

## Why is *voir dire* during jury selection<sup>1</sup> important in a Human Trafficking Case?

Prosecutors can engage in *voir dire* to gain insight into the minds of potential jurors, educate them about the reality of human trafficking<sup>2</sup> in their communities, and begin to lay the foundation of their case. Human trafficking cases can be legally and factually complex and victims' behavior may not align with preconceived notions of many jurors. *Voir dire* is an opportunity for prosecutors to demonstrate leadership in the courtroom by clearly and concisely discussing key legal fundamentals and educating the jurors about sex trafficking, labor trafficking, and related topics of coercion and trauma.

### Topics for an effective *voir dire*:

- **Complexity of the law:** Human trafficking cases may involve multiple counts or defendants, and charges that may be difficult to explain or understand. When prosecutors can clearly, concisely, and accurately explain the law, they demonstrate leadership and trustworthiness that can positively impact jurors' perceptions of subsequent arguments.
- **Preconceived notions about human trafficking:** Jurors may have a preconceived notion of what "human trafficking" is and may conflate it with smuggling or expect it to look a particular way. A prosecutor may be able to ask questions to see if jurors will be able to put aside expectations that may have been shaped by popular media.
  - **Possible line of questioning:** "*Would it surprise you to know that human trafficking does not require any movement or the crossing of any border; that it can happen in one's own home?*" followed by the question, "*would anyone require the prosecution to prove that the victim was transported or moved across any border?*"
- **Preconceived notions about how victims respond to trauma:** Victims of human trafficking have experienced trauma. Many of them have experienced trauma throughout their lives, including child sexual abuse and domestic violence. Trauma impacts individuals differently, and many common responses to trauma are not commonly or easily

<sup>1</sup> Jury selection differs widely between jurisdictions. This resource is focused on how prosecutors who speak with potential jurors (*voir dire*) can leverage that opportunity to improve case outcomes. For a more in depth discussion of topics that may be relevant to jury selection techniques in human trafficking cases, see Webinar by International Association of Chiefs of Police, Jane Anderson, and Miiko Anderson, *Prosecution Foundations: Educating the Judge and Jury About the Realities of Human Trafficking*, AEQUITAS, [https://www.youtube.com/watch?v=gWt78Z\\_qjEg](https://www.youtube.com/watch?v=gWt78Z_qjEg) (uploaded November 2023).

<sup>2</sup> For more information to help prosecutors understand the realities of human trafficking, see: AEQUITAS, Wendy Barnes, Keisha Head, and Toolsi Meisner, *Being Trafficked: What Prosecutors Need to Know About the Life*, 22 STRATEGIES IN BRIEF, (June 2023) available at <https://aequitasresource.org/wp-content/uploads/2023/07/Being-Trafficked---What-Prosecutors-Need-to-Know-About-the-Life.pdf>

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understood.<sup>3</sup> Delayed disclosure, a “freeze” response during an assault, acting out in anger, minimization, and trauma bonding with the trafficker are all common responses that may need to be explained to jurors. *Voir dire* provides prosecutors with an opportunity to start that education process by asking questions about the jurors’ experiences and what they have witnessed in friends and family members who may have experienced trauma.

- **Possible line of questioning:** “Who has a close friend of family member who has experienced trauma?” A common example a prosecutor might draw is asking whether any jurors have had a friend or family member experience domestic violence.<sup>4</sup> Specific questions can follow to elicit from the juror whether that friend or family member called the police the first time it happened, whether they left immediately after it happened, or if they ever returned to their abuser. The answers to these questions can educate others in the panel that these behaviors are typical.
- **Existing biases:** Jurors may have opinions related to individuals engaged in the commercial sex industry, drugs, or other illegal activities. Where a trafficking case involves forced criminality<sup>5</sup> or a victim with vulnerabilities related to illegal behavior such as drug use, it is imperative that the prosecutor identifies any jurors that cannot look past bias and evaluate the facts and evidence as required by law.
- **The “Perfect” Victim Doesn’t Exist:** Human traffickers identify victims who they believe they can exploit without repercussions. That means that they seek out individuals who are accessible, vulnerable, and who they think will not be believed because of those vulnerabilities. While jurors may readily understand vulnerabilities such as age or disability, they may not recognize that trafficker’s prey on individuals who have criminal histories, substance use disorders, or who are already engaging in commercial sex to

