



Working with Experts to Combat Common Defenses in Human Trafficking Cases

Webinar

December 21, 2020

TRANSCRIPT

Jessie Hello, and welcome to today's webinar on "Working with Experts to Combat Common Defenses in Human Trafficking Cases". On behalf of the IACP, AEquitas, and the US Department of Justice Office for Victims of Crime, thank you for joining today's event. My name is Jessie Plamp, and I am a Project Coordinator on the Anti-Human Trafficking team, at the International Association of Chiefs of Police. Before I hand things over to today's presenter, I'd like to first review some basic online event housekeeping with you.

During the presentation portion of this webinar, please keep your microphone muted to prevent disruptions. You can verify that your microphone is muted by checking that there is a red diagonal line through the microphone icon at the bottom left corner of your screen. Please keep your microphone muted during the times that you are not speaking. Additional audio options can be accessed via the up arrow next to the microphone icon. To view the list of participants on today's webinar, click the participant icon at the bottom of your screen. The popup participant list box is also where you'll find the raise hand feature. Please use the raise hand button to let the facilitators know if you need assistance. You may also open a chat box, by clicking the chat icon at the bottom of your screen. The chat box will be used by presenters to share resources and handouts with you, and you may also submit questions using the chat box. Please submit questions to the everyone option in the chat box, as presenters may be unable to monitor individual conversations during the webinar. For technical support, email us at humantrafficking@theiacp.org. For best quality, we suggest you close all other windows on your computer during the presentation.

At the conclusion of today's event, you will be provided with an online survey about today's meeting. We hope to receive your feedback, so we can learn more about your experience and how to best serve you for future events. Today's webinar will be recorded and be made available in the future on IACP's online learning platform. More information will be provided to you via the email in the following weeks.

Today's webinar is supported through a cooperative agreement with the US Department of Justice, Office for Justice programs. Since 2015, through the generous support of the Department of Justice, the IACP has provided technical assistance services to more than 40 enhanced collaborative model task forces, and provided training tools and resources to law enforcement, prosecutors, and allied partners through the US. In partnership with AEquitas, and the John Jay College of Criminal Justice, IACP provides a broad range of training and technical assistance, such as this webinar, to forward the mission and vision of the Department of Justice in combating human trafficking in the United States.

If you are logged in as a group, please take a minute to help us count. Go to the chat window and type in the name of the person registered and the names of additional people in the room with you today. This will help us with our final count, and to ensure we have an accurate record of attendance. You do not have to do this if you are viewing the webinar by



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yourself. Again, only if you're viewing with more than one person, please type in the name of the person registered and the name of additional people joining you today.

For those of you who may be unfamiliar with the IACP, it is the largest and most influential association for police leaders in the world, with over 30,000 members in 150 countries. Visit theIACP.org for more information on IACP's commitment to enhance community safety, by shaping the future of the policing profession, and our page on human trafficking to access our full library of anti-human trafficking resources.

Since 2015, the IACP and our partners AEquitas, and the John Jay College of Criminal Justice, have been training technical assistance providers for the enhanced collaborative model, to combat human trafficking, funded by the US Department of Justice Office of Justice programs. The ECM program, as it's known for short, is comprised of multidisciplinary and collaborative partnerships, that include federal, state and local law enforcement and prosecutors, victims and social service providers, and relevant community stakeholders.

The ECM develops and expands victim service programs for victims of human trafficking, to include enhancing the capacity of law enforcement and other stakeholders, to identify victims and provide justice through the investigation and prosecution of their traffickers. The ECM requires human trafficking task forces to implement collaborative, sustainable approaches to investigation and prosecution, that are trauma-informed, are victim-centered, and seek to proactively identify and serve all victims of all types of human trafficking.

Typical taskforce work can be categorized into four core areas of function, with each area describing a distinct focus. These areas of function broadly describe all multidisciplinary taskforce duties, operations, and responsibilities. The four areas include internal foundations, operation and collaboration; case operation; data, reporting, and assessment; and public community engagement, awareness, and training.

I will now ask my colleague at AEquitas, Jane Anderson, to introduce herself and provide some additional information about this webinar series.

Jane Thank you so much, and it's really a pleasure to see so many folks on this morning, or this afternoon, from all over the country. I am seeing that you guys are getting a little competitive about your weather, which I like to see. I'm in sunny Lake Tahoe, California, but we also have a lot of snow here, so best of both worlds. I'm an Attorney Advisor with AEquitas, and it's really been a pleasure to be working with IACP and other TTA partners on this ECM human trafficking task force's grant.



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It's really been amazing to see how far people have come, and to know what hard work people are doing each and every day, so I appreciate all of you. I'm a former prosecutor myself.

I started my career at the Miami-Dade State Attorney's Office, and I worked there for almost nine years, working my way up from starting in our misdemeanor domestic violence unit, through the office, concentrating on cases involving sexual assault, domestic violence, kidnapping, homicide, and eventually went back and became the chief of litigation for our domestic violence unit, and it's there where I really started focusing on human trafficking. And that was back now over 10 years ago, and we've learned so much between then and now. And one of the things that I think has been critical is educating the public, and our allied professionals about the realities of human trafficking.

So, today's webinar, we're gonna be focusing on how we can use experts to combat common defenses, and also demystify some common misunderstandings about human trafficking. I work for AEquitas as an attorney advisor, and we are funded through various sources, including many federal grants, to provide innovative, informed, and practical information for the field. I'm really hoping that those of you on today will take some practical strategies and be able to apply them to the work that you're doing, because our goal really is to support all of you in the field, however we can. So please feel free to check out our website, we have lots of resources on there.

