

ISSUES AND GOOD PRACTICES FOR INTERVIEWING POTENTIAL HUMAN TRAFFICKING VICTIMS

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I. IMPORTANCE OF THE VICTIM INTERVIEW

A. The Victim Interview as Evidence

Because the victim interview is necessary in obtaining important information, the proper handling of it is essential to the viability of your investigation. As a first responder to a homicide, would you immediately discount a knife lying next to a stabbing victim? Or would you ignore a trail of money after a bank robbery? A victim of trafficking, which will often involve physical and/or sexual assault, is a walking crime scene and key evidence all in one. You should handle your victim with not only the same care you would handle any major evidence to a crime but you should also handle the victim with all the consideration and compassion that you can. Mishandling an interview with a trafficking victim can irreparably damage your case as the victim alone can provide much of the necessary evidence in developing your case.

Chicago (Illinois) Police Department's Detective Scott Keenan used this simple explanation to demonstrate the role of the investigator in cases where a victim has been assaulted: "By corroborating as many facts as possible, no matter how insignificant they may seem, you can better help establish the validity of the victim's story and improve his/her credibility even when there are other problems with the investigation. Obviously, the primary role of the investigator is to gather evidence, but in doing so, a good investigator will take the time to consider each detail of the victim's story for potential corroboration. Verifying as many details as possible, even when they are not directly relevant to the elements of the crime, will always help to bolster the victim's credibility. This can be most crucial when there are questions regarding the accuracy of some major details of the case. The purpose of conducting a thoughtful, thorough and accurate interview is to corroborate as much as the victim's story as possible, all the while working to protect and improve [the victim's] credibility as a potential prosecution witness."

B. Obstacles to Effective Interviewing in Trafficking Cases

The investigative process and the personality of the typical investigating officer may create unseen obstacles to conducting a good interview of trafficking victims. These obstacles are discussed in greater detail below.

1. Asking for "Just the Facts"

Many officers feel as if just asking "who, what, when, where, and why" is sufficient in an interview. It is important not only in trafficking investigations but virtually any type of crime to take the time to ask thoughtful questions and really involve yourself in the interview in order to ensure a satisfactory outcome. By just asking the basic questions, you will in turn just get basic facts and not the insights or level of detail that more open-ended and probing questions could elicit.

2. The Police Personality

Police officers, as a very general personality type, tend to be action-oriented people who like to get to the point and then solve the problem. While this personality type can serve an officer well in many circumstances, it can be counter-productive in a trafficking investigation where a drawn-out, detail laden and emotionally taxing interview is the norm rather than the exception. The officer may constantly fight to "move on" with the interview rather than give it the time and delicate touch it requires.

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3. The Tough-Guy Facade

Because trafficking cases can be so emotionally difficult for not only the victim but the officer as well, the officer may have a tendency to adopt a tough facade when responding to such cases. This false exterior is an attempt by the officer to distance themselves from the emotion of the case and maintain an unbiased image in front of the victim. While adopting this image may help the officer feel more in control of themselves and their emotions, it can serve as a huge barrier to effectively connecting with the victim and, in turn, conducting a satisfactory interview.

4. The Police Career Path

The typical career path for a police officer that may lead him from the entry-level patrol position to that of conducting interviews serves as a somewhat deeper and more difficult obstacle to overcome. Most officers, by the very nature of the police career path, will learn much of their interview techniques "in the trenches" where time and optimal conditions may not be a possibility. They will rely on those first experiences in handling victims throughout their career. This less than optimal method of training potential investigators in the fine art of interviewing seems difficult and virtually impossible to combat.

C. Pre-Interview Guidance

Below are some key principles to keep in mind when preparing for your victim interview.

1. Do No Harm to the Victim

One of the goals of your victim interviews, aside from the obvious gathering of evidence, should be to inflict the least amount of further injury to the victim. The interview will most likely be the first or second of many times that the victim will be forced to recount pain and humiliation to another person. It should always be a priority to do everything possible to minimize the damaging effects that the interview could have on the victim as well as the longer term effects of a poor interview on your investigation.

