



OVC
Webinar Transcript

**Human Trafficking and the
Intersection of Civil, Criminal, and
Administrative Justice Systems**

December 12, 2013



Human Trafficking and the Intersection of Civil, Criminal and Administrative Justice Systems

Facilitator:

Terry Campos, J.D., NATIONAL CRIME VICTIM LAW INSTITUTE

Panelists:

Christopher Killmer, IMMIGRATION COUNSELING SERVICE

Amy C. Liu, J.D., NATIONAL CRIME VICTIM LAW INSTITUTE

Andrea Ogston, J.D., LEGAL AID SERVICES OF OREGON

Charese Rohny, J.D., CHARESE ROHNY LAW OFFICE, LLC

Katrina Watson, J.D., IMMIGRATION COUNSELING SERVICE



Flow of the Webinar



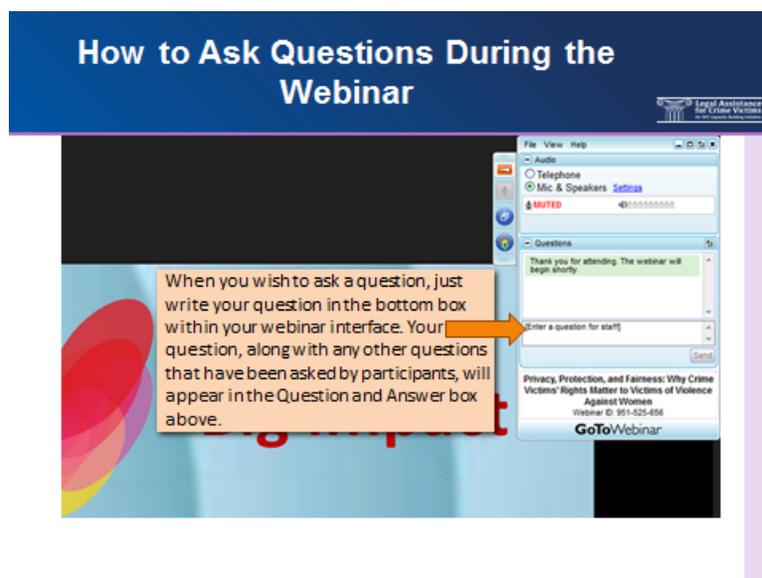
- You are muted but you can ask questions & participate – and we hope that you do!
- You will receive an email with the powerpoint slides and the recording of the webinar will be available online.
- Please provide feedback at the end!

Flow of the Webinar

Terry Campos: As many of you know, the National Crime Victim Law Institute's (NCVLI's) work focuses on promoting balance and fairness in the criminal justice system. And we do this through legal advocacy, education, and resource sharing. And one other way we do this is by helping crime victims obtain pro bono legal counsel. For this reason, we are thrilled to be a part of the Office for Victims of Crime's (OVC) Training and Technical Assistance Center's (TTAC) OVC Legal Assistance for Crime Victims Capacity Building Initiative. OVC TTAC and NCVLI are working together to expand the availability of pro bono and no cost legal assistance for crime victims nationally. This Webinar is part of that collaboration and it is designed to assist attorneys around the country by providing the tools they need to increase their knowledge base about crime victim issues and to increase their capacity to provide legal representation to crime victims.

Terry Campos: Before we begin, I am going to go over a few logistics about the Webinar. Excuse me just a second to get to the right slide. So, first, please turn off all your cell phones and any other wireless devices. We recommend this because they interfere with the Webinar. And if you are getting any static on your audio, this is probably the cause because it is pretty common. And we will send out a PDF of these PowerPoint slides. Even though the slides are not going to contain a lot of legal or resources or citations, it will have the hypothetical for you. And so if you are taking notes along the way, you will be able to print out a PDF later on and fill in your notes. Additionally, we are going to have a recording of this training. It will be uploaded to NCVLI and OVC TTAC's Web sites in the near future.

Terry Campos: And then, finally, we are going to have a survey at the end of the Webinar, and these are really helpful for us, and especially in this Webinar because this is a new format for us and we really want to hear your feedback, see if it works, what worked, what did not work, so that we can then make some changes. Because we really do take your feedback into consideration when we are planning future Webinars.



How to Ask Questions During the Webinar

Terry Campos: And you are going to be muted during the Webinar, but you can ask questions and you can do that throughout. You just need to type your question in the bottom box of the Webinar interface. We will try to answer these questions throughout, but there is going to be a lot of questions going back and forth to the panelists today, and it is going to depend really on the question and the flow of the Webinar. We may save them until the end. But if you do post a question, do not worry. Someone will respond even if it is by e-mail after the Webinar is over.

www.GoToWebinar.com

1-800-263-6317

GoToWebinar Assistance

Terry Campos: And then, finally, if you are having trouble, any technical difficulties, please contact GoToWebinar for support. You can do this, 800-263-6317. And that takes care of the housekeeping part of the Webinar today.

Terry Campos: So the structure of the Webinar is based on a hypothetical case. We will start from an initial call where we learn that there is someone in need of assistance. And what that assistance is may not be clear right up front. And we are going to continue adding some facts throughout the prosecution of a crime. Our panelists will spot issues, they will discuss strategies and steps they would take in providing assistance to this victim. And the goal is not for you to leave the Webinar with all the legal knowledge that you need to assist a victim all by yourself, but it is to gain an understanding of what issues may arise, what type of questions to ask, the various types of protections and resources that are out there, and most importantly, when and where to refer these victims so they get all of their needs met.

Terry Campos: We have several disciplines represented on the panel today. They are immigration, housing, employment labor, and victims' rights. So how this will kind of go is I will read the hypothetical and I will pose the questions to the panelists. Not all the facts are going to be provided because, as you all know very well from your own practice that you never get all the information that you need in one neat little package right up front. And one of the points of this presentation is so that you know what questions to ask to get to the relevant information you need to help the victims.

Goals for the Session



1. Identify hurdles that attorneys and advocates may face in identifying trafficking victims;
2. Highlight the diversity of legal issues that trafficking victims confront; and
3. Provide guidance on assisting trafficking victims with these legal issues.

Goals for the Session

Terry Campos: And this brings us to the goals for the session. We want you to be able to identify hurdles that attorneys and advocates may face in identifying trafficking victims. Highlight the diversity of legal issues that trafficking victims confront. And provide guidance on assisting trafficking victims with these legal issues. And, of course, while this is focused on trafficking victims, a lot of the issues or a lot of the strategies that we are posing today and the panelists are going to be presenting are going to be relevant to all victims of crime and not just trafficking.

Presenters



Facilitator:

Terry Campos, J.D., National Crime Victim Law Institute

Panelists:

Christopher Killmer, Immigration Counseling Service
Amy C. Liu, J.D., National Crime Victim Law Institute
Andrea Ogston, J.D., Legal Aid Services of Oregon
Charese Rohny, J.D., Charese Rohny Law Office, LLC
Katrina Watson, J.D., Immigration Counseling Service

Presenters

Terry Campos: So in meeting these goals today, NCVLI reached out to several individuals in the community and they graciously agreed to share their knowledge and expertise with us today. They are Christopher Killmer with Immigration Counseling Service, and he is going to be providing a non-attorney perspective on immigration. Amy Liu, who is my wonderful colleague here at National Crime Victim Law Institute, and she will be discussing victims' rights. Andrea Ogston from Legal Aid Services of Oregon, and she will be focusing on sort of the housing law aspects of the crime victim issues. Charese Rohny from Charese Rohny Law Office, LLC, and she will be focusing on labor employment issues. Katrina Watson of Immigration Counseling Service, and she will be providing the attorney perspective on immigration.

Terry Campos: And so just to make sure that all of our microphones are working, I am going to just ask the participants, as I call out their name, to just let me know that they are there. So, Amy?

Amy Liu: I am here.

Terry Campos: Okay, good. Andrea?

Andrea Ogston: Here

Terry Campos: Charese?

Charese Rohny: Here.

Terry Campos: Christopher?

Christopher Killmer: Here.

