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Sex Trafficking Litigation Can Be Risky, for Both Attorneys and Accusers

Editor's note: This is the second installment in a series examining sex trafficking litigation.

by Max Mitchell

Of the Legal staff

Attorney Michael Dolce is the only lawyer on Cohen Milstein's website who isn't wearing a tie. He keeps his dark hair a little mussed, and when he has a client meeting, the Florida attorney tries not to put a desk or a conference table between himself and his client.

More than 1,000 miles away in Philadelphia, attorney **Nadeem Bezar** has framed comic books in his office, and there are no coasters in sight. A lot of his client meetings take place over pizza, and often-times his client's case isn't discussed at all. Instead they watch TV.

For years, these attorneys have represented victims of sex trafficking and abuse, and they know that often the last thing a victim wants to do is detail the time their pimp tased them, or burned them with a curling iron, or withheld drugs from them so they would more easily comply with their pimp's demands.

That is why Dolce and Bezar and those who practice in this area try to make connections with their clients as personal as possible.

"I try not to bring people to my office. I try to go to them, go to wherever they'd rather discuss. I put on a

pair of jeans, and dispense with the briefcase and use a backpack. It's to let them know it's personal, and it's real for them," Dolce, himself a survivor of childhood sexual abuse, said. "I speak with them as a survivor before I speak with them as a lawyer."

The attorneys are longtime practitioners in an area that is becoming increasingly prominent for trial lawyers. State and federal laws passed in the last 15 years have opened up civil liability for those who have any role in the chain of events that enabled sex trafficking and other forms of human trafficking. Attorneys have put new legal theories to the test.

According to longtime practitioners in the field, this interest represents a shift in the type of representation trafficking victims receive, where once they were being represented by nonprofit and pro bono lawyers, they are increasingly being represented by attorneys using the more traditional, revenue-based model. But as more and more attorneys seek to enter the field, those who are more familiar with the practice warn the work is unlike other areas of the law, and caution that, if done carelessly, lawyers can do the victims more harm than good.

"I would recommend attorneys to think: Is this an area you really want to get into? It's a much more nuanced type of work," Anita Teekah, senior director on anti-trafficking programs at Safe Horizon in Manhattan, said. "The traumatization of your client is going to be significant."

Longtime civil litigators say they welcome newcomers in the fight to raise awareness of the issue and to hold the websites, hotels, truck stops and other abuse facilitators accountable, but they also warn that new entrants to this field should not take the work lightly.

"When I have a case, it takes a lot of time, a lot of energy and a lot of love. They need to talk to you a lot. They're afraid. I've had clients who are so afraid they won't leave their homes. They've picked all the hair off their head," Beth Klein, of Klein Frank in Boulder, Colorado, said. "You're not going to make a big payload, but in terms of the goodness you're doing, it's beyond measure."

'Don't Rush It Along'

A person typically knows when they've been the victim of an automobile accident or medical malpractice event, and they are rarely shy about holding the tortfeasors ac-

countable. That is not the case with sex trafficking victims.

According to attorneys, oftentimes sex trafficking victims do not recognize the myriad ways they've been abused and manipulated—many times through drugs and violence—and few are willing to go through the litigation process.

Bezar, of Kline & Specter, who brought the first lawsuit under Pennsylvania's anti-trafficking law, said he typically fields a handful of calls from abuse survivors each day. Some are exploring possible litigation options, but most callers ask about support services in the area—a common service being tattoo removal since many victims are branded by their abusers—or simply thank him for pursuing these cases.

At that stage, Bezar said, he isn't focusing on bringing a possible suit, but on just answering their questions.

"These victims of human trafficking and physical and sexual assault have spent a lot of years hiding, sometimes there's a lot of self-loathing, and hiding from themselves," Bezar said. "These victims are oftentimes not mentally, or emotionally, capable of being able to endure the process. ... We don't rush it along."

Attorneys said the first step in bringing a case is establishing trust between the victim and the attorney—a process that can be further complicated because most victims were, at least one point in their lives, taken advantage of by an authority figure.

"I don't care how successful you are, or how many cases you handled," Dolce said. "You are just another person in this person's life in a long series of people who've abused them."

But then, even if trust is established, getting key pieces of information from the client is again typically more complicated than a more run-of-the-mill civil case.

According to Shea Rhodes of the Villanova Law Institute to Address Commercial Sexual Exploitation, information does not get stored in the brain the same way when someone is experiencing a traumatic event, and victims, she noted, live for years in a constant state of reacting to trauma. This can lead to confusion and inconsistencies, which attorneys may interpret as a client attempting to be evasive or deceptive.