2. Set the Stage for the Victim

An officer or other interviewer can "craft" a more desirable and less damaging atmosphere by attempting to set the stage properly for the victim interview. This has as much to do with managing your own demeanor and reactions as it does with establishing physical space and comfort for the victim. The first step would be to select an appropriate location for the interview. The location should be one in which the victim feels safe and comfortable, and it should be quiet and free from distractions. An officer (especially one in full uniform) should always avoid standing above the victim, as this can be seen as intimidating. Steps are a good location for an interview, as even a physically larger person can maintain a lower presence than the victim. This allows an excellent opportunity for the victim to regain a small bit of control over physical surroundings and will help to put the victim at ease during the discomfort of the interview. This can also be accomplished at the hospital by sitting in a chair while the victim is sitting or lying on the higher position of the examining table.

To preserve the emotional health and the progress of your interview, you should discuss privately with the victim if she would like anyone specifically included or excluded from the interview. As long as the support person is not a witness to the crime, where that person's own testimony could influence or be influenced by the victim's, you should allow the victim any support person that they wish. In the case of the victim preferring to have someone excluded from the interview, most likely a parent or spouse, it should be handled diplomatically. While initially having a parent or spouse present seems like a reassuring and safe idea to the victim, they will often find themselves holding back key information in the presence of the spouse or parent out of shame, fear or embarrassment. Other support people should be available upon request of the victim, possibly a counselor or a same sex officer.

It is imperative that you stress to the support person that their role is one of emotional support to the victim and they should be cautioned against "filling in gaps" for the victim, prompting answers or in any other way disrupting the interview. This is again another opportunity for the victim to be allowed to feel in control of the situation. You should explain to the victim the purpose of the interview – that you are there to collect a statement as well as any evidence of the crime. Remember that, often, the investigator is a first responder on a scene and is possibly in full uniform. This can be very intimidating to a victim. When this person starts asking many probing, personal questions with no explanation, it becomes frightening. By explaining the purpose of the interview, the victim begins to understand that you are not questioning the

victim to find fault or blame, but, instead, to gather evidence and begin an investigation.

Explain to the victim before you begin the interview that there may be questions that she cannot answer. Assure the victim that this is normal and in no way reflects the strength or validity of his/her claims. Your job is to attempt to gather as much accurate information as possible, so caution the victim against guessing as it could have a longer term negative impact on the investigation.

In the victim's fearful state, they may emphasize to you that they do not wish to prosecute the case or that they are unsure about whether or not to proceed with a prosecution. Reassure the victim that you respect their opinion on how the case should be handled, and that the opinion will be taken into account when determining whether and how to proceed with any criminal investigation. However, stress to the victim that it is important that the police gather appropriate evidence and make a report about the incident in spite of the victim's decision to not further cooperate with the investigation.

3. Showing Empathy

Empathy is a powerful tool to assist an investigating officer or other interviewer in a trafficking case. It helps to establish a rapport with the victim that will ultimately lead to a more open and productive interview. Empathy is demonstrated as much by words as by actions. When asking the victim how they are feeling, take the time to actually listen to the victim's answer and let the victim know that you are doing so. In an effort to show empathy to a victim, it is often the case that officers will say well-intentioned things that could have the opposite of the desired effect, making the victim feel angry or hurt. This can lead to withdrawal and decreased cooperation on the part of the victim.

It is imperative that the victim feel comfortable with you, feel that their emotions are valid, and feel that you are genuinely interested in their well-being. Acknowledging that the victim has been through a very difficult experience can demonstrate empathy and help put the victim at ease. Your vocal tone and volume should be calm and reassuring. Using "you" statements demonstrates that you are concerned about the victim and are there to help. For example, you may say to the victim, "I'm sorry that this happened to you," or "How are you feeling?"

