

# Human Trafficking Intervention Courts: Why Trauma-informed Courts Are Necessary For Survivors of Trafficking.

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I am honored to serve as a judge in New York City, one of the most diverse cities in the world. Currently, I preside over a drug court, mental health court, and a human trafficking intervention court in Queens County Criminal Court which hears misdemeanor offenses. Being a judge in these problem-solving courts requires an understanding of the role of trauma in the lives of many of the damaged individuals who appear before us. Part of the challenge of addressing societal problems within the criminal justice system, whether it be drug addiction, mental health issues, or human trafficking, is to be able to provide restorative justice that takes into account defendants' trauma backgrounds. While it is particularly important for treatment courts to be trauma-informed, the understanding of trauma and its impact on defendants within the criminal justice system is something that should extend to all courts.

This article focuses primarily on my experiences working with survivors of human trafficking as a judge in the Queens Human Trafficking Intervention Court, which is one of the oldest and largest courts of its kind in this state, if not the country. The Queens court was started in 2004 by Justice Fernando Camacho as a way of addressing victims of child sex trafficking who were brought into the criminal court on prostitution charges. The QHTIC has been so successful that it was the model for the creation of this nation's first statewide initiative in 2013 when former Chief Judge Jonathan Lippman created 8 new trafficking intervention courts throughout New York State. Including the three courts already in existence at that time, in Nassau County, Midtown Community Court, and in Queens County, there are now a total of 11 such courts that deal with approximately 95% of the prostitution-related cases in this state, many of which involve sex trafficking survivors.

Every year, the QHTIC sees approximately 600 defendants who are arrested on prostitution related charges. The diversity of Queens, where at least 176 languages are spoken, as well as the fact that it is a hub of international trafficking, accounts for a mixture of both domestic and foreign-born victims of sex trafficking in my court. In the past several years, with the increase of illicit massage parlors flourishing in Queens, many of which are fronts for human trafficking, at least 40-45% of the defendants we have seen in the QHTIC are foreign-born Asian women. Whether American or foreign born, most of the defendants are women of color who have either been trafficked or are at high risk of trafficking because of the victimization they have experienced in the commercial sex trade because due to their race, gender and poverty. African American girls and women are arrested most frequently for prostitution and are often stigmatized and treated with scorn and humiliation for being "prostitutes" and "whores." Asian foreign nationals, on the other hand, work in some of the 700 massage parlors in New York as victims of labor or sex trafficking and experience misery and enslavement which may never see the light of day. Although boys and men can be victims of both labor and sex trafficking, sex

trafficking is a form of gender violence that mostly affects women and is the cause of myriad forms of trauma. It is also a violation of their human rights and right to self-integrity.

The HTICs are innovative problem-solving courts that employ a culturally sensitive, multi-disciplinary approach to address the needs of trafficking survivors. Its aim is to identify and assist survivors of human trafficking whose cases are before the court because of the criminal charges pending against them. Working with a collaborative team of service providers, defense attorneys, and the District Attorney's Office, these courts are designed to serve as an alternative to incarceration by connecting these defendants to a wide array of services that are suited to their individual needs. Thus, while still caught within the framework of the criminal justice system as defendants, understanding how these women are also victimized by their prostitution arrests necessitates their treatment as victims instead of as mere criminals. This is even more so the case if the defendants have been trafficked. An important role of these courts is to identify and connect them to the services they may need, to promote their well-being and independence, and to resolve their cases with non-criminal dispositions wherever possible. Another objective is to help restore dignity and agency in the lives of these women who have been stripped of both and supporting their empowerment.

### Trauma and Trafficking

As all judges in problem solving and treatment courts are aware, trauma is a pervasive reality for the defendants who come before the court, whether it is a drug court, a mental health court, or a veterans' court. This is none more true than in the HTICs, where a trauma informed courtroom is critical to address the often complex, chronic, and multiple trauma histories of these defendants. It has been well documented that victims of trafficking suffer various types of trauma associated with the use of physical, sexual, and psychological violence against them not only by their pimp/traffickers, but also by their johns – the men that they have been forced to have sex with countless times a day. Sexual assault, rape, torture, beatings, and other attacks on the physical integrity of these victims are not uncommon, as well as medical/gynecological problems faced by women who are forced into prostitution and commercial sex work. Under pimp-controlled prostitution, which characterizes the situation of many domestic sex trafficking victims, complete domination and control is exercised in a number of different ways, not just physical, but psychological and emotional as well. If the trafficking victim is involved in a sexual or romantic relationship with her trafficker, the dynamics may be similar to domestic violence situations characterized by intimate partner violence. The trauma-bonding that forms in these relationships, including the coercive techniques that are employed to keep women under subjugation, becomes part of the psychological makeup of these victims. As in years past, when ignorance about the dynamics of domestic violence lead many to blame the victim by asking why she simply didn't leave an abusive situation, so, too, there is currently a lack of understanding about the complicated situation that may prevent a trafficking victim, believing that she is in love with her pimp, from recognizing her own subjugation. Many trafficking survivors might also exhibit features of the "Stockholm syndrome" whereby they have internalized and identify with the trafficker's perspective. Several studies have also established similarities between the traumatic experiences of victims of trafficking and torture.

