privacy, Confidentiality, and Privilege**



Cindy C. Liou: Privacy, confidentiality, and privilege – this is just a very basic kind of diagram – kind of are subsets of one another. And, on the most broad bubble when we talk about privacy rights, that is the bigger circle there, confidentiality is within that, and privacy – privilege is the most restrictive form of this set of rules when we are talking about protecting the survivors.

## Confidentiality and Privilege

### Confidentiality and Privilege

<b>Confidentiality</b>	<b>Privilege</b>
<ul style="list-style-type: none"><li>• A communication:<ul style="list-style-type: none"><li>• Made with the expectation of privacy</li><li>• Inaccessible to the general public</li></ul></li><li>• Ethical duty</li></ul>	<ul style="list-style-type: none"><li>• A specific communication:<ul style="list-style-type: none"><li>• Created by statute</li><li>• Disclosure is prohibited</li></ul></li><li>• Evidentiary rule</li></ul>

Cindy C. Liou: So, a little bit of just a basic difference between confidentiality and privilege. In confidentiality, we are talking about usually communications that are made with the expectation of privacy that will be inaccessible to the general public. It is an ethical duty, most of the time, across many, many different professions. And, privilege is a specific communication that is usually statutorily created in the law where disclosure is actually prohibited. So, the person is actually the professional who is usually working these cases, under the law is usually not allowed to, under the law, release the information, with certain exceptions. And, it is usually an evidentiary rule. So, it is a bit different.

Cindy C. Liou: And, confidentiality and privilege rules also differ in different professions. So, for example, for attorneys, there are certain things like ABA (American Bar Association) model rules, there is California evidentiary rules, federal rules. So, one of the most important things to think about is, at least at the very beginning in your own professional – in your own profession – what are the rules, and where do I find them for both confidentiality and privilege? And not only in your professional guidelines, but on the state level, local level, and federal level.

## What is Confidential?

### What is Confidential?

- Who is seeking or receiving services
- Private and identifying information about client (name, address, telephone number, birthdate, health issues, etc.)
- Disclosing location or contact information of victim
- Confidential shelter location

Orchid Pusey: This is – we are switching mics. This is Orchid Pusey, and we are going to start off looking at, sort of broadly, what actually is confidential. So, the Family Violence Prevention and Services Act, that is FVPSA, and the Violence Against Women Act, VAWA, require that any shelter, rape crisis center, domestic violence program, or any kind of similar service, in order to maintain a federal funding, be barred from disclosing to anyone any information about a victim receiving services. So, this first point about who is seeking or receiving services is absolutely barred from being shared. It is confidential.

Orchid Pusey: Of course, included in that is private and identifying information about the client. So, you know, examples are up here. They are not completely inclusive of everything that would be private, but private and identifying information such as name, the address of where a client used to live or is living now, telephone number, what it used to be, what it is now, birth date, health issues, etcetera, are to be kept private.

Orchid Pusey: Also, this last point about confidential shelter location really comes up in a lot of trafficking cases. So, both Acts, FVPSA and VAWA, prohibit grant recipients from disclosing the address or the location of any shelter that does actually maintain a confidential location for itself, unless the person that is responsible for operating the shelter gives written authorization for the disclosure of that address or location. So, failure to follow these Acts' universal grant conditions regarding victim confidentiality and privacy can result in a loss of funding.

Orchid Pusey: Now, there are different laws across our states with regard to the disclosure of DV (domestic violence) shelter locations. So, in many states, such as California, it is actually a crime to reveal the location of a shelter. In California, it is a misdemeanor. So it is a misdemeanor to reveal the location of a DV shelter to someone who is not a resident of the shelter, or somehow

personnel connected to that organization. And it is also a crime to coerce someone into revealing that information.

Orchid Pusey: So, you know, as we are building our collaborations, it is a really, really great idea to get clear in each organization and across the collaborative what your state laws are. And to also remember that sometimes in the absence of law, if your state does not have a law similar to the one in California that I just touched on, your collaborative might still work together to hold the line in keeping shelter location confidential and knowledge of shelter location to an absolute, absolute bare minimum.

## **Maintaining Confidentiality and Privilege**

### Maintaining Confidentiality and Privilege

- Law Enforcement Officer: Please tell me your current address.
- Client: I'm staying at a shelter.
- Law Enforcement Officer: What is the address of the shelter?

How do you respond?

Orchid Pusey: We are going to actually use one common scenario to problem solve this issue further, and this is going to be the first scenario of many of this kind through the Webinar. So, we are going to read this together. Cindy is going to be a law enforcement officer in this very brief role play. I am going to be the client. And then, once we are finished reading it, we will discuss it together.

Cindy C. Liou: And we just want, before we go into these hypotheticals, we just want to specify that this is not, you know, the perfect answer that we are asking people to textbook respond. But something that Orchid and I, in the many years that we have worked on cases together in our agencies, kind of had a conversation about the way that we would respond to things, of course on a case-by-case basis.

Cindy C. Liou: So here I go. I am the law enforcement officer. "Please tell me your current address."

Orchid Pusey: "I am staying at a shelter."

Cindy C. Liou: “What is the address of the shelter?”

Orchid Pusey: So now we have a question on this slide. How do you respond? And we want to make a clarification that we are not saying how do you, as the client, respond. But if you were there with the client, maybe you are there as the client’s attorney, maybe you are there as the client’s advocate of some kind. How would you respond? So we are just going to wait a few seconds so that if there are some of you who want to type in a response, we can have a chance to read that and then respond.

Orchid Pusey: We have some great responses coming up already. We have some skilled responders in our listening group. That is great.

Cindy C. Liou: And I want to also point out that this training is not going to be very specific on VAWA confidentiality rules in particular. There are some great Webinars that OVW (Office on Violence Against Women) in the past has put out on this in terms of responding if the officer is the Department of Homeland Security officer. There is a little bit additional rules, but we would like you to check into that.

Orchid Pusey: So there are some great responses that you all have put out about asking questions back about, you know, “Why do you need to know the exact location?” About letting people know that, “Well, I cannot give that out because it is confidential. You can talk to blank-blank, the appropriate person about that.” Being unable to disclose about not having the authorization to disclose. Those are great responses.

Orchid Pusey: And the reason why we put this up here as a scenario to talk about is because, in my experience, in the early 2000s, in the shelter program that I work at, which is the Asian Women’s Shelter, we discovered that we needed more discussion and training on this. Because while people felt equipped and trained to respond about shelter confidentiality in most situations, a lot of people did not have the practical and emotional experience of responding when a federal law enforcement officer is standing in front of you saying, “These are special circumstances, I must know where the victim is at all times, and I need to know the address of where they are going to be living.” So it is really good to, you know, have mutually respectful collaboration with law enforcement on all topics, and that includes shelter location confidentiality. And we found that it is really important to do this before we are working together on a specific case, before we are sort of in the crunch of – of time and stress and concern when we are dealing with a real victim.

Orchid Pusey: So we know that in some locations, local law enforcement do know where shelters are. In others, they do not. For many programs, you know, awareness of officer involved domestic violence is the basis from which shelters might actually really hold the line around confidentiality from law enforcement. And what we found is that in trafficking cases, federal law enforcement might say that, for example, you know, “We can only release the victim from custody if we know where the victim is and we can get in contact with that victim at any time of any day.”

Orchid Pusey: There are other scenarios where conditions of continued presence for that victim require that the location of where the recipient of the continued presence is. And what we want to share is that there are a lot of ways to address these issues without compromising shelter confidentiality, whether you have laws in your state to protect it or not.

Orchid Pusey: One is you can use a system through which law enforcement contacts victims through the victim advocate or attorney only, and that is about ad hoc need for communication. In our program we have – we had and have a 24/7 on call system through which appropriate law enforcement or attorneys could reach an advocate from the organization at any time of any day. But the advocates, we share the duty of carrying that on call system so that we do not design something in our collaborative that pretty much systematically burns out one of our workers. So having that system did not mean that law enforcement – does not mean to this day that law enforcement has to talk through the advocate to reach the victim. Obviously, there are confidentiality and privilege issues there. But it does mean that they can reach the client competently without knowing the address of the exact – the exact address of the shelter.

Orchid Pusey: Another thing is that partner agencies, if you do not already have them, partner agencies can create waivers for confidentiality, for if or when they become necessary in a case. And we share these not because we are saying everybody should do things exactly this way, but just to make the point that these are really critical things to discuss sooner rather than later, and to know that we can build off of the confidence that we have for DV cases, while also incorporating some of the scenarios of confidentiality, where confidentiality of shelter location is asked to be broken in different ways in human trafficking cases, we can prepare for those differences.

Cindy C. Liou: And I would just like to say that it is important – this is Cindy again – to maintain consistency in this conversation. So easily the survivor could have been the legal services attorney, me, saying, “Oh, I just need to know your address.” And I think the answer usually in a team should be consistent and would be the same. Oftentimes when I was asked this question from other people, “Where is the shelter,” then I could confidently also say, “I am also abiding by these rules, and even though I am the attorney, I also do not know the location of the shelter,” and I work with the advocate and with the client directly without knowing the shelter location. So, some great responses here, and we are just going to move on.

## Different Privileges

### Different Privileges

- Attorney-client (strongest)
  - Attorney work product
  - Priest-penitent
  - Psychotherapist-patient
  - Doctor-patient
  - Spousal
  - Advocate/caseworker-client (in certain states)
- Always check to see if state privilege and/or federal privilege applies, and apply the stronger privilege

Cindy C. Liou: There are several different privileges. We are not going to be able to go through every single one of them. These are some of the most common ones. And attorney-client tends to be the strongest, most absolute privilege. It is the legal way that we talk about it. And we will also talk a bit about advocate and caseworker client privileges that exist in certain states. Always check to see if state privilege and/or federal privilege rules apply, and always apply the stronger privilege if at all possible. In all trafficking cases, because they are happening and they can subsequently legal action be taken at any moment in time, flipping back and forth between the state and the federal level, it is important to kind of have a plan on both ends of the situation.

## Questions and Answers

# Questions and Answers

Cindy C. Liou: Okay, just a brief Q and A here. We have been seeing some of these questions in the chat box, before we move on to the next section. I saw something earlier that said: “Is it inevitable that there is going to be discovery of the shelter because there is a network of pimps or other kinds of traffickers that know the locations that can lead people there?” And, Orchid, do you want to take on that question that I saw earlier?

Orchid Pusey: Let us see.

Cindy C. Liou: The other Act is FVPSA and VAWA confidentiality, the Family Violence Prevention and Services Act, FVPSA.

Orchid Pusey: Okay, so, sorry, can you restate that earlier question? It is not in the chat box anymore.