Many of them are public facing. Some of them, you'll have to request, but there's webinars, there's written resources, and all sorts of information on upcoming training events, and other initiatives and partnerships that we have. We also provide 24/7 case consultations, which can include anything from trying to find an expert witness that might be appropriate for you, to walking through some voir dire strategies, to talking about general case strategies. So please feel free to reach out and take advantage of all of AEquitas' resources.

So today, we're gonna talk about how we can use experts to really educate our judges and our juries about the realities of human trafficking. By doing that, we're really going to be able to combat some of the common defenses that we see when we're prosecuting sex and labor trafficking.

One of the things I want to focus on is how experts are not just for putting them up for trial testimony, but also, they can, if we're working with them on a regular basis, they can enhance our ability to investigate these cases, to conduct trauma-informed interviews, and even to come up with some trial strategies and theories of our cases. And we'll talk about how we can identify and collaborate with experts before trial, and within your jurisdiction.

So, there's probably folks out there, probably on this call, as I'm looking at the list of participants, who would be qualified as experts in human trafficking, but maybe we haven't built up that capacity to actually testify as such, so let's think about that. So, what are some



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of those common defenses that we see in human trafficking cases? And feel free to type this in your chat box here. I think it's changed.

I do think that the prosecution and investigators are kind of ahead of the game right now, and the defense bar seems to be playing catch up a little bit. We haven't seen too many defense experts out there yet, but I imagine that that will happen, as the defense bar starts trying to figure out how they're going to combat human trafficking cases, 'cause hopefully, we're bringing more and more to trial. I know this task force is, these task forces, those of you that are working in ECM, or maybe not in a formal task force, we're really building our own capacity, which means that we're going to have more cases go to trial, so we need to be prepared.

So, we've got one out there, which is a defense, which is that maybe the people are related in some way, or they're tied together some way, and that makes it hard for us to do that. Someone else is mentioning that common defenses, "hey, this is consensual. This is an independent or solo worker." Other folks talking about the victims are lying, or exaggerating, maybe to get a visa. Somebody is talking about, you know, and this one's really typical, right, and it speaks to misunderstandings, but the defense is saying, "hey, the doors weren't locked, they were clearly free to leave." Consent and just general misunderstandings. Yeah, I think you guys are nailing it right there.

So, we also have this disconnect between what our jurors, or maybe our judges expect, and the reality of our case, right? To a great deal, because of some public awareness campaigns that were launched, because of some movies out there, there's this disconnect, right?

So, when I first started trying these cases, I would be picking a jury, and I was lucky enough to be able to do quite a bit of voir dire, or jury selection, with the panel, and ask them some questions. And our judge always started, before jury selection, would read the information or the charges, and the jury would hear human trafficking or sex trafficking in the early days. And you would see the panel of 60 perspective jurors, and their eyes would pop out of their heads, and you'd see that, "oh my gosh, what are we talking about?"

And so, when I started doing my jury selection, I always wanted to maybe manage some expectations right off the bat. And so, I would ask them, you heard that we're gonna have a case on sex trafficking or human trafficking today, let me ask you guys, did a certain movie pop into your head when you heard that charge? And you guys fill in the chat, I'm sure you guys picked it up right now, immediately, even this many years later, we really have these misconceptions, and it's based on a very famous movie. There you go, you guys are getting it, and they would almost yell out in unison that that is what they're thinking of. They're thinking about "Taken."

And so, I would sort of, 'cause it was my style of jury selection was to be a little bit more light, I would say, "well, you know, unfortunately Liam Neeson is not gonna be testifying here today." And then we would start talking about what the reality looked like, right? And



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so, we would, one of the refrains I would use is that trafficking is about exploitation, not transportation, and that kind of rang through, and we came up with some ways to start laying the foundation in our jury selection. But we really need to make sure we're tackling this, right? Because if our case doesn't involve a shipping container, or a white windowless van, we're setting ourselves up to have an issue.

And this is from a local prosecutor, had this quote, and it says there's this conception out there, the juries are gonna see that, and that is that this is slavery, and you'll see that language used a lot of times. And so that of course means that there's this iron ball attached to their legs, that they're sleeping in shipping containers, they're wearing rags, and so all of these perception issues we really have to battle, when we're going to be combating common defenses in our human trafficking cases.

So those are some of the myths and misconceptions. I know we've already talked a lot about them. Keep going if you want. I love the chat, the chat working out. But on the other side of that, these are the realities. And I read this study a while back that said even when you're trying to demystify something, by repeating it, it really reinforces the myth. So instead of saying the myths here, I'm gonna talk about the realities of trafficking, right?

That it doesn't require movement. That there are domestic victims of both sex and labor trafficking. That trafficking can look really different depending on what we're talking about, what is the venue, all the different operations. That victims can be of all gender. That there are non-physical coercive tactics used more than anything else, and ideas of grooming, and of course, common responses to trauma, and forced criminality, coping mechanism, things like that.

So, these are the realities that we need to make sure we're being clear about, when we present our case, so that we're driving the narrative, and we're educating the judge and jury, rather than the defense trying to reinforce those myths, and talking about things like consent. They weren't tied up, so therefore, this couldn't possibly have been forced, fraud and coercion. So, we can educate the jury in many ways, and I already talked about the fact that we can start doing that in our jury selection. We can start laying that foundation. Just the way that we ask our questions of our experienced law enforcement, we can start laying the foundation.

I always like to talk to law enforcement about why these cases are different. Why did you have to speak— why did you conduct so many interviews of the victim? Why did you speak to the victim so many times? Is that what you do in a house burglary? And by asking that, one of the purposes of that type of question is to have your experienced law enforcement officer be able to talk about, well, these cases are different. We treat them differently because of our experience, and because of our training on trauma-informed responses. We recognize that we have to build trust and rapport, before we can really get to a truthful disclosure.



