

Expert Testimony in Sex Trafficking Cases

Tianyi Zhang, MD, and Vivek Datta, MD, MPH

In the courtroom, the credibility of sex trafficking survivors is often called into question. Particularly of interest are the survivors' complex behaviors and reactions, which may be misunderstood as being incongruent with claims that they were sex trafficked. Expert testimony may be essential to help the trier of fact understand the seemingly counterintuitive behavior of trafficking survivors. This article describes current laws against sex trafficking and challenges to prosecution arising from common misconceptions about survivors. We summarize clinical research on the mental health sequelae of sex trafficking. We review published judicial opinions that describe the use of expert testimony in sex trafficking prosecutions. Our case review shows that forensic psychiatrists are infrequently used as experts in this setting. Forensic psychiatrists, particularly those with expertise in traumatic stress or sex trafficking, can play an important role in explaining how trauma and psychopathology can cause survivors to recant testimony, be reluctant to engage, or respond in other ways that weaken their perceived credibility. Forensic psychiatrists can also assess for treatment needs to calculate restitution for trafficking survivors more accurately.

J Am Acad Psychiatry Law 50(2) online, 2022. DOI:10.29158/JAAPL.210051-21

Key words: trafficking; sex trafficking; expert testimony; legislation

The year 2020 marked the twentieth anniversary of the Trafficking and Violence Protection Act of 2000 (TVPA). While trafficking in persons is hardly a novel phenomenon, new concerns about human trafficking have emerged as the world becomes increasingly complex in terms of human migration and movement and available venues for trafficking. The passage of the TVPA and subsequent anti-trafficking legislation at the state level set forth a new definition of severe forms of sex trafficking and established them as federal and state crimes, respectively.^{1,2}

The TVPA defined severe forms of sex trafficking as situations “in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.”³ The Action-Means-Purpose model illustrates the evidentiary requirements to establish whether sex trafficking has occurred: at a minimum, there must be evidence that the perpetrator used an

action, namely “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person,”⁴ by a means of force, fraud, or coercion for the purpose of compelling the person to provide commercial sex. Minors represent an exception, as commercial sex involving a minor meets the federal definition of sex trafficking, regardless of whether force, fraud, or coercion were used.⁵

The TVPA uses the terms “victims” and “trafficked persons” to refer to individuals who have been trafficked. To reflect the language of the statute, this article similarly uses these terms. This article also uses “survivor” somewhat interchangeably with “victim” to acknowledge that individuals who experienced sexual trauma are heterogeneous in their preferences for and self-identification with the term survivor or victim.⁶

Sex traffickers use various tactics to compel their victims into providing commercial sex. Fraud is used prominently during the recruitment process. Traffickers sometimes pose as parental figures or romantic partners to socially isolated people⁷ or as potential employers and misrepresent the nature or conditions of the work. Individuals trafficked into the United States from other countries are often burdened with excessive debt, supposedly incurred

Published online March 10, 2022.

Dr. Zhang is Forensic Psychiatry Fellow and Dr. Datta is Assistant Clinical Professor, University of California San Francisco, San Francisco, CA. Address correspondence to: Tianyi Zhang, MD. E-mail: tianyi.zhang@ucsf.edu.

Disclosures of financial or other potential conflicts of interest: None.

through their transportation, and are forced into commercial sex to pay off the alleged debt.^{8,9}

Sex traffickers often use force, including physical assault, sexual assault, kidnapping, confinement, and other physical barriers to movement. They also utilize coercive tactics such as threats of physical force as a consequence of noncompliance or attempted escape.¹⁰ Other traffickers manipulate their victims' behavior through the use of rewards and punishments by offering and then threatening to take away attention and demonstrations of love¹¹ or by providing and then withholding drugs to induce withdrawal.¹²

At the time of the TVPA's passage, the U.S. government estimated that approximately 50,000 women and children were trafficked into the United States each year.¹³ Subsequent reauthorizations of the TVPA have declined to offer an estimate, citing the challenges of quantifying the scope of this problem.¹⁴

The TVPA serves as a comprehensive federal statute on human trafficking. It has three primary functions: prosecuting traffickers, protecting victims, and preventing trafficking. The TVPA enhanced prosecution of human trafficking via the addition of new criminal provisions related to human trafficking, increased criminal penalties for trafficking charges, and a mandate for defendants convicted of trafficking crimes to pay restitution to their victims. The TVPA also offered new protections to trafficking survivors, including health benefits and access to certain federally funded services.¹⁵ Some survivors became eligible to apply for the T visa and U visa, which were immigration benefits created to allow survivors of trafficking to remain in the United States if they cooperated with the crime's investigation and prosecution.¹⁶ Finally, the TVPA sought to make global prevention efforts more robust by providing funding and recognition to anti-trafficking programs.¹⁷

Subsequent reauthorizations of the TVPA in 2003, 2005, 2008, 2013, and 2017 have publicly reaffirmed a political will to address the problem of human trafficking.¹⁸ In 2003, individual states began to enact their own state statutes to combat human trafficking. By 2013, all 50 states had criminalized sex trafficking to varying extents.^{19,20}