Terry Campos: Katrina?

Katrina Watson: Here.

Terry Campos: Okay, great. We just want to make sure that we do not end up having some valuable perspective lost because we could not have our microphones and everything working.

Poll #1

Terry Campos: So with that, we are going to start out with a quick poll. And this is just really so that our panelists have an idea of who is out there. And so what we want to know is if you are an attorney, a victim advocate, or other non-attorney. And, basically, that can be someone who is in the victims' services field but not a victim advocate or maybe working for the court system. An attorney can be any and all types of attorneys. So I will give you just a second for you to check that.

[silence]

Terry Campos: And that is probably about enough time. And let us see what our response is. So we have 20 percent attorney, 50 percent victim advocate, and 30 percent other non-attorney. Okay, so we have about 80 percent of you who are not attorneys. So really what we want you to take away from this then is to when you hear something that comes up, recognizing that it may be a legal issue that you need to speak to an attorney about, whether it is immigration, housing,

employment, etc. So I think this can be really helpful for all of you as well as the attorneys. So let us move on here.

Case Study: The Intro



You are a staff member of a local nonprofit that serves low income clients.

Sam, a social worker friend of yours, calls to tell you about two women who were recently injured in an apartment fire. Sam says one of them, Amita, speaks English but is not a native speaker. Sam thinks that the women are scared because they have lost a place to live and they probably won't be able to work for a long time. Amita made a comment about going to jail if they can't work. Sam asked Amita if they wanted help, explaining that there are people like you who help people who have lost a place to live or who have trouble with their jobs. Amita was reluctant but she said yes. Sam asks you to stop by the hospital when you have time.

That afternoon, you met Amita and her friend. You agree with Sam's observations about the women's concerns. You learn that the women work as maids at two local motels; their employers are also their landlords; and another woman died in the fire. When asked why she thinks they may go to jail if they can't work, Amita wouldn't answer. You decide to let her rest and return another day with follow-up questions.

Case Study: The Intro

Terry Campos: And with that, we are going to jump into our hypothetical. I just need to move me forward here. Okay. So I am going to go ahead and read this hypothetical so that we do not have silence on the air. And then I am going to pose the questions to our panelists.

Terry Campos: So you are a staff member of a local nonprofit that serves low income clients. Sam, a social worker friend of yours, calls to tell you about two women who were recently injured in an apartment fire. Sam says one of them, Amita, speaks English but is not a native speaker. Sam thinks that the women are scared because they have lost a place to live and they probably will not be able to work for a long time. Amita made a comment about going to jail if they cannot work. Sam asked Amita if they wanted help, explaining that there are people like you who help people who have lost a place to live or who have trouble with their jobs. Amita was reluctant but she said yes. Sam asks you to stop by the hospital when you have time. That afternoon, you met Amita and her friend. You agree with Sam's observations about the women's concerns. You learn that the women work as maids at two local motels, their employers are also their landlords, and another woman died in the fire. When asked why she thinks they may go to jail if they cannot work, Amita would not answer. You decide to let her rest and return another day with followup questions.

Terry Campos: Okay, so looking at this hypothetical, Sam, a social worker, clearly identifies that there are employment and housing issues at stake here. So we are going to turn this over first to Andrea and see what type of issues and red flags or questions that you have in your next steps to preparing for the next meeting. So, in a sense, you get this, you have met with Amita in the hospital. Let us say you are going back to your office. What are you going to do to prepare for your next meeting with Amita?

Andrea Ogston: Okay, great. Thanks. So, obviously, you have two women who are in a really precarious situation. And depending on the hospital discharge plan, it seems like the most critical piece for me would be finding them stable housing. As a gateway issue in Oregon, and we have adopted the majority of the Uniform Residential Landlord and Tenant Act, which is also the case for about half the states. So some of this is Oregon-specific, but will apply more broadly across the Nation. So the one issue will be whether they are tenants, and why that becomes important is that frequently when I get calls about apartment fires, if the tenant is not responsible for the fire in any way, the landlord has an obligation to provide them with substitute housing. And why this hypothetical was interesting for me from a practical perspective is that if I was negotiating for them for substitute housing, I do not know that it would necessarily be on my radar to think about sort of the safety implications that the perpetrators and the people that I would be asking to provide the substitute housing are people that these women might be very afraid of. But in terms of...Because of their questionable immigration status, they are, I think with the exception of maybe some of our rural subsidy programs, they are not going to be eligible for any of the HUD subsidies.

Andrea Ogston: So the other issue around whether they are tenants is that they are also employees of their landlord. So in terms of the obligation to provide them with another apartment, it would matter whether the employment was on the same premise as the housing. So the classic example is like a property manager. They are not tenants and they do not have any rights under our Landlord/Tenant Act. But because their work is somewhere else, they would likely still be viewed as tenants in Oregon. So I guess the first thing I would look at would be trying to find them stable housing. And I think that is all I have for housing on this slide.

Terry Campos: Okay. And just curious, you have raised the question of questionable immigration status. Now, is that based on these facts, or based on...What are you basing that on I guess would be the question?

Andrea Ogston: Well, I guess at this point I do not know what their status is. So I guess I would just flag that as something I would need to explore, but I maybe would not want to do at this initial meeting, just in terms of trust building or, you know, concerns they may have about their status.

Terry Campos: Okay. Turning now to Charese, what would you, about employment issues, what were some things that you potentially noted in this scenario?

Charese Rohny: Well, to segue from where we were just talking in the housing context, there is an interesting question. When lodging is provided under the employment context, you look at to whose benefit it was for. So when the employee lives on the employer's premises as a job requirement, lodging is not for the employee's private benefit. And, in this case, you need to always make sure you are looking at minimum wage and the value of lodging to see how there is perhaps a deduction or offset. But what is also...What the interesting part is, like a property manager, that is typically when you look at whether it is for the employer's benefit. Because this particular landlord owns the house, or apartment building I should say, in addition to these other places this person is working as a maid, the two motels. It does create a little bit of a difference. I have represented a stripper who worked in a particular bar and had also a landlord/tenant relationship in a different location in a house. And so, you know, whether or not it is for the employer's benefit is a question to look at. And I think you need to look deeper in terms of how that really comes off on the paycheck and whether there are deductions and whether there is compensation that the employer tries to get credit for, where there might be some illegal, unlawful actions on the wage and hour violations.

Charese Rohny: The first thing, though, I would look at as this person is coming in is when she says she is worried about going to jail if she cannot work. I mean, this is kind of the springboard for the whole Webinar, right? I mean, that gives the indication that there is some coercive contract. There is some type of forced—potential forced labor, or threats to something. And that just requires a whole bunch more questions in terms of where she is coming from in that thought process, and what caused her to think that because there might be a lot more that is problematic.

Charese Rohny: And the second thing are deadlines in the employment context. There is some statute of limitations. If she, in fact, may have any kind of claim under state statute, it is a year from the date of the bad act for any protected class, that may be gender, race, religion, anything that you typically think of as a protected class, is a year. And then for federal protection it is really 300 days. And we have not really dove into more facts to really analyze whether there is anything applicable here, given what we know at this point in the hypothetical. But those are deadlines that loom over my head.

Charese Rohny: And then the last part is really just the premises liability. We have had an apartment fire, and as already was mentioned, the status of this particular...Whether a tenant, an employee, depends on whether they, you know, maybe have worker's comp coverage, or whether they have—if they are an invitee, or what their status is on this property, given the negligence that probably caused the fire, that we can assume if somebody's negligence, either the tenant or the landlord. If it is the landlord, then what are the personal injury claims that may exist that may invoke some insurance? Which is not part of the employment context, but just also something to issue [inaudible].

Andrea Ogston: And I think that sort of highlights this idea of getting more people on board because I may, as somebody who does not practice employment law, inadvertently try to construe her as a tenant, where long term it might be better if she is viewed as an employee.

Terry Campos: Oh, interesting. And so, I guess are there any questions at this point? I mean, it is very early in the beginning, obviously. But are there any questions that either of you avoid at this point asking?

Charese Rohny: No.

