

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

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>



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

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

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

Overview

- Definitions of Confidentiality & Privilege
- Attorneys
- Caseworkers
- Criminal and Civil Law Enforcement
- Interpreters
- Victims
- Traffickers' Tactics

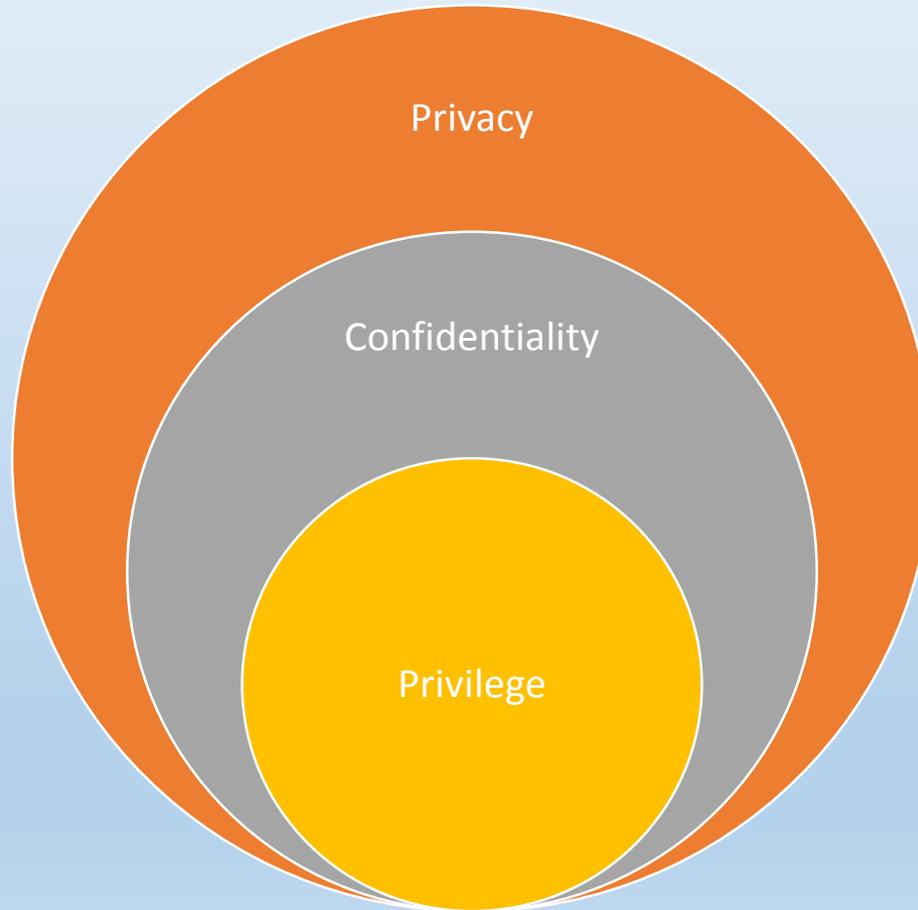
Definitions

Confidentiality and Privilege

Different Relationships

- Attorneys/case managers and clients
- Case managers and attorneys
- Between different victim services attorneys (e.g. immigration, family law, and civil attorneys)
- Attorneys/case managers and law enforcement
- Other professionals and individuals
 - E.g. doctors, psychotherapists, Good Samaritans, family members, etc.

Privacy, Confidentiality, and Privilege



Confidentiality and Privilege

Confidentiality

- A communication:
 - Made with the expectation of privacy
 - Inaccessible to the general public
- Ethical duty

Privilege

- A specific communication:
 - Created by statute
 - Disclosure is prohibited
- Evidentiary rule

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

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?

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

Questions and Answers

Attorneys

Attorney-client privilege, Work-product privilege, and
Conflict of Interest

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

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?

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?

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?

Maintaining Confidentiality and Privilege

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

How do you respond?

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

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?

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

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

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

Questions and Answers

Caseworkers

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

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>

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?

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

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 reporter to client
- If co-located with other non-caseworkers, law enforcement, and/or attorneys, create plan to maintain confidentiality and privilege

Questions and Answers

Criminal and Civil Law Enforcement

Confidentiality, Exculpatory Duty, and Privilege

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)

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

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

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

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?

Questions and Answers

Interpreters

Confidentiality and Privilege

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?

Victims

Confidentiality and Privilege

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

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

Questions and Answers

Traffickers' Tactics

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?

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

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.)

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?

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

Questions and Answers

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>

Key Toolkits and Technical Assistance Resources

NHTRC

NATIONAL
HUMAN TRAFFICKING
RESOURCE CENTER

1-888-373-7888

<http://www.traffickingresourcecenter.org/>



<https://www.ovcttac.gov/taskforceguide/eguide/>



HUMAN TRAFFICKING
AND THE STATE COURTS COLLABORATIVE

<http://www.htcourts.org/>

Special Collection: Human Trafficking



<http://www.vawnet.org/special-collections/Trafficking.php>

Special Collection: Trauma-Informed Domestic Violence Services

<http://www.vawnet.org/special-collections/DVTraumaInformed-Overview>

Runaway and Homeless Youth Tool Kit

<http://www.nrcdv.org/rhydvtoolkit/critical-issues/>

Need More Help?

Specialized Human Trafficking Training and Technical Assistance Providers

The logo for the Office for Victims of Crime, Training and Technical Center (OVCTTAC). It features the letters 'OVCTTAC' in a bold, sans-serif font. The 'OV' is dark blue, and the 'CTTAC' is light blue. The logo is centered within a white horizontal bar that spans the width of the left blue box.

Office for Victims of Crime, Training and
Technical Center
www.ovcttac.org

The logo for the Center for Court Innovation. It consists of four horizontal bars of equal height. The top and bottom bars are white with the words 'CENTER' and 'INNOVATION' in black, all-caps, sans-serif font. The middle two bars are black with the words 'FOR' and 'COURT' in white, all-caps, sans-serif font. The logo is centered within the right blue box.

FOR

COURT

INNOVATION

Center for Court Innovation
www.courtinnovation.org

Don't Forget – Upcoming Webinar Schedule

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All webinars are being recorded and will be available at:

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

Your feedback is important to us – please take a few minutes to fill out the online evaluation form.

Thank you so much!

<https://www.research.net/r/June1815HTwebinar>