Prior to the TVPA's enactment, human trafficking was prosecuted under the patchy umbrella of several federal statutes that dealt with involuntary servitude and slavery.²¹ The U.S. Department of Justice

reported only 18 initiated prosecutions of human trafficking cases between 1996 and 2000.²² After the TVPA's passage, federal prosecutions of sex trafficking steadily increased until their peak around 2016, a year in which 394 defendants in sex trafficking cases were sentenced; subsequently, prosecutions have declined slightly.²³ The most recent federal trafficking reports summarize data from 2018; that year, 213 federal prosecutions of sex trafficking were initiated,²⁴ 287 defendants were convicted of sex trafficking an identifiable victim, and 28.2 percent of them were ordered to pay restitution to their victims.²⁵ These data have attracted criticism; many experts view these changes in sex trafficking prosecutions since 2000 as modest, indicating insufficient identification, reporting, and prosecution of sex trafficking under the TVPA.^{26,27}

Similarly, there are significant obstacles to prosecuting sex trafficking in the state courts. One study examined records from 2003 to 2012 and found only 479 state-level human trafficking prosecutions across all 50 states.²⁸ Another study examined state-level prosecutions of sex trafficking cases investigated by the police in 12 counties between 2003 and 2010; human trafficking charges were pursued in only 22 percent of these cases, while charges related to prostitution or promoting or compelling prostitution were used in 52 percent of cases.²⁹

Studies seeking to understand and improve criminal prosecutions at federal and state levels have identified challenges at every step in the process.³⁰ Initial investigations often yield limited evidence, partly because of the difficulty of securing evidence from the victims. Prosecutors have expressed reluctance to accept referrals of sex trafficking cases because of errors made in the initial investigations, the perception that these cases are resource-intensive, and their relative inexperience with human trafficking laws in comparison to more familiar laws on rape, kidnapping, and promoting prostitution.³¹

Some prosecutors have said that they are less likely to accept referrals in which the survivors appear to have complex psychosocial problems or significant psychological sequelae of their traumatic experiences; sex trafficking survivors with these characteristics are deemed less likely to testify and more vulnerable to scrutiny in the courtroom.³¹ Jurors and judges may carry their own misconceptions of human trafficking as a result of media narratives or common public perceptions that conflate trafficking with smuggling or

the use of physical force.^{32,33} These beliefs may produce negative attitudes toward sex trafficked persons that do not fit the stereotypical image of a victim.

The biases held by many judges, juries, and attorneys, as described above, are notable, considering the high prevalence of mental health diagnoses among sex trafficked persons. A recent review of the health of trafficked persons identified 15 studies that investigated the prevalence of mental health disorders in this population.³⁴ Twelve studies examined trafficked women; estimates of pooled prevalence were 50 percent for anxiety disorders, 52.4 percent for depression, and 31.6 percent for posttraumatic stress disorder (PTSD). Three studies examined trafficked men and reported notable levels of depression (20.8% to 60.6%), anxiety (21.7% to 48.3%), and PTSD and other trauma- and stressor-related disorders (15.8% to 46.2%). Child participants were included in three studies and were reported to have high rates of anxiety (32.3%), affective disorders (27% to 57.3%), and trauma- and stressor-related disorders (26.5% to 27%).³⁴ While the above studies are scant and heterogeneous in terms of country of study, assessment tools, and definitional criteria for trafficking identification, they provide growing evidence of a high burden of mental health symptoms in this population.

Studies within the United States attribute higher rates of mental disorders to sex trafficked persons than to other traumatized or vulnerable groups. One study reported that adolescent victims of sex trafficking had higher rates of mood disorders, PTSD, conduct disorder, and substance use disorders than age-matched sexually abused adolescents.³⁵ Another study noted that sex trafficked children were more likely to have a diagnosis of PTSD, bipolar disorder, or attention hyperactivity deficit disorder compared with children who were justice-involved, runaways, or in foster care homes. Sex trafficked children were also reported to have higher rates of depression, anxiety, oppositional defiant disorder, conduct disorder, and psychosis than certain high-risk groups.³⁶ The symptoms of these mental disorders can negatively affect perceptions of sex trafficked persons in the courtroom. Substance use, externalizing behaviors from disruptive behavioral disorders, and avoidance and memory impairments from trauma-related disorders could be viewed unfavorably.

Individuals with a background of childhood abuse, neglect, service-systems involvement, and

other indicators of family dysfunction are disproportionately recruited by sex traffickers.^{37,38} With limited viable options for other relationships, many sex trafficked persons develop complex loyalties and attachments to their traffickers. Traffickers reinforce these attachments through the use of entrapment methods that isolate victims, build dependence on the trafficker, and normalize the experience of coerced prostitution. Survivors may choose to remain with their traffickers and may not want their traffickers to be convicted.³⁹ Alternatively, they may fear their traffickers or mistrust the criminal justice system, leading to a reluctance to testify. For these reasons, several studies that examined the challenges of sex trafficking prosecutions noted that using an expert witness could lend clarity to the complexities inherent to sex trafficking cases.^{31,40,41}

Select Case Law Descriptions

A search was conducted on Lexis Advance database (<https://advance.lexis.com>) for published opinions filed before August 2019 involving sex trafficking prosecutions that used expert testimony. The terms “sex trafficking” and “expert witness” yielded 119 cases. “Sex trafficking” and “psychiatrist” yielded 38 cases, “forced prostitution” and “expert” yielded 30 cases, and “Trafficking Victims Protection Act” and “expert” yielded 38 cases. There was considerable overlap in the search results.

