

Help wanted: attorneys to represent victims of human trafficking

Robin Thompson



Victims of human trafficking often need a variety of different kinds of help to right the wrongs they have suffered and lawyers have a wide range of expertise to help them.

Julia is a 16-year-old girl from Guatemala. She left her home country when a relative told her that she could make money in the United States working for a family as a nanny and housekeeper. She said yes to this long journey from home out of desperation: her family is very poor and she holds no hope for work. The man who brought her to the United States took her to a labour contractor who told her that she owed him US\$5,000 for her transport to the United States and that she must work picking tomatoes during the day and to do housekeeping and child care at night for the foreman and his family in order to pay off this debt. She is never out of the sight of the labour contractor or the family. The foreman regularly rapes her, pays her US\$50 a week and deducts from that amount the cost of food and housing, so she is left with only US\$10 to send home each month. Beaten, alone and without a friend, she escapes one day and the police pick her up. Speaking only Spanish, she tells them she is petrified that the foreman will hurt her and her family since she escaped. Police investigate and find that Julia is one

of perhaps hundreds who have been enslaved by this foreman and labour contractor.

Attorneys around the world have an important and unique role to play in helping people like Julia. This article will explore human trafficking and discuss what today's legal profession can do to help those who are its victims.

Modern-day slavery

Human trafficking, or modern-day slavery, is an all-too-common and tragic fact of life in today's world. Annually, an estimated 600,000 to 800,000 victims of trafficking are bought, sold, tricked, kidnapped and trafficked across international borders. The UN estimates are even higher, finding that as many as four million people are victimised each year by traffickers. Trafficking is big business, and with an estimated annual revenue of over US\$9.5 billion, it may soon surpass the revenues from

the trafficking and sale of guns and drugs for organised crime.

Human trafficking is extremely profitable and, tragically, the traffickers are at an extremely low risk for arrest and punishment. For instance, from 2001 to 2004, the US Department of Justice convicted 118 defendants in 60 filed cases. This occurred in a country where the government has estimated that 14,500 to 17,500 people are trafficked annually.¹ It is a sad truth that these numbers are not unusual for other nations, despite the hard work of many. However, while more aggressive and comprehensive investigations and prosecutions must occur, even greater efforts must take place to focus on the civil justice system and how it can work to bring justice to victims. There, victims can see relief that can begin to make them whole again, and traffickers can literally be forced to pay for their crimes.

Scores of prosecutors and other government-based attorneys, from prosecutors, police attorneys, to those in policy positions who are drafting laws, to the NGOs who protect and advocate for victims in the criminal justice system, are doing exemplary work. The civil Bar, however, is the place where a great deal more work must be done – with immigration relief, social services benefits, back wages and compensation for pain and suffering, and where the financial incentives for trafficking can effectively be stripped away.

In the scenario above, Julia has suffered greatly. She has not been paid and is injured emotionally and physically. The foreman and labour contractor have benefited from her hard work. The agricultural business that owns the fields where she worked profited. There are a host of specific causes of action that can be brought by lawyers working on Julia's behalf and it is not unusual in human trafficking cases for victims to need a range of legal assistance. In Julia's case, she needs the help of many legal experts on immigration law, labour law (wage and hour issues, overtime), civil rights and relief, torts and public benefits. The foreman, labour contractor and the grower could be liable for damages. Julia could be eligible for a special trafficking visa or other immigration relief that would help her remain in the country, or she may need help going home, if that is her wish. She may also be eligible for social services benefits, back wages and damages for overtime, damages for civil rights violations and for torts committed against her such as battery and assault, false imprisonment and sexual battery. Under some laws, she could attach the trafficker's assets such as land, equipment and bank accounts. Many of these legal actions are asserted daily by attorneys on behalf of their

Four million people are victimised each year by traffickers'

clients, and lawyers have expertise in a range of these matters; however, they may have never seen how human trafficking might be the cause of the damages.