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So, I spend a lot of time talking to victims in advance, trying to build that rapport. Well, that's one way of educating the jury. "Hey, hey, hey, these cases are a little different. We're talking about trauma. We're talking about victims that don't have a lot of trust in law enforcement," and that can help us get to where we need to go, right? The way that we conduct our direct examination of the victim can also start that education process. Some victims, survivors, especially those that have been connected with services, they can do a lot of educating themselves. They can serve as their own expert witnesses.

And in fact, one of my earliest trials, I was preparing to use expert testimony, however, the victim in the case, she, lucky, this is one of those things about trafficking cases. Most of the time, the fact that it takes a case so long to go to trial can be an impediment, right? But when we actually have been able to support the victim through that process, sometimes the victim has really made that journey, and have self-reflection, and they can articulate on their own behalf what they were thinking, and feeling, and what their responses were that maybe otherwise seemed maybe counterintuitive. So, I ended up not using an expert witness in that particular case, because the victim was so powerful in her own ability to explain, and to talk about what she had gone through.

One of the other things is just our arguments, so that'll be our closing argument, while we're putting the pieces together, we can educate through that. But one of the biggest tools in our tool belt, when it comes to educating the jury is the use of expert testimony. So have you guys, I'm gonna pop up a poll question here. Let's see. Have you guys used expert witnesses in any of your cases? And we've got a couple of options here.

One is, hey, this is common practice, we're doing it all the time. One is, yes, but I have not actually had to call one at trial, so we're using them, but we haven't actually brought to trial. No, I don't think the court, in my case, would allow that. No, we don't have anyone really qualified. And other, and then other, please explain in the chat box. And we've got a question here about not wanting to reinforce myths. So, when we're in trial, do we want to stick to that? And I think there's a fine line there, right?

So, if we know that our jury is thinking that myth, we do want to absolutely address it, and we may be able to address it by just saying the opposite, but we may have to be a little bit more clear, and say, for example, like I say it's not about transportation, it's about exploitation. I think that's a clear way to do it. It also has that sort of rhyming effect, where it sticks with the jury. So, there's ways to do it where you're not just only talking about myths. If you are addressing a myth, you're immediately talking about what the reality is.

So, is our poll in there? Okay, so we have, oh great. We kind of have a really great mix. Quite a few of you have been engaging with experts, but haven't quite been having to bring them to trial, and then an equal amount say that this is common practice, or that we're not sure if we have any qualified experts in our jurisdiction, so we'll address those as we go on. And I'm curious, and maybe you guys can put that in the chat, those of you that maybe



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haven't used them in trafficking cases, is it common practice for you to use them in say domestic violence cases, or sexual violence cases?

Because those are gonna be really analogous case law, if you don't have direct case law on human trafficking, that's often a really great place to look. So, we want to reinforce this idea of using experts at each stage of our case, right? And this could be the experts that are amongst all of you, that are all working together in a task force. It can be those investigators that have been doing this work for a long time. It can be those direct service providers or medical professionals that have provided care to victims for years, but they're all experts that we can engage with to enhance our response, right?

So, during the investigative phase, we might be able to engage with a victim service provider and say, "hey, hypothetically, this is what I'm seeing, or this is some language that I see in text messages, when I'm looking at the phones, what does that mean?" So, it can be as easy as almost translating text messages, or language that's being used, or can be trying to get a grasp on a behavior, a victim behavior that you don't quite understand, and we can engage with survivors in this regard as well. So, survivors can be experts, absolutely.

Typically, for a survivor to be qualified as an expert in court, they'd have to have some expertise beyond their own personal experience. So, I work closely with a survivor leader named Rebecca Bender, and she says, 'cause we'll talk about this with other experts, excuse me, other survivors who are interested in becoming experts. And she says, "just because you lived through a fire, doesn't mean you could be an arson investigator."

So, I think survivors are amazing, they have amazing capacity to serve in this regard, but they should have some expertise beyond their own experience. But with Rebecca, she is often engaged with law enforcement and prosecutors to review the evidence and talk about what this behavior is, or what this language is. So, during the charging phase, this can be really important, if we're trying to figure out and assess culpability, analyze what charging you want to do.

And again, Rebecca has recorded a webinar that's hosted on IACP's IACPlearn network, called "Analyzing Culpability" and it's a perfect insight as to how that is really effectively done, and what kind of information we want to make those charging decisions. And then of course, as we prepare for trial, experts can be wonderful in giving us some tips on how to conduct a trauma informed direct examination, or pretrial interviews. But they can also help us just try to figure out our theory of our case, and oftentimes, they have great insight into what the defense likely will be, and so they can help us prepare for that, and then of course, ultimately, at trial itself.

But I encourage you guys to think beyond just, "hey, I need this person to testify at trial," and start using your experts, throughout your entire work in human trafficking cases. So, I've included the Federal Rule of Evidence 702.



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This is where most of our state rules of evidence are formed as well. You'll see that they look very similar. And the point that I really want to point out here is that experts can be qualified based on a lot of things, and your judges may not be used to this type of expert testimony. They may be thinking about fingerprint, or DNA, or ballistics, right? These is very hard sciences, and this is different, right?

And so, it's important for us to remember that an expert can be qualified, based on experience, on knowledge, on skills and training as well, and education as well. But oftentimes, it's that experience that's really helpful for us, when we're talking about using expert witnesses. And they just need to have some sort of specialized knowledge, right? So, it can be scientific or technical, but also there's this catch all of other specialized knowledge. And what is the test?

Sometimes we hear that they have knowledge outside of the ken of a common juror, or they know more than a lay person, but the rule here just basically says some sort of specialized knowledge, that's going to help the trier of fact to understand the evidence, or to determine a fact in issue. So obviously, if we've got some text messages that are using really specific language, or we have threats that go to somebody's cultural fears, then that's something an expert can help us understand that evidence. So, what are the benefits?