Cases that preceded the enactment of the TVPA were included if the described offenses were consistent with current definitions of sex trafficking. Unpublished cases and cases with unreported outcomes were excluded. Cases in which the expert witness was primarily utilized for evaluations related to criminal competencies, the insanity defense, or attempted use of paraphilic disorders for sentencing mitigation were excluded because their testimony was not specific to sex trafficking. The relevant judicial opinions included 16 by federal appellate courts, three by federal district courts, four by state appellate courts, and one by a state trial court. A selection of these cases is described in greater detail below to illustrate various uses of expert testimony.

Barriers to Perceived Victim Credibility

Expert witnesses addressed potential barriers to the survivor’s credibility in most cases. Many experts

provided general testimony. For example, in nine cases, law enforcement provided testimony on the *modus operandi* of pimps and the pimp–prostitute relationship. This social framework testimony was intended to disabuse jurors of the common misconceptions about sex trafficking and provide a context in which jurors could more accurately evaluate the credibility of trafficking survivors.

Some medical and mental health professionals also provided general testimony and explained why some survivors might remain in the situation, feel reluctant to testify against the trafficker, or offer an inconsistent recollection of events. Other experts provided more case-specific testimony after assessing the trafficked individuals to varying extents. There were only five cases in which experts assessed the survivor to the extent that they were able to present a diagnosis to explain the survivors' behaviors and reactions to their trafficking experience.

United States v. Winters (1984)⁴² is the earliest published opinion to include testimony from an expert witness on sex trafficking. In 1982, Charles Winters was charged with kidnapping and transporting women in interstate commerce for immoral purposes after he assaulted, raped, and forced two women into prostitution. During his trial, Mr. Winters asserted that both women were with him voluntarily and drew attention to the fact that they did not take advantage of opportunities to escape or seek help, suggesting that this behavior indicated consensual participation.

The prosecution produced testimony from a psychiatrist who diagnosed PTSD in both women and explained how the symptoms of PTSD made it difficult for them to view escape as a possible and safe option. A forensic psychologist also provided testimony to explain how sex trafficking victims may be conditioned to feel helpless and dependent on their perpetrators.

Mr. Winters was convicted and sentenced to two life sentences and 15 years' imprisonment. He then appealed and challenged the trial court's admission of expert testimony. The Ninth Circuit affirmed Mr. Winters' conviction.

United States v. Carson (2017)⁴³ involved defendant McKenzie Carson, who ran a sex trafficking ring in Illinois. At Mr. Carson's trial, four women testified that although they initially agreed to work for him, they unwillingly remained with him as the result of physical violence, threats, and other coercive

measures. Mr. Carson asserted that the women voluntarily engaged in prostitution.

A forensic pediatrician served as an expert witness for the prosecution. She described how traffickers select victims on the basis of psychosocial vulnerabilities, which make them easy targets for recruitment and control. She also described the psychological impact of sex trafficking, explaining how fear, shame, low self-worth, isolation, and helplessness make it difficult for victims to leave their situations. Her testimony provided meaningful context to the fact that all four women initially agreed to join their trafficker and that two of the women were able to leave Mr. Carson at one point but then returned to him. Without this context, some of these behaviors may have been misconstrued by the jury as evidence that the four women were complicit in their sexual activity.

A jury convicted Mr. Carson of four counts of violating the federal sex trafficking statute. The district court subsequently sentenced him to 47 years' imprisonment. The government requested restitution for the victims, but the court found their request untimely and announced there would be no restitution.⁴⁴ Mr. Carson appealed his conviction unsuccessfully.

Restitution

Restitution is an important component to sex trafficking prosecutions and theoretically offers a lifeline to survivors who have few resources and significant medical and mental health needs. Mental health experts are sometimes utilized to evaluate the survivors and calculate the expenses of their anticipated future mental health treatment.

In *United States v. Jennings* (2012),⁴⁵ Randal Jennings pled guilty to commercial sex trafficking of minors. The government sought restitution for all five child victims and hired a child psychologist to evaluate them. After watching video interviews of the children, the psychologist produced a calculation of \$176,530 per victim for future mental health costs. The defense contested these calculations; their forensic psychiatrist expert argued that the victim's predisposing factors, such as genetic and developmental history, and perceived lack of interest in engaging with psychological care were not taken into consideration.

The defense argued that the prosecution's expert witness was operating with limited information and

thus could only offer speculation. Ultimately, the district court found that the government did not meet the burden of proof in justifying the victims' future mental health expenses. The court additionally stated that because most of the victims had engaged in prostitution before meeting Mr. Jennings, it was not clear how much of their psychological trauma could be attributed to him. The district court sentenced Mr. Jennings to 262 months' imprisonment and did not order restitution. Mr. Jennings' subsequent appeal was dismissed.