Andrea Ogston: I mean, I would avoid asking about immigration status at this point.

Charese Rohny: Oh, yes. It is not really relevant to me as an employment lawyer, either, so much.

Andrea Ogston: Right, and I would just worry about it breaking down trust.

Charese Rohny: Yes.

Terry Campos: Oh, interesting. Okay. So now let us just change this a little bit and say Sam, as a social worker, he has been doing a lot of training on trafficking lately because I think there is a push nationwide kind of to get people in the victims' services field to understand the crime of trafficking. So let us say Sam has had this training and so he sees a few facts here that he may or may not say, hmm, this is something that maybe I am going to call my friend over Immigration Services. So he calls Chris. So Chris, you get a call from Sam and it is you who ends up meeting up with Amita. What types of issues and questions? What are your next steps in this case if you meet with Amita?

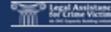
Christopher Killmer: Yes. So a couple of things are coming to mind. As a case manager, my role is really at this point to build a strong, trusting relationship with the client so that I can provide those direct services to them, but also so that I can get that trusting relationship in place and make the referrals that I need to make to the various legal workers who can cover the different legal services that that client is going to need. At this point, you know, having just very little information, a couple of red flags are standing out to me in terms of the trafficking. So the first one, Charese covered this to a certain extent, is what we are immediately seeing is a lot of fear, and specifically fear about going to jail if one is not able to work. So that is something that I see very commonly with trafficking victims is that they are extremely fearful, even coming in to visit a case manager or to see an immigration attorney. Traffickers really tend to drive into someone that they should not talk to anybody about their situation. If they do, there will be consequences for them and for their family. And so that is part of why building that trusting relationship can be very challenging with potential victims of trafficking. So that is the first thing that I am noticing. The reluctance and the concern about reaching out for help as well kind of plays into that.

Christopher Killmer: And then the other major red flag is the employer is also being the landlord. So in most domestic servitude and many labor trafficking cases, there is a setup where the employee or the victim is being provided housing directly by the employer. And then the legal deductions are being taken from that person's paycheck to the point where the person is not making any money. The books, they are being held, but the victim was never being able to see the books and find out what deductions are taking place. So any time that I am meeting with somebody and they say, "Well, I live with my employers and they provided me with housing," that is an immediate red flag for me, that there is a potential labor trafficking situation taking place.

Terry Campos: Okay, great. So we have a quick question from the audience. Andrea, would Salvation Army or a homeless shelter be something that you would be considering for this victim? What would you say, talking about temporary housing, what are you actually considering?

Andrea Ogston: Yes, like maybe like a shelter or, yes, just looking at less formal like HUD programs for some sort of temporary emergency housing. Because they tend to have broader criteria.

Case Study: More Details # 1



Since your first meeting with Amita, you have learned more facts. The newspaper reported that the police are investigating the death of the other woman in the apartment. The article stated that investigators suspect there may be building and fire code violations, and potential charges against the landlords include criminally negligent homicide. It also mentioned that the husband and wife owners of the apartment building also own many of the local motels, and they are prominent members of the local Nepalese community.

Amita just informed you that the police wants to talk to her, and an officer will visit her later this afternoon.

Case Study: More Details #1

Terry Campos: Okay, let us move on to...Let us see if I can get this to go. There we go. So now we have got a little bit more facts adding to our hypothetical. So since your first meeting with Amita, you have learned more facts. The newspaper reported that the police are investigating the death of the other woman in the apartment. The article stated that investigators suspect there may be building and fire code violations, and potential charges against the landlord including criminally negligent homicide. It also mentioned that the husband and wife, owners of the apartment building, also own many of the local motels, and they are prominent members of the local Nepalese community. Amita just informed you that the police want to talk to her and an officer will visit her later this afternoon. So this still—we are still seeing the housing and now we have a potential criminal case involved. So let us stick with Andrea for a little bit here. So you are preparing to go talk to her. What are your next steps knowing these new facts?

Andrea Ogston: So guess in terms of the immediate need for housing, I am not sure that this will really...The only way this helps her, helps the two women in terms of—I guess we are just dealing with Amita at this point—but the immediate need for housing. The fact that they own, you know, a building with other units, it does not say whether the whole building has gone. But there could be a potential for them to get another unit. And again, just listening to Christopher talk about things that he cues into early on that indicate that this is a trafficking situation. That is really helpful for me because, honestly, I do not know that it is always on my radar. So I think that would change my strategy in terms of pursuing getting them other housing from this landlord if I was more alert to that issue, because I could be potentially putting her safety at risk. In terms of maybe laying the groundwork for later claims, I would definitely want to be documenting the building and fire code violations, because they may have a negligence claim against this landlord. And also, the fact that they own other hotels, you know, makes it more likely that they are actually going to get maybe some restitution from their perpetrators.

Terry Campos: Okay, so now that we see that there is a potential prosecution ongoing and so we are moving a little bit into some more potential criminal prosecution facts. Maybe let us turn to

Katrina and say that Chris has referred this victim to you. What would you be looking at? What issues are jumping out at you? What questions do you have?

Katrina Watson: I would start with, of course, my basic screening that I do for most of my clients, trying to get the basic facts down so I understand what my client's history is or this potential client's history is, where they are coming from, what their current situation is, what their current priorities are. And when I am seeing somebody with this type of facts, especially even more than normal, I take a lot of time to do trust building and to separate myself. They might see my title as an immigration law attorney and be confused as to whether I work for Immigration or what my connection to the immigration system is. So I do a lot of education on how I am a private attorney. I am held to strict rules about confidentiality. That I am not going to be sharing her information with anybody else without her permission and without a lot of warning, and in a way that would only be to her benefit. So a lot of trust building first. But then right away, unlike other attorneys, I am, of course, going to dive right into the immigration stuff. So I am going to clarify where she is from, how long she has been in the United States. I am going to ask her to tell me as much as she can, as much as she understands about what has happened with immigration thus far. If she knows, specifically, what type of immigration status she has, or not. If she has any of those documents. What she can tell me about the immigration process that she, herself, has participated in. Did she attend an interview at an embassy or a consulate in her home country? Did she, herself, fill out forms with Immigration, or did somebody else fill them out? Did she sign documents that she understands were submitted to Immigration on her behalf?

Katrina Watson: But really a couple of things I am going to want to nail down as well as I can is an understanding of how long she has been in the country, whether she understands her current status, and then what family members she has. Does she have family members who are here in the United States? And, also, what family members she may have left behind in her home country. And I am going to want to, in a delicate way, also ask her questions about her criminal history, if she has one either here in the United States or at home, because that can affect her eligibility for different immigration relief. And all of that gathering of information I am doing, keeping in mind the various types of immigration relief that might apply to her, really starting with a clean slate at this point.

Katrina Watson: But then after I do screening, she very urgently might be talking to the police, and some of the types of immigration relief that I am going to be analyzing for her do require cooperation. So if I have already...It seems that there have been...There is a criminal investigation going on. So at this point with police cooperation being imminent, I am thinking about two specific types of relief for immigrants which is called a U Visa, and then a separate Visa that is called a T Visa.

Katrina Watson: So a U Visa is for somebody who has been the victim of a designated qualifying criminal activity here in the United States. They have suffered harm as being a victim of crime. But then other eligibility requirements specifically include cooperating with law enforcement in the investigation and/or prosecution of that crime. So at this point, even without having identified her as a trafficking victim, that is kind of on my radar. But some crime is being investigated. It sounds like maybe I even know that a criminally negligent homicide is being investigated. So I might think a U Visa might apply to this person. Already a crime is being investigated.

Katrina Watson: A T Visa is a different Visa that is specifically for victims of human trafficking, and it also has a cooperation component. Cooperation with law enforcement may be required, but it also might not. It depends on the facts and the extent of the cooperation can vary among applicants.