One of the benefits is, it really provides context, right? So, gives us this lens through which we're gonna see the rest of the evidence, and that includes some victim behaviors that are directly related to trauma and abuse, but may not initially present itself such as that, right? So, we're talking about delayed disclosure. We're talking about perceived love or loyalty to their trafficker. All those types of behaviors that, those of us who have been doing the work for awhile, we expect. We understand that this is related to trauma and abuse, and the coercive control that a trafficker uses, but for a lay person, for a juror, they may be still in that mentality of, if they're not chained to the wall, they could've walked out, right? So, it provides this context with which to view the victim's behavior. It can support victim credibility.

Now, this is one of those places where we could potentially get in trouble, if we are trying to get an expert to actually opine the victim is being truthful. That's a danger zone, for sure. But what it does is it allows for that trauma-informed lens to then allow us to say, through the victim's disclosure, "okay, now I see what they're talking about. I see why that might've happened. I understand these responses." And so, it can support the victim's credibility, when the victim is talking about, "I felt that I loved him," or "I thought that my family back at home was going to be injured," and it can dispel those misconceptions, right? So those things that are left unexplained, we have to address them, because otherwise the jurors may rely upon them, and so we need to do that. Let's see.

So, this is one of the cases that, back in 2010, one of the earlier cases, most of the case law that you'll find on the use of expert witnesses in human trafficking cases does come from federal case law, right? Because generally, they were doing these cases, they were



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prosecuting trafficking, before a lot of the States even maybe had their own statute. So, you're gonna have to be, in a lot of States, you're probably going to have to be bringing up case law that's from the federal circuits, so that you can draw those analogies. But again, with that, you should also be talking about, if you have strong case law about the use of experts in your domestic violence and your sexual violence cases, there's, again, some analogies to be used here.

So, in this case, the court found that the testimony was pertinent to the jurors' determination of the credibility of the victims. And again, one of those fine lines, the expert couldn't say this victim is being credible, but their testimony and that context it provided was a useful tool that was helpful to the jurors in making that determination of credibility. And so, the court went on to say that without that testimony, the jurors might presume that the victims did not want to escape from the defendant's alleged operation, because they failed to run away when they were beyond his physical grasp, right? So exactly what we're talking about, that this case supports the use of expert testimony, says it's necessary.

So, these are the two danger areas, right? And this would be concluded as invading the purview of the jury. Commenting on the victim's credibility, and opining whether the victim was in fact trafficked or not. However, this case basically is addressing that second piece of it, right? So, it says "Even if the testimony arguably embraced "the ultimate issue, such testimony is permissible "as long as the expert's testimony assists, rather than supplants, the jury's judgment."

So, this just is, again, a good case when you're gonna have ultimately the defense attorney saying, hey, this is not proper testimony, because you're basically providing testimony that is bolstering the victim's credibility.

And what this court says is, "hey, if it's assisting, right, it's helping us provide that context or that lens, that's perfectly fine." You cross the line when it's supplanting the jury's judgment. So, the legal analysis, we're looking at relevancy really here is, will the testimony help the trier of fact? Right, so the jury, in most cases, sometimes if you're doing a bench trial, the judge, right? Will it help them understand the evidence, or, and or will it determine a fact in issue? So that's your first one.

And there's a ton of case law that says, "hey, there are myths and misconceptions out there. This testimony is relevant. This testimony is helpful. This testimony does fit the definition of expert testimony, and when it's appropriate." So, then that's your first step of analysis, and the second one is, is the expert qualified? And so, when we're looking at qualifications, we're gonna go through some different analysis here.

So, Dr. Sharon Cooper has been testifying as expert witness in human trafficking cases from the beginning. I believe that Hawaii case I just quoted was also her as a expert. And she's a doctor, and so obviously, she has a lot of academic credentials. She's worked directly with



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victims, and she has been qualified as an expert all around the country. However, even her expertise is sometimes limited as to what topics she can and cannot opine upon.

So, in this case, she was allowed to talk about means that were commonly used to recruit, target and manipulate, and maintain victims. She was also allowed to talk about contributing factors that make victims vulnerable. This is the court's language. She was able to talk about finesse pimping and what that was, and that goes to the last one, which is the subculture or the vernacular. She was not allowed to testify in this case about health risks of trafficking victims.

And so, the courts have, and you want to look at your case law, they have defined general topics. So, when you're talking about, "I want an expert testimony, I want an expert to talk about this, this and this," you want to make sure that you're really providing parameters that the court can look at and say, "okay, this is relevant," right? Not just a general, like they're gonna talk about all things human trafficking. You want to talk about, and you can look at the case law and say, "okay, this is directly from this case," but you may want to add some things in your expert testimony as well.

And here it says, "The court agrees with the government that the background information Dr. Cooper could provide to assist the jury about the dynamics, explain why they didn't leave, and to generally demystify the relationship was appropriate. Additionally, her opinion testimony allowed her to address factors related to vulnerability, enticement of women and juveniles, and may include a discussion of the effects that commonly used grooming and deterrent practices have. The court believes that this general information will provide a framework within which the jury can consider the testimony presented, and enable the jury to more meaningfully evaluate whether the element of coercion has been established."

So, I think it's this last part of the quote where we need to talk about exactly what this is for, right? So when you're trying to maybe brief the judge, or educate the judge about expert testimony in this non-hard science, sometimes referred to as a social science or a soft science, this is the language directly from the case, that this education, right, it's education, helps provide a framework, and then it allows the jury to more meaningfully evaluate the testimony, the evidence, to see if the government, the prosecution has established that element of coercion.

So that's always helpful for when you're briefing your judge, to take language and words directly from these cases that we're presenting to you. And there's several more, and if you ever have any issues, AEquitas is here to help you research for your jurisdiction, or even to find more cases to support a brief.