In *United States v. Lewis* (2011),⁴⁶ restitution proceedings were initiated against Shelby Lewis, who pled guilty to sex trafficking his foster daughter and three runaway minors, for which he was sentenced to 20 years' imprisonment. The government used the services of a child psychologist to evaluate the victims. The psychologist testified that Mr. Lewis's actions caused all the victims to develop PTSD and to require significant funds to support years of future psychiatric care, therapy, and tutoring.

The district court granted the victims between \$577,500 to \$849,400 each for the costs of future treatment; additional restitution was awarded to each victim for ill-gotten gains. Mr. Lewis challenged the restitution order in his appeal, *In re: Sealed Case* (2012).⁴⁷ He drew attention to the fact that his victims had prior histories of prostitution or other traumatic experiences before they met him. He also argued that two of his victims, who were trafficked for four and 14 days, should not receive nearly as large a restitution sum as his two other victims, who were trafficked for 914 and 1,159 days.

In this context, the psychologist's testimony was useful in recognizing sex trafficking as the most proximal trauma in the victims' lives, which had seriously exacerbated the effects of any prior traumas. His explanation that psychological harm in the form of PTSD can result from brief traumatic events helped justify the amount of treatment estimated for the victims who were trafficked for four and 14 days. The D.C. Circuit Court of Appeals clarified that restitution does not need to "be proven with exactitude" (Ref. 47, p 66), and the judgment of the district court was affirmed.

In *United States v. Palmer* (2011),⁴⁸ Debra Palmer and her boyfriend Todd Barkau pled guilty to one count of sex trafficking of a minor, Ms. Palmer's daughter. The district court sentenced Ms. Palmer and Mr. Barkau to 15 and 25 years of imprisonment,

respectively. The government sought restitution for the victim and utilized the services of a child psychologist, who observed video interviews of the victim. The psychologist concluded that the child would need \$200,000 in future psychotherapy services and \$800,000 in future psychiatry services.

Ms. Palmer and Mr. Barkau disputed these calculations, stating that they were speculative, not based on a formal interview of the child, and did not take the child's resilience into consideration. The district court agreed that the psychologist's decision was "very speculative" but that there was "no question that there is going to be a need for . . . psychological services" (Ref. 48, p 1065) and awarded a lesser sum of \$200,000 in restitution.

The government appealed, and Ms. Palmer and Mr. Barkau cross-appealed. The appellate court affirmed the restitution award, citing the U.S. Supreme Court's recognition in *Kennedy v. Louisiana* (2008)⁴⁹ that victims experience untold psychological harm from childhood sexual abuse.

Victim Alignment with the Trafficker

Expert witnesses were called to testify in several cases in which the victim and trafficker were closely aligned. Their testimony provided a context in which jurors could better understand why some survivors try to protect their traffickers or commit crimes under their trafficker's direction.

State v. Donaldson (2014)⁵⁰ involved an unusual, but known, phenomenon in which one of the trafficker's victims testified on his behalf during the trial. In 2012, Kevin Donaldson was indicted on two counts of trafficking in persons and two counts of promoting prostitution for compelling two adult women (Q.P. and M.N.) into commercial sex. His case was one of the first in Ohio to test the state's new anti-trafficking statute.

When Q.P. was initially interviewed by law enforcement, she gave inculpatory evidence against Mr. Donaldson, revealing that he made her give her earnings from commercial sex work to him. When Mr. Donaldson faced criminal charges, Q.P. recanted and provided testimony on his behalf, sharing on the stand that he had never compelled her into prostitution.

The prosecution used two law enforcement agents as expert witnesses. A detective testified generally on the relationship dynamics between traffickers and their victims and on the psychological effects of sex

trafficking. An agent from the Federal Bureau of Investigation (FBI) shared that, when he previously interviewed Q.P., she appeared very frightened of Mr. Donaldson; he commented on how she continued to appear frightened of Mr. Donaldson in the courtroom. While the expert witnesses did not state this outright, their combined testimonies implied that Q.P. was still acting under coercion from Mr. Donaldson in the courtroom. He was found guilty of all counts by a jury and sentenced to 12 years' imprisonment. He appealed, arguing that the trial court had admitted impermissible expert testimony. The state appellate court affirmed the trial court's judgment.

In *United States v. Brooks* (2010),⁵¹ Depaul Brooks and Uawndre Fields were each indicted on two counts of child sex trafficking and two counts of interstate transportation of minors for purposes of prostitution after they recruited two runaway teenage girls into commercial sex work. Many of the logistics of the sex trafficking were carried out by their co-defendant Julia Fonteneaux, who also engaged in commercial sex.

The prosecution called a detective as an expert witness, who testified that traffickers often charge a senior woman with the task of training new recruits. A jury found Mr. Brooks and Mr. Fields guilty of all counts. Mr. Brooks was given concurrent sentences of 97 months' imprisonment for each count, and Mr. Fields was given concurrent sentences of 198 months' imprisonment for each count. Ms. Fonteneaux received a reduced sentence in exchange for providing testimony.