Laws in place

Specific to human trafficking, the US Trafficking Victims Protection Act (TVPA) provides that a victim of a 'severe form of trafficking' can file suit against the trafficker in federal court. If there is a pending criminal action, the civil case is stayed and attorneys' fees are recoverable.² This law is in addition to a host of other remedies available including the Alien Tort Crimes Act, Fair Labor Standards Act, Title VII of the Civil Rights Act, intentional torts and negligence, contract claims and other state statutory remedies.³ The TVPA also provides for specific immigration relief and social services benefits for victims of trafficking, provided they agree to cooperate with law enforcement in the investigation and prosecution of the traffickers.⁴ In the United States, some states have also begun to address the issue of civil relief.⁵

The 2005 Council of Europe Convention on Action Against Trafficking provides an array of legal responses to human trafficking and includes relief for victims in the areas of legal status, repatriation and victim compensation for material injuries and suffering. The Convention also specifically calls for victims to be given legal assistance.⁶ All of these laws and remedies are worthwhile examples that other nations could look to if they seek to amend their own laws and provide for a wider range of victim reparations.

Lawyers stepping up

Lawyers working with NGOs can also play a significant role. In the Republic of Georgia, for instance, the Georgian Young Lawyers Association (GYLA) worked in collaboration with lawyers from around the country and the world in drafting the nation's first anti-trafficking laws. These lawyers brought great credibility to the need for this law in Georgia and the legitimacy of trafficking victims' plight. They spearheaded public awareness campaigns, offered free legal assistance to victims, convened international panels of experts and key individuals to draft needed laws and have continued their work by working

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towards the establishment of a shelter for human trafficking victims.⁷

Lawyers representing victims have also recovered money judgments. In 2006, welders from India were awarded a verdict of over US\$1.2 million against the John Pickle Company in the United States. Civil rights attorney Kent Felty and US Equal Employment Opportunity Commission regional attorney Robert Canino noted that this verdict set a precedent in the United States for federal civil rights laws to be used to sue traffickers in court. In another success, a Sri Lankan domestic worker sued her employers under the TVPA civil remedies provision, and was awarded US\$225,000 in settlement of her claims. ‘This is the first time that a victim of trafficking has recovered civil damages under a new law designed to address this human rights abuse,’ says Kathleen Kim, her attorney.

In one of the largest recoveries, trafficking survivors from India who were trafficked into the United States by Lakireddy Bali Reddy sued him after he had repeatedly raped and sexually abused them and forced them to work in his Berkeley restaurants for over 15 years. The case, including a count for wrongful death, settled for US\$8.9 million. Reddy was convicted in a criminal court as well and sentenced to over eight years’ imprisonment.

Much to do, but one of many

Representing victims of human trafficking may appear to be a daunting task: it may be a new area or one that is seemingly alien to an attorney’s current practice. However, lawyers have skills and resources that they have developed representing others, perhaps not trafficking victims, which they can apply to these cases. Lawyers have a special duty as guardians of the rule of law in society to help victims who have endured great brutality and injustice. Moreover, we should all keep in mind

that if direct representation is not possible, there is a wide array of activities that attorneys can undertake to help the cause, from working with NGOs to enhance public awareness, to speaking to local civic organisations on the topic (*see box overleaf*). Finally, remember that the lawyer is but one member of a team of people, such as local anti-trafficking NGOs, health care professionals, labour rights organisations, law enforcement, housing authorities, and others, who can and should be part of a coordinated community response to assist trafficked persons. ☒

