



Building Human Trafficking Cases with Intimidated and Missing Victims

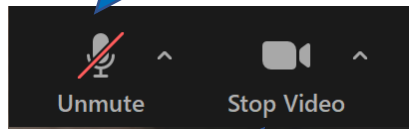


Jessie Plamp
Project Coordinator
International Association of Chiefs of Police

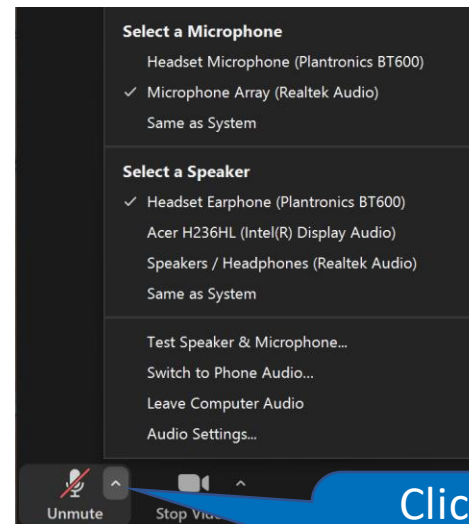
Zoom How-To

Move your mouse anywhere in the Zoom window to open the menu bar at the bottom of the screen.

Click here to mute and unmute your microphone



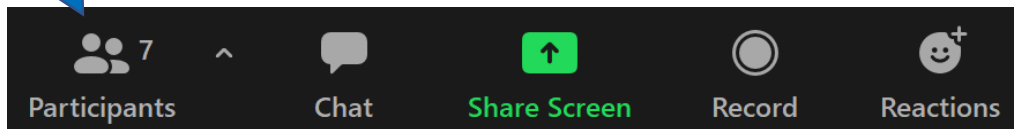
Click here to turn your camera on/off



Click here to change audio settings (Select microphone or speaker)

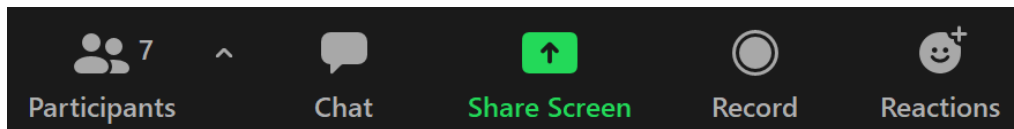
Zoom How-To

Click here to view
the list of
participants



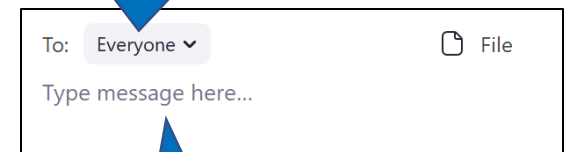
In the participants
box, click here to
raise your hand for
assistance

Zoom How-To



Click here to open a chat box to communicate with other participants and ask questions

In the Chat window, click here to chose who you would like your message to go to



Type your comments and questions in this box

Zoom How-To

- For technical support e-mail humantrafficking@theiacp.org
- For the best meeting quality, close other windows during the webinar
- At the end of the meeting, you will be directed to an evaluation

Support

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**Help us
Count!**





About the IACP

Shaping the Future of the Policing Profession

- The International Association of Chiefs of Police (IACP) is the world's largest and most influential professional association for police leaders. With more than 30,000 members in 150 countries, the IACP is a recognized leader in global policing, committed to advancing safe communities through thoughtful progressive police leadership.
- Since 1893, the association has been serving communities worldwide by speaking out on behalf of law enforcement and advancing leadership and professionalism in policing worldwide.