Mr. Brooks and Mr. Fields appealed and challenged the trial court's decision to admit expert testimony. The Ninth Circuit held that the detective was a qualified expert and noted that her testimony potentially helped the jury appreciate Ms. Fonteneaux's actions within the context of Mr. Fields's direction and understand that she was acting "not on her own accord" (Ref. 51, p 1196). Both convictions were affirmed.

Discussion

This review of sex trafficking prosecutions demonstrates a wide breadth of relevant concepts upon which an expert witness might be expected to testify. These topics ranged from the relational dynamics between sex traffickers and their victims, the psychological impact of sex trafficking, barriers to victim

cooperability, and assessments of the survivors' future mental health needs for the purposes of restitution.

The admissibility of expert testimony on sex trafficking was challenged in many cases. On a federal level, most cases withstood challenges to inclusion of expert witness testimony; in 2010, the U.S. district court for the district of Hawaii rejected such a challenge in an evidentiary *Daubert* hearing.⁵² *United States v. D'Ambrosio* (2017),⁵³ an unpublished opinion, is the only reported federal criminal case to exclude expert testimony from a mental health or medical professional; in this case, the Third Circuit held the expert's testimony was not relevant to the fundamental question of whether the defendants themselves had transported the minors across state lines for purposes of a commercial sex act. Several state courts have published opinions from sex trafficking prosecutions that incorporated testimony from an expert witness, including Ohio,⁵⁰ New York,⁵⁴ Hawaii,⁵⁵ California,⁵⁶ Maryland,⁵⁷ and Colorado.⁵⁸

Of the 24 prosecutions reviewed, 23 resulted in convictions. One defendant was acquitted of sex trafficking charges by the Colorado appellate court in *People v. Cardenas* (2014)⁵⁸ because of the wording of the state's anti-trafficking statute, which has since been revised. This high conviction rate alone does not indicate the effectiveness of expert testimony, given that most federal criminal trials result in convictions⁵⁹ and that prosecutors preferentially proceed with sex trafficking cases that have a high likelihood of conviction.²⁸ The relative difficulty of the cases is a more useful indicator of the benefits of expert testimony. These were difficult cases in which the victims' credibility could have been scrutinized because of their history of substance use, prostitution, or system involvement, or behaviors such as remaining with the trafficker, returning to the trafficker after escaping, or attempting to protect the trafficker. In these challenging cases, expert witnesses served an important role in helping juries and judges understand that these seemingly counterintuitive behaviors were consistent with common responses to trauma.

There are no guidelines on the selection of expert witnesses in sex trafficking prosecutions. Such guidelines exist for sexual and domestic violence prosecutions, however, which similarly utilize mental health and medical professionals and members of law enforcement as experts to testify on victim behaviors

and symptoms. These guidelines do not favor any category of expert and recommend selecting an expert on an individual case basis with consideration given to the victim's presentation, the facts of the case, the context of the applicable jurisdiction, and the prosecutorial strategy.^{60,61}

In this case review, the use of various types of expert witnesses had merit, including forensic psychiatrists, psychologists, pediatricians, and law enforcement. The relative strength of mental health professionals was their ability to speak through their experience in clinical assessment and treatment of mental disorders and to relate a psychiatric diagnosis to the survivor's behavior. For prosecutions in which restitution was requested, mental health professionals appeared more qualified to assess the survivor's future mental health expenses, and utilization of a mental health expert resulted in restitution being awarded in two of three cases. These are relatively successful outcomes, given that restitution is ordered in only 36.2 percent of sex trafficking cases in which restitution is requested.⁴⁴ Some legal scholars recommend the use of an expert witness to increase the likelihood that restitution is granted.^{41,62}

Mental health professionals were infrequently utilized as expert witnesses in sex trafficking cases with published opinions, appearing in seven of 24 cases. Law enforcement agents were the most commonly used experts, providing testimony in half of the cases. This is a notable departure from sexual and domestic violence prosecutions, where mental health professionals appear relatively more frequently as expert witnesses.^{60,61} Their low representation in the reviewed sex trafficking cases is surprising, given that significant psychopathology can influence survivors' behaviors, and mental health professionals can testify to the relevance of this phenomenon.

One possible explanation for the low utilization of mental health expert testimony in the reviewed cases is that, until recently, the mental health sequelae of sex trafficking were largely unstudied. In 2012, a systematic review found only four studies that examined the mental health of trafficked people.⁶³ An updated review in 2016 found 15 studies that reported on the mental health of trafficked persons.³⁴ The delayed emergence of clinical research and training of health care professionals on the health of trafficked persons⁶⁴ may have contributed to a perception that this was a niche topic, best left to the purview of vice units or highly specialized experts. This perception is

not supported by the existing literature, which largely describes mental disorders familiar to forensic psychiatrists, including PTSD, depressive disorders, anxiety disorders, and substance use disorders in sex trafficking survivors.³⁴

Another consideration is that many sex trafficking cases have not included requests for restitution. This could contribute to the low representation of forensic psychiatrists as expert witnesses because their specific strengths appear most useful for securing restitution. Theoretically, restitution should be requested in every federal sex trafficking prosecution and in many state cases because it is mandatory under the TVPA and some state statutes. Historically, restitution often was not requested for myriad reasons,⁴⁴ including the fact that requests were sometimes denied. For example, in *United States v. Jennings*,⁴⁵ restitution was denied because of uncertainty about how much a victim's psychological symptoms could be directly attributed to sex trafficking.