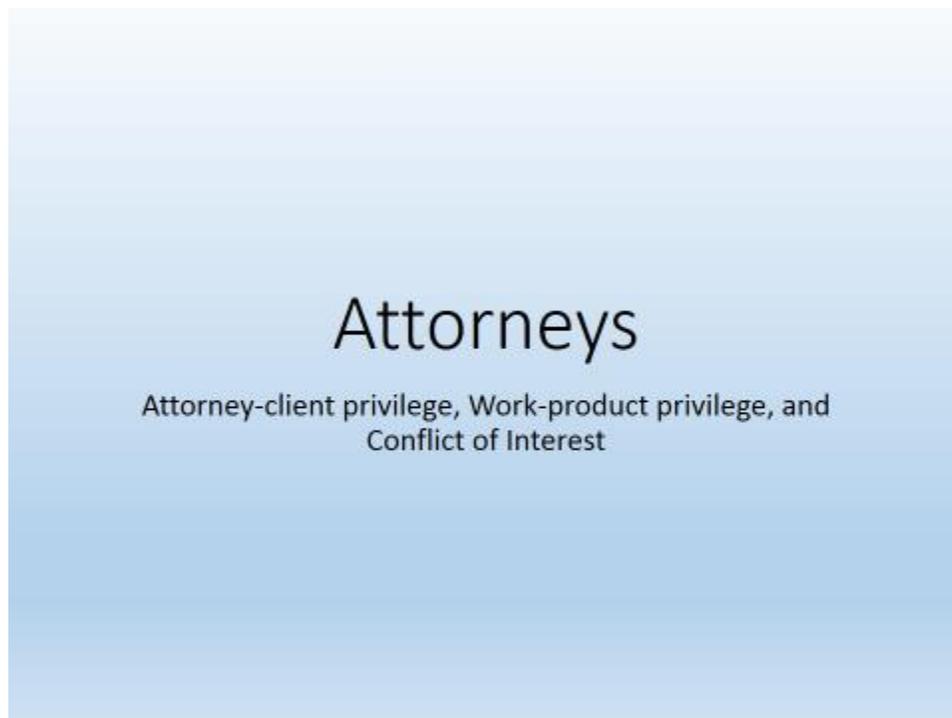
Cindy C. Liou: There is often a network of pimps and traffickers who are in communication with one another, and if a victim discloses the location of a shelter, that might often mean that others will know where the shelter is. How realistic is it to think that shelter locations for trafficking victims can remain confidential?

Orchid Pusey: Sure. You know, I think that – I think – so I have worked in the shelter context for 15 years and I think that confidentiality, like all of our work, we do not have absolute guarantees away from risk. This work has inherent risk in it, and what we are always trying to do is just minimize it, shrink it, shrink it, reduce it, reduce it.

And I think that one of the most important things around shelter confidentiality is the allocation of time to help everybody understand exactly what is at stake. And that includes very, very concrete work with victims of all ages around, not just, “This is a rule, you have to abide by it or you will lose your housing.” But I feel like I assume everyone on the call, you know, who deals with confidentiality of shelter location is doing this all the time. I do not bring this up because I think we are not. But I think that the time that it takes to help someone understand the implications, not just on themselves, but now you are in this place where everyone is moving through a time when they absolutely need to be in a safe location. And it is also not even about this current household, it is about in the years to come, people who are going to need this place. And, for that reason, we go through role plays, we go through all sorts of time-consuming and program-saving and life-saving tactics to ensure that victims think through every way in which they could and can choose not to reveal shelter confidentiality – sorry, shelter location.

Cindy C. Liou: And there is a question here. If there is a shelter that is not a confidential location, then I think – and that is another question between the team about how to do safety planning, particularly in light of those circumstances. So this is an evolving conversation.

## **Attorneys**



Cindy C. Liou: So we are going to move on to the next section regarding attorneys. And I saw some questions earlier about breaking privilege, so that is a great segue into this section.

## Attorney-Client Privilege

### Attorney-Client Privilege

- Right of clients to refuse to disclose confidential communications with their lawyers, or to allow their lawyers to disclose them
  - Client's privilege, not the lawyer's
  - Extends to agents of lawyer (e.g., interpreters, paralegals or secretaries).
  - Disclosure, even in court, is prohibited without permission
- Multiple attorneys for single victim
  - Common-interest agreement

Cindy C. Liou: As I mentioned earlier, many of you have often heard about attorney-client privilege. You hear it in movies. You hear people assert it, saying, “I do not have to talk to you, I want to talk to an attorney, I have attorney-client privilege.”

Cindy C. Liou: So what does that really mean? What it is, as I mentioned earlier, it is a statutory obligation, it is an evidentiary rule. But it is actually also the right of the client to refuse the attorney to disclose confidential communications or allow – and for them to also have to disclose their confidential conversations with the attorneys. So really it is the client’s privilege, not the lawyer’s. And it is theirs to also waive and tell the attorney when they can and cannot disclose that information.

Cindy C. Liou: It also extends to agents of the lawyers, so interpreters, which we will get into more, but also paralegals and legal secretaries of the law office. So those conversations are also covered by attorney-client privilege.

Cindy C. Liou: What it really is is that it is part of a Constitutionally-based right to effective assistance of legal counsel. It is really to allow people to seek and receive full legal counsel without repercussions, thinking that I am asking and talking to my lawyer and they may turn around and give up that information to somebody else or hold it against me. That would really discourage people from being able to be truthful and to be able to get the information and assistance that they need from their attorney.

Cindy C. Liou: It also is really – applies to when advice is predominantly legal. And it also prevents – it is very powerful because it can prevent even an attorney from disclosing information in a court before a judge in many circumstances.

Cindy C. Liou: One thing in trafficking cases that we have to be careful about is, as opposed to other more common scenarios in domestic violence situations or sexual assault, not always, but in trafficking cases, we more often see a situation where there can be multiple attorneys for a single victim, or actually multiple attorneys for multiple victims, in which it can be quite complicated to figure out where the attorney-client privilege begins and where it ends and for what particular client. So this is something to also work out beforehand and to coordinate, because a single trafficking survivor may need an immigration attorney, a civil litigation attorney, a family law attorney. How do you get all the attorneys to get together to coordinate and corroborate their information and extend their attorney-client privilege together as a right of the particular client?

Cindy C. Liou: So, it is best for the attorneys to sign for a – to sign a common-interest agreement to share information about the same client together, and that is something that we have talked about, if you are in a collaboration with different kinds of attorneys, to set up in advance.

### **Maintaining Confidentiality and Privilege**

## Maintaining Confidentiality and Privilege

- **Caller:** Hi, I'm Jane Doe's family law attorney. I hear you're her immigration attorney and I'd like to talk to you about her case.

**How do you respond?**

Cindy C. Liou: So, right now we are on the maintaining confidentiality and privilege slide, and we are going to go through another fake hypo.

Cindy C. Liou: So we get a caller who says, "Hi. I am Jane Doe's family law attorney. I hear that you are her immigration attorney and I would like to talk to you about her case." And how do you respond? And, again, this is a hypothetical. It could be anything. "Hi. I am Jane Doe's dependency attorney. I hear you are doing a restraining order for her and I would like to talk to you about her case." So I am just going to wait also just a few seconds to see in the chat box if we have some responses. If you are the attorney, how would you respond to this?

Cindy C. Liou: So, that is a really great response there. I see Jeremy wrote something. "I would have to get your information and verify with my client, and if you could send me over a waiver

release, that would be great.” I think the most important thing is to maintain a friendly tone without giving much information away, because at the end of the day, maybe this person really is the family law attorney and they are just trying to coordinate efforts. So I think you just say, “Yeah, I am so sorry, I do not have a release yet. If you could send that over, that would be great.” One thing you can also do is, after that phone call, pick up the phone and talk to the client and just verify the information. It is important to verify though, not only for our obligations as attorneys, but it is also, this is oftentimes a trafficker’s tactic. So, again, it is important to kind of have these set up in advance. So, okay, great.

## Maintaining Confidentiality and Privilege

- Client: Can my aunt sit in this conversation with me?
- Client’s Aunt: Yes, her English is not great so I want to make sure Jane understands you and does the right thing.

How do you respond?

Cindy C. Liou: So, let us do another quick hypo. Client: “Can my aunt sit in on this conversation with me?” And the client’s aunt says: “Yes. Her English is not so great so I want to make sure Jane understands you and does the right thing.” And how do you respond? And, oftentimes, you know, the client’s aunt could be the quote/unquote “good Samaritan,” is the term we use sometimes, a person who is really helping the client out of a situation. She is a concerned family member. But the truth is we oftentimes do not know who this person is.

Cindy C. Liou: And I am liking some of the responses I see here that we really want an interpreter. But what if Jane is really scared and she really wants her aunt there? I think most of us have been in this kind of scenario. And how do we have a conversation with the client to explain what privileges and what breaking attorney-client privilege is? And how do we do it in a way that is gentle that we can extricate Jane’s aunt from the scenario to keep her still friendly in this scenario?

Cindy C. Liou: So, usually – and it is true, the aunt could be the trafficker. I am seeing a lot of responses here. So it is great to just say, “Hey,” you know, keep it casual. “Jane, I totally understand your concern about that, but there is something called privilege, it is something where our conversation, we need to keep it – we have to protect our conversation. And it is not a big

deal. Let us just have a quick conversation about what is going on here, and I will get you an interpreter. Do not worry about your language, we can just take it slow.”

So there is always many different ways to handle this scenario, but I can see in the responses here that most people here are pretty on top of this scenario.

Cindy C. Liou: Let me... Okay, come it is not moving to the next slide? There we go.

## **Waiver of Attorney-Client Privilege**

### Waiver of Attorney-Client Privilege

- **Waiver when:**
  - Communications made in non-private settings
  - Content of a confidential communication is disclosed to a third person
  - Accidentally forwarding documents and sending drafts to third party
- **Who are you emailing, and do you need to send that in writing?**

Cindy C. Liou: So, okay, everyone is also catching on to the fact that if she is there is a third party, what is happening is a waiver of the attorney-client privilege. So a waiver is a communication that is made in a non-private setting when the content of the confidential communication is disclosed to somebody else that is not the attorney and not the client, and not an agent of the attorney.

Cindy C. Liou: One thing that is really common is accidentally forwarding documents, sending draft documents with work-product impressions and attorney-client privilege communications to somebody else. So I have put in big writing here, in this day and age where we are constantly on the go, we are super connected with the Internet and digital communications, always remember who are you e-mailing, and do you need to send that in writing? And also, who are the people that you are working with, and can you have this conversation with your client about who they are cc'ing on certain e-mails, and the conversations? What makes the conversation confidential? I mean, when you are taking a phone call on the bus and you are the attorney, is that conversation confidential? The answer is no. So just constantly be aware of this.

Cindy C. Liou: And I think for many other people who are on the team working together on the anti-trafficking case, understanding that from an attorney's perspective, their presence also constitutes a third-party presence. And even though we are all working together to support the

client, that that does break the attorney-client privilege. But again, having this conversation is very important.

Orchid Pusey: And I see the question: “What if the third party is a DV advocate for the client?” And we are going to get to caseworker privilege in just a little bit, so we will touch on that.

## **Maintaining Confidentiality and Privilege**

### Maintaining Confidentiality and Privilege

- Client: Can my caseworker sit with me while we write this declaration?

How do you respond?

Cindy C. Liou: And, right here, here is another scenario. This is exactly the scenario we were talking about. “Can my caseworker sit with me while we write this declaration?” And this declaration could be for any kind of legal document.

Cindy C. Liou: And the way that I usually respond, you know, for example, if Orchid was there with the client, I would say, “Oh, I totally understand, you know, why you would want her here. I get it. But, you know, we have to work on these legal documents together.” And we go through the process of kind of explaining again what it means to have privilege – to maintain the attorney-client privilege, but also how to prevent future subpoenas of the caseworker. And, of course, these are big legal terms that we try to break down into layperson terms. You know, if potentially, if Orchid has to sit in on this conversation, that the judge under the law, or someone else, the trafficker, could ask Orchid our conversation and what happened here. But if the conversation is just between you and me and the interpreter, we can tell the judge that we do not have to tell the judge what is happening because those are conversations between you and me.