So, I wanted to point out that both under Daubert and under Frye, this type of testimony has been found reliable. Again, the courts have had to rethink how these Daubert and Frye tests can be applied to something like a social science, right? Because they're really



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developed more so for those hard sciences, right? So, you can do a test, and you could replicate the test kind of thing.

In the case, Simmons talks about, hey, social sciences are really a little bit different. Trial judges have discretion, and we're not stuck true and tried to this test, right? It's much more of just a gate-keeping function. And on the other side with Frye, again, this is not novel scientific evidence, it's practical experience, and jurors can use their common sense, and there's a couple of cases on that as well. So, we recommend the use of what's called a blind expert.

I have heard this referred to as something else as well, I've forgotten the term, but really it's this idea that the expert is a true educator, and that they're coming in to share their expertise with the jury. And one of the ways we can do this, without crossing any lines, without opening ourselves up to some defense arguments, is to make sure that our expert really doesn't have all that many facts about our specific case, right?

So, this isn't somebody that has worked with our victim. This isn't even somebody that has looked at our police reports, or our file, right? We may have a consultant expert that does that for us when we're preparing for trial, and when we're looking at charging decisions, but that's not gonna be the same expert that we're going to put up at trial.

At trial, we would love to have somebody that's sitting there saying, "hey, I don't know the facts of this case, I don't know this victim, I don't know the defendant. But I do, based on all of my experience, I can teach you, I can share with you some of what I know about trafficking." And so typically, when we engage with an expert, a blind expert, we will have already figured out, from our case analysis, okay, these are going to be the three sticking points.

The fact that she—the victim in this case did not leave when they had opportunity. The victim in this case, maybe initially, did not truthfully disclose to law enforcement. And the fact that this victim reported and disclosed in piecemeal. Maybe those are our three issues. Maybe it's something else. Maybe it's about immigration related coercion, or drug facilitated human trafficking, whatnot. You sort of point out what you want, and you talk to the blind expert. "Hey, these are the pieces that I really want us to talk about at trial," and you'll talk about that in advance.

You may even have to have the expert write up a report, depending on your jurisdiction. And then they don't meet the victim, they don't provide any services to the victim, and they're solely there to educate the fact finder. What this does is it really withstands most of the common appellate issues. Most of the things people get in trouble for are that vouching for the victim or vouching for the fact that this really is trafficking. So that usually is one of the big pluses.



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The other thing that when we don't use a blind expert, we have our expert actually maybe even diagnose our victim or talk to our victim. There's nothing to prevent the defense from arguing, hey, we want to have our own expert talk to the victim, and do a psychological workup on the victim, and all of that, and obviously that's something that we'd want to protect the victim from. So, this doesn't do that. It doesn't open the door to that, when we have this sort of blind expert. Also, it can be really powerful, because you could have, you're acknowledging that this blind expert doesn't know your victim, doesn't really know that much about the case, but when they talk about common themes, common dynamics related to trafficking, the jury is going to basically.

A subject matter expert we just were talking with, she said, the expert listed like 10 possible vulnerabilities that could make somebody more vulnerable to trafficking, and then as the testimony and the evidence came out, the victim had 8 of those 10, and so when they put it together at the closing, it was really powerful. And that way it's like this person doesn't even know my victim, and they're still naming 8 out of the 10 things here.

Okay, so we've got another poll question for you, and I'm loving the chats going on. A lot of you guys are using blind experts, and that case law actually makes you do that, and less fodder for cross examination, amazing. So, we talked about the victim behavior and the common dynamics, but what other types of expert testimony might you introduce in a trafficking case? And so, we've got digital evidence, common defendant profiles, trafficking operations, immigration relief, culture, toxicology, all of the above, or all of the above except for common defendant profiles.

Yeah, and somebody's saying domestic violence, for sure. If you've got that intersection between domestic violence and trafficking, then you can use a domestic violence expert, for sure. And a lot of, even if you didn't have a direct case like that, you would want to, that's a good place to start looking for possible experts in your jurisdiction. Who's working with victims of domestic violence? They most likely are also working with victims of human trafficking. You can kind of explore what their level of expertise is for trafficking cases, because we know some of those dynamics are really similar, or that can be analogous. And we also know that many human trafficking victims are in intimate partner relationships with their traffickers.

So, what do we have? Do we have some results here yet? Yay! Yeah, so the winning answer is correct, which is all of the above except for common defendant profiles, and that's just another one of those danger areas. Anytime that we're profiling a defendant, similar to propensity evidence and things like that, and you'll see the same thing in sex abuse, and domestic violence case law, is that it's impermissible, and courts really look in disfavor whenever an expert has tried to talk about common things that all batterers share, or all child abusers share, and so we want to stick away, we want to stay away from defendant profile testimony.



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But other than that, all of these types of expert testimony topics would be applicable, right? And so especially when we're talking about labor trafficking, and we just got done with a labor trafficking series. IACP, feel free to put that up there too. We had a five-part series on labor trafficking cases, and one of the big things that comes up is immigration relief, and we know that it's a hot topic.

We also know that folks that work with U visas, and T visas, and continued presence don't necessarily know everything about them. They're very complicated processes, and there's a lot of myths and misconceptions out there about those forms of immigration relief. So, if that's going to be the spotlight that the defendant's going to put in the defense, they're lying to get this T visa, well then you're gonna have to come up with a strategy to counter that and combat that defense.

And one of the ways to do that is to have someone, in an expert testimony capacity, talk about what is the T visa, and what is the purpose of it? How is it qualified? What does a law enforcement declaration mean, and what doesn't it mean? And that can be an immigration attorney, it could be a family law attorney. It could be an academic. Lots of different places to go there.