Since *United States v. Jennings*,⁴⁵ new research has examined the effect of sex trafficking when considered against other traumatic exposures. One study reported that sex trafficking exacerbated PTSD and complex PTSD symptoms in adults and children beyond the role that could be accounted for by their pretrafficking exposures to trauma.⁶⁵ Several studies reported that sex trafficked minors experience a heavier burden of trauma-related and other psychological symptoms than nontrafficked, age-matched minors with other traumatic exposures or adverse experiences.^{35,36,66} These data could be useful for experts asked to explain the rationale for estimated mental health expenses.

The reluctance of some prosecutors to pursue cases involving survivors with mental health and substance use disorders or complex psychosocial environments³¹ may have additionally limited the use of forensic psychiatric testimony. Many sex trafficking cases that historically made it through the vetting process involved more straightforward victim presentations and thus did not require the testimony of a forensic mental health expert. Recently, prosecutors in some jurisdictions have started to accept more cases involving survivors with complex behaviors and to develop strategies for the use of expert witness testimony to explain these behaviors.³¹ In this context, forensic psychiatrists could assume an important role in helping judges and juries understand how trauma and related psychopathology can

affect the survivor's seemingly counterintuitive reactions to sex trafficking.

This review was specific to sex trafficking prosecutions with published opinions, which were predominantly appellate cases. The low utilization of mental health experts in this case review might not reflect broader patterns of how mental health experts engage in sex trafficking cases. Mental health experts may be involved in cases that do not go to trial. For example, they may be asked to evaluate sex trafficking victims who have been charged with prostitution or related crimes, a practice that has persisted despite language in the TVPA discouraging inappropriate criminalization of trafficked persons.^{67,68} Survivors experiencing significant trauma-related symptoms might choose to plead guilty rather than undergo the retraumatizing experience of being prosecuted. It is also possible that mental health expert testimony is being more commonly used in cases that have not undergone appellate review.

Conclusions

The enactment of federal and state anti-trafficking legislation was a promising step in addressing human trafficking in the United States. Many challenges remain in the path to successful implementation of these laws, including common misconceptions of sex trafficking survivors. Expert witness testimony can be useful in aiding the jury in assessing the victim's credibility, particularly if the victim has taken actions that could be misconstrued as consensual behavior or is reluctant to participate in the prosecutorial process.

References

1. Chacon JM. Misery and myopia: Understanding the failures of U.S. efforts to stop human trafficking. *Fordham L Rev.* 2006 May; 74:2977–3040
2. Victims of Trafficking and Violence Protection Act (TVPA) of 2000 (codified in various sections of 18 and 22 U.S.C.) (2000)
3. 22 U.S.C. §7102(12) (2019) (as amended at Pub. L. No. 115-427 (2019))
4. 22 U.S.C. - §7102(11a) (2019) (as amended at Pub. L. No. 115-427 (2019))
5. U.S. Department of Health & Human Services Office on Trafficking in Persons. Fact sheet: Human trafficking [Internet]. Available from: <https://www.acf.hhs.gov/otip/resource/fshumantrafficking>. Accessed January 2, 2020
6. Boyle KM, Rogers KB. Beyond the rape “victim”-“survivor” binary: How race, gender, and identity processes interact to shape distress. *Sociol Forum.* 2020 Jun; 35(2):323–45
7. Raphael J, Myers-Powell B. From victims to victimizers: Interviews with 25 ex-pimps in Chicago. Report from the DePaul University College of Law [Internet]; 2010 Sep. Available from: https://law.depaul.edu/about/centers-and-institutes/schiller-ducanto-fleck-family-law-center/Documents/interview_ex_pimps.pdf. Accessed August 27, 2020
8. Deshpande NA, Nour NM. Sex trafficking of women and girls. *Rev Obstet Gynecol.* 2013; 6(1):e22–7
9. Hodge DR. Sexual trafficking in the United States: A domestic problem with transnational dimensions. *Soc Work.* 2008 Apr; 53(2):143–52
10. Sabon LC. Force, fraud, and coercion—what do they mean? A study of victimization experiences in a new destination Latino sex trafficking network. *Fem Criminol.* 2018 Dec; 13(5):456–76
11. Raphael J, Reichert JA, Powers M. Pimp control and violence: Domestic sex trafficking of Chicago women and girls. *Women & Crim Just.* 2010; 20(1-2):89–104
12. U.S. Department of Justice Office of Public Affairs. Defendant who exploited opioid addictions of young women convicted of crimes related to drug trafficking and prostitution. Justice News [Internet]; 2019 Mar 25. Available from: <https://www.justice.gov/opa/pr/defendant-who-exploited-opioid-addictions-young-women-convicted-crimes-related-drug>. Accessed August 26, 2020
13. Victims of Trafficking and Violence Protection Act of 2000 § 102 (b), 22 U.S.C. §7101(b) (2000)
14. Trafficking Victims Protection Reauthorization Act of 2005 § 2, 22 U.S.C. §7101(2) (2005)
15. U.S. Department of State Office to Monitor and Combat Trafficking in Persons. Fact sheet: The 3P's: prosecution, protection, and prevention [Internet]. Available from: <https://www.state.gov/3ps-prosecution-protection-and-prevention>. Accessed August 27, 2020
16. U.S. Department of Homeland Security. U and T visa law enforcement resource guide [Internet]. Available from: https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf. Accessed August 27, 2020
17. 22 U.S.C. §7109b (2000)
18. Wells K. The 2019 Trafficking Victims Protection Reauthorization Act: A topical summary and analysis of four bills [Internet]; 2019. Available from: <https://polarisproject.org/wp-content/uploads/2020/01/Polaris-TVPRA-2019-Analysis.pdf>. Accessed August 27, 2020
19. National Conference of State Legislatures. Prosecuting human traffickers - recent legislative enactments [Internet]; 2018 Sep. Available from: https://www.ncsl.org/Portals/1/HTML_Large_Reports/Prosecuting_Traffickers_091818_32767.pdf. Accessed January 5, 2020
20. Richard S. State legislation and human trafficking: Helpful or harmful? *U Mich JL Reform.* 2005; 38:447–77
21. The United States Department of Justice. Human trafficking key legislation [Internet]; updated 2017 Jan 6. Available from: <https://www.justice.gov/humantrafficking/key-legislation>. Accessed on January 5, 2020
22. United States Department of Justice Civil Rights Division. Report on the tenth anniversary of the Trafficking Victims Protection Act [Internet]. Available from: <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14tvpaanniversaryreport.pdf>. Accessed January 6, 2020
23. Human Trafficking Institute. 2017 Federal human trafficking report [Internet]; 2018. Available from: <https://www.traffickingmatters.com/wp-content/uploads/2018/05/2017-Federal-Human-Trafficking-Report-WEB-Low-Res.pdf>. Accessed January 7, 2020
24. United States Department of State. 2019 Trafficking in persons report [Internet]; 2020. Available from: <https://www.state.gov/reports/2019-trafficking-in-persons-report>. Accessed January 6, 2020