www.TheIACP.org

www.TheIACP.org/humantrafficking



Enhanced Collaborative Model to Combat Human Trafficking

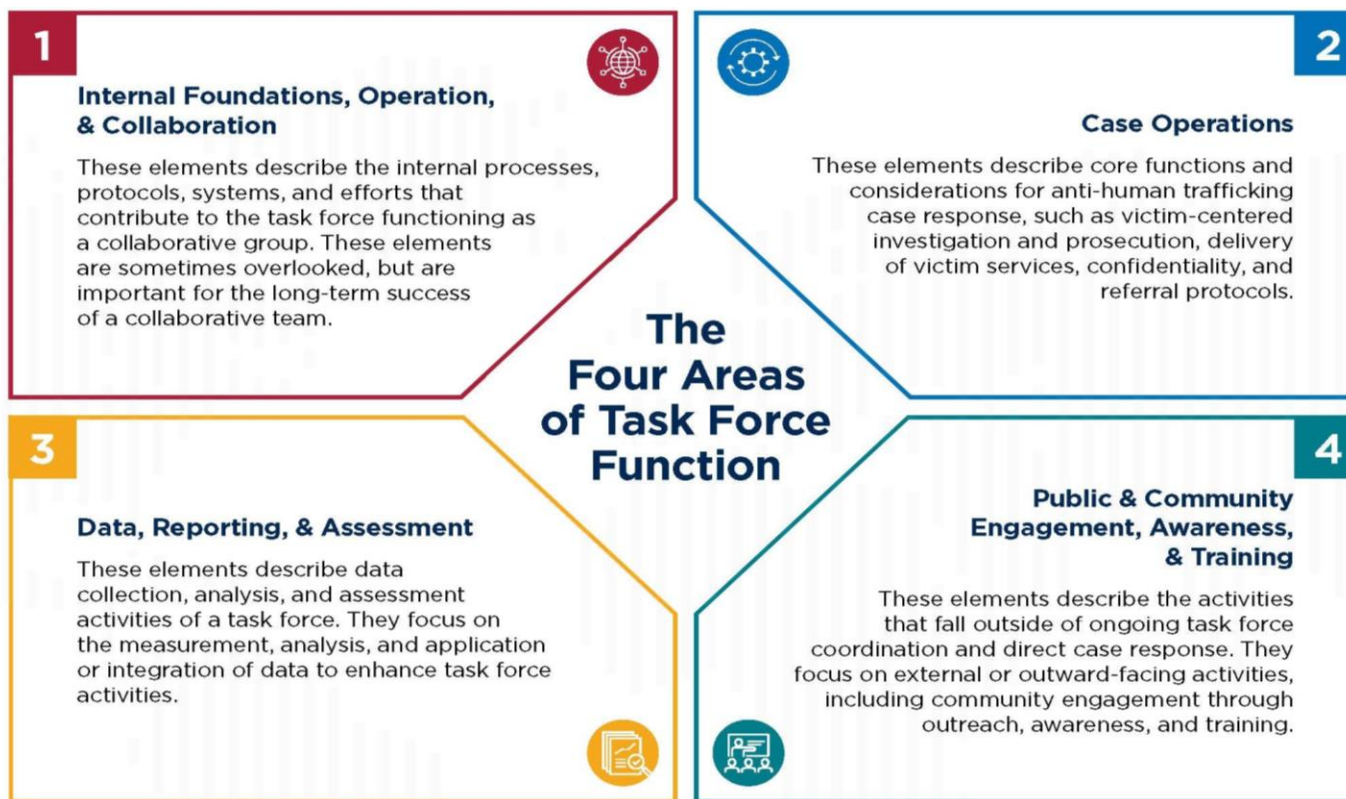
- Funded by the U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime
- Includes federal, state, and local law enforcement and prosecutorial partnerships, alongside victim and social services providers; and relevant community stakeholders
- Develops, expands, or strengthens service programs for victims of human trafficking
- Enhances the capacity of law enforcement and other stakeholders to identify victims and provide justice for those victims through the investigations and prosecution of their traffickers
- Requires ECM human trafficking task forces to implement collaborative, sustainable approaches to investigation, prosecution, and service delivery

Trauma-Informed

**Victim-
Centered**

**Proactively Identify
& Serve All Human
Trafficking Victims**

Four Core Functions of an Enhanced Collaborative Model Human Trafficking Task Force



[The Development & Operations Roadmap for Multidisciplinary Anti-Human Trafficking Task Forces](http://www.theiacp.org/humantrafficking) can be accessed at www.theiacp.org/humantrafficking

Jane Anderson
Attorney Advisor
AEquitas





INNOVATIVE

Sustaining effective practices and promoting systemic change

INFORMED

Training, resources, and assistance supported by research and experience

PRACTICAL

Customized strategies that are accessible, responsive, and easy to apply

What AEquitas Does



Resources

Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices



Consultations

Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions



Training Events

Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals



Partnerships & Initiatives

Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training

Objectives



Support victim participation

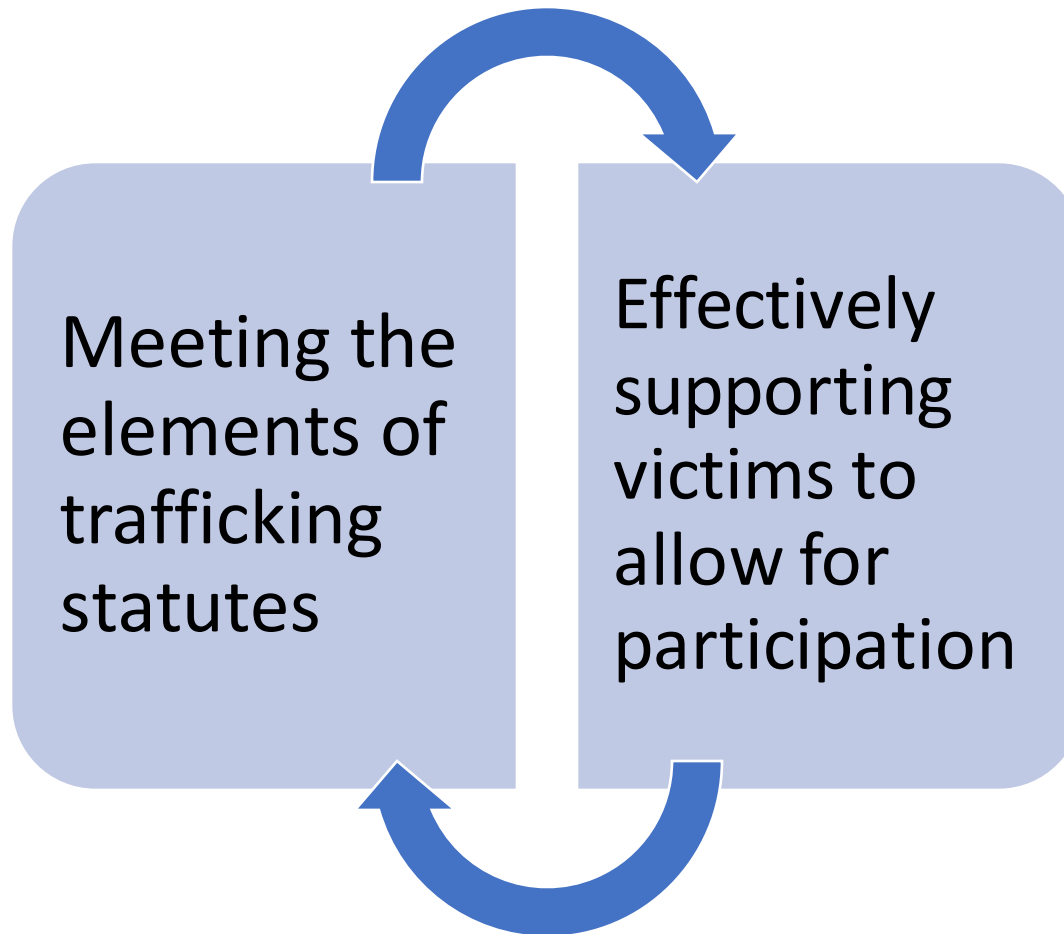
Minimize and respond to witness intimidation