Katrina Watson: So at this point, with the police wanting to come talk to her this afternoon, really I want to find out how she feels about talking to the police. You know, this could be a hugely traumatic or very nerve-wracking situation that she is confronting in the afternoon. I need to figure out how she feels about it, if she wants to do it, if she does not want to do it. You know, talking to the police could still be voluntary at this point and she has the decision in making that choice to talk to the police or not, and I want to get a feel for how she feels about it. So I would go through some pros and cons about talking to the police, knowing as I do that cooperation is a great thing. It is very helpful for certain types of immigration relief that I might be considering for her. Part of me is hoping that she might be willing, and I am definitely going to tell her that cooperating has benefits. But also I am going to recognize that she has just gone through a very traumatic event. She might still be in the hospital. I am going to want to know whether she feels mentally prepared to talk to the police. And also whether...It sounds like she is very scared to seek help, and I am not sure if she is seeing the police as somebody who is helping her or somebody who might be harming her. So I want to take an evaluation of what she perceives to be the potential for harm, both against herself or maybe family members, if she has been threatened. But other people could have consequences.

Katrina Watson: And, honestly, at this point, whenever my clients are going to be talking with the police, I am going to be doing all that I can to get them hooked up with somebody who can be their victims' advocate. I am not qualified to do it myself. I know that there are a lot of protections that can be implemented during interactions with the police. So if a referral has not been successful yet to a victims' rights attorney, I am going to spend a good chunk of time before that afternoon hoping that I can get somebody who might be willing to get onboard with this client.

Terry Campos: Great. And that is a great segue into...So Katrina just mentioned that she might want to get a victims' rights attorney involved. So, Amy, from a victims' rights attorney perspective, if Katrina called you up with these facts, what issues are you seeing? What are you doing to prepare? Or is there a role for you at this point?

Amy Liu: Yes, there is definitely a role. At this point, I would say that if she were to call me and just give me the facts as stated, I would say, well, Amita and her friend, this potential victim, even though right now the only potential charges that we are hearing about are criminally negligent homicide, they are not deceased, they can be victims based on the injuries they suffer. We do not know if the police might uncover other criminal action. And it is not clear whether the deceased had some kind of relationship with Amita or her friend, because sometimes you could become a legal victim by virtue of your relationship with the person who is actually suffering the direct injury. So I would flag all of these with Katrina or whoever is contacting me. And, in particular, so that they are aware, at some point, someone who is going to be representing their rights would be stepping in if there is going to be, you know, an investigation and formal charging coming through as well. Some of the potential issues that I would flag for an attorney who is contacting me at this stage would be to watch out for potential privacy interests. You know, every time when there is a lawsuit coming on, sometimes when the victim is simply starting off as a witness, you may face potential discovery or other inquiries into their records and background. So I would flag that as something to watch out for. I would start flagging the possible, you know, restitution in any criminal case that the victim or that Amita might be covered. And I would say, well, start gathering receipts and, you know, document all the losses. And, you know, on the victim's compensation side, every state and the District of Columbia has an Administrative Crime Victim Compensation program. And a lot of times you do not need even

prosecution to go for as long as you have a victim of an eligible crime and you meet other eligibility requirements.

Amy Liu: And Katrina mentioned about, you know, the benefits of cooperating with the police. And, you know, while the requirements vary on the Administrative Victim Compensation, what is pretty uniform is a requirement of cooperating with reasonable requests of the police. So that would be something that I would highlight and flag as well in terms of, you know, when talking to the victim—talking to Amita—giving her the pros and cons of talking to the police, to have that as part of the consideration. And certainly here, just because the police want to talk to her right now does not mean that, you know, if she is not mentally or physically prepared, that somebody should not step in and ask her to reschedule that, you know. She does not have to...She can still cooperate. It has to be a reasonable request, and it may not be reasonable to demand that she is available later this afternoon simply because it is at the police's convenience. So I would flag that as well.

Amy Liu: The other thing I would flag also, before I am actually formally stepping in, is that, as a crime victim, if she has that status of potential crime victim, there may be right to confer with the prosecutor. And at what stage depends on the laws of the particular jurisdiction, whether it is a state case or a federal case. But that sometimes, at least on the federal side, the right to confer with the prosecutor can start precharging. So that would be something that I would flag so that if there are precharging discussions going on for the attorney who is currently representing her to say, hey, you might want to reach out to the prosecutor and see if, you know, you can get some more information even before the charging stage.

Terry Campos: Okay, great. So this has spurred a lot of questions from our audience, which I think is great. So I am just going to pose some of these questions to our panelists. So, Katrina, I think I am going to pose this to you. Amy mentioned the consequences of cooperation regarding victims' compensation. You mentioned U Visa, T Visa. So what are...Could you just quickly summarize potential consequences if Amita just says, "I do not want to talk to the police?" And then, also, I am adding this question on. Who has defined cooperation, or is there a definition?

Katrina Watson: Let us see. So there are—there is, as I mentioned earlier, there is kind of a spectrum of cooperation and when it is required, when it is not, what is a reasonable request, what is not. So if she is not interested in cooperating this afternoon, like Amy mentioned, we could reschedule and we are still cooperating with law enforcement and eventually providing information and support of an investigation.

Katrina Watson: So taking a look at the U and T Visas, so for the U Visa the qualifications or eligibility requirement is that the victim has been helpful, is being helpful, or is likely to be helpful to law enforcement. And that can be any level of law enforcement in the investigating or prosecuting of a crime. And the adjudicating officers who decide U Visa cases really, in general, are quite liberal in their definition of cooperation. So somebody who at least called the police and then gave a statement. Or even if the victim, him or herself, did not call the police or initiate contact with the police, really any willingness to answer questions, however brief, however, even if it was just in 10 minutes of questioning on one occasion, or being willing to have photographs taken of yourself, your injuries, your house. Those things are perceived as sufficient cooperation. It is not determined on the outcome of the case. So even if the victim, him or herself, chooses not to file charges or go forward, maybe is not willing necessarily to appear in court as a witness because that would be too challenging psychologically, that is fine. One instance of cooperation is sufficient, answering a handful of questions, sufficient cooperation.

Katrina Watson: The T Visa, the cooperation requirement is written as complied with a reasonable request for assistance in an investigation or prosecution. So again, the request needs to have been reasonable. And there are some people who do not even need to have reported, have cooperated with law enforcement. Specifically, the clearest one in a group of people who do not need to cooperate with law enforcement is if the victim, the person who has been trafficked, is under 18 years old.

Katrina Watson: And another thing, moving back to the U Visa, there are also some exceptions, I guess, for people who are under 16 years old. They, themselves, do not have to have cooperated with the police. So that is, again, it is age, so under 16. But also if the person is incapacitated or otherwise kind of unable to cooperate. So that is something we have not clarified. I do not know how old Amita is at this point, but I am going to need to figure that out quickly for my own analysis. But also, regardless, maybe she is older than 16 for the U Visa, older than 18 for my T Visa. She has just gone through a traumatic injury. I might be able to argue that at this moment the request is unreasonable. She is not currently willing to. She is incapacitated, either mentally or physically. Those are arguments I am going to be thinking about making.

Terry Campos: Great. Okay, just one last question from the audience on this, which I think is a good one that should be covered. And that was a question about interpreters when she talks to the police. And Chris, why do not I turn that question over to you, and if there are any issues regarding interpreters?

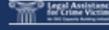
Christopher Killmer: Yes, so one of the facts that we are given here is that the accused are prominent members of the Nepalese community. And so that would immediately to me indicate that you need to be very careful in terms of finding an interpreter. Unfortunately, telephonic interpreters, while you can guarantee their distance from a victim, oftentimes it is not very personal and victims feel more comfortable when there is somebody in the room doing interpretation. But, at the same time, in many cities you have pretty small ethnic communities. So depending on where a victim is coming from, for example, in Portland, you know, the Nepalese and Bhutanese community here is not that large and they are very close-knit. And so, oftentimes, victims are greatly concerned about who is going to be interpreting because they are afraid of that interpreter talking about their situation outside of the context in which they are brought in to interpret. So that is something that needs to be addressed, either through developing a really strong relationship with an interpretation agency, and developing relationships with particular interpreters, or finding a way to do a telephonic interpretation.

Terry Campos: Would you ever just rely on one provided by the police?