It is not only the experience of being trafficked for sex that defines the experiences of these women, but their past and current circumstances may also impact upon a person's mental health, state of mind, and ability to function. The discrimination that women of color face because of their race, class and gender may also contribute to their experiences of trauma. Similarly, differences in language, culture, sexual orientation and gender identity, also play a huge role in the trauma experiences of the defendants in the HTIC. A noticeable number of the American women of color we see in court are victims of childhood sexual abuse and were involved in the child welfare system. Many were then trafficked as children and were forced into prostitution when they were 13-16 years old, but had never been identified or recognized as victims of child sex trafficking. We are also starting to understand the connections between child sex abuse, trauma, and its impact on the criminality of women and girls, and that it not only pertains to survivors of sex trafficking, but more broadly to a high percentage of justice-involved women.

Cultural backgrounds and other factors may also shape the trauma experiences of the defendants in the HTICs. Most of the foreign-born defendants we see in Queens are Asian women, usually in their 30's and 40's, are undocumented, do not speak English, and are often in debt bondage. They came to this country expecting to work hard to support family in their home country, but did not realize that they would wind up working in massage parlors or having to engage in commercial sex. In many of these cases, traffickers and massage parlor owners or managers employ sophisticated and coercive techniques to traffic these women. Similarly, the court also has a noticeable number of Latina transgender defendants who have been persecuted for their sexual orientation in their native countries and experience different forms of discrimination once here, making sex work one of the only ways that they have been able to survive. They, too, like their Asian counterparts, often do not speak English, are disenfranchised and are victims of gender violence and discrimination. They are thus easy targets for arrest as well as for trafficking.

### Trafficking and Trauma-Informed Courts

The QHTIC is based on a collaborative, multidisciplinary model that seeks to identify and provide assistance to victims of trafficking as well as those who are victimized and exploited in the commercial sex trade. Along with the recognition of their exploitation and abuse is the reality that many of the defendants are also severely traumatized as a result of their experiences. The court is thus geared towards minimizing the stress and trauma potentially caused by participation in the criminal justice system by providing a non-threatening and safe environment to the extent possible. Given the incredible difficulty in identifying trafficking victims – because of its underground, criminal nature, the shame, fear, or distrust felt by victims, their inability to see their own victimization, or because the individual may not otherwise be prepared to self-identify as such -- there is no requirement by the court that a defendant be identified as a trafficking victim in order to be entitled to services. Rather, the court operates on the assumption that all defendants are potential trafficking victims rather than criminal offenders. This shift in focus – from criminal defendant to a victim/defendant paradigm, is perhaps the linchpin of this court, around which everything revolves. Thus, while

trafficking intervention courts bear many similarities to other problem solving courts, these courts are uniquely designed to address the complexities of dealing with sex trafficking victims within either a criminal or family court context.

On Fridays when my court is in session, there is simultaneously great activity taking place outside the courtroom – the hallways are lined with attorneys, service providers, interpreters and defendants, who are all conferring with one another about the defendants' cases. Central to keeping order and providing security are the court officers, and my sergeant will spend the morning in and out of the courtroom, trying to maintain order, security, and field questions to various parties. A trauma-informed approach extends to court staff, including the court officers, who must be alert and sensitive to what takes place in the courtroom, who understand the victim/defendant paradigm as they deal sensitively with the defendants, and also to be on the lookout for possible traffickers in the courtroom. Providing safety and security in the courtroom often means ensuring the safety of the trafficking victim/defendant and making sure she is free from harm and obvious coercive efforts from any pimps or promoters who may be sitting in court. The officers must also be able to facilitate solutions in situations, for example, where a defendant is trying to evade her trafficker and the court has to provide alternative means of exit or escape. Courtroom safety also means knowing how to diffuse confrontation by the practice of de-escalation, providing information to others and answering questions to many of the non-english speaking defendants with the aid of an interpreter (or a google translating app). The court officers also serve as the court's eyes and ears, and I depend upon them to provide information about suspicious individuals in the courtroom or other situations as they arise. Training is an important part of a trauma-informed courtroom, and the Court Officers' Academy within the NYS Office of Court Administration has commenced trainings for its new officers on trauma and human trafficking in 2017.

