

For Lawyers Representing Trafficking Survivors: Best Practices in Cooperating with Law Enforcement

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Proskauer was privileged to host a panel presentation this month on the topic of representing victim witnesses in cooperating with law enforcement investigations and prosecutions of human traffickers. The panel featured Jane Kim, Assistant United States Attorney for the Southern District of New York; Jessica-Wind Abolafia, Director of Sanctuary for Families' Anti-Trafficking Initiative; Lori Cohen, incoming Executive Director of ECPAT-USA; and Bill Silverman, Proskauer's Pro Bono Partner and former Assistant United States Attorney.

The panelists shared a number of insights from their various perspectives as attorneys within law enforcement, a nonprofit legal service provider, and a law firm's pro bono program. Several best practice tips emerged that will enable pro bono lawyers representing survivors of human trafficking to provide competent and trauma-informed legal assistance to their clients:

1. **Identify your client's goals.** We must understand our clients' objectives to effectively assist them in deciding whether to report their victimization to the government. Trafficking survivors may have one or more motivations for cooperating with law enforcement. For example, foreign-born victims may wish to pursue an immigration remedy such as Continued Presence or T nonimmigrant status. Many survivors seek justice against their abusers and hope to prevent perpetrators from victimizing others.
2. **Prioritize the client's personal safety.** As lawyers, we are trained to spot legal issues and plan case strategy, but when working with a survivor of human trafficking it is vitally important to first ask the client what their priorities are and whether their non-legal needs and safety concerns are being addressed. Partnering with organizations such as Sanctuary for Families can ensure that the

client has access to holistic services, including counseling, safety planning and shelter. Law enforcement may also be able to provide services to ensure a victim witness's safety, such as temporary relocation to alternative housing. The pro bono lawyer should advocate for these measures when necessary to protect the client.

3. **Remember that you represent an individual client, not a social justice cause.** As much as we hope our work as public interest legal advocates will serve the greater good and bring an end to all forms of abuse and exploitation, when we are engaged to represent a survivor we must always put our client first. We should help the client to assess carefully whether the potential benefits of cooperation outweigh the risks before contacting law enforcement to explore the possibility of a proffer.
4. **Practice trauma-informed lawyering and know your client's story.** It is critical that the pro bono lawyer know the client's full story before representing the client as a cooperating witness. This includes knowing about any criminal history the client may have and whether those crimes were a result of the trafficking or were unrelated to it. Pro bono lawyers should be aware of the effects of trauma on memory, and must be patient and willing to meet with the client multiple times until the client is comfortable with sharing their full story. It is not uncommon for a client's story to change from one meeting to the next, and trauma-informed lawyers understand that these changes likely do not indicate a lack of honesty but rather reflect the way in which trauma can affect one's ability to recall and sequence memories. A client's story may also change when they are afraid that they or their loved ones may suffer retaliation or harm as a result of efforts to report the trafficking. Creating safety and establishing rapport is critically important to providing compassionate and dignified representation.
5. **Get a proffer agreement but understand its limits.** In our view, pro bono counsel to trafficking victim witnesses should seek a proffer agreement, which is a written agreement between the prosecutors and the client that may offer some measure of protection for the client against future prosecution by restricting the prosecutor's ability to use the client's words against them in criminal proceedings. However, the pro bono lawyer must ensure that the client understands the limited protection that proffer agreements provide. Prosecutors in some jurisdictions, such as the Southern District of New York, are specifically trained in how to work with trafficking victims and generally do not prosecute them. Unfortunately, this sensitivity is not universally shared.
6. **Prepare your client to be interviewed by law enforcement.** There are several steps the pro bono lawyer can take to prepare the client to meet with law

enforcement and to help mitigate fear and traumatization. Ensure that the client knows what to expect during the interview. Explain that they may be asked questions that are very sensitive and personal, questions about past crimes, and questions that to the client might sound odd but that prosecutors routinely ask.

Explain the importance of complete honesty and fully answering the question that is asked. Ensure that the client understands that not only dishonest answers but also intentional omissions will undermine their credibility and potentially expose them to criminal liability. Sharing details in advance such as who is going to be in the room, what type of clothes those people are likely to be wearing, and how the room will be set up can help reduce a client's anxiety.

7. **Advocate for your client throughout the investigative process.** It is advisable, in advance of any such meeting, to give law enforcement a preview through an attorney proffer, which will help ensure that everyone is on the same page. When the time comes for the prosecutor to interview the client, the pro bono lawyer continues to play a key role in ensuring that the client's best interests are served and that law enforcement works with the client in a trauma-informed way. Attorneys and law enforcement agents should use language and terms that mirror the language the survivor uses and respect how the client self-identifies. The client should be permitted to choose their own seat in the room and take breaks when needed. If the client identifies as a woman and feels uncomfortable sharing sensitive facts in front of men, she should be permitted to speak only with law enforcement officials of her same gender identity about particularly sensitive subjects.

While cooperating with law enforcement is likely to be challenging and traumatizing for trafficking victim witnesses, with thoughtful and dedicated advocacy, pro bono attorneys can aspire to turn this process into an opportunity for their clients to feel empowered and achieve just outcomes.

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