Christopher Killmer: I have done that in the past and it has not been particularly effective. I prefer to have a relationship with the interpretation agency because I do not know if the interpreter that the police is providing, I do not really know what their credentials are. I do not know if they have a background in working with victims of crime. I have brought in interpreters before actually meeting with the victim and brought them in early so I can explain the situation and make sure they are prepared for it. And, hopefully, have that interpreter have some kind of background in working with victims of trauma as well.

Terry Campos: Okay, great. So we have other questions, but I think in order to get through this whole hypothetical, we need to move on. And we will address those questions that other people have posed via e-mail if we do not have time at the end. Okay, so moving on. Let me see if I can get this forward. There we go.

Case Study: More Details #2



You meet with Amita to prepare her for the interview with the police. During your meeting, you learn additional facts.

Amita thinks she is 19 years old. She and her friend believe they will go to jail because they owe their employers a lot of money for bringing them to America, giving them a job, and providing them with food and an apartment. Amita has worked as a maid at the two motels since coming to America, and she is trying to save up enough money to return home and help her family.

Case Study: More Details #2

Terry Campos: Okay. So you meet with Amita to prepare her for the interview with the police. During your meeting, you learn additional facts. Amita thinks she is 19 years old. She and her friend believe they will go to jail because they owe their employers a lot of money for bringing them to America, giving them a job, and providing them with food and an apartment. Amita has worked as a maid at the two motels since coming to America, and she is trying to save up enough money to return home and help her family. Okay, so now we have the age—Katrina had mentioned not knowing how old she is. Amita thinks she is 19 years old. Before we see how that affects the immigration analysis, I want to see if housing or employment, these new facts, do anything for the issue spotting there. So let me first turn to Andrea regarding housing. Do these facts change anything for you so far?

Andrea Ogston: I mean, the only thing this bolsters is that, given that they seem to be paying rent, at least indirectly, it does bring them potentially under our Landlord/Tenant Act which can provide them some additional remedies. But beyond that, nothing additional.

Terry Campos: Okay. And Charese, what about employment?

Charese Rohny: If she is over 18, she is provided protection under our state statutes in Oregon. It does not create much of a...If she is 16 or 17 years of age, because I am not sure, and she appears 18, there may be rules and laws that apply to her in terms of the number of hours she can work a week, whether they are on school days or not school days, whether it was in the summer or not. But assuming that she is, indeed, over 18, and really it is only age discrimination that applies and it is, you know, unlike over 40 for Title 7 in federal law and Oregon here. But, really, it does not impact too much. All the different protections I would likely look at for her are going to be the same, unless she is, indeed, under 18, which she is not it sounds like.

Terry Campos: And does it matter that they are being paid with food and apartment? Is any of that an employment issue?

Charese Rohny: Oh, yes, I am sorry. So in terms of when I was mentioning that as a red flag but I did not get into that earlier, yes, absolutely. So when meals and lodging are for the private benefit of the employee, they may be, in some cases, deducted. And, you know, when the employee lives on the premises we talked about. Minimum wage, though, has to be, you know, provided even under those, in addition to the value of the lodging. So as long as minimum wage is not violated, you know, the employee may authorize, and again, “may authorize” is the important part to highlight these payroll deductions for lodging, if there are such deductions. But she can have the benefit of lodging. It creates, you know, all the red flags we talked about earlier in terms of whether there is any kind of coercive relationship. We do not really know yet if there are deductions, but certainly her minimum wages need to still be provided. And if there are some deductions that are on her paycheck for purposes of this lodging, it has to be, in Oregon, it may not exceed [unclear audio] percent of the employee’s disposable earnings, or the amount of disposable earnings in excess of \$218 per week, whichever is less. So disposable earnings are generally the net earnings after tax deductions, and any family support withholdings, which she likely does not have. So I would want to see her paychecks and see if her pay, you know, her paystubs are showing any kind of deductions and whether those were done lawfully or not, because that is just, you know, a pretty broad area for finding violations where it is not done appropriately.

Terry Campos: Okay, great. Okay, so now, Katrina, we have some additional facts. How does that change your analysis or what your assistance that you are providing?

Katrina Watson: Gosh, at this point, all warning bells about trafficking are going off in my head. So it is somebody that I am going to quickly start screening for whether I believe she has been a victim of human trafficking or not. But also, quickly to touch about how age affects my immigration analysis. So it does for, as I had already mentioned, whether cooperation might be required or not if I am going to consider her for a T Visa. But there are also a couple of other immigration remedies that are age specific. So to quickly give a couple of examples. If she is under 18, if she is a minor that is living in the United States without parental support, without parents, she might be eligible for something that is called Special Immigrant Juvenile Status. So Special Immigrant Juvenile Status is also called SIJS, its initials. If she is somebody who is here by herself as a minor, she might be getting then quickly into the juvenile system, looking for either shelter placement of other assistance. So if she is under 18, that is important to me. I want to know if she is going to be working with a juvenile rights attorney, if it is something that can facilitate for her in order to help her become eligible for recognition as a special immigrant juvenile who is here by herself, who cannot be reunited with a parent or cannot go home to her country because it is not in her best interest.

Katrina Watson: Also, 18 years old is a key age under the trafficking definition of whether she might be a victim of sex trafficking. And we do not have any facts to indicate that she has been subjected to a commercial sex act. But if she has, under our federal definition of trafficking, it is always considered trafficking any time somebody who is under 18 is made to engage in a commercial sex act. So I am going to be making sure that that is something that I consider as well.

Katrina Watson: And, additionally, I know now that she is from Nepal. Nepal has typically been a country that has had issues that have arisen causing people to flee to the United States. So I am going to be screening her for political asylum, a more generally asylum recognition as a refugee, as somebody who is coming to the United States fleeing persecution. And there are some special rules for children, for minors, who are seeking asylum. Some of the burdens are not quite as high. So I am going to be wanting to get a hold of her identity documents to understand this concept

about how she thinks she is 19 but she is not sure. I am going to ask her if she has a passport, if she has ever seen her birth certificate, where was she born, was she born in a hospital, was she born at home. I need more facts about her birth. For any type of immigration relief it is going to be real important that she has an identity document. And we are going to need to prove who she is and how old she is. But other than that, other than my age analysis and my concern over her identity documents, I am going to dive more generally into the analysis of whether she has been the victim of human trafficking.

Terry Campos: Okay. And I am sure we will find out exactly how you will do that in the next slides because we will be presenting more facts that establish that. So let us move on and see.

Case Study: More Details #3



By now, Amita and her friend have found temporary housing.

You arrange another meeting, and this time you learn that Amita is pregnant. You also learn that she and her friend typically worked 12 to 16 hour days at the motels; their employers deducted the amount that they owed from their paychecks; and after the deduction, they received cash ranging from zero to \$300 each month.

Case Study: More Details #3

Terry Campos: Okay, so by now Amita and her friend have found temporary housing. You arrange another meeting and this time you learn that Amita is pregnant. You also learn that she and her friend typically worked 12- to 16-hour days at the motels. Their employers deducted the amount that they owed from their paychecks. And after that deduction, they received cash ranging from zero to \$300 each month. So, Andrea, we now hear that she has temporary housing. Based on these facts, is your job done?

Andrea Ogston: I mean, I mean, unfortunately, knowing what comes later, I might be, you know, inclined to think that the issue was resolved. I mean, if there were other people, other attorneys involved, it could be that they are going to pursue the civil claims. But, you know, it is not uncommon that when I have, you know, housing cases I keep them longer just to make sure that the housing remains stable. So yes and no. I mean, if initially she came in because she was wanting substitute housing, but even at this point we have sort of identified potentially other claims that she may have under [90? 9D?] in terms of negligence. So, I mean, hopefully she would remain my client.

Terry Campos: Okay. Charese, let us take trafficking out of this equation for now. And with these facts, what, if anything, presents more, you know, issues or red flags for you?