Identify victim statements that may be admissible without the victim testifying

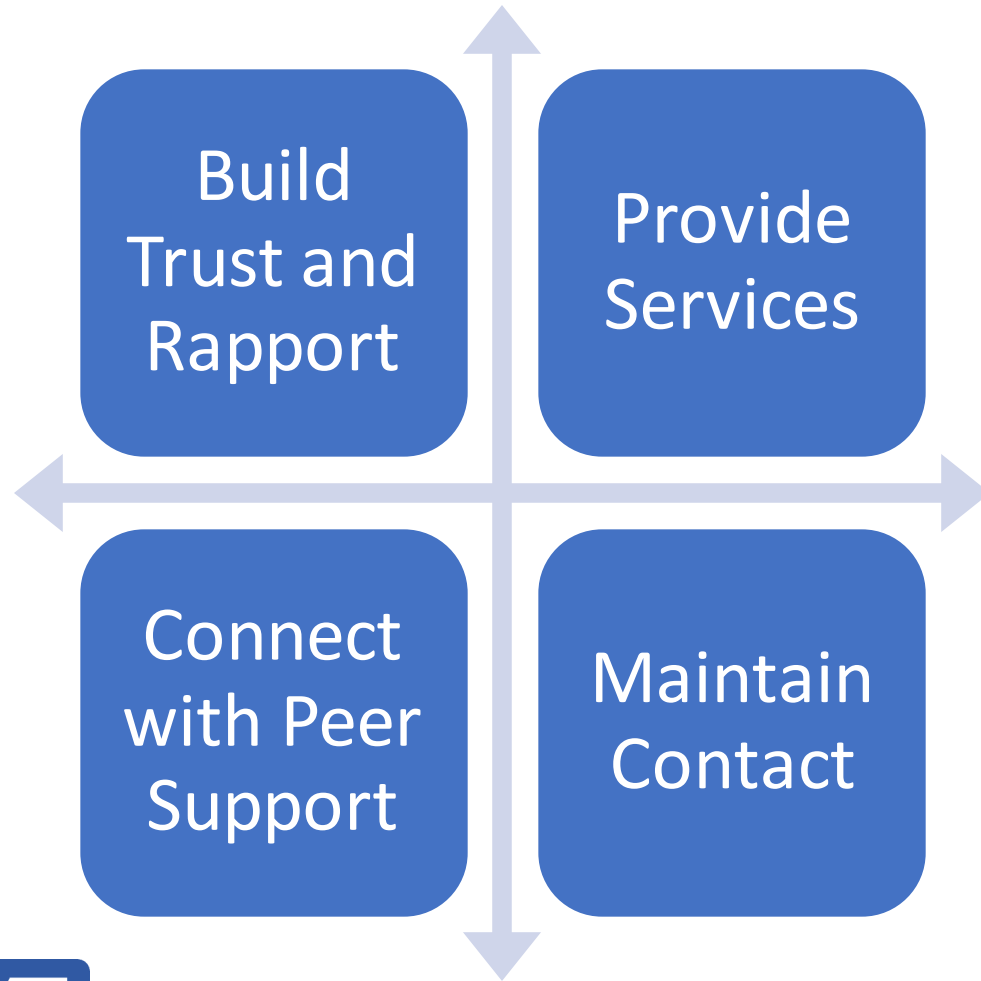
What is your biggest challenge when investigating or prosecuting human trafficking cases?