Some examples of things NOT TO SAY to a victim include:

- "I know how you feel" (even if you as an officer are a survivor of sexual assault)
- "Everything will be ok."
- "It could have been worse."
- "You shouldn't feel that way."
- "Don't cry."

Showing empathy is perhaps the most important thing that an investigating officer or other interviewer can do to set the stage for a thorough and accurate interview.

II. CONDUCTING THE INTERVIEW

A. Techniques to Creating and Maintaining an Open Interview

Throughout the interview, there are various techniques that you can use to help put the victim at ease, encourage honesty, and demonstrate empathy. By preempting questions with an explanation of why you need the information, you allow the victim the chance to understand why he or she should answer your questions and answer them accurately. This is especially important when discussing specific sexual acts involved in the assault or high risk behaviors surrounding the assault. When asking for specific information about sexual acts, it is helpful to explain the various nuances of language in the law regarding sexual assaults in an effort to explain why such explicit and embarrassing information might be needed. In the case of high risk behaviors surrounding the crime, it is important that the victim understand that asking about such behaviors should not be taken to mean that the investigator believes that the victim is lying or somehow allowed the crime. More importantly, it is an effort to understand the circumstances around the trafficking crime and to prepare for an inevitable attack on the victim as it relates to lifestyle, background, etc.

There are various physical cues and techniques that an investigator can use to relax the victim and foster open communication. For example, maintaining eye contact with the victim during the course of the interview is vital to maintaining the flow of communication. Be sure not to stare, as many find that unsettling. However, it is important to look the victim in the eye when addressing him/her and, more importantly, make eye contact when the victim is answering your questions. This lets the victim know that you are listening and are in tune with what the victim is saying. It also conveys a small level of respect that the victim is most likely relieved to be feeling. One should be cautioned, however, against forcing this type of eye contact as some victims may feel too much shame to be able to look you in the eye. Also, in some cultures, eye contact may be considered offensive.

Because the crime that has been perpetrated against the victim is of such a personal nature, it is unadvisable to actually touch the victim during the course of the interview. Referring back to earlier comments about helping the victim to regain control, any sort of uninvited physical touch could be construed as a violation of their recently violated personal space. If you do feel as though some sort of personal contact is warranted, be sure to actually ask the victim's permission before doing so.

Finally, many victims find police terminology used to describe sexual acts both confusing and intimidating. You should avoid using them altogether until you are writing your report. You should allow the victim to use whichever terms he/she feels most comfortable with. However, if you find yourself unfamiliar with a slang term being used, take the time to clarify the specific act without being overly technical. After a victim has used a term to describe a sexual act or genitalia, mimicking that term when you speak (after clarifying its meaning) will increase the victim's comfort level. Acting shocked or embarrassed by these terms will lead the victim think you are otherwise uncomfortable in the situation and the victim may begin to withdraw.

Finally, by injecting comments and rhetorical questions into the conversation that do not upset the flow of the victim's narrative, you show the victim that you are not only listening but are listening intently. Below is an example:

- Victim: "I'd seen him around and my friends all knew him but I really didn't know him at all."
- Investigator: "So you sort of knew him on a casual basis?"
- Victim: "Yeah, like I'd nod or something if I saw him on the street."

B. The Victim's Narrative

By using open-ended prompts and allowing ample time for a thoughtful response during this stage of the interview, you allow the victim to tell the story completely and to have control over the process. Sentences such as "And then what happened?" or "Tell me more about that" allow the victim to elaborate on the narrative without upsetting his/her thought process. The victim should be leading the conversation with occasional encouragement from the investigator. By allowing this sort of flow of conversation, you are likely to get more accurate and uncorrupted information, not to mention more information all together. Also, it allows the victim to tell his/her story in a way that the victim feels comfortable, which helps to increase ease with the entire process.