Charese Rohny: I have...Well, the facts that I talked about already regarding deductions would apply here. And certainly there are some issues regarding the nonpayment of possible overtime that she is due certainly on certain days. We do not know the numbers of hours per week she worked, but let us assume there is overtime due. Just looking at this, I guess, in a global way we know this is going to be a problem employer where there is just going to be, you know, many, many violations that are likely. So the fact that she is receiving cash and there is really no accounting it sounds like of even what we, you know, what we are going to be alleging in terms of the deductions, what was appropriate, what was not appropriate. I am now seeing there is going to be a problem because the employee oftentimes has some burden of proof regarding some kind of documentation. Of course, so does the employer in terms of documenting. It is not the employee's responsibility to keep timesheets necessarily. It is the employer to keep the accounting of what time was worked, even if the employee does not keep timesheets. But, I can tell there is going to be a problem with documentation and proof. So I would want her to get me all her calendars, get me any kinds of records that would really corroborate the hours that she was working. Not in any way because I doubt her. Because I just want to be able to prove all the different things she is saying. So that is kind of what I am thinking about as I am looking at these facts is how am I going to prove what is going to be just a host of violations of wage and hour law.

Terry Campos: Okay, so Katrina, now that we have these facts, what are—what are your next steps?

Katrina Watson: Gosh, my next steps will generally be to start screening her for what type of coercion or fraud or force was going on. As somebody who is not, definitely, not up to speed on all of her labor rights, [unclear audio] situation seems really unfair and pretty terrible to me. So is this what she agreed to when she was recruited in Nepal? What was her understanding of what she was going to be doing? And is that different from the reality in which she finds herself presently? So just what did she think she was going to be getting paid? What did she think her hours were going to be? Did she think she was going to have breaks and vacation? Where did she think she was going to be living? Was there going to be a stipend for renting? Or did she realize that she was going to be living with her employer? So I am going to want to get my handle on like how was she recruited? What was she told was going to happen? And then what is the reality of what is happening now? And then I am also going to start asking her whether she believes that she has been mistreated at her current employment, and start digging deeper as to whether, you know, she ever felt unsafe. Was her employer ever aggressive towards her verbally or physically?

Katrina Watson: So in order to meet the definition of human trafficking which is used for the T Visa and for the U Visa, I am going to need to show that she was working. She was recruited and she has been performing some sort of employment, but that she was recruited and obtained through the use force, fraud, or coercion. And she is currently not in a situation of fair employment. That it truly is a situation of involuntary servitude, debt bondage, or peonage. So, gosh, you know, I am going to start asking her lots of sensitive questions. I do not know if there were threats. So coercion really means that there has been a threat to her liberty or to her physical wellbeing. So I am going to start...It is real important for me to know whether she is facing any abuse at work—sexual abuse, physical abuse, psychological abuse, what the parameters of...Sounds like she is being socially isolated. She is there 12 to 16 hours a day. She is living there. I am going to want to ask her a lot of questions about her freedom of movement, her access

to her identity documents. And then also a lot of questions about what control she has over her money. I would definitely start with those.

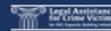
Terry Campos: And now, obviously pregnancy could be a sensitive issue. Would you question her about her pregnancy at all?

Charese Rohny: This is Charese and I—that was just a very big oversight on my part. I will let you answer that, but, of course, I would, too, on the employment side. So I apologize for leaving that out.

Katrina Watson: Me, too. I apologize for leaving that one out. That is a big one, yes. Yes, I would ask and I would certainly try to do so in a sensitive way of, does she have a partner? I had already asked her about family members, and that would be very important to me to know as far as who I might be able to include on her family petition. Does she have a spouse? Does she have somebody that she is thinking of marrying? So has this been a pregnancy that she had planned or is within an intimate relationship that she has? Or is it...Yes, so I would ask questions about who the father is, how did you become pregnant? And then I would do followup questions and referrals about whether she is receiving prenatal care. And if it turns out that it was not something that had been planned in the context of an intimate partner relationship, you know, if she discloses that this was an abusive act, I am going to want to start analyzing whether I think it was a commercial sex act, whether she was made to have sex in exchange for something of value. Even if she did not, herself, receive it, did somebody else receive money in the context of the sexual activity? Did she feel pressured to have sex with somebody and why? Does she need a referral to a sexual assault support group or a counselor, a case manager who deals more specifically with issues of sexual violence?

Terry Campos: Okay, great. So let us move on. And I am going to actually skip the second poll because we are really running...We have got a lot of good information that is coming out and we still need to get out. So we are going to just jump to more details.

Case Study: More Details #4



By this time, law enforcement has identified Amita and her friend as victims of human trafficking, and both state and federal prosecutors are considering filing charges.

Case Study: More Details #4

Terry Campos: By this time, law enforcement has identified Amita and her friend as victims of human trafficking, and both state and federal prosecutors are considering filing charges. Okay, so now that we know that she has been identified, Katrina, what next would you be, you know, next steps or any—or are you referring out at this point? What is happening?

Katrina Watson: Gosh, at this point I am considering the immigration relief that is available for people who are identified as victims of trafficking. So law enforcement is actively it sounds like going to be investigating, pursuing this case. And if that is happening, my client might be eligible for something that is called “continued presence” in the immigration world. Continued presence is the temporary immigration benefit for victims of trafficking specifically. And it is so that they can remain in the country and cooperate with an active investigation. And it is not something that my client, it is not something that Amita could apply for herself, submitting an application to Immigration. It involves collaborating with law enforcement and having law enforcement do the paperwork that is required to get this temporary permission to stay in the United States. And there are pros and cons of doing it. It usually involves a more lengthy interaction with law enforcement. So I would be gauging the mental health of my client, whether she is up for kind of more. And at times, often more... I do not know, it is challenging. She may have already given information, so I just need to gauge at this point whether she is struggling to the point that having kind of more meetings to drag out the facts again and talk about what is going on and whether that is something that she can do or not. So continued presence is probably my most urgent thing that I am considering for her.

Katrina Watson: If I am not going to do continued presence, regardless, I am also discussing with her the possibility of filing a T Visa. If she has been recognized as the victim of trafficking, she has already cooperated with the police, I think that I have enough facts to lay out coercion, force, fraud, and meet the elements of trafficking. So I am going to be preparing a T Visa application for her. And here is where it also matters what family members she has. If she is married, if she has a spouse that does not have immigration status, as somebody who is under 21 she could also file for parents. She could do petitions for her parents. So as somebody who is under 21, she could file for a spouse. She could file for her parents. She could file for any children that she has who are unmarried. And so I am going to be wanting to get a hold of identity documents for all of them. And so those would be my most urgent ones.

Katrina Watson: I think that she would qualify for T. I think that U, that continued presence might be a good option for her. And also, as the victim of trafficking, she would be eligible for a U Visa as well. So the U Visa is only for victims of specified crime. There are lots of crimes that are laid out in the U Visa statute, and one of them specifically is trafficking. So she could also do a U, and I would go over the pros and cons of how many applications to file, what types of costs we are looking at. Yes, so at that point, I would be focusing my analysis on that. You know, at this point, I probably have already ruled out that she does not have any other options like asylum or family-based options, especially with a juvenile status. It is maybe something that I have already thought of and ruled out. I would think that we are going to go forward with a T or a U at this point.

Terry Campos: Okay. Let us just jump ahead here.

Case Study: More Details #5



The U.S. Attorney's Office has charged Amita's former employers with violating several federal offenses, including immigration fraud, labor trafficking, and sex trafficking.

Today, you learn that the defense is seeking discovery of Amita and her friend's "U" and/or "T" Visa applications as well as their health care records.

Case Study: More Details #5

Terry Campos: So then we learned that the U.S. Attorney's Office has charged Amita's former employers with violating several federal offenses, including immigration fraud, labor trafficking, and sex trafficking. Today, you learn that the defense is seeking discovery of Amita and her friend's U and/or T Visa applications, as well as their health care records. And we are running a little tight on time, so I am going to ask Amy, as a victims' rights attorney, what she sees here, what issue she spots. Let us say that Katrina has reached out to you now that there is definitely a prosecution underway. So, Amy, what would you—questions you would want to know of some issues that might pop up?