Cindy C. Liou: A huge issue though is to work this out with the caseworkers and the advocates beforehand in terms of how to respond in a coordinated way where the client feels comfortable. Maybe it is to have the caseworker sit in the first 5 minutes while we are just going through basic, you know, biographical information in terms of like your date of birth or just the retainer, but not

for the actual interview. Or having them wait outside in the waiting area so that they are there if they need to go out and talk to their caseworker and take a break.

Cindy C. Liou: So this is a conversation then to coordinate, and it is a little bit different because oftentimes on the local level it is true that a lot of domestic violence advocates are used and do sit in on these conversations. But for the trafficking cases, as we will go further in, because of the trafficker's tactics and the subpoenas, it is recommended, if possible, to maintain attorney-client privilege in these conversations that really go into great legal detail and to prepare legal documents like a declaration.

## Work-Product Privilege

### Work-Product Privilege

- **Definition:** Provides protection from disclosure through the legal process of pre-trial "discovery" of certain documents and other tangible things prepared by a lawyer in preparation for or anticipation of going to trial
  - **Examples:** memoranda reflecting mental impressions, conclusions, opinions or legal theories developed by lawyers as they prepare for trial

Cindy C. Liou: Work-product privilege is similar to attorney-client privilege but not quite the same. What it is is that it provides protection from disclosure of basically things that could be what we call discoverable, brought into court. And they are usually tangible things prepared by the attorney in preparation for and in anticipation of going to trial or having some kind of big legal process. So a common thing is a draft of a declaration, a draft complaint, memorandum reflecting mental impressions, so a document saying, "I think so and so today seemed like – I am not sure that she is that comfortable yet telling me the entire truth. I suspect that there were more incidences of forced labor than she is telling me." Anything of the sort that reflects a mental impression as part of the legal case.

Cindy C. Liou: Okay, and this is something that we should also maintain to protect our documents and our work, to prevent them from falling into the hands of the defense, so that they know that we are trying to figure out our strategy and kind of the narrative on our end.

Orchid Pusey: I want to add one thing that later when we talk about caseworker privilege, we are going to be talking about some of the differences between this absolute privilege and limited –

absolute privilege of attorneys and limited privilege of caseworkers. And this is a strong example of that where, for caseworkers, our documentation of things like mental impressions, [unclear] opinions, those are not protected.

## Maintaining Confidentiality and Privilege

### Maintaining Confidentiality and Privilege

- Prosecutor: Can I have a draft of the victim's T visa declaration and the final restraining order you filed?

How do you respond?

Cindy C. Liou: Thank you, Orchid. That is really important. So in this particular hypo, a prosecutor or, you know, maybe even a doctor, anyone could say, "Can I have a draft of the victim's T visa declaration and the final restraining order you filed?" So how would we respond to this hypothetical? I am just going to pause for 2 seconds. I see all these lawyers in the chat room, I know you have answers to this that you would respond.

Cindy C. Liou: So the first comment is, "Not without the client's consent," which is great because it is remembering that a lot – the privilege is really held by the client. It is not for us as the attorneys to make the decisions to give up.

Cindy C. Liou: And that is great. "The draft is protected but the restraining order is public record." So I think that is a great thing to discuss with the prosecutor and to say, "I understand the information you are trying to seek, I hope to get my client's permission. The final restraining order is public record, so here is a copy, you do need that. But the draft of the victim's T visa declaration is also work-product privileged and it is protected, and it is my recommendation that before it is filed that I do not – that I should not share the draft." And as we will talk later, because law enforcement, criminal law enforcement does have a duty to hand over certain information to the defense and the traffickers, should it help their particular case. But you can also say, you know, "Let me talk to my client and see what some of your concerns are. So if there are particular facts that you are worried about or the way that we present information in the T visa declaration that we are filing, maybe we can have a verbal confirmation and phone call about some of these things." So even though I am not sharing the draft, we are having a conversation

about the right dates and times and information so that we are harmonizing our information and collaborating, but not in a way in written format.

## Conflict of Interest

### Conflict of Interest

- **Multi-Victim Cases**
  - Lawyers may represent multiple victims in one case
  - If there is a conflict, the lawyer may have to withdraw from all representation
- **Imputed Disqualification**
  - A single lawyer's disqualification extends to the entire law firm/department
  - Ethical wall can be constructed but may be difficult
- Strategize on how to handle multi-victim trafficking cases
- Be wary of intentional attempts to conflict out victims' attorneys

Cindy C. Liou: So, conflict of interest. This is a really big deal. So, for attorneys, oftentimes we hear it and we do not understand exactly what it is. And a lot of friction within collaborations and partnerships can occur, for example, when social service providers request that an attorney – or prosecutors or law enforcement have requested that an attorney or a legal agency takes on a case. And the attorney or the organization may decline, and oftentimes the referring agency can get upset but not know that maybe the attorney has a conflict of interest.

Cindy C. Liou: What it means is that an attorney cannot represent an individual because, in that particular matter, because they may have already spoken to or received confidential information from someone, therefore formed that attorney-client privilege with them for legal rights on the same issue, and to do so would violate legal rules. So again, we want to encourage people to feel like their attorneys will never use the information they are giving to them, that confidential information, against them.

Cindy C. Liou: So this can present a problem in multi-victim cases because sometimes there can be a conflict of interest within that case between the different victims or between other members in the community in which the attorneys have represented in the past that may or may not be related to the traffickers. So this is complicated because oftentimes if there is a conflict and there was, say, one lawyer is representing multiple victims and there is a conflict between some of the victims and it is very severe, a lawyer may have to withdraw from representing all of the victims in a single case. In a world where our resources are limited, this can be a very complicated and

hard situation to deal with. So it is important to think about these things in multi-victim cases in terms of assessing conflicts of interest between the victims and seeing, if so, that there can be different attorneys from different agencies representing different individuals.

And so that the victims themselves feel like they are having their full legal advice from one attorney without being conflicted out and having kind of needing to represent, you know, Victim A and Victim B simultaneously, when Victim A might have also been victimized to a certain degree by Victim B.

Cindy C. Liou: So it does get kind of complicated and these things do need to be decided in advance, and that is why we recommend always building off the pro bono network and private attorneys and partners that you trust to be able to refer these cases to – and multi-victim cases, should the situation arise.

Cindy C. Liou: In particular, there is something called imputed disqualification as well. So, for example, if Orchid and I are in the same law firm and Orchid has a conflict of interest with a particular individual, then I, because I am in the same legal office, am also disqualified from representing Orchid's client as well, and the entire office is conflicted out. Ethical walls can be constructed to fend off the situation, but it can be difficult in nonprofit settings with resources that are available. So be wary of intentional attempts to conflict out victims' attorneys.

Cindy C. Liou: At some point in time it became known to the community, for example, that the office I used to work with represented trafficking survivors. And sometimes we would get, right after some kind of a sting operation, calls from certain people and it became very obvious that they were traffickers trying to call our office to give us some kind of information to intentionally conflict us out. And we have actually seen this in domestic violence cases, too, where they call and they immediately blurt out, "I hit my wife," and it is in order so that we cannot represent the victims in the case.

Cindy C. Liou: So this is where collaboration and conversations with law enforcement in terms of information that they can provide in advance on the situation is helpful, such as traffickers' names or this or that after the information is public, so that you can also maintain your ability to stay out of this conflict of interest so that you can properly represent victims when the time arises.

## Maintaining Privilege and Confidentiality: Attorneys

### Maintaining Privilege and Confidentiality: Attorneys

- Label what is privileged and confidential
- Assert privileges
- Brief victim and caseworkers on how to communicate with law enforcement to minimize issues of perjury, witness tampering, and obstruction of justice
- Don't take transcript-like notes at law enforcement/client interviews

Cindy C. Liou: So, finally here, in terms of maintaining confidentiality and privilege, it is helpful to label what is privileged and what is confidential to assert these privileges. And brief everyone on how to minimize issues of perjury, witness tampering, and obstruction of justice. So, oftentimes it is helpful to have a conversation first with your attorney so that you are – oftentimes some people may feel very fearful of revealing the entire truth. They may have been told as part of the trafficking situation that what they are doing is illegal, that they will be arrested. And so having a conversation with an attorney to dissuade these fears and have their representation may avoid these scenarios where the victim may end up giving incorrect information to law enforcement that later has to be corrected, and is seen as perjury or destroys kind of the flow of the case. And I would strongly recommend not to take any transcript-like notes at law enforcement/client interviews, which we will go over.

## Maintaining Privilege and Confidentiality: Attorneys

- Understand differences in discovery in civil and criminal cases
- Strategize introduction or discovery of immigration status and victim's past history
- Respond to subpoenas using attorney-client, work-product, and VAWA confidentiality
- Protect victim's identity in public documents and in the media

Cindy C. Liou: Understand the differences in discovery in civil and criminal cases. In civil cases, it is very, very broad. In criminal cases, there is a different set of obligations, which we will move into the next situation area.

Cindy C. Liou: And strategize introduction or discovery of immigration status in the victim's past history – so it could be past sexual history, criminal history – into cases if you are opening up the case into family law court civil proceedings, or that you know that your client is going to be a victim witness in a criminal case. These are issues that will come up that have limited protections under different state and federal laws.

Cindy C. Liou: We will talk about responding to subpoenas in a bit.

Cindy C. Liou: And always remember to strategize as caseworkers and with the victims and law enforcement on how to protect the victim's identity in public documents where possible and in the media. So that means that in cases where it is possible to file your client's name as Jane Doe, or to only be recognized by the initials, like say in restitution orders and civil complaints, I would strongly recommend doing so.

## Questions and Answers

# Questions and Answers

Orchid Pusey: We are seeing, starting with: “What if the law enforcement...?” So for questions, we can just start with – there are a few questions that came up in the last couple of minutes and we can start with those. “What if the law enforcement agency demands to see the T visa declaration before issuing a Supplement B?”

Cindy C. Liou: Yeah, so this has happened a few times where there are definitely concerns about what is being issued in the T visa application. I would work with law enforcement again for them to understand why release of the draft of the T visa declaration or legal documents is actually harmful to the case. Because they will, as we will explain later, have an exculpatory obligation to hand over our drafts which are not final forms of the information that we have that we are comfortable releasing to the defense, which will then be used to impeach or be used against our client and the victim later on down the road. Also, for T visas, Supplement B declarations are definitely considered strong forms of secondary and primary evidence – sorry, primary evidence, but they are actually not a requirement to file the T visas the way that U visas are. But, that being said, it is something to work out with your law enforcement partners to kind of explain things and talk about the case from the whole, and let them know that you are seeing things also from their perspective.

Orchid Pusey: “How does a trafficker calling to give [inaudible/faint]...”

Cindy C. Liou: “How does a trafficker calling to give information cause a conflict? Can you elaborate, please?” Sometimes in certain law offices, there is intake processes and procedures where a lot of information is taken down and they are seeking information, and maybe you work at a large agency where you have not told people yet that you are working with one case, or just

everything is happening simultaneously, and someone calls and gives information and they reach you first, asking for legal advice, what to do. Maybe they are under criminal investigation. At that point, there are varying rules about when attorney consultation and advice become actual attorney-client privilege. But it is a possibility, and then that creates that potential conflict of interest down the road.

Orchid Pusey: “How do you balance protection of victims with access to possible [inaudible/faint]...”