<sup>3</sup> TRAUMA BONDING IN HUMAN TRAFFICKING, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, UNITED STATES DEPARTMENT OF STATE (2020), [https://www.state.gov/wp-content/uploads/2020/10/TIP\\_Factsheet-Trauma-Bonding-in-Human-Trafficking-508.pdf](https://www.state.gov/wp-content/uploads/2020/10/TIP_Factsheet-Trauma-Bonding-in-Human-Trafficking-508.pdf)

<sup>4</sup> In many sex trafficking cases, dynamics between a trafficker and their victim may closely resemble those in a domestic violence case. Prosecutors may be able to use the dynamics of domestic violence as an illustrative link to help jurors better understand victim behavior. For more on this particular dynamic in sex trafficking cases, see Webinar by Wendy Barnes and Jane Anderson, *Coercive ‘Love’: The Intersection between Intimate Partner Violence and Human Trafficking*, AEQUITAS, <https://www.youtube.com/watch?v=-YIOUeablE> (Uploaded January 2022).

<sup>5</sup> Forced criminality as used here refers to a type of human trafficking and exploitation where victims are coerced into committing crimes for the benefit of traffickers. This is a common tactic to further isolate victims and make them seemingly complicit in the trafficker’s wrongdoing, often on the hopes that officers and jurors will see victims as criminals. See Webinar by Beth Jacobs, Shamere McKenzie, and Dalia Racine, *Just Exits: Assessing Culpability - Context before Conviction*, AEQUITAS, <https://www.youtube.com/watch?v=Z5vyMW7-S8M> (uploaded November 24, 2020).

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survive. *Voir dire* is an opportunity to establish that traffickers are intentional on who they identify to exploit and that victims are not perfect.<sup>6</sup>

- **Possible line of questioning:** Starting a discussion around victims' vulnerability and traffickers' predatory behavior can introduce this theme to jurors. For example, a prosecutor may ask:
  - "Who in our community do you think is vulnerable to human trafficking?" The prosecutor's goal in asking this question is to have jurors identify on their own individuals who might be readily targeted by traffickers and identify victim vulnerabilities in their case.
    - "Who else?" is a question that may prod jurors to think more deeply if their initial response to the first question is more limited.
  - "What makes those people vulnerable?" Once a prosecutor has the jury identify who may be vulnerable, they can tie those vulnerabilities to the defendant's intentions.
    - For example, if a juror responds that unhoused individuals, or those with drug addictions are vulnerable, a prosecutor can follow-up by asking, "why would a trafficker pick them?"

### Tying *voir dire* questioning into the case theme:

Focusing the trial theme on the offender's behavior allows prosecutors to demonstrate that "*the defendant picked the perfect victim.*" This reminds the jury that the defendant selected this victim knowing these vulnerabilities would make the victim less credible and is counting on jurors to act on their biases and preconceived notions, rather than the evidence, to disregard the victim's testimony. That theme introduced during *voir dire* can be woven through the entire case, culminating in the jury evaluating the evidence and testimony through an offender-focused lens.

### Case specific topics for *voir dire*:

*Voir dire* is a powerful tool to establish leadership in the courtroom, uncover improper biases, educate jurors, and instill empathy for the victim. Every case will present unique challenges related to the victim, trafficking typology, and specific and individualized tactics used by the trafficker to recruit, control, and exploit the victim. These cases may require additional strategies or specialized questions.<sup>7</sup>

<sup>6</sup> See AEQUITAS et al., *supra*, note 2.

<sup>7</sup> AEQUITAS is available for case specific consultations for more direct assistance in *voir dire*. To request a consultation on a specific case, visit *Consultations*, AEQUITAS, <https://aequitasresource.org/consultations/>.

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