Notes

- 1 For that time period, between 58,000 and 70,000 people would have been trafficked in the United States.
- 2 18 USC 1595 (2000).
- 3 See Kathleen Kim and Dan Werner, ‘Civil Litigation on Behalf of Human Trafficking Victims’ (March 2005), available at www.lafla.org/clientservices/specialprojects/VictimsTrfficking0405.pdf.
- 4 This requirement dilutes the power of the law to help victims directly as assistance to them is conditioned on law enforcement approval. Some commentators have noted that this has had the effect of deterring victims from coming forward to seek help.
- 5 California Civil Code s 52.5 provides a trafficking specific civil cause of action, which was adopted with the passage of AB 22 of the California Trafficking Victims Protection Act; Florida provides that ‘any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s 772.103 due to sex trafficking or human trafficking shall have a cause of action for threefold the amount gained from the sex trafficking or human trafficking and in any such action is entitled to minimum damages in the amount of US\$200 and reasonable attorney’s fees and court costs in the trial and appellate courts’. Chap Law 2006-168, LOF.
- 6 Ann Gallagher, ‘Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention’ (2006) 8 *European Journal of Migration and Law* 163-189.
- 7 Georgia Young Lawyers Association: www.gyla.ge/?id=50&view=476&lang=eng.

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Tips for attorneys and bar associations: how you can help end human trafficking

1) Know and help improve the laws in your jurisdiction

- Learn the basics of federal and local human trafficking laws, policies and regulations. A good place to start for US information is: www.ncjrs.gov/spotlight/trafficking/Summary.html
- Join listservs that provide regular updates. A good resource for both US and international information is: www.humantrafficking.org.
- Compare your jurisdiction's efforts with others and lobby for needed law and programme changes (see www.abanet.org/ceeli/publications/htat/home.html for CEELI's Human Trafficking Assessment Tool and see www.cahr.fsu.edu for 'Florida Responds to Human Trafficking', for one state's comprehensive look at the issue).
- Collaborate with others who are working to change the law.

2) Educate and inform other lawyers and judges

- Sponsor a speaker on human trafficking from an anti-trafficking organisation, a survivor (who is ready and can speak safely in public) or someone who has represented human trafficking victims to speak at your next Bar meeting.
- Create training materials on trafficking dynamics and laws, working closely with experts, for dissemination to members of the Bar.
- Dedicate a special issue of a Bar journal or other regular publication to human trafficking. Articles on the many aspects of human trafficking could be included, such as current laws, legal liability, victim rights, labour and employment issues, representing victims (and understanding their needs), prosecution of traffickers and community resources.
- Reach out to young lawyers' organisations to see if they can include human trafficking on their list for pro bono or community outreach. Their energy and creativity are well suited to this humanitarian kind of effort.

3) Organise pro bono representation of human trafficking victims

- Add human trafficking to the list of pro bono activities encouraged in your firm. (It is important that lawyers link with NGO anti-trafficking experts when handling these cases.)
- Target efforts towards representing victims in immigration and civil matters and assist victims in criminal matters where needed.

4) Beyond the world of the law, engage and inform your community about human trafficking

- Give speeches, help set up a speakers' bureau, or simply share information about human trafficking with other groups in which you are active.
- Spread the word in your faith community (traffickers sometimes allow some victims to attend religious services).
- Alert Chambers of Commerce and other business associations about the prevalence of human trafficking.
- Join or help spearhead the creation of local anti-trafficking task forces.
- Write letters to the editor or opinion articles.

5) Support local anti-trafficking organisations as well as legal services organisations that assist trafficked persons

- Volunteer to help them, pro bono. Keep in mind creative ways to assist, such as appellate advocacy, in-kind support, gaining access to particular venues and people in positions of authority.
- Offer your offices as meeting places; buy lunch.
- Serve on their boards.
- Give money!

6) Understand how human trafficking may affect your current practice

- Understand how human trafficking can affect many areas of the law including both criminal and civil arenas such as immigration, marriage and family, tort and insurance, domestic violence, labour and employment, business transactions and taxation.
- Evaluate whether your clients are in compliance with all human trafficking laws and regulations.
- Conduct or ask an expert to come to an informal firm lunch and do a presentation on human trafficking; write a 'legal alert' for key practice groups in your firm or area of expertise.