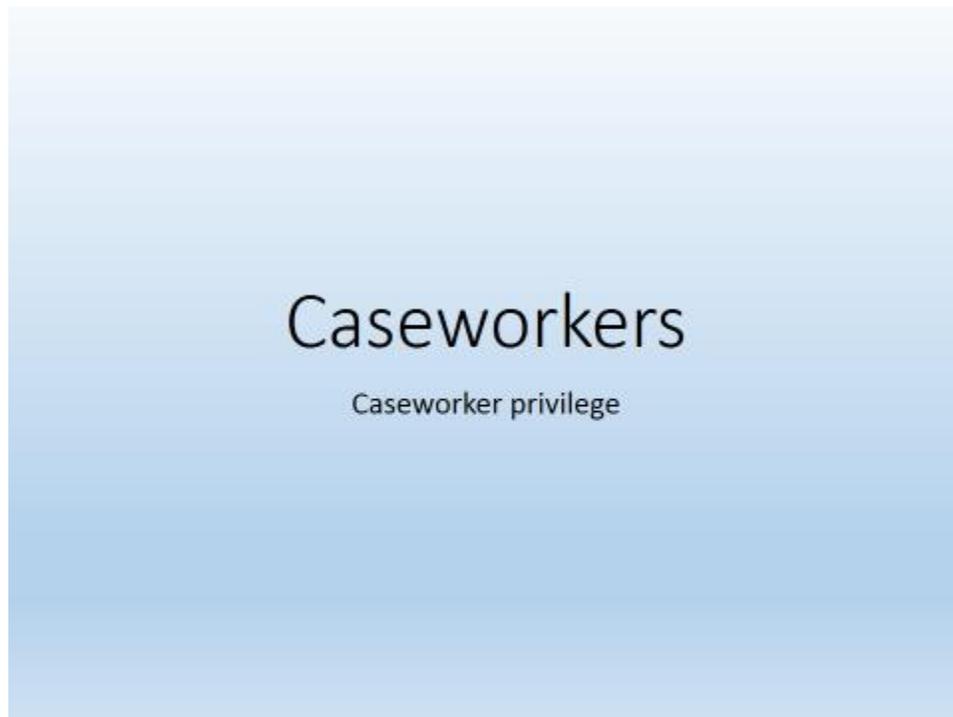
Cindy C. Liou: “How do you balance protection of victims with access to possible victims seeking aid?” I am not sure that I – I am trying to understand the question.

Orchid Pusey: Well, we will go to the next one. Sorry. I think we are just going to move on kind of with this section.

Cindy C. Liou: There are a lot of good questions, everyone. I really appreciate how complicated these issues are.

Orchid Pusey: And I appreciate everyone giving responses to each other based on your own expertise. That is perfect.

## **Caseworkers**



Orchid Pusey: So, next we are going to move into caseworker privilege. We are going to be using the term caseworker to refer to advocates, to social workers, etc., because it is usually the term that is used in privilege law.

## Caseworker Privilege

### Caseworker Privilege

- Usually statutory privilege protecting confidential communications between victims and advocates
- Human trafficking-caseworker privilege
  - Limited privilege
  - Typically tracks domestic violence/sexual assault caseworker privileges
  - May not exist in all states, but does not affect client confidentiality obligation
- Find your state's laws:
  - National Network to End Domestic Violence  
[http://nnedv.org/downloads/SafetyNet/OVW/CI\\_USStateConfidentialityLawChart\\_Jan2014.pdf](http://nnedv.org/downloads/SafetyNet/OVW/CI_USStateConfidentialityLawChart_Jan2014.pdf)

Orchid Pusey: So, caseworker privilege. Of course, these vary by state, but usually there is a statutory privilege of some kind that is going to protect confidential communications between victims and advocates. And that would be, for example, domestic violence advocates, or sexual assault or sexual violence advocates. So, when we are talking about human trafficking caseworker privilege, we are talking about a privilege that is also limited, in this sense limited as domestic violence counselor privilege is limited and sexual assault counselor privilege is limited, as compared to attorney privilege. So human trafficking caseworker privilege, it typically will track along with the DVSA (Domestic Violence Survivor Assessment) caseworker privileges, and it does not exist in all states. But the fact that it does not exist in all states does not affect client confidentiality obligation, our obligation as caseworkers to protect the confidentiality of our clients.

Orchid Pusey: So, I am going to give you an example again from California, but this is very similar to the code in Washington DC and Kentucky. So, in California, under California Evidence Code 1038, there is – there are two types of caseworker privilege. Type 1 privileges communication between a client and an employee or a volunteer with a qualified DV shelter-based program, and that person would have experience counseling victims of human trafficking or have received 40 or more hours of training, including on trafficking, and is supervised by a counselor who is – who has the experience counseling victims of human trafficking in a qualified DV shelter program.

Orchid Pusey: The Type 2 of privilege in California privileges communication between a client and an employee or volunteer working with a qualified human trafficking services organization with counseling in rape, assault – rape or sexual assault.

And that person, that employee or volunteer working with a qualified human trafficking services organization has a minimum training for human trafficking counseling that matches the guidelines, and is supervised by a counselor who meets the criteria that I just stated.

Orchid Pusey: Now, the following piece of the Evidence Code from California, that I am actually going to touch on again later when we talk about confidentiality and the point of view of victims, is that under – it is California Evidence Code, a different section. A victim of domestic violence or sexual assault and/or human trafficking, whether or not a party to the actions, that person, that victim has the privilege to refuse to disclose and to prevent their domestic violence or sexual assault or human trafficking caseworker from disclosing a confidential communication. But, we know that the court can compel disclosure of that information that is received by the sexual assault or domestic violence or human trafficking counselor if the probative value outweighs the effect on the victim of the domestic violence, sexual assault, human trafficking, child abuse. The treatment relationship and the actual treatment services.

Cindy C. Liou: And practically what this means most of the time is if this is a criminal case and someone's liberty is at risk because criminal prosecution is a very serious thing, oftentimes they will find that the probative value will outweigh this effect. And that means – that's why we call the caseworker privilege frequently a limited privilege because oftentimes they will rule that there is enough reason that is important enough in the case for the caseworkers still to have to break that privilege and be told to testify.

Orchid Pusey: So, we put a resource on here on this slide for finding your state's laws, and this is something that, you know, if you already know them, that is great. This is also a resource that you can share throughout your collaborative, because we found that in building collaborations of this kind it is really so much easier for everyone when we are making this information about all different kinds of confidentiality and privilege learning material for everyone regardless of their role. So this resource is through the National Network to End Domestic Violence. Of course, if you are here with us now you can just click on that. For people who are listening to this recording later, you can go to [www.nnedv.org](http://www.nnedv.org) and go to the download section and look for the U.S. State Confidentiality Law Chart.

## Limitations to Caseworker Confidentiality and Privilege

### Limitations to Caseworker Confidentiality and Privilege

- Limits to caseworker confidentiality and privilege with clients
  - Duty to Warn
  - Duty to Protect
  - Subpoena
  - Mandatory Reporting
    - Other reporters: Social workers, teachers, doctors, health-care workers, counselors, child care providers, law enforcement officers
    - Children: <https://www.childwelfare.gov/pubPDFs/manda.pdf>

Orchid Pusey: Limitations are, of course, important to look at when we are thinking about caseworker confidentiality and privilege. Am going to just quickly go through four limits.

Orchid Pusey: The first one, the duty to warn. So certain advocates have a legal obligation to warn a potential victim if they believe that their client presents an imminent threat to that potential victim, to that individual. That is the duty to warn.

Orchid Pusey: The duty to protect, another limitation is – the reality of that is that certain advocates have a legal obligation here to seek hospitalization for their client, to inform law enforcement of a potential threat, or to take other steps to protect the potential victim from harm. And, you know, the seeking of hospitalization for the client, that would be following a duty to protect the client from themselves.

Orchid Pusey: Third, subpoena. We are actually going to talk about subpoenas in more detail later so I am going to skip that one for now, but we wanted to make sure that we have that listed there as a limitation to caseworker confidentiality and privilege.

Orchid Pusey: And last, mandatory reporting. So, human trafficking might not be something that – that you or others in your collaborative are obligated to mandatorily report on. So we have put this up here because it is important to remember that people across your collaborative have different relationships to mandatory reporting. So, for example, attorneys are usually not mandatory reporters, whereas caseworkers, law enforcement agency workers often are mandatory reporters. And so figuring out how we are going to handle our collaborative communications in awareness of this difference can be very helpful.

## Maintaining Confidentiality and Privilege

### Maintaining Confidentiality and Privilege

To: Caseworker 1 <caseworker1@socialwork.org>  
From: Caseworker 2 <caseworker2@socialwork.org>  
Cc: Attorney 1 <attorney@law.org>  
Re: Help for my client

Dear Caseworker 1,

I have a new client that I want to bring to you. Her name is Jane Doe. I think she's a sex trafficking victim but I'm not sure because she keeps saying no one has forced her to do anything. I am going to help her get medical services because she is a drug user. Can you please help place her into your shelter? I am ccing her attorney Cindy Liou here. Thanks.

- Is this confidential? Privileged?

Orchid Pusey: Next, we are going to go to another scenario. This scenario is – is an e-mail example. So, in this example, we have got Caseworker 1 who is receiving an e-mail from Caseworker 2. And the cc, in the cc line is the attorney, and the subject line we have got is: “Help for my client.”

Orchid Pusey: So here is the e-mail text. “Dear Caseworker 1, I have a new client that I want to bring to you. Her name is Jane Doe. I think she is a sex trafficking victim but I am not sure because he keeps saying that no one has forced her to do anything. I am going to help her get medical services because she is a drug user. Can you please help place her into your shelter? I am ccing her attorney, Cindy Liou, here. Thanks.”

Orchid Pusey: And the question we have is, is this confidential? And is it privileged? I am going to wait a few seconds to see what you say.

Orchid Pusey: No and no. It should not have been sent in writing. It is not privileged. Clearly not confidential. Not privileged because it is not between the attorney and the client. No.

Orchid Pusey: All right, great. Thank you. So, in this e-mail situation, is the information privileged? No. Is the information confidential? In this situation, this is a bit of a tricky – there is a gray area to that component of the question about confidential. Should it be confidential between these people? Absolutely. Do we know how confidentiality was handled by Caseworker 2 in writing this e-mail to Caseworker 1? You know, we do not know.

If Caseworker 2 who is writing this e-mail giving names, giving thoughts and opinions about whether or not this person is a victim, giving details about what that victim, potential victim has said about her situation, anything, of course, that would have this sort of information in it needs to be accompanied by, as you all know, by a very clear statement that this is confidential information, I have consent via this such and such form of waiver from the client to share this information.

Cindy C. Liou: And the other problem with this e-mail is now there is information out here that also may be inaccurate. Or maybe right now she is not comfortable talking about what really happened to her, but now we have this e-mail forever saying, well, at some point in time even her own caseworker said that she, you know, it says that no one forced her to do anything. There is also an admission to criminal liability here as a drug user. So there is a lot of issues that are here, and simply copying an attorney does not make this attorney-client privileged.

Orchid Pusey: Right. So our most important learning point here is that ccing the attorney does not protect the communication. And we found this important because in the early 2000s, again, we did not have a human trafficking caseworker privilege in California yet. And this was actually almost commonly talked about as a strategy, like, "Oh, you know, none of our communications are privileged, so cc the attorney and that is a way that you can have open communication that supports the client, but have it be protected." And that actually is not the case. And even now when we do have the human trafficking caseworker privilege here, it is limited to the extent that not that much has changed with regard to our communication about cases.