"If you're always having that fight-or-flight response going, your brain isn't chronicling things that have a beginning, middle and end," Rhodes said. "Sometimes they can't remember things in a chronological order, so you have to change your perspective and don't expect a story with a beginning, middle and an end."

Mass Actions

As civil litigators move into this area, attorneys have begun to push the boundaries of the law by filing mass actions and pursuing novel claims against tech companies, and one group of attorneys in particular appears to be focusing on this area of practice: law firms that focus on mass torts.

Some longtime practitioners say the common features of mass tort litigation—which is often based on high-volume business models, and has recently seen a spate of lawsuits and leadership infighting stemming from claims that attorneys put profits over the interests of their clients—are not always compatible with representing survivors.

"Every victim's situation, they're so individualized," said Klein, a civil litigator, who also founded the Klein Frank Foundation, which is

aimed at training on and spreading awareness of the issue. "These types of things, I don't think you can mass produce."

Civil practitioners, like Bezar and Dolce, whose firms do mass tort and class action work, respectively, both focus almost exclusively on abuse and sex trafficking cases, which, practitioners said, is key in making sure the victims are properly represented. They also said their firms give them the freedom to pursue these claims, even though recovery can be tough.

Insurance, for instance, is usually disclaimed in cases against motels or truck stops, and so usually there are no deep pockets to pursue.

New attorneys looking to take on this work should be ready to accept raising awareness as their biggest recovery, longtime practitioners said.

"We need as many hands on deck as we can get. This is such a horrific and underappreciated condition in our society. The private sector bar is a critical component," Dolce said. "That said, I do want, and I do hope that those who join the fight recognize the uniqueness."

'Trauma-Informed Care'

Dolce said he once consulted with an attorney representing a child who had been raped six times in an institutional environment. The attorney, who typically handled slip-and-fall cases, told Dolce that he had demanded \$6 million at a recent mediation. Dolce said when he heard this, his heart sank.

"You are setting a price on the rape of a child," Dolce said he told the attorney. "You need to shift your focus."

The biggest concern from practitioners established in this area is that firms looking to take on the work might not be not providing "trauma-

informed care,” which involves being trustworthy, collaborating between attorneys, case workers and survivors, and providing emotional and physical safety.

Longtime practitioners in this area warned that attorneys need to be very clear about the harsh questioning survivors are likely to face during depositions, the length of time it takes to pursue these claims, and the difficulties that can arise when it comes to recovery. With some survivors, the litigation may be the only hopeful thing in their lives, attorneys said, so lawyers need to keep in regular contact with those they represent.

“If you are working with someone who has been through a really awful experience and were, in effect, a crime victim, you have to be really careful and mindful of the fact that the information you need to file a petition, or file a complaint is probably going to re-traumatize them,” Rhodes said.

Failing on these fronts could lead the victim to be re-traumatized, and could cause survivors to relapse into their prior behaviors, attorneys said.

While the dangers of re-traumatization may be hard to recognize, sometimes pursuing a lawsuit can put a survivor in physical danger, attorneys noted, as they will need to come into contact with their abusers, many of whom are violent.

“In the criminal justice system, there are mechanisms in place for victim witness safety, and to make the traumatic interactions as minimal as possible,” Teekah said. “If you bring that into the civil system, it gets rid of those safety checks.”

The work can also present risks for attorneys, who, like police officers, paramedics and trauma-specialists, would be likely to experience secondary trauma when diving into the details of these cases.

“The inhumanity people can visit upon others, particularly children, seems to know no bounds,” Dolce said. “We have to have a therapist we can turn to. A support group. You have to have the presence of mind to take the afternoon off if that’s what it takes to regroup yourself.”

Most attorneys who have done this work for a long time say they specifically do not advertise in this area, and still have extremely busy case-loads. However, as the area has become increasingly popular, firms across the country are starting to increasingly advertising their sex trafficking practices, and that could mean attorneys who might want to dabble in this area could soon find themselves inundated, whether they want the work or not.

“It’s almost impossible to turn the phone calls off. You’re constantly responding to calls and texts,” Bezar, who said he does not advertise his practice, said. “[And once you hear their stories], it’s kind of hard to say, I can’t call them back, or I won’t take that call.”

The next part of this series is set to focus on attorney advertising in sex trafficking litigation.