Please answer in the Chat Box

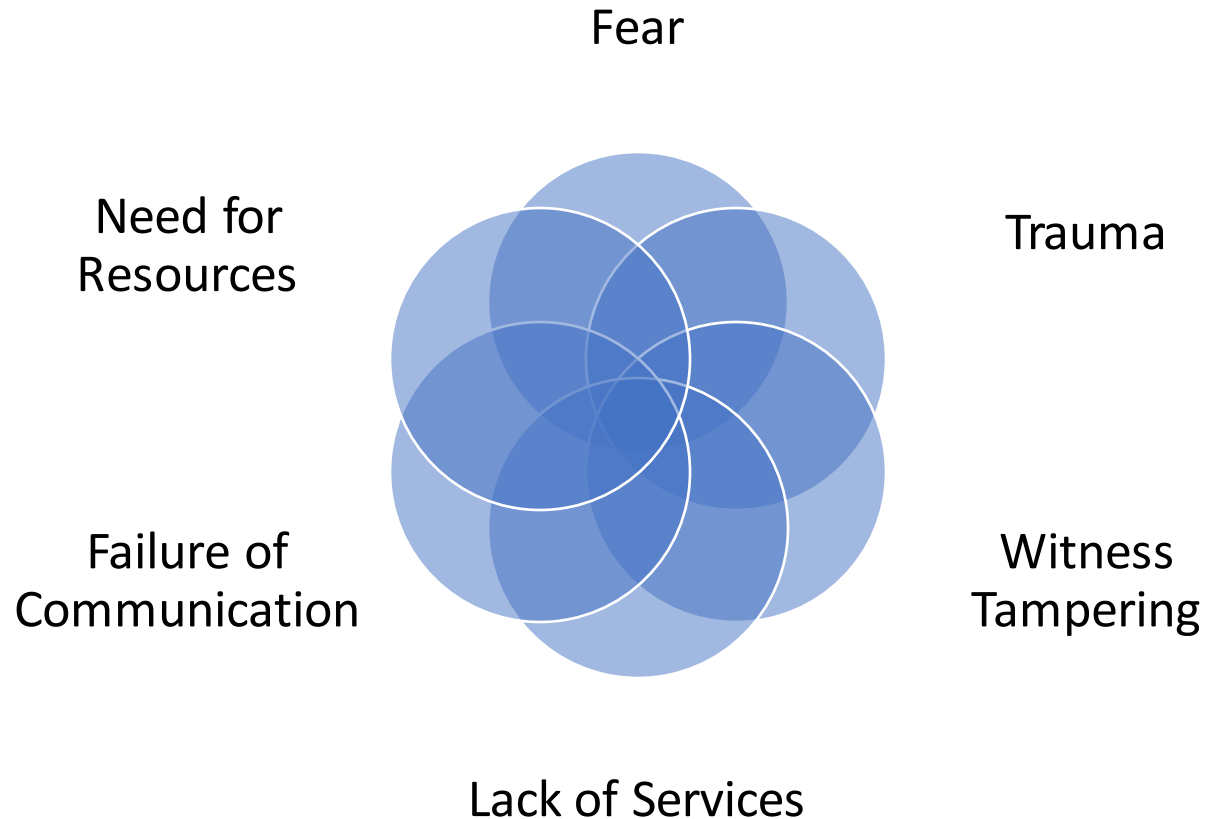
Challenges



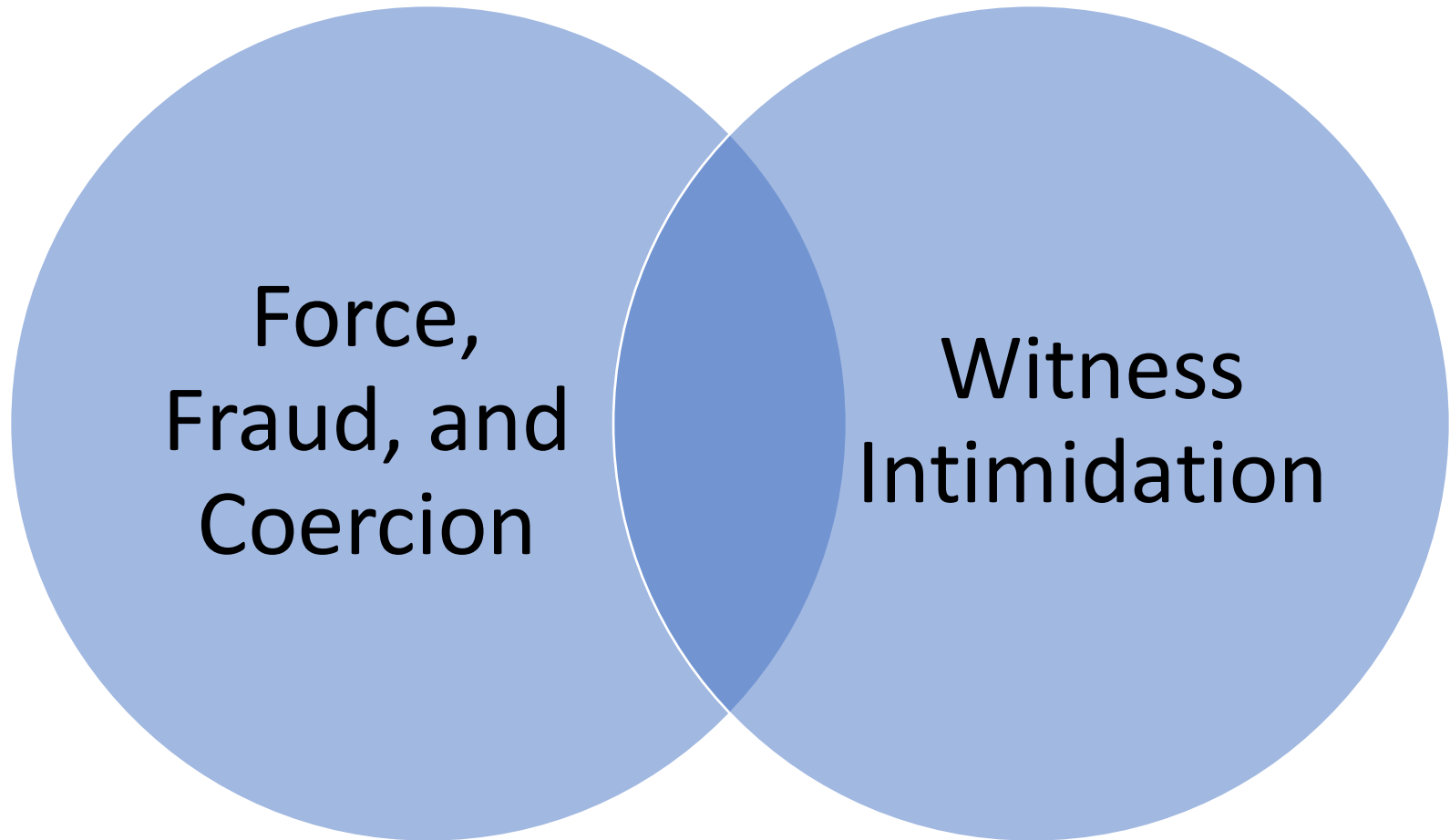
Increasing Participation



Inability to Participate



Anticipate Offender Tactics



What type of intimidation have you witnessed in human trafficking cases?

Please answer the Poll Question

Common Tactics

Emotional Appeals

Bonomi, R. Gangamma, C. Locke, H. Katafiasz & D. Martin, *Meet Me at the Hill Where We Used to Park*, 73 SOCIAL SCIENCE & MEDICINE, 1054-61 (2011)

Cultural Fear Tactics


Deportation

Threats of Violence

Financial Manipulation

*I'm Not
Giving Up
on Us*



A watercolor border at the top of the notebook pages, featuring a gradient of pink, red, and blue, with yellow stars and red hearts scattered throughout. The paper itself is a light, textured grey.

Perfect love only happens
in the movies.

In the real world we sometimes
say things in anger
that we wish we could take back.
We sometimes do foolish things ~
without thinking about
the consequences...
and we hurt the ones we love most.
But that doesn't mean
our love isn't real ~
or that it's not worth fighting for.

Let's focus on what's good between us
and remember the reasons why
love brought us together.

I believe we can grow
from these hard times
and our relationship
will become stronger and healthier
as we learn more about
the power of compromise,
forgiveness ~
and love.

~ Jason Blume

Blue Mountain Arts

Strategies

Educate victims

- Reality of tampering
- How to report and preserve

Protect privacy

- Seal documents from public records
- Use initials, redact identifying information

Monitor offenders

- Jail communications and social media
- Pretrial release conditions; GPS

Safety plan

- Technology
- Third-party offenders

Read Between the Lies

When he says, "Stay in pocket"

DON'T BE TRICKED

he means, "Stay under my thumb"

OWN YOUR LIFE

LET US HELP



CALL 305-547-0749

Heard these lines before?

"I promise, this will never happen again."

"It's just until we can pay off these bills."

"If you go to the police, they'll arrest you."

"I took you when your own family didn't want you."

"You're supposed to be my girl."

"If you didn't snitch, I wouldn't be in this situation."

"When I beat this case, we can finally get married."

"You were in the game before I met you."

"Who's going to want you now?"

"If anyone finds out, you'll lose your kids."

"If you don't come to court, this will all go away."