Okay, so now we have to do our practical analysis, right? Which is, okay, identify what needs explanation, and like I said, not everything does. Sometimes your victim's gonna do a great job talking about their own experiences, and what they've learned since they've maybe been engaging with some counseling. They've learned about trauma themselves. They've can now self-identify some of the things that they went through.

So, identify what needs explanation, and then consider all of your strategies to educate, right? So, from the jury selection, to the testimony, to our expert witness. And then if we figure out, hey, we need to actually engage with an expert, then consider all available experts. And I'm not gonna be out here pretending that this is something that we can do in every case, in every jurisdiction.

We've got to have somebody that's qualified. We have to think about budgetary considerations, and we just have to think who is appropriate in this case. And I'm interested if anyone on the call or on the training has read the book "Missoula."

It's a case about campus sexual assault, or it's a book about campus sexual assault, and the response that happened in Missoula. The only thing I want to take from it is that they brought in a nationally, internationally recognized expert, who's a professor in the northeast, at a very, I don't know if it's an Ivy League school, but it was definitely this northeast university, and they brought them to Montana, to Missoula, Montana, and had him testify. And the defense really, really attacked him by saying, "hey, you don't need some big city guy from the Ivy League school to come in here and talk to us here in Montana about what's happening in our backyard." And it was a very effective cross-examination and argument from the defense.



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And so, I always try to bring that up, because sometimes we don't need the most qualified person that we can find, with as many letters after their name. Sometimes the best and most appropriate expert is somebody that's working with victims and survivors in our community, or in our larger jurisdictional area, that day in and day out is working with victims and may not have any of those letters after their names. So really think about what you think is gonna be effective for your audience. So, there can be effective experts in both of these categories.

That academic, credentialed Dr. Sharon Cooper. She knows what she's talking about. She comes across, having been having testified in dozens of cases, she's very polished at this point, right? And there's real advantages to that. But on the other side, this experiential or anecdotal expert can be incredibly effective as well.

Nurses can be incredibly effective as well. If you've got a specialized sexual assault nurse examiner that has received training in doing medical forensic examinations of human trafficking victims, those are amazing, and you can use them both as a fact and as an expert witness.

So, who else might serve as an expert witness? I think I've given away most of this here. So, we won't spend too much time on that, because I think hopefully at this point, we know that all of these can serve as expert witnesses, and your experienced investigator. And so, people like your experienced investigator, and your sexual assault nurse examiner, those are the rare occasions when you may have somebody serving that dual role of both a fact witness and an expert witness. So, because those are the two places where you cannot have— you may have somebody that's not necessarily a blind expert in those cases, just to be particularly careful about the questions that you ask, and that are allowed of the defense attorney.

So, for example, I mentioned when you're talking to your experienced investigator about why they conduct so many interviews, you can do that in a pseudo expert way. We don't actually qualify them. We're really just asking them about their training and experience, as you would any investigator, or you can use an experienced investigator as an actual expert witness. So, you'd probably want to look a little bit deeper into your own case law about that, but it can be done both ways, and similarly for medical professionals as well.

Let's see. So, here's another case just to really nail down that a police officer can be qualified as an expert, right? And so, some of this language is, I think, a little outdated, but it's from the cases themselves, and in this case, a police officer was able to testify all the way from recruitment to retention, and about those relationships and what that looked like, in this officer's training and experience.

And so, the court said, yeah, this provides that context that the jury needs, so that they can really assess the facts, right? It's that lens, it's the context, it's the framework. Those are the



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keywords we're gonna be looking at. So, this is some of the types of questions that you might ask an expert, when we do the testimony, right? And I always think about it as a little bit of a funnel effect, where we ask the broad question, and then we start narrowing it down.

So, these would be some of the prompts. "Are you familiar with common responses to trauma?" And they'll say "yes," right? And hopefully they may even say something like, "well, there are common responses, but there's no set response for every victim of trauma. It looks different, but here are some of the common ones." And then you can say, "okay-" And this is a different prompt; these aren't in order of talking about that. But you may be able to say, "okay, you discussed the fact that victims of labor trafficking often are reluctant to leave, even when they have the opportunity, because they're in debt bondage."

Okay, you mentioned debt bondage, can you explain what that is to the jury? Well, obviously you're working with your experts in advance, and you're making sure that they can do that, right, and that is part of their expertise. And then, how may X impact Y? So now you might be narrowing it down a little bit, where you're trying to get something a little bit closer to your factual scenario. And this might be an example of how might one's immigration status impact their ability to leave a trafficking situation, right? And then you, well, somebody that has, that doesn't have immigration status is probably going to be very reluctant to go to the police, because of the fear of deportation. And hopefully, even though you haven't talked about this, maybe, fact for fact with your expert, it's gonna start resonating. It's gonna start look like the case that you're presenting to the jury.

Similarly, you could use the opposite of, is it common, but also, would it be unusual for? Would it be unusual, in your experience, for a victim of trafficking to return to a trafficking situation? Nope, that wouldn't be unusual at all. Can you then explain that to the jury? Or what might impact the victim's ability to leave for good?

So those are all the types of prompts you're gonna be asking. So going forward, there's everything from identifying and really analyzing your case, so you're identifying those issues that may need that support from your expert witness. And then thinking about how they can be used to improve how you're responding to trafficking generally, and then think about litigating the admission of expert testimony.

And that is something that AEquitas, and IACP, and your whole TTA team can help with, because— obviously this is for a national audience, but we have provided state specific TTA, in this regard. There's also a lot of state cases that now are coming forward, that talk about trafficking, and again, can be analogous for you, if your state hasn't talked about this at all. Other emerging issues I want to put out there. I know we have a little bit; we have some time for questions and things like that, but some of the emerging topics are things like culture and coercion.