Applying the principles of restorative justice when dealing with victim/defendants in the HTICs also contributes to a trauma-informed approach. Judges can provide leadership in this regard by setting the appropriate tone in the courtroom and serving an example to others by the court's treatment of the defendants. When addressing defendants in my court, I don't go out of my way to be solicitous; I simply treat them with compassion, dignity and respect. In the limited time I have with each defendant, I address the defendants by name, ask them how they are doing, and when it is not clear, I will ask a transgender defendant how he/she wishes to be referred. I also ask defendants if they understand the proceedings taking place, or if they have any questions of the court once they have agreed to participate in a program with one of the service provider organizations. In those instances where an interpreter is present, I want to make sure that the interpreter is doing his or her job and that the proceedings are not going so quickly that the defendant has no idea what is going on. I am well aware of the limits of my interaction with each of the defendants, and the fact that whatever trauma they may be experiencing will likely be undisclosed to the court, especially if they are being trafficked. Additionally, I am also cognizant of the perceived and actual power I possess in my robe as well as the incredibly intimidating and frightening experience of being a defendant in a criminal matter. Despite my limited vantage point from the bench, I am nevertheless always sensitive to the nuances of what is taking place with the defendants, and if it appears that one of them is in distress or becoming upset, I will interrupt the proceedings to find out what is happening. It

is helpful to be mindful of defendants' verbal and non-verbal cues, or if they evince signs of substance abuse, mental illness or severe trauma. It is also important for judges to avoid misunderstanding or misinterpreting a defendant's behavior in court that may be responses to trauma. Thus, defendants may exhibit hostility or aggression, complete withdrawal, apathy, non-responsiveness, dissociation, or hyper-arousal, or severe depression. There may be several reasons for a defendant's behavior, and so judges can't take it personally when a defendant may not appear engaged or responsive as their comportment in the courtroom may be evidence of trauma.

The collaborative model utilized by the QHTIC places a heavy emphasis upon the involvement of the independent service providers, who are active participants in the court proceedings and in the courtroom. Indeed, the QHTIC may be characterized as having one of the most trauma-informed courtrooms anywhere because of the large number of service providers who work with trafficking victims and who provide a wide array of services for them. They appear in court on a weekly basis as court advocates and their presence and contact with the defendants are critical elements in providing a trauma-informed courtroom. Currently there are nine direct service provider organizations to whom cases are referred based on demographic breakdowns and needs of the participants, including specific services for trafficked youth, Chinese and Korean speaking defendants, and Spanish speaking transgender defendants. Virtually all of the providers have been trained on trauma issues and incorporate trauma-informed care in the programs that are available to the defendants.

When the cases appear for the first time in the QHTIC, the dedicated defense attorney from one of the two defense provider organizations will introduce their client to the service provider to whom the defendant has been referred before her first court appearance. After the introduction has been made and the service provider has had an opportunity to talk briefly to the defendant, she will stand alongside the defendant and the attorney when her case is called. The reason why in-court advocacy is stressed as part of this collaborative model is that the service providers perform an important function by making contact and introducing themselves to their clients during this initial encounter. By doing so they are able to put a face to the organization they represent and are present to answer any questions about their organization's program. Their role as in-court advocates and having direct contact with their client from the outset alleviates some of the fear and anxiety many of the defendants face. One of the issues that is often raised is the trauma surrounding the circumstances of a defendant's arrest and how that experience may carry over into her experience in court. Many defendants have discussed the trauma they experienced at the hands of the police during their arrest and the subsequent shame and stigma of being arrested for prostitution.

While there are many unique features of the QHTIC, including being in a resource-rich city such as New York with many anti-trafficking organizations, there are a variety of practices that the court employs that can be used in any courtroom to provide a trauma-informed environment. It was not until I was asked to write this article that I had to start thinking about what we do in court that is trauma-informed, and it slowly dawned on me that *everything* we do is implicitly guided by the trauma that victims of sex trafficking experience. Not every individual in the criminal justice system is similarly traumatized, but we are slowly beginning to

understand the role of trauma in the lives of justice-involved women and girls. In this regard we are just entering a new frontier of understanding that will inform our practices in the future.

Hon. Toko Serita, *Human Trafficking Intervention Courts: Why Trauma-Informed Courts Are Necessary for Survivors of Trafficking in Mental Health Issues & the New York State Courts 2018: Why Trauma Matters to Judges and Lawyers* (PLI Pro Bono Course Handbook 2018)