Cindy C. Liou: And there are some comments here. "Does it change if you remove the name?" And I am assuming the name of the victim. I mean, down the road I think what we are really protecting is if there is, say, trial in this case, or the criminal civil were going to court, this information is going to be pulled up obviously in relation to this particular victim. Sure, maybe it is the caseworker's opinion, but I mean, really, they will use anything to kind of undermine the credibility of the victim in this particular case and to kind of attack their credibility. So some of this is also thinking ahead strategically.

Orchid Pusey: And, yes, drug rehab centers are different from shelters. So, the information that I was just sharing is particular to domestic violence shelters.

## Maintaining Privilege and Confidentiality: Caseworkers

### Maintaining Privilege and Confidentiality: Caseworkers

- Balance absolute attorney-client privilege with limited caseworker privilege
- Balance support with safety: need to know basis
- General and limited notes
- Consult attorney about what legal documents you should look at and have a copy of
- Separate roles between caseworkers and interpreters whenever possible
- Balancing dynamics of other shelter residents

Orchid Pusey: All right, so continuing on with more tips on caseworker privilege. As we have been saying, one, a balance or knowledge – balance the reality that attorney-client privilege is more comprehensive than limited caseworker privilege. And because of our recognition of that limited privilege for caseworkers, we also want to keep – remember to keep tabs on our well-intentioned curiosity, and to balance our want of information so we can provide support with our knowledge of how that information can be used against clients later, such that we operate from a need to know basis. And this is something that we learn for ourselves, but then within programs that are working with survivors of all different crimes, we need to figure out how we can communicate across advocates, volunteers, what the practices are around information collection and documentation. And I think in our work it can be easy to think that client disclosure of experiences, of these experiences that are tremendously painful and private, but disclosure reveals a success of some kind, that we have succeeded in communicating how nonjudgmental we are, that we have created that safe space where someone can open themselves to the opportunity to get support instead of what they fear – judgment and criticism and blame. But we want to balance that support with safety, and for these trafficking cases most of the time, not all the time, but most of the time, the need to know basis is where we want to be starting from. And I don't mean that we want to tell clients not to talk to us about things or to draw, you know, to draw lines in the sand unnecessarily. We just want to make sure we catch ourselves from any practices that are veering toward over asking. So needs assessment questions to learn what services a client needs and wants are fantastic, but we want to make sure, as caseworkers with limited caseworker privilege, we are never acting in a role of investigator and asking those sorts of questions.

Orchid Pusey: Taking general and limited notes as a result. We want to help ensure that the information that clients do share with us as caseworkers in confidence is not later twisted and used against them.

So we keep things specific to just, for example, types of services provided, not on the minutia of conversations, emotional states, our opinions about emotional states, changing hopes, changing fears that we hear from the people that we are working with.

Orchid Pusey: And we can consult attorneys about what legal documents we should look at or we should have a copy of. And we want to separate roles between caseworkers and interpreters whenever possible. We are going to have a section on interpreters specifically later.

Orchid Pusey: And then, finally, when we are thinking about confidentiality, as caseworkers, we have to think about balancing dynamics with other residents when we are working with people who are in a shared residential program of some kind. So that is something that might involve looking at support group practices within a residential program, what sorts of information people are invited to share. We might look at, in shelter programs, what is the sort of bonding over shared experience that is nurtured in that program so that we can make sure, one, that we do not compromise the confidentiality of the survivor, but, two, we also do not cut that person off unnecessarily from the opportunity to build supportive relationships.

## Maintaining Privilege and Confidentiality: Caseworkers

- Generalize details of case when seeking external guidance
- Don't email substantive details about client
- Understand and explain duties as a mandated reported to client
- If co-located with other non-caseworkers, law enforcement, and/or attorneys, create plan to maintain confidentiality and privilege

Orchid Pusey: Let us see. Moving on. When we are, like in that e-mail scenario, when we are seeking external guidance, of course, we want to generalize details of the case. We do not want to e-mail the substantive details, like we just talked about. We want to be very upfront about – well, first understanding in ourselves, obviously, and making sure that across the organization and across the collaborative there is understanding about mandated reporting duties. We also want to make sure that we explain that very clearly with the people that we are working with. And if we are co-located in our organizations, many of us are, with other non-caseworker staff, with law enforcement, or with attorneys, we want to create plans to maintain confidentiality and privilege.

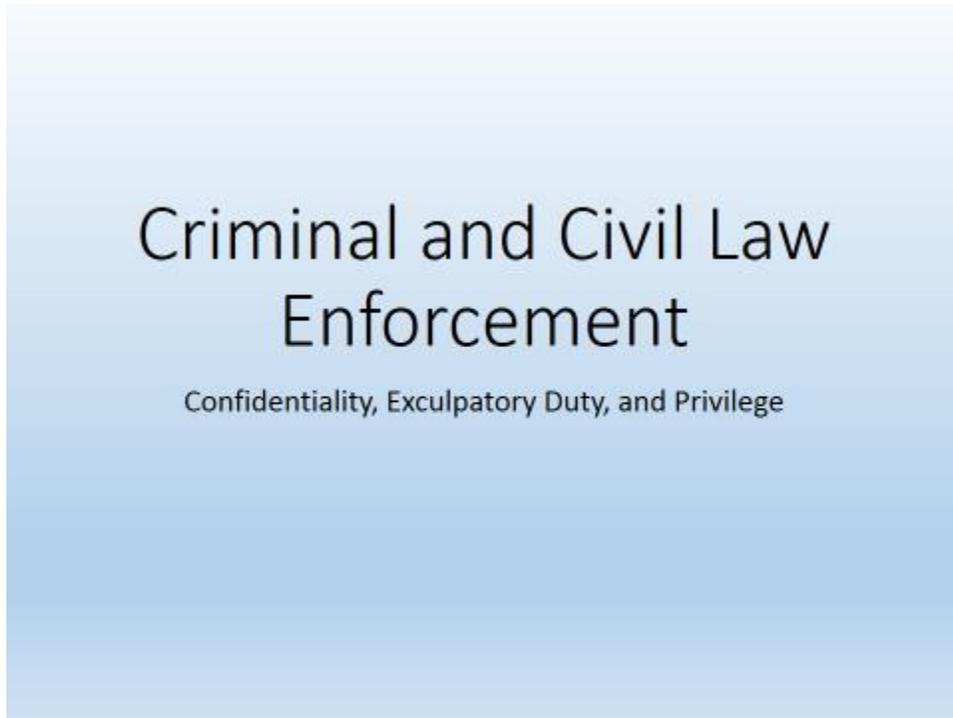
And also I am going to add that if we are perhaps not co-located, but when we come to collaborative meetings and we are working on multi-victim cases, we also want to think ahead of time about how to create a plan for communication across law enforcement, attorneys, and caseworkers.

### **Questions and Answers**



Cindy C. Liou: Great. I think we have been answering a lot of questions and answers during this section, so if you have any, go ahead and put them down and, if we have time, we will grab them.

## **Criminal and Civil Law Enforcement**



Cindy C. Liou: But in the meantime, we are going to move on to the next section of talking about criminal and civil law enforcement, which we have already been discussing quite a bit here.

## Criminal Law Enforcement

### Criminal Law Enforcement

- Criminal law enforcement (prosecutor, agent, officer, victim-witness specialist) do NOT have attorney-client relationship with victim-witnesses
- Victim witness specialists usually considered law enforcement, NOT case managers, under privilege rules
- Prosecutors must disclose exculpatory evidence to the defense
  - Exculpatory evidence: generally evidence that is “favorable to an accused” and “material to guilt or to punishment” Brady v. Maryland, 373 U.S. 83 (1963)

Cindy C. Liou: Criminal law enforcement [unclear] includes prosecutors, agents, certain officers, and victim witness specialists, even if they are not criminal law enforcement but they are employed by and sit within – like say, for example, the District Attorney’s Office. They do not have attorney-client relationships with the victims who are also considered sometimes witnesses or victim witnesses. That does not mean they do not care about them, obviously, or that they are not working extensively with them. But what it means in terms of not having an attorney-client relationship, even if they themselves are an attorney, it means that the rules of privilege do not apply the same way in terms of attorney-client privilege. And the information that can be put out there is much, much broader at this point in time.

Cindy C. Liou: Victim witness specialists are usually oftentimes considered law enforcement. Of course, this varies not only state-by-state, but kind of the set up in which this occurs. But sometimes this can be a bit confusing because they are usually then not following under, or at least very obviously, the same advocate caseworker privilege that would also otherwise kick in if you were someone working at a social services or a domestic violence shelter agency. So this is pretty important to think about beforehand in terms of these relationships because oftentimes we may view ourselves as attorneys or that I have training as a social worker, but the actual position that you are holding in relationship to the victim in the case changes the rules of confidentiality

and privilege, and changes the kind of information we then – and protocols we should use to protect the information.

Cindy C. Liou: Prosecutors, in particular, must disclose exculpatory evidence to the defense. What this means in criminal cases is that, for exculpatory evidence, it is generally evidence that is favorable to an accused and is material to the guilt or to the punishment, oftentimes called a Brady obligation as well.

And what it is, again, is part of the Constitutional right of the criminal defendant to be able to mount a serious defense with all the information that they have. So this is an obligation again for prosecutors to give this evidence that might be favorable to them, and this could include conflicting and inconsistent statements by the victim, which is oftentimes done just because there is a lot of misunderstanding and trauma that might happen, and just other information.

Cindy C. Liou: So now you are starting to see where the previous e-mails and the [stocks?] and substantive issues may come into play where a prosecutor is mandatorily obligated to then turn this information over to the defense.

## **Civil Law Enforcement**

### Civil Law Enforcement

- Civil law enforcement do not have an attorney-client relationship with claimants
- Examine rules for state and federal agencies
- Equal Employment Opportunity Commission (EEOC)
  - Communications between EEOC attorneys and claimants generally recognized as privileged
  - Common interest privilege protects communications between EEOC legal staff and claimant's attorney

Cindy C. Liou: There is also civil law enforcement. Increasingly we are seeing many agencies, for example, the Equal Opportunity – Equal Employment Opportunity Commission, EEOC, the Department of Labor, New York Department of Labor, California Division of Labor Standards Enforcement, etc., state agencies also be involved in anti-trafficking cases. However, civil law enforcement also do not have attorney-client relationships with their claimants, and you need to examine these rules if these agencies are also involved on these cases. It is not quite the same full Brady obligation, but there are still limitations to this relationship. Communications between the EEOC attorneys and claimants have been generally recognized as privileged, particularly as we

are seeing many of these trafficking cases brought by the EEOC. But it is good to assert common interest privilege to protect communications between EEOC legal staff and the claimant's attorney. If you are working with civil law enforcement on this case, again, it is very important to have these conversations to understand these limitations and how to protect information.

## Coordinating Law Enforcement Interviews

### Coordinating Law Enforcement Interviews

- Attorneys have attorney-client privilege, caseworkers can be subpoenaed
- If victim = defendant, then there is a Sixth Amendment right to counsel
- Victims have a right to consult an attorney
- Consistency of information and legal filings
- Caseworkers should never take notes
- Attorneys should at most take work-product protected notes during law enforcement interviews

Cindy C. Liou: Coordinating law enforcement interviews. This is a really big topic. Typically, again, attorneys have attorney-client privilege and, as we have mentioned earlier, caseworkers though can be subpoenaed and this makes things very, very difficult. Actually, attorneys can also be subpoenaed too, but again attorneys can assert their attorney-client privilege which again is a much more absolute privilege than a limited caseworker privilege. So, oftentimes we say it is helpful and, if possible, in areas where there are attorneys on the scene, that the attorneys sit in on the interview with law enforcement with the survivor and the victim, but that the caseworkers and victim witness specialists, if possible, can excuse themselves from this particular interview to protect them from also being subpoenaed.