"I've always got eyes on you."

See also, City of Denver's Victim Services Program, available at:
<https://www.familyjusticecenter.org/wp-content/uploads/2018/09/Victim-Resources-Program-What-May-Happen-While-Your-Case-is-Pending.pdf>

Prepare for Recantation

Victim is strong and resolved



Offender minimizes the abuse & casts themselves as the victim



"They don't understand us"



"Lie for me, it's us against the world"



Developing the Plan



Eliminating the Payoff



Are sex and labor trafficking victims
eligible for protection orders in your
jurisdiction?

Please answer the Poll Question

Protection Orders

Criminal

- Condition of pretrial release
- Revocation of release
- May be a crime
- Contempt

Civil

- Relationship between offender and victim
- Type of violence or threats
- Violation is a crime
- Contempt

Contempt

- File a Petition for an Order to Show Cause
- Order to Show Cause initiates civil or criminal contempt proceeding
 - Tells defendant to “show case” why they should not be held in contempt
- Judges have an inherent right to uphold their own orders
- Defendant will have a right to an attorney, but likely not a right to a jury
- Allowable punishment can range from 30-90 days in jail

Inside the Courthouse

Safe spaces

Train
personnel

Make a
record

Ask for
court orders

When Intimidation has Occurred

- Make a record and ask for additional security measures, including court orders
 - Cell phone policies
 - Require identification to enter courtroom
 - “Intimidation is enabled by anonymity”
 - e.g. United States v. Smith, 426 F.3d 567, 574 (2d Cir. 2005)
- Convene an anonymous jury
 - 28 U.S.C. § 1863
 - e.g. United States v. Dinkins, 691 F.3d 358, 375 (4th Cir. 2012)

Waller v. Georgia

467 U.S. 39, 104 S. Ct. 2210, 2212, 81 L. Ed. 2d 31 (1984)

Test for any partial court closure, including closing the courtroom during a victim's testimony:

1. *The party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced*
2. *The closure must be no broader than necessary to protect that interest*
3. *The trial court must consider reasonable alternatives to closing the hearing; and*
4. *The court must make findings adequate to support the closure*

Forfeiture by Wrongdoing

F.R.E. 804(b)

(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused--or acquiesced in wrongfully causing--the declarant's unavailability as a witness, and did so intending that result.