Avoiding leading questions will also help you to avoid any sense that the victim has been unduly influenced one way or another. Victims of violent attacks, especially sexual attacks, are highly susceptible to the influences of those around them, especially those of people in power. You may unwittingly influence the victim's accounting of events. Also, by asking leading questions, you may convey the idea that answering the question a certain way would be the "right" answer and that it would be more like a "real" assault if these things did occur. In an effort to be believed, the victim may change his/her own version of events to match what she feels the investigator might favor. Examples of leading questions:

- "Did he use physical force to restrain you?"
- "Was he bigger than you?"
- "Did you resist?"

Interruptions by investigators can be a death blow to a good investigation. When you interrupt the victim's narrative, even just to clarify a point, you interrupt their train of thought which could cause them to be confused and forget details. Also, it shows you are either not listening or not particularly interested in what

the victim is saying, or even that the information she had been giving was somehow not important enough to allow the victim to continue. During the victim's narrative, you should concentrate on making notes about things you didn't understand or gaps in information rather than interrupting on the spot to clarify points and asking more questions. Of course, while making notes, you should still be sure to pay close attention to what the victim is saying, using eye contact and other non-verbal gestures to indicate that you are listening.

When preparing to conduct a trafficking victim interview, you should prepare yourself for a long, emotionally difficult interview. Essential elements in collecting information from the interview include:

- Description of the victim's behavior and relationship with the suspect
- Description of the suspect's behavior
- Description of the labor and circumstances of the labor
- Documentation of the specific acts committed and whether any acts were repeated
- Description of the suspect's sexual behavior

To the extent possible, you should also obtain information regarding the victim's background. You should try to obtain these details once you build rapport with the victim and once the victim feels comfortable providing the information. To the extent that the victim is reluctant to provide personal background information early on in the investigation, you will need to conduct your own investigation (for example, criminal history) and follow-up on critical matters as needed.

C. The Inconsistency Problem

It is understandable and perhaps inevitable that victims will give information that is either inconsistent or untrue. However, any inconsistencies or untruths are likely to destroy the victim's credibility if not handled appropriately by police. It is critically important that officers realize these inconsistencies or untruths are understandable and should not be confused with a "false" allegation. Rather, officers should address inconsistencies in the victim's statement by exploring the issue gently and nonjudgmentally with the victim.

When an inconsistency does arise, the most immediate response should be to point it out to the victim and ask the victim to clarify it. It is entirely possible that the victim simply made a mistake or the officer misheard or misunderstood what the victim was saying. It is also important to fully explain to victims the impact of inconsistencies on their credibility and the police investigation. If the inconsistency remains, officers can explain that conflicting information has arisen and ask for the victim's assistance in making sense of it. For example, an officer could say: "I need to ask these questions because I have to write a report on this, and I want to get every detail correct." If the inconsistency seems to result from the victim's attempt to make the assault sound more like "real," officers should address the victim's underlying fear of being doubted or blamed. Officers can also reassure the victim that the assault was serious and that he/she did nothing to deserve it, or emphasize the importance of complete truthfulness and create a safe, nonjudgmental environment that encourages honesty even regarding unflattering or illegal behavior. Victims should be reassured that they will not be arrested for illegal behavior such as underage drinking or drug use — but this promise must only be made if it can be guaranteed to be true. Departments should never arrest trafficking victims for such behavior given the priority that must be placed on the criminal victimization.

If these more direct strategies do not work in clarifying information with the victim, there are some alternative approaches. For example, the officer can blame someone else for needing to clarify the information. This can help take the heat off the officer and facilitate victim cooperation. For example, the officer could say: "I understand why you didn't call for help that night, but I need to know what you are going to say when the defense attorney asks about it in court." Or, officers can blame themselves. This technique might work best with victims who continuously change their story. For example: "I'm sorry, but I'm confused. I thought you said you didn't call for help that night."

D. Concluding the Victim Interview

Take time after the conclusion of the "hard part" to ask the victim if she can remember anything else that she may have forgotten or had any other information that may be at all relevant. By allowing the victim to stop after the intensity of the interview to collect their thoughts, they may come up with additional information that could be useful. Though the interview is coming to an end, continue to extend empathy to

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the victim by reassuring the victim that the crime was in no way his/her fault. You may also thank the victim for cooperation and courage at coming forward, reporting the crime, and enduring the interview.