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And so, we're seeing more prosecutors look at, how can I perhaps educate the jury as to why this type of coercive of tactic was particularly effective for this victim, right? Because we know that to establish that force, fraud, and coercion; it's not just about what did the defendant do, right? The case law also tells us, and the definitions of serious harm tell us that what is relevant to that inquiry is not just what did the defendant do, but who is the victim, and what are the circumstances?

So, one of the things that we're really trying to look at, as an emerging issue, is when we've got a victim that may come from a culture that is not well-known in the United States, and that those coercive tactics were particularly effective because of that cultural component, that we need to be educating our juries about that. And so, there's not a lot of case law on this, if any right now. I know of a few prosecutors who have successfully done this. Happy to consult with you, if this is something that you think would be really helpful for your cases.

But it's one of those areas where I see a lot of emerging issues, and I also think that defense is going to get better at this, and we're gonna start seeing some defense experts out there. I have one defense expert report, which was embarrassingly bad, but they're not gonna keep being that bad. So, I think it's important for all of us that are doing this work to share what we're seeing, because of it's happening in one area, it's gonna start happening somewhere else as well.

So going forward, let's also include that as something we should all be doing, which is sharing this information within our networks. And I know IACP, and OVC, and AEquitas would love to hear from you, if you're getting interesting defense theories, or defense experts are being listed in your cases, or if you're having a lot of success with your expert witness testimony, and who you're using.

I don't see any questions coming in. I know one of the other things I wanted to touch upon, that's not in the content here, but it's something that AEquitas can support you in, and others, I'm sure. I just know that I personally have worked on quite a few trainings where we brought together prosecutors and experts in a jurisdiction. The experts that maybe didn't think of themselves as experts, those direct service providers, or those survivor advocates and leaders, or even law enforcement, and SANEs, and medical professionals. And we've done a training with both of those groups to, A, build out how we can talk about our expertise in a way that really convinces the court, right?

So, building out your CV, or your resume. Being able to start talking about how you have that training and expertise. So, building on the capacity of experts to testify in your own jurisdiction, and then also doing the mock testimony, so that, as a prosecutor, you can be more familiar with how it works, as far as laying the foundation of having someone determined to be an expert. It looks a little bit different state to state. And then also talking about these common questions and these prompts, and how one would answer those. And so, if you have folks in your jurisdiction that you think could serve as experts, but just haven't yet, we'd absolutely love to help you with that.



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Jessie Thank you, Jane. So, in a moment, we'll answer some participant questions. If you have a question for Jane, please submit it in the chat box. Before we get into the Q&A though, I'd like to ask that you take a moment to provide your feedback on today's webinar. You can access the evaluation form by scanning the QR code or following the link on the screen. Okay, so let's go ahead and answer some questions.

So, Jane, building off of your thoughts for going forward, we did have a question asking, how do you combat the defense, not legal so much as rhetorical, that the person is still in a better situation than back in their home country? In other words, you're punishing me for improving their life.

Jane So, I think this is actually a common thing that comes up, obviously more so in labor trafficking than sex trafficking, in my experience. And I think it's important that we talk about that, because with labor trafficking, one of the challenges is often that the victim will have received some amount of payment, and so you'll have defense attorneys talking about what they were making back at home, what their living conditions were there and here. And there's kind of one of those legal arguments here, right? And we have the emotional argument and the legal argument.

So, this would be a place where I'd start laying that foundation in jury selection, right? And start talking about those questions that we've all done in different cases, about following the law and about exploitation. And then I would make sure that when I'm preparing the survivor to testify, that we talk about that, and that they are able to really articulate, and that your questions are designed to elicit information that really captures that the trauma of the labor trafficking, the harm of the labor trafficking was not whether it was \$4 an hour or \$4.50 an hour.

It was this idea of not having control of their lives, being in constant fear, not being able to support their family back home. Having perhaps their family's land or home as collateral for these traffickers. So, you really have got to be able to dig deeper into what the harm was, because if the defense just wants to talk about, "hey, look, if there's no harm done, no harm, no foul they got more money, and they had this opportunity to work in the United States." If that's all we're able to present, I think it's an uphill battle, so we need to make sure that we are talking about the harm of labor trafficking. And I see this in judges sentencing, and how just the public perceives labor trafficking, as a less harmful form of trafficking.

And I think it's because sex trafficking, especially like in the early days, there was a lot of time, no child is a prostitute, and it was all very young girls, and it was very easy to hit an



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emotional key with that and say, “oh my gosh, this is such a traumatic, awful thing.” And then you see labor trafficking victims, and it's a grown man from Central America, and it's harder for us to see that harm.

And so, it's really important for us to combat that defense, by asking ourselves, are we really understanding that the trauma of labor trafficking is, it mirrors the trauma of sex trafficking, in the fact that we're talking about somebody that had hopes and dreams for a better life, and this is what happened. This American dream turned into a nightmare. That there are this pervasive violence. That there is no viable way out. That the family back at home has all their hopes and dreams maybe perhaps on this victim, and that this victim feels the weight of generations, of letting them down, and shame.

So, we really need to be able to articulate that through our trial presentation, and whether that's through an expert testimony, or it's through our direct examination of the victim, I think it's key, I think it's key.

Jessie Perfect, thank you, Jane. So, the next question we have is, is it possible to bring in expertise or case knowledge from the home country of the victim, in regards to human trafficking?

Jane So, I think that touches on the idea of a cultural expert, so similarly. I don't believe there's any reason why we cannot. There's no case law out there that speaks to this directly, one way or the other, as far as I can tell. However, there was a case recently that we talked about, and I want to say, I can come up with the site, if you guys want it. But it was a case that the recruitment and the original coercion happened in the country of origin, which was Togo, and that coercive recruitment and manipulation that happened included cultural fear tactics, that were described as voodoo.