Have you ever been involved in a case
where Forfeiture by Wrongdoing was
used?

Please answer the Poll Question

“The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.”

Elements

Witness is unavailable



Because of the defendant's wrongdoing



The defendant intended to make the witness unavailable

Unavailability

- Witness cannot be located after diligent attempts
 - Document steps taken and attempts made
 - May need to issue a subpoena
- Witness has real or feigned amnesia or memory loss
- Defendant marries the witness
- Witness refuses to testify

Wrongdoing

State v. Hallum, 606 N.W.2d 351, 356 (Iowa 2000)

- Wrongdoing is not limited to wrongful conduct or misconduct
- Does not require threats, force, in intimidation
- Includes persuasion and control by the defendant
- May be established if the defendant directs the witness to exercise the Fifth Amendment privilege

People v. Pappalardo

152 Misc. 2d 364, 576 N.Y.S.2d 1001 (Sup. Ct. 1991)

- A witness's claim of amnesia at the time of trial creates a “practical unavailability”
- Defendant financed, supported and was actively involved in implementing the plan to prevent the witness from testifying.
- Court found that the forfeiture could be established when the defendant had any knowledge or complicity

Defendant's Intention

Sufficient for prosecution to prove that “wrongdoing was at least partially intended to procure the declarant, his wife's, unavailability”

- United States v. Montague, 421 F.3d 1099 (10th Cir.2005)

“defendant need only intend ‘in part’ to procure the declarant's unavailability”

- United States v. Gray, 405 F.3d 227 (4th Cir.), cert. denied, 546 U.S. 912 (2005)

To establish forfeiture by wrongdoing, prosecution “need only show that the defendant ‘was motivated in part by a desire to silence the witness”

- United States v. Dhinsa, 243 F.3d 635 (2d Cir.), cert. denied, 534 U.S. 897 (2001)

Com. v. Szerlong

457 Mass. 858, 933 N.E.2d 633 (2010)

“Even if the idea to marry originated with the victim, the defendant agreed to marry, and the victim's spousal privilege existed only because of his agreement...the judge was entitled to infer that the defendant intended to make her unavailable to testify by agreeing to marry her. The judge did not need to find that making her unavailable as a witness was the defendant's sole or primary purpose in marrying her; it is sufficient that it was a purpose in marrying her.”



What if the victim recants on the stand?

Emerging Issue

People v. Nelson, 67 N.Y.S.3d 719 (N.Y. App. Div. 2017)

“Unavailability’ in this context is not limited to a witness's outright refusal to testify or physical absence from the proceedings; a witness is practically or effectively unavailable where the witness recants his or her initial statements or otherwise changes his or her version of the events as a result of misconduct on the part of the defendant.”