Cindy C. Liou: Victims have a right to consult attorneys, usually both under state law and the federal Crime Victims' Rights Act, as their right to obtain counsel. Obviously, if the victim is the defendant in a criminal case, it totally changes because they are mandated to have criminal defense attorneys there and they are not to be interviewed by law enforcement without their attorney present. But a lot of this in a trafficking case where the victim is a victim witness, having

the attorney there is really about having consistency of information in legal filings down the road. So perhaps the victim is saying something to law enforcement in a particular interview, you want to make sure the information is the same and correct in a restraining order application or a T visa declaration. But that being said, attorneys should never take transcript-like notes in this interview because they could then be subpoenaed. If they are going to be taking notes, at most it should be in a work-product format to make sure the notes, again, are consistent.

Cindy C. Liou: Caseworkers should never take notes if they are in these meetings. Again, it is recommended, if at all possible – we understand there are different resources, limitations – the recommendations that caseworkers do not sit in these meetings.

But should they be there, they should not be taking notes. And this is with the understanding, too, that trafficking cases can start in many different places and levels. So on the local level, state level, federal level, it could first present as a domestic violence case in which oftentimes caseworkers and advocates are present when they are reporting the initial police report.

Cindy C. Liou: So, again, we have to be flexible with the different scenarios to figure out what is happening when, and to recognize the resource limitations, but also to strategize in advance what this should look like. In particular, when victims have their attorneys present, they can also feel more comfortable that if they have questions or they are worried they might get into trouble, so they can pull their attorney aside to have a conversation with them. And the attorney's role there is just to really be there for advice and counsel, but not to coach the victim and not to guide the interview because that is a conversation between the victim and law enforcement and is the crux of the investigation into the case. It is really the word of the victim.

Cindy C. Liou: So, moving on here. And the question was can we give an example when a victim is a defendant? Sometimes, you know, and we see this in domestic violence cases, the victim is arrested and sometimes it is because of manipulation on the trafficker, the abuser's end. There could be misunderstanding in interpretation. It could be, in the course of the trafficking coinciding with an illegal act, such as cases of sex trafficking where someone is being forced into prostitution or forced to sell drugs, we see in drug [unclear] cases. In those cases, the victims will also encounter the system as defendants and criminal perpetrators.

Cindy C. Liou: And the other question was can we clarify what it means to take work-product notes versus transcript-like notes. So it is important not to write, "A) Victim said," and then kind of write out everything they said point-blank in a transcript-like format. It would be important to say, "Victim said something, seemed like she was uncomfortable." Something with really mental impressions of the case and not just trying to jot down word by word of what is happening. It is the same thing with a conversation about recording of interviews. There are a lot of different ideas about this. I, in particular, find it sometimes to be difficult because the victim's memory can sometimes change, especially as they are receiving therapy, they are traumatized, they might be recovering memories. But transcript-like notes and recordings are information that are kind of locked in time that then later on is considered exculpatory evidence that may have to be turned over to the defense or discoverable in court.

## Maintaining Privilege and Confidentiality: Law Enforcement

### Maintaining Privilege and Confidentiality: Law Enforcement

- Minimize written communications with law enforcement
- Refrain from sharing draft work-product documents
- Review all filed legal documents (immigration, family law, etc.) and expect them to be used for victim impeachment
- When possible, request victim's name be anonymous in public documents

Cindy C. Liou: So, again, that goes to the next point. Is it necessary to – oh, sorry. Minimize written communications. Refrain from sharing draft work-product documents. Review all filed legal documents. So if one trafficking survivor has multiple attorneys, it is again important that in your immigration, family law, guardianship, whatever documents, that the facts are as consistent as possible. And expect that even though you can try to assert attorney-client privilege, you can try to protect things, a lot of things, particularly as they are publicly filed documents, can and will be used against your client in impeachment. And, when possible, again request her name to be anonymous in public documents.

## Maintaining Privilege and Confidentiality: Law Enforcement

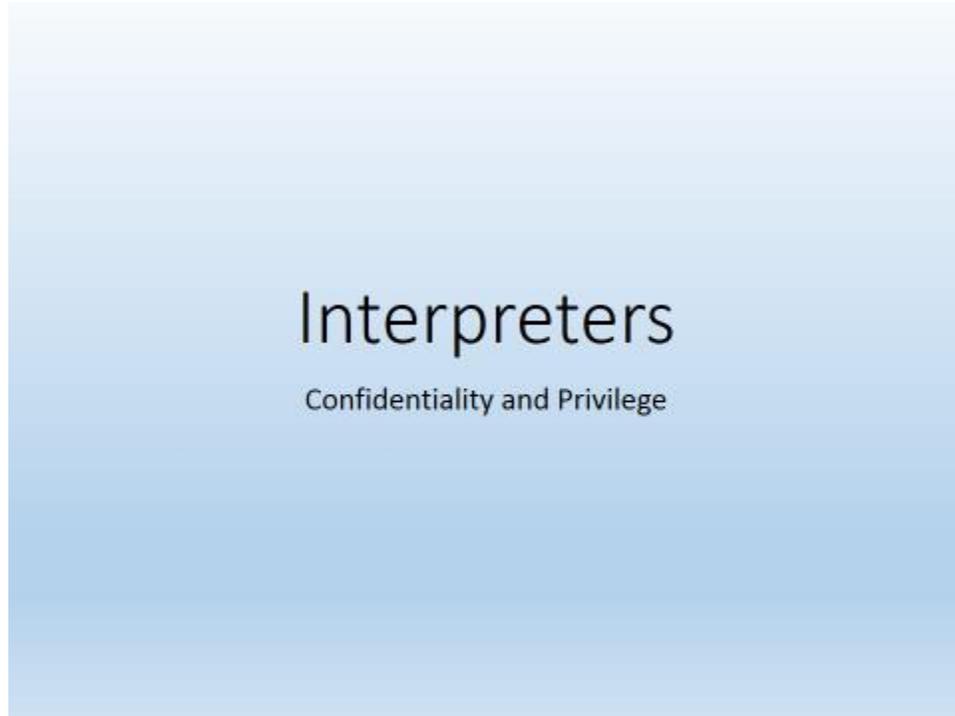
- Is it necessary to record the interview?
- When is it Confidential investigation v. Public record?
- What is the best way to communicate?
- What documents should be shared?
- How can you share information without violating privileges?

Cindy C. Liou: Okay, again, ask that question with your team. Is it necessary to record this interview? Can you work out a resolution that kind of satisfies everyone's role but also protects the victim's rights, and also maintains confidentiality and privilege for a good outcome of the case? Figure out what is the best way to communicate. I am kind of a phone person because that is not recorded, we can have conversations and try to work things out, and it is not written format and producible discoverable in the same way. Figure out what documents should be shared amongst the team, and how can you share information without violating the privileges? I cannot give you the answer for every single configuration in your particular state about the answer to these, but these are questions that you should be addressing together as a collaborative as you move forward to working on cases rather than addressing them after a case has already begun and people are upset with each other because they cannot or will not share information, etc.

Cindy C. Liou: So, moving on to the most section. Yes, I know I am speaking quickly. Sorry. There are a lot of legal terms here and hopefully the resources at the end here will compound some of these terms.

Cindy C. Liou: Victim impeachment generally is used to basically undermine a victim's credibility in court and to kind of really attack the victim's credibility in a particular case. And I am speaking quickly, sorry, just to kind of move along on time, and we will go to the next section.

## Interpreters



Orchid Pusey: Okay. So interpreters. We know language access is a primary issue that we have all faced in most cases of international trafficking, and some cases of domestic trafficking. So interpreters and bilingual advocates are part of the landscape of confidentiality and privilege in trafficking cases. The assumptions that we are working from are that when we talk about interpretation and interpreters, we are not just talking about court settings. There are many, many critical settings of interpretation throughout the life of a case. We also assume that we have a pie in the sky of perfect, certified interpretation throughout all elements of the case, all spaces of the case. But that what we are doing in reality is striving for the pie in the sky through putting together as many resources as we can in the different spaces of a case in service of the victim.

## Interpreters

- Confidentiality and privilege covered:
  - If agent of the attorney or caseworker
  - Extent of coverage tracks attorney (absolute) or caseworker (limited)
- When should victims' attorneys, caseworkers, and law enforcement act as interpreters?
- What can be done to clarify between roles?

Orchid Pusey: So, interpreters. The confidentiality and privilege of communication is covered if the interpreter is an agent of the attorney or the caseworker. And the extent of that privilege coverage would track the absolute privilege for the attorney and the limited privilege for the caseworker. And a lot of times, you know, because we live in a world with sometimes extremely limited language access, we have these questions that we have to face. When should victims' attorneys or victims' caseworkers or law enforcement act as interpreters? When we have strong bilingual staff in these different places who are actually trained in providing – trained to some level to provide interpretation, when should they act as an interpreter in the service of the victim in the case? And what can be done to clarify roles when people switch between them?

Orchid Pusey: So, quickly, attorneys can act as interpreters for other attorneys. But, of course, it is best not to confuse roles because, of course, you cannot advocate and interpret simultaneously, I mean out of the same mouth at the same time. I will talk in a little bit about when we might switch roles between interpreting and doing some kind of advocacy within, for example, one 2-hour meeting. But in court especially that impossible.

Orchid Pusey: Caseworkers are also – are best to not play dual roles as caseworkers and interpreters. It is best to pick one for a scenario. But, again, remember that court versus non-court can be really different. And so there are many, many scenarios where a bilingual caseworker can absolutely switch between role of caseworker and role of interpreter, as long as those roles are very distinct and clear within that person and the training they have received, and that they make that extremely clear throughout the course of the scenario.

Orchid Pusey: Law enforcement as being an interpreter. That law enforcement is now in a situation where there is no privilege. So if you have a bilingual law enforcement officer who can support a situation to move forward in a positive way, just know that the privilege is gone.

Orchid Pusey: Something, what can be done to clarify across these roles? We want to... Oftentimes it can be helpful to write interpreter confidentiality agreements to clarify roles, maintain privilege and confidentiality, and prevent subpoena complications.