Amy Liu: If Katrina reached out to me and let us say she reached out to me before the official charge has taken place, and she gives me a call and said that the police, or the U. S. Attorney's Office and the State are both considering pressing charges. At that point, I would want to talk to the police or the prosecutor and ask to make sure that they allow the victim, allow Amita to proceed anonymously. That would be one of my first concerns in terms of protection. I think it is mostly a non-issue in trafficking cases. The government is used to using pseudonyms or maybe initials. But that would be something on my checklist. And as soon as I hear that there is a potential charge coming, or as soon as formal charges are in place, I would want to file a notice of appearance, assuming that Amita has retained me at this point to represent her. And if not me, if, you know, her current attorney working on other issues is willing to also represent Amita on victims' rights matters, there should be a notice of appearance filed. In this case, it would be in the federal court. That would basically give everybody a heads-up that Amita is represented by counsel and to assert all of the rights that Amita would have under the Federal Crime Victims' Rights Act in terms of, you know, notice, information, right to be heard, right not to be excluded. The whole host of rights under the federal law.

Amy Liu: And in terms of the record, my big concern would be Amita and her friend's privacy records. I am not sure of the status of her friend right now, whether her friend has separate counsel or whether I am also representing Amita and her friend. There might be conflict issues. That is something I am going to sort of set aside. But in terms of discovery, what we were seeing

would be, you know, cases where the defense attorney wants everything. All of the Visa applications as well as all the documentation submitted alongside the application. So there, first of all, would be a challenge. I would ask, talk to Amita about possibly going in and filing a motion to quash. And challenge on, first, the need for any of these Visa applications for purposes of a sex trafficking crime. What is the relevance in terms of the defense?

Amy Liu: And second, even if we were to lose on, you know, disclosing the applications, there is absolutely no need to have the supporting documentation be disclosed. And certainly, you know, be prepared to challenge that on all of the possible potential victims' rights grounds, on privacy, and so forth. And I would immediately, even if I have not heard about subpoenas to any other record holders, the fact that I am hearing about the defense is seeking references to the immigration and health care records, I am going to think, gosh, you know, Amita has applied for benefits, whether it is in the housing area, or, you know, I do not know if there is some other administrative, you know, in terms of worker's comp. I would be giving a heads-up to all potential record holders and letting them know that Amita is represented by counsel in this case, that she is a crime victim, and that if any subpoenas come, we need to talk about how to address that. And the fact that Amita is prepared to, you know, file a motion to quash.

Amy Liu: I would also want to talk to her about getting a protective order alongside filing a motion to quash. I would be concerned that anything that is disclosed...Let us say we lose and the court orders disclosures of a lot of records. To make sure that her private name is not identified on any attachment, on any receipt, on any medical records, so that they are redacted and replaced by pseudonyms. And, certainly, to ask that the court moving forward—and this would be something I would do right, you know, in the beginning—that all matters in this case, discovery, any kind of filings, that everybody onboard makes sure that their identity is protected as well.

Terry Campos: Okay. Andrea, do you see any issues now that we know that there is a charge going forward against the former employers?

Andrea Ogston: Yes. So I guess at this point, now that they have been identified as victims of sex trafficking, it raises the issue of potential fair housing claims. So there are federal fair housing claims that prohibit discrimination on the basis of sex. And any time you have housing provided on the condition of the tenant providing sort of a quid pro quo exchange for sexual acts of the landlord, you can have claims under the Fair Housing Act. And this might be, I mean, given the cases with the U.S. Attorney's Office now, we have a really good relationship with our U.S. Attorney's Office, so we may reach out to the Civil Division to see if they want to pursue charges under their federal acts. It can be really powerful to have them on your side pursuing the claim. So yes, at this point you would really want to flag the fair housing claims because there is a 1-year statute of limitations to file administratively with HUD. Otherwise you have 2 years.

Case Study: More Details #6



More than a year has passed since you first met Amita and her friend.

A friend of yours who works in the U.S. Attorney's Office just informed you that he heard that plea negotiations are underway. Until now, you were not aware that the government was going to offer any deals.

Case Study: More Details #6

Terry Campos: Okay. So speaking of timing, let us move to the next slide and see what facts come up. So more than a year has passed since you first met Amita and her friend. A friend of yours who works in the U.S. Attorney's Office just informed you that he heard that plea negotiations are underway. Until now, you were not aware that the government was going to offer any deals. So, Katrina, I want to jump back to you and see if there is anything on the trafficking front, the immigration front, with these facts that are going on.

Katrina Watson: Well, with an application that has been pending over a year, or sorry, with the situation now having happened over a year ago, if I filed my application for a T Visa over a year ago, hopefully Amita now has T non-immigrant status, which would be great. And even if her application is still, for some reason, wallowing away on an adjudicator's desk, this is the point where I could probably request certain documents that will allow me to get her set up for refugee benefits. One of the great things about a T Visa is that it qualifies the applicant for all sorts of types of benefits. And Chris, in my office, is the person who case manages those access to benefits for my clients. So I would be talking a lot to Chris about, you know, if this person is not already getting his services, let us see if she has any urgent needs that we should make this happen, either if the application is still pending, or she has now been approved. And then I would be pushing along any family member cases that we have pending.

Katrina Watson: It sounds like it is still an active case. With the T Visa, if she has already been approved, we will be setting things up so that she can apply to become a permanent resident, either soon or the longest we would wait is probably in a couple more years.

Terry Campos: Okay. Amy, do you have anything right now that has come up now that you have just been informed that there was a plea negotiation underway?

Amy Liu: Yes. A couple of things with this scenario. A year has passed, and even before the plea, the victim, you know, would have a right to a speedy trial or proceedings free from unreasonable delay. And I may have already engaged in discussions, or I should have, to find out what has been

going on. But here, clearly, that plea negotiations are underway, I am hearing it from a third party. I have already filed the notice of appearance, so that the government, the prosecutor should know that the victim is prepared to assert all of her rights, and certainly in terms of the right to confer. This should have been one of the discussions in terms of the heads-up, I should be hearing from the prosecutor that the plea negotiations are underway because I would have many concerns. And assuming, at this point, I have talked to Amita and we have discussed, you know, some of her concerns in terms of what she wants, maybe in terms of restitution, and so forth, I will want to make sure that the government understands that if they are going to reach a plea agreement, that it does not end up basically wiping away her victim status with respect to certain things such as the right to full restitution for all of the crimes, if they end up pleading down to, you know, one small charge. I mean, right now it is not clear what they might reach in terms of the plea agreement. So that is something that, you know, the government can work into a plea deal to make sure that she is going to get the full restitution that she is entitled to, and we would have a discussion about that.

Amy Liu: And also, I will want to make sure that she understands—that the prosecutor understands that I have talked to my client and that, assuming here that Amita actually wants to be present or to be heard, to make sure that this failure to notify us is not going to continue, so that we have a heads-up and we will receive reasonable notice to allow Amita to exercise, you know, her rights to be present, to be heard at the plea hearing.

Terry Campos: Okay. Charese, do you have any issues or red flags based on this?

Charese Rohny: Yes. Two things that came up. One is on the medical records, the motion to quash conversation was important for me to hear, but in my arena of employment law, and economic and noneconomic damages, specifically compensatory damages for emotional distress, and any other kinds of physical damages she may have suffered from an assault or battery or sexual harassment, all those medical records are coming into evidence. And it does not matter if we redact her name because the name of the case is her and they will know that these are all her damages. So I just want the doctors to document, and the therapist to document extraordinarily well because that is what is going to get her compensation. And to me, at this point, my whole job is to get her the most amount of money.

Charese Rohny: Which leads me to my second point, which is I better have filed before a year later because this guy, this older employer, is spending a lot of money and it is all depleting from what is going to go to her. So I want to make sure that she is...It is kind of a race to the courthouse and getting a big verdict because she has a lot more chance to get a lot more compensation [microphone interference] really go through Title 7 and maybe whether or not there is a *42 U.S.C § 1981* which is based on her race or national origin. But that has a 2-year...Well, that actually can go back 4 years. And there are no limitations on compensation for noneconomic damages and punitive damages. But I want to get this guy and I want to get her as much as possible so she can go back to Nepal or, you know, wherever she wants to put this money, just so she has it before he spends it all on his attorney's fees. So those are the two things that I was thinking about, that I have got to get this filed right away.