Argument for Expansion

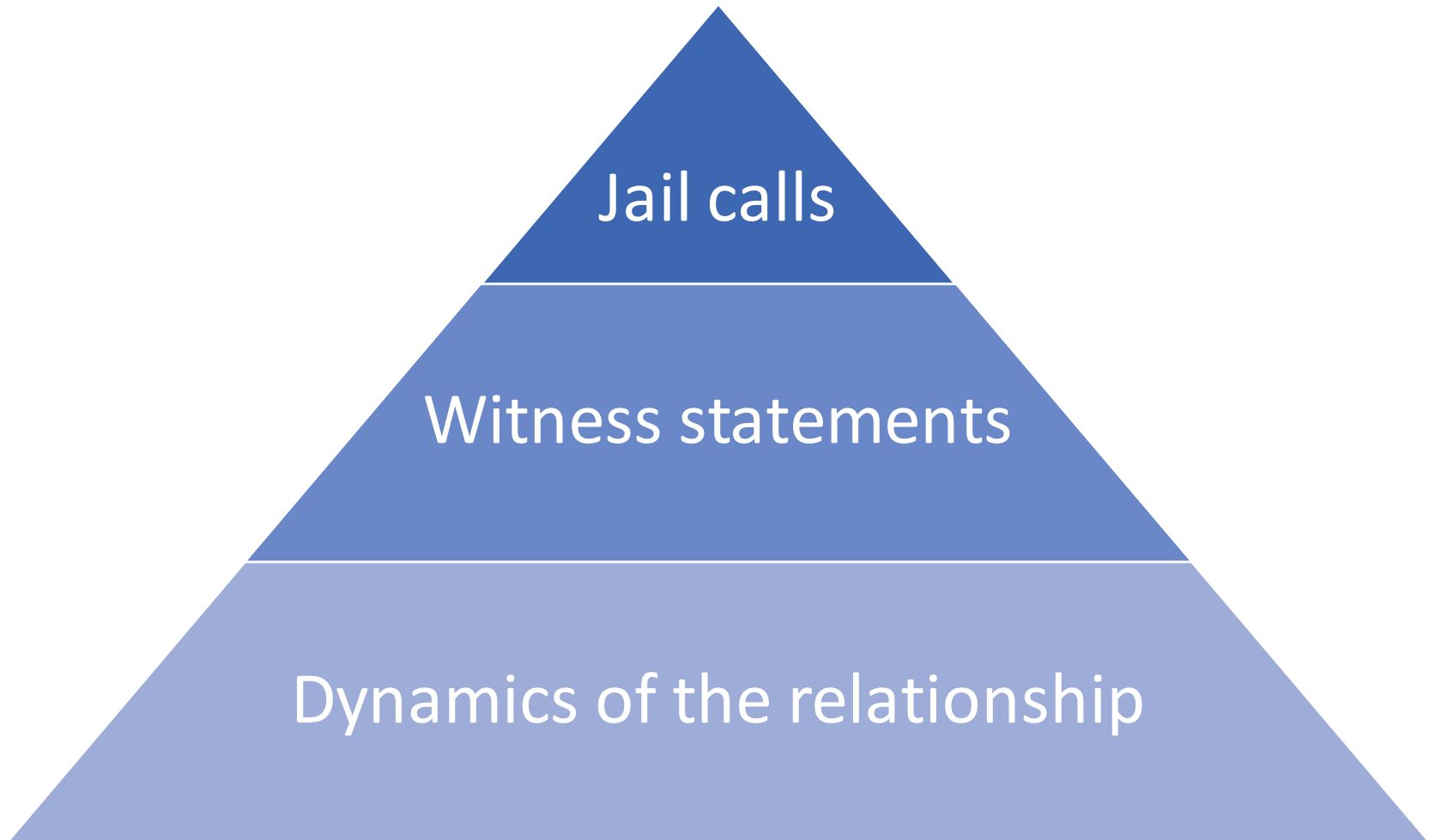
People v. White, 772 N.Y. S.2d 309 (1st Dept. 2004)

“To deem a testifying, but recanting witness ‘available’ for Confrontation Clause purposes, as defendant suggests, would provide witness tamperers with an incentive to induce witnesses to recant rather than to refrain from testifying at all.”

Judicial Determination

- Requires hearing outside of the jury
- Standard = “Preponderance of the evidence”
 - MD, WA, and NY require “clear and convincing evidence”
- Hearsay evidence admissible, including affidavits
- Statements which you wish to introduce are admissible
- Consider using expert witness to educate
- Court may reserve ruling based on unavailability until trial

Evidence of Wrongdoing





Bringing the Victim's Voice into the Courtroom

Shaping the Future of the Policing Profession®

Hearsay

F.R.E. 801

“Hearsay” means a statement that:

- (1) the declarant does not make while testifying at the current trial or hearing; and
- (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

A “statement” is:

- An oral or written assertion; or
- Nonverbal conduct of a person, if it is intended by him as an assertion.

Solicitation as a Verbal Act

State v. Warren, 291 Or. App. 496, 422 P.3d 282, review denied, 363 Or. 744, 430 P.3d 567 (2018)

“...the act of posting an online advertisement offering sexual conduct for money, itself, carries legal significance, regardless of whether the statements contained in the advertisement are true. In any event, the advertisements in this case were not offered to prove the truth of the statements in them but, rather, to demonstrate that defendant was connected to offers of prostitution. Therefore, the advertisements are verbal acts and not hearsay.”

Statements of Coconspirators

F.R.E. 801(d)(2)(E)

- Statements made by the defendant's coconspirator during and in furtherance of the conspiracy are not hearsay
- Coconspirator need not be charged
- Coconspirator may be immune from prosecution
 - People v. Brown, 14 Cal. App. 5th 320, 221 Cal. Rptr. 3d 854 (Ct. App. 2017) - Statute prohibiting prosecution of victims did not preclude such victims from being considered uncharged coconspirators under coconspirator exception to hearsay rule


Hearsay Exceptions



Present sense impression



Excited utterance



Then-existing mental, emotional, or physical condition



Statement made for medical diagnosis or treatment

Crawford Analysis

Testimonial

- Generally more formal or made to law enforcement or their agents
- Primary purpose is to report facts for later prosecution

Nontestimonial

- Statements during ongoing emergency
- Casual remarks to others
- For purposes of medical treatment

Reports and Records

Williams v. Illinois, 567 U.S. 50 (2012)

Testimonial

- Forensic reports that include information from scientific testing are testimonial
 - e.g. DNA, Ballistics, fingerprints, drug testing

Nontestimonial

- Records that are compilations of stored information
 - e.g. Phone records, caller ID, GPS printouts

Statement Analysis

Is it hearsay?