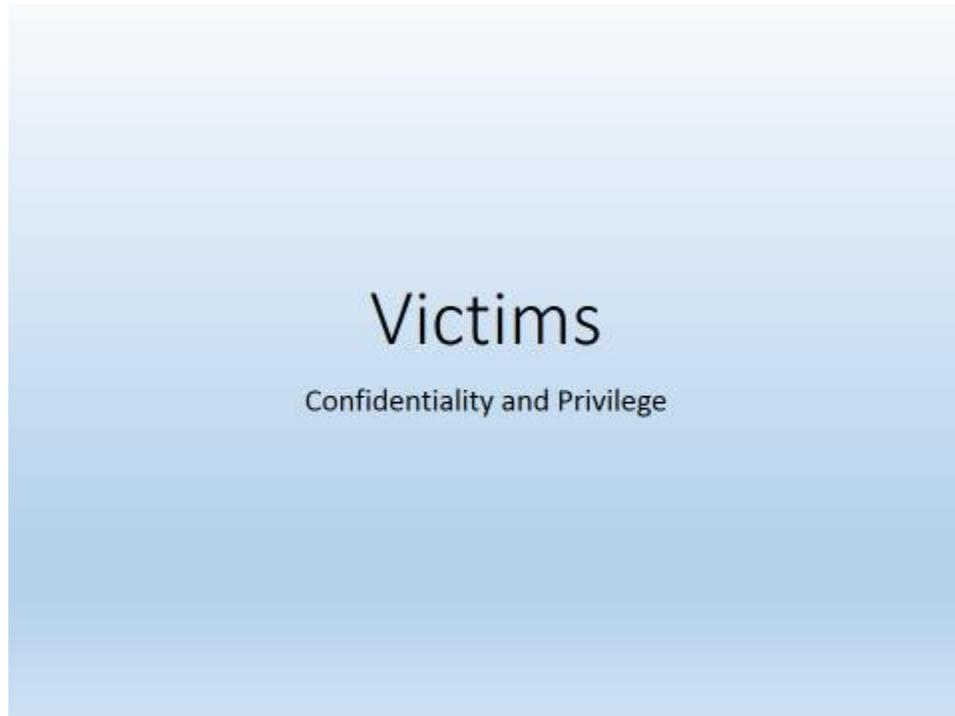
Orchid Pusey: Another thing that I think is a really strong practice is to write a standard introduction – for organizations to write a standard introduction for interpreters working with their organization to use every time they work. And that standardized introduction clarifies every single time what is the role of the interpreter as opposed to the role of the advocate or the role of the attorney. What is the type of interpretation that that interpreter is going to be doing? Are they going to be, of course, they are going to be doing first-person interpretation, they are going to be doing consecutive or sight translation or simultaneous interpretation. All of that can be clarified consistently when we write standard introductions and do not leave it up to individual – individual communication.

Orchid Pusey: And, lastly, when we have those standardized introductions, we can also make clear whether or not in certain situations of interpretation it is allowable for an interpreter to step out of their interpreter role to make a very clear break in their interpretation and say, “I am going to be a sort of cultural consultant right now. I am going to ask a culturally-informed question because I think we are getting, you know, unnecessarily confused,” and there is a clarification that they can make to strengthen the relationship and understanding between, for example, the attorney and the client. So those kinds of switches are – can be very helpful, but they must be very clear. Let us keep going.

Cindy C. Liou: And you can also, if you are working with a caseworker who is only going to be an interpreter on a case and not do any casework, sometimes you can sign an interpreter’s agreement with them to clarify and outline that, and make sure that someone else in a different agency is doing the casework.

Orchid Pusey: So, I think, you know, this – the conversation about interpretation, the different types of interpretation, modalities of interpretation, settings of interpretation, is a huge conversation. And so this is just sort of an initial, an initial taste of it to just primarily clarify the confidentiality and privilege of interpreters is covered when they are agents of the attorney or the caseworker.

## Victims



Orchid Pusey: We are going to move from interpreter privilege to victim privilege. And we do this, we have a short section on this because what we realize is that oftentimes when we talk about confidentiality and privilege, and we provide and we receive training on it, we are always looking at privilege from the perspective of the law, confidentiality from the perspective of advocates or workers or law enforcement or attorneys. But we often forget about, or it is easy to forget about the lens from the victim directly. That the victim has their own view of confidentiality. And we want to think through how can we empower people to make informed choices about their own confidentiality with regard to who they tell what information, and what information will be public to whom?

## Maintaining Privilege and Confidentiality: Victims

### Maintaining Privilege and Confidentiality: Victims

- Educate victim about confidentiality v. privilege and limitations
- Obtain written consent to release and obtain information
- Develop media plan with victim
- Explain impact on confidential settlement agreements

Orchid Pusey: So, just as we are here and we are learning about the complexity of confidentiality and privilege, we want to put out in this Webinar that victims need and deserve to learn about it too. And not just to, of course, obey their advice that they get from their attorney or advice that they get from law enforcement or caseworkers. So we want to really value educating victims about confidentiality versus privilege and the limitations on both. And we want to do that repeatedly. And I think we all know that the people that we are working with have been through tremendous trauma and are going through emotional and cognitive overwhelmed to degrees that are hard to imagine. And so, the recollection of this sort of information is almost impossible from just hearing it a single time. We do not remember it from hearing it a single time. So our recommendation is instead of leaving it to victims to constantly ask for clarification, that we make it a regular practice to reiterate information about a client's right to confidentiality.

Orchid Pusey: Let us see. We want to, of course, like we talked about, obtain written consent to release and obtain information.

Orchid Pusey: Media plans come up. It is a great practice to develop a media plan with the victim. It is great if a caseworker and an advocate, an attorney, and the victim can work on it together and to actually update that plan with the client as the case changes and progresses.

Orchid Pusey: And then, explaining the impact on confidential settlement agreements. That is an important piece, too, and Cindy is going to tell us a bit more about it.

## Maintaining Privilege and Confidentiality: Victims

- Work with victim to balance safety and healing
- Emphasize consequences of violating shelter rules
- Explain consequences of discussing case with media, friends, family, and shelter participants

Cindy C. Liou: Oftentimes, at the point in time many victims will say, “Yeah, I do not want to ever talk about this again, I am fine taking this agreement.” And what they do not realize is that maybe many years later on when they are ready to tell their story that actually they have signed to waive that as part of the confidential settlement agreement. So this just needs to be explained very clearly with the client and to really structure and pushback against the opposing party, if at all possible, to construct something as limited as possible. Because I have seen cases where it is just very heartbreaking to see victims not be able to reclaim their stories, and they will tell me they regretted signing the confidential settlement agreement, even though at the time they had agreed to do it. So just something to be really aware of in advance.

Orchid Pusey: And then, lastly, with maintaining privilege and confidentiality from a victim perspective, we want to make sure – this again, of course, could be its own whole Webinar – but we want to work with victims to balance their safety and their confidentiality with their empowerment and opportunities for having a life, a whole life. So, part of the might involve casework that is geared toward fending off boredom, particularly for clients who are in very large or heavily represented in the media cases, or where danger is extreme, and their movement is extremely restricted after they have escaped from a trafficking situation. We also want to emphasize consequences of violating shelter rules, especially if a shelter does have very strict confidentiality rules. We want to emphasize the consequence of violating that with victims because the tragedy of needing to leave a residential program because of not having adequate information about what all the strong extreme rules are, that tragedy, we just want to avoid it as much as we possibly can. And we can do that by talking through scenarios, doing role plays to help – to help residents or victims be able to navigate the many situations where it would be extremely easy to violate some of these large shelter rules.

Orchid Pusey: And finally, we want to explain consequences of discussing any case information with media, with friends, with family, with shelter participants, and we want to do that not as, you know, “Yes, you can talk about this. No, you cannot talk about that.” Or, “Yes, you can share this. No, you cannot share that.” But more, “If you blank, then blank might happen. Or blank will happen.” So that we are constantly making sure that their experience with us, no matter our role in learning about confidentiality and privilege, is an empowering one rather than a dictating one.

Cindy C. Liou: And this is particularly important. Earlier, I had a slide on – we were talking about criminal law enforcement and there was a question of the difference between the confidential investigation versus when the case becomes public. And there is oftentimes with law enforcement a stage where the investigation itself, that they are even investigating the trafficker or the situation, is confidential. And, you know, oftentimes that stage and also through a case we tell a victim or a client that they cannot talk to anyone about what is happening, and that includes their own family, and that can be very isolating and further their trauma.

### **Traffickers’ Tactics**



Cindy C. Liou: And that kind of also leads into this final section, which we will just go through in the final minutes we have left, about some of the traffickers’ more common tactics, and this usually happens in some of these stages.

## Maintaining Confidentiality and Privilege

### Maintaining Confidentiality and Privilege

- Caller: Hi, I'm a federal investigator and I'd like to ask you a few questions about Jane Doe's case. I see that you're her case manager and our conversation would be really helpful.

How do you respond?

Cindy C. Liou: So one example is a caller will say, "Hi, I am a federal investigator and I would like to ask you a few questions about Jane Doe's case. I see that you are her case manager and our conversation would be really helpful." And how would you respond to this case? So this is actually a very common defense tactic where they will say, "I am a federal investigator." They will not specify for what side. In a particular case like this I would recommend just taking down their name and information. Do not at this point in time give any indication that you are representing the client, that you work with them. You can claim some ignorance and say, "I will just check in. Give me your name and information and phone number." And this is when it is important to check in with the attorney and law enforcement on this case to see who this person is. And if they are really who this person says that they are, the defense definitely has a right to reach out to potential victims – sorry – potential witnesses to interview them and ask them their own questions. And law enforcement is required to allow them to be able to do so. But we as victim witness advocates in the middle can also bridge this and give our clients a head up, or maybe the good Samaritan who helped our client, if they get this phone call, to be really aware of who they are talking to.

## Traffickers' Tactics

### Traffickers' Tactics

- Subpoena
- Release of victims' information to the media
- Defense attorney calls asking questions
- Attorney hired by trafficker pretends to be on the "same team"
- Defense misleads victim or other key witnesses into thinking they are law enforcement

Cindy C. Liou: Other common tactics that we have seen in recent times. Subpoenas. Media plans, we mentioned that earlier, just having a conversation. What happens if a journalist calls a victim or calls your office? Because some of these cases may be public on a docket and they may show up. We have had cases where traffickers have actually released our client's photos and information to the news, yet the journalists themselves have their own kind of set of privilege and rules, and we have not been able to prove that it was the traffickers who did so.

Cindy C. Liou: The defense attorney may call asking questions. Sometimes the attorneys are hired by the traffickers and they pretend to be on the same team and they want to work together. Sometimes they may mislead victims or the key witnesses into thinking that they are law enforcement or the investigators, as we saw in the earlier example here.

## Traffickers' Tactics

- Traffickers intentionally call to conflict out attorneys
- Use of spyware and technology to track victims
- Using “lures” to discover shelter location
- Traffickers obtain information through third parties (family, friends, etc.) connected to the victim (in person, online, etc.)

Cindy C. Liou: Other ones are intentionally – we mentioned intentionally calling law offices to conflict out attorneys, using spyware technology to track victims, using lures to discover shelter locations. So sometimes that might be sending someone in a multi-victim case, maybe say there is a sting operation and there is a group of five women. Let us say two women agree and say we are victims and go to the shelter, and the other two say we are not victims. Sometimes the traffickers will ask the other two women who said that they were not victims to call the other women to say, “Okay, now I want to come to the shelter and I want to get help.” Or, “Tell me where you are. Come meet me somewhere,” to kind of discover shelter location. And also obtaining information through third parties – friends, family, who do not know what is going on because we told our clients, “Do not tell anyone what is happening.” Or through things like Facebook or other social media. So it is just something to be also aware of.

## Responding to Subpoenas

### Responding to Subpoenas

- Do you have an attorney to represent you?
- Is it a civil or criminal subpoena?
- What are the court dates and deadlines?
- What are you being asked to do, produce documents or testify?
- Do any laws protect statutory privileges, and if so, to what extent?

Cindy C. Liou: So responding to subpoenas. There is a whole slew of information online these days. I believe the ASISTA has some of these responses on their website, [www.asista.com](http://www.asista.com), their website. But the question is: Do you have an attorney to represent you? And this includes the attorney themselves when they are being subpoenaed so, again, from their pro bono network.

Cindy C. Liou: Is it a civil or criminal subpoena? Because the responses are very different. Oftentimes people inappropriately use civil responses to a subpoena, to a criminal subpoena, which do not work.