Terry Campos: Okay. Amy, did you have anything to add?

Amy Liu: Yes. I just want to piggyback on what Charese said about the concern in terms of, you know, concurrent civil lawsuits, and that is definitely something, and not even in this context, that sometimes it is a matter of, you know, filing the complaint. And if it is a state case, to basically

make sure that the statute of limitations problem is addressed. But then staying the action to allow the criminal case to go forward.

Amy Liu: And I also want to kind of flag for those who have practiced under the federal law. The federal trafficking act actually has civil remedies. It allows you to file civil suits for violations of any of the crimes that are under the Trafficking Victims Protection Act (TVPA), the statute. So in some cases, what attorneys have done is that they would, when you are in federal court, you can also bring in state claims. And then you...I think it is almost an automatic stay, but certainly the routine is to stay the civil action. So again, you preserve all of the, you know, timing concerns so that the—we make sure that civil remedies are also available. And then in terms of records, we have successfully helped crime victims proceed in civil cases as a plaintiff by use of pseudonym in sexual assault cases. So this will be the type of case where we would proceed and file a motion to ask the court to allow the plaintiff in the civil case to proceed by a pseudonym. And that is something that we have done in the past and we would be happy to help attorneys work on that.

Charese Rohny: Yes. And Jane Does and such we often use for sure. I just wanted to point out that I probably would not move to quash the whole medical file. I would just want to protect her if she had fear, you know, because she is a crimes victim, we can do it better than with anyone else.

Case Study: More Details #7



Defendants have pled guilty to two counts of peonage (a condition of compulsory service or involuntary servitude based upon a real or alleged indebtedness) in violation of 18 U.S.C. § 1581, and trafficking with respect to peonage in violation of 18 U.S.C. § 1590. In return, the government has dropped all other charges, including the charges relating to sex trafficking.

The sentencing hearing is scheduled to take place in a month. The prosecutor has assured the victims that she intends to seek full restitution to cover all the back wages due.

Case Study: More Details #7

Terry Campos: Okay, great. So now we are just going to wrap up real quick here. Defendants have pled guilty on two counts of peonage in violation—and trafficking with respect to peonage, in violation of federal code. In return, the government has dropped all other charges, including the charges relating to sex trafficking. The sentencing hearing is scheduled to take place in a month. The prosecutor assured the victims that she intends to seek full restitution to cover all the back wages due. Now, I know we probably all have a lot to say on this, but, unfortunately, we are really running out of time. So I am going to turn it over to Amy, if you can maybe issue-spot really quickly in 2 or 3 minutes. And then we will have to wrap it up.

Amy Liu: Sure. Really quickly, I would ask Amita, does she want to be present? Because if she does not, she can certainly, you know, give a victim impact statement on paper, by letter, through the pre-sentence report or written memo. I can file a sentencing restitution memo. Will the date work with her schedule? I want to make sure that whatever date is scheduled to take place is also convenient for the crime victim. With respect to restitution, at this point, hopefully we have been prepared and we have been documenting the losses. And I think—I cannot remember who spoke earlier about documenting losses. You know, in these scenarios there are a lot of cases where simply the victim declaration affidavit as well as best estimate, best guesses, based on the, you know, the trafficker’s records are often sometimes [unclear] as well. And I would be very concerned, in terms of talking to the prosecutor, that she understands full restitution does not just cover back wages. For trafficking, even though they dropped all the other charges and they are simply keeping the charge regarding peonage, under the relevant statute Amita should be entitled to all economic losses. That includes medical, past, current, future, mental health, perhaps, you know, examination for sexually transmitted diseases. Depending on the age, maybe education, housing. I would make sure that all of that is requested, including attorneys’ fees, anything that is caused by the criminal conduct. That would include attorneys’ fees for the immigration attorney, as well as costs and expenses. Plus, under the federal trafficking law, the victims also, in addition to that, entitled to either—to the greater of the defendant’s ill-gotten gains or the value of Amita’s labor under the Federal Fair Labor Standards Act, which may include minimum wage. It may include overtime. It may include liquidated damages in terms of double the back wages. So, you know...And I mentioned that I want to make sure the prosecutor fully understands because we have seen many cases where, based on the record, we can see that the victim is not getting everything that the victim is entitled to under the federal restitution laws.

Wrap Up



Final Thoughts

Wrap Up

Terry Campos: Wow, we have a lot of great information, and there is definitely, I am sure, more we could all say about the hypo and the issues and the questions that pop up. But, unfortunately,

we are out of time. And I want to thank everyone so much. This, I think, was a really great discussion.

Questions?



We did have some questions that came in that we did not have time to get to. And what I am going to do is forward the panelists those questions. And then I will forward on the answers to the person who posed that question.

Terry Campos: I would like to mention in wrapping up that we have lots of great other resources and publications and recorded prior trainings in our law library. Just visit www.ncvli.org and click on the resource library, our Victim Law Library Resources.

Are you working on a case with a victims' rights issue?

NCVLI provides legal technical assistance to practitioners serving crime victims.

Request Technical Assistance:
go.lclark.edu/ncvli/ta

Request a Training:
go.lclark.edu/ncvli/trainings

Are You Working on a Case with a Victims' Rights Issue?

Terry Campos: Additionally, if you are working on a case with victims' rights issues, please do not hesitate to contact NCVLI. And that information for contacting us is on the screen.

Contact Information



Christopher Killmer, Immigration Counseling Service
ckillmer@ics-law.org

Andrea Ogston, Legal Aid Services of Oregon
andrea.ogston@lasoregon.org

Charese Rohny, Charese Rohny Law Office, LLC
charese@rohnylaw.com

Katrina Watson, Immigration Counseling Service
kwatson@ics-law.org

NATIONAL CRIME VICTIM LAW INSTITUTE
Tel: 503-768-6819
ncvli@clark.edu www.ncvli.org

Contact Information

Terry Campos: And lastly, let us see, I am going to jump back to that one in a minute. But, first, I wanted to... You will be receiving all the contact information for the presenters in the PDF.

Completion Code



Completion Code:

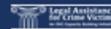
PP1212

Completion Code

Terry Campos: And then, for those of you who are seeking a certificate of completion, the completion code is on the screen. And you can enter that on a certificate that you can, that I guess we will be providing with the PDF.

Terry Campos: This video will be available online. So if you missed anything and you want to go through with your PDF, you can go ahead and re-watch this and take notes as you go.

Terry Campos: And I really want to thank you for joining us today. Really appreciate it. And I hope you got as much out of it as I did. I thought there was a lot of really great information. And I was going to say one last thing and, of course, it has now slipped my mind. But I want to thank all of our presenters. They did a great job. Oh, please fill out the survey so that we can see how this format worked for you. I think one thing that is pretty clear is we got a little tight on the—we were a little tight on the time at the end. So that is certainly something that we will take into consideration next time when we have all this great information that we want to get out there, is potentially scheduling a little bit longer. So if you can let us know if you would want to take part in a longer presentation, or if that we should just cut out some of the information so that it can be shorter, that is very helpful information to us. So, again, thank you very much for joining us and please fill out the surveys. Thank you.



As part of the *Legal Assistance for Crime Victims: An OVC Capacity Building Initiative*, OVC TTAC and the National Crime Victim Law Institute (NCVLI) are working collaboratively to expand the availability of pro bono and no-cost legal assistance for victims of crime nationally.

Part of that collaboration includes developing and delivering a series of Webinar trainings designed to assist attorneys around the country with the tools needed to increase their knowledge base about crime victim issues, and increase their capacity to provide pro bono or no-cost legal representation to crime victims.

For additional information about the Initiative and to register for upcoming webinars, please visit: <https://www.ovcttac.gov/>

[End.]