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graph TD; A[Is it hearsay?] --> B[Does an exception to hearsay apply?]; B --> C[Is the statement testimonial?];
```

Does an exception to
hearsay apply?

Is the statement
testimonial?

Identifying Admissible Statements

- Identify anyone the victim spoke to
- Interview all witnesses and suspects
- Document any statements made to the witness by the victim
- Document circumstance of the statement
 - Timing
 - Demeanor

Why is it important to document demeanor evidence?

Please answer in the Chat Box

Prior Testimony

- Victim's prior testimony can be admitted where the defense had a full and fair opportunity to cross examine
 - Provide discovery prior to testimony
 - Allow for wider scope of inquiry
 - Preserve testimony
- Grand Jury testimony does not qualify
- Adversarial Preliminary Hearings
- Preservation of Testimony

Example: Cal. Penal Code § 1335

Conditional examination of witnesses is authorized

(c)(1) If a defendant has been charged with human trafficking... and there is evidence that the victim or material witness has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or physical threat, from cooperating with the prosecutor or testifying at trial, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter...

Example: Cal. Penal Code § 1335

Conditional examination of witnesses is authorized, cont'd.

(2) If a defendant has been charged with human trafficking... and the court finds that there is a reasonable basis to believe that the material witness will not attend the trial because he or she is under the direct control of the defendant or another person involved in human trafficking and, by virtue of this relationship, the defendant or other person seeks to prevent the witness or victim from testifying, and if the defendant has been fully informed of his or her right to counsel as provided by law, the court may have a witness examined conditionally as prescribed in this chapter.

Going Forward

Encourage victim participation
by providing services

Combat witness intimidation
and eliminate the payoff

Identify and preserve
admissible victim statements

Questions for the presenter?
Submit them in the chat box

Don't forget: we love your
feedback! Scan with your
smart phone or use the
link below to let us know
your thoughts:



<https://forms.gle/ozH2UPZDFJDZys4M8>



Jane Anderson

ATTORNEY ADVISOR



janderson@aequitasresource.org



(202) 596-4229



1000 Vermont Avenue NW, Suite 1010
Washington, DC 20005



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www.linkedin.com/company/aequitas-the-prosecutors'-resource-on-violence-against-women/

Access resources and trainings at www.aequitasresource.org

Contact AEQUITAS at info@aequitasresource.org



IACP Training and Technical Assistance Resources

- Child Sex Trafficking Toolkit
- Online Trainings and Events
- Classroom Trainings
- Peer-to-Peer Mentoring
- Customized Technical Assistance
- Task Force Connect, exclusively for ECM members

www.theiacp.org/humantrafficking

**Technical Assistance Provider:
The International Association of Chiefs of Police**

With support from the **Bureau of Justice Assistance**, and in partnership with **AEQUITAS** and the **John Jay College of Criminal Justice at the City University of New York**, the **International Association of Chiefs of Police (IACP)** provides a broad range of training and technical assistance (TTA) to enhance the capability of law enforcement and their multidisciplinary partners to combat all forms of human trafficking. Since 2015, the IACP has provided technical assistance services to more than 40 ECM task forces and provided training, tools, and resources to law enforcement, prosecutors, and allied partners throughout the United States.

IACP Resources

 ONLINE LIBRARY of human trafficking training, tools, and resources for law enforcement, prosecutors, and judges	 CHILD SEX TRAFFICKING TOOLKIT for law enforcement	 Ongoing WEBINAR TRAINING SERIES on human trafficking
 ONLINE TRAINING on such topics as labor trafficking identification, child sex trafficking, innovative prosecution strategies, and emerging human trafficking issues	 CLASSROOM TRAINING: Labor Trafficking Investigation and Prosecution, and Advanced Human Trafficking Investigation and Prosecution	 Multidisciplinary Collaborative Model for Human Trafficking Task Forces: DEVELOPMENT & OPERATIONS ROADMAP
 PEER-TO-PEER MENTORING opportunities between task forces	 TASK FORCE CONNECT , an online community for ECM task forces to network, share resources, and engage in peer-to-peer problem-solving	 CUSTOMIZED TECHNICAL ASSISTANCE on topics such as identification, investigation, and prosecution; data collection and evaluation; and effective task force operations

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<https://www.linkedin.com/company/international-association-of-chiefs-of-police/>

Access resources at www.theiacp.org/humantrafficking

Contact IACP at humantrafficking@theiacp.org

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learn.theiacp.org

On-demand
and live
training

Webinars

General
education

Podcasts



Additional OVC-funded Human Trafficking Technical Assistance Resources

[ICF Incorporated](#) – Enhanced Collaborative Model Capacity Building and Implementation

[Coalition to Abolish Slavery and Trafficking](#) (CAST) – Comprehensive Legal TTA

[National White Collar Crime Center](#) – Preventing Human Trafficking and Child Exploitation Through Education

[International Rescue Committee – Framework](#): Tools to Combat Labor Trafficking

[OVC Training and Technical Assistance Center](#)

[Freedom Network USA](#) – Training Institute Housing TTA Project

[Human Trafficking Capacity Building Center](#)

Improving Outcomes for Child and Youth Victims of Human Trafficking TA

[Youth Collaboratory](#) – Preventing Trafficking of Girls Training and Technical Assistance

[U.S. Committee for Refugees and Immigrants, Inc.](#) – Project Trauma Response to Uplift Survivors of Trafficking (TRUST)

[American University](#) – Maximizing OVC's Survivor Assistance in Court Settings (MOSAICS)

[Futures Without Violence](#) – Promoting Employment Opportunities for Survivors of Trafficking Program



Thank you!

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Provide your feedback:

[https://forms.gle/ozH2UPZDFJ
DZys4M8](https://forms.gle/ozH2UPZDFJDZys4M8)