25. Human Trafficking Institute. 2018 Federal human trafficking report [Internet]; 2019. Available from: <https://www.traffickingmatters.com/wp-content/uploads/2019/04/2018-Federal-Human-Trafficking-Report-Low-Res.pdf>. Accessed January 6, 2020
26. Farrell A, Dank M, Kafafian M, *et al*. Capturing human trafficking victimization through crime reporting, Report on award number 2015-VF-GX-0105 for the National Institute of Justice. Available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/252520.pdf>. Accessed January 7, 2020
27. Roby JL, Turley J, Cloward JG. U.S. response to human trafficking: Is it enough? *J Immigr Refug Stud*. 2008; 6(4):508–25
28. Bouche V, Farrell A, Wittmer D. Identifying effective counter-trafficking programs and practices in the U.S.: Legislative, legal, and public opinion strategies that work [Internet]; 2016. Available from: <https://www.ncjrs.gov/pdffiles1/nij/grants/249670.pdf>. Accessed January 8, 2020
29. Farrell A, DeLateur MJ, Owens C, Fahy S. The prosecution of state-level human trafficking cases in the United States. *Anti-Traffick Rev*. 2016; 6:48–70
30. Nichols AJ, Heil EC. Challenges to identifying and prosecuting sex trafficking cases in the Midwest United States. *Feminist Criminology*. 2015 Jan; 10(1):7–35
31. Farrell A, McDevitt J, Pfeffer R, *et al*. Identifying challenges to improve the investigation and prosecution of state and local human trafficking cases. National Institute of Justice [Internet]; 2016 Apr. Available from: <https://www.urban.org/sites/default/files/publication/25526/412593-Identifying-Challenges-to-Improve-the-Investigation-and-Prosecution-of-State-and-Local-Human-Trafficking-Cases.PDF>. Accessed January 12, 2020
32. Austin R, Farrell A. Human trafficking and the media in the United States. In *Oxford Research Encyclopedia of Criminology*. Oxford, UK: Oxford University Press; 2017
33. Reichert J, Houston-Kolnik J, Vasquez AL, Peterson E. News reporting on human trafficking: Exploratory qualitative interviews with Illinois news journalists. *J Hum Traffick*. 2018; 4(1):6–20
34. Ottisova L, Hemmings S, Howard LM, *et al*. Prevalence and risk of violence and the mental, physical and sexual health problems associated with human trafficking: An updated systematic review. *Epidemiol Psychiatr Sci*. 2016 Aug; 25(4):317–41
35. Shaw J, Lewis JE, Chitiva HA, Pangilinan AR. Adolescent victims of commercial sexual exploitation versus sexually abused adolescents. *J Am Acad Psychiatry Law*. 2017 Sep; 45(3):325–31
36. Palines PA, Rabbitt AL, Pan AY, *et al*. Trafficked children and three groups of youth at high-risk for trafficking: A dual retrospective cohort and scoping review. *Child Abuse Negl*. 2020 Feb; 100:104196
37. Chohaney ML. Minor and adult domestic sex trafficking risk factors in Ohio. *J Soc Social Work Res*. 2016 Spring; 7(1):117–41
38. Institute of Medicine and National Research Council. *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*. Washington, DC: The National Academies Press, 2013
39. Reid JA. Entrapment and enmeshment schemes used by sex traffickers. *Sex Abuse*. 2016 Sep; 28(6):491–511
40. Clawson HJ, Dutch N, Lopez S, *et al*. *Prosecuting Human Trafficking Cases: Lessons learned and promising practices*. Fairfax, VA: ICF International, 2008