Cindy C. Liou: What are the court dates and deadlines that you have to show up and respond? Whatever you do, respond to the subpoena, do not blow the deadline.

Cindy C. Liou: And what are you being asked to do? Are you being asked to produce documents or testify? And what are the privileges and the laws, that we went through earlier, can you do to protect your information? Can you assert? And what are things you can do to start protecting information? Now, you cannot just start destroying information, but at this point in time you say, “Oh, call everyone and say, hey, no one e-mail about anything about the client right now,” and start setting up.

## Responding to Subpoenas

- Who should you contact and what should you do to start protecting information?
- What can you do to resist the subpoena?
  - Can you negotiate with the subpoenaing party?
  - Can you challenge service?
  - Can you file a motion to quash?
- What will you say to your client to maintain their trust?
- **DO NOT ignore the subpoena and DO NOT destroy evidence subject to the subpoena**

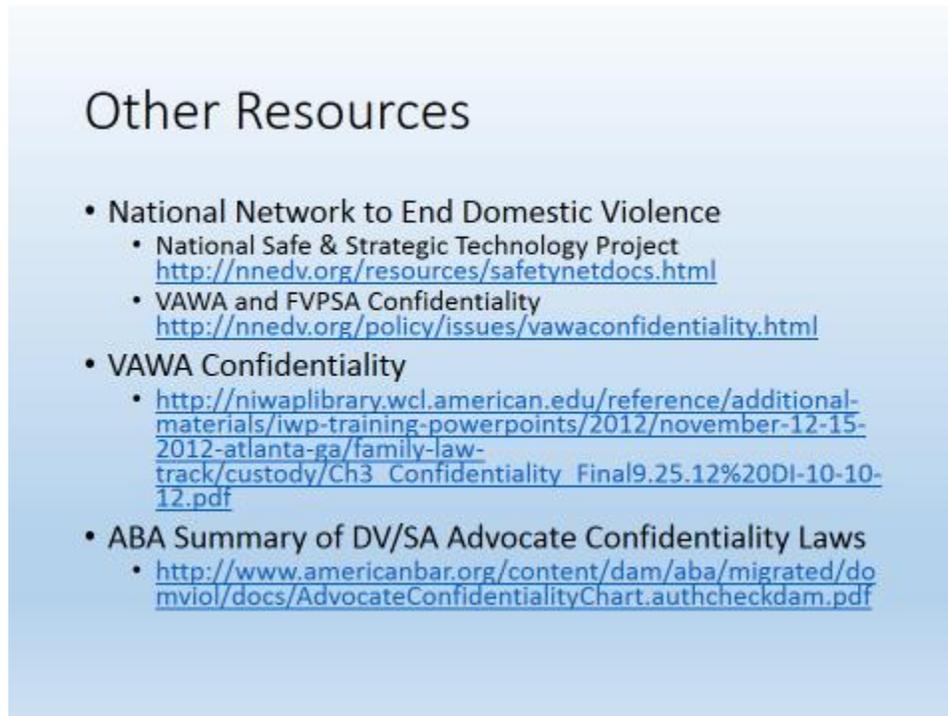
Cindy C. Liou: Who do you contact? So you might want to let law enforcement know in this particular case, if they are involved in this case. And think about how do you resist the subpoena? Can you file a motion to quash or squash? I know that these are very legal terms but, again, this is why an attorney would be really important to help you respond to the subpoena. Can you negotiate them? Can you challenge service?

Cindy C. Liou: What do you say to your client to maintain their trust? Because it can be very conflicting on one hand to say, “Hey, all the information you give me is confidential and privileged except for I am being called to court.” So how do you preemptively deal with these questions and conversations in advance?

Cindy C. Liou: Whatever you do, again, do not ignore the subpoena and do not destroy evidence because that is illegal.

Cindy C. Liou: So, we are just at 1 o’clock right now, finishing up, and please, if you have more information, I know that we opened up a whole slew of different scenarios and fact patterns. You were engaged and great today in just so many different ways to think about these issues.

## Other Resources



### Other Resources

- National Network to End Domestic Violence
  - National Safe & Strategic Technology Project  
<http://nnedv.org/resources/safetynetdocs.html>
  - VAWA and FVPSA Confidentiality  
<http://nnedv.org/policy/issues/vawaconfidentiality.html>
- VAWA Confidentiality
  - [http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2012/november-12-15-2012-atlanta-ga/family-law-track/custody/Ch3 Confidentiality Final9.25.12%20DI-10-10-12.pdf](http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2012/november-12-15-2012-atlanta-ga/family-law-track/custody/Ch3%20Confidentiality%20Final9.25.12%20DI-10-10-12.pdf)
- ABA Summary of DV/SA Advocate Confidentiality Laws
  - <http://www.americanbar.org/content/dam/aba/migrated/doviol/docs/AdvocateConfidentialityChart.authcheckdam.pdf>

Cindy C. Liou: And here are some more resources related to some of the issues we talked about today.

Orchid Pusey: And we know that there are – just so you know that as you are typing in your questions and we are not able to get to them, all of them on the Webinar, know that we are seeing them and we want to have a way outside of the Webinar to be able to respond to them. For example, what is a media plan? There are several that we did not have time to get to. But we are going to pass the mic right now and we will have – there will be communication about how to get some of those questions answered.

Neelam Patel: Thank you so much, Cindy and Orchid, for a wonderful Webinar. We will go to the next slide, please.

## Key Toolkits and Technical Assistance Resources

Key Toolkits and Technical Assistance Resources	
 <a href="http://www.traffickingresourcecenter.org/">http://www.traffickingresourcecenter.org/</a>	 <b>Human Trafficking Task Force e-Guide</b> <a href="https://www.ovcttac.gov/taskforceguide/eguide/">https://www.ovcttac.gov/taskforceguide/eguide/</a>
 <a href="http://www.htcourts.org/">http://www.htcourts.org/</a>	<b>Special Collection: Human Trafficking</b>  <a href="http://www.vawnet.org/special-collections/Trafficking.php">http://www.vawnet.org/special-collections/Trafficking.php</a>
<b>Special Collection: Trauma-Informed Domestic Violence Services</b> <a href="http://www.vawnet.org/special-collections/DVTraumaInformed-Overview">http://www.vawnet.org/special-collections/DVTraumaInformed-Overview</a>	<b>Runaway and Homeless Youth Tool Kit</b> <a href="http://www.nrcdv.org/rhydtoolkit/critical-issues/">http://www.nrcdv.org/rhydtoolkit/critical-issues/</a>

Neelam Patel: So here are some more tools and technical assistance resources for the remaining Webinars, and for you to access any time you need any more information about trafficking. Next slide, please.

**Need More Help? Specialized Human Trafficking Training and Technical Assistance Providers**

Need More Help?  
Specialized Human Trafficking Training  
and Technical Assistance Providers



The image displays two logos side-by-side. The left logo is for OVC TTAC, featuring the acronym in large blue letters above the text 'Office for Victims of Crime, Training and Technical Center' and the website 'www.ovcttac.org'. The right logo is for the Center for Court Innovation, featuring the text 'CENTER FOR COURT INNOVATION' in white on a black background, with 'Center for Court Innovation' and 'www.courtinnovation.org' in white below it.

**OVC TTAC**  
Office for Victims of Crime, Training and  
Technical Center  
[www.ovcttac.org](http://www.ovcttac.org)

**CENTER  
FOR  
COURT  
INNOVATION**  
Center for Court Innovation  
[www.courtinnovation.org](http://www.courtinnovation.org)

Neelam Patel: And here is the OVC TTAC website and the Center for Court Innovation, if you need more specialized trafficking and technical assistance training. Next slide, please.

## Do not Forget – Upcoming Webinar Schedule

### Don't Forget – Upcoming Webinar Schedule

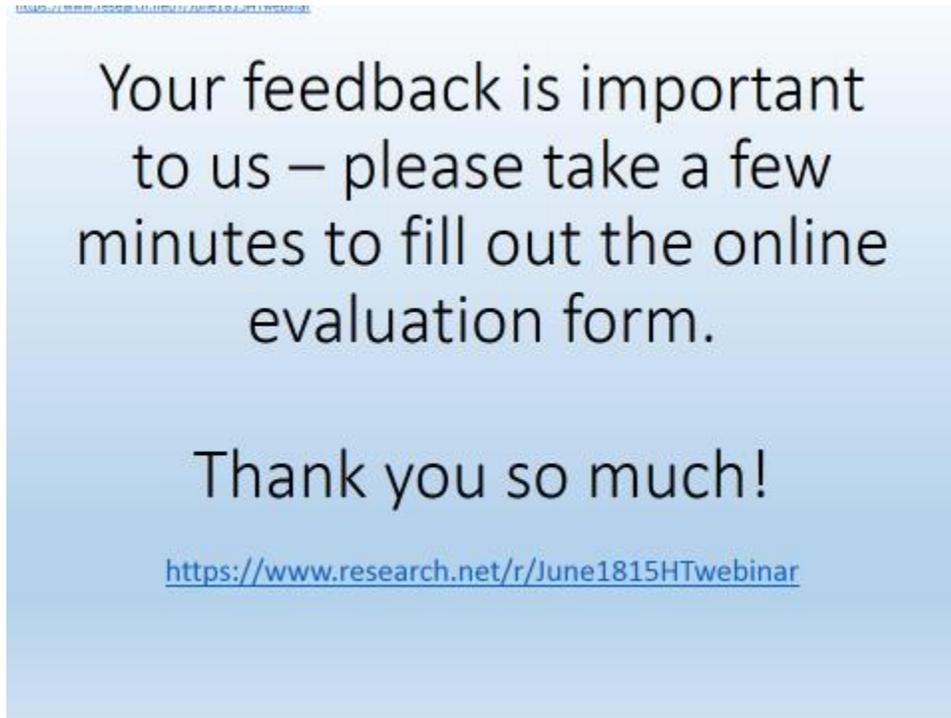
<i>Getting Out of the Box: The Key Ingredients to Cultivate Collaboration</i>	Completed
<i>Balancing Collaboration, Confidentiality, and Privilege in Human Trafficking Cases</i>	June 18, 2015 @ 2:30 p.m. ET
<i>Collaborating With Culturally Specific Organizations to End Human Trafficking, Domestic Violence, and Sexual Assault</i>	July 9, 2015 @ 2:30 p.m. ET
<i>Working Together Part I: Law Enforcement</i>	August 13, 2015 @ 2:30 p.m. ET
<i>Working Together Part II: The Courts</i>	September 24, 2015 @ 2:30 p.m. ET

All webinars are being recorded and will be available at:

<https://www.ovcttac.gov/views/HowWeCanHelp/dspHumanTrafficking.cfm>

Neelam Patel: So here is the schedule for the next upcoming Webinars, and they are all being recorded and will be available at the website that is listed on the slide. The next one is July 9, 2015, and if you have not yet registered, please do so if you are interested.

## Your Feedback is Important to us



Neelam Patel: And, finally, your feedback is so important to us. So as you log off there will be a brief survey, so please fill it out so we are making sure we are meeting everything that you need. And it will pop up automatically in your browser. For those that are participating just on the phone, on the PowerPoint slides, there is a link to submit your feedback as well. And, finally, an updated PowerPoint will be sent to you all so you can – then when you get that updated one you can use that one for future reference.

Neelam Patel: Again, I would like to thank everyone for attending. Thank you to Orchid and Cindy. And Futures Without Violence, that is over where they are right now to answer some of your questions. And thank you also to Jenna who has been wonderful with the technology. So thank you all.

[End.]