So, when they came to the United States, they were trafficked here in the United States, and the prosecution wanted to talk about what had happened in the home country, and they did it as, not as expert testimony, they did it as a prior, as a other bad act, as 44B evidence. And the court said it's absolutely relevant what happened back in the home country, because it talks to why these tactics were so effective. And so, if we're doing it as a other bad acts, 44B, or we're doing it through expert testimony explaining that, I think it's in the same vein, and we have a really strong argument that it's relevant, right?

So, if we've got— if your coercive fear tactics were really based in voodoo, or Santeria, or something that you don't think your jury is gonna immediately understand of, “why was that so powerful over the victim? Like, I don't understand why that was something that was able to control the victim, right?” We know the courts say it is relevant, right? Whatever we



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can do to put that in context, to better understand why this victim, right, because it's the victim, with all their vulnerabilities, in all their circumstances, was it coercive to them?

So, anything we can do, whether that be bringing in those acts, or whether it be bringing in an expert, the courts have really favorably looked upon things that provide context, that provide that lens, through which to view the rest of the evidence. So, I think, absolutely, it's one of those things where we're gonna have hopefully some prosecutors on this call, or folks that are working with prosecutors, try some of these things, when it's really important, right?

You've got that case and you're thinking, the jury is just not gonna get this piece of it, then that's when you really want to be thinking of, "okay, is there some sort of expert that I can bring in, and talk to, and have testify?" So, try it.

Jessie Thank you, Jane. So, here's a quick question from the registration form. What is a SANE? Jane, can you address that, and maybe share about the value of working with a SANE as an expert?

Jane Sure. So, a SANE is an acronym for sexual assault nurse examiner. Sometimes they're referred to in other regards. I've always called them SANEs, so I'm really sorry if that's not the language. Sometimes it's like a medical forensic nurse, or somebody that I think most people think of as the person that does the rape kit, right? And that's just such a narrow view of their medical expertise.

So, we work really closely with the International Association of Forensic Nurses, or IAFN, on making sure that folks are really thinking about how to integrate a SANE response into their trafficking response. And so SANEs not only collect forensic evidence. What we're really the most familiar with is that rape kit, but they also provide really wonderful medical care to their patients, which includes educating their patients on health risks, both labor and sex trafficking.

They can collect evidence as well, of course. They can document injuries, both acute and historic. They can collect assault histories and medical histories, and they're really amazing folks generally.

I love working with SANEs. Their testimony is usually incredibly powerful. They provide victims with services and access to advocates, and they can really do a lot to demonstrate to the victims that we serve, that we care about them. We don't just say it, we want to walk the walk as well. And providing a meaningful access to medical care, even if you're not looking to collect a rape kit, it's still such a worthwhile piece of our response, that I really



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encourage people, if you're not already integrating some sort of medical response to each and every victim of trafficking (labor, sex, adult, child), I'd really encourage you guys to look at that, and they're amazing witnesses as well.

I recently read something where nurses were the most trusted profession in the country, so to have them testify in our cases, I think, is always a plus. And I've got a note in the chat that they've actually, through the SANE's testimony, they've been able to proceed to trial without a survivor testifying, and that's one of the benefits of SANE as well, is that oftentimes you can get in some non hearsay, or excuse me, exception to hearsay, not subject to Crawford, really great statements from your victim.

Jessie Thank you, Jane. So, it looks like I have one last question for you that also came from the registration. It says, "Is there a national or international hand signal victims of human trafficking or told to use for rescue?" They've seen at least two different hand signs from different organizations.

Jane Not that I know of. No.

Jessie Okay, perfect. So, if anyone has any other questions for Jane, feel free to put them in the chat, and we will make sure that we get answers to you after the webinar. But that will wrap up the Q&A portion of the webinar. If you find any additional questions you have later, please send those to humantrafficking@theIACP.org.

And don't forget, please let us know your feedback for this webinar. Here is Jane's contact information, for anyone who might need it. You can also download the handouts in the chat, we'll make sure to post the link again, and it will be in the handouts, in the slides as well.

And then before we end, I'd also like to let you know about our next few upcoming webinars. We have the "Building Human Trafficking Cases with Traumatized Victims" on January 7th at 2:00 PM Eastern Time. And the "Building Human Trafficking Cases with Intimidated and Missing Victims" will be held January 21st at 2:00 PM Eastern Time. To register, please visit our website theiacp.org/humantrafficking.

AEquitas has been a major partner for the IACP on the development of this training program, so we encourage you to check out their resources by visiting their website on the screen, and also give them a follow on all of your favorite social media platforms. As a training and technical assistance provider for the ECM program, IACP provides a number of



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services and resources, to enhance collaborative model grantees and the broader anti-human trafficking field.

Through the support of the Office of Victims of Crime, IACP provides resources such as a webinar training series, online classroom trainings, peer to peer mentoring, a development operations roadmap, customized TA, and through Task Force Connect: an online community exclusive for members for the ECM task forces. For more information about the IACP's anti-human trafficking resources, please visit our webpage at theiacp.org/humantrafficking.

We also encourage you to check out IACP's website to find her a robust library of resources, including our development and operations roadmap for human trafficking, task forces, protocol development checklist, roll call training videos, and more as well as to follow all of our social media as well.

The recording for today's webinar will be housed on IACP Learn, IACP's new online training platform. IACP Learn houses all IACP's online training, webinars and educational material. Please look out for an email after the webinar regarding how to access the platform. You'll use the same login and password you used to register for today's event. IACP is just one of a number of OBC funded anti-human trafficking training and technical assistance providers.

You can find out more information about our fellow TTA providers, by visiting OVC's website.

I also encourage you to download a copy of today's slides, and use the links to explore each of the provided online resources. Thank you for joining us today.

Before you go, please take a moment to provide your feedback on today's webinar, if you have not yet done so. You can access the evaluation form by scanning the QR code or following the link on your screen. Thank you all for being with us today, and we hope to see you for our next webinar.