41. National Crime Victim Law Institute. Ensuring full restitution for trafficking victims: Case studies compel a call to action. *Victim Law Bulletin* [Internet]; 2013 Nov. Available from: <https://law.lclark.edu/live/files/16052-ncvlivlrestitution-for-trafficking-victims--call>. Accessed May 2, 2020
42. *United States v. Winters*, 729 F.2d 602 (9th Cir. 1984)
43. *United States v. Carson*, 870 F.3d 584 (7th Cir. 2017)
44. The Human Trafficking Legal Center. United States federal courts' continuing failure to order mandatory criminal restitution for human trafficking victims [Internet]; 2018 Sep. Available from: <https://www.htlegalcenter.org/wp-content/uploads/2018-Mandatory-Restitution-Report.pdf>. Accessed January 9, 2020
45. *United States v. Jennings*, 662 F.3d 988 (8th Cir. 2012)
46. *United States v. Lewis*, 791 F. Supp. 2d 81 (D.D.C. 2011)
47. *In re Sealed Case*, 702 F.3d 59 (D.C. Cir. 2012)
48. *United States v. Palmer*, 643 F.3d 1060 (8th Cir. 2011)
49. *Kennedy v. Louisiana*, 554 U.S. 407 (2008)
50. *State v. Donaldson*, 2014 Ohio 3621 (Ohio Ct. App. 2014)
51. *United States v. Brooks*, 610 F.3d 1186 (9th Cir. 2010)
52. *United States v. King*, 703 F. Supp. 2d 1063 (D. Haw. 2010)
53. *United States v. D'Ambrosio*, 677 F. App'x 84 (3d Cir. 2017)
54. *People v. Abdur-Razzaq*, 77 N.Y.S.3d 842 (N.Y. Sup. Ct. 2018)
55. *State v. Bruce*, 411 P.3d 300 (Haw. 2017)
56. *In re N.C.*, 209 Cal. Rptr. 3d 357 (Cal. Ct. App. 2016)
57. *Jones v. State*, 199 A.3d 717 (Md. 2019)
58. *People v. Cardenas*, 338 P.3d 430 (Colo. App. 2014)
59. United States Courts. U.S. district courts – criminal statistical tables for the federal judiciary [Internet]; 2019 Jun 30. Available from: <https://www.uscourts.gov/statistics/table/d-4/statistical-tables-federal-judiciary/2019/06/30>. Accessed January 12, 2020
60. Lonsway KA. The use of expert witnesses in cases involving sexual assault [Internet]; 2005. Available from: <http://www.ncdsv.org/images/UseExpertWitnessesSexAssaultCases.pdf>. Accessed February 2, 2020
61. Long JG. Introducing expert testimony to explain victim behavior in sexual and domestic violence prosecutions [Internet]; 2007. Available from: https://www.forensichealth.com/wp-content/uploads/2016/10/pub_introducing_expert_testimony.pdf. Accessed November 12, 2020
62. Vandenberg ME. Remedies for trafficking victims: Mandatory criminal restitution for victims. *Lawline* [Internet]; 2016 Mar 17. Available from: <https://www.lawline.com/course/remedies-for-trafficking-victims-mandatory-criminal-restitution-for-victims>. Accessed August 28, 2020
63. Oram S, Stöckl H, Busza J, *et al*. Prevalence and risk of violence and the physical, mental, and sexual health problems associated with human trafficking: Systematic review. *PLoS Med*. 2012; 9(5):e1001224
64. Powell C, Dickins K, Stoklosa H. Training US health care professionals on human trafficking: Where do we go from here? *Med Educ Online*. 2017; 22(1):1267980
65. Hopper EK, Gonzalez LD. A comparison of psychological symptoms in survivors of sex and labor trafficking. *Behav Med*. 2018; 44(3):177–88
66. Ottisova L, Smith P, Shetty H, *et al*. Psychological consequences of child trafficking: An historical cohort study of trafficked children in contact with secondary mental health services. *PLoS One*. 2018 Mar; 13(3):e0192321
67. 22 U.S.C. §7101(b)(19) (2000)
68. Emerson J, Aminzadeh A. Left behind: How the absence of a federal vacatur law disadvantages survivors of human trafficking. *U Md L J Race Religion Gender & Class*. 2016; 16(2):239–57