Explain to the victim what your next steps will be and how the investigation should proceed. Remember that most people have no understanding of how police procedures work, so taking the time to explain them to the victim will be greatly appreciated. For example, the officer can explain the crime laboratory procedures for processing forensic evidence (like DNA) and the process for releasing any of the victim's property that was taken for investigative purposes. When explaining the police procedures, it is important to avoid false assurances or unrealistic expectations for the process. For example, victims should not be told: "Don't worry, we'll have the suspect in custody before you know it and he'll go to prison for a long time." Instead, victims should be provided with honest information about the process and likely outcomes.

Officers should also address any questions or concerns the victim might have about what is and is not part of the police investigation. For example, one victim might be very concerned about the fact that her criminal history is checked. In this case, the victim can be reassured that everyone who comes into contact with police is checked for a criminal history and that this does not in any way represent that she is being doubted or blamed for the assault. Another victim might be concerned about why she is being fingerprinted after reporting that she is a victim of a physical or sexual assault. In this case, officers should explain to victims that they are providing elimination prints and how these are used to rule out those from the victim when looking for those of the suspect.

Victims can also be informed that the officer will interview the suspect (if one can be located), and that information about this contact may come back to the victim. For example, officers will often "go along" with things that the suspect says in an interview just to keep him talking. Victims should be informed that this is used as a technique for collecting information from the suspect and does not indicate that the officer has "taken the suspect's side" or view of events.

At the conclusion of the interview, officers can explore safety concerns with victims and help them formulate a plan for maintaining their physical well-being. Given that most victims know their offenders, they understandably have concerns about what will happen when the suspect is contacted by police about the assault. In cases where the suspect is a stranger, victims are also concerned that the suspect will remain at large and pose a threat for repeated victimization. It is therefore important for officers to explore a safety plan with victims, and explain the procedures for obtaining an order of protection if appropriate.

Officers should provide victims with information about who to contact if they have any questions or recall any additional information. Victims may also want to contact someone to clarify details in their statement. To make sure that victims can actually get in contact with the officer who responded to their case, the responding officer should provide victims with his/her name, badge or identification number, and the victim's case number. If an officer has a business card, this can also be provided to victims with information about who to contact for any questions or concerns that may arise.

Finally, because victims are often reluctant to stay at their own home or the place of victimization after an assault (especially if the assault took place there), it is important to get the address and phone number where the victim will actually be staying. In addition, it is advisable to get the name, address, and phone number for another contact person in case the investigator has difficulty locating the victim.

After the interview, officers should stay in touch with the victim and keep him/her apprised of the status of the case. Even though officers often withhold information to protect the victim from unpleasant news, victims want to be kept informed of the status of their case. Especially if their case is being closed or inactivated, victims need to be notified of this fact to achieve some closure in their own lives. Because it can sometimes be difficult for police to keep in contact with victims as often as victims would like, victim advocates can play an important role in keeping the victim informed regarding the police investigation. Also, victim advocates can be especially helpful in ensuring that all of the victim's questions and concerns are addressed, and that they understand what will happen next in the police investigation.

Support people can also be provided with the same information and referrals as the victim, in order to

address their own questions and concerns regarding the victim’s trauma. In addition to answering questions from the victim, advocates can also address the questions and concerns of significant others both during the immediate response to trafficking (e.g., at the hospital or police department) and in the longer-term aftermath of victimization.

Finally, officers should provide the victim with written information about a person’s rights as a crime victim in the state. Some of these rights might include confidentiality, anonymity, and the right to an advocate or support person during follow-up interviews with law enforcement. The victim should also be provided with referrals and information about community resources and agencies that are trained to work with survivors of trafficking. Either the officer or advocate should have printed material that can be made available to victims so they have it in their possession for whenever they might need it. These materials should address topics such as recovery from sexual assault, medical issues, what to expect during the legal process, and community resources. When leaving the victim, police should make sure that she has support personnel and transportation, especially if she is at the hospital.

A quote from retired New York (New York) Police Department Detective Harry O'Reilly vividly describes the important role of the officer/investigator in handling sexual assault victims:

You might be wondering, if you are police officers reading this, “Why should we be doing all of this? We aren't social workers.” This is one of the most common comments made to me in this training job. I say that we most certainly are social workers. We are in the people business, and we must learn how to deal with and relate to all kinds of people. We should be relating with a much greater degree of sensitivity than in the past. If you cannot be moved by the humanity of the argument, then maybe you can relate to the practical advantage of it — if we want the victim's cooperation in the prosecution we have to treat her with the same dignity we afford any other victim of crime. Only we should treat her much more sensitively, because she has had the most heinous crime next to murder perpetrated against her.

This “victim-centered” approach to investigating and prosecuting sexual assault cases applies with equal force to human trafficking cases.

III. VICTIM ASSISTANCE DURING A CRIMINAL INVESTIGATION

A. The Need for Victim Assistance

Federal prosecutors need to consider every possible mechanism that will stabilize the victim. In the United States, options include immigration relief (Continued Presence or T visas), non-governmental organization (NGO) victim advocates, and community support. Victim advocates, NGOs, and community group members can be helpful with the process of explaining the courtroom procedures, what the victim-witness will face, and what their participation will entail.

B. Possible Legal Issue

The provision of victim benefits to cooperating victim-witnesses is an issue that federal prosecutors consistently cite as a challenge to a successful prosecution. Investigators and prosecutors representing the United States Government cannot promise victim-witness benefits for their cooperation in a prosecution. The problem is that defense attorneys can argue that witnesses are not credible if the US Government gives victim-witnesses immigration benefits in exchange for their cooperation and testimony.

No prosecutor can give any assurance to a trafficking victim that they will receive a visa or immigration benefits for their cooperation. Victims must understand that if they do not have legal status in the US, they risk being removed. Prosecutors must rely on an approach with the victim-witness that is frank but as comforting as possible. Prosecuting attorneys, however, must be careful not to make promises to the victim they cannot keep (such as promising a visa, family unification, or immigration benefits).

In addition to the challenge represented by federal assistance to victim-witnesses, prosecutors must also consider the jury appeal of the case. The jury might see the victim-witness as a criminal because, for example, they willingly came to the country illegally or may have initially agreed to engage in commercial sex acts, in spite of their subsequent exploitation. Additionally, if a victim-witness receives assistance while

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cooperating in a criminal investigation, the jury may believe that the victim's testimony is tainted by bias in favor of the government. Potential jurors need to be carefully screened to exclude those with anti-immigrant sentiments, or those who may be critical of anyone who engages in commercial sex acts. The prosecutors must also make the jury recognize the suffering of the victim.

AUTHORITIES & SUPPLEMENTAL RESOURCES

1. United Nations Office of Drugs and Crime, Anti-Human Trafficking Manual for Criminal Justice Practitioners (2008), located at http://www.unodc.org/unodc/en/human-trafficking/publications.html#Training_Materials

NOTE: Module 8 of the UNODC Training Manual provides a comprehensive list of interview questions for trafficking victims, which fall into three categories: (1) General points; (2) Sexual, physical and psychological abuse; and (3) Trafficking markets and the five commercial processes.

2. United States Department of State, Office to Monitor and Combat Trafficking in Persons, <http://www.state.gov/j/tip/>
3. United States Office of Immigration and Customs Enforcement, Human Trafficking, located at <http://www.ice.gov/human-trafficking/>
4. Polaris Project, <http://www.polarisproject.org>

NOTE: The Polaris Project is a non-profit organization that is committed to combating human trafficking and modern-day slavery, and to strengthening the anti-trafficking movement through a comprehensive approach.

5. Minnesota Center Against Violence and Abuse, located at <http://www.mincava.umn.edu/>