

Human Trafficking Cases: How and Why to Use an Expert Witness

By Florrie Burke and Joy Zarembka

Trafficking in persons is the recruitment, transportation, transfer, harboring or receipt of persons, by any means, for forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Human trafficking is an unfamiliar crime to many judges and juries. Jurors may not believe slavery is happening on American soil and may believe that the case presented before them is an isolated incident. Jurors might also sympathize with the trafficker in some cases, such as those involving domestic workers. To help explain the complicated dynamics of human trafficking to judges and or juries, you may want to consider including the testimony of an expert witness.

An expert witness can offer consultations, reports, depositions, and court testimony for attorneys, law firms, judges, juries, and government agencies in state and federal court hearings, trials, and arbitrations in both civil and criminal cases. An expert witness can put the human trafficking phenomenon into a larger context and provide an external objective voice to complement the plaintiff's narrative. Expert witness testimony can educate and inform the court about

the nature and extent of the crime. In particular, when the trafficking case involves psychological coercion, it is helpful for a trafficking expert to better contextualize that coercion and enhance the overall testimony.

An expert witness may help your case by:

- ▶ Providing important background information on the crime of human trafficking;
- ▶ Providing subject-matter expertise on the specific type of trafficking, i.e. domestic servitude, sexual exploitation, etc.;
- ▶ Providing in-depth analysis of the “climate of fear” created by traffickers in human trafficking cases;
- ▶ Providing insight on the psychological dynamics and effect of human trafficking on its victims;

- Establishing that evidence is consistent with common practices and behavior patterns in other human trafficking cases;
- Outlining the various cultural components of the case and explaining particular cultural differences such as class stratification, hierarchy, and deference, etc.;
- Contextualizing the power of non-violent psychological coercion.

Screen a possible expert witness by checking the following:

- Credible educational background
- Specialized practical experience
- Professional demeanor
- Solid reputation in the field
- Citations and documents to support reports and/or testimony
- Experience with testifying
- References from other attorneys about earlier testimony

Tips for working with an expert witness:

- Communicate verbally rather than in written form to avoid document discovery.
- Be clear about the level and type of the expertise required for your case.
- Clarify the scope of the expert's work (will a written report be required? is there a deposition? testimony at trial? etc.)
- Discuss and agree to financial arrangements at the outset.

- Take time to discuss the case and furnish the necessary documents to the expert.
- Give the expert ample time to prepare.
- Be aware that some human trafficking experts may not be lawyers; ensure that the expert understands the legal posture of your case.
- Decide whether or not the expert will meet the clients.
- If the expert interviews the client(s), arrange the meeting, but do not attend.
- Provide preparation for depositions and trial testimony when appropriate.
- Provide education and guidance about discovery, materials, files, notes, etc.

Examples of human trafficking cases that benefited from expert witness testimony:

Chellen v. John Pickle Co., Inc., 446 F.Supp.2d 1247 (N.D.Okla. 2006)

Mesfun v. Hagos, No. CV 03-02182 MMM (RNBx), 2005 WL 5956611 (C.D. Cal. Feb